Export Controls

ANSRS4U: January 21, 2020
Presenters

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What are Export Controls?

Export Controls are a set of laws and regulations administered by the U.S. Departments of State, Commerce and the Treasury that regulate the export of goods, services, software and technology in order to protect U.S. national security interests and foreign policy objectives.

What are exports?

- Physically sending (or even hand carrying) export controlled items to a foreign country
- Transmitting export controlled information or software electronically or digitally to a foreign country or foreign person (Note: an export can occur by sending an email, or even just having a verbal conversation with a non-U.S. person or someone located outside of the U.S.)
- Providing export controlled technology on behalf or for the benefit of a foreign person or foreign country (Defense Service)
- Deemed Exports: Providing export controlled items/information (by any means) to a foreign person; normally occurs in the U.S. The highest area of vulnerability for academics violating EC laws/regulations.
SRS Processing

- Potential export control items will be identified by the PI as part of the proposal process on the compliance tab in Maestro
• When an award is received, the compliance screen will be reviewed to identify any export control items.

• Contract negotiators and Project Administrators will also review language for any of the following red flag terms that haven’t already been identified:
  • The results of research conducted are intended for military, nuclear, or space purposes or for other restricted End-Uses or Users
  • Foreign Persons will have access to Controlled Physical Items on campus
  • Software including encryption features will be developed or purchased
  • Faculty or staff will export or travel abroad with research equipment, chemicals, biological materials, encrypted software, or Controlled Physical Items; or travel abroad with laptops, cell phones, tablets, portable drives, or other electronic devices containing Controlled Information
  • A proposed activity/transaction will involve embargoed countries or entities, individuals/entities located in embargoed countries, or who are on prohibited or restricted End-User lists, as determined by RPS
  • The sponsor requires pre-approval rights over publications or the participation of Foreign Persons
  • International shipments, including equipment, chemicals or biologicals to a foreign country
  • The agreement contains a Controlled Unclassified Information (CUI) clause. (e.g. DFARS 252.204-7012)

• If an approval is not yet listed in Maestro or if red flag terms were identified, SRS will notify the appropriate export control contact to review and take action, as needed.

• Funds cannot be released until a determination has been made by the export control office.
Restrictions Regarding Participation of Non-US Persons

- A “person” includes not only individual, but also a business, a government unit, an institution (example: a university), or any other organization.

How to Identify Status:
- **Foreign Person:**
  - Any Person effectively owned or controlled by a foreign interest whether located either inside or outside of the U.S. (example: international oil company)
  - Foreign businesses not incorporated in the U.S.
  - Individuals holding a work, business, or student visa (F1, J1, H1B) (example: visiting scholars or even short-term business visitors)

- **U.S. Person:**
  - U.S. Citizen
  - Green Card Holders
  - Asylum or Refugee Designations
  - U.S. owned business incorporated under the laws of the U.S. to do business in the U.S.
International Collaboration

- Examples of when this applies: Sharing research with foreign persons (organizations and/or individuals), as fellow researchers, as sponsors, or even as interested foreign institutions or governments.

- When this flag is checked, the PI will need to enter the name and country of the foreign individuals/entities involved in the collaboration. We use the entered information to run screenings. If the name of the foreign collaborators are not included or they are listed as “TBD”, it may delay the project set-up, as we will have to follow up to get the required information.
Examples

- A PI is collaborating with a university in China that he has collaborated with for many years. He does not mark this compliance item for the new project because he knows this collaborator has been screened numerous times before. This presents a potential problem because the collaborator was recently added to the Entity List. Because the past projects have expired, the ECO does not know to take action or review further with the PI. All international collaborations should be included on each project so compliance staff can ensure compliance with export control regulations.

- A PI plans to share some research data for her new project with a former student who is now employed by a company in Iran. The PI does not list them as a collaborator since they have recently been affiliated with TAMU. This presents a potential problem because the student is now employed and residing in Iran, an embargoed country. All international collaborators should be included on the compliance statement so compliance staff can ensure compliance with export control regulations.

- A PI is collaborating with a researcher in Brazil and will also ship some research materials to the collaborator. The PI marks the International Collaboration compliance item and lists the researcher’s name and institution, but he does not mark any other compliance items. This presents a potential problem because compliance staff might only screen the collaborator but not the shipment, which could pose additional export control concerns. All applicable compliance items should be marked to ensure the review is comprehensive.
Project Performed at a Non-US Location

- Please include the name and country of the non-U.S. entity for screening purposes.

Note: This includes TAMU-Q even though the university is a TAMU affiliate.
Items to be Shipped to a Non-US Destination

- Any shipping destination outside the U.S., includes shipments to a U.S. location for subsequent trans-shipment to a Non-U.S. destination.

- Please include the name and country of the non-U.S. entity for screening purposes.

- Your Export Control Office will ask for the items being shipped to the Non-US Destination and will classify the items being shipped and apply for a license, if needed.

- The Texas A&M System does not have a centralized shipping program, so we depend on faculty and staff to inform their Export Control Office if they intend to ship any items internationally.
Examples

- PI intends to hand carry a thermal camera, export controlled as EAR 6A003.c, to a conference in Tokyo, Japan. Since this item will be taken to a Non-US location, your Export Control Office will need your assistance to submit a license to the Bureau of Industry & Security (BIS) to request permission to take this item.

- PI intends to ship aflatoxin samples to the University of Cambridge. Aflatoxin is export controlled as EAR 1C351.d. Since this material will be shipped internationally while it is export controlled, your Export Control Office will need to submit a license to the Bureau of Industry & Security (BIS) to request permission to ship the aflatoxin.

- PI intends to ship cotton samples, export controlled as EAR99, to Harbin Engineering University. Harbin Engineering University is a Denied Entity on the BIS Entity List. Although the items are not highly export controlled as the previous items, your Export Control Office would need to apply for a license to the Bureau of Industry & Security (BIS) to request permission to ship these samples.

- PI intends to ship a few boxes of lab gloves, export controlled as EAR99, to Baghiatollah Medical Sciences University. This university is on the Office of Foreign Asset Control (OFAC) Specially Designated Nationals And Blocked Persons List (SDN). Your Export Control Office would need to apply for a license with OFAC to get permission for shipping these items.
Foreign Travel

• Restricted party screening of countries, entities, and individuals to be visited. Sanctions or embargoes are reviewed for the destination countries.

• Review of topics to be discussed or presented at a conference, physical items to be transported, and any controlled information stored on portable electronic devices.

• Restricted party screen of the entity hosting a conference

• Review of who is paying for the travel expenses
Examples

- If travelers have any questions about the entities they would like to visit or the people they plan to meet with, please have them contact their export control compliance team in advance, so we can run restricted party screenings before travel any plans are finalized.

- Some laptops and software are subject to export controls. However, in some cases, there may also be some license exceptions available. If anyone ever needs an export license determination, please have them contact their export control compliance team.

- If the traveler is involved in export controlled research, or traveling to a high risk country, we would strongly recommend that they ask their IT Department for a clean “loaner” laptop to use just for the trip.

- TEES foreign travel requests are submitted through Concur and they are required to be submitted at least 7 days prior to departure, to allow for safety and export control review.
Publication Restrictions

- A restriction that requires sponsor approval prior to publication.

- A simple pre-publication review of a publication by a sponsor without requiring approval doesn’t create an export control restriction.
TCP / RDP

• TCP: Technology Control Plan
• RDP: Restriction of Distribution or Publication
Equipment, Software, or Technology for Military or Outer Space Use

- Examples: Items on the U.S. Munitions List (USML) controlled under the ITAR
Possible Development of Weapons of Mass Destruction

• This includes the proliferations of nuclear explosive devices, chemical or biological weapons or missile technology.

• This might not include nuclear research not related to the development of “special nuclear materials” (example: plutonium and some isotopes or uranium).
Software or Mass-Market Encryption Productions with 128-bit encryption source codes

• Encryption is an evolving export control area

• Please send anything related to encryption for export control review to ensure compliance.
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Question and Answer Session
Thank you for joining us!

The next AnSRS4U session will be on February 18, 2021 covering payroll. More information to come.