RESEARCH SECURITY OFFICE (SPAN)

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Export Overview

- What are Export Controls?
- ITAR/EAR/OFAC
- U.S. Persons vs. Foreign Persons
- What is “Export”?
- Exclusions for University
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What are Export Controls?

US laws that regulate the distribution to foreign nationals and foreign countries of strategically important technology, services and information for reasons of **Foreign Policy** and **National Security**.
Who Controls Exports?

State Department:  
*International Traffic in Arms Regulations (ITAR)*  
*(22 CFR Parts 120-130)*  
Items that are inherently military in character

Commerce Department:  
*Export Administration Regulations (EAR)*  
*(15 CFR Parts 700-799)*  
Items that are “Dual Use” – military and civilian applications

Treasury Department, Office of Foreign Assets Control (OFAC)  
*Foreign Assets Control Regulations (FACR)*  
*(31 CFR Parts 500-598)*  
Financial transactions/travel to embargoed/sanctioned countries
CERTIFICATION PROGRAM

• State Department
• Aimed at preserving military superiority of US
• Items that are inherently military in character

The **U.S. Munitions List (USML)** includes all items (and related information/data) with obvious military application.

Examples – explosives, rocket systems, military training equipment, spacecraft and satellite equipment, toxicological agents and equipment, biological agents, radiological equipment including nuclear radiation detection and measurement devices, defense services.
The EAR contains the Commodity Control List (CCL), which lists all items under EAR control, and they are classified by Export Control Classification Number (ECCN).

Before any item is added to the CCL, consideration is given to:

1. The type of item
2. Reason for export, and
3. Country of destination

Examples – batteries and fuel cells, cameras and optics equipment, artificial intelligence software, certain computer equipment, items using laser technology, certain chemicals, microorganisms and toxins
OFAC = Office of Foreign Assets Control (Treasury Dept.)

The prohibitions here are much broader because they are based on the country of destination; as opposed to the type of export.

Enforces economic and trade sanctions against targeted foreign countries and individuals.
CERTIFICATION PROGRAM

US PERSON vs. FOREIGN PERSON

• (ITAR § 120.15; EAR §§734.2(b)(2) & 772, define the term “US Person” as a person or group of people incorporated to do business in the US. It also refers to government entities.

• The term “US Person” includes:
  – U.S. citizens
  – Aliens who are “Lawful Permanent Residents” (Green Card) (8 USC § 1101(a)(20))
  – Other “Protected Individuals” under the INA (8 USC §1324b(a)(3))
  ✔ designated an asylee or refugee
  ✔ a temporary resident under amnesty provisions
“Foreign Person” means everyone else. (ITAR 22CFR § 120.16)

- “Any foreign interest and any US Person effectively owned, influenced, or controlled by a foreign interest.”
- Includes foreign businesses not incorporated in the U.S. and persons representing other Foreign Persons
- Includes: H1B Work Visa, F1 Study Visa, J1 Training Visa, E1 Investors Visa, TN Work Visa, L1 Intra-Company Transfer Visa, K and V Fiancée Visas.

EAR does not use the term “foreign person”, instead refers to “foreign national”.

- “Foreign National”: “Any person who is not a citizen or national of the United States.” (Note: same as “alien” pursuant to 8 U.S.C. § 1101)
What is an “Export”?
(ITAR 22CFR § 120.17; EAR 15 CFR § 734.2(b))

Sending or taking an article out of the U.S. except by mere personal knowledge, or transferring registration, control, or ownership in the U.S.;

Disclosing (including oral or visual disclosure) controlled info to a Non-U.S. Person, in the U.S. (also known as a deemed export) or abroad;

Performing technical assistance, training, or other defense services for, or on behalf of a Non-U.S. Person, whether in the United States or abroad; and

Re-exporting from foreign countries items or technology of U.S. origin; including some foreign-made items that incorporate U.S.-origin components or technology.
Typical University Exclusions

1. **Fundamental Research** = basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community.

2. **Educational Information** = Applies when the information in question consists of general scientific, mathematical or engineering principles commonly taught in universities or information that is in the public domain.
3. **Public Domain/Publicly Available Information**

Applies when the information is already in the public domain and does not have restrictions on who may access.
Potential Export Indicators

1. **Restrictions** within the Statement of Work (SOW), attachments, or addendums in the contract.
   - Contract requires *screening of personnel* to be working on the project by contract sponsor (ex. e-verify)
   - Research results will be published only at a symposium or conference where there are *attendance restrictions that could exclude foreign nationals* from attending

2. **Red Flags** within the wording of a contract that may refer to:
   - Contracts or grants which require a shipment of item(s) to a foreign country.
   - Contracts or grants which involve collaboration with foreign nationals.
Potential Export Indicators

(cont’d)

• ANYTHING you’re doing that deals with an OFAC embargoed country.

• Any reference in a contract or grant to export-controlled information or technology.

• Any term in a contract that restricts publication research results.
What to do???

If an awarded contract has any of the aforementioned indicators, at minimum the following 3 things MUST happen:

- **Export Control Training**
  - In person, or online ([http://www.citiprogram.org](http://www.citiprogram.org))
  - Keep accurate records of training and attendance
  - Periodic refresher training throughout the life of the contract

- **Commodity Jurisdiction/Classification**
  - To determine which US regulation applies
  - To implement risk mitigation measures

- **Technology Control Plan** *(RSO provided)*
  - All involved must read, and acknowledge in writing
  - It must remain readily available to all
Increasingly more Auburn University projects are subject to export controls.

US Government scrutiny, as well as inspections and investigations are becoming more regular and meticulous.

Administrative penalties
- Loss of US and/or State funding
- Loss of export privileges
- Loss of current and future research contracts

Monetary fines
- Averaging $1 Million per violation

Prison term for involved personnel
- Up to 20 years per violation
Useful Tools

• Research Security Office (RSO)
  – Primary Source of Information
• US Government Websites
  – State Department
  – Department of Commerce
  – Treasury Department
• Visual Compliance - web based software by e-Customs
  – Statewide license for the major universities
  – Unlimited seats on campus
  
https://www.visualcompliance.com/logon.cfm
Classified Research

- Contract Clause
  - FAR 52.204-2

- DD Form 254
  - Most Important Document

- U.S. Citizens Only
Auburn University Experts

Research Security Office

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http://www.auburn.edu/research/vpr/export/
Conclusion

• There are numerous Policies and Regulations which are necessary but tedious to follow.

• They are created to protect:
  1. You
  2. Auburn University
  3. The United States of America
Questions

• If at any time you are unsure on what you can or cannot do please check with the Research Security Office.