



# Export Control for University Activities

JoAnne Dupre, Ph.D.

Manager, Biosafety/Export Control

NMSU Research Administration

Ph: 646-4463

E: biosafe@nmsu.edu

exportcontrolmgr@nmsu.edu

# What is an export?

SHIPMENT OF GOODS  
OUT OF THE U.S.

ELECTRONIC  
TRANSMISSION OUT OF  
THE U.S.: INTERNET,  
CLOUD, PHONE

TRAVEL: CARRYING DATA  
OUT OF THE U.S. ON A  
COMPUTER OR PORTABLE  
STORAGE DEVICE, EVEN IF  
IT IS NOT ACCESSED

REMOTE ACCESS TO A U.S.  
SERVER FROM OUT OF  
THE U.S.

RELEASE OF TECHNOLOGY  
TO A FOREIGN PERSON IN  
THE U.S. (DEEMED  
EXPORT)

- EXPORT OF CONTROLLED  
TECHNOLOGY REQUIRES A  
LICENSE, EXCEPTION,  
EXEMPTION

- Challenge for universities: open exchange of ideas, applied and developmental research, international students and visiting scientists / regulations

# U.S. Export Control Authorities

*Regulate business  
activities for  
national security  
and foreign policy*

1. State Dept: military technology & services
    - International Traffic in Arms Regulations (ITAR)
    - 22 CFR 120-130
  2. Commerce Dept: "Dual-Use" technologies
    - Export Administration Regulations (EAR)
    - 15 CFR 730-774
  3. Treasury Department, Office of Foreign Assets Control (OFAC): enforces sanctions programs, financial transactions
- + NRC (Nuclear materials & equipment)
  - + DOE (Energy)
  - + DHS/CBP (exports/imports)
  - + FDA (medical)
  - + DEA (controlled substances)
  - + DOJ/ATF (firearms, explosives)
  - + Patents & Trademarks (invention secrecy)
  - ...

# Examples of Exclusions and Exceptions

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Public Domain Exclusion: Information that is available at bookstores, libraries, online, at open conferences, by subscription, published software (except encryption)

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Educational Exclusion: general scientific, math, or engineering principles (ITAR); information released by instruction in catalog courses and associated teaching laboratories of academic institutions in the U.S. (EAR)

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Fundamental Research Exclusion: basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly...

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Travel Exceptions: TMP, BAG, ++

# ITAR-controlled technologies

- United States Munitions List (USML)
- Department of State website – [pmddtc.state.gov](http://pmddtc.state.gov)
  - Specially designed for military/defense
  - Export of defense articles, services, technical data requires a license from DDTC
- Example:
  - An Unmanned Aerial Vehicle (UAV) is developed with DOD funding for use in surveillance activities (USML Category VIIIa)
  - A foreign national graduate student is part of the project team and has access to the UAV design and data. Providing this technical data/training is a defense service = license reqd.
  - Technical data: the design information, specs, etc. for the UAV

# EAR controlled technologies

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Categories  
on EAR  
Commerce  
Control  
List (CCL),  
15 CFR  
774-s1)

0 Nuclear Materials

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1 Materials, Chemicals, Toxins

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2 Materials Processing (motion, detection, testing)

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3 Electronics

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4 Computers, related software & technology

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5 Telecommunications & information security

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6 Sensors and Lasers

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7 Navigation & Avionics

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8 Marine

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9 Propulsion Systems, Space Vehicles

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EAR99

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# How can we identify controlled technology?



Look for key language in grant, contract, or agreement: export control, restrictions on access to technical or proprietary information, or approval needed for non-U.S. persons or publication



Vendor's website might have a page that lists ITAR or ECCN for products (i.e., computer or GPS software), or call the sales rep and ask

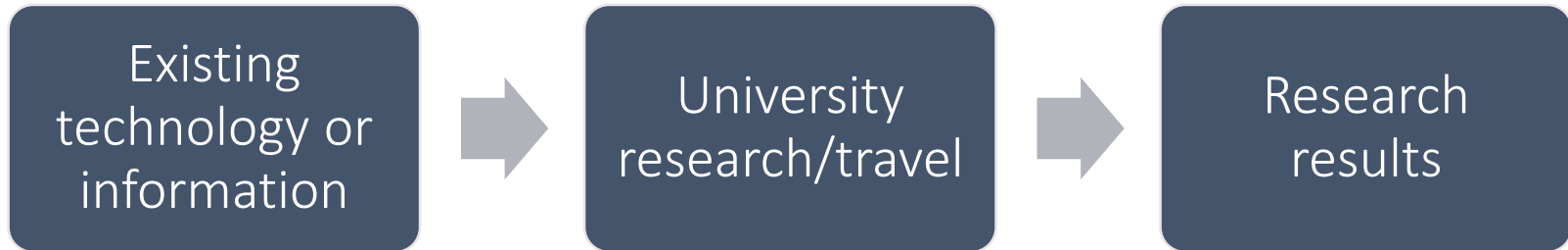


Terms and conditions for purchase or use: certain country restrictions; signature of institutional official on MTA, NDA; manuals are marked CUI



Note: If we create it, we have to categorize it (or seek a commodity ruling from State or Commerce). Examples: satellite, encryption software

# Caution: export controls might apply to parts of the fundamental research or academic activity



Public domain or commercial off-the-shelf product?

- No – This is not fundamental research -needs a license or authorization before export. Create a Technology Control Plan (TCP).
- Yes - - >

Has the sponsor agreed that there are no restrictions on who may participate?

- No – This is not fundamental research-needs a license or authorization before export.Create a Technology Control Plan (TCP).
- Yes - - > the entire project is fundamental research



# Restricted Party Screening

OFAC "Specially Designated Nationals" and other "red flags"

- <https://www.treasury.gov> >> Sanctions Programs

- Prohibited to provide anything of value to designated "persons" – institutions, companies, individuals

- Evaluate before starting a transaction:

- Vendors
- International collaborations
- Visitors to campus locations with high-tech research

>> <https://www.export.gov/article?id=Consolidated-Screening-List>

- If alerts are present, license may be needed even for EAR99 items
- Send email to [exportcontrolmgr@nmsu.edu](mailto:exportcontrolmgr@nmsu.edu)

# Summary: export control at NMSU

- No concern for most university activities
  - Catalog courses, fundamental research
  - Travel: TMP, BAG, TSU, & others provide exclusions
- Call or email [exportcontrolmgr@nmsu.edu](mailto:exportcontrolmgr@nmsu.edu) to evaluate:
  - International shipments valued over \$2500
  - International shipments of controlled equipment, materials, data
  - Categorizing technology on EAR or ITAR, or HTS, Schedule B #
  - Screening international collaborators or visitors, J-1, F, H-1B
  - Travel to sanctioned countries (Cuba, Iran, etc.)
  - Applying for licenses – give lots of time (1-2 months)!
  - Technology Control Plan
- Good communications: VPs/Deans, Research Administration, General Counsel, Arrowhead, Procurement, Human Resources, International Programs, Security
- Reporting losses or violations can help mitigate penalties.