



# 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”

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## 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 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



# 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:







# Export Control Laws and USA

Currently at South Alabama

1042 International Students

AKA:



# 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





# 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:

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# Export Control Laws and USA

## EXCLUSIONS TO ECLS:

### B. EDUCATION EXCLUSION:

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# Export Control Laws and USA

## EXCLUSIONS TO ECLS (cont.):

D. FUNDAMENTAL RESEARCH EXCLUSION (FRE): will cover most resrt esrc.4 (h a)9 2: 4

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# Key Issues for Universities

- Exclusions (Public domain, Fundamental Research)
  - 1710 Act - 1.2 Exclusions
    - 1641 Act
      - 1913 Act - 1.2 Exclusions

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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



# Export Control Laws and USA

Troublesome Clauses/Contract Restrictions

The FUNDAMENTAL RESEARCH EXCLUSION (FRE)





# Key Issues for Universities

- Exclusions (Public domain, Fundamental Research, Etc)
- “Deemed” Exclusions (Public domain, Fundamental Research, Etc)





# Key Issues for Universities

- Exclusions (Public domain, Fundamental Research, Etc)
- “Deemed” Exports
- Equipment Use
- Troublesome Clauses/Contract Restrictions
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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



# 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

### 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.
- U.e rtih
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# 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)?

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# 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!!!





# 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

