

Introduction to Export Control



What is an Export? Does UC & Anschutz Export?

- Transfer of technology, information, equipment, software or services to a foreign person in the U.S. or abroad by any means.
For example:
 - An actual shipment outside the US
 - Visual inspection in or outside the US
 - Written or oral disclosure
 - Overseas Travel- Discussions & Technology
- UC & Anschutz exports to every foreign national who works at one of its facilities and with every international collaboration



Export Control Laws and Research at Denver | Anschutz

What are the Export Control Laws?

- Export Control Laws are laws which prohibit the unlicensed “export” of certain controlled technologies to foreign persons for reasons of national security and trade protection
- “Export” is defined very broadly to include an oral or written disclosure of information, visual inspection, or actual shipment outside the U.S. of technology, software/code or equipment to a foreign person
- Any method of disclosure may apply: email, telephone, websites, tours, training sessions

Export Control Laws and Research at Denver | Anschutz

What is meant by a “Foreign Person”?

- Any Foreign Government
- Any Foreign Corporation or group that is not currently incorporated in the United States or organized to do business in the United States
- Anyone who is not a lawful permanent resident of the United States.

Export Control Laws and Research at Denver | Anschutz

What regulations govern Export Control Laws (ECLs)?

- Export Administration Regulations (EARs)
- International Traffic in Arms Regulations (ITARs)
- Office of Foreign Assets Control (OFAC)



Export Control Laws and Research at Denver | Anschutz

What are the Goals of Export Control Laws?

- Prevent Terrorism
- Curtail export of technologies that assist the military potential of adversaries
- Compliance with Trade Agreements
- Prevent development of nuclear, chemical and biological weapons



Export Control Laws and Research at Denver | Anschutz

Federal Agencies with oversight of Export Control Laws

- Department of Commerce - EAR: Technologies with “dual uses” but primarily commercial
- Department of State -ITAR: Technologies with inherently military properties
- Department of the Treasury-FAC: Prohibits transactions of value with certain countries and individuals



Export Control Laws and Research at Denver | Anschutz

Export Administration Regulations

- Enforced by the Department of Commerce through its Export Administration Regulations (EAR). Primarily covers technologies and technical information with both commercial and military applications, the so called “dual use” technologies (chemicals, satellites, software, computers, etc.)
- Lists of controlled technologies are found in 15 CFR 774, Supplement I, [referred to as the Commodity Control List (CCL)]



Export Control Laws and Research at Denver | Anschutz

International Traffic in Arms Regulations

- Enforced by the Department of State under the International Traffic in Arms Regulations (ITAR).
- Controlled technologies of an inherently military nature: defense articles, defense services and related technical data listed on the Munitions Control List (MCL)
- Not likely to be an issue at UC & Anschutz



Export Control Laws and Research at Denver | Anschutz

Economic Sanctions

- The Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury administers and enforces economic and trade sanctions against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.
- Regulations target specific nations in controlling significant financial transactions or services. Countries currently sanctioned are the Balkans, Burma, Cuba, Iran, Iraq, Liberia, Libya, North Korea, Sudan, Syria, and Zimbabwe.

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



Export Control Laws and Research at Denver | Anschutz

Examples of prohibited activities in boycotted countries monitored by OFAC:

- Conducting surveys and interviews
- Engaging the services of persons to develop new informational materials or support of research activities (i.e., just hiring Iranians to work on an overseas trial may be prohibited!)
- Providing marketing and business services



Export Control Laws and Research at Denver | Anschutz

How do these laws impact research at Denver | Anschutz?

- If Denver | Anschutz research involves these controlled technologies, UC & Anschutz may be required to get government approval (a license) before allowing:
 - Certain foreign researchers and students in the U.S. (including on campus at UC & Anschutz) or foreign persons outside the U.S. from participating in research involving the controlled technologies
 - The sharing of research results with foreign persons
 - Providing training and other services to foreign persons
 - Sending equipment or software outside the U.S.



Export Control Laws and Research at Denver | Anschutz

Why increased concern with impact of ECLs on University research?

- Advanced technologies developed at universities may be subject to ECLs
- ECLs are applicable to research fields not traditionally associated with the “military” such as life sciences materials (biological agents and toxins)
- University research reliance on Federal funding with increased compliance requirements
- Increased “globalization” of University research



Export Control Laws and Research at Denver | Anschutz

Why Is this issue important?

- Export Control Laws (ECLs) present a challenge to the research community
- ECLs are the law of the land and apply to all research activities
- Failure to comply carries heavy fines and possible imprisonment
- Compliance is not easy because ECLs are complicated and confusing
- Federal Government has increased enforcement and investigations of universities since 9/11/2001



Export Control Laws and Research at Denver | Anschutz

General Rule:

The University of Colorado Denver | Anschutz Medical Campus, its faculty, and employees may not export to foreign persons certain materials and information without a license from the U.S. Government, unless an exclusion applies.

Fortunately, the majority of research at Denver | Anschutz will be covered under an exclusion to the ECL requirements.



WHAT ARE THE EXCEPTIONS?

Exceptions to ECLs

PUBLIC DOMAIN EXCLUSION. Export controls do not apply to information and research results already published and publicly available from:

- Libraries, bookstores, or newsstands
- Trade shows, meetings, seminars in the U.S. open to the public
- Published in certain patent applications
- Websites accessible to the public
- Courses listed in a university catalog of a general nature



Exceptions to ECLs

EDUCATION EXCLUSION

- ITAR: No export controls associated with information (but not technology and materials) which is “general scientific, mathematical or engineering principles commonly taught in universities.”
- EAR exclusion for “educational information” released by instruction in catalog courses and associated teaching laboratories. So, in general, no need for a license to share information as part of a regular course being taught at UC & Anschutz.



Exceptions to ECLs

EMPLOYMENT EXCLUSION License is not needed to share information subject to export control laws if the foreign national is/has:

- A full-time, employee of Denver | Anschutz
- Not a national of certain countries
- A permanent address in the U.S. while employed at UC & Anschutz

Exceptions to ECLs

FUNDAMENTAL RESEARCH EXCLUSION (FRE) Will cover most research at UC & Anschutz

- Basic or applied research in science or engineering
 - At an accredited institution of higher learning in the U.S.
 - Resulting information is ordinarily published and shared broadly in the scientific community
 - The “Bread and Butter” exception that the institution will seek to protect.



Exceptions to ECLs

HOWEVER...University research will not qualify as FUNDAMENTAL RESEARCH if the university accepts any restrictions on the publication of information resulting from the research, other than limited prepublication reviews by research sponsors to:

- Prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor
- Insure that publication will not compromise patent rights of the sponsor

EXCLUSIONS TO ECLS

The **FUNDAMENTAL RESEARCH EXCLUSION (FRE)** would be destroyed by a contract clause that:

- Gives a sponsor a right to approve publications
- Forbids the participation of foreign nationals in the research effort

These limitations are applicable to any sponsor, whether federal, private or not-for-profit



Exemptions from Export Controls



Export Control Laws and Research at Denver | Anschutz

SHIPPING EQUIPMENT OUTSIDE THE UNITED STATES

- If equipment is subject to ITAR regulations, a license is required from the Department of State to ship to any foreign nation. A license can take a long time to obtain so plan ahead!
- If equipment is subject to EAR regulations, the necessity of license is dependent on the facts:
 - where it is being shipped and,
 - do any exceptions apply
- Plan ahead and notify Export Controls as soon as possible.
- It is illegal for equipment to be shipped to a country subject to sanctions/embargo under OFAC



Export Control Laws and Research at Denver | Anschutz

EXCLUSIONS TO ECL Shipping License:

- Under an exception to the need for a license (exception for temporary export), a researcher may be able to take a laptop out of the country for use in fundamental research, provided the laptop does not leave the control of the faculty researcher

Note: This exception does not apply to OFAC embargoed countries!!

Export Control Laws and Research at Denver | Anschutz

EQUIPMENT USE EXCLUSIONS?

- There are no express exclusions that allow foreign persons to use controlled equipment without a license.
- Universities maintain that if controlled equipment is used in most research, such use would be covered by the Fundamental Research Exclusion. If controlled equipment is used in a program of study, the Education Exclusion would apply.
- These interpretations are being questioned by the Federal Government.



Export Control Laws and Research at Denver | Anschutz

How are Contracts and Grants Impacted by ECLs?

- Important Federal funding opportunities (Homeland Security, NSF, NIH, DOD) directly linked to ECLs
- Terms and conditions restricting access by foreign nationals or removing research from fundamental research exclusion
- Contract requirements from Corporate Sponsors on ECLs
- Tech Transfer Issues: disclosure/licensing of technologies and material transfer agreements to foreign nationals

Controlled Select Agents

- Export Control Lists do not exactly match FDA/NIH lists
- One Commerce one State
- UC & Anschutz Export Controls needs to review all international shipments!
- Website provides list of export controlled select agents: (sample)

http://www.ehs.ufl.edu/programs/bio/shipping/export_control/

Export Control Laws and Research at Denver | Anschutz

Contracts and Grants Impacted by ECLs: What should one pay attention to? Proposals and contracts where:

- There is a shipment of equipment to a foreign country
- Training or collaboration with foreign nationals
- Any work with or travel to an OFAC controlled country
- Any reference to export controlled technologies in the award

Export Control Laws and Research at Denver | Anschutz

- Caution! Faculty, staff and students may be held personally liable for violations of EAR and ITAR in the conduct of their research in addition to any liability attaching to UC & Anschutz
- Penalties for unlawful disclosure or export of export controlled information are very high fines (millions of dollars) and possibly imprisonment.



Convictions Happen!



Thomas Butler

Chief of Infectious Disease Division
at Texas Tech's Department of
Internal Medicine

Select Agent violations &
accounting fraud

One count for transfer of plague
sample to Tanzania



University recently fined

- In April, 2013 the University of Massachusetts at Lowell agreed to pay to the Bureau of Industry and Security ("BIS") a suspended penalty of \$100,000 in connection with its unlicensed export (shipment) of an atmospheric sensing device, antennae and cables valued at slightly more than \$200,000 to Pakistan's Space and Upper Atmosphere Research Commission ("SUPARCO").



Taking your laptop computer overseas

Hardware - Specialty laptops and equipment may require a license, e.g.:

- ✦ Radiation hardened or protected from extreme elements
- ✦ High performance computers

○ **Software and Encryption - may need a license**

- ✦ Encryption software with symmetric key length of 64-bits or higher
- ✦ Controlled Software
- ✦ Military support applications

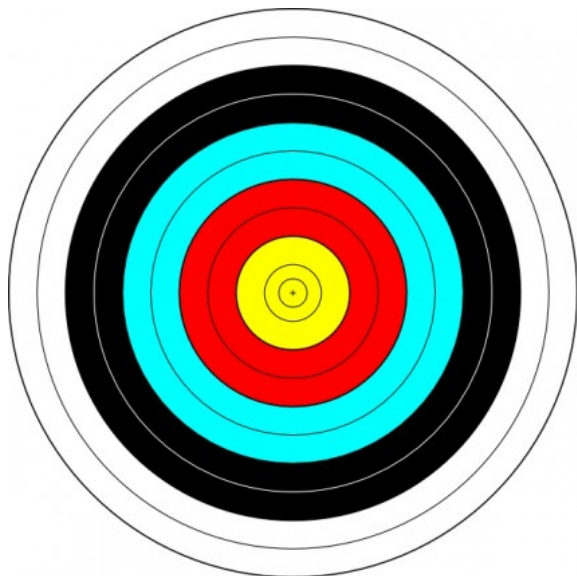
○ **Export-controlled technical data**

- ✦ Best to back-up on a secure system and remove from laptop prior to travel



Information Security Overseas

- Be aware that your electronics may be vulnerable to surveillance...



HOME PAGE TEXT CHARTS VIDEO MOST POPULAR TIMES FOR US

The New York Times Business Day
Technology

WORLD U.S. N.Y. / REGION BUSINESS TECHNOLOGY SCIENCE HEALTH SP

Traveling Light in a Time of Digital Thievery

Published: February 10, 2012

(Page 2 of 2)

Both China and Russia prohibit travelers from entering the country with encrypted devices unless they have government permission. When officials from those countries visit the United States, they take extra precautions to prevent the hacking of their portable devices, according to security experts.

Readers' Comments
Readers shared their thoughts on this article.
[Read All Comments \(113\) »](#)

Now, United States companies, government agencies and organizations are doing the same by imposing do-not-carry rules. Representative Mike Rogers, the Michigan Republican who is chairman of the House Intelligence Committee, said its members could bring only “clean” devices to China and were forbidden from connecting to the government’s network while abroad. As for Rogers, he traveled “electronically naked.”

At the State Department, employees get specific instruction on how to secure devices in Russia and China, and are briefed annually on general principles of security. Brookings Institution. Mr. Lieberthal advises companies that do business in

Facebook Twitter LinkedIn Email Print Copy +

Final Thoughts

- Government agencies concerned about university compliance with U.S. export control laws
 - Visits to campuses by federal agents
 - Inspector General reports that led to revise concept of “deemed exports”
 - GAO report on uneven university export compliance
- Three distinct, complex sets of U.S. export control laws that require specialty knowledge, experience
- Each set of U.S. export control laws has unique rules uniquely applicable to U.S. universities

COMPLIANCE IS NOT OPTIONAL!





Questions?

Christine Ahearn, JD
Export Control Officer
Office of Regulatory Compliance
Christine.ahearn@ucdenver.edu
303-724-0245

