

Export Controls When You're Not in Charge

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- Introductory quiz
- The administrator's role
- Definitions
- Day-in-the-life issues
 - Proposal
 - Award Initiation
 - Project
 - Award Completion/Ongoing
- Articles and case studies



NCURA Region I

supporting research...together

**How much do I
already know about
Export Controls?**

What can result from an export control violation?

- A. FBI investigation
- B. Personal jail time
- C. Personal fines (\$\$\$\$)
- D. All of the above

Your institution offers export control training.

A. Yes

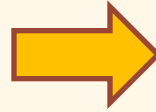
B. No

C. Honestly, I have no idea!

I can violate the export control laws by:

- A. Taking a piece of equipment with me when I travel out of the country.
- B. Sending a piece of equipment out of the country.
- C. Sending an email to a foreign colleague.
- D. All of the above.

Department/PI



Central Administration

- *People*
 - Foreign collaborators
 - Foreign nationals
- *Places*
 - Work or collaborate outside the U.S.
- *Products*
 - Information
 - Equipment
 - Technology

- *People*
 - Denied parties list
 - Deemed exports
- *Places*
 - Embargoed and sanctioned countries
- *Products*
 - Openly published
 - Shipments outside US
 - Dual use

Your role is very important!!!!

- Serve as liaison between researchers and your central office (or *Export Control Officer*) to **identify** export control issues
- Stand at the “front lines” for protecting your Institution’s ***fundamental research exemption***

You don’t need to resolve issues – identify them and bring them to your Central Administrator’s attention!!!!

Basic Export Control Definitions

- *Fundamental research*
- *Deemed exports/exceptions*
- *Fundamental research exemption*

Fundamental research is “basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community”.

Both Harvard University and Massachusetts General Hospital perform fundamental research!

Deemed Exports

“Any release of technology or source code (subject to the export regulations) to a foreign national while inside the U.S. (i.e., on campus) is *deemed* to be an *export* to the home country or countries of the foreign national.”

(Note: *Fundamental research* is NOT subject to the export regulations.)

Deemed Export *“Exceptions”*

Foreign nationals are not subject to the “deemed export” rule IF they have been granted:

- ✓ A permanent residence (“Green Card”)
- ✓ U.S. citizenship
- ✓ Status as a “protected person”

Fundamental Research Exemption

Research is considered *fundamental research* if your institution **does not accept** sponsor restrictions on publication of research results, and they **do not accept** sponsor restrictions on the use of foreign nationals performing the research.

The *fundamental research exemption* exempts your institution from requiring a *deemed export* license for research performed **on campus**.

“An export license is not required for research conducted on the University campus -- including research involving ...*Deemed Exports* -- IF there are no publication or access restrictions on the research. The University’s strict policy of open access and publication provides protection under the *fundamental research exemption*...

ALL RESEARCHERS are responsible for recognizing whether the technology or equipment involved in their research might be a Covered Technology and for complying with export control law. [Central Office] is available to assist researchers...”

**What do I do
with this
information?**

Day-In-The-Life *Red Flag* Issues

Proposal preparation and review process

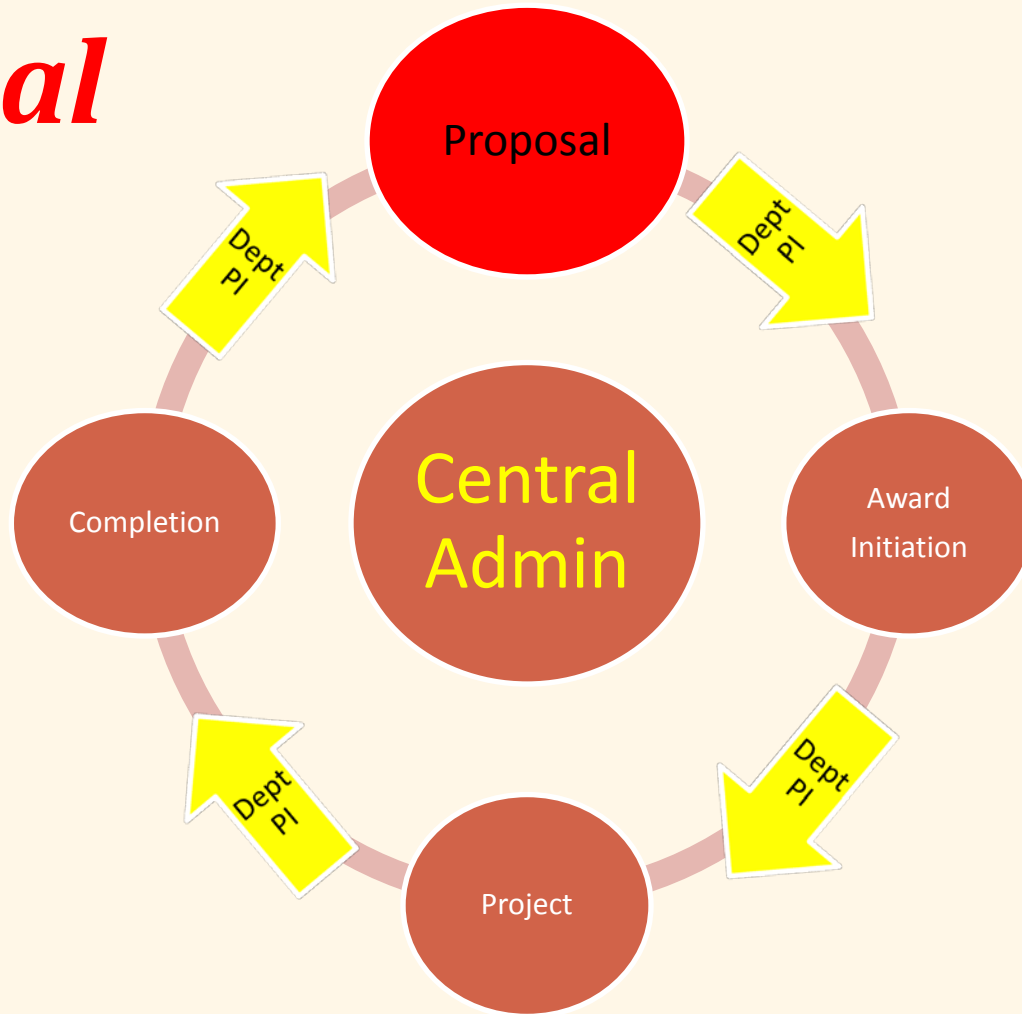
- ✓ Request for proposal/sponsor guidelines
- ✓ Preparation of statement of work

Award initiation and continuous monitoring

- ✓ Negotiation of award
- ✓ Export/shipment of equipment or material
- ✓ Foreign collaborators or foreign travel



Proposal Stage



Department/PI

- Request for proposal (RFP) or sponsor solicitation review

Central Administration “Red Flags”

- “Classified information” or “U.S. export regulations”
- “Foreign national” restrictions
 - Restricts non-U.S. entity participation based on country of origin
 - Prohibits access by non-U.S. citizens to project information
 - Prohibits the hiring of non-U.S. persons
- Publication or “disclosure of information” restriction
- Requirement to train specific personnel for a special purpose, such as a military or defense service

Department/PI

- Prepare **detailed** statement of work

Central Administration “Red Flags”

- Review for potential export control issues:
- Research to be performed outside of the U.S.
- Data, materials, or equipment to be exported or shipped to non-U.S. entity
- Third-party information or technology required (classified or export controlled?)

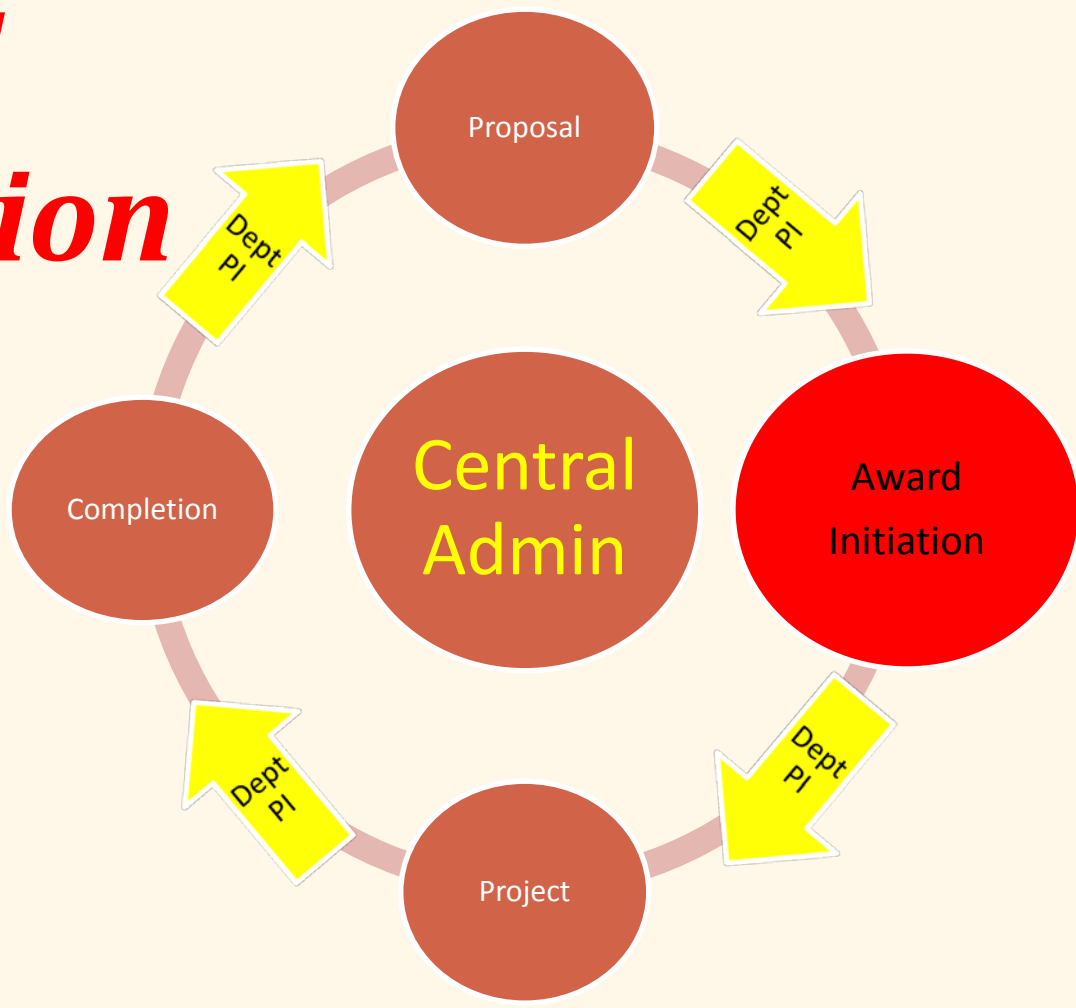
Department/PI

- Prepare internal approval routing “paperwork” **timely** and accurately

Central Administration “Red Flag Alerts”

- Foreign organizations/collaborators
- Research to be performed outside the U.S.
- Export of data, material, or equipment
- Potential military applications

Award Initiation Stage



Role of Central Administration (Red Flags - Cannot Accept)

- Publication **approval** requirement
“There shall be no dissemination or publication of information developed under this contract or contained in the reports to be furnished pursuant to this contract without *prior written approval* of the Contracting Officer.”
- Foreign national **approval** requirement
“By signing the contract, the Contractor certifies that *no foreign nationals are working* under the contract.”
- “Classified” or “export-controlled” information

Role of Department/PI

- ✓ Understand it might take time
- ✓ Provide input as needed by your central administration office
- ✓ Don't begin work before award is finalized!!

Dual-Use Research of Concern

- Certain pathogens and toxins have been identified by the federal government as at risk for misuse and could significantly impact public health or safety.
 - Good science, bad use
- Your Biosafety Officer or Institutional Biosafety Committee may flag protocols that use these pathogens or toxins in certain ways.

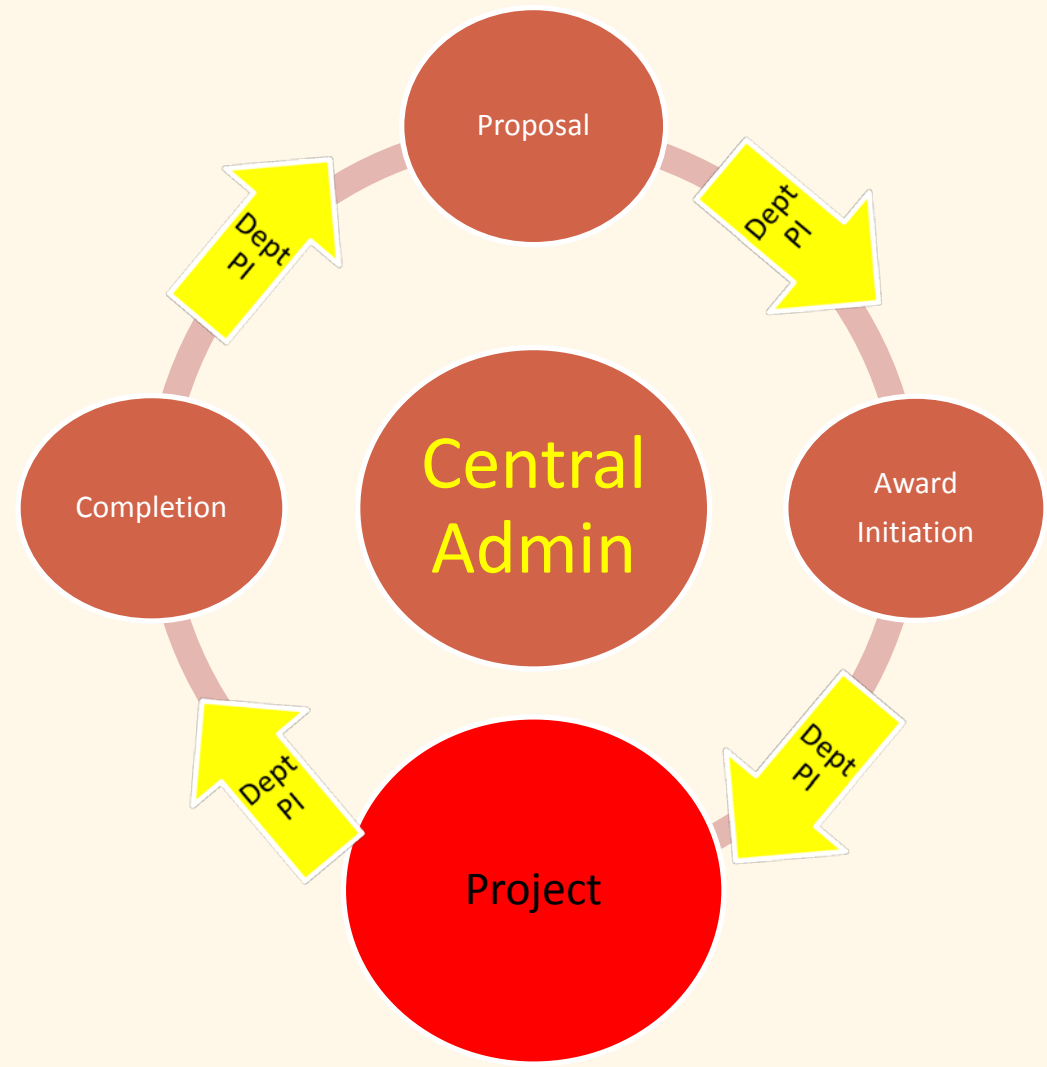


Dual-Use Research of Concern

- An award or contract for projects using these pathogens in certain ways may include requirements for control plans or mitigation plans.
 - These plans may include restrictions on publication of certain elements of the research or designating the research “classified” after-the-fact
- DURC restrictions should be flagged and discussed at the leadership level of your institution.



Project Lifetime



Role of Department/PI

Best scenario - Direct ship from vendor

- Vendor: “exporter on record”
- No need to obtain a license
- Timely shipping

Otherwise, notify your Central Administrator in advance and work with them!!!!

Role of Department/PI

Identify what you want to bring well in advance of travel

- Must be reviewed for any export restrictions or license requirements
- Be prepared to explain why items cannot be shipped or purchased in-country
- Other regulatory requirements: DEA, FDA, CDC, USDA, US Customs, or their foreign equivalents

Role of Central Administration

- Review equipment list – comprehensive, time-consuming
- Classify all items to be shipped (central administration, export control officer, vendor, *researcher, department*)
- Request license if necessary (can take *several months* or ultimately be denied)

Sharing materials such as reagents, plasmids, mice, etc.

- **Who** – does the researcher know the requestor?
- **What** – is the item export controlled or could it have a military application?
- **Where** – is the destination country under US sanction?
- **Why** – the requestor should explain what the material will be used for

Ultimately, is the researcher willing to take on the time and possible expense of obtaining a license, if necessary?

*Office of Foreign Assets Control ("OFAC") of the U.S.
Department of the Treasury*

- “Enforces economic and trade sanctions against targeted foreign countries, terrorists...in activities related to the proliferation of weapons of mass destruction...”
- Target specific nations in controlling significant financial transactions or services
- Sanctions can be comprehensive for the entire country or targeted at groups within

- Balkans
- Belarus
- Burma
- Burundi
- Central African Republic
- Cote d'Ivoire (Ivory Coast)
- **Cuba**
- Democratic Republic of Congo
- **Iran**
- Iraq
- Lebanon
- Former Liberian Regime of Charles Taylor
- Libya
- **North Korea**
- Somalia
- **Sudan**
- South Sudan
- **Syria**
- Ukraine/Russia
- Venezuela
- Yemen
- Zimbabwe

How does this relate to our role?

Department/PI/Central Administration

- Payments (compensation, honoraria, subcontracts) to embargoed countries/individuals/organizations
- Attendance at/planning of international conferences
- Surveys/services for embargoed countries/entities
- Collaboration with nationals of embargoed countries
- Foreign travel

It is very important to know who you're dealing with and to have your Export Control Officer perform a "Restricted Party Screening".

“Visual Compliance”

Online application that allows searches multiple government databases for items such as:
Restricted Party Screenings, CCL, ML

Example: China RPS List

eCustoms : VISUAL COMPLIANCE
<https://www.visualcompliance.com>

CHECKLIST OF BLOCKED PERSONS LOCATED IN: CHINA

As detailed on the following lists:
Arms Export Control Act Debarred Parties (ITAR)
Denied Persons List (BIS)
Entity List and "Unverified" List (BIS)
Specially Designated Nationals and Blocked Persons (OFAC)
Federal Register General Orders
Department of State Designated Terrorist Organizations
Department of State Terrorist Exclusion List (TEL)
Department of Treasury Palestinian Legislative Council List (PLC)
International Traffic In Arms Regulations Munitions Export Control Orders
Department of State Nonproliferation Orders
Foreign Persons Designated Under the Weapons of Mass Destruction Trade Control Regulations

104 records returned [Tuesday, June 11, 2013 04:09 PM EDT].

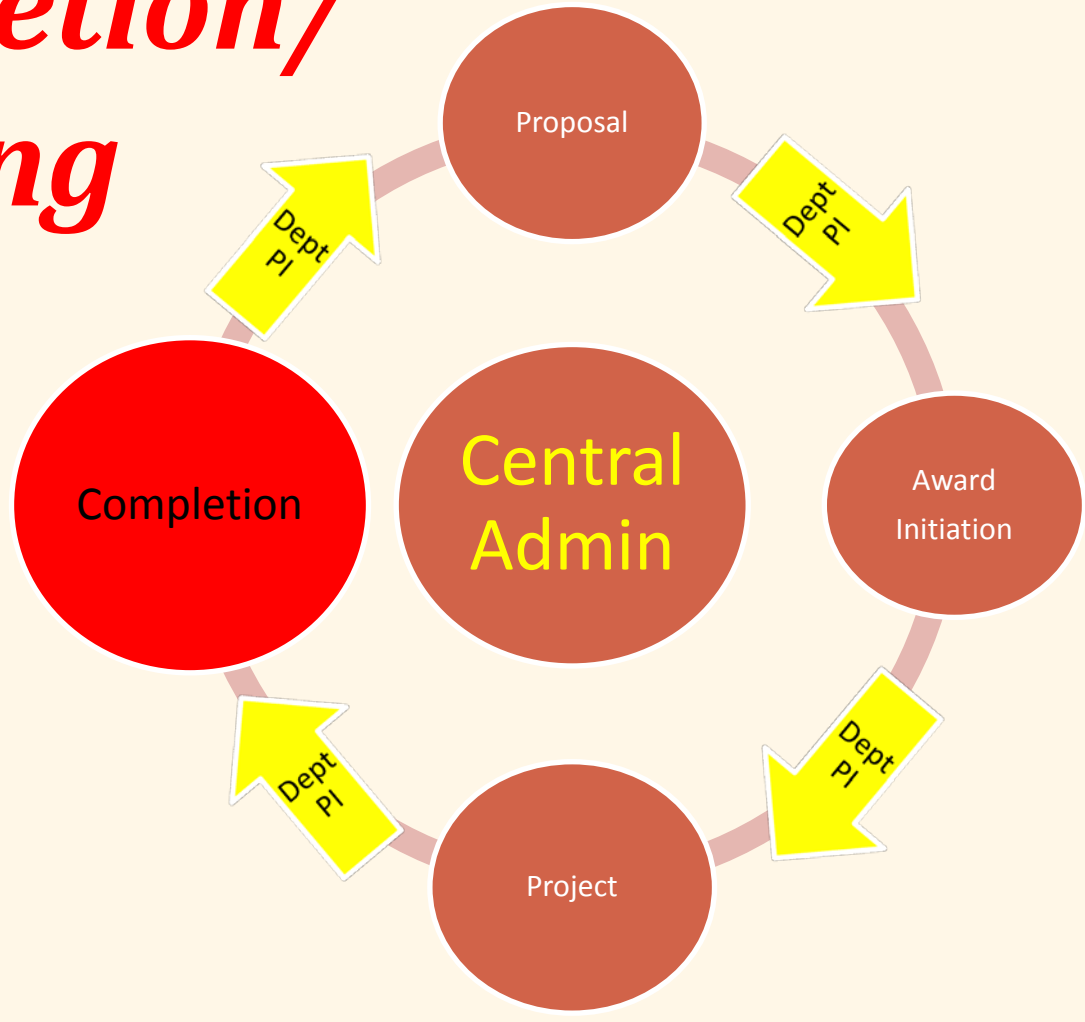
CHINA

- Prohibited as an export destination for defense articles and defense services under the ITAR (126.1), including denial policy and U.S. Arms Embargo countries.
- Restricted as an export destination under Department of State U.S. Arms Embargoes.
- Restricted as an export destination under EAR Part 736 General Prohibition Three (Foreign-produced direct product re-exports).
- Subject to military end-user and end-use based control policy for specified ECCN dual-use items under EAR Part 744.

List	Name
Entity List [BIS]	13 INSTITUTE, CHINA ACADEMY OF LAUNCH VEHICLE TECHNOLOGY (CALT) [13TH INSTITUTE] AKA 713 INSTITUTE OF BEIJING AKA INSTITUTE OF CONTROL DEVICES (BICD) AKA 13TH INSTITUTE CHINA AEROSPACE TIMES ELECTRONICS CORP (CATEC) AKA BEIJING INSTITUTE OF AEROSPACE CONTROL DEVICES (BIACD) AKA BEIJING AEROSPACE CONTROL INSTRUMENTS INSTITUTE AKA DESIGN AND MANUFACTURE CENTER OF NAVIGATION AND CONTROL DEVICE
Entity List [BIS]	33 INSTITUTE AKA BEIJING AUTOMATION CONTROL EQUIPMENT INSTITUTE (BACEI) AKA BEIJING INSTITUTE OF AUTOMATIC CONTROL EQUIPMENT CHINA HAIYING ELECTROMECHANICAL TECHNOLOGY ACADEMY AKA NO. 33 RESEARCH INSTITUTE OF THE THIRD ACADEMY OF CHINA AEROSPACE SCIENCE AND INDUSTRY CORP (CASIC)



Completion/ Ongoing



Non-funded agreements

- Data agreements
- Material transfer agreements
- Confidentiality, non-disclosure, proprietary information

Everyday discussions with researchers

- New foreign collaborator
- Foreign travel for conference or research
- Shipments

Change in scope of research projects

Performed on campus

Allows publication of all research results

No restrictions on foreign nationals

Involves no export of equipment or
technology

No problem – fundamental research!!!

Summary

- Export control laws and trade sanctions are complex laws and regulations with which we **ALL** must comply.
- Export license applications can take many months to obtain (or be denied)!

Department/PI

- Identify potential export control issues and bring them to your Central Administrator for evaluation and resolution **as soon as possible**

Central Administration

- Ensure staff is trained to deal with these issues

Related Articles & Case Studies

PRESIDENT'S EXPORT CONTROL REFORM INITIATIVE – Final Rule (December 30, 2014)

- ...move of certain spacecraft systems and related items, including certain satellites, from the United States Munitions List (USML) to the Commerce Control List (CCL).
- The rule removes those articles from the USML that were determined to no longer warrant control under Category XV – Spacecraft Systems and Associated Equipment, and seeks to more clearly define those Category XV items that will remain under ITAR control.
- **Does this affect your institution?**

Obama Intends to Lift Several Restrictions Against Cuba on His Own (December 2014)

- ...lift restrictions on travel, commerce and financial activities
- The Treasury Department will issue a series of regulations to ease agricultural exports and establish banking relations.
- The Commerce Department will move to allow United States companies to export construction and telecommunications equipment, among other things, for sale in Cuba.
- **Will this affect your institution?**

Time Article: UMass Bans Iranians From Some Engineering, Science Programs (February 17, 2015)

- “...aligns its policy with U.S. sanctions against Iran.”
- “The university will no longer admit students from Iran to some programs in engineering and natural sciences.”
- “The National Iranian American Council says UMass’ interpretation of the law is flawed and may violate protections against discrimination.”

<http://time.com/3711532/umass-bans-iranians-from-some-engineering-science-programs/>

Inside Higher Ed Article: U-Turn on Iranian Admissions **(February 19, 2015)**

- “...rather than restrict Iranian students from enrolling, they will develop "individualized study plans" that ensure that these students' courses and research endeavors comply with requirements imposed by the sanctions”
- “What a lot of schools have done is they issue an advisory to students -- ‘if you apply to certain programs, keep this in mind’ -- and some have even said this may have a bearing on our [admissions] decision-making process”

<https://www.insidehighered.com/news/2015/02/19/umass-amherst-reverses-policy-barring-admission-iranian-students-certain-fields>

Case Study #1

While reviewing a solicitation, you note no publication restrictions, but also the following requirement:

*“**Key Personnel.** Identify key personnel who will be involved in this effort including information on directly related education and experience. Identify any foreign nationals you expect to be involved on this project, country of origin and level of involvement.”*

The PI has proposed two graduate students to work on the project who are U.S. citizens and doesn't have any concerns.

- Are there red flags here?
- Potential issues?

Case Study #2

Following a [publicly open, non-classified] conference, a faculty member in your department extends an invitation to a researcher they met from the Beijing University of Technology in China to spend a year working in her lab in the U.S. This faculty member, in particular, works primarily with for-profit industry sponsors and has, you suspect, proprietary information available to her. You are also aware she consults for industries outside of the university.

- What potential export issues do you see here?
- Are they manageable?

Additional Resources

- **Department of Commerce Export Administration Regulations (EAR):**
<http://www.bis.doc.gov/policiesandregulations/ear/>
- **Intro to Commerce Department Export Controls:**
<http://www.bis.doc.gov/licensing/exportingbasics.htm>
- **Department of Commerce, Commerce Control List:**
<http://www.gpo.gov/fdsys/pkg/CFR-2012-title15-vol2/xml/CFR-2012-title15-vol2-part774-appNo-.xml>
- **Department of State, U.S. Munitions List (USML):**
<http://www.gpo.gov/fdsys/pkg/CFR-2011-title22-vol1/xml/CFR-2011-title22-vol1-part121.xml>
- **Department of State International Traffic in Arms Regulations (ITAR):**
http://pmdrtc.state.gov/regulations_laws/itar_official.html
- **Department of Treasury Office of Foreign Assets Control:**
http://pmdrtc.state.gov/regulations_laws/itar_official.html

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