



Olga King
Jet Propulsion Laboratory
Office Of Export Compliance
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What Are The Real or Perceived Problems With Export Regulations in Research and Technology Development Programs (R&TD)

- Export Regulations;
 - Hinder collaborative research
 - Stifle creativity
 - Prohibit the finest and brightest from collaborating
 - Stand in the way of what scientists and engineer's want to do
 - Labor intensive and cost prohibitive
 - Require experts to interpret the regulations

R&TD Programs in Industry, Universities and FFRDC's

- Collaborative activities:
 - Scientific, Research and Experimental Satellites
 - Scientific Instruments
 - Satellite subsystems (specifically designed or modified)
 - Satellite components, parts, accessories, attachments or associated equipment (specifically designed or modified).

Potential Collaborative Partners

- U.S. Space Agency
- U.S. Corporation
- FFRDC
- U.S. University
- Foreign Space Agency
- Foreign Corporation
- Foreign University

Export Compliance in Research Programs

Where to begin?

- Who are you engaging with?
 - U.S. University
 - foreign post docs
 - foreign PI or Col
 - U.S. Corporation employing foreign persons
 - Foreign entities

Export Compliance in Research Programs

Where to begin?

(continued)

- What is the export classification of the technology, activity or project?
 - EAR
 - ITAR
- What are you providing?
 - Public domain data
 - Controlled hardware or software
 - Controlled technical data
 - Defense services (know-how)

Export Compliance in Research Programs

Where to begin?

(continued)

- What are they providing ?
 - Public domain data
 - Controlled hardware or software
 - Controlled technical data
 - Defense services (know-how)
- Will there be co-mingling of technology or technical information?
- Will controlled technical data, hardware or software need to be safeguarded?

Export Compliance in Research Programs

Where to begin (cont)?

- Will the results of the research be published?
- Will there be restrictions on partners' technical data/hardware?
- Will there be foreign procurements?
- Will you need to export hardware?
- Will you need to provide access to secured facilities?

What Legal Tools Are Available?

- Exemptions, Exceptions and Fundamental Research
- Commodity Jurisdiction
- CCATS (commodity classification)
- Export Licenses
 - TAA, DSP-5, DSP-73, BIS

Fundamental Research Activities Not Subject to ITAR

- U.S. institutions of higher learning
- Project/program/task is faculty and/or student-run and educational in nature
- All students participate regardless of nationality
- Hardware/software designed and built by students and faculty
- Faculty PI and Col's act as mentors
- All resulting information is published and shared broadly in the scientific community
- No controlled technical data used in the research
- No export of controlled hardware or software
- No providing of defense services

Exemptions For Universities

- Export of hardware fabricated under fundamental research is controlled under ITAR
- U.S. Institutions of higher learning exemption
 - §123.16(b)(10)(i-iii): Permanent or temporary export of hardware and technical data
 - Category XV (a) or (e)
 - Countries and nationals of NATO, ESA and EU member states
 - Information that will be published and shared broadly without restrictions, see §120.11.
 - Article may be integrated into a research, scientific or experimental satellite only.
 - Article must be launched into space from countries and by nationals of NATO, ESA or EU.

Exemptions For Universities (continued)

- U.S. Institutions of higher learning
 - §125.4(d)(1): Providing defense services
 - Category XV (a) or (e)
 - Countries and nationals of NATO, ESA and EU member states
 - Limited to discussions on assembly and or integration into a scientific, research or experimental satellite
- Providing of defense services even when using public domain information is controlled under ITAR

Exemptions For Universities (continued)

- Transferring controlled technical data to foreign persons working on fundamental research projects is controlled under ITAR
 - §125.4(b)(10): Export of technical data to foreign persons (deemed export)
 - Bonafide and full time regular employees
 - Permanent residence in the U.S.
 - Can not transfer to other foreign persons

General Exemptions

- If you are working on a project in furtherance of a contract between (you) the exporter and a U.S. Government Agency
 - §125.4(b)(3): Export of technical data
 - Fulfilling a contractual agreement for a U.S. Government agency
 - The technical data can not disclose details of design, development, production, or manufacturing.
 - The exemption authority does not extend to providing of defense services.

General Exemptions (continued)

- If you are working on a program pursuant to an arrangement with DoD, DOE or NASA
 - §125.4(b)(11): Export of technical data
 - If you have an arrangement that implements an international agreement to which the U.S. is a party and if multiple exports are contemplated
- You can request a release by a government agency
 - §125.4(b)(13): Technical data approved for public release
 - Approval provided by the cognizant U.S. Government department, agency or DFOISR

Licensing Your Activity

- Create a project, program or task check list of all the information that you will need to compile to complete a license request
 - Company or Institution name, address and contacts
 - Detailed statement of work; tell your story
 - Deliverables; what are you creating?
 - Hardware for permanent or temporary export
 - List technical data and/or defense services being exchanged
 - List of third country/dual nationals
 - Subcontractors/sublicensees

What Next?

How Do I Pull It All Together?

- **Create a matrix mapping the steps needed to facilitate the engagement**
 - Partners identified
 - Foreign and domestic
 - Scope of work identified
 - Who is doing what
 - What data belongs to whom
 - Export classification of technology, technical data and/or software
 - May need to submit CJ or CCATS
 - Legal tools identified
 - Fundamental research for the entire engagement
 - Combination of fundamental research, exemptions and/or licenses
- File for licenses when necessary
- **Work closely with all partners, everyone has to understand their role and responsibilities**

Challenges of Implementation

- Ensuring that fundamental research work is not tainted with export controlled work.
- Establishing boundaries of what controlled technical data can be transferred under the proscribed limitations of the exemptions.
- Ensuring that defense services are not provided under the tech data exemptions.
- Securing access to controlled technology, technical data, and/or software.
- Record keeping

Mitigating Challenges Through Compliance

- Train all personnel on the program
 - What part of the engagement is fundamental research
 - What are the limitations under the exemptions/exceptions
 - What technology, technical data and/or software is controlled
- Create rules of engagement for meetings and conferences
 - What can be shared in technical discussions
 - What technology or technical data can be provided
- Create a record keeping repository
 - Document use of exemptions/exceptions or transfers of controlled technical data and/or defense services
- Marking Language
 - Ensure partner documents are appropriately marked

Benefits of a Compliance Program for Collaborative Work

- Ability to facilitate collaborative research projects
- Ability to clearly carve out activities that are fundamental research
- Ability to protect controlled technology, technical data and/or software
- Ability to decouple comingled technology
- Ability to publish results without inadvertently releasing controlled or proprietary data
- Ability to obtain licenses when necessary

Summary

- The success of collaborative work depends on an export compliance infrastructure to support the activities.
- Proper use of legal tools, exemptions/exceptions and/or licenses are valuable in minimizing project delays.
- Training all personnel will protect activities under fundamental research and activities that are controlled.
- Export compliance is the responsibility of all partners.