Export Control Compliance
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Objectives

- Describe the roles and responsibilities of Research Administrators, OSR, EHS and University Counsel in export control compliance
- Provide an overview of applicable regulatory guidelines, including the ITAR (International Traffic in Arms Regulation), EAR (Export Administration Regulations) and OFAC (Office of Foreign Asset Control)
- Identify “troublesome clauses” that could affect the University’s Fundamental Research Exclusion
- Review the process for restricted party screening and University tools to assist in the process
- Provide an overview of Technology Control Plans
- Discuss the implications for international shipping and travel
Why should we be concerned?

- It is the policy of the University of North Carolina at Chapel Hill that all personnel, including employees, visiting scholars and students, comply with all U.S. export control laws and regulations.
- The University’s Policy on Export Controls is available at: http://www.unc.edu/campus/Export_Control/policy.html
Why should we be concerned?

- Significant penalties for noncompliance, including both criminal and civil sanctions
- Penalties apply to both the university and the individual researcher/exporter
- Federal government enforcement against universities has increased over the past decade
Why do we have export control laws?

- Concern about certain goods and technology with potential military capabilities falling into the hands of adversaries
  - Most research performed on our campus is “dual use” – meaning the good or service is normally used for civilian purposes but may have military applications
- Prevent proliferation of weapons of mass destruction
- Prevent terrorism
- Comply with U.S. trade agreements and trade sanctions against other nations
What are the relevant government authorities?

- International Traffic in Arms (ITAR) – regulates defense articles and services which are controlled for export
  - Regulated items listed on the U.S. Munitions List (USML)
  - USML is based on whether an article or service is deemed to be inherently military in character
  - If an item is listed on the USML a license to export may be necessary
  - EHS assists in licensing
- The University does not typically engage in ITAR controlled research.
What are the relevant government authorities?

- Export Control Regulations (EAR) – regulates the export and re-export of most commercial items
  - The inherent capabilities and design, not the end use, determine whether an item falls under the EAR
  - If an item falls under the EAR – a license to export may be necessary
  - EHS assists in licensing
- Common items – viruses, bacteria, toxins, laboratory equipment/supplies, computers, diagnostic kits, GPS, cameras, lasers, software
What are the relevant government authorities?

- Office of Foreign Assets Control (OFAC)
  - OFAC enforces economic trade sanctions against specific countries, terrorists, narcotics traffickers, and those engaged in weapons of mass destruction proliferation
  - Countries with comprehensive sanctions currently include: Balkans, Belarus, Burma, Cuba, Democratic Republic of Congo, Iran, Iraq, Ivory Coast, Lebanon, Liberia, Libya, North Korea, Somalia, Sudan, Syria, Yemen and Zimbabwe
  - Before travel to or trading with a country, the OFAC restrictions should be reviewed
    - Visual Compliance is a source provided by the University
## Export Controls at UNC

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❖ I-129 Review for visa applications (Deemed Exports)
What is an “Export”?

- An export is a transfer by any means of controlled goods, technology or software outside the U.S. or to a foreign national located in the U.S.

- These include:
  - Mailing materials outside the U.S.
  - Personally transporting materials outside the U.S.
  - Transfer of technology to a foreign national inside the U.S. or a foreign entity
General Rule

- General Rule: UNC faculty, employees and students may not send or take export-controlled equipment, chemicals or technologies to foreign persons without a license from the U.S. government, unless an exclusion applies.
  - The release of controlled technology to a foreign person in the U.S. are “deemed” to be exports to the person’s country or countries of nationality – this is called a “deemed export”
Federal regulations for visa applications (H-1B, H-B1 Chile, Singapore, L1-A, O1-A) require the University to certify that the employee either:

- Will not be involved in any activity that would require an export license; or
- Will be involved in an activity requiring an export control license and the University will prevent access to controlled technology until an export control license has been obtained.
I-129 Deemed Export Attestation

- Employee is checked in Visual Compliance
- Department completes Deemed Export questionnaire
Exclusions/Exemptions from Export Control Laws

- Public Domain Exclusion (ITAR and EAR)
- Educational Exclusion (ITAR and EAR)
- Employment Exemption (ITAR)
- Fundamental Research Exclusion (ITAR and EAR)
Public Domain Exclusion

- Applies to information and research results that are published and generally available to the public through:
  - Libraries, bookstores, newsstands;
  - Trade shows, meetings, and/or seminars in the U.S. open to the public;
  - Published in certain patent applications; or
  - Websites accessible to the public
- Does NOT apply to encrypted software, information where there is reason to believe it may be used for weapons of mass destruction, or where the U.S. government has imposed access or dissemination controls as a condition of funding
- Also does NOT apply to physical equipment, substances, etc.
Education Exclusion

- Applies to the transfer of information to students, including students who are foreign nationals, concerning general scientific, mathematical or engineering principles commonly taught in school, colleges and universities
Employment Exemption

- ITAR regulations exempt disclosure of unclassified technical data in the U.S. by U.S. universities to foreign nationals where
  - The foreign national is a University’s bona fide full-time regular employee;
  - The employee’s permanent abode throughout the period of employment is the U.S.;
  - The employee is not a national of an embargoed country; and
  - The University informs the employee in writing that information disclosed may not be disclosed to other foreign nationals without governmental approval.
Fundamental Research Exclusion

- Most important exclusion for the University
- Government acknowledgment of the importance of open, fundamental research at universities
- Applies to:
  - Basic and applied research in science and engineering
  - Conducted at an accredited institution of higher education in the U.S.
  - Where the resulting information is ordinarily published and shared broadly within the scientific community
Fundamental Research Exclusion

- University policy is to protect the fundamental research exclusion by refusing to accept provisions in research contracts, grants or MOUs that:
  - Give external entities (e.g., sponsor) the right to limit or prohibit the publication, presentation, distribution or sharing of research results; or
  - Give external entities the right to decide who may have access to or participate in the research
Fundamental Research Exclusion

- Publication restriction - we are looking for language that restricts the University’s right to publish the project data
- Particular attention should be paid to projects funded by branches of the military (Army, Navy, Air Force, Marine Corps), DOD, DoE, DOJ, DOT, DARPA, NASA, NRC, NSA, Homeland Security, FAA or Government Laboratories
- Watch out for clauses being incorporated by reference
Example publication restriction clause:

- FAR 52.227.17 Rights in Data - Special Works -- “(d) Release and Use Restrictions. Except as otherwise specifically provided for in this contract, the Contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.”
Fundamental Research Exclusion

- It is acceptable to give the sponsor a review period, typically 30-90 days, to prevent inadvertent inclusion of confidential information or to protect sponsor’s ability to file a patent.
Fundamental Research Exclusion

- Restricted access – we are looking for language restricting access or giving the sponsor the right to approve access or disclosure to the research site, to technology or information used in the research or to the research results or the research contract
Fundamental Research Exclusion

- Examples of participation restriction based on nationality
  - “NOTICE: This agency may prohibit non-U.S. citizens from all or certain aspects of work to be done under any resulting contract…”
  - “In connection with any activities in the performance of this subcontract, the Subcontractor agrees to comply with any ‘Sensitive Foreign Nationals Controls’ requirement that may be attached…”
  - “Prior approval to use non-U.S. citizens to perform on this Order…”
Fundamental Research Exclusion

- Others types of language to look out for:
  - Sponsor approval or security clearance required for project participation
    - “Although the intent for the basic research is to be unclassified, each Fellow must be able to obtain and maintain a Department of Defense security clearance...Fellows must be granted and maintain a final Secret Clearance to receive program funding.”
  - Language identifying that some information used or produced by the research may be “Classified”
    - FAR 52.204.2 Security Requirements (Aug 1996) (a) This clause applies to the extent that this contract involves access to information classified “Confidential,” “Secret,” or “Top Secret.”
  - Language saying that some information used or produced by the research may be “Sensitive But Unclassified”
  - Language saying that the research includes military or national security or defense purposes or equipment or technology
Fundamental Research Exclusion

- If problematic language is identified in the contract/grant review attempt to negotiate deletion or an acceptable alternative clause
- If unsuccessful, seek guidance from within OSR or OUC
OFAC Restrictions
OFAC Overview

- OFAC enforces economic and trade sanctions against specific foreign countries, terrorists, international narcotics traffickers, and those engaged in weapons of mass destruction proliferation.
- Before traveling to a sanctioned country, or trading with or providing services to persons in sanctioned countries, individuals must first educate themselves on the specific sanctions program for that country to determine whether such transactions are permitted.
- OFAC’s website contains up-to-date information on each of the sanctioned program - [http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx](http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx)
Restrictions on OFAC Sanctioned Programs

- Sanctioned Programs may restrict:
  - Payments (compensation, honoraria, contracts) to embargoed countries/nationals/entities
  - Attending international conferences and purchasing goods and services in embargoed countries
  - Providing services to embargoed countries/nationals/entities
The Specially Designated Nationals and Blocked Persons List (SDNBPL) List is a publication of OFAC which lists individuals and organizations with whom United States citizens, permanent residents and legal entities are prohibited from doing business.

The University has a license for eCustoms Visual Compliance software which provides enhanced search functionality of the SDNBPL and other similar federal restricted party lists.
Visual Compliance - Restricted Party Screening - Windows Internet Explorer

INDIVIDUAL AND COMPANY SCREENING

Name: 
Company: 
Address: 
City: State: 
Country: Select country if applicable ...

- Exact
- Phonetic
- Fuzzy Level 2
- Stemming
- Thesaurus
- Field Specific
- Remove business endings and abbreviations
- ECCN for country controls check: Select ECCN ...

BLOCKED FOREIGN NATIONALS BY COUNTRY

Display a checklist of blocked foreign nationals in a given country:

Select country for checklist ...

Many foreign nationals are not identified by country in the official sources. This query searches the Export and Munitions list groups only.

BLOCKED ENTITIES AND FUGITIVE LISTS

Display a checklist of entities on the selected government list:

Select list to display ...

SDN not available here on account of size, please use PDF instead.

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Technology Control Plans
Technology Control Plan

- Provides guidelines for the control of export controlled information to foreign nationals unless approved by license with the Department of State, Office of Defense Controls (ODTC) or Department of Commerce as applicable

- TCPs are written when aspects of the research are controlled, but do not warrant an export license
TCPs @ UNC

- In 2012 we developed a TCP project involving ITAR physical items.
- The plan controlled the physical export of the biological product that was being designed.
- There were no controls required for the information and research results for this project; the PI did not have access to any classified or non-public technical data.
- All sponsor supplied information was in the public domain and all research results were intended to be published.
Shipping
Shipping @ UNC

- EHS provides guidance for domestic and international shipping. Common items EHS helps ship:
  - Infectious substances
  - Hazardous chemicals
  - Human/animal tissue and bodily fluid
  - Chemicals
  - Radioactive material
  - Dry Ice
Shipping @ UNC

- EHS is responsible for applying for export licenses
- Export licenses can take weeks to obtain
  - Department of Commerce: 4-6 weeks
  - Department of State: 6-8 weeks
Cross Functional Export Control Working

- University Counsel and EHS developed an Export Control Working Group. Members include, University Counsel, EHS, Material Transfer Agreement Office, Office of Sponsored Research, Research Compliance and Associate Vice Chancellor of Research.

- Ad hoc committee established by Export Working Group for outreach when expertise needed in virology/genetics, physics, computer science (encryption)