

Export Controls and Research

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Why is This Important?

Supports the US Government's objectives of protecting:

- US national security
- foreign policy interests
- Economic interests
- Avoids reputational harm and adverse publicity
- Its the Law and UNTHSC Policy !

What are the penalties for unlawful export disclosure?

- Voluntary disclosure of violations **may** serve as a “mitigating factor” in deciding penalties
- Violations of export control laws and regulations are severe.
 - Penalties for individuals include fines up to \$1,000,000 and 10 years in prison.
- Result in loss of export privileges and debarment from contracting with the government.

University of Tennessee Professor – 4 Year Prison Sentence

- July 2009 – Dr. John Roth, PhD. (Univ. of Tennessee professor) 72, sentenced to 4 years in prison for violation of Arms Export Control Act by illegally exporting technical information relating to USAF research contracts
- Convicted of exporting to China “technical data”
 - He was developing plasma technology for use on an advanced form of an unmanned air vehicle (UAV)
 - Roth gave ITAR technical data to a Chinese and an Iranian grad research student
 - Downloaded his project from a Chinese colleague’s computer while in China
 - Roth did not obtain permission to take sensitive documents to China on his laptop

Texas Tech University Professor – 2 Year Prison Sentence

- **March 2004 -Dr. Thomas Campbell Butler, M.D., a professor (Texas Tech University) in Lubbock, Texas**
 - illegally exported the *Yersinia pestis* (*human plague*), which is a *controlled* item under the EAR and cannot be exported without the required export licenses
 - Prison: 2 Year
 - Fired from TX Tech Univ.

What are Export Controls?

- US laws that regulate the transfer or shipment of payments, items, technology, software, services, and sensitive info to foreign governments and persons
- **These laws apply to all activities** – not just sponsored projects

What is an export?

- Any oral, fax, written, electronic, visual disclosure, shipment, transfer or transmission of commodities, technology, information, technical data, assistance or software codes from the United States to
 - Anyone outside the U.S, including a U.S. citizen
 - A non-U.S. person, wherever they are (deemed)
 - A foreign embassy or affiliate

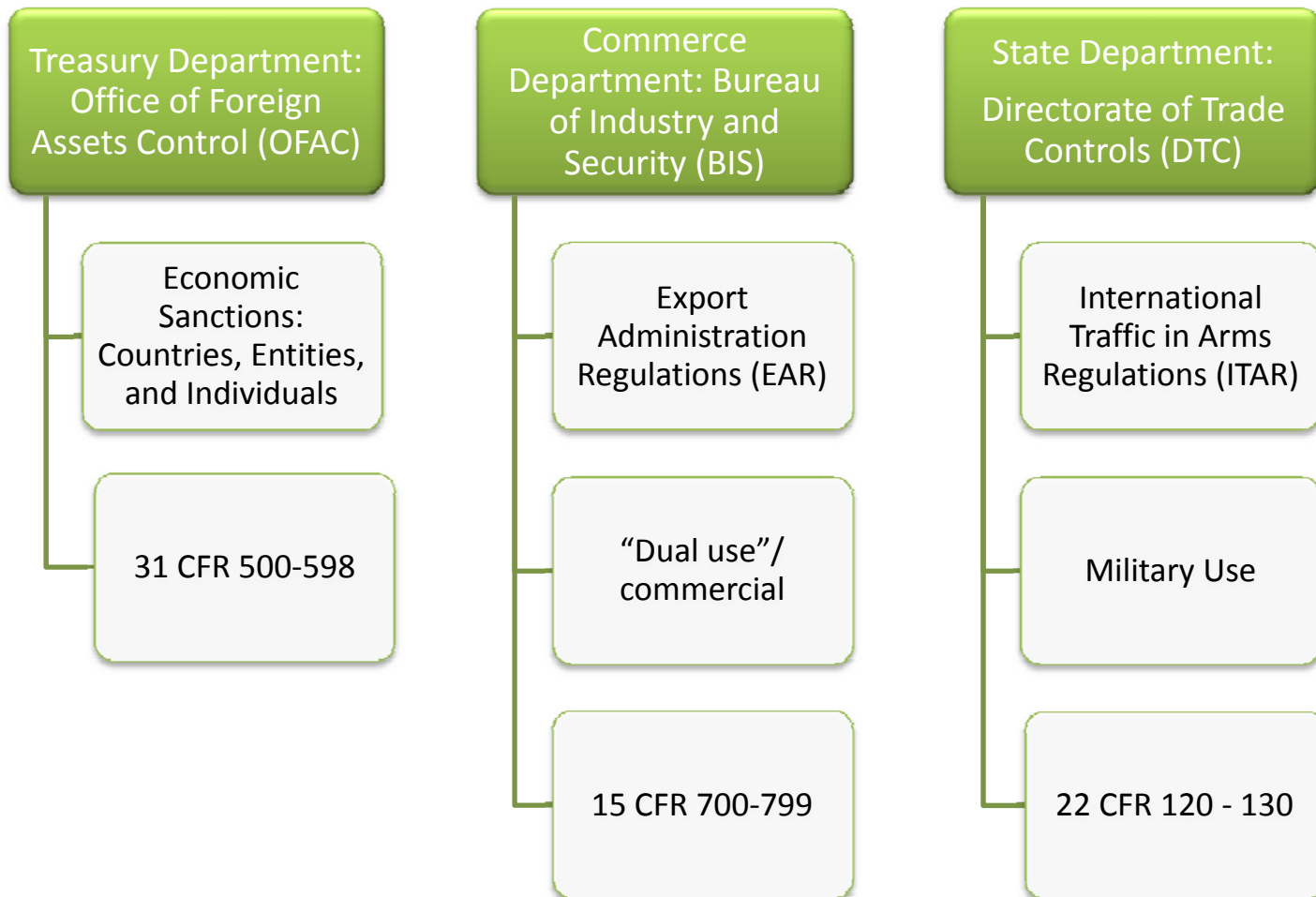
What is a “deemed export”?

- The transfer of or access to controlled technology to a foreign person even while in the U.S
 - The transfer is “deemed” to be an export to his / her home country

Who is considered a U.S. Person?

- U.S. person
 - Everyone who is a U.S. citizen, a U.S. legal permanent resident (“green card”) or an asylee/refugee
 - NOT F-1, J-1, H-1B, L-1, O-1, etc visa holders
 - U.S. corporation, partnership, trust, society or other entity incorporated or organized to do business in the U.S
 - Everyone else is a “foreign person”

What are the regulations?



Treasury's Office of Foreign Assets Control

- Financial transactions & services to countries listed on the OFAC list of sanctioned countries may be prohibited (incl. purchase of equipment, payment of honoraria)
- Cuba, Iran, Sudan, Syria, North Korea, Iraq, Belarus, Burma, Cote d'Ivoire, Democratic Republic of the Congo, Somalia, Zimbabwe, Balkans, Lebanon
- <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml> for current OFAC Country Sanctions list

Commerce's Export Administration Regulations

- The Commerce Control List (CCL) includes items subject to the EAR.
- For the CCL, see www.access.gpo.gov/bis/ear/ear_data.html

What is on the CCL?

15 CFR 774

Ten categories:

- 0- Nuclear Materials, Facilities & Equipment (and Misc. Items)
- **1- Materials, Chemicals, Microorganisms, & Toxins**
- 2- Materials Processing
- 3- Electronics Design, Development & 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



ITAR U.S. Munitions List

22 CFR 121.1

- I - Firearms
- II - Artillery Projectors
- III - Ammunition
- IV - Launch Vehicles, etc.
- V - Explosives, Propellants, Incendiary Agents and Their Constituents
- VI - Vessels of War and Special Naval Equipment
- VII - Tanks and Military Vehicles
- VIII - Aircraft and Associated Equipment
- IX - Military Training Equipment
- X - Protective Personnel Equipment
- XI - Military Electronics
- XII - Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIII - Auxiliary Military Equipment
- *XIV - Toxicological Agents and Equipment and Radiological Equipment
- XV - Spacecraft Systems and Associated Equipment
- XVI - Nuclear Weapons Design and Related Equipment
- XVII - Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- XVIII - Reserved
- XIX - Reserved
- XX - Submersible Vessels, Oceanographic and Associated Equipment
- XXI - Miscellaneous Articles



ITAR Proscribed Countries

22 CFR 126.1

- Afghanistan
- Burma
- Belarus
- China (PR)
- Cote d'Ivoire
- Cuba
- Cyprus
- Democratic Republic of the Congo
- Eritrea
- Haiti
- Iran
- Iraq
- Lebanon
- Liberia
- Libya
- North Korea
- Sierra Leone
- Somalia
- Sri Lanka
- Sudan
- Syria
- Venezuela
- Vietnam
- Yemen
- Zimbabwe

How Can This Affect Research?

- May impact or restrict:
 - Conducting surveys and interviews in foreign countries
 - Involvement of foreign students in research
 - Collaborating on research projects with foreign colleagues and students from foreign countries
 - Creating materials at the request of a person or entity from a foreign country
 - Speaking at conferences in which foreign persons attend

How Can This Affect Research?

- Visiting foreign scientists
- Sharing of data, software, & materials – such as biological materials through MTA
- Peer review of publications for foreign persons
- Travel to and research and fieldwork conducted in foreign countries
- Shipping items, technical data, software, research equipment to foreign countries

What About Peer Review?

- OFAC licenses authorize U.S. persons to engage in certain activities related to publishing of scholarly articles:
 - *IF* Peer review by US person of scholarly articles authored by persons in boycotted countries-
 - style and copy editing if these activities do not result in substantive alterations or enhancements to the manuscripts

What About Travel?

- Trips to foreign countries should be reviewed due to the restrictions on activities and
- the ability to take along certain items such as laptops, software, testing equipment is restricted

Shipping items outside the U.S.

- May require a license from the Dept of State; Bureau of Industry & Security; and / or OFAC
- About 6 months
- Do not ship an item outside the U.S w/o the proper license
- Contact ORC for guidance

What are the Exclusions?

1. Educational Exclusion

- –Released by instruction in catalog courses or through associated *teaching laboratories of academic institutions*

2. “Publicly Available” Exclusion

- –Generally accessible to the interested public
- –Found in periodicals, books, print, electronic and other media forms
- –Found in Libraries
- –Shared at open conferences

3. “Fundamental Research” Exclusion

- –*Very important exclusion for higher education*
- Basic and applied research in science and engineering; Resulting information is ordinarily published and shared broadly within the scientific community;
- At accredited U.S. academic institution

What is NOT Fundamental Research?:

UNTHSC accepts any contract clause, for example, that:

- Forbids / restricts the participation of foreign persons
- Gives the sponsor a right to approve publications resulting from the research
- Restricts access to and disclosure of research results



Prepublication Review

- UNTHSC could accept prepublication review provisions and still claim the exclusion for the research results if the review is solely to ensure that publication:
 - Would not divulge proprietary information that the sponsor provided to UNTHSC researchers
 - Would not compromise patent rights

Is a License Always Required?

- A license to export or reexport an item or technology may be required based on:
 - classification of the item or technology?
 - Destination country?
 - Identity of the intended recipient (“end user”)?
 - What “end-user” do with it?

To help you decide whether your project may require a license, please use the Stanford University Decision Tree:

http://www.stanford.edu/dept/DoR/experience_controls/tree/tree_1.html

UNTHSC Export Control Policy

- The ORC will assist researchers in complying with export control laws, **but the primary responsibility rests with researcher involved in the project. Researchers and educators are most informed about potential projects and are responsible for notifying the ORC in order to obtain any required licenses.**
- The principal investigator for a research project has the primary responsibility for compliance.

Faculty start-up funds or non-sponsored research

- Could have export control issues depending on the nature of the research
 - proprietary research could have export control implications
 - foreign nationals on project could be an issue
 - Nondisclosure agreements
- **if not run through (OGCM) office, may not get an export controls review

Accepting Export Controlled Information

- Contact ORC if:
 - You agreed to receive controlled information to determine compliance issues
 - Acceptance creates compliance issues for Researcher and the University

?Questions to Ask?

- Do the terms of the RFP or award involve:
 - Restrictions on publication (ex. Sponsor approval rights or prepublication review beyond a brief review for patent protection and / or release of proprietary info)
 - Restrictions on the participation of foreign persons (sponsor approval required for participation of foreign persons, or explicit prohibition)

?Questions to Ask?

- Is the RFP marked “Export Controlled” or “Classified Information” or similar references to U.S. export control regulations?
- Do you know or have any reason to believe that the item, technical data or software to be exported will be used to support WMD efforts?

?Questions to Ask?

- Does the Project involve
 - Collaborating with foreign colleagues in foreign countries
 - Shipping items, data, software to foreign country
 - Travel to foreign country
 - Are there any Red Flags?



Work Visa Application Requirements

- U.S. Citizenship and Immigration Services (USCIS) revised I-129 form.
- Requires employers sponsoring foreign nationals for certain work visas (H-1B, L-1, O-1) to certify that the employer has made an export licensing determination regarding the employee being sponsored.

Part 6. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States

(For H-1B, H-1B1 Chile/Singapore, L-1, and O-1A petitions only. This section of the form is not required for all other classifications. See Page 3 of the Instructions before completing this section.)

Check Box 1 or Box 2 as appropriate:

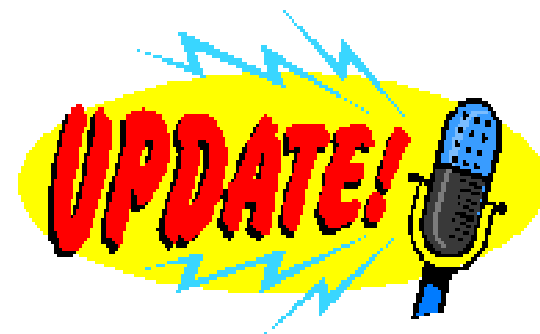
With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

- ☐ 1. A license is not required from either U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or
- ☐ 2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

For More Information

- UNTHSC Office of Research Compliance:
<http://www.hsc.unt.edu/research/compliance/>
- UNTHSC policy revised – Winter 2010 
- If you have questions regarding any activity, please contact the Office of Research Compliance
➤ Rhonda.dash@unthsc.edu

What's Next?



- Post Approval Monitoring (PAM)
 - Use of Controlled Substances in Research
 - IRB approved Investigator –Initiated Studies

Return to Me!

1. Sign in Sheet

