Export Controls
Foreign Travel Briefing

Michelle Moore
Research Compliance Officer
Sponsored Programs, Contracts & Grants
Elizabeth City State University
mwmoore@ecsu.edu 252-335-3823
Goals of the Presentation

- Understand essential aspects of export controls
- Exclusions to export controls
- International Travel
- Penalties for non-compliance
Control the export (and import, and re-export) of certain categories of commercial items and defense-related articles and services.

Control access of certain technology to foreign nationals whether in US or abroad.

Safeguard US national security.

Facilitate US foreign policy objectives.
What is an export?

- a physical transfer/disclosure of an item outside the United States
- a transfer/disclosure in any form of a controlled item or information within the U.S. to anyone who is a foreign national (not a U.S. citizen or permanent resident), better known as the “deemed export” rule.
- i.e. a transfer of items, software, technology to a foreign person, foreign entity or foreign destination
Examples of exports

- Shipment of physical items outside of US
- Discussion of unpublished research at a conference in the US with foreign nationals present
- Visit to a lab on campus by a foreign national scholar where technical data is displayed
- Participation of foreign national in research
- Receiving an email with technical data on a foreign national’s computer
Goods, services, technology, or technical data that have both civil/commercial and/or military applications.

Examples:

- GPS
- Genetic research data pertaining to genes that regulate growth of plants

*Rogue nations prohibited from Dual Use exports: CUBA, IRAN, N KOREA, SUDAN & SYRIA*
Exporting Methods

Mailing, Shipping or Transporting

- Biological, Chemicals, Reagents
- Equipment, Materials, Prototypes
- Manuals and Data

Electronically

- Verbally
- Teaching
- Presentations
- Deem Export
Export Controls

Export controls are the set of laws, policies and regulations that prohibit the unlicensed export of certain items, technology and software.

Exports are controlled for various reasons:

- Anti-terrorism
- Non-proliferation of weapons
- National security
- Crime control
- Regional stability
- Foreign policy purposes
- Multilateral agreements
Export Controls Regulations

- Export Administration Regulations (EAR) for dual use items
  - Department of Commerce, Bureau of Industry and Security (BIS)
- International Traffic in Arms Regulation (ITAR) for military items
  - Department of State
- Sanction Programs
  - Department of Treasury, Office of Foreign Assets Control (OFAC)
Exclusion Options

- Fundamental Research Exclusions
- Educational Information Exclusion
- Public Domain Exclusion
- Contract Negotiation
- Export License Application
Fundamental Research Exclusion

Basic or applied research in science and/or engineering at an accredited institution of higher learning in the US where the resulting information is ordinarily published and shared broadly in the scientific community.
Fundamental Research Exclusion does not apply if

1. The researcher accepts any restriction on publication of the scientific or technical information resulting from the research
2. The research is funded by the US Government and specific access & dissemination controls are applicable
3. The research restricts access by foreign nationals
4. The research uses/incorporates/develops controlled materials
5. The researcher makes a “side agreement” with the sponsor
**Educational Informational Exclusion**

- **EAR**-Export Controls do not apply to “educational information” released by instruction in catalog courses and associated teaching laboratories.

- **ITAR**-Export controls do not apply to information concerning “general scientific mathematical or engineering principles commonly taught in schools, colleges and universities.”
Public Domain/Public Availability

Information that is published and generally accessible or available to the public in any form

Books, periodicals, print /electronic, or forms of media for distribution
When there are restrictions in publication language in contracts, these are best if negotiated out of the contract if possible.
Export License Agreement

When exporting does not fall under Fundamental Research, Educational Exemption, or Public Domain, the PI will initiate the export application process through the Office of Sponsored Programs, Contracts and Grants
It is the policy of Elizabeth City State University to comply with all United States (U.S.) Export Control laws and regulations, including those implemented by National Security Decision Directive 189 (NSDD 189); the U.S. Department of Commerce (DOC) through the Bureau of Industry and Security's Export Administration Regulations (EAR) (trade and dual use protection) (15 CFR 700 – 799); the U.S. Department of State through its International Traffic in Arms Regulations (ITAR) (national Security) (22 CFR 120 –130) and those imposed by the U.S. Treasury Department through its Office of Foreign Assets Control (OFAC) (trade embargo); and the University of North Carolina General Administration Policy Manual 500.1

http://www.northcarolina.edu/content.php/aa/research/regulatory%20compliance.htm.
Each ECSU faculty, staff, and student who is involved in research must take reasonable precautions for safeguarding sensitive and export controlled data and information from disclosure to foreign persons without proper authorization. A license from the US government is required before a foreign national has access to hardware or technology controlled by either the US Department of Commerce or the US Department of State.
What is an export license

An export license is issued by an export agency and authorizes an export, re-export or other regulated activity as specified on the application.
Determining if an export requires an export license

- Who will receive the export?
- What is the export?
- Where is the export going?
- What will they do with the export?
Examples of Situations having Export Control Implications

A Computer Scientist is working on encryption strategies with a graduate student who is a foreign national.

A faculty member in the Computer Science department working on satellite related research is visited by Canadian colleagues. Other site visitors include faculty born in North Korea, China and Syria.

Faculty members in marine biology takes their GPS equipment overseas to conduct research of fish populations in the middle east.

A faculty member working on unmanned aerial vehicle technology presents his research in a departmental seminar. Attending the seminar are international graduate students who are studying remote robotic control systems.
License Required

- If you are taking an item found on the Department of State US Munitions List (USML) outside the US
- Travel to certain embargoes or sanctioned countries would require a license from the Office of Foreign Asset Controls (OFAC), or could in fact be denied
Generally, any transactions with embargoed countries will be constrained or prohibited. Very little unauthorized (license or license exception) activity can happen with these destinations:

- Comprehensive sanction programs against Cuba, Iran and Sudan
- Limited sanction programs against Burma, North Korea and Syria
License Required

The Bureau of Industry and Security (BIS) would required a license to take any items found on the BIS Commerce Control List (CCL)

For example:
A license would be required to take any laptop computer if you were traveling to a sanctioned or embargoed country. There are also regulations about securing licensed items and returning them to the US.
It is illegal to conduct business with entities or individuals that are barred by the government. The recipient of any exchange of information, items or monies should be screened through government restricted party lists.
When hiring personnel on awarded proposals, we are required to screen them utilizing the Visual Compliance Screening tool.
Failure to comply can result in criminal and civil penalties for university and individual

ITAR Penalties
- Civil fine is up to $500,000 per violation; loss of export privileges; seizure and forfeiture of articles
- Criminal penalties of up to $1,000,000 and up to 10 years imprisonment per violation for individual

EAR Penalties
- Civil fine is $250,000 per violation; seizure and forfeiture of articles; revocation of exporting privileges
- Criminal penalties as high as $1,000,000 and up to 20 years imprisonment per violation for individual

OFAC Penalties
- Civil fine up to $250,000 per violation; suspension or debarment from government contracts
- Criminal fine up to $1,000,000 and up to 10 years imprisonment
Before traveling to an embargoed or sanctioned country, contact the Research Compliance Officer in the Office of Sponsored Programs to obtain a list of persons and organizations that you should not interact with while traveling abroad.
International Travel

Even if you frequently or periodically travel internationally and have never had a problem, it is a good idea to understand export controls to prevent an unintentional violation.
Within the university, we possess a wealth of information of interest to foreign powers and entities. Because of your access to personnel, facilities, and information, you, as a university employee present an opportunity for a foreign entity to expand their knowledge about US technology, capabilities and vulnerabilities.

For that reason, we ask you be aware of your surroundings and your actions at all times.
Prior to Departure

- You may want to contact the Department of State-Citizen services recorded messages at 202-647-5225 to receive up-to-date travel advisements.
- Carefully complete your VISA application, as it will be scrutinized. If you are a naturalized US citizen returning to the country of your origin, your citizenship may be questioned.
- Verify if your medical insurance applies to overseas, and if it covers emergency expenses such as medical evacuation.
Prior to Departure

- Ensure that items you carry are not controversial or prohibited. Political material or anything that could be considered pornographic should not be carried.
- If you carry prescription drugs, be certain that they are clearly marked and bring only necessary quantities.
- Carrying letters, packages or gifts to individuals in other countries should be avoided. You may be viewed as a courier attempting to bring the material for subversive or illegal purposes.
Prior to Departure

- Limit the amount of Identification that you take. If you have several forms of Government ID, bring only one ID with you or the minimum required for entry and exit.
- Make a photocopy of any ID or credit card you will be bringing and leave the copy at home.
- Write down your passport number and keep it separate from your passport.
- Do the same with your address and telephone number.
Prior to Departure

- The carrying of laptop computers are discouraged, but not prohibited.
- Consult your sponsor’s contracting officer before you take your laptop or similar computing equipment.
An accurate declaration of all money and valuables should be made at entry. Some countries give the traveler a copy of the declaration, which must be surrendered upon leaving.

It is important to keep receipts of all money exchanges; these frequently are required upon departure. Undeclared sums of US or other currency are likely to cause difficulty with authorities and may be confiscated upon departure.

Declare such items as camera, radios, etc., to preclude possible explanations, customs charges, or confiscation when you leave.
Upon Arrival

- In some cases, especially non-westernized countries like Cuba, Syria, N Korea, etc., contact the American Embassy or Consulate prior to arrival, and provide your local address and the probable length of visit.

- Use of public transportation is recommended rather than driving yourself, because involvement in traffic accidents can be problematic. Taxis are the preferred mode of transportation. State Department travel advisories provide updated information regarding public transportation concerns in the country.
Activities and Behaviors Abroad

- In all of your activities, show discretion and sound reasoning. MAINTAIN A LOW PROFILE. Refrain from any behavior that may make you conspicuous or a potential target. NEVER engage in any illegal activity, excessive drinking or gambling. Use your best judgment to carefully avoid any situation that may allow a foreign intelligence agency the opportunity to coerce or blackmail you.
- Do not discuss controlled or sensitive information in any vehicle, restaurant, hotel room, hotel lobby, or other public place. In any public place, your conversation may be overheard, or you may be monitored.
- If you need to call the US to discuss controlled or sensitive information, locate a secure telephone by contacting the in-country FBI office or the US Embassy.
Activities and Behaviors Abroad

- If you locate any possible surveillance equipment, such as microphones, telephone taps, miniature recording devices, or cameras, do not try to neutralize or dismantle it. Assume the device is operable and that active monitoring is ongoing. Report what you have found to the US Embassy or Consulate. When you return, advise your local FBI agent.
- Never leave luggage or briefcases that contain controlled or sensitive information unattended (whether in the US or US Territory or not). This includes leaving your briefcase in your hotel room. We encourage you to keep your briefcases containing sensitive information in your immediate possession at all times.
Activities and Behaviors Abroad

- Foreign Intelligence Services may place you under physical surveillance or you may suspect that you are being watched. It is better to ignore the surveillance than attempt to lose or evade it. In any event your actions should be prudent and not likely to generate suspicion.
- Good precautionary measures are to use well-traveled highways and avoid establishing routine schedules.
- Never try to photograph military personnel, installations, or other “restricted areas”. It is best to also refrain from photographing police installations, industrial structures, transportation facilities and boarder areas.
Activities and Behaviors Abroad

- Beware of overly friendly or solicitous people that you meet. Do not establish personal or intimate relationships with these individuals as they may be employed by the intelligence service.
- Do not share any work related information with any person who does not have a need to know.
Rule of Thumb

- Do not accept packages and agree to transport them back to the US. Even if your friends, relatives and professional contacts, make the request.
- If you will be on an extended visit and expect to be writing or receiving mail, remember that it may be subjected to censorship. Never make references to any controlled or sensitive information.
- Avoid any areas where there is political or ethnic unrest, demonstrations or protests
Rule of Thumb

- Should you be detained or arrested for any reason by the police or other officials, be cooperative, and contact the US Embassy or Consulate immediately.
- Do not make any statements or sign any document you do not fully understand until you have conferred with an Embassy representative.
- Do not leave documents in hotel safes.
- You may keep this travel briefing document for reference, but DO NOT carry it with you.
Before your departure, it is recommended that you provide your family and/or a close friend with the name and phone number of your supervisor or co-worker so that you can be reached in the event of an emergency.

If an emergency does occur, persons needing to reach you should be instructed to contact you via your immediate office.

If this is not possible, the 24 hour State Department Operations Center (202) 647-1512, may be able to assist others in reaching you.
Contact your local FBI Agent to report suspicious foreign contacts and any unusual incidents.

If you have a security clearance through a third party, you may need to receive a security debriefing if you have been abroad for more than a certain number of days that is established by the third-party security office.
You are required to report all contacts with individuals of any nationality, either within or outside the scope of your official activities in which:

- Illegal or unauthorized access is sought to controlled or sensitive information
- If you are concerned that you may be the target of an actual or attempted exploitation by a foreign entity
Michelle Moore, MBA
Research Compliance Officer
Sponsored Programs, Contracts and Grants
Elizabeth City State University
107 McLendon Bldg
Campus Box 864
Elizabeth City NC 27909
Office: 252-335-3823
Fax: 252-335-3106
mwmoore@ecsu.edu