Trade Compliance Basic Awareness

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Why Do Export Regulations Exist?

• Protect U.S. National Security

• Further U.S. Foreign Policy Goals and Obligations

• Prevent/Limit Diversion of Sensitive Products or Technical Data

• Prevent Short Supply

Exporting is a Privilege Not a Right
Why Do YOU Care??

• To Gain an Awareness of the Rules

• Export Regulations Reach Everyone
  – And they impact how universities can conduct research

• Successful Compliance with the Regulations Requires Understanding and Commitment from everyone

• IT is a Key Pinch Point for Compliance!
  – You control access and store data

• The Regulations Apply to Individuals and Institutions
What Are The Regulations?

• Export Administration Regulations (EAR)
  – Controls all commercial items
  – Licenses not always required, need classification & destination to determine

• International Traffic in Arms Regulations (ITAR)
  – Controls any item specifically designed/modified for military use/application
  – Licenses required, few exemptions

• Office Foreign Assets Control Regulations (OFAC)
  – Specific sanctions on embargoed destinations
  – License always required, rarely approved

• US Customs & Border Protection (CBP)
  – Controls all imports into the United States
  – Need proper classification to determine proper Duty payment
What is the EAR?

• Controls commercial and/or dual use items listed in the Commerce Control List (CCL)
  – Any part that is not controlled under the ITAR is controlled under the EAR

• Many U.S. exports of hardware, software or technology may occur without a license
  – Unless exported to Syria, Sudan, N. Korea, Iran, Cuba.
  – Other country specific license requirements are determined by classifying Export Control Classification Number (ECCN) of hardware, software or technology

• Restricted activities:
  – End users active in proliferation (nuclear, chemical, biological or missile technology and weapons); or
  – Persons or entities on various Restricted Parties Lists (RPL); or
  – Persons of diversion risk (Red Flag); or
  – Persons supporting certain boycotts

• Controlling Agency:
  – Bureau of Industry and Security (BIS), US Commerce Dept.
What is the ITAR?

- Controls all items on the US Munitions List (USML)
  - Any item that is specially designed or modified for a military/defense application is considered on the USML
  - Includes most space related technologies because of application to missile technology

- When in doubt, items are presumed to be on the USML
  - Look to USML first before you classify an item as commercial

- Most exports of USML hardware, software or technical data require a license

- Controls:
  - Defense Services, Brokering and Political Contributions, Fees and Commissions, sometimes controls proposal making

- Controlling Agency:
  - Directorate of Defense Trade Controls (DDTC), US State Department
What is the OFAC?

• Prohibits participation in unsanctioned Boycotts
  – Primary Target is Arab League Boycott of Israel
  – Countries of Concern: *(See Handout)*
    • Bahrain
    • Iraq
    • Kuwait
    • Saudi Arabia

• Reports of Boycott Requests are Mandatory to OFAC within Calendar Qtr Received
  – Screen All business documents for Boycott Language

• Controls U.S. Sanctioned Boycotts of Terrorist Supporting Countries and Actors
  – Economic sanctions focus on end-user or country and may limit transfer of technologies and assistance to OFAC’s list of sanctioned countries
  – Bad Actors -- “Specially Designated Nationals and Blocked Persons List”
  – Prohibits payments or providing “value” to nationals of sanctioned countries and certain entities or could require a license

• Controlling Agency:
  – Office of Foreign Asset Controls (OFAC), US Treasury Department
What is the CBP?

• Controls all items entering into the “Commerce” of the United States
  – Customs Duty is a major source of income to United States

• Harmonized Tariff Schedule of the United States (HTSUS)
  – Everything can be classified within the HTSUS

• Controls:
  – Temporary Imports, Permanent Imports, Return of US Origin Items

• Controlling Agency:
  – Customs & Border Patrol (CBP), U.S. Department of Homeland Security
Key Definitions
U.S. Person vs. Foreign Person

• A U.S. Person
  • Is a U.S. Citizen; or
  • Holds Lawful Permanent Resident status (Green Card); or
  • Is a “Protected Person” or Refugee under the U.S. Asylum Program

• A Foreign Person is:
  • A Person Who Holds a Student or Work Visa; or
  • A U.S. Person Representing a Foreign Entity; or
  • An Employee an Overseas facility; or
  • A Foreign Government and Its Offices (Embassies); or
  • A Foreign Owned or Controlled Entity
What the Heck is a Denied Party?

• Denied Parties List (DPL)
  – U.S. government regulations require that U.S. persons not engage in transactions with Parties (countries, companies and individuals) identified on U.S. government restricted lists.

  – All Transactions should be screened against the RPL
    • Placing PO’s, Hiring (Full Time & Contract Labor)
    • Accepting PO’s, Contracts, Grants
    • At time of acceptance/delivery

  – Ad Hoc Screening for first time contacts (i.e. Sales, Visitor, etc.) should be a common practice
So What Is This Technical Data Stuff Anyway?

• Information required for the design, development, manufacture, use, operation, modification, maintenance or repair of a product.

• Software directly related to the item which includes but is not limited to:
  – Systems functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair

• Technical Data Does **NOT** Include
  – Basic Marketing Information regarding the general function or purpose or a general system description of the article (The Fact That a University is Conducting Research in a Particular Field or Product is Not Controlled Information).
  – General scientific principles or information which is already in the public domain (Available To the Public Through Public Medium).
Public Domain

• Includes information that is published and generally available to the public:
  – Through sales at bookstands and stores
  – Through subscriptions available without restrictions
  – At libraries open or available to the public
  – Through patents
  – Through unlimited distribution at a conference, meeting seminar, trade show, generally accessible to the public in the U.S.
  – Includes technology and software that are educational and released by instruction in catalog courses and associated labs and universities
How Do Exports Occur?

• Sending or taking a items out of the U.S. using any method for any reason

• Disclosing or transferring, by any means technical data to a foreign person, whether in the U.S. or abroad; or
  – Includes your companies Foreign Employees in U.S. or international locations, consultants, long term visitors and contract employees
  – May includes training Foreign Persons how to use a product or conduct research

• Disclosing or transferring, by any method, in the U.S. any defense article to an embassy, any agency or subdivision of a foreign government
  – Transferring control or ownership of an item on the U.S. Munitions List, to a foreign person regardless of location

• Beware of the Re-Export or Re-Transfer!
Are There Penalties?
ITAR, EAR, CBP and OFAC Penalties

• Penalties for “Willful” Violation*:
  – Up to $1 million per violation for institutions
  – Up to $1 million per violation and up to 10 years in jail for individuals
  – Seizure or forfeiture of goods
  – Debarment from Exporting for as long as three years
    • Commerce and State
  – Potential debarment from contracting for up to three years

*A “violation” is often based on each unit in a shipment/transaction