“Export Controls for Newbies”

Impact of Export Controls on Higher Education and Scientific Institutions
May 23-24, 2016
What are Export Control Laws (ECLs)

• Federal laws that govern how items, technology, and data may be exported from the United States or shared with foreign persons within the United States
  • Protect national security
    • Curtailing exports of militarily significant items and technologies to U.S. adversaries
    • Preventing terrorism
  • Prevent the proliferation of weapons of mass destruction
  • Further U.S. foreign policy and Trade agreements
  • Preserve U.S. economic competitiveness
Violations of ECLs

• Violations of the ECLs can result in both institutional and individual penalties, including large fines, imprisonment, and debarment from future export activities. These penalties generally result from negligence and willful violation of the law rather than from honest error. Penalties associated with violation of the ECLs are mitigated by self-reporting the violation.

• If you think the regulations have been violated, who do you notify?
What is an Export?

- Shipment of goods out of the United States
  - U.S. origin materials to another country
  - U.S. origin materials from one foreign country to another, or from a foreign country back to the U.S. (re-export)

- Electronic transmission out of the United States
  - Any media (phone, fax, email, chat programs, cloud)

- Release of technology to a foreign nation in the United States (deemed export)
  - Lab tour, presentations and discussions at meetings, etc.
What is an Export?
# ECL Regulations & Federal Agencies with Oversight

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<td>Department of State, Directorate of Defense Trade Controls (DDTC)</td>
<td>Technologies with inherently military properties</td>
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<td>EAR <strong>Export Administration Regulations</strong></td>
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<td>Technologies with both commercial and military applications, most commercial items, and certain military items not controlled under the ITAR</td>
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Department of State (DDTC)

- Determines regulatory authority for new technologies through Commodity Jurisdiction process
- Administers the ITAR (primarily military and listed on the United States Munitions List [USML])
  - Defense articles
  - Defense services
  - Related technical data
Department of Commerce (BIS)

• The EAR covers
  – Technologies and technical information with both commercial and military applications (chemicals, biologics, telecommunications, software, computers, etc.)
  – Military items not enumerated on the USML
  – Solely civil use items depending on the end use/end user

• Each item has an export control classification number (ECCN)
  – Items are listed on the Commerce Control List (CCL)
Department of Treasury (OFAC)

- OFAC administers and enforces economic and trade sanctions against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.
- Specially Designated Nationals (SDNs) — persons, businesses, and nations designated by OFAC for sanctions.
- Sanctions are country specific and include financial transactions.
  - Most heavily sanctioned countries: Cuba, Iran, North Korea, Sudan, Syria.
- Non-financial transactions can also require a license.
Prohibited Party

• U.S. government agencies maintain lists of individuals and entities both in the U.S. and abroad that have committed export violations or other offenses

• Financial dealings or export transactions with restricted entities and parties are prohibited without a license from the applicable government agency

• Restricted Party Screening is recommended depending on the transaction involved
Who should be screened?

• Sponsors
• Vendors
• New hires
• Parties involved in international collaborations and shipments
• International visitors

Software is available that allows users to screen multiple lists at one time; BIS maintains a consolidated list: http://export.gov/ecr/eg_main_023148.asp
What’s controlled?

• Technologies
  – USML and defense services
  – CCL and deemed exports
• Transactions
  – International shipping
  – International payments
• International Travel
  – Depends on the location
• Activities
  – Lab tours
  – Hiring of foreign nationals
  – Conferences
What’s NOT controlled?

• Information in the public domain
• Basic marketing descriptions
• Artistic or non-technical publications
• Information available to the public through:
  – Sales in bookstores
  – Public libraries
  – Published patents
  – Distribution at a conference
  – Educational materials related to catalog courses in associated labs and universities
• Information created under the Fundamental Research Exclusion (FRE)
Fundamental Research

“Fundamental Research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research . . . the results of which ordinarily are restricted for proprietary or national security reasons.”

-National Security Decision Directive 189
FRE: Key Points

• Applies to results of research, not “things”
• Applies to information only
• Does not apply to material shipments anywhere outside the U.S., even if it was created under the exclusion
• Does not apply to research conducted outside the U.S.
• Is lost if research is subject to access, publication, or participation restrictions
How Can I Help my University with Export Compliance??

• You can help by identifying activities that may raise export-control issues, including:
  – Identifying export-control issues in research activities
  – Payments to locations outside the U.S.
  – International shipping
  – Hiring of foreign nationals
  – International student research
  – Purchases with restrictions on the export or use of the item
  – International travel
  – Hosting international visitors
Research Activities and ECLs

- ECLs may apply to a variety of research activities depending on
  - Type of work involved
    - research with military applications, select agents, space, encryption technology, international field work, etc.
  - Equipment involved
    - ITAR-controlled items, international shipment/travel with equipment
  - Parties involved
    - collaboration with foreign nationals in the United States or abroad
Export Controls in Proposals and Awards

• EC issues can be flagged at the proposal/award stage
  – Are there publication or foreign national restrictions?
  – Does the RFP indicate that the topic is ITAR controlled?
  – Is the Statement of Work export controlled?
  – Will there be foreign collaboration in the United States or abroad?
  – Will research be conducted outside of the United States?
  – Will equipment or materials be shipped outside the United States?
  – Is the sponsor a DoD agency?
    • If a subcontract, is the Prime a DoD agency?
  – Is DFAR clause 252.204.7012 included?
Purchases

• Supporting documentation for equipment and software purchases may contain information about export controls
• Vendor may state on invoice that the item may not be exported from the U.S. without a license
• Purchasers may be asked to sign an export compliance certification
  – Can you comply?
• Who do you contact if export language is present?
Payments

- Payments remitted to locations under U.S. trade restrictions may not be permissible
- Certain individuals and businesses may not be eligible to receive payments from U.S. banks
- Screen international parties before processing wire transfers or other payments
Shipments

• International shipments should undergo restricted party screening for the location and the recipient
  – Should be screened for export licensing requirements
• Do not accept packages for shipping if you don’t know what it is!
  – Who do you contact to help determine if an export license is necessary?
Hiring a Foreign National

• New foreign national hires involved in export-controlled research may require an export license before work can proceed

• I-129 form for H-1B or O visa
  – Certifies whether or not the proposed employee will have access to export-controlled materials
  – Administrators can assist with obtaining information required to make this certification

• Having a visa does not mean you can work on export-controlled research without a license
International Visitors

• Perform restricted party screening for all non-U.S. person visitors

• Review the proposed activities
  – Is access or exposure to controlled items required?
  – Is a license required?

• Identify export-controlled items and appropriately secure them from access by unlicensed, non-U.S. persons

• Alert other labs in the department so they are aware of any potential issues involving controlled items
International Students

• Most undergraduate work is not subject to export controls

• Foreign graduate students cannot participate in research that involves restricted technology without first obtaining a license

• Being aware of any export-controlled research in your department can help identify when a foreign graduate student may need a license
International Travel

• May raise export-control issues depending on the location and parties involved
  – Embargoed locations
  – Monetary transactions
  – University-owned equipment may require a export license

• If assisting with travel arrangements, consult your university’s policy on international travel
It Takes a Village

- Central Sponsored Proposals and Awards Office
- Human Resources
- Payroll
- Procurement (central and department)
- IT Department
- Technology Transfer Office
- Department Administration
- International Faculty/Student Offices and Study Abroad
- Shipping
Questions?

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