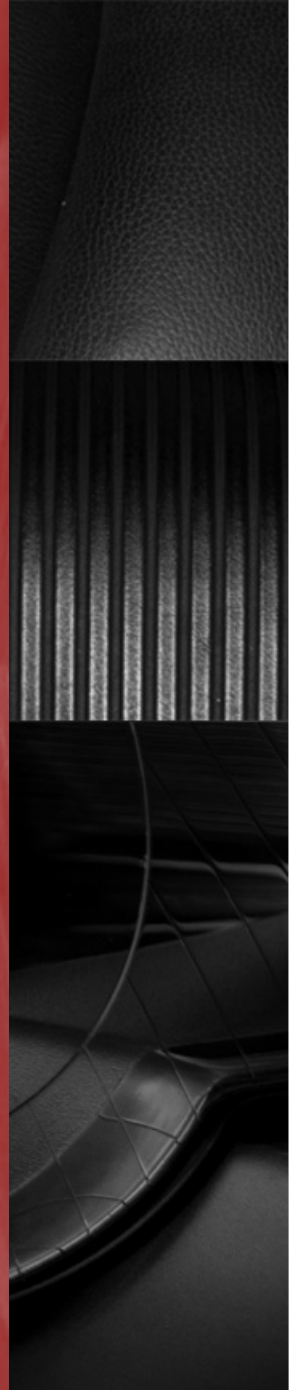


Export Control and Financial Conflict of Interest Compliance

Office of Sponsored Projects
and
Office of Faculty Research
Tarleton State University





System and Institutional Policy

- System Policy 15.02 – *Export Controls (2012)*
- Tarleton Rule 15.02.99.T1 – *Export Controls (2014)*
- TAMUS Policy Statement
 - System members must comply with **ALL** United States export control laws and regulations, including:
 - Department of Commerce – Export Administration Regulations (EAR);
 - Department of State – International Traffic in Arms Regulations (ITAR); and
 - Department of Treasury, Office of Foreign Assets Control (OFAC) – Embargoes and Sanctions.



What are “Export Controls?”

- Export Controls are U.S. government regulations relative to the **export** of strategic technologies, equipment, hardware, software, or providing technical assistance and sensitive information to **Foreign Persons**.
- Export control laws **apply to all activities** – not just research projects.



Why do we have Export Controls?

- Advance foreign policy goals;
- Restrict export of goods and technology that might contribute to the military expertise of our adversaries;
- Prevent proliferation of Weapons of Mass Destruction;
- Fulfill international obligations (e.g., treaties); and
- Prevent terrorism.



Why should Universities be concerned?

9/11 changed everything

- Many foreign students seek degrees from U.S. universities.
- Cutting edge research and national security policy connections are increasing.
- Universities have become a focal point for export control compliance.



Export Control Compliance

- To have an effective compliance program, an organization must establish and maintain an **organizational culture** that “encourages ethical conduct and a commitment to compliance with the law.”
- **U.S. Federal Sentencing Guidelines §8B2.1(a)(2)**



How do we comply?

- Increase awareness
- Provide training (TrainTraq) and education
- Establish a **culture of compliance**
- Develop written policies and procedures to address risks
- Keep lines of communication open
- Monitor for compliance
- Respond to instances of noncompliance

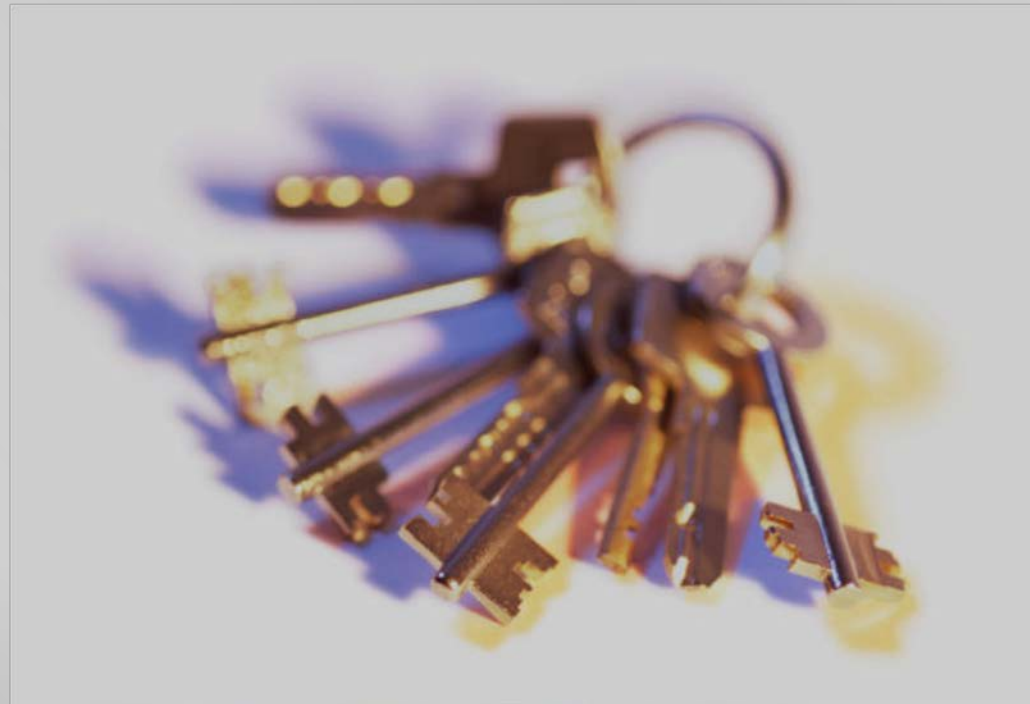


WHAT does this mean?

- System Policy 15.02 requires that **WE**:
 - Understand the regulatory framework
 - Appoint an “Empowered Official”
 - Adopt a rule for export control compliance
 - Identify risks
 - Develop procedures to address risk

Keys to Understanding Export Controls

- Who?
- What?
- When?
- Where?
- Why?
- How?



WHO regulates export controls?

Three federal agencies govern U.S. export controls -

- Department of State
- Department of Commerce
- Department of Treasury





U.S. Department of State (Arms)

- Directorate of Defense Trade Controls (DDTC)
 - Arms Export Control Act of 1976, 22 U.S.C. §2778
 - International Traffic in Arms Regulations (ITAR), 22 C.F.R., Part 120
 - US Munitions List, 22 C.F.R., Part 121



About the ITAR

- Covers military items, e.g., munitions, “defense articles”, or “defense services.”
- Regulates goods and technology designed to kill people or defend against death in a military setting.
- “Defense articles” include technical data, which encompasses software, furnishing assistance such as design, engineering and use of defense articles.
- “Defense services” include the transfer of information, **even if in the public domain.**
- Includes space-related technology and research; increasing applicability to other research areas such as nanotechnology, new materials, sensors, and life sciences.



USML Categories (The ITAR)

- IV Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
- V **Explosives and Energetic Materials**, Propellants, Incendiary Agents, and Their Constituents
- VI Vessels of War and Special **Naval Equipment**
- VIII **Aircraft** and Associated Equipment
- IX Military Training Equipment and Training
- X Protective Personnel Equipment and Shelters
- XI Military Electronics
- XII Fire Control, Range Finder, **Optical** and **Guidance and Control Equipment**
- XIV Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- XV **Spacecraft Systems and Associated Equipment**
- XX Submersible Vessels, **Oceanographic and Assoc. Equipment**
- XXI Miscellaneous Articles (Software, components, etc.)



U.S. Department of Commerce (Trade)

- Bureau of Industry and Security (BIS)
 - Export Administration Act of 1979, 50 U.S.C. §§2401-20
 - Export Administration Regulations (E.A.R.), 15 C.F.R., Parts 730-74
 - Commerce Control List (CCL), Supplement No. 1 to Part 774 of the E.A.R.

About E.A.R.

- Covers **dual-use** items, or items designed for a commercial purpose that might also have a military application, e.g., computers, pathogens, and civilian aircraft.
- Covers goods, test equipment, materials, technology, including technical data, assistance, and software.
- 10 categories of different technologies on the Commerce Control List (CCL).
- Also covers “re-export” of U.S. origin items outside the U.S.





Commerce Control List (CCL) Categories

1. Nuclear Materials, Facilities & Equipment, and Misc.
2. Materials, Chemicals, Microorganisms & Toxins
3. Materials Processing (*i.e.*, making plastics, metals)
4. Electronics Development
5. Computer (development and programs)
6. Telecommunications and Information Security
7. Sensors and Lasers
8. Navigation and Avionics
9. Marine systems
10. Propulsion systems, Space Vehicles and Related Equipment



U.S. Department of Treasury (Money)

- Office of Foreign Assets Control (OFAC)
 - Trade Sanctions and Embargoes – prohibits trade with certain countries, *e.g.*, Iran, Syria, Sudan, Cuba, North Korea
 - Restrictions on travel, financial transactions, or transfers to certain end-users



NEW Embargoes and Sanctions

- Iran Threat Reduction and Syrian Human Rights Act of 2012 (ITRA)
 - Signed into law on August 10, 2012
 - Prohibits foreign subsidiaries of U.S. companies from engaging in transactions that a U.S. company cannot engage in.
 - Implements visa restrictions for Iranian citizens seeking higher education in the “energy, nuclear science, nuclear engineering, or related fields.”



OFAC General Licenses

- **Iran – 31 CFR §560.544**

On October 22, 2012, OFAC issued a general license authorizing certain educational activities of U.S. persons in third countries.

- **Sudan – General License No. 1**

On April 15, 2013, OFAC issued a general license authorizing U.S. institutions to enter into educational exchange agreements with Sudanese institutions to provide certain educational activities in the U.S. or Sudan



Compliance - Identifying Risks

- WHO is a “Foreign Person?”
 - For export control purposes a “Foreign Person” includes:
 - Persons in the U.S. in non-immigrant status (*e.g.*, H-1B, H-3, L-1, J-1, F-1 Practical Training, L-1)
 - Persons unlawfully in the U.S.
 - It does **NOT** include:
 - U.S. Citizens of foreign origin
 - Permanent residents (*i.e.*, green card holders)
 - Persons granted asylum or refugee status



WHAT is an Export?

Any item, technology, or information that is sent from the United States to a foreign destination is an export

- E-mail, phone, mail, travel, package, conference presentation, face-to-face, visual inspection, hand carried items – laptops, phones, memory devices, etc.



Exports in a University Setting

This may include -

- Unpublished research findings or data
- Funds transferred to restricted countries, entities, or persons
- Biological specimens
- Chemicals
- Electronics
- Computers
- Telephones
- Sensors




WHAT is a “deemed export?”

- A “deemed export” is the release of controlled information, technology, or software to a foreign person **in the United States.**
- Export control regulations **deem** this transfer of information, technology or software to be an export to the home country of the foreign person.



Examples of “Deemed Exports”

- Deemed Exports might include:
 - Visual inspection by foreign persons of U.S.-origin equipment and/or facilities;
 - Oral exchanges of information; or
 - Access to a computer that possesses export controlled information and/or technology.



WHEN should I be concerned about export controls?

- **NOW** – U.S. export control regulations affect many activities on university campuses such as
 - Student Enrollment
 - Employee Hiring
 - Research Activities
 - Purchasing
 - Travel
 - Shipping



Red Flags

Does your activity involve:

- Shipping equipment to a foreign country?
- Collaborating with foreign colleagues in a foreign country or the U.S.?
- Training foreign persons to use equipment?
- Working with persons from a country subject to a U.S. embargo?
- An RFP or grant opportunity marked "Export Controlled"?
- A sponsor that requires pre-approval rights over publications or the participation of foreign nationals?



Red Flags (cont'd)

Does your activity involve:

- Travel abroad?
- Sending emails or other electronic communications to foreign persons abroad or within the U.S.?
- Hiring foreign persons, e.g., faculty, graduate students, or staff?
- Sensitive technology or equipment that may have military applications?
- Accepting payments from foreign persons/entities?



Good News!

- Exemptions & Exclusions
 - Public Domain/Publicly Available (ITAR?)
 - Fundamental Research
 - Educational Information
 - Tools of the Trade



Exemptions & Exclusions

- **Public Domain/Publicly Available** – already published, e.g., library books, magazines, etc.
- **Fundamental Research** – results of basic or applied research conducted in the U.S., which are shared widely without restriction
- **Educational Information** – materials and information found in course curriculae
- **Tools of the Trade** – materials or equipment that enable you to perform your job when travelling abroad



WHY do I Need to Comply with Export Control?

- **IT'S THE LAW!**
- Severe criminal and civil noncompliance penalties and sanctions for **individuals** as well as institutions and corporations.
 - Up to \$1M for institutions/corporations and up to \$250,000 for individuals
 - Up to 10 years in prison
 - Termination of export privileges
 - Suspension and/or debarment from federal contracting
 - Loss of federal funds (Financial Aid)

Recent Enforcement Actions



- Dr. J. Reece Roth, University of Tennessee – charged with 15 counts of violating the Arms Export Control Act; sentenced to 4 years in prison



- Dr. Thomas Butler, Texas Tech – indicted on 69 counts; sentenced to 2 years in prison for making fraudulent claims and unauthorized exports (plague bacteria)



- UMass, Lowell – BIS imposed \$100,000 penalty, suspended for illegal exports to SUPARCO, a Pakistani entity listed on the Denied Parties List



- NYU – Scientists arrested for selling MRI technology developed through federal research funding to Chinese government



WHO you gonna call?

- The Empowered Official and other compliance officials are responsible for export control compliance and oversight on campus.
 - They are knowledgeable of the regulations and can answer questions;
 - They are aware of campus procedures to address risk; and
 - They have the authority to stop any activity that may result in violations.



Procedures to Address Risks

- Review Processes
 - Travel
 - Who is going? Where? AND what are they taking?
 - Shipping
 - In-House v. Third Party (UPS, Fed-Ex, etc.)
- Screening Procedures for Foreign Persons
 - Visual Compliance
- Technology Control and Security Plans
 - Equipment
 - Information
 - Research



Export Control Resources

- System Offices

- System Ethics and Compliance Officer
- Office of General Counsel

- Texas A&M University

<http://vpr.tamu.edu/resources/export-controls/resources>

- Tarleton State University

<http://www.tarleton.edu/facultyresearch/policies/index.html>

- SRS

<http://osrs.tamus.edu/contracts-and-grants/project-administration/compliance/>



Export Control Resources

TrainTraq Training

#2111212 Export Controls & Embargo Training – Basic Course

#2111873 Export Controls – Technology Control Plans

#2111207 TEEX Export Management and Compliance Program: A
Program Overview



Export Control Resources (cont'd)

Federal Agency Websites:

- U.S. Department of Commerce, Bureau of Industry and Security (BIS)
<http://www.bis.doc.gov/index.htm>
 - Export Management and Compliance Program (EMCP)
 - BIS Compliance Guidelines: How to Develop an Effective Export Management and Compliance Program and Manual (166 pages)
 - BIS Seminars and Training
- U.S. Department of State, Directorate of Defense Trade Controls (DDTC)
<http://www.pmddtc.state.gov/index.html>
- U.S. Department of Treasury, Office of Foreign Asset Control (OFAC)
<http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

Export Control Resources (cont'd)

- Higher Education Compliance Alliance
<http://www.higheredcompliance.org/>
- Other University Websites:
 - Stanford University
<http://export.stanford.edu/>
 - University of Texas – Austin
http://www.utexas.edu/research/osp/export_control/
 - University of Tennessee – Knoxville
<http://research.utk.edu/exportcontrol/>
 - Wayne State University
<http://research.wayne.edu/export-control>



Contacts

- System Ethics & Compliance Officer
Janet Smalley, janetsmalley@tamus.edu (979) 458-6008
- Chief Research Compliance Officer
Bruce Whitney, brucewhitney@tamus.edu (979) 458-6160
- Office of General Counsel
Jan Faber, jan-faber@tamus.edu (979) 458-6124
- Tarleton State University
Bert Little, little@tarleton.edu (254) 968-9463

Export Control Questions?





What's all this about FCOI?

- System and Institutional Policies

- System Policy 07.01 – *Ethics (2013)*

- “to promote integrity-rich behavior, ethical conduct beyond reproach, to a commitment to compliance, and in accordance to Texas Government Code, Section 572.051”*

- System Policy 15.01.03 – *Financial Conflict of Interest in Research (2013)*

- “Members are responsible for identifying and managing, reducing or eliminating conflicts of interest that may arise due to financial or other personal interests of an Investigator. The **System requires investigators to disclose** financial interests related to their institutional responsibilities.”*

- TSU Rule 15.01.03.T1 - *Financial Conflict of Interest in Research (2013)*

- “Empowered Official”*



What is COI and FCOI

- *COI - occurs when an individual's private interests compete with his/her professional obligations to the system to a degree that an independent observer might reasonably question whether the individual's professional actions or decisions are determined by considerations of personal gain, financial or otherwise.*
- *FCOI – is a **Significant Financial Interest** that could directly and significantly affect the design, conduct, or reporting of research or research activities.*



What is a SFI?

- A **Significant Financial Interest** is:
 - Equity in a publically traded entity with a value exceeding \$5,000
 - Equity held in a private entity with a value exceeding \$5,000
 - Intellectual property or royalties regardless of value
 - Reimbursed or sponsored travel paid on behalf of the investigator
 - Gifts, when the value of any single gift exceeds \$250
 - Any fiduciary position held in a for-profit or nonprofit entity



SFI does not include:

- Salaries, royalties, or other remuneration paid to the investigator by or through the institution
- Income from investment or retirement accounts
- Income from seminars, lectures, or teaching engagement sponsored by and agency or institution
- Income from service to advisory committees or panels
- Travel reimbursed by a sponsor through the institution



When is disclosure required

- PHS funded research
- NSF funded research
- NIH funded research
- Other -



What must be disclosed?

- Identify all Research or Research Activities in which the Investigator is engaged at the time the Financial Disclosure Statement is submitted;
- Information for each SFI held by the Investigator or a Covered Family Member, that is reasonably related to the Investigator's Institutional Responsibilities including:
 - Source names and addresses, salary or other payments, value or interests in stocks, value of intellectual property or royalties, reimbursed or sponsored travel, gifts, honoraria, etc.



How do I disclose?

- FCOI Disclosure is administered through MAESTRO.
- MAESTRO provides electronic notification (email) when disclosures are due.



How often is disclosure required?

- Within 30 days of initial employment
- Annually not later than August 31
- Within 30 days of acquiring a new SFI
- No later than the application date for PHS, NSF, or NIH funding

- Investigators must update and submit a separate disclosure for each Covered Family Member



What if I fail to disclose

- Failure to disclose or complete training requirements may result in
 - Loss of access to research accounts and funding;
 - Loss of privilege to submit grant requests;
 - Disciplinary actions; and/or
 - Termination



FCOI Resources

- TrainTraq Training
 - #2111716 - Financial Conflict of Interest in Research

Must be completed prior to engaging in any research activity and **every four years** thereafter

FCOI Questions?



Export Control and Financial Conflict of Interest Compliance

Thank you for you time and attention

