Society of Corporate Compliance & Ethics (SCCE) Higher Education Conference 2023

University Export Compliance Programs

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Topics

- Export Control Basics (Scot/Sheila)
- GAO Report on Export Controls (Scot)
- Is Your Export Control & Trade Compliance Program the Best it can be? (Sheila)
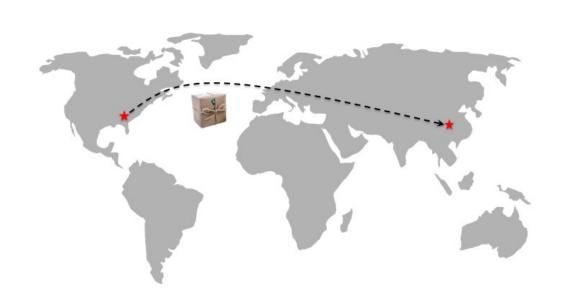- Case Studies
- Q&A

Export Control Basics

Exports & Deemed Exports

Exports, Re-exports, & Transshipments

*tangible goods, technology, &
software (ITAR: services)*

Deemed Export & Deemed Re-export

*technology & software
(ITAR: tangible goods, services)*

3 Major Government Agencies

Department of Commerce

- Bureau of Industry and Security (**BIS**)
- Export Administration Regulations (**EAR**)
- "Dual-use" items and less sensitive military items

Department of State

- Directorate of Defense Trade Controls (**DDTC**)
- International Traffic in Arms Regulations (**ITAR**)
- More sensitive military items and services

Department of Treasury

- Office of Foreign Assets and Control (**OFAC**)
- OFAC Regulations
- Sanctioned/embargoed countries

Fundamental Research Exclusion (FRE)

EAR

"core concept...that the research is to be **published** and **shared broadly** without restriction"

"Fundamental research'' means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the **researchers have not accepted restrictions for proprietary or national security reasons**.''

Not "subject to the EAR"

Note: ITAR definition is similar but more restrictive. (U.S. Only)

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Additional Exclusions from U.S. Export Control Regulations

❖Public domain/Publicly Available information

❖Educational Instruction – information released in most university catalogue courses and labs

❖Fundamental Research Exclusion (FRE)

Restricted Parties – Decentralized

- Restricted Party Screening (RPS)

- Each agency has its own list(s)

- Due diligence with a potential match

- Examples
  - ✓ Denied Persons List (BIS)
  - ✓ Unverified List (BIS)
  - ✓ Entity List (BIS)
  - ✓ Specially Designated Nationals (SDN) List (OFAC)

University Activities Impacted by Export Controls

- **Research and collaboration**
- **Contracts and purchasing**
- **IT & communication**
- **International shipping**
- **International travel**
- **Hiring non-U.S. persons & hosting visiting scholars**
- **Teaching online courses**

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GAO Report on Export Controls

GAO Report: University Export Controls

- U.S. Government Accountability Office, May 2020, GAO 20-394

- Report: State and Commerce Should Improve Guidance and Outreach to Address University-Specific Compliance Issues

  - Concerns about undue foreign influence on universities and personnel

  - Evaluated export controls at 9 universities – 3 groups

  - Complexity of export controls for universities

  - Presented 4 recommendations to Depts. of State, Commerce, Defense

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Summary of Results

Elements of an effective export compliance program

University	Average research expenditures	Management commitment	Risk assessment	Export authorization	Record-keeping	Training	Internal audits	Reporting violations	Export compliance manual
University 1	High	Fully aligns	Does not align	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns
University 2	High	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns
University 3	High	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Partially aligns	Fully aligns	Does not align
University 4	Medium	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns
University 5	Medium	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns
University 6	Medium	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Fully aligns	Does not align
University 7	Low	Fully aligns	Does not align	Fully aligns	Fully aligns	Fully aligns	Partially aligns	Fully aligns	Fully aligns
University 8	Low	Partially aligns	Does not align	Fully aligns	Fully aligns	Does not align	Partially aligns	Fully aligns	Does not align
University 9	Low	Partially aligns	Does not align	Does not align	Fully aligns	Does not align	Does not align	Fully aligns	Does not align

Legend:
- Fully aligns
- Partially aligns
- Does not align

Source: GAO analysis of statements made by university officials and information on publicly available university websites. | GAO-20-394

Overall Results of GAO Audit

Most universities in compliance*

- Management commitment
- Export Authorization
- Recordkeeping
- Reporting violations

*Of the 9 universities visited

Fewer universities in compliance

- Risk assessment
- Training
- Internal audit
- Export compliance manual

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Is Your Export Control Compliance Program the Best it can be?

Federal Agency Guidance for Export Control Programs

❖ Updated State Dept. DDTC Guidance for ITAR Compliance Programs (December 2022) https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=4f06583fdb78d300d0a370131f961913 (link for Guidance document is at bottom of page-must download).

❖ Department of Commerce BIS Export Compliance Guidelines: Elements of an Effective Export Compliance Program https://www.bis.doc.gov/index.php/documents/pdfs/1641-ecp/file

❖ Department of Treasury Office of Foreign Assets Control (OFAC) A Framework for OFAC Compliance Commitments https://home.treasury.gov/system/files/126/framework_ofac_cc.pdf

Federal Agency Guidance for Effective Export Control Programs - What is Required to Mitigate Risks?

State DDTC (ITAR), Commerce BIS (EAR) & Treasury OFAC ALL require the following elements for Effective Export Control, ITAR & Sanctions Programs:

- ❖ [Management Commitment Letter](#) and Written Export Manual on Website.
    - ❖ Requires Senior Management Commitment to promoting a culture of compliance & sufficient resources (time, funding, personnel & training) with risk of organization.
- ❖ Recordkeeping
    - ❖ Keep documents 5 years from last date of export
    - ❖ Have a system to keep records and be able to find records.
- ❖ Risk Assessment
    - ❖ Evaluate internal controls for EAR, ITAR and OFAC risks periodically or as changes happen on campus.
    - ❖ How do you capture?
    - ❖ Exports, "Customers", University Internal Operations
        - ❖ International travel, international visitors, end use, correct export classification, online courses (OFAC)

Federal Agency Guidance for Effective Export Control Programs - What is Required to Mitigate Risks? (Continued)

❖ Audits
   - ❖ Functional specific area- examples: international shipping or hosting/hiring international visitors?
   - ❖ Program Level
   - ❖ Internal Audit or External Audit?

❖ Compliance Monitoring
   - ❖ Changes in EAR, ITAR and/or OFAC Sanctions and/or Guidance
   - ❖ Best practices & internal lessons learned from close calls or other organizations
   - ❖ OFAC, State DDTC & Commerce BIS want programs to have internal controls for compliance & written policies and procedures.
   - ❖ Export questionnaires in different areas to assist in catching issues

❖ Training
   - ❖ Who? When?
   - ❖ What type of training? (EAR/ITAR/OFAC) In person? Online? Other? (Faculty Meetings/Export reviews)
   - ❖ Technology Control Plans (TCPs)/All of Campus? Other special circumstances?
   - ❖ Job specific knowledge based on need

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Federal Agency Guidance for Effective Export Control Programs State DDTC & Commerce BIS

Export Authorization

- ❖ Jurisdiction (CJ & CC) & Export Classification
- ❖ ITAR license Exemptions/EAR License Exceptions
- ❖ Licensing
  - ❖ Registration with DDTC & DECCS/Registration SNAP-R (BIS)

Detecting & Reporting Violations

- ❖ Required by State DDTC for ITAR & Commerce BIS for EAR
  - ❖ Both agencies have ways to self-disclose violations
  - ❖ How do you make sure violation or possible violation will not happen again? Mitigation Plan?

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Imports & International Shipping

Imports are High Risk!

- ❖ Customs & Border Protection (CBP) is the 2nd highest revenue generating federal agency next to the Internal Revenue Service (IRS)
- ❖ Restricted Party Screening for All international vendors
- ❖ Import Broker
- ❖ Centralized Shipping Office
- ❖ Controls in Place

Commerce Department highlights international shipping as a high-risk activity.

- ❖ Export classification/license determination
- ❖ End–User & End Use? Who is the ultimate end-user/end use?
- ❖ EEI filing for permanent exports valued over $2,500.00 & items with export license. Must be filed Prior to export.
- ❖ ALL exports (temporary, permanent, hand-carry) to China (includes Hong Kong), Russia and Venezuela require an EEI filing PRIOR to export.

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Eliminate Silos, Collaborate & Educate!

❖Export & Trade Compliance needs help from colleagues on campus.

❖International shipping/Imports involves University Procurement & Accounts Payable as well as Environmental Health & Safety (EH&S) Dangerous Goods shipments

❖International Travel questionnaires often hosted through International travel Business Process

❖Hosting & Hiring International visitors & employees involves Human Resources & International Student & Scholars Services

❖Online Masters Courses & Professional Education assist Export & Trade Compliance with Controls for OFAC Sanctioned Countries and screening procedures.

❖Research Security can assist with physical security inspections for Technology Control Plans (TCPs) & more.

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Undue Foreign Influence

❖Export Controls & Trade Sanctions are foreign policy driven

Is Restricted Party Screening (RPS) sufficient for hosting & hiring international visitors & employees?

❖Review CV/Resumes & Affiliations closely including International Conferences/Collaborations.

   ❖Remember: it may take two years to finish a paper after employment/research ends

❖Open-source searches. COI & Disclose outside activity & international activity to federal funding sponsors

National Security Presidential Memorandum {NSPM}-33

❖**Established national security policy for U.S. Government-supported R&D**.

PURPOSE: strengthen protections of U.S. Government-supported R&D against foreign government interference and misappropriation, while maintaining an open environment to foster research discoveries and innovation that benefit the United States and the world. (*Source: GUIDANCE FOR IMPLEMENTING NATIONAL SECURY PRESIDENTIAL MEMORANDUM 33 (NSPM-33) ON NATIONAL SECURITY STRATEGY FOR UNITED STATES GOVERNMENT-SUPPORTED RESEARCH AND DEVELOPMENT*)

❖Applies to Research Institutions with over $50 Million in Federal Research funds.

Export Control Compliance involvement:

      ❖Research Security & Export Control Training; &

      ❖Foreign Travel Security Requirements of NSPM-33

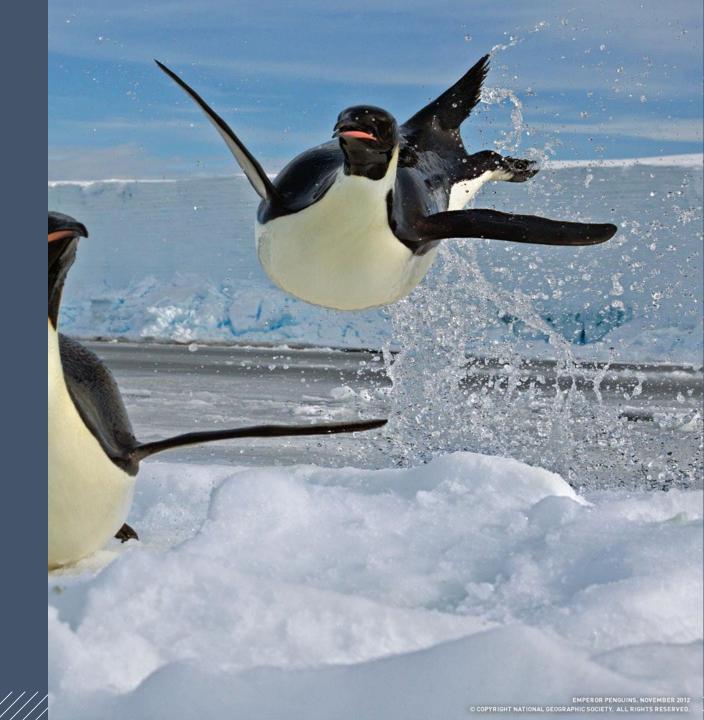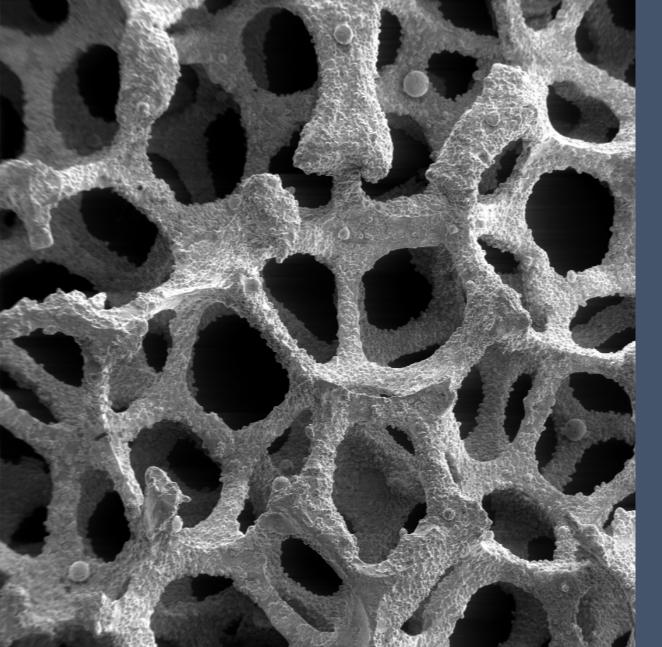   ❖How do you comply?

      ❖Examples……

Hypothetically... Questions

- What factors in your group's scenario might concern the university or federal law enforcement agencies, related to export controls?

- How might a violation of export control laws affect the university?

- When a situation like this happens or is planned during your research or activities, where might you turn for advice?

Hypothetically... 1

- Professor P performs fundamental research on how penguins play underwater tag, using military sonar equipment and non-military GPS gear. She is on location in Antarctica.

- She has two graduate assistants and needs to hire one more. The one with her in the field is from India. The second is back on campus, and she is from Duluth, MN.

- The best candidate for the open position is from Iran.

- The research is funded by National Geographic, which is withholding publication rights to the results in case there is something juicy, and they want to use it on their penguin reality television show.

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Hypothetically…

- Professor S runs a lab where her undergrads do assigned lab work, and graduate students do sponsored research. In particular, they use an electron microscope, controlled by the Commerce Department under the EAR.

- On a neighboring lab bench, another professor uses a plasma source to test materials in a low earth orbit setting, and that is controlled by the State Department under ITAR.

- Professor S is planning a sabbatical. Colleagues visit from Senegal, Sweden, and Syria. One has IT trouble, and Professor S shares his login info so they can check email.

- The guests tour the local breweries and go home to their respective countries. After the visit, the university discovers a data breach, thousands of research files.

Hypothetically...

- Professor Z visited Northwestern Polytechnic University and lectured on the surprising relationship between cannabis use and hepatitis, endemic to China.

- He is hoping to win a fellowship from the Chinese government, the Thousand Talents Program, and bring top biomedical researchers to the university.

- Knowing it could be an issue, he skips over the slides about some export-restricted equipment that was normally part of his presentation.

- Professor Z's computer was stolen from his hotel room in Weihai, but thank goodness a colleague loaned him a laptop. That way, he could log into your university systems and continue his work.

THANK YOU!

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With thanks to our colleague Jennifer Saak

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Q & A