

Trade Compliance Basic Awareness

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Why Do Export Regulations Exist?

- Protect U.S. National Security
- Further U.S. Foreign Policy Goals and Obligations
- Prevent/Limit Diversion of Sensitive Products or Technical Data
- Prevent Short Supply

Exporting is a Privilege Not a Right



Why Do YOU Care??

- To Gain an Awareness of the Rules
- Export Regulations Reach Everyone
 - And they impact how universities can conduct research
- Successful Compliance with the Regulations Requires Understanding and Commitment from everyone
- IT is a Key Pinch Point for Compliance!
 - You control access and store data
- The Regulations Apply to Individuals and Institutions



What Are The Regulations?

- Export Administration Regulations (EAR)
 - Controls all commercial items
 - Licenses not always required, need classification & destination to determine
- International Traffic in Arms Regulations (ITAR)
 - Controls any item specifically designed/modified for military use/application
 - Licenses required, few exemptions
- Office Foreign Assets Control Regulations (OFAC)
 - Specific sanctions on embargoed destinations
 - License always required, rarely approved
- US Customs & Border Protection (CBP)
 - Controls all imports into the United States
 - Need proper classification to determine proper Duty payment



What is the EAR?

- **Controls commercial and/or dual use items listed in the Commerce Control List (CCL)**
 - Any part that is not controlled under the ITAR is controlled under the EAR
- **Many U.S. exports of hardware, software or technology may occur without a license**
 - Unless exported to Syria, Sudan, N. Korea, Iran, Cuba.
 - Other country specific license requirements are determined by classifying Export Control Classification Number (ECCN) of hardware, software or technology
- **Restricted activities:**
 - End users active in proliferation (nuclear, chemical, biological or missile technology and weapons); or
 - Persons or entities on various Restricted Parties Lists (RPL); or
 - Persons of diversion risk (Red Flag); or
 - Persons supporting certain boycotts
- **Controlling Agency:**
 - Bureau of Industry and Security (BIS), US Commerce Dept.



What is the ITAR?

- Controls all items on the US Munitions List (USML)
 - Any item that is specially designed or modified for a military/defense application is considered on the USML
 - Includes most space related technologies because of application to missile technology
- When in doubt, items are presumed to be on the USML
 - Look to USML first before you classify an item as commercial
- Most exports of USML hardware, software or technical data require a license
- **Controls:**
 - Defense Services, Brokering and Political Contributions, Fees and Commissions, sometimes controls proposal making
- **Controlling Agency:**
 - Directorate of Defense Trade Controls (DDTC), US State Department



What is the OFAC?

- Prohibits participation in unsanctioned Boycotts
 - Primary Target is Arab League Boycott of Israel
 - Countries of Concern: (*See Handout*)
 - Bahrain
 - Iraq
 - Kuwait
 - Saudi Arabia
- Reports of Boycott Requests are Mandatory to OFAC within Calendar Qtr Received
 - Screen All business documents for Boycott Language
- Controls U.S. Sanctioned Boycotts of Terrorist Supporting Countries and Actors
 - Economic sanctions focus on end-user or country and may limit transfer of technologies and assistance to OFAC's list of sanctioned countries
 - Bad Actors -- “Specially Designated Nationals and Blocked Persons List”
 - Prohibits payments or providing “value” to nationals of sanctioned countries and certain entities or could require a license
- **Controlling Agency:**
 - Office of Foreign Asset Controls (OFAC), US Treasury Department



What is the CBP?

- **Controls all items entering into the “Commerce” of the United States**
 - **Customs Duty is a major source of income to United States**
- **Harmonized Tariff Schedule of the United States (HTSUS)**
 - **Everything can be classified within the HTSUS**
- **Controls:**
 - **Temporary Imports, Permanent Imports, Return of US Origin Items**
- **Controlling Agency:**
 - **Customs & Border Patrol (CBP), U.S. Department of Homeland Security**



Key Definitions



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U.S. Person vs. Foreign Person

- A U.S. Person
 - Is a U.S. Citizen; or
 - Holds Lawful Permanent Resident status (Green Card); or
 - Is a “Protected Person” or Refugee under the U.S. Asylum Program

- A Foreign Person is:
 - A Person Who Holds a Student or Work Visa; or
 - A U.S. Person Representing a Foreign Entity; or
 - An Employee an Overseas facility; or
 - A Foreign Government and Its Offices (Embassies);or
 - A Foreign Owned or Controlled Entity



What the Heck is a Denied Party?

- Denied Parties List (DPL)
 - U.S. government regulations require that U.S. persons not engage in transactions with Parties (countries, companies and individuals) identified on U.S. government restricted lists.
 - All Transactions should be screened against the RPL
 - Placing PO's, Hiring (Full Time & Contract Labor)
 - Accepting PO's, Contracts, Grants
 - At time of acceptance/delivery
 - Ad Hoc Screening for first time contacts (i.e. Sales, Visitor, etc.) should be a common practice



So What Is This Technical Data Stuff Anyway?

- Information required for the design, development, manufacture, use, operation, modification, maintenance or repair of a product.
- Software directly related to the item which includes but is not limited to:
 - Systems functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair
- Technical Data Does **NOT** Include
 - Basic Marketing Information regarding the general function or purpose or a general system description of the article (**The Fact That a University is Conducting Research in a Particular Field or Product is Not Controlled Information**).
 - General scientific principles or information which is already in the public domain (**Available To the Public Through Public Medium**).



Public Domain

- Includes information that is published and generally available to the public:
 - Through sales at bookstands and stores
 - Through subscriptions available without restrictions
 - At libraries open or available to the public
 - Through patents
 - Through unlimited distribution at a conference, meeting seminar, trade show, generally accessible to the public in the U.S.
 - Includes technology and software that are educational and released by instruction in catalog courses and associated labs and universities



How Do Exports Occur?

- Sending or taking a items out of the U.S. using any method for any reason
- Disclosing or transferring, by any means technical data to a foreign person, whether in the U.S. or abroad; or
 - *Includes your companies Foreign Employees in U.S. or international locations, consultants, long term visitors and contract employees*
 - *May includes training Foreign Persons how to use a product or conduct research*
- Disclosing or transferring, by any method, in the U.S. any defense article to an embassy, any agency or subdivision of a foreign government
 - *Transferring control or ownership of an item on the U.S. Munitions List, to a foreign person regardless of location*
- *Beware of the Re-Export or Re-Transfer!*



**Are There
Penalties?**



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ITAR, EAR, CBP and OFAC Penalties

- Penalties for “Willful” Violation*:
 - Up to \$1 million per violation for institutions
 - Up to \$1 million per violation and up to 10 years in jail for individuals
 - Seizure or forfeiture of goods
 - Debarment from Exporting for as long as three years
 - Commerce and State
 - Potential debarment from contracting for up to three years

*A “violation” is often based on each unit in a shipment/transaction

