SRS Quarterly BA Meeting

March 9, 2016

Welcome
Export Controls

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Director Export Controls

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What are Export Controls? Why are they Important?

March 9, 2016

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http://researchcompliance.uc.edu/exportControls/exportControls.aspx
Key Points

• Who is working with you?
  – Visitors (e.g. visiting scholars, presenters, etc.)
  – International collaborations (e.g. emails, skype, etc.)
  – Current employees who may be foreign persons
• Where are you going internationally?
• Hand-carrying or Shipping items?
• Who is receiving your items? Country and End-user?
• Are you receiving any items?
  – purchasing or as a gift or temporary for testing
    • Purchase orders may contain export control clauses
• Working on proprietary projects? UCRI?
• What are you doing?
• Look at clauses in contracts and purchase orders; restrictions?
Export is the transfer of commodities, software, technology, or information that is controlled. It can happen inside (deemed export) or outside the U.S. Email, conversations, website up/downloads, cloud storage, tours, presentations, hand-carrying items, collaborations, physical shipments, performing “defense services” (i.e. military training etc.), visiting and sponsoring international staff/faculty/post docs

International Shipments (Importing & Exporting): Prior to shipment, you must ensure the recipient is authorized to receive items. See "Know Your Customer" for restricted party screenings and know the item(s) export classification (EAR CCL ECCN / ITAR USML Category). Prior to importing, must know the classification of the item, ITAR-restricted defense articles and their associated technical data and software are controlled.

International Travel hand-carrying items or going to OFAC Sanctioned Destinations (Top 5 out of 21 country specific: Cuba, Iran, Syria, Sudan, North Korea)
Export Control Regulations

• Every item is either controlled, general business correspondence, marketing or is publicly available (public domain information/software).
  – Some technology (e.g. encryption) may be publicly available and still controlled

• Military/Defense/Nuclear Items, Certain Drugs, Toxins, Pathogens, Commercial Items and Restricted Entities and Sanctioned Countries

• Under the Dept. of Commerce per the Export Administration Regulations (EAR) within the Commerce Control List (CCL) the item has an Export Control Classification Number (ECCN) – (e.g. 9E001, 9E003)

• Under the Dept. of State per the International Traffic in Arms Regulations (ITAR) within the United States Munitions List (USML) the items has a Category (Cat.) – (e.g. USML Cat. XIX(g), IV(i) )

• For example:
  – A pencil is controlled under the Dept. of Commerce as EAR99 (NLR to most destinations & end-users)
  – A Gas Turbine Engine and it’s technology/technical data is either controlled under the DOC as 9A619 or 9E619 or DOS as Cat. XIX
Export Controls

The Fundamental Research Exclusion **ONLY** applies to **information NOT** developed products or samples or prototypes.

The following causes the Fundamental Research Exclusion **NOT** applicable to the project: Making **SIDE DEALS** or statements that the publication restrictions are okay or approval by the sponsor is alright; if you do not intend to publish.

Tangible products of fundamental research (models, instrument, devices, prototypes) **ARE** subject to Export Controls and have an export classification.

**Know your customer** (person/company/institution) on the other end – **Visual Compliance Screening Tool** prior to further engagement or visit or shipping item.

exportco@uc.edu
http://researchcompliance.uc.edu/exportControls/exportControls.aspx
Export Controls

What to do once you determine that export controls applies to the sponsored research:

- Ensure that you restrict access to the technical data (e.g. Statement of Work)
  - Proper electronic storage, restrict the folder that contains the technical data, ensure that only US persons have access (look at all staff (including IT support), faculty, and graduate students))
  - Ensure that any email correspondence outside of UCMAIL is encrypted if it includes technical data
- Ensure that all parties involved in the work are listed on the Technology Control Plan (TCP)
- Ensure that all items being received or used are properly classified with proper access and storage controls
International Travel

Where am I going, who am I visiting, and what am I doing while there? Am I hand-carrying or shipping item(s)?

- If traveling to OFAC Sanctioned Destinations (Top 5 out of 21 country specific: Cuba, Iran, Syria, Sudan, North Korea) contact Export Controls Office
- If taking or shipping items contact Export Controls Office
- Avoid international travel with proprietary data (GE data, etc.)
- Ensure RPS is conducted on place and or person(s) of visit and cleared prior to trip
- Presentations and discussions must be limited to topics that are not related to controlled items, software, or technology unless that information is already published or in the public domain.
International Shipments

• Prior to shipment, the Export Control office needs to know the recipient (see "Know Your Customer" for restricted party screenings) and the item(s) export classification (ECCN/ITAR).

The Export Compliance Office will assist you by:
• Helping prepare your shipping documents
• Screen recipients
• Determine jurisdiction classification of your items
  USML Cat./ECCN/EAR99
  Schedule B and HTS number
• Preparation and submission of export licenses with Department of State, Commerce or OFAC
• Preparation and submission of Electronic Export Information (EEI)

Please be aware that importation of ITAR-restricted defense articles and their associated technical data and software are controlled. A temporary or permanent import license or use of an exemption may be required to import these items.

We are here to help!!
What is a Restricted or Prohibited Party?

- A restricted party is an entity that is placed on a denial list by the U.S. Government (OFAC, BIS, DDTC, FBI, etc.) and/or other countries’ governments. There are over 200 lists internationally.
- Financial dealings or export transactions with Restricted or Prohibited parties is prohibited.
- The entities on the list are U.S. and International companies, individuals, groups, institutions, universities, vessels.
- The lists have specific denial orders that restrict activities.
  For example:
  - A U.S. company can be on the list for government contracting issues and may restrict our activity with them for anything over a certain dollar threshold.
  - A U.S. company or person can be on the list for export control issues and we cannot use an export exemption or receive an export license in order to collaborate with them.
  - A foreign institution can be on the list for weapons proliferation and we cannot collaborate, host, visit or conduct any research with them.
Penalties for Institutions and Individuals

- ITAR Violations:
  - Criminal (Entities): Up to $1M per violation
  - Criminal (Individuals): Up to $1M per violation / 20 years in prison
  - Civil Fines: Up to $500K per violation and Forfeitures

- EAR / OFAC Violations:
  - Criminal (Entities): Up to $1M
  - Criminal (Individuals): Up to $1M / 20 years in prison
  - Civil Fines: $250K per violation or twice the amount of the transaction that is the basis of the violation and Forfeitures

- Negative Publicity

- Loss of Government Funding/Grants/Sponsored Research
Cases of University Export Violations

• Professor Roth, University of Tennessee Found Guilty on 18 Counts of Export Violations

Jurors found University of Tennessee professor emeritus J. Reece Roth guilty of 18 charges involving the Arms Export Control Act this morning.

Jurors in U.S. District Court deliberated nearly eight hours starting Tuesday before announcing their verdict.

Roth was accused of allowing foreign national graduate students access to information on a U.S. Air Force defense project.

Assistant U.S. Attorney Will Mackie said that the case already has resulted in tighter restrictions by universities across the country, including UT, on the handling of defense research.

"National security issues are matters that should be everyone's concern, even among those in an academic setting," Mackie said. "Everyone has a responsibility to be careful in what they are doing."

Cases of University Export Violations

May 20
UMass Lowell Fined For Entity List Violations

Posted by Clif Burns at 4:54 pm on May 20, 2013
Category: BIS · Entity List

Back in April the University of Massachusetts at Lowell (the "University") agreed to pay to the Bureau of Industry and Security ("BIS") a suspended penalty of $100,000 in connection with its unlicensed export of an atmospheric sensing device, antennae and cables valued at slightly more than $200,000 to Pakistan's Space and Upper Atmosphere Research Commission ("SUPARCO"). The fine will be waived if the university does not commit any more export violations during a probationary period of two years.

The items at issue were all classified as EAR99. The violation occurred because SUPARCO is on BIS’s Entity List. The licensing policy for SUPARCO has a presumption of approval for EAR99 items, so had the university applied for a license for these exports, it almost certainly would have been granted.

The atmospheric sensing device is likely the basis for this research paper titled "Study of maximum electron density NmF2 at Karachi and Islamabad during solar minimum (1996) and solar maximum (2000) and its comparison with IRI" and co-authored by employees of SUPARCO and a professor at the University. This paper raises an interesting deemed export issue since transfer of technology, even EAR99 technology, would be a violation of the EAR unless the transferred technology was "publicly available" or if it qualifies as "fundamental research." It is not always easy to determine whether discussions with foreign persons on the Entity List fall within these exceptions, so cooperative projects with such persons by a university will always entail more than a modicum of risk.
ASK if you aren’t sure.
We are here to help.

Reporting Concerns

PI, relevant office (IRB, IACUC, ECO, etc.), Research Compliance, Export/Import Compliance and/or ???

Toll-free Anonymous Hotline 1-800-889-1547
Anonymous Email

We protect whistleblowers
Key Points

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  – Visitors (e.g. visiting scholars, presenters, etc.)
  – International collaborations (e.g. emails, skype, etc.)
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If you have any concerns or questions you prefer to address privately

Please call or email

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Foreign Person vs. U.S. Person

Under the National Industrial Security Program Operating Manual and NASA NPR 1600.1

Foreign National

Non U.S. Citizen with No Right to Work in U.S.

Non U.S. Citizen with Temporary U.S. Work Permit

Non U.S. Citizen with Permanent Resident Status or Refugee / Asylee Status

U.S. Citizen (unless employed by a Foreign Company)

Under the Export Administration Regulations
Any citizen or permanent resident Alien of the United States, protected individual, juridical person organized under U.S. laws (including foreign branches), and any person in the United States.
Export Control Regulations and Classification Outline

<table>
<thead>
<tr>
<th>Department of State</th>
<th>Department of Commerce</th>
</tr>
</thead>
</table>
| **Arms Export Control Act (AECA)**
  (22 U.S.C. 2778-2780 est. 1979) |
  **Export Administration Act (EAA)**
  (50 U.S.C. app. 2401 – 2420, est. 1979) |
| **ITAR**
  (22 CFR 120-130) |
  **EAR**
  (15 CFR 730-774) |
| **USML** |
  **CCL** |
| **Category I-XXI** |
  **ECCN** |
Examples of Export Classifications

- 5A992 – iPad, iPhone
- 1B001.d.1 – Carbon Fiber Equipment
- 1C010, 1C210 – Carbon Fiber
- 6A002 or 6A003.b.4.b – Infrared Camera
- Cat. X11.c – Infrared focal plane array detectors
- 5D002 / 5D992 – Encryption Software / Mass Market
- 9A012.a.2 – UAS
- EAR99 – Encryption for medical end-use
- EAR99 – Carbon Fiber Powder, Pencil, cup, Consumer or Medical protective gear (e.g. latex gloves, surgical masks, etc.), all other items that are not described in a particular ECCN on the CCL
Use of Export Controlled Equipment

• If controlled under the Department of Commerce, it is usually not restricted unless the use of the equipment is being able to perform all of the following 6 elements (excluding 500 & 600 series ECCN):
  – Operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.
  – If the item(s) is controlled under a 500 or 600 series ECCN, then only 1 out of the 6 elements will constitute “use” and may require a license.

• Any use or visual inspection of ITAR controlled items or equipment must be limited to US Persons ONLY.
  **Otherwise a license is required. Contact ECO.
Controlled Technology

• “Technology” takes the form of “technical data” or “technical assistance” (tangible, intangible, deemed exports)

Types of Technology controlled: “Production“, “Development”, “Use”

• “Development” is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.

• “Production” means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.
Exclusions for Universities

• Universities have based most of their activity as falling within the following exclusions:

• Fundamental Research Exclusion (FRE) and the National Policy re Fundamental Research (NSDD 189)
  – Accredited Universities of higher learning conducting basic and applied research the results of which are intended to be published…and are not subject to access or publication restrictions
  – “Fundamental Research means 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 . . . the results of which ordinarily are restricted for proprietary or national security reasons.”

• Public Domain
• Educational Exclusion
Not Export Controlled

- **Public Domain** Information
- Publicly available technology and software
- Already published or will be published
- Information excluded under the Fundamental Research Exclusion (FRE)
- Basic marketing and general system descriptions
- Educational activities, generally are not subject to Export Controls when the information delivered consists of general scientific, mathematical or engineering principles commonly taught in universities or information in the public domain
- Catalog courses open to all (some distance learning may require review for certain destinations, e.g. Iran)
Did You Know?

- The use of 3rd Party Export Controlled Technology or Information - University activities involving the “use” (per the EAR) of export controlled information, items, equipment, or technology received from outside the university are **NOT** protected under the Fundamental Research Exclusion and all research involving the use of export restricted technology is subject to **ALL** export controls.

- Information associated with the patent which is **not** in the patent itself or **product made** as a result of the patent **can** still be export controlled and licensable. For additional details see Part 734.3(b)(1)(v) of the EAR and review the Advisory Opinion dated 1/11/2006.

- Regulations require documentation!
  - Keep all records for at least **5** years from the date of determination, export or conclusion of the project/contract/agreement or the expiration of a DDTC license/agreement.
Do export controls apply to my project?

Export controls ALWAYS apply to a project that involves defense articles or technical data listed on the United States Munitions List (USML) under the ITAR.

Export controls may apply to a project that involves items (articles, technology, software) on the Commerce Control List (CCL) under the EAR and:

- There are physical exports – shipments of items out of the U.S. and or intangible exports – conversations, emails, downloads of controlled unpublished technical data
- Travel to a sanctioned country
- International travel with controlled prototypes, equipment, technical data, etc.
- Controls are agreed to contractually or verbally on access, publication, and foreign person restrictions
- The research does not qualify for any exclusions
Conducting Export Controlled Work

- Receiving Export Controlled Work (ITAR or EAR)
  - Must request export classification
- Technology Control Plan (TCP) – Developed with ECO assistance
- Security of the Room
  - Limited access (proper setup with Public Safety)
  - Audit trail of when and who enter the room
- Security of the export controlled equipment, data, etc.
- Tracking of the equipment and maintain a chain of custody log for the equipment, including receipt, changes in location, use, and appropriate disposal. Contact the Export Controls Office for disposal.
- Receiving/Purchasing Export Controlled Items
  - Need to request export classification and communicate with the Export Control Office prior to finalizing the purchase order. We need to work together to establish proper controls (TCP, security of the equipment, security of the room, etc.)
NIH Grants
Policy Statement

No Cost Extension Effort
NIH Grants Policy Statement
- No Cost Extension Effort

- Grants Policy Statement revised November of 2015 for Fiscal Year 2016
- Revision is applicable to all NIH grants and cooperative agreements with budget periods beginning on or after October 1, 2015
NIH Grants Policy Statement
- No Cost Extension Effort

- Significant Post Award Change: Effort Reduction in No Cost Extension Year: (GPS 8.1.1.3)
  - Prior approval no longer required for effort reduction for Senior/Key personnel
  - Exception does not apply to grant programs that have an effort requirement (i.e. Training grants and Career Development awards)
NIH Grants Policy Statement - No Cost Extension Effort

- Active awards must still have a measurable level of effort (direct charge or cost share on UC Flex)

● Other Sections Worth Reviewing as a Refresher:
  - 8.1.2.5 Change in Scope
  - 8.1.2.6 Change in Status, Including Absence of PD/PI and Other Senior/Key Personnel Named in the NoA
FDP’s Payroll

Certification Pilot
## Summary of Pilot:

**EFFORT REPORTING VS. PAYROLL CERTIFICATION**

<table>
<thead>
<tr>
<th>Description</th>
<th>Effort Reports</th>
<th>Payroll Certification Pilot</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certification focus</td>
<td>Individuals</td>
<td>Grant/Contract (award)</td>
</tr>
<tr>
<td>Certification Cycle</td>
<td>Academic semesters or semi/annual fiscal periods</td>
<td>End of each award budget year (every 12 mos.) and at the end of the award</td>
</tr>
<tr>
<td>Approver</td>
<td>Individual or PI</td>
<td>PI</td>
</tr>
<tr>
<td>Confirmation focus</td>
<td>Individual’s percentage of effort is reasonable based on overall effort</td>
<td>All salaries/wages directly charged to the award are reasonable based on work performed</td>
</tr>
<tr>
<td>Type of funds</td>
<td>All sponsored funds</td>
<td>Federal funds</td>
</tr>
</tbody>
</table>

**PAYROLL CERTIFICATION PILOT UPDATE**

Mar 34
FDP’s Payroll Certification Pilot

- Current Indications:
  - Payroll Certification is permitted under 2 CFR 200
  - Approval from the cognizant agency is not required
  - Guidance on internal controls should be considered in implementation
  - Still to Come: Capstone Report of the Pilot Project
FDP’s Payroll Certification Pilot

- Current Indications:
  - Since payroll certification is done at the end of a project’s budget year (and at project end), certifications decreased anywhere from 61% to 89% for the four institutions participating. Payroll certification also spread the certifications out over the year instead of having peak certification periods.
  - FDP meeting results have been forwarded to GCC
New FDP Pilot

Expanded Clearinghouse, Phase I Pilot
In 2011, the FDP created a PHS Financial Conflict of Interest (FCOI) Clearinghouse as a mechanism for FDP member and non-FDP member institutions to document that they had a PHS FCOI compliant policy in place.

The success of the FCOI initiative led to the concept of an expanded Clearinghouse that would contain audit, demographic, and fiscal information needed by pass-through entities (PTEs) when issuing subawards.
The University of Cincinnati is participating in this new pilot.

This pilot will involve the subaward processes—both incoming and outgoing subawards.

Significance to FDP:
- Test feasibility of standardized data repository of Entity Profiles.
- Will such a repository reduce administrative burden, while still ensuring stewardship?
- If successful, it will demonstrate a more effective model and if not successful, information gathered still very useful.
Expanded Clearinghouse, Phase I Pilot

As a participant in the pilot, the University is expected to:

- Create profile & have profile approved by Authorized Official
- Send profile to Working Group Co-Chair for review
- Agree the profile can be posted publically
- Agree to update profile timely and at least annually
- Forego use of other entity form or request for entity information
- Track number of subawards issued using this mechanism
- Suggest improvements & evaluate at least twice
Expanded Clearinghouse, Phase I Pilot

● Participants:
  – Approximately 40 FDP Institutions to start
  – Expansion dependent on early results and stability of profile and repository

● Time Line:
  – Estimated: 3/1/2016 – 6/30/2017
  – Anticipate initial Phase 1 to be approx. 6 months Evaluation – stop, refine, continue, and/or expand
  – Possible expansion to additional set of FDP Institutions
  – Updates provided regularly and via FDP Meetings
Expanded Clearinghouse, Phase I Pilot

- **Success Criteria**
  - Participants are able to efficiently and accurately complete the Entity Profile template
  - Entity Profile forms are certified to be accurate by authorized institutional officials
  - Entity Profile templates are able to be posted in a timely manner and easily accessed on the FDP web site
  - Participants routinely access and use the Entity Profile to obtain annual/static information needed for subaward issuance or modification.
  - Participants are able to update their Entity Profile forms efficiently, and do so at least one time per year
  - Participants determine that access to the Expanded Clearinghouse is more efficient than sharing of individual Subaward Commitment forms.
**Expanded Clearinghouse, Phase I Pilot**

- **Plans for Evaluation**
  - At least two evaluations will be electronically sent to all participating institutions to ascertain the efficiency and the effectiveness of the entity profile form.
  - Situation specific data will be collected to better understand the challenges and the usefulness of the data being collected.
  - A report will be prepared at the end of the pilot recommending next steps.
Closeout Reminders

And

DHHS Salary Cap Increase
Closeout Reminders

- For awards with typical reporting due dates, it is imperative that all allowable expenses be on the grant within 60 days of the end date. This time frame is even shorter for awards with due dates less than 90 days.

- Please be proactive and start looking at what steps need to be taken when the Pre-Close email is received. Those now generate automatically 60 days before the end date.
Closeout Reminders

- **DHHS Specific Concerns:**
  - UC has to ensure there are no discrepancies between the final FFR expenditure data and the FFR cash transaction data in the Payment Management System. (PMS report is quarterly – timing is crucial.)
  - HHS policy requires NIH to initiate unilateral closeout procedures within 180 days of the period of performance end date if grantee has not submitted an acceptable report for each required final report.
NIH Notice NOT-OD-15-105
Transition to Subaccounts in FY2016

- Identified with a Code type 4 - Extension (Example: 4 R01 ES00669-23)
- SRS Accounting has been proactively setting up both current grant year and the next year to make transition as smooth as possible
  - Allows for PCR’s to be completed early
  - Transition PO’s & other items as soon as possible
  - Department will still need to make sure all items are in place in order for expenses to hit the newest year (Protocols, Conflict of Interest etc.)
- New grants will allow pre-award costs
NIH will still look at this as one segment even though they are effectively splitting the segment into two parts.

Our hope is to be able to unilaterally close and report the old grant and to move the balance to the next year. In order for us to do this, grant needs to be clean! Please move all encumbrances and re-occurring payments at least a month before the grant ends.
The Consolidated and Further Continuing Appropriations Act, 2016 (Public Law 114-113), was signed into law on December 18, 2015. It restricts the amount of direct salary to Executive Level II of the Federal Executive pay scale.

The Executive Level II salary was increased to $185,100 effective January 10, 2016.

All DHHS Agencies follow this cap (NIH, CDC, CMS, ACF, FDA, HRSA, SAMHSA etc.)

NIH Notice can be found at: http://grants.nih.gov/grants/guide/notice-files/NOT-OD-16-059.html
DHHS Salary Cap Increase

- Twelve Month Appointments – Check cost distributions for proper percentages for direct charge and cost sharing.
- Update PCR by April 15, 2016 to avoid CTR. Use DHHS Salary Cap Adjustment in the notes section.
- 9 Month Appointments / EXC:
  - Update EXC Calculators spreadsheets Cell M9 (DHHS2) to be $49,834.62 (=185,100*32/52*14/32)
  - If your PI is claiming EXC for time during or after spring break on any DHHS award, you should pick DHHS2 from the “Pick from List” dropdown for any DHHS awards so they will be paid out correctly.
DHHS Salary Cap Increase

- 9 Month Appointments / EXC continued…
  - If a PI receives a merit increase effective 3/1/2016, you need to update cells C19, C20, D19, D20 and E20 as illustrated below:

<table>
<thead>
<tr>
<th>PL</th>
<th>Effective Date</th>
<th>Maximum EXC</th>
<th>Base Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>9/1/14 - 8/31/15</td>
<td>05.29%</td>
<td>120,226.04</td>
</tr>
<tr>
<td>2</td>
<td>9/1/15- 2/29/2016</td>
<td>61.38%</td>
<td>122,103.97</td>
</tr>
<tr>
<td>3</td>
<td>3/1/16-8/8/2016</td>
<td>33.33%</td>
<td>123,325.01</td>
</tr>
</tbody>
</table>

Moving forward, you would choose Pay Line 3 (PL in column B) for any additional payments that are made.
• Questions?