

**FUNDAMENTALS OF EXPORT CONTROLS
AND EMBARGOES/TRADE SANCTIONS FOR
RESEARCH UNIVERSITIES**

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I. THREE EXPORT CONTROLS AND TRADE SANCTIONS AND EMBARGOES REGIMES IN THE U.S.

- A. International Traffic in Arms Regulations (ITAR), Department of State, 22 C.F.R. §§ 120-130
 - 1. Covers “Munitions” and other Military Application Technologies, both offensive and defensive (as determined by DDTC; intent doesn’t control)
 - 2. Licensing by Directorate of Defense Trade Controls (DDTC)

- B. Export Administration Regulations (EAR), Commerce Department, 15 C.F.R. §§ 730-774
 - 1. Dual Use Technologies with Primary Commercial Application, but Also Possible Military Use
 - 2. Licensing by Bureau of Industry and Security (BIS), formerly BXA

- C. Office of Foreign Assets Control (OFAC) Regulations, Treasury Department, 31 C.F.R. § 500 et seq.
 - 1. Impose Trade Sanctions, and Trade and Travel Embargoes Aimed at Controlling Terrorism, Drug Trafficking and Other Illicit Activities
 - 2. Prohibit Payments/Providing Services or Anything of Value to Nationals of Sanctioned Countries and Some Specified Entities/Individuals (foreign nationals and U.S. citizens may be sanctioned or embargoed)
 - 3. May Prohibit Travel and Other Activities with Sanctioned or Embargoed Countries and Individuals (depending on the terms of the sanction or embargo) Even When Exclusions to EAR/ITAR Apply

II. AIMS OF EXPORT CONTROLS/TRADE SANCTIONS AND EMBARGOES

- A. Advance U.S. Foreign Policy Goals
- B. Restrict Goods and Technologies that Could Contribute to Military Potential/Economic superiority of other Countries (both adversaries and friendly nations)
- C. Prevent Proliferation of Weapons of Mass Destruction (nuclear, biological, chemical)
- D. Prevent Terrorism and Other Illicit Activities (e.g., drug trafficking)
- E. Fulfill International Obligations (e.g., treaties)
- F. Post September 11, 2001, Seen as Anti-Terrorism Tools – Increased Focus on Research Universities – and on Enforcement
 - 1. Great Focus on Life Sciences – Biological agents and toxins
 - 2. Export Controls and USA PATRIOT Act of 2001 and Public Health Security and Bioterrorism Preparedness and Response Act of 2002 Govern Biologicals and Chemicals
 - a. Export Controls Cover a Wider Range of Biologicals/Chemicals Than Only Select Agents/Toxins
 - b. Must Evaluate and Comply with All Statutory/Regulatory Regimes that Apply

III. BACKGROUND: LICENSING AND EXCLUSIONS

- A. ITAR and EAR Cover U.S. Origin Items (e.g., equipment, chemicals, biological, other materials, software code, computers – “Items or Materials”) Located Anywhere If
 - 1. On the U.S. Munitions List (ITAR, 22 C.F.R. 121.1) and Even if Not on USML, Anything with a Military Application as Determined by the State Department DDTC

OR

2. On the Commerce Control List (EAR 15 C.F.R. 774)

AND RELATED

3. Defense Services (ITAR): e.g., training on how to use defense articles (22 C.F.R. 120.9), and
 4. Technologies/Technical Data (EAR and ITAR): information beyond basic and general marketing materials on use, development or production of controlled items or materials (15 C.F.R. 772, 774, Supp. 1 and 2; 22 C.F.R. 120.10)
 - a. Not all export controlled items or materials are controlled for use technology
- B. Most Research and Teaching on Campus in U.S. -- Some Information Transfers on Campus and Abroad -- Can Qualify for Regulatory Exclusions or License Exemption
- C. Due to Proprietary Restrictions Fewer Commercial Activities Qualify for Exclusions/Exemptions
- D. When Exclusions/Exemptions Don't Apply and a License is Required, It Must Be Obtained
1. Before "Export" (or "Re-Export"): Transferring Abroad in Any Medium -- to Anyone Regardless of Nationality -- Controlled Items or Materials -- or Controlled "Technologies"/"Technical Data"

And

2. Before "Deemed Export": Transferring to Foreign Nationals in the U.S. (Even on Campus) in any Medium -- Controlled Technologies/Technical Data
 - a. Deemed Exports Apply to Controlled Technologies/ Technical Data -- Not to Related Controlled Items or Materials Without Any Accompanying Information
 - b. Security Must be Implemented on Campus/Site in U.S. to Prevent Unlicensed Deemed Exports

- E. If License is Required and Denied, Export or Deemed Export is Prohibited
 - 1. Exporting is a Privilege -- Not a Right
- F. Violations Subject to Civil and Criminal Penalties Against Individuals and Institutions -- Can Also Result in Loss of Export/Deemed Export Privileges and Loss of Funding
 - 1. ITAR: (Individual and Entity) (22 U.S.C. §2778(c) and (e))
 - a. Criminal Fines: \leq \$1M and/or \leq 10 Years in Prison/Violation
 - b. Civil Fines: \leq \$500K and Forfeitures/Violation
 - 2. EAR (15 C.F.R. §764.3(a) and (b):
 - a. Criminal Fines/Entities: \leq Greater of \$1M or 5X Value of Export
 - b. Criminal Fines/Individuals: \leq \$250K and/or \leq 10 Years in Prison/Violation
 - c. Civil Fines: \$10K - \$100K/Violation
 - 3. OFAC: (31 C.F.R. §515.701)
 - a. Criminal Fines/Entities: \leq \$1M/Violation
 - b. Criminal Fines/Individuals: \leq \$250K and/or \leq 10 Years in Prison/Violation
 - c. Civil Fines: \$12K - \$55K/Violation
- G. Violations Affect Reputations of Individuals and Institutions and Can Result in Loss of Exporting Privileges

IV. BACKGROUND: LICENSING AND EXCLUSIONS

- A. Regulations are Complex -- Require Both Technical and Regulatory Expertise to Apply Correctly

- B. Best to Qualify for Exclusions -- Universities Focus on These
 - 1. Evaluate Information Transfers Under Potential Exclusions First.
 - 2. Exports Abroad of Items or Materials Require Greater Review of Applicability of Controls.
- C. Must Understand and Adhere to Prerequisites for Exclusions From Controls to Apply

V. FUNDAMENTAL RESEARCH EXCLUSION

- A. Fundamental Research Exclusion (EAR/ITAR) (22 C.F.R. 120.11(8); 15 C.F.R. 734.8(a) and (b)) Applies to
 - 1. Information -- Not to Items or Materials
 - 2. Resulting From -- Or Arising During (Open Issue: -- Or Already Existing and Used During)
 - 3. Basic and Applied Research in Science and Engineering
 - 4. Conducted at an Accredited Institution of Higher Education (EAR)/Higher Learning (ITAR)
 - 5. Located in the U.S. (Doesn't Apply Abroad with Limited, Specific Exception Under ITAR for Satellites and Related Technology, Subject to Conditions, see 22 C.F.R. §121.1 XV(a) or (e), 123.16(b)(10) (equipment), and 125.4(d) (services, information; instruction))
 - 6. Where the Information Is Ordinarily Published and Shared Broadly In The Scientific Community

and

 - 7. Is Not Subject to Proprietary or U.S. Government Publication or Access Dissemination Controls (e.g., re: approval of publications and foreign national participation)
- B. Allows U.S. Universities to Include Foreign Faculty, Students, Visitors in Research Involving Creation of Controlled Information on Campus in the U.S. Without a License

- C. Once Created in Fundamental Research, the Information May Be Transferred Abroad Without Application of Export Controls
- D. Fundamental Research Information Is Public In Nature – and Is Excluded (Not Just Exempted) From Controls
- E. Based on NSDD 189 (1985)
 - 1. Fundamental Research is “Basic and Applied Research in Science and Engineering, the Results of Which Ordinarily are Published and Shared Broadly Within the Scientific Community, as Distinguished from Proprietary Research and From Industrial Development, Design, Production and Product Utilization, the Results of Which Ordinarily are Restricted for Proprietary or National Security Reasons”
 - 2. The Classification Process is the Appropriate Means of Securing Information Related to “Fundamental Research” by Colleges and Universities When Security is Warranted -- Otherwise, Except as Required by Statute, Fundamental U.S. University Research Should Be Open and Freely Disseminated Because It Supports Our Nation’s Security
 - 3. The George W. Bush Administration, in November 2001 and October 2004 Confirmed that NSDD 189 Continues to be the Policy of the Federal Government <http://www.aau.edu/research/Rice11.1.01.html> and http://www.generalcounsel.ufl.edu/exportControl/Condoleezza_Rice_Letter.pdf
- F. Commercial Companies and Independent Research Institutes Have Similar EAR (not ITAR) Exclusion When Research Is Not Subject to Publication/Access/Dissemination Restrictions (15 C.F.R. 734.8(d), (e))

VI. INSPECTORS GENERAL PROPOSAL TO LIMIT FUNDAMENTAL RESEARCH

- A. The National Defense Authorization Act (FY 2002, P.L. No. 106-65, 113 Stat. 512 (1999)) Requires
 - 1. Commerce, Energy, Defense, and State Departments, with CIA, FBI, and recently Homeland Security, to Assess and Report to Congress Annually for 8 Years (2000-2007) On The Adequacy of U.S. Export Controls to Prevent Acquisition of Sensitive U.S. Items or Materials and/or Technology/Technical Data and Services by Foreign Governments, Entities, Individuals

2. Focus of Reports on 2003 (filed with Congress in March/April 2004) is University Compliance with Deemed Exports

VII. DEEMED EXPORTS IN FUNDAMENTAL RESEARCH

- A. Commerce IG (Adopted by Multi-Agencies' IGs) Finds
 1. A Deemed Export License Is Required for Transfer of "Use Technology" (Controlled Information Beyond Basic and General Marketing On the Installation, Operation, Repair, Maintenance, Refurbishing, and Overhaul of Controlled Equipment) In Any Medium (Even Through Careful Observation/Demonstration) to Foreign Nationals on Campus in Fundamental Research Projects
 2. Concerns Already Existing Controlled Use Information (Not Information Created in U.S. Campus Research)
- B. Universities Reasonably Inferred the Ability to Convey Information on Use of Controlled Equipment in Fundamental Research on Campus As Part of the Exclusion
 1. NSDD189: "No restrictions may be placed upon the conduct or reporting of [Fundamental U.S. university] research that has not received national security classification, except as provided in applicable statutes." The statute authorizing the EAR has lapsed and there is no currently controlling statute.
 2. Commerce Has Not Previously Taken Another Position in Enforcement or Regulatory Questions and Answers, But Has Been Considering.
 3. Commerce Has Appointed a Deemed Export Advisory Committee to Consider This and Other Issues Raised In The 2004 IGs' Report to Congress.
 - a. See "October 2006 Update on Developments in 'Deemed' Export Controls in the University Context" at http://www.generalcounsel.ufl.edu/exportControl/Update_on_Developments_in_Deemed_Export_Controls_in_the_University_Context.pdf
- C. Deemed Export License Not Technically Required For Mere Use of Controlled Equipment (Without Transfer of Controlled "Use Technology")—But Would Be Required Practically Under the IGs' Interpretation Due to Dynamic, Spontaneous Transfer of Use Information In Research
- D. Commerce Potential Position/Analysis of Whether Deemed Export License is Required:

1. Is Equipment Controlled?
 2. If So, Is It Controlled for Use Technology?
 3. If So, For What Aspects of Use Is It Controlled (e.g., installation, repair, mere operation, maintenance, etc.)?
 4. If So, Is It Controlled for Use Technology for All Countries or Just Some Countries (Which Ones)?
 5. Is the Use Technology Already Publicly Available By Specified EAR Methods?
 6. Is the Use Technology Subject to a Blanket License/Exclusion (e.g., TUR) and, If So, Is the License Applicable to All Countries or Just Some (Which Ones)?
- E. If Controlled Under 1 and 2, Then Under This Interpretation, A Deemed Export License Is Required Before Use Technology of the Type Controlled Under 3 is Conveyed in the U.S. to Any National of a Country That Is Subject to Controls in 4, Unless An Exclusion Applies Under 5 or a License Exception Applies Under 6.
1. An export license would also be required before the controlled use technology (in 3) is sent abroad to anyone (regardless of nationality) in a controlled country (in 4) or is sent anywhere abroad to a national of a controlled country (in 4).
- F. Under the Commerce IG's Potential Interpretation of Deemed Exports--Regardless of Number of Licenses Ultimately Required – Would Have to Track/Isolate Foreign Nationals on Campus and Identify Controlled Technologies/Technical Data For All Equipment
- G. Would Severely Limit Fundamental Research Exclusion on Campus and Change Creative, Open, International Dynamic of University Research That Underlies Its Success.
- H. 9/04 Then-MIT President Charles Vest and 22 University Presidents, Including President Bernie Machen of University of Florida, Registered Concern About Academic Research and Security As a Consequence of the IG's Position.
<http://www.generalcounsel.ufl.edu/exportControl/PresidentsExportControlLetter.pdf>
- I. 10/04 Rice Letter Confirms Importance of Academic Research Endeavor and Security -- Commits to Dialogue With Academy -- Involves Commerce, State, National Security Council.

http://www.generalcounsel.ufl.edu/exportControl/Condoleezza_Rice_Letter.pdf

- J. AAU Presidential Task Force Was Convened To Conduct a Dialogue with Administration to Reach Understanding/Solution for Security and Research Interests
- K. On March 28, 2005, Commerce Published an Advance Notice of Proposed Rulemaking in the Federal Register, 70 Fed. Reg. No. 58, 15607-15609 (March 28, 2005) Asking for Comments on the IG's Recommendation to Increase Deemed Export Licensing Requirements and Limit the Application of the Fundamental Research Exclusion From Controls. Over 300 Comments Were Received.

VIII. ACTUAL PUBLICATION FOR FUNDAMENTAL RESEARCH

- A. Commerce/Multi-Agency IGs Express Discomfort with "Ordinarily Published" aspect of Fundamental Research Definition
 - 1. Prefer Requirement of Actual Publication
 - 2. Not Supported By EAR/ITAR Language
 - 3. Hard to Implement
 - 4. Would Require Regulatory Amendment

XIV. FUNDAMENTAL RESEARCH AS FUNCTION OF USEFULNESS-NOT OPENNESS

- A. Commerce/Multi-Agency IGs Recommend Defining Fundamental Research as a Function of Subject Matter/Results and Usability, not Open Context and Mission of University Research
 - 1. If Useful for a Particular Purpose, IGs Suggest Research is Not Fundamental
 - 2. Universities Undertake Long-term Fundamental Research--Industry Later Develops Products and Commercializes.
 - 3. Universities Seek to Acquire, Disseminate and Increase Knowledge--Rely on Publishability and Absence of Restrictions to Define "Fundamental Research".
 - 4. Industry Seeks Profits and Restricts Dissemination of Research as Proprietary to Commercialize Research Through Products.

5. When Industry is Willing to Freely Disseminate Research, EAR Provides a Fundamental Research Exclusion for Industry. (See 15 C.F.R. 734.8(d),(e).)
- B. In the University Context, It Is Hard/Impossible to Distinguish Between Fundamental Research and Commercialization/Product Development by Subject Matter or Usability for a Product.
 1. Context Matters
 - C. Not Supported By Regulatory Language
 - D. Destroying Fundamental Research in Academia Would Undermine a Productive Symbiotic Relationship Between Academia and Industry that Supports the Strength of the U.S. Economy, Our Leadership Role in Innovation, Education and the Global Economy, and Our National Security.

X. FOREIGN NATIONAL: CITIZENSHIP VS. NATIONAL ORIGIN

- A. Commerce/Multi-Agency IGs Recommend that a Person's Status as a U.S. Person vs. a Foreign National be Determined Based on Country of Birth as well as Current Citizenship
 1. Assumes a Foreign Born Person is More Likely to Export through Travel Abroad--But in Global World, Anyone Could
 2. May Constitute Constitutionally Proscribed National Origin Discrimination (*Compare City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 440 (national origin discrimination) *with Espinoza v. Farah Manufacturing Co., Inc.*, 414 U.S. 86 (1973) (citizenship distinctions under Title VII).)

XI. FOREGOING TROUBLING RECOMMENDATIONS OF THE COMMERCE IG ARE NOT BEING IMPLEMENTED AT THIS TIME

- A. On April 24, 2006 (71 Fed. Reg. No. 78, 22392) and May 22, 2006 (71 Fed. Reg. No. 98, 29301-29303), the Department of Commerce Published Notices in the Federal Register Stating That Current Regulatory Means of Determining Foreign Nationality (for application of controls), Definition of "Use" (for application of use technology controls), and Relationship of Fundamental Research To Deemed Exports Are Adequate and Will Not Be Changed At This Time. In Those Notices and In a Commerce Press Release Issued On September 12, 2006, Commerce Stated That A Deemed Export Advisory Committee Of Senior University, Industry and Government Representatives Will Review Current Deemed Export Policies To Consider How To Most Effectively Protect National

XII. PUBLICLY AVAILABLE/ PUBLIC DOMAIN EXCLUSION

A. Publicly Available (EAR)/Public Domain (ITAR) Information Exclusion (See 22 C.F.R. 120.10(5), 120.11, 125.1(b), 125.4; 15 C.F.R. 734.3(b)(3), 734.7-734.10) Applies to

1. Information already published, not just ordinarily published, through specified means:
 - a. libraries open to the public, including most university libraries; unrestricted subscriptions, newsstands, or bookstores for a cost not exceeding reproduction and distribution costs (including a reasonable profit);
 - b. published patents;
 - c. conferences, meetings, seminars, trade shows, or exhibits held in the U.S. (ITAR) or anywhere (EAR), which are generally accessible by the public for a fee reasonably related to the cost and where attendees may take notes and leave with their notes; or
 - d. Websites accessible to the public for free and without the host's tracking or controlling who visits or downloads software/information (clearly acceptable under EAR, and likely acceptable under ITAR).

B. Broadest Exclusion -- Can Apply to Information Transfers in U.S. and Abroad

C. If University/Entity Accepts Publication or Access/Dissemination Restrictions -- Fundamental Research/Publicly Available/Public Domain Exclusions Are Destroyed

1. Faculty/Researcher Side Deals With Sponsors Destroy Exclusions
2. Short (e.g., 30 - 90 days) Pre-publication Review Period (Not Approval) For Patent Protection/to Remove Inadvertently Included Sponsor-Proprietary Information Does Not Destroy Exclusions

XIII. GOVERNMENT SPONSORED RESEARCH COVERED BY CONTRACT CONTROLS EXEMPTION

- A. EAR License Exemption for Government Sponsored Research Covered by Contract Controls (15 CFR 734.11) Applies Only To:
1. Information Resulting From Federally-funded Research that Includes Specific National Security Controls in the Government Agreement (e.g., prepublication reviews or dissemination controls)
 2. Does Not Qualify for Fundamental Research Exclusion (15 CFR 734.8) But No License is Required if Comply with All Specific National Security Controls in Contract
 3. If All Controls are Not Followed, Fundamental Research Exclusion Is Not Available – Consequently, If License Was Required and Not Obtained, a Violation Occurs
 4. Open Issue Whether That Exemption Extends to Existing Controlled Technology on “Use” of Equipment – Clearly Applies to Results of Research

XIV. OTHER EXCLUSIONS/EXEMPTIONS

- A. Educational Exclusion (EAR/ITAR) (15 CFR 734.3(b)(3)(iii), 734.9, 22 C.F.R. 120.10(5)) Applies to
1. General Science, Math, Engineering Commonly Taught at Schools/Universities (ITAR - Subject Matter Focused), or
 2. Information Conveyed In Courses Listed In Course Catalogues and In Associated Teaching Labs of Any Academic Institution (EAR – Venue Focused -- but Doesn’t Cover Encrypted Software)
- B. Bona Fide Full Time Employee License Exemption (ITAR Only) (22 C.F.R. 125.4(b)(10)) Applies to
1. Unclassified Technical Data Provided to Bona Fide Fulltime Regular Employees of U.S. Institutions of Higher Learning With Permanent Abodes in the U.S. Throughout Employment
 2. Must Inform Employee in Writing Not to Transfer to Other Foreign Nationals
 3. Does Not Apply to Students with F-1 Visas or Others With Visas Allowing Only Part-time Work

4. Does Not Apply to Nationals of ITAR -- Prohibited or Embargoed Countries

XV. IF EXCLUSIONS/EXEMPTIONS DON'T APPLY -- LICENSE REQUIRED? OBTAINABLE?

A. If Exclusions/Exemptions Do Not Apply and

1. If Items or Materials on Commerce Control List -- Related Technologies/Technical Data Controlled

2. EAR License May Be Required Before Any Export or Deemed Export Depending on Type of Listing/Destination

a. Most EAR Licenses are Considered Case-by-Case (but see XV.B. re: EAR 99 Listings)

b. Where Chemicals/Biologicals Involved:

i. License Required for All Countries if Listed for CB (chemical/biological controls) Purpose

ii. License Required for All Non-Chemical Weapons Convention (CWC) Countries if Listed for CW (CWC) Compliance Purposes

iii. License Mostly Considered Case-by-Case if Listed for CB or AT (anti-terrorism) Purposes -- Will be Denied if Listed for CW Purposes and Export is to Non-CWC Countries

iv. License Will be Denied to Syria and Embargoed Countries and End Users -- and, for Ricin D and E and CWC Chemicals/Toxins for Countries Not a Party to the CWC

B. If Items or Materials Are On CCL as EAR 99 Only

1. Likely Will Need EAR License If

a. Destination-Foreigner's Nationality is on EAR Entities List -- 15 C.F.R. 744, Supp. 4

b. End User is on "Denied Person List"
<http://www.bis.doc.gov/DPL/Default.shtm>

- c. Destination-Foreigner's Nationality is an OFAC Embargoed Country
- d. Destination/Foreigner's Nationality is Another US Embargoed Country (Rwanda*3, OFAC Embargo List)
- e. The Individuals/Institutions involved are on an OFAC Prohibited List (e.g., the Specially Designated Nationals List, Certain Individuals Associated with War Crimes in the Balkans or the Taliban in Afghanistan) or
- f. The Project is Associated with a Weapons of Mass Destruction Program, a Missile Program or There are Indications of Possible Diversions ("red flags") (15 C.F.R. 732, Supp. 3)

2. Otherwise, Don't Need License (Just Follow Export Documentation and Procedures)

C. If Items or Materials On/Covered by the ITAR US Munitions List (USML) – Related Technical Data or Defense Services Controlled

and

Even if Not On/Covered by Lists, IF Reason to Know that Items or Materials Will be Used In/For Weapons of Mass Destruction or

Even if Not On/Covered by Lists, If Items or Materials, Technical Data are Designed or Modified for Military Use

An ITAR License Will be Required Before Any Export or Deemed Export

1. **Will Not Get License**

- a. If Destination/Foreigner's Nationality is an ITAR Prohibited Country

2. **May Get a License Otherwise**

XVI. BEWARE

A. Export Controls May Apply/Be Violated:

1. When Research Equipment--Biological Samples -- Computer with Research Data or Encrypted or Proprietary Software -- Are Hand-Carried or Shipped Abroad Without a License
2. When University Has Reason to Know that Sponsors or Collaborators are Violating Controls (15 CFR 736.2(b)(10))
3. When Sponsors Provide Proprietary Information to University Researchers Who Then Share It With Anyone Abroad or With Foreigners in U.S.
4. If Exclusive Material Transfer Agreements or IP Licensing Agreements Impose Publication/Access-Dissemination Restrictions and the Materials and/or Related Technologies/Technical Data are Controlled -- Deemed Exports and Exports
5. When Technology Transfer Disclosures are Made Abroad Before a Patent Issues (Becomes Public) -- Except When Directly Related to Applying for a Foreign Patent

B. Trade Sanctions/Embargoes May Apply to

1. Payments (Compensation, Honoraria, Contracts) to Embargoed Countries/Nationals/Entities
2. Attendance At/Planning of International Conferences
3. Surveys/Services to Embargoed Countries/Nationals/Entities
4. Editing/Joint Authorship of Articles of/with Nationals of Embargoed Countries
 - i. December 17, 2004 OFAC General License for Cuba, Sudan and Iran Allows Most Editing/Joint Authorship with Nationals of these Countries (But Not the Governments or Government Employees) (31 C.F.R. 515, 538, 560)
 - ii. OFAC April 2, 2004 Letter Allows Peer Review/Copy + Style Editing of Libyan Nationals' Articles [<http://www.treas.gov/offices/enforcement/ofac/rulings/ia040504.pdf>]
 - iii. Raises 1st Amendment Issues

C. Licenses Can Take Weeks--Months—Longer to Obtain

1. Apply Early

XVII. NINE ATTRIBUTES OF GOOD EXPORT CONTROLS COMPLIANCE PROGRAM

A. Can Be Implemented in Different Forms—Successful University Programs Often:

1. Are Simple and Focused - Emphasizing the Penalties of Non-compliance - How to Qualify for Exclusions Typically Useful in Academic Research and Teaching;
2. Encourage Open and Public Research Under the “Public Availability”/“Public Domain” and “Fundamental Research” Exclusions - Recognizing Openness is More Natural Than Security in Academia;
3. Centralize Administration/Oversight of Compliance in an Office With Which Faculty Routinely Interacts to Maximize Expert Knowledge of Research and Applicable Controls - and Ensure Application of Uniform Policy;
4. Include Clear and Consistent Institutional Policy Prohibiting Sponsor Restrictions on Publication or on Access/Dissemination;
 - a. Or Perform Controlled Research Only in Separate, Secured Facility Where Only U.S. Citizens Work—Or Where Nationalities Are Tracked/Deemed Export Licenses Obtained Through Effective Controls
5. Assign Expert Legal Counsel (inside and outside) to Support Central Office;
6. Are Grounded in Rich Educational Program Emphasizing What Faculty and Staff Can Know Without Being Export Experts - How to Qualify for Exclusions - Triggers of Possible Control Requiring Advice from the Central Office - and the Risks of Non-compliance;
7. Include Records of the Compliance Program, Implementation Efforts, and Steps to Discover and Rectify Inadequacies (To Mitigate the Consequences of Unintentional Violations);
8. Encourage Prompt Disclosure of Potential Violations to the Central Responsible Office for a Knowledgeable and Timely Response After Consultation With Counsel (Including Through Appropriate Self-disclosure to the Cognizant Agency to Mitigate Penalties);
9. Capture the Program in writing (E.g., in an Export Controls Management Plan)

XVIII. RESOURCES

- A. Paper: Part VI of “The War on Terrorism Affects The Academy: Principal Post-September 11, 2001 Federal Anti-Terrorism Statutes Regulations and Policies That Apply to Colleges and Universities,” the author’s version is available at http://www.generalcounsel.ufl.edu/exportControl/Final25_Apr04_JLKversion_Same_As_PDF_Journal_version.pdf
- B. Paper: October 2006 Update on Developments in “Deemed” Export Controls in the University Context
http://www.generalcounsel.ufl.edu/exportControl/Update_on_Developments_in_Deemed_Export_Controls_in_the_University_Context.pdf
- C. Guidance: “Deemed Exports” for Faculty Members and Senior Research Staff – Massachusetts Institute of Technology¹
http://www.generalcounsel.ufl.edu/exportControl/Deemed_Export_Information_September.pdf;
- D. Chart: Export Controls (EAR/ITAR) and Embargoes (OFAC) Requirements and Exclusions²
<http://www.generalcounsel.ufl.edu/exportControl/AppendixI.pdf>;
- E. Chart: Export Controls and Embargoes Country Key³
<http://www.generalcounsel.ufl.edu/exportControl/AppendixG.pdf>;
- F. Chart: Export Controls of Chemicals and Bio-Agents/Toxins⁴
<http://www.generalcounsel.ufl.edu/exportControl/AppendixH.pdf>;

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