

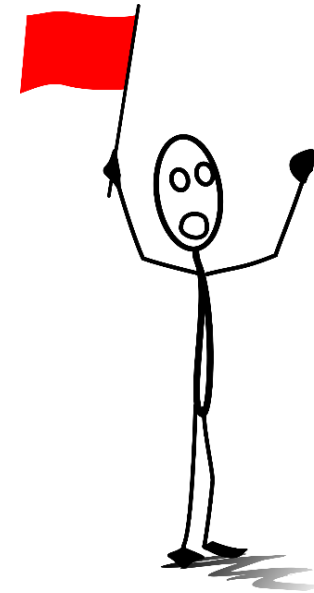
# Export Control Considerations

**March 2, 2018**

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# Agenda

- Why are exports controlled?
- What is an export?
- Who are the regulators?
- What is controlled?
- Are there any exclusions?
- Why does this matter?
- Red flag scenarios?



# Why Are There Export Controls?

- Framework of Laws Directed At
  - Restriction on exports of items that could contribute to the military capabilities of our rivals
  - Prevention of proliferation of weapons of mass destruction (nuclear, biological, chemical)
  - Compliance with trade agreements and sanctions against other nations
  - Prevention of terrorism

# What is An Export?

- Physical & electronic transfers of items outside the U.S.  
(Ex: Freight, Mail, Handcarry)
- Release or disclosure of technical data, technology, or source code to a non-U.S. Person, in the U.S. or abroad  
(Ex: In-Person, Phone/Fax, E-mail, FTP)
- Application of controlled data outside the U.S.  
(Ex: Training, Technical Assistance)

# Who Are Regulators?

Three Main U.S. Agencies:



Department of State (DDTC)  
Defense articles & services (ITAR/USML)  
<http://www.pmdtcc.state.gov/>

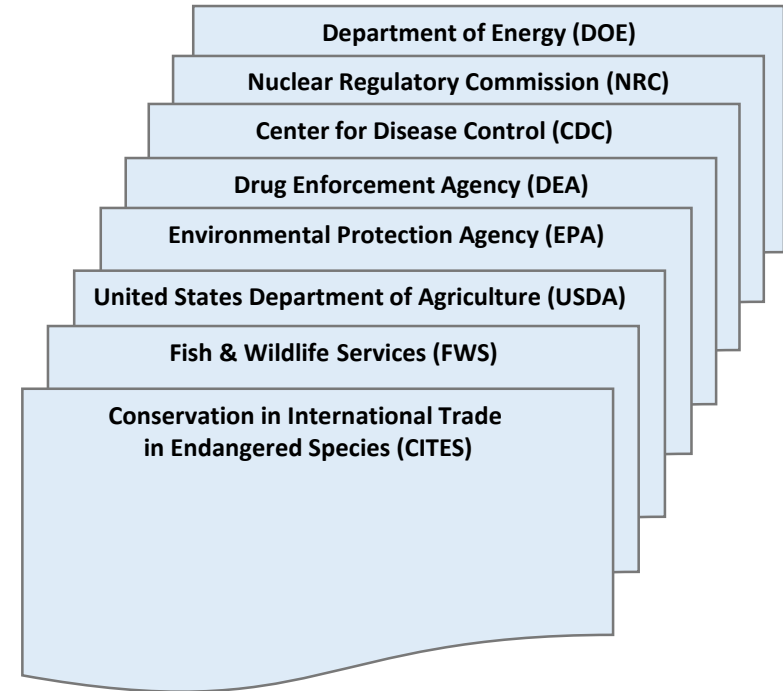
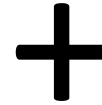


Department of Commerce (BIS)  
Dual use items (EAR/CCL)  
<https://www.bis.doc.gov/>



Department of Treasury (OFAC)  
Embargoes & sanctions (FACR)  
<https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

Other U.S. Agencies Including:



# What is Controlled?

## Restricted Items:

- International shipment of tangible items
- Technology & source code to non-U.S. persons (even within U.S.)

## Controls Contingent On:

- What is it? (classification)
- Where is it going? (country/foreign nationals)
- Who will receive it? (restricted party screening)
- What will they do with it? (ultimate end-user/end-use)

# What is it? (Classification)

- Designed/Modified Military Application
  - ITAR: U.S. Munitions List (USML) 22 CFR §121.1
- Dual-Use Applications
  - EAR: Commerce Control List (CCL) 15 CFR §774
- **NEED EXPORT CLASSIFICATION PRIOR TO EXPORTING**

# ITAR - United States Munitions List (USML)

- 21 Categories w/Technical Specifications ([22 CFR part 121.1](#))

I – Firearms, Close Assault Weapons and Combat Shotguns

II – Guns and Armament

III – Ammunition/Ordnance

IV – Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

V – Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents

VI – Surface Vessels of War and Special Naval Equipment

VII – Ground Vehicles

VIII – Aircraft and Related Articles

IX – Military Training Equipment and Training

**X – Personal Protective Equipment**

XI – Military Electronics

XII – Fire Control, Range Finder, Optical and Guidance and Control Equipment

XIII – Materials and Miscellaneous Articles

XIV – Toxicological Agents including Chemical agents, Biological Agents and Associated Equipment

XV – Spacecraft and Related Articles

XVI – Nuclear Weapons Related Articles

XVII – **\*Classified** Articles, Technical Data, and Defense Services Not Otherwise Enumerated

XVIII – Directed Energy Weapons

XIX – Gas Turbine Engines and Associated Equipment

XX – Submersible Vessels and Related Articles

XXI – Articles, Technical Data and Defense Services Not Otherwise Enumerated

## **Ex: Category X**

(a) (2) Clothing to protect against or reduce detection by radar, infrared (IR) or other sensors at wavelengths greater than 900 nanometers, and the specially treated or formulated dyes, coatings, and fabrics used in its design, manufacture, and production;

**\*Note: Not all ITAR is classified; it is a subset.**



# EAR - Commerce Control List (CCL)

- 10 Categories w/Technical Specifications ([15 CFR part 774](#))

## Export Control Classification Number (ECCN)

### Export Control Categories

- 0 = Nuclear materials, facilities and equipment (and miscellaneous items)
- 1 = Materials, Chemicals, Microorganisms and Toxins
- 2 = Materials Processing
- 3 = Electronics
- 4 = Computers
- 5 = Telecommunications and Information Security
- 6 = Sensors and Lasers
- 7 = Navigation and Avionics
- 8 = Marine
- 9 = Propulsion Systems, Space Vehicles, and Related Equipment

### Five Product Groups

- A. Systems, Equipment and Components
- B. Test, Inspection and Production Equipment
- C. Material
- D. Software
- E. Technology

### Reasons For Control

- 0xx = National Security
- 1xx = Missile Technology
- 2xx = Nuclear Proliferation
- 3xx = Chemical / Biological Weapons
- 5xx = Foreign Policy
- 6xx = Former USML or Wassenaar Arrangement Munitions List
- 9xx = Anti-Terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions, Etc.

#### Ex: Category 9, Product Group A

9A012 - Non-military "Unmanned Aerial Vehicles," ("UAVs"), unmanned "airships", related equipment and "components", as follows;

>>> EAR99 if Subject to EAR and Not on CCL

# Where is it going? (Foreign Country)

- ITAR – Restrictions for All Countries
- EAR – Restrictions Vary by Country

[http://www.bis.doc.gov/index.php/forms-documents/doc\\_download/944-740-sup-1](http://www.bis.doc.gov/index.php/forms-documents/doc_download/944-740-sup-1)



# Where is it going? (Foreign Persons)

Due to Deemed Export controls, exports of technology and source code to a foreign national (within the U.S. or abroad) is “deemed” to be an export to their country of origin.

- A U.S. Person is a person who is a U.S. citizen, a U.S. legal permanent resident (“green card” holder) or an asylee/refugee under Federal regulation.
- U.S. corporation, partnership, trust, society or other entity incorporated or organized to do business in the United States is also a U.S. Person.
- Everyone else is a Foreign Person.

**F-1, J-1, H-1B, O-1 visa holders are Foreign Persons!**

# Who Will Receive it? (Restricted Party Screening)

- Are they a Restricted Party?
  - Entity can be on a denial list by the U.S. Government (OFAC, BIS, DDTC, FBI, etc.) and/or other countries' governments for a range of reasons
  - Consolidated Screening List  
([http://2016.export.gov/ecr/eg\\_main\\_023148.asp](http://2016.export.gov/ecr/eg_main_023148.asp))
  - Over 200 lists internationally
- Entities can include U.S. and International companies, individuals, groups, institutions, universities, and vessels
  - Examples:
    - SHARIF UNIVERSITY OF TECHNOLOGY Tehran, Iran
    - SICHUAN UNIVERSITY Chengdu, China

# What Will They Use it For? (End-Use/User)

- Additional restrictions on specified end-users and end-uses

[http://www.bis.doc.gov/index.php/forms-documents/doc\\_download/1062-744](http://www.bis.doc.gov/index.php/forms-documents/doc_download/1062-744)

- Examples:
  - Foreign Militaries
  - Nuclear End-Uses
  - Chemical & Biological Weapons

# Are There Exclusions? (Yes!)

## Not Export Controlled: Publicly Available Technology (\*)

- Published materials - generally accessible to interested public
- Educational information - released in catalog courses and associated teaching labs
- Information resulting from fundamental research
  - Ordinarily published and shared broadly in scientific community
  - No participation or publication restrictions
  - No faculty/researcher side deals with sponsors

(\*) Excluding certain encryption items.

# Are All University Activities Excluded (No...)

## Export Controlled: Restricted Technology

- Proprietary information from sponsors/collaborators
- Research with participation or publication restrictions
- “Development”, “Production” or “Use” (operation, installation, maintenance, repair, overhaul and refurbishing) technology for controlled equipment

## Should Also Review Foreign:

- Shipments
- Transactions
- Visitors
- Travel
- Sponsors
- Collaborations

# Risks of Non-Compliance

## Substantial Risks:

- Penalties
- Substantial Fines
- Imprisonment (Criminal Offenses)
- Reputational Damage

## Academic Examples:

- [Professor Roth](#) (University of Tennessee)
  - 4 yrs. Prison
  - Defense Articles
- [U Mass Lowell](#)
  - \$100K fine
  - Entity List Violation



# What Can You Do?

## Engage RSCP For Guidance if Research Includes:

- Contractual inclusion of publication restrictions, participation restrictions or language referencing exports controls, the EAR, the ITAR, or military/defense articles
- Access restrictions based on nationality such as U.S. Citizen only or U.S. Persons only
- Receipt of proprietary/confidential technical information or data from another party (may be accompanied by a non-disclosure agreement)
- International collaborations, sponsors, field work or consulting
- International travel with or international shipment of equipment, prototypes, samples, specimens, software or proprietary/confidential information
- International financial transactions
- Hosting foreign national visitors & delegations
- Any activity involving an embargoed country such as Cuba, Iran, North Korea, Sudan (North), Syria or the Crimean region of Ukraine

# Also Applicable to International Activities

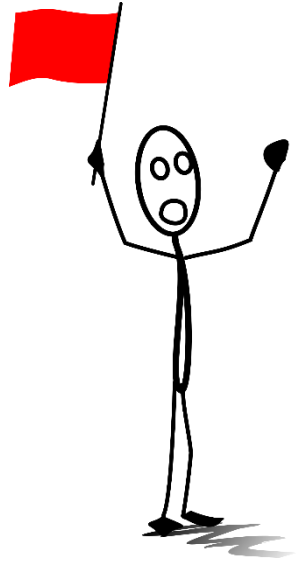
## Anti-Boycott Laws:

- Prohibit participation in boycotts inconsistent with U.S. foreign policy
- Includes, but not limited to, Arab League boycott of Israel
- Requests must be reported to U.S. government

## Foreign Corrupt Practices Act:

- Anti-bribery provisions
- Prohibit corrupt payments to foreign officials for improper advantages

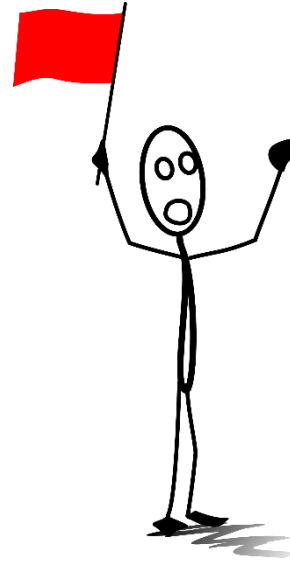
# Scenarios



- I-129 Certifications
- Fundamental Research
- Proprietary Research
- Foreign Visitors
- Foreign Travel
- Academic/Exchange Agreements
- APHIS Permits
- Collaboration w/Cuba or Iran
- Rushed Activity

# I-129 (Deemed Export Control Certification)

Scenario 1: My department has hired a new faculty member who requires a H-1B visa. As part of the visa request process, I've been forwarded a I-129 Certification Form to complete. Since he won't be doing classified research, it is safe to indicate a license is not required and sign.



Guidance 1: Remember that export controls apply to much more than just classified research. Unless you are deeply familiar with the export regulations, you should engage RSCP for guidance on how to complete this I-129 Certification Form prior to signing and escalating.

Note that I-129 Certifications are required by U.S. Citizenship and Immigration Services (USCIS) for all foreign national workers applying for a visa under categories H-1B, H1-B1, L-1 and O-1A.

**Part 6. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States**

(For H-1B, H-1B1 Chile/Singapore, L-1, and O-1A petitions only. This section of the form is not required for all other classifications. See Page 3 of the Instructions before completing this section.)

Check Box 1 or Box 2 as appropriate:

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

- 1. A license is not required from either U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or
- 2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

# Fundamental Research

Scenario 2: A researcher in my department has been awarded a NSF grant. I've reviewed the terms and conditions and there are no participation or publication restrictions. This means the research qualifies as Fundamental Research, so her foreign national graduate student can work on the project.

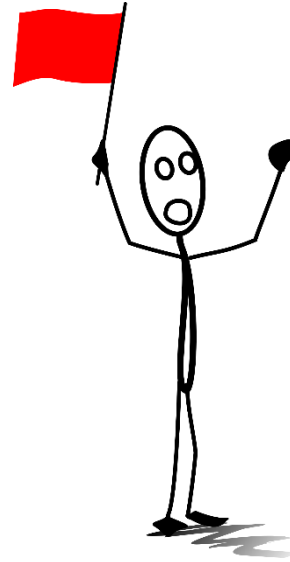


Guidance 2: Yes, the absence of participation and publication restrictions does qualify the research results for the Fundamental Research Exclusion (FRE). Foreign nationals can participate.

Note that the FRE applies to research results. Any related international shipments, travel and visitors would still need reviewing.

# Proprietary Research

Scenario 3: A professor in my department is working on a project with an industry sponsor. A NDA (Non-Disclosure Agreement) with publication restrictions was reviewed and approved by legal before proceeding. I can assume that since the agreement is signed, any and all activities needed to support the work have also been approved.



Guidance 3: Do not make such assumptions. The agreement likely established scope of the project and confidentiality terms, but should not be considered a blanket export authorization. Since FRE is not applicable due to publication restrictions, contact RSCP to classify items and gain a better understanding of relevant export restrictions before engaging in any export related activities.

# Foreign Visitors

Scenario 4: My department has invited a professor from a foreign country to visit. There are no export restrictions; as long as the U.S. government approves the visa, the visitor has been properly vetted.



Guidance 4: No, more diligence is needed. While the government may have screened the visa request, this is not a blanket export authorization. RCSP can complete RPS for the visitor and also provide guidelines on what can be shared and what should not be shared with the visitor.

# Foreign Travel

Scenario 5: A professor in my department is collaborating on a FRE project with a colleague in China. She's planning a trip to China, and will carry along some integrated circuits from the project for her colleague to evaluate. Since the project qualifies for the FRE, there are no export restrictions.



Guidance 5: This is not true. While the results of the research may qualify under the FRE, it does not authorize the export tangible goods (such as integrated circuits). Those items would require an export classification by RSCP to determine any related restrictions. Since there are some Chinese universities on the Entity List, RSCP should also complete RPS.



# Academic/Exchange Agreements

Scenario 6: A professor in my department wants to start a collaboration project with a colleague at an institution in a foreign country (where they both study as undergraduates). Since UAF has an Memo of Understanding (MOU) in place with this institution, there will be no restrictions on what can be shared.



Guidance 6: A MOU, like other agreements, should never be interpreted as a blanket export authorization. RSCP should be engaged prior to any export related activities.

# APHIS Permits

Scenario 7: A professor is working with a plant pathogen that was imported under a APHIS (Animal and Plant Health Inspection Service) permit. This should allow for exportation of the pathogen to other collaborators in foreign countries.



Guidance 7: No, an import authorization by APHIS does not serve as an export authorization. The CCL includes plant pathogens and the item would need to be classified and reviewed for export restrictions prior to shipment. An export license may be required.

# Collaboration with Cuba or Iran

Scenario 8: Recently I've seen a lot of news about improving relations with both Cuba and Iran. I'm not sure what this means for some collaborations our department is considering. We should check with RSCP prior to pursuing engagements in those countries.



Guidance 8: You're right to exercise caution. Export considerations are still necessary. Despite what you may hear on the news, both countries are still embargoed by the U.S. government. While more activities are allowed, any potential collaborations and exports should be reviewed.

# Rushed Activity

Scenario 9: I'm up against a deadline and need to meet deliverables. My motto is it's better to ask for forgiveness than permission. It's just paperwork anyway – what's the big deal? These export regulations seem complicated and I don't have time.



Guidance 9: It is not excusable to knowingly violate export regulations. Enforcement actions are much more severe when the exporter acts with malicious intent. It is not acceptable to export first and ask permission later.

# Additional Questions

## Contact RSCP

Phone: 479-575-4572

Email: [canditam@uark.edu](mailto:canditam@uark.edu)

Web: <http://vpred.uark.edu/units/rscp/>

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