DETERMINING THE APPLICABILITY OF EXPORT CONTROL REGULATIONS

I. DO I NEED TO BE CONCERNED ABOUT EXPORT CONTROLS?

A. NO, if . . .

PUBLIC DOMAIN: (i) Equipment/encrypted software/listed-controlled chemicals, bio-agent toxins NOT involved, AND (ii) there is no reason to believe that Information or non-encrypted Software being released, whether in the U.S. or abroad, will be used in/for a weapon of mass destruction, AND (iii) any U.S. government funding does not impose export controls, AND (iv) the Information/Software is already published, not just ordinarily published, through/at one or more of the following:

- Libraries open to the public or unrestricted subscriptions, news-stands, book stores for a cost not exceeding reproduction/distribution costs (including a reasonable profit);
- Published patents;
- Conferences, meetings or seminars IN THE UNITED STATES which are generally accessible to the public for a fee reasonably related to the cost, and where attendees may take notes;
- Websites which are accessible to all members of the public, free of charge, and where AU does not have knowledge or control of who visits the sites or downloads the software; and/or
- General science, mathematics or engineering commonly taught at and offered in course catalogues of a university.

Transfer to foreign students/visitors in the U.S. ("deemed export") or communication/transfer to researchers abroad ("export") is permitted as long as I.A.1., above, applies. If the situation involves OFAC embargoed or ITAR or EAR restricted countries (see II.B. and III.A.), always contact the AU Facility Security Officer FIRST. Restrictions and licenses may apply to travel to embargoed countries or to dealing with specified persons.

-- OR --

FUNDAMENTAL RESEARCH: (i) Equipment/encrypted software/listed-controlled chemicals, bio-agent toxins NOT involved, AND (ii) there is no reason to know that Information or non-encrypted Software will be used in/for a weapon of mass destruction, AND (iii) the Information/non-encrypted software is being released to foreign nationals in the U.S. only (deemed export), AND (iv) it is the result of scientific or engineering research at an accredited university in the U.S. to which no publication restrictions apply (other than a short period in which to seek patent protection or remove sponsor proprietary data (under Commerce Control List (CCL) and, probably U.S. Munitions List (USML)—see I.B.), AND (v) it is not proprietary and is ordinarily published and broadly shared in the scientific community (no side deals). If information/software is on the USML, it must actually be published (see I.A., above.)

Transfer/communication to any foreign national in the U.S. only at an accredited university (deemed export) is permitted.

(Adapted from UAH/OSP publication)
B. **MAYBE**, if . . .

(i) Equipment or encrypted Software is involved, OR (ii) I.A. above doesn’t apply, AND exposure to foreign nationals (even on U.S. campus) or transfer or travel outside of the U.S. is involved AND:

a. The Equipment, Software, Technology is on the Commerce Control List (CCL) under the Export Administration Regulations (EAR) (http://www.bis.doc.gov/) (note: EAR 99 on the CCL is a catch-all category and virtually all technology not otherwise captured falls into this category, although licenses are not required, except to specified destinations or users.)

b. You are providing information or instruction concerning equipment or software referred to in a., or

c. The foreign nationals are from, or the destination is to, any OFAC embargoed country: Cuba, Iran, Iraq, Libya, N. Korea, Burma, Liberia, Sudan, Syria, Sierra Leone, Zimbabwe.

*If a., b., or c. apply, you MUST contact the AU Facility Security Officer for an analysis of whether an export license is required (and whether it will be presumed to be granted or denied) **BEFORE** any foreign national is involved or transfer outside the U.S. occurs.*

C. **YES**, if . . .

Equipment, Software, Chemical-Bio, or Technology is on/controlled under the USML under the International Traffic in Arms Regulations (ITAR) (http://www.pmdtc.org/)

Equipment, Software, Chemical-Bio, or Technology is designed or modified for (i) a military use, (ii) use in outer space (unless limited exception in 22 CFR 123.16(b)(10) or 125.4(d) applies, or (iii) there is a reason to know it will be used for/in weapons of mass destruction.

Chemicals, Bio-agents/toxins on CCL are involved. EAR license required (i) for ALL countries if listed for chemical-bio weapons control (CB); (ii) for Ricin and Saxitoxin for ALL countries; (iii) for chemical weapons convention compliance-listed chemicals for all countries not a Chemical Weapons Convention (CWC) party.

- License mostly considered on case-by-case basis if listed for CB or AT purposes—will be denied if listed for CW purposes and export is to non-CWC countries;
- License will be denied to Syria and embargoed countries and end users and, for Ricin D and E and CW chemicals/toxins for countries not a party to the CWC.

II. **DO I NEED A LICENSE IF INFORMATION, SOFTWARE, EQUIPMENT, CHEMICAL-BIO IS NOT ON THE USML AND IS ON THE CCL AS EAR 99 ONLY?**

A. **NO**, if . . .

**Equipment**, encrypted **Software**, **Chemical-bio** is NOT involved, and information or non-encrypted software is NOT subject to EAR in the first place because:
a. I.A. (above) applies OR it is “publicly available”

- At a conference, meeting, seminar, whether in the U.S. or abroad, where the fee is reasonably related to the cost, attendance is unrestricted or is on a first to register or technical qualification basis, and all attendees may take notes.

-- OR --

b. It is “educational information”

- Released through instruction in a course offered by an academic institution, wherever located, in its course catalogue or in associated teaching laboratories.

*EAR export controls don’t apply even if OFAC embargoed countries are involved.*

B. MAYBE, if . . .

**EQUIPMENT, LISTED CHEMICALS, BIO-AGENTS/TOXINS, OR ENCRYPTED SOFTWARE ARE INVOLVED OR II.A. (ABOVE) DOES NOT APPLY AND . . .**

- The destination is China, India, Israel, Pakistan, Russia (countries with restricted entities on the EAR “entity chart” at 15 CFR 744, Supp. 4), or

- The end user is on the EAR “denied person list” available at [http://www.bis.doc.gov/DPL/Fefault.shtm](http://www.bis.doc.gov/DPL/Fefault.shtm), or

- The destination is in/national of an OFAC embargoed country (Cuba, Iran, Iraq, Libya, N. Korea, Burma, Liberia, Sudan, Syria, Sierra Leone, Zimbabwe) or on OFAC prohibited list, or

- The destination is in/national of another U.S.-embargoed country (Rwanda and the OFAC embargo list).

III. IF ITEM, CHEMICALS, BIO-AGENTS/TOXINS, OR SOFTWARE IS ON USML/CONTROLLED UNDER ITAR AND I.A. (ABOVE) DOES NOT APPLY, ITAR LICENSE REQUIRED. WILL I GET A LICENSE?

A. NO, if . . .

the destination is, or foreign national (even at AU) exposed is a national of Belarus, Cuba, Iran, Iraq, Libya, N. Korea, Syria, Vietnam, Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan, or Zaire (Democratic Republic of Congo), or any UN Security Council arms embargoed country (Angola).

C. MAYBE otherwise.

*If you have questions, please call the AU Facility Security Officer. Export control laws are complex and these thresholds do not cover all circumstances.*

 REGARDLESS OF ANY OTHER PROVISION, THE KNOWING TRANSFER OF ANY ITEM, SOFTWARE, COMMODITY OR TECHNOLOGY TO CERTAIN COUNTRIES (AND ANY RELATED INSTRUCTION OR INFORMATION TRANSFER IN THE U.S. OR ABROAD), FOR A NUCLEAR, MISSILE, OR CHEMICAL/BIOLOGICAL WEAPON END USE IS PROHIBITED.