



# Introduction to Export Controls

*U.S. Export Control Laws at the University of South  
Alabama*

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Adapted from presentations from Pennsylvania State , the University of  
Texas, and The Johns Hopkins University



Welcome!

## Welcome to the University of South Alabama's Introduction to Export Controls

The Program is designed to facilitate compliance requirements by addressing concepts critical to understanding the vast network of federal regulations related to exports.

This seminar examines the various federal laws and regulations governing export controls and the conduct of University research.



# Export Control Laws and USA

## *Background:*

1775

Continental Congress outlawed exportation of goods to Great Britain

1917

**Trading With the Enemy Act-** cut off trade with North Korea and China

1949

**Export Control Act-** protect domestic economy from postwar scarcity

1977

**International Emergency Economic Powers Act-** implement embargos

1991

**President's Enhanced Economic Powers Act-** emphasis on end use and end user

2001

**Patriot Act-** Post 9/11



# Export Control Laws and USA

## What are the Export Control Laws?

- Export Control Laws
  - are laws which prohibit the unlicensed “export” of certain controlled technologies to *foreign persons* for reasons of national security and trade protection
- “Export”
  - is defined very broadly to include an oral or written disclosure of information, visual inspection, or actual shipment outside the U.S. of technology, software/code or equipment to a foreign person
- Any method of disclosure may apply:
  - email, telephone, websites, tours, training sessions



## Export Control Laws and USA

What is meant by a “*Foreign Person*”?

- Any Foreign Government
- Any Foreign Corporation or group that is not currently incorporated in the United States or organized to do business in the United States
- Anyone who is not a lawful permanent resident of the United States.

\*Realize that this definition applies even if the individual is physically in the United States!



# Export Control Laws and USA

## What are the Goals of Export Control Laws?

- Prevent Terrorism
- Curtail export of technologies that assist the military potential of adversaries
- Compliance with Trade Agreements
- Prevent development of nuclear, chemical and biological weapons



# Export Control Laws and USA

What are the various regulations governing Export Control Laws (ECLs)?

- International Traffic in Arms Regulations (ITAR)
  - United State Munitions List
- Export Administration Regulations (EAR)
  - Commerce Control List
- Office of Foreign Assets Control
  - Country specific sanctions and regulations



# Export Control Laws and USA

- Federal Agencies with oversight of Export Control Laws
  - **Department of State** –ITAR- technologies with inherently military properties
  - **Department of Commerce** – EAR – technologies with “dual uses” but primarily commercial
  - **Department of the Treasury** – OFAC – prohibits transactions of value with certain countries and individuals





# Basic Regulations: ITAR

- International Traffic in Arms Regulations (ITAR)  
22 CFR Parts 120 – 130
  - U.S. Munitions List (USML) enumerates the defense articles and services (furnishing technical assistance - \_ includes design, engineering and use of defense articles) which are controlled
  - Based primarily on whether an article or service is deemed to be **inherently military in character**
  - Licensing handled by the Directorate of Defense Trade Controls (DDTC)



# Basic regulations: ITAR

## U.S. Munitions List (USML) 22CFR 121.1

- I. Firearms, Close Assault Weapons/Combat Shotguns
- II. Guns and Armament
- III. Ammunition
- IV. Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- V. Explosives, Propellants, Incendiary Agents
- VI. Vessels of War and Special Naval Equipment
- VII. Tanks and Military Vehicles



# Basic regulations: ITAR

- VIII. Aircraft and Associated Equipment
- IX. Military Training Equipment and Training
- X. Protective Personnel Equipment and Shelters
- 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 Equipment
- XV. Space Systems and Associated Equipments



# Basic Regulations: ITAR

- XVI. Nuclear Weapons, Design and Testing Related Items
- XVII. Classified Articles, Technical Data and Defense Service not Otherwise Enumerated
- XVIII. Directed Energy Weapons
- XIX. Reserved
- XX. Submersible Vessels, Oceanographic and Associated Equipment
- XXI. Miscellaneous Articles



# Basic Regulations: EAR

## Export Administration Regulations (EAR)

### 15 CFR Parts 730-774

- The Commerce Control List (CCL) contains commodities, technology, and software subject to the EAR; identified by an Export Classification Control Number (ECCN)
  - These are goods and services that have “**dual use**” meaning they have civilian AND military uses.
- Licensing handled by Bureau of Industry and Security (BIS)
- The inherent capabilities and design, not the end use, determines whether the item falls under the ITAR or the EAR



# Basic Regulations: EAR

0. Nuclear Materials, Facilities & Equipment, and Miscellaneous
  1. Materials, Chemicals, Microorganisms & Toxins
  2. Materials Processing (i.e., making plastics, metals)
  3. Electronics Development
  4. Computer (development and programs)
  5. Telecommunications and Information Security
  6. Sensors and Lasers
  7. Navigation and Avionics
  8. Marine
  9. Propulsion Systems, Space Vehicles and Related Equipment



# Basic Regulations: OFAC

## Department of Treasury Office of Foreign Assets Control

(OFAC) – Economic sanctions focus on end-user or country and may limit transfer of technologies and assistance to OFAC’s list of sanctioned countries

- In certain cases, OFAC regulations “trump” other government agencies such as the BIS (for example, shipping items to Iran)
- OFAC has a “Specially Designated Nationals and Blocked Persons List”
- Prohibits payments or providing “value” to nationals of sanctioned countries and certain entities



# Export Control Laws and USA

## How do these laws impact research at USA?

- If USA research involves these controlled technologies, USA may be required to get government approval (a license) before allowing:
  - Certain foreign researchers and students in the U.S. (including on campus) or foreign persons outside the U.S. from participating in research involving the controlled technologies
  - The sharing of research results with foreign persons
  - Providing training and other services to foreign persons
  - Sending equipment or software outside the U.S.





## Export Control Laws and USA

### Why increased concern with impact of ECLs on University research?

- Advanced technologies developed at universities may be subject to ECLs
- ECLs are applicable to research fields not traditionally associated with the “military” such as life sciences materials (biological agents and toxins) and computers (encryption technology)
- University research reliance on Federal funding with increased compliance requirements
- Increased “globalization” of University research



# Export Control Laws and USA

## Currently at South Alabama

1042 International Students

*AKA: Foreign Persons*

Predominantly from India, Japan, Vietnam, Saudi Arabia and Nepal

*These students are valuable members of our student population and research activities!*



# Export Control Laws and USA

## Why Is this issue important?

- Export Control Laws (ECLs) present a challenge to the USA research community
- ECLs are the law of the land and apply to all research activities
- Failure to comply carries heavy fines and possible imprisonment
- Compliance is not easy because ECLs are complicated and confusing
- Federal Government has increased enforcement and investigations of universities since 9/11/2001



# Key Issues for Universities

- Exclusions (Public domain, Fundamental Research, Etc)
- “Deemed” Exports
- Equipment Use
- Troublesome Clauses/Contract Restrictions
- Shipping/Material Transfer
- Travel
- Payment to Vendors



## Export Control Laws and USA

General Rule: *USA, its faculty, and employees may not export to foreign persons certain materials and information without a license from the U.S. Government, unless an exclusion applies.*

Fortunately, the majority of research at USA will be covered under an exclusion to the ECL requirements.

What are the exclusions?



# Export Control Laws and USA

## *EXCLUSIONS TO ECLS:*

- A. **PUBLIC DOMAIN EXCLUSION:** export controls do not apply to information and research results already published and publicly available from:
- Libraries, bookstores, or newsstands
  - Trade shows, meetings, seminars in the U.S. open to the public
  - Published in certain patent applications
  - Websites accessible to the public
  - Courses listed in a university catalog of a general nature

\*Mass market exclusion available for encrypted items that you would have to pay for\*



# Export Control Laws and USA

## *EXCLUSIONS TO ECLS:*

### **B. EDUCATION EXCLUSION:**

- ITAR: No export controls associated with *information* (but not technology and materials) which is “general scientific, mathematical or engineering principles commonly taught in . . . universities.”
- EAR exclusion for “educational information” released by instruction in catalog courses and associated teaching laboratories. So, in general, no need for a license to share information as part of a regular course being taught at USA.



# Export Control Laws and USA

## *EXCLUSIONS TO ECLS (cont.):*

**C. EMPLOYMENT EXCLUSION:** license is not needed to share information subject to export control laws if the foreign national is/has:

- A full-time, employee of USA
- Not a national of certain countries (E:1)
- A permanent address in the U.S. while employed at USA





# Export Control Laws and USA

## *EXCLUSIONS TO ECLS (cont.):*

**D. FUNDAMENTAL RESEARCH EXCLUSION (FRE):** will cover most research at USA

- Basic or applied research in science or engineering
  - at an accredited institution of higher learning in the U.S.
  - resulting information is ordinarily published and shared broadly in the scientific community



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# Export Control Laws and USA

## *“DEEMED” EXPORTS*

- The EAR defines a deemed export as the release of technology or source code subject to the EAR to a foreign national (no green card) in the U.S.
- Such release is “deemed” to be an export to the home country of the foreign national.
- Situations that can involve release of U.S. technology or software include:
  - Tours of laboratories
  - Foreign students or professors conducting research
  - Hosting foreign scientists
  - Emails, visual inspection, oral exchanges
- Unless the fundamental research exclusion applies, a university’s transfer of controlled (on the CCL or the USML) technology to a non-permanent resident foreign national may require a license and/or be prohibited.



# Key Issues for Universities

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## Export Control at USA

### EQUIPMENT USE EXCLUSIONS?

- “Use” of controlled equipment by a foreign national may require a license even if Fundamental Research exclusion is applicable.
  - The transfer of controlled technology or source code of a controlled item to a FN may require a license, NOT the normal operation or use of the item or piece of equipment
    - Technology that is subject to export controls is “use” technology (i.e. operation, installation, maintenance, repair, refurbishing, overhaul)
    - BIS considers manuals to be published when available from the manufacturer.



# Key Issues for Universities

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# Export Control Laws and USA

## *Troublesome Clauses/Contract Restrictions*

ALSO, University research **will not qualify** as FUNDAMENTAL RESEARCH if the university accepts **any** restrictions on the publication of information resulting from the research, other than limited prepublication reviews by research sponsors to:

- Prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor
- Insure that publication will not compromise patent rights of the sponsor

\*Prepublication review by the sponsor is allowed as long as it is timely and cannot have publication restrictions placed after review



## Export Control Laws and USA

### *Troublesome Clauses/Contract Restrictions*

The FUNDAMENTAL RESEARCH EXCLUSION (FRE) would be destroyed by a contract clause that:

- Gives a sponsor a right to approve publications
- Forbids the participation of foreign nationals in the research effort

These limitations are applicable to any sponsor, whether federal, private or not-for-profit





# Key Issues for Universities

- Exclusions (Public domain, Fundamental Research, Etc)
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# Export Control Laws and USA

## *SHIPPING EQUIPMENT OUTSIDE THE UNITED STATES:*

- If equipment is subject to ITAR regulations, a license is required from the Department of State to ship to any foreign nation. A license can take a long time to obtain so plan ahead!
- If equipment is subject to EAR regulations, the necessity of license is dependent on the facts:
  - where it is being shipped and,
  - do any exceptions apply
- Plan ahead and notify ORCA/OTT as soon as possible.
- It is illegal for equipment to be shipped to a country subject to sanctions/embargo under OFAC

**Remember, this includes material transfers!**

**Reginald Taylor, Associate Director**



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# Export Control Laws and USA

## *TRAVEL*

- Taking equipment, laptops, etc., out of the country may require a license
  - License may be required for controlled technology loaded on laptop, but not the laptop itself
- There are license exceptions available
  - TMP – temporary exports
    - » Form is good for one year
  - BAG – baggage
  - Laptop, equipment must stay under “effective control” for travel to certain countries



## Export Control Laws and USA

### *TRAVEL (cont):*

- OFAC has restrictions
  - Money transactions
  - Sanctioned countries
- The Departments of Commerce, State, OFAC, and other government agencies have denied entities/persons lists
  - We use Visual Compliance to check individuals and companies to see if they are on a “list”



# Export Control Laws and USA

## *TRAVEL (cont):*

- NEW! USA International Travel Policy
  - Complete the *International Travel Review* forms that can be found at:  
<http://www.southalabama.edu/travel/international.html>
- DO NOT purchase or make airfare or other arrangements prior to submitting this form
- Once you have received the review feedback from OIE you will need to READ, PRINT, SIGN , and attach the documentation to your formal request for leave, absence, etc.
- This can then be submitted to the appropriate department, college/administrative unit for APPROVAL.

\*Realize that your Request for Leave forms have changed as well!\*



# Key Issues for Universities

- Exclusions (Public domain, Fundamental Research, Etc)
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- Travel
- **Payment to Vendors**



## Export Control Laws and USA

### *Payment to Vendors:*

- Payments to entities/persons on the denied lists could result in fines
  - Includes payments to entities in the U.S. or abroad
  - Payment to foreign entity should raise a red flag!
  - Visual Compliance can be used to check vendors





# Export Control Laws and USA

## Visitors to Campus

- Do you give tours?
- Have visiting/temporary international faculty?
- Student Orientations?

If you have material/items in your area subject to export controls, it matters whom can tour your space without a license!!



# Export Control Laws and USA

## *LICENSING THE TECHNOLOGY AND GOODS:*

- EAR – not too complicated, can apply electronically, no fee
  - Deemed Export license required for foreign national working with certain controlled proprietary technology
  - License needed to ship certain goods/technologies outside the U.S.
- ITAR – very complicated and expensive
  - DSP-5/Technical Assistance Agreement required for foreign nationals working with export controlled technology/defense service
  - Technology Control Plan required



# Export Control Laws and USA

## *QUESTIONS TO ASK:*

- **Are there foreign nationals that will be working on the project?**
- Will the researcher or project director be receiving restricted information?
- **Destination:** Is the research technology or goods going overseas to a foreign company, government or individual?
- What do the end-users intend to do with the research results or goods?



# Export Control Laws and USA

*DETERMINING THE NEED FOR A LICENSE:*

## **QUESTIONS TO ASK:**

- What is the nationality of researchers INCLUDING Professors and Research Assistants (grad students/post-docs)?
- Will the results be publicly available?
- Will there be restrictions?
  - on publications
  - on access
  - on dissemination
  - on proprietary information



# Determining the Need for a License

## *STEPS TO TAKE:*

- Classify the technology or goods involved (ITAR, EAR, OFAC, other?)
- Determine if license is needed for the technology/end user/end use
- Determine if license exemption or exclusion is available (public domain, fundamental research, EAR exemption from CCL, etc.)

Contact ORCA for help!!!



## License or Technology Control Plan?

- In some situations it is possible to put a TCP in place instead of applying for a license
- A TCP is simply a plan that outlines the procedures to secure controlled technology (e.g., technical information, data, materials, software, or hardware) from use and observation by unlicensed non-U.S. citizens
  - If this is not possible, then a license or technical assistance agreement would be needed

**Those closest to the action know their area and things in it the best. THINK!**



# When do you need a TCP?

- In conjunction with a Technical Assistance Agreement (TAA) – Dept. of State
- In conjunction with a Deemed Export license – Dept. of Commerce
- In conjunction with an agreement that does not allow foreign nationals
- In conjunction with an agreement that involves controlled technology – includes NDAs
- Or in conjunction with *any* project that involves controlled technology!
- TCP template - Export Controls website:



# The Cost of Noncompliance

- **ITAR/EAR**
  - Criminal: Up to \$1 million per violation and 20 years imprisonment
  - Civil: seizure and forfeiture of article, revocation of exporting privilege, up to \$500,000 fine per violation
    - Professor Roth (Univ. TN) just sentenced on 7/1/09 to four years in prison
    - Thomas Butler (Tx. Tech) sentenced on 10/24/05 to two years in prison and \$37,400 fine
    - Hughes Electronics and Boeing Satellite Systems - \$32M
    - Boeing - \$4.2M
    - Lockheed Martin - \$13M





## How Does USA back this up?

- Management Commitment
- Policies and Procedures
- Training and Documentation
- Monitoring
- Export Control Management Plan
  - Development
  - Implementation
  - Monitoring

# Export Control Laws and Research at USA

- Thank you for your help in ensuring compliance with Export Control Laws at the University of South Alabama
- Please contact the Office of Research Compliance and Assurance
  - Alison Henry (460-6509) with any questions or for assistance.



## Case Studies

### ON THE LIGHT SIDE



These are the Commandments—those over there are the Government Guidelines that go with them.