Fundamental Research Issues-Challenges for Universities and Research Institutions

March 27. 2013
University of Pennsylvania

Stephen B. Hall- Office of Exporter Services
Fundamental Research

- EAR 734.8- information that arises during or results from fundamental research is exempt from EAR licensing requirements:

  “Fundamental research is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community.”
The fundamental research exemption only applies to information that “arises during or results from” the research.

There is no “blanket exemption” for all information that is transferred in the context of such research.
The Universe of Research

**Publicly available technologies**
(Not Subject to the EAR)

**Results of research published:**
(e.g., Fundamental Research)
(Not Subject to the EAR)

**Preexisting Export Controlled Technologies**
(Subject to the EAR)

**Results of research withheld from publication**
(Subject to the EAR)
Publically Available Technology

- Through published patents and patent applications;
- Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;
- Through fundamental research in science and engineering where the resulting information is published and shared broadly in the scientific community.
Publically Available Technology

- No license needed if technology is “publically available” or in the public domain

- Examples-
  - Sales through newsstands and bookstore
  - Through subscriptions available to anyone
  - At libraries open to the public or where the public can obtain documents
Challenges to Universities

Fundamental Research:

- No restriction on access of information vs. deemed export license and provisos

- Compliance requirements

- Fundamental Research– 734.8
- Educational Information-734.9
- Patent Applications- 734.10
- Government-Sponsored research covered by contract controls- 734.11

Be aware of license exceptions and country groups
Deemed Export Resources

- On BIS Website:
  - Deemed Exports FAQ’s
  - Deemed Exports Fact Sheet
  - Guidelines for Preparing Export License Applications Involving Foreign Nationals
- On USCIS website:
  - Form I-129 Part 6 FAQ’s
Contacting Us

U.S. Dept. of Commerce (dual-use licenses)
- Washington D.C. telephone- 202- 482-4811
- Irvine, CA office- telephone- 949- 660-0144

Web site – www.bis.doc.gov- has FAQ’s for deemed exports & upcoming workshops

U.S. Dept. of State (military-related licenses)
Telephone- 202-663-1282
Web site: www.pmddtc.state.gov