Export Controls at Universities

Introductory Overview
What are Export Controls?

- Laws, regulations and sanctions governing who can have access to U.S. technology
  - Designed to prevent adversaries from using our technology against us
  - Designed to protect our economy
  - Limit weapons of mass destruction
Who can be impacted by them?

• Administrators
• Faculty
• Staff
• Students
What happens if they are violated?

- Individuals and institutions can be fined or criminally prosecuted.
  - Administrative penalty – the greater of:
    • up to $300,00/violation or
    • 2x the value of the transaction
  - Criminal penalties up to 30 years in prison and up to $1 million/violation in fines
  - Loss of Export privileges
How do you avoid violation?

Consult with someone knowledgeable in Export Controls **before:**

- Sharing technology or technical data
- Offering services to non-US persons
- Traveling to foreign countries
- Shipping items outside the U.S
- Hiring a foreign person
- Enrolling students from countries of concern
- Procuring items from new vendors
The UL System Policy M-(16) Export Control

- **Policy** Adopted in 2009
- Contains list of important definitions
- States the purpose of the regulations:
  1. Restrict goods and technology from US international adversaries
  2. Prevent proliferation of weapons of mass destruction
  3. Advance US Foreign policy and protect our economy
- Requires **ALL** institutions to
  - assess their risks – the Fundamental Research Exclusion does **NOT** apply to all activities
  - develop appropriate policies and procedures, including ensuring appropriate offices, staffing and training
Three primary departments involved in Export Controls

- **US Department of Commerce** - Bureau of Industry and Security (BIS)
  - Oversees commercial and “dual-use” items
- **US Department of State** – Directorate of Defense Trade Controls (DDTC)
  - Oversees defense items and services
- **US Department of Treasury** – Office of Foreign Assets Control (OFAC)
  - Oversees economic and trade sanctions based on US foreign policy

**NOTE** – These departments constantly monitor world interactions and update the regulations and sanctions. **There is no permanent list of countries of concern**
Export Controls Regulations and Sanctions

- **Bureau of Industry and Security** *(BIS)*
  - Export Administration Regulations *(EAR)* – **15 C.F.R. Subchapter C**

- **Directorate of Defense Trade Controls** *(DDTC)*
  - International Traffic in Arms Regulations *(ITAR)* – **22 CFR Subchapter M**
  - ITAR stems from Arms Export Control Act *(AECA)*

- **Office of Foreign Assets Controls Sanctions Regulations** *(OFAC)* – **31 CFR Chapter V**

- **Nuclear Regulatory Commission** *(NRC)* – **10 CFR Part 110**

- **Department of Energy** *(DOE)* – **10 CFR 810**
What is an export?

• Shipping a physical item outside the U.S.
• Hand carrying technology to a foreign country
• **Sending an email** outside the U.S.
• Accessing your U.S. technology files while in a foreign country
• Storing technical data in a foreign cloud
• Sharing technical data, technology or source code with a foreign person, even in the US (**Deemed Export**) 
• Providing a tour of your lab to a foreign person
• Payments, funding or sponsorship to foreign entities
Who is a Foreign Person?

• Depends on which set of regulations apply to the activity or technology.
  – The **EAR** looks at the **most recent country** of citizenship.
  – The **ITAR** looks at **all countries where citizenship** has been held.

• In general, a foreign person:
  – **Does NOT** have US citizenship,
  – **Is NOT** a lawful permanent resident or
  – **Has NOT** been granted asylum.

• In the regulations the term “Foreign Person” includes entities:
  – Foreign corporation, business, partnership, etc not incorporated in the US
  – International organizations,
  – Any division of a foreign government
Two key terms are used when discussing Export Controls:

**Technology** (EAR - 15 CFR 772.1)
Information necessary for the
• “development,”
• “production,”
• operation,
• maintenance,
• repair,
• “Use,”
• installation,
• overhaul, **OR**
• refurbishing

“Use” is operation, installation (including on-site installation), maintenance (checking), repair, overhaul **and** refurbishing

**Technical data** (ITAR 22 CFR 120.33(a))
Information about defense articles which is required for their:
• design,
• development,
• production,
• manufacture,
• assembly,
• operation,
• repair,
• maintenance,
• testing, **OR**
• modification
• classified information relating to defense articles and defense services
• information covered by an invention secrecy order
• Software (see § 120.40(g)) directly related to defense articles
Fundamental Research Exclusion

- Research in science and engineering **intended to be published** and is not restricted for proprietary or U.S. Government access reasons.
- Applies to technical data and information
- **Does not apply** to equipment or tangible items
- Is **NOT** a permanent designation
Licenses

• Issued by
  – Bureau of Industry and Security (BIS)
  – Directorate of Defense Trade Controls
  – Office of Foreign Asset Controls
• Allows foreign persons to have access to items that are normally restricted
• Requires submission of a detailed application
  – Except for general licenses
• Requires documentation of access
• Generally limited to a specific person, project and time period
• Can take months to receive
• No guarantee that one will be granted
Technology Control Plans (TCP)

Documents that describe
- What is export controlled on the project
- Who can have access
- How access is controlled
- What are the methods of documenting access
- Training of project personnel on the TCP
- When reports will be filed
- Who has ultimate control of the project

Signed by all project personnel
Examples of University Activities affected by Export Controls

Hiring

– Background checks and restricted party screening must be done on the individual

– Type of work/research planned needs to be assessed for export controlled activities and items, dependent on the country of citizenship and position the person will hold.

– Fulltime employees resident in the US have different Export Control regulations governing them than temporary graduate students and post-docs.

Tours

– Allows for visual inspection of technology and provides information about it’s “use” or performance
Examples of University Activities affected by Export Controls

Online education

- **Delivery platform may restrict service** to certain countries due to export controls or sanctions.
  
  e.g. Distance learning cannot be provided to the Crimea region in Ukraine.

- **Topics delivered may be restricted** depending on the country and the type of student: undergraduate or graduate.
  
  e.g. Students in Iran can take online undergraduate courses in humanities, social sciences, law or business, including introductory math and science

- **Talking about an unpublished research projects** can be controlled by the EAR or ITAR.
Examples of University Activities affected by Export Controls

Procurement

- Some items used in research, like night vision goggles and highspeed cameras, may be ITAR controlled.
  
  - Try to ensure you are obtaining items that are EAR controlled instead of ITAR controlled.

- An End-user statement, ensuring no foreign entity use or shipment to a third party, may be required.

- Ensure that the supplier is not a restricted party.
Examples of University Activities affected by Export Controls

Providing Professional Services
- In some countries, these are prohibited by US export controls
  - e.g. Consulting on a research project
  - Distributing surveys or questionnaires to gather information for your own research

Contracts, MOUs, Data Use Agreements
- Frequently have export control clauses that can affect who is allowed to work without a license or have access to technological information for the project
Examples of University Activities affected by Export Controls

**Collaborations/Visiting Scientist** should be carefully evaluated

- Offering to work for free
  - Are there sanctions that prevent payment
  - Is their government paying them to relay information to the government
- What is their country of origin – is it sanctioned?
- Are they a restricted party?
- Do they work at an institution that is a restricted party?
- What technology will they have access to?
- Are there any software or equipment end-user restrictions?
Examples of University Activities affected by Export Controls

Attending Conferences or Receiving honorariums from foreign parties

- May require a license or be prohibited

International Travel

- May require a license prior to travel
- May need a carnet for items traveling with you (passport for equipment)
- Primary data may be confiscated
- Downloading or viewing your cloud stored data is an export
- Some countries require use their sim card in your cell phone, which can lead to a malware download to your device
**Documentation**

Document everything regarding exports (hold for 5 years after):

- Which regulations apply
  - Export control classification from the manufacturer
- Thought processes
- General and specific licenses used
- Persons involved
- Dates
- Activities
  - Technology “used”
  - Tours
  - Technical data, technology, or software shared
  - Training provided
- Signed technology control plans
Resources

- BIS – Export Administration Regulations Training
- DDTC - ITAR & Export Controls
- OFAC – Sanctions Programs and Country Information
- Council on Governmental Relations (COGR) – Export Controls
- Export Compliance Training Institute (ECTI) – training and certification for a fee
- Collaborative Institutional Training Initiative (CITI) – institutional training subscriptions or individual for fee
- Association of University Export Control Officers (AUECO)
- Visual Compliance – software as a service for performing restricted party screenings, also has links to regs
- UL Export Controls
Questions?

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Thank You for Attending Today’s Presentation

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