

BRIEFING ON U.S. EXPORT CONTROL REGULATIONS

The purpose of these federal regulations is to protect certain national and economic security interests. Although these regulations have been in effect for decades, they were re-emphasized as official government policy after the 9/11 attacks on the United States. They may apply to some university activities even though there are exclusions for fundamental research and teaching. While Oakland University is committed to academic freedom, the sharing of information and ideas, and public dissemination of knowledge, inclusive of citizens from non-U.S. nations, the **university and its members must comply with the export control regulations** or face penalties for any violations that occur. These regulations carry severe sanctions to both institutions and individuals, including prison sentences.

Most of the export control regulations are administered by one of three federal departments—**State, Commerce, and Treasury**. Each of these departments has its own set of regulations, policies, and procedures, which are changeable and often conflict with each other. Therefore, it is the goal of the Research Office at Oakland University to provide relevant information and education to members of the university community, especially investigators, so that they can plan their activities to comply with these complex regulations. In order to achieve this goal, investigators must share the responsibility for recognizing the activities under their purview that may require review for compliance with export controls. The technical expertise and knowledge of each investigator is essential to allow the Office to perform diligent analyses of situations and to develop appropriate compliance programs when necessary.

There are two major concepts to introduce with regard to export control regulations as they apply to university activities, as follows:

- The regulations control, limit or prohibit the transfer of certain technology, information, equipment, or software to certain foreign nationals, both outside the U.S. (“export”) and **within the U.S.** (sometimes called a “deemed export”).
- Activities that qualify as “fundamental research” or “fundamental education” **may** be excluded from export control regulations, but there are important exceptions to these protections. These include but are not limited to:
 - Use of equipment or other items on the U.S. Munitions List which, when shared with foreign nationals, may constitute a “defense service” and may be prohibited
 - Acceptance of publication restrictions in contracts or other agreements may remove a research project from the “fundamental research” definition
 - Acceptance of a contract that limits or prohibits the participation of foreign nationals on a project is a red flag that export control regulations probably apply
 - Utilization of information, technical data, equipment or software that a military sponsor considers sensitive, even if it is “unclassified”
 - Providing anything of value to OFAC-sanctioned countries

Department of Treasury--Sanctioned Countries:

The Office of Foreign Assets Control (OFAC) administers sanctions against certain countries, entities, and persons. These sanctions can be comprehensive or selective, and may involve the blocking of assets or trade restrictions in order to achieve foreign policy and national security goals. U.S. citizens may be prohibited from giving anything of value to the sanctioned countries and their citizens without a license (which may not be an option). Currently*, there are sanctions against the following countries (with date of most recent update):

- Balkans-Related 02/07/2014
- Belarus 08/11/2011
- Burma (Myanmar) 04/01/2014

- Central African Republic 07/07/2014
- Cote d'Ivoire (Ivory Coast)-Related 01/06/2011
- Cuba 07/30/2013
- Democratic Republic of the Congo-Related 07/08/2014
- Iran 07/21/2014
- Iraq-Related 05/27/2014
- Lebanon-Related 07/30/2010
- Former Liberian Regime of Charles Taylor 04/02/2013
- Libya 10/18/2012
- North Korea 06/20/2011
- Somalia 07/05/2012
- Sudan 02/01/2012
- South Sudan-related 06/02/2014
- Syria 07/09/2014
- Ukraine-related 07/16/2014
- Yemen-Related 11/09/2012
- Zimbabwe 07/10/2014

What Investigators Can Do:

- Carefully review contract language for any restrictions on publication or the participation of foreign nationals
 - Work closely with the Office of Research Administration (ORA) to establish a mutual understanding of the potential export control issues involved. ORA in consultation with legal counsel will typically work with the sponsor to have such clauses removed.
- Inspect equipment in your laboratory to identify any “export control” labels. If you have such equipment, notify ORA immediately so that these items can be screened and appropriately controlled, if necessary.
- For any equipment or software that you believe may have a military use or purpose, contact ORA so that these items can be screened and appropriately controlled, if necessary.
- If you know that you have export controlled items or research in your laboratory, contact ORA before arranging for visitors who are not U.S. citizens to tour your laboratory.
- When traveling internationally, consider the following:
 - Attend only open conferences if you are going to share the results of any research that involved export controls
 - Do not have “side-bar” conversations about your work with foreign nationals
 - If you carry a laptop, take only information and software that is in the public domain.
 - Software and technical devices or data that are available in the U.S. may be subject to export controls if your travels involve sanctioned or embargoed countries or entities.
 - Password-protect your mobile phone.
- Do not provide anything of value to entities or persons from OFAC-sanctioned countries. Take care when travelling to these countries.

Educational presentations on export control compliance are available for large or small groups, or on an individual basis. Please call the Office of Research Administration (ORA) for more information. On-line training is available through the Collaborative Institutional Training Initiative (CITI)—see the link provided on the OU Export Control website. If your research program has been identified as having an export controlled component, you will be required to complete training on the export control regulations.

Helpful links:

State Department, Directorate of Defense Trade controls:

http://pmddtc.state.gov/consolidated_itar.htm

The United States Munitions List:

<http://www.fas.org/spp/starwars/offdocs/itar/p121.htm>

Commerce Department: Introduction to Commerce Department Export Controls:

<http://www.bis.doc.gov/licensing/exportingbasics.htm>

Commerce Control List Overview and the Country Chart:

<http://www.access.gpo.gov/bis/ear/pdf/738.pdf>

*Treasury, Office of Foreign Assets Control (OFAC):

<http://www.treas.gov/offices/enforcement/ofac/> and

<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

Report from the Council on Governmental Relations:

http://www.columbia.edu/cu/compliance/pdfs/COGR_AAU_TroublingClauses_2007_2008.pdf

Warnings and alerts about international travel:

<http://travel.state.gov>.

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