Export Control Basics

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What are export controls?

• US laws that regulate the distribution to foreign nationals and foreign countries of strategically important technology, services and information for reasons of foreign policy and national security.

• Export control laws apply to ALL activities—not just sponsored research projects.
What is an Export?

• Transfer of controlled technology, information, equipment, software or services (ITAR) to a foreign person in the US or abroad by any means—including...
  – Actual shipment or transport outside of the US,
  – Visual inspection in or outside the US
  – Written or oral disclosure
  – Any other means of access—intentional or unintentional.
Definition: Foreign Person

• Any person who is **not** a lawful permanent resident of the US
• Any foreign corporation or other entity or group that is **not** incorporated or organized to do business in the US
• Any foreign government
Definition: US Person

- Any US citizen or lawful permanent resident (green card holder)
- Any foreign or domestic corporation, society or other entity or group that is incorporated or organized to do business in the US
- Any federal, state or local government entity in the US
Responsible US Agencies

- State Department: Inherently military technologies—International Traffic in Arms Regulations (ITAR)
- Commerce Department: “Dual Use” technologies (primary civilian use)—Export Administration Regulations (EAR)
- Treasury Department, Office of Foreign Assets Control (ORAC): Prohibits transaction with countries subject to boycotts, trade sanctions, embargoes
Categories – ITAR (military)

I. Firearms, Close Assault Weapons and Combat Strategies
II. Guns and Armament
III. Ammunition/ordnance
IV. Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
V. Explosives and Energetic Materials, Propellants, Incendiary Agents, and their constituents
VI. Vessels of War and Special Naval Equipment
VII. Tanks and Military Vehicles
VIII. Aircraft and Associate Equipment
IX. Military Training Equipment
X. Protective Personnel Equipment
Categories – ITAR (military) cont.

XI. Military Electronics
XII. Fire Control, Range Finder, Optical and Guidance and Control Equipment
XIII. Auxiliary Military Equipment
XIV. Toxicological Agents, including Chemical Agents, Biological Agents and Associated Equipment
XV. Spacecraft Systems and Associated Equipment
XVI. Nuclear Weapons, Design, and Testing Related Items
XVII. Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
XVIII. Directed Energy Weapons
XIX. Reserved
XX. Submersible Vessels, Oceanographic and Associate Equipment
XXI. Miscellaneous Articles
Categories – EAR (dual use)

- 0-Nuclear Materials, Facilities & Equipment (and Miscellaneous Items)
- 1-Materials, Chemicals, Microorganisms and Toxins
- 2-Materials Processing
- 3-Electronics Design, Development and Production
- 4-Computers
- 5-Telecommunications and Information Security
- 6-Sensors and Lasers
- 7-Navigation and Avionics
- 8-Marine
- 9-Propulsion Systems, Space Vehicles and Related Equipment
Implications of Export Laws

• No effect on **most** university research
• Potential impact on
  – Ability of foreign students or researchers to participate in research involving a controlled technology (mostly under ITAR)
  – Ability to provide services (including training in the use of controlled equipment) to foreign persons (ITAR, EAR, OFAC)
  – Ability to send or carry controlled equipment to foreign countries (ITAR, EAR, and OFAC)
Disseminating Information aka “Deemed Exports”

• In the absence of an exclusion, a license must be obtained from Commerce or State to share controlled technical information with a foreign person either within the US or abroad.

• Methods of disclosure include
  – Fax
  – Telephone discussions
  – E-mail communications
  – Computer data disclosure (or access)
  – Face-to-face discussions
  – Training sessions
  – Tours which involve visual inspections
University Strategy for Export Control

1. Protect fundamental research exclusion by negotiating the elimination of all contractual clauses that restrict university control over publications or limit access to or participation in research.

2. Protect all exclusions by developing a Compliance Plan that informs and educates University community on export control regulations.
Exclusions

• A license is not required to disseminate information if one of three exclusions apply:
  • Fundamental Research Exclusion (ITAR, EAR)
  • Employment Exclusion (ITAR only)
  • Education Exclusion (ITAR, EAR)
Fundamental Research Exclusion

- No license is required to disclose to foreign persons information that is “published and which is generally accessible or available to the public [for example] fundamental research in science and engineering at universities where the resulting information is ordinarily published and shared broadly in the scientific community.”
Fundamental Research Exclusion is Destroyed if….

The University accepts any contract clause that:

• Forbids or limits the participation of foreign persons (including students);
• Gives the sponsor a right to approve publications resulting from the research; or
• Otherwise operates to restrict participation in research and/or access to and disclosure of research results.

Fundamental Research Exclusion is violated if a “side deal” or verbal agreement is made by a PI and the Sponsor that would create the effect of any of the above and may also violate university polices on openness in research or State of Florida Chapter 119 Statute on Public Information.
Employment Exclusion

No license is required to share controlled technical information with a foreign person who

• Is a full-time, bona-fide University employee

• With a permanent address in the US while employed provided that person is
  – Not a national of certain countries and
  – Is advised in writing not to share controlled information with other foreign persons.
Education Exclusion

- No license is required to share with foreign persons “information concerning general scientific, mathematical or engineering principles commonly taught in universities or information in the public domain.”
- Foreign students using controlled equipment to conduct research should be registered for a research credit class.
Equipment Use Exclusions?

• There are no express exclusions that allow foreign persons to use controlled equipment or software without a license. Most universities rely on:
  – The fundamental research exclusion on the grounds that using equipment is part and parcel of conducting fundamental research and/or
  – The education exclusion when the program of instruction requires using equipment.
Services to Foreign Persons

• ITAR and EAR prohibit assisting & training foreign persons anywhere in the design, development, use, testing, etc. of controlled equipment without a license from Commerce or State.
  – Example: Fermenters having a capacity of at least 20 liters.
Services Under OFAC

• In general OFAC programs prohibit the provision of services to countries subject to US sanctions, boycotts, etc. without a license.

• Services include:
  – Conducting surveys and interviews in boycotted countries;
  – Providing marketing & business services to persons in boycotted countries
  – Creating new information materials at the behest of persons in a boycotted country.
  – Engaging the services of persons in a boycotted country to develop new information materials.

NOTE: RESTRICTIONS VARY BY COUNTRY.
Countries Under Boycotts

• Examples: Balkans, Burma, Cuba, Iran, Iraq, Libya, Liberia, North Korea, Sudan, Syria, Zimbabwe and groups of countries dealing with issues such as Diamond Trading, Narcotics Trafficking, Nonproliferation, and Terrorist etc.

• For complete and current listing of countries subject to OFAC sanctions and descriptions, visit OFAC website:

Shipping Equipment

- A license is required to ship equipment controlled by ITAR to any foreign countries (few exclusions or exceptions apply).
- A license may be required to ship equipment controlled under the EAR out of the US depending on what the equipment is, where it is being sent and whether an exception applies.
- The process to classify equipment under EAR is tedious, detailed, and time-consuming.
- It can take months to obtain a license from State or Commerce.
- NOTE: A license may be required to ship software out of the US.
Shipping Equipment cont.

- There is a presumption under OFAC sanction programs that any and all shipments of equipment and provision of services to countries under sanction or persons in or from those countries are ILLEGAL.
License Example

• University archaeologist desires to take GPS system to France to use in training foreign colleagues (nationality/citizenship unknown).
  – GPS equipment is covered by EAR Category 7, and there are two entries there that redirect the exporter to ITAR.
  – The exporter must evaluate the EAR entries and ITAR Category to identify the appropriate licensing authority and classification.
**Laptop Exception (EAR)**

- **Excluding countries under sanction**, faculty who wish to take their laptops out of the country to use in a project that qualifies as fundamental research may be able to do so under the license exception for temporary export (TMP) if the laptop meets the requirement for “tools of trade” and the faculty member retains control of the laptop at all times.
Liability and Violations

- Liability is personal and institutional and may take the form of:
  - Administrative penalties
  - Monetary fines
  - Jail Time
- Voluntary disclosure of violations may serve as a “mitigating factor” in determining penalties.
- Administrative Penalties:
  - Termination of export privileges (EAR & ITAR) and/or
  - Suspension and/or debarment from government contracting (EAR & ITAR).
# PENALTIES FOR EXPORT CONTROL VIOLATIONS

## PENALTIES FOR EXPORT CONTROL VIOLATIONS

<table>
<thead>
<tr>
<th>TYPE OF CONTROL</th>
<th>CRIMINAL (willful) VIOLATIONS</th>
<th>CIVIL VIOLATIONS</th>
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<tbody>
<tr>
<td>EAR VIOLATIONS</td>
<td>Up to $1M for University Up to $250K per violation for individuals and/or up to 10 years in prison.</td>
<td>Up to $12K per violation for individual and University</td>
</tr>
<tr>
<td>ITAR VIOLATIONS</td>
<td>Up to $1M for University Up to $1M per violation for individuals and/or up to 10 years in prison.</td>
<td>Up to $500K per violation for individual and University.</td>
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<td>OFAC VIOLATIONS</td>
<td>Maximum fine of $100K for individuals (may include administrative officers) and/or 10 years in prison.</td>
<td>Maximum fine of $55K per violation for individual and University</td>
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UWF Compliance Plan

- Inform/educate university community of the legal requirement for a compliance plan and about export control laws and issues.
- Designate a responsible person in sponsored research and/or legal office to serve as the point person for researchers and government agencies on export control issues.
- Establish a training program for research, tech transfer, procurement, and shipping administrators.
- Establish an awareness program for faculty and other researchers.
- Establish written procedures for reviewing proposals and awards.
- Designate final authority to determine if projects require license and under what circumstances the institution will accept a project that requires a license.
- Document all export control decisions.
- Develop a website that provides information on Compliance Plan.
- Develop a check list for faculty and/or research administrators to use in deciding if a project raises export control concerns.
Checklist Items

• Does the project involve:
  – Shipping equipment to a foreign country?
  – Collaborating with foreign colleagues in foreign countries?
  – Training foreign persons in using equipment?
  – Working with a country subject to a US boycott?

• Do the terms of the RFP/BAA or award require:
  – Sponsor approval rights over publications?
  – Sponsor approval of the participation of foreign persons (including students) in the project?

• Is the RFP or SOW marked “Export Controlled”?
• The OSR has been designated to develop the Compliance Plan and Export Control Procedures to assist and document this process.

• A draft of procedures and forms for export control review of proposals, projects, and contracts or awards and an investigator’s (employee’s) certification of knowledge of export control restrictions are being reviewed by the Sponsored Research Advisory Committee and will then be submitted to the appropriate parties for adoption as a formal University policy and implemented as an internal Procedure pending approval.

• Handouts: Draft Procedures, Review and Certification Forms.