

# Export Control Compliance at PUIs

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Middlebury

# Outline

- Why Do U.S. Export Controls Exist and Why Should You Care?
- What are U.S. Export Controls? Just the Basics
- What Should You Do about U.S. Export Controls on Your Campus?

# Why Do U.S. Export Controls Exist?

- Foreign policy goals
- National security concerns
- Economic objectives

Remember: US Export Controls are the law, and they apply not just to sponsored research but to all activities.

# Why Should You Care about Export Controls?

- Collaborations internationally
  - Middlebury operates Schools Abroad and Language Schools
  - Middlebury faculty also collaborate informally with individuals overseas
  - Middlebury accepts students from around the world
- Diverse community locally
  - Students from overseas now make up about 5% of all university students in the U.S
  - 10% of Middlebury's undergraduate community is international students

# Why Should You Care about Export Controls?

- State Department (ITAR)
  - Criminal violations: fines of up to \$1,00,000 per violation for individuals and universities; individuals are also eligible for up to 10 years in prison per violation
  - Civil penalties: fines of up to \$500,000 per violation for individuals and universities
  - Additionally, for any violation of the ITAR, any of the following may be imposed: seizure and forfeiture of the articles and any vessel, aircraft or vehicle involved in attempted violation, revocation of exporting privileges, inability to obtain federal contracts
- Commerce Department (EAR)
  - Criminal violations:
    - Willful: fines of up to \$1,00,000 per violation for universities and \$250,000 per violation for individuals, or five times the value of the export ; individuals are also eligible for up to 10 years in prison per violation
    - Knowing: fines of up to \$250,000 per violation for universities and individuals, or five times the value of the export ; individuals are also eligible for up to 5 years in prison per violation
  - Civil penalties: fines up to \$250,000 per violation
  - Additionally, for any violation of the EAR, any of the following may be imposed: seizure and forfeiture of the articles and any vessel, aircraft or vehicle involved in attempted violation, revocation of exporting privileges, inability to obtain federal contracts, denial of export privileges
- Treasury Department (OFAC)
  - Criminal violations: : fines of up to \$1,000,000 per violation for individuals and universities; individuals are also eligible for up to 20 years in prison per violation
  - Civil penalties: fines of up to \$250,000 per violation for individuals and universities
  - Additionally, for any violation of the OFAC, seizure and forfeiture of the articles may result
- Reputation
  - U Mass Amherst banned Iranian nationals from enrolling in certain engineering and science graduate programs, then back peddled
  - Professor Roth at the University of Tennessee





# What Are U.S. Export Controls? Just the Basics

- Fundamental Research
- Educational Information and Public Domain Information
- Exports and Deemed Exports
- Foreign Persons



# Fundamental Research

Fundamental research is “information which is generally accessible to the public “through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.”

15 C.F.R. § 734, FAQs in 15 C.F.R. 734, Supplement 1

22 CFR § 120

# Research that

- Is performed on your campus
- Is intended for publication
- Has no participation restrictions
- Involves no export of controlled equipment or technology

is fundamental research and not subject to export controls

# Educational Information and Public Domain Information

- Information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities
- Information which is published and which is generally accessible or available to the public through books, journals, libraries, conferences in the U.S.

# Information that

- Is commonly taught in courses
- Is published and generally accessible

is not subject to export controls

# Exports and Deemed Exports

- An export is a transfer of technology, information, equipment, software, or services to a foreign person by any means.
- Exports include the actual physical transfer of one of these items (technology, information, equipment, software, or services) outside the U.S.
- Exports also include making any of these items available for visual inspection, written or oral disclosures about the items, and electronic communication about the items—this is what is referred to as a *deemed export*.

# Foreign Persons

- A foreign person is defined as anyone who is not a U.S. citizen or permanent resident or who is not a protected individual (a protected individual is someone who has been granted asylum or refugee status)

# What Should You Do about U.S. Export Controls on Your Campus?

- Proposal Preparation and Review
- Award Negotiation
- Shipment of Equipment/Material
- Foreign Collaborators and Foreign Travel
- Admissions and Visitors to Campus
- Continuous Monitoring

# Proposal Preparation and Review

- Carefully review program announcement and sponsor guidelines
- Review the statement of work
- Flag potential export control issues during your institutional internal review/routing/signature process



# Award Negotiation

- What you don't want in the terms of the award
  - Publication approval requirements
  - Foreign national approval requirements
  - Classified or export controlled information being given to your researchers as part of the award
  - Proprietary information being given to your researchers as part of the award

# Shipment of Equipment/Material

- If possible, direct ship from vendor
  - Vendor is exporter of record
  - May also save time and hassle
- If PIs or students are hand-carrying items
  - Review all items and retain records

# Foreign Collaborators and Foreign Travel

- Ideally, you should screen; here is a free easy to use tool
  - <http://apps.export.gov/csl-search#/csl-search>
- What kinds of things need screening?
  - Payments to foreign nationals
  - Foreign travel, including international conferences
  - Collaboration with foreign nationals, including surveys/services
  - Activities in foreign countries

# Admissions and Visitors to Campus

- Students:
  - For admitted students who are here on valid visas, their activities while they are in the U.S. are subject to public domain, fundamental research, and education exclusions
  - For prospective students, the concern is receiving payments such as application fees. There are also concerns around financial aid for admitted students. There are broad general licenses for engaging in such activities for some sanctioned countries
    - Sudan
    - Iran
- Visitors: Ideally, you should screen foreign visitors; here is a free easy to use tool
  - <http://apps.export.gov/csl-search#/csl-search>

# Continuous Monitoring

- Talk to your researchers
  - Foreign collaborators
  - Foreign travel/conferences
  - Shipments
- Other agreements
  - Material transfer agreements
  - Data use agreements
  - Confidentiality/non-disclosure agreements

