

# System Policy – 15.02

- System Policy 15.02 – *Export Controls*
  - Adopted 2009, Re-certified 2012.
- 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 that govern the **export** of strategic technologies, equipment, hardware, software or providing technical assistance 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 adversaries;
- Prevent the proliferation of Weapons of Mass Destruction (WMD);
- Fulfill international obligations (e.g., treaties); and
- Prevent terrorism.



# Why should Universities be concerned?

9/11 changed everything:

- There is a growing intersection of cutting edge research with national security and foreign policy.
- Many foreign students seek educations from U.S. universities.
- Universities have become a focal point for export control compliance.



# Developing a Compliance Program



# 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)



# Federal Sentencing Guidelines

- Establish a culture of compliance
- Identify and assess the risks
- Develop written policies and procedures to address the risk
- Provide training and education
- Keep lines of communication open
- Monitor compliance
- Respond to instances of noncompliance



# WHAT does this mean?

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





# Understanding the Regulatory Framework



# 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

- 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.
- Also 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

- 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 the E.A.R.

- Covers commercial applications
- Covers technology, including software
- 10 categories: Control
- Also covers U.S.



for a military aircraft.  
technology, software.  
Commerce  
outside the



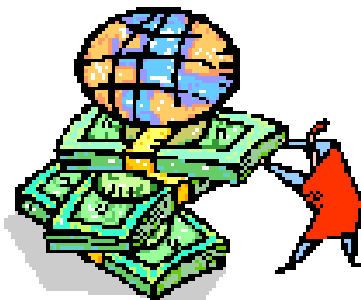
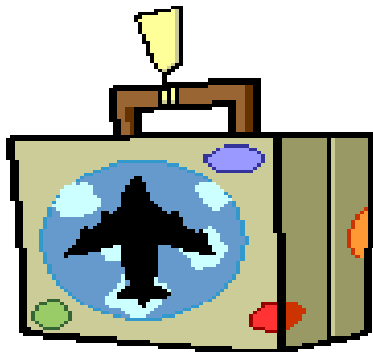
# Commerce Control List (CCL) Categories

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
10. Propulsion systems, Space Vehicles and Related Equipment



# U.S. Department of Treasury

- Office of Foreign Asset Control (OFAC)
  - Trade Sanctions and Embargoes – prohibitions on 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 new 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 new 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.



# Identify the 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
  - Permanent Residents (*i.e.*, green card holders)
  - Persons granted asylum or refugee status



# WHAT is an Export?

Any item, technology or software that is sent from the United States to a foreign destination:

- E-mail, phone, mail, travel, package, conference presentation, face-to-face, visual inspection, hand carried items – laptop, memory devices



# Exports in a University Setting

These items may include:

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





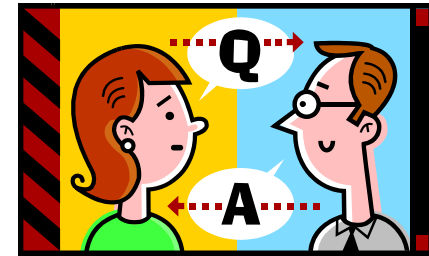
# WHAT is a “deemed export?”

- 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 facilities;
  - Oral exchanges of information; or
  - Access to a computer that possesses export controlled information/technology.



# WHEN should I be concerned about export controls?

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



# Red Flags

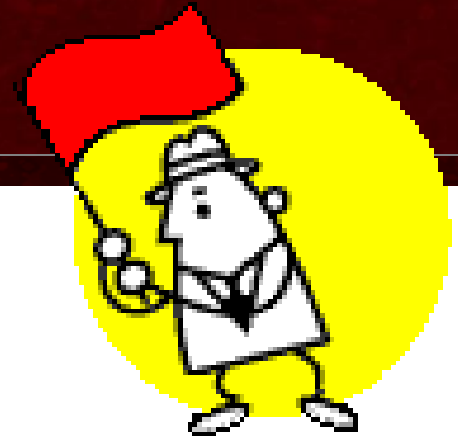


## Does your activity involve:

- Shipping equipment to a foreign country?
- Collaborating with foreign colleagues in foreign countries or in 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 marked "Export Controlled"?
- A sponsor who is requiring pre-approval rights over publications or the participation of foreign nationals?



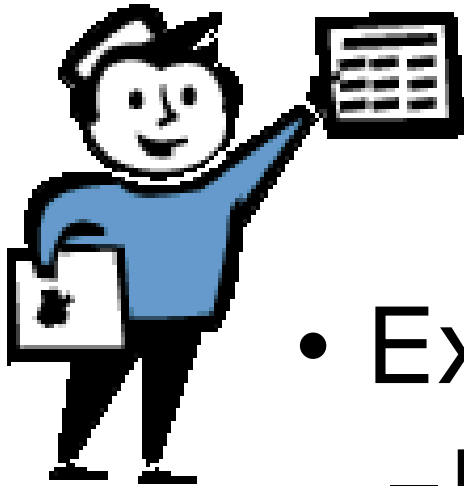
# Red Flags (cont'd)



## Does your activity involve:

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

# Good News!



- Exemptions & Exclusions
  - Public Domain/Publicly Available
  - 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 Regulations?

- **IT'S THE LAW!**
- Severe criminal and civil noncompliance penalties and sanctions for **individuals** as well as institutions and corporations.
  - Up to \$1MM 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 government contracting
  - Loss of federal funds





# 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

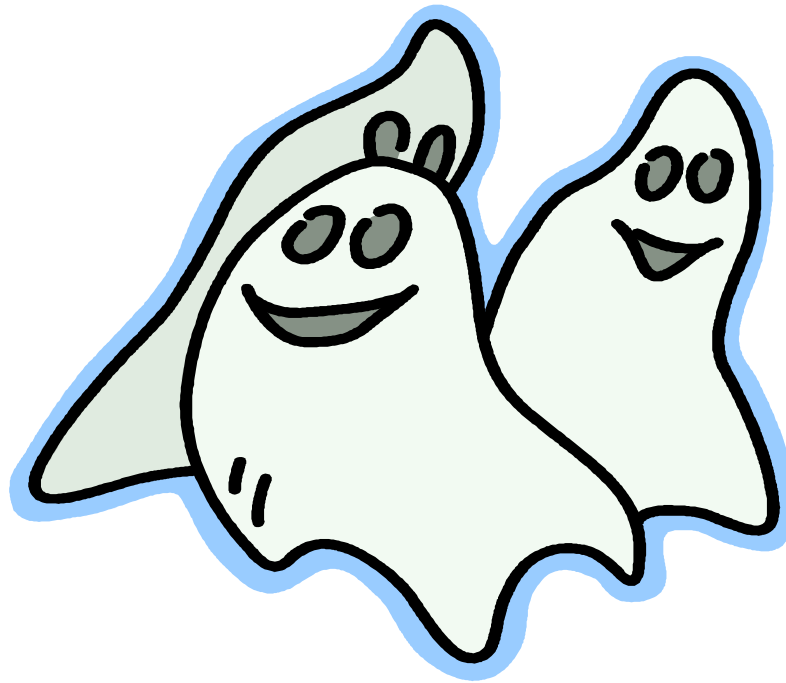


# Personnel & Procedures



# WHO you gonna call?

## GHOSTBUSTERS??



# Appointing an Empowered Official

- The Empowered Official is responsible for export control compliance and oversight for your agency or campus.
  - They must be knowledgeable of the regulations (or, at a minimum, trainable);
  - They must be aware of your agency/campus activities; and
  - They must have authority to stop any activity that may result in a violation of law.



# Developing 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

- Visual Compliance

- Technology Control Plans

- Equipment

- Research Projects



# Export Control Resources

## System Resources:

- System Offices
  - System Ethics and Compliance Officer
  - Office of General Counsel
- Texas A&M University  
<http://vpr.tamu.edu/resources/export-controls/resources>
- Texas A&M University – Corpus Christi  
<http://research.tamucc.edu/compliance/export.html>
- TEES  
<http://tees.tamu.edu/researchcompliance/export-controls/>
- OSRS  
<http://osrs.tamus.edu/contracts-and-grants/project-administration/compliance/>



# Export Control Resources (cont'd)

## System Training (TrainTraq):

- #2111212 Export Controls & Embargo Training – Basic Course
- #2111873 Export Controls – Technology Control Plans
- #2111207 TEEEX 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.pmdtcc.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/](http://www.utexas.edu/research/osp/export_control/)

- University of Tennessee – Knoxville

<http://research.utk.edu/exportcontrol/>

- University of South Florida

<http://www.research.usf.edu/dsr/export-controls/export-controls.asp>

- Wayne State University

<http://research.wayne.edu/export-control/>



# Contact Information

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# Questions?

