Export Controls

Recent Regulatory Changes
PANEL MEMBERS

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LEARNING OBJECTIVES

• Impact of recent regulatory changes
• Institutional approaches to export controls
• Integrate functional areas
• Case studies
RECENT CHANGES IN EXPORT CONTROLS

• Scot T. Allen
ABCs of Export Controls

• What?
  • US Munitions List (ITAR), Commerce Control List (EAR), Equipment, Materials, Software, Technology, FRE
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• Where?
  • Policy of Denial (ITAR 126.1 Countries), BIS Country Chart, Country Groups, OFAC Sanctions
ABCs of Export Controls

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• Where?
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• Who?
  • Debarred Parties, Entity List, Unverified List, Specially Designated Nationals
How can we more effectively support research?

- Restricted Party Screening
- Identify restrictions early, RFP
- Partner for contract negotiations
- Remove XC clauses when possible
- Request disclosure prior to sending
- At award: TCP, license application
Changes to end-use definition

- Expansion of Export, Reexport, and Transfer (in-Country) Controls for Military End Use or Military End Users
  - Federal Register 4/28/2020
  - Shipments to China, Russia, and Venezuela
  - Expanded reporting, Electronic Export Information (EEI)

- AUECO comment letter
  - What constitutes “support” or “contribution” to the operation, installation, … “production, or development” of a military item?
  - What criteria should universities use to determine whether an end user is a “person or entity whose actions or functions are intended to support ‘military end uses’”? 
Designation of Companies as Controlled by Chinese Military

• DoD identifies “Communist Chinese Military Companies”
  • Deputy Secretary of Defense, 6/24/2020
  • “Ensure that our exchanges with China do not harm our national security or economic competitiveness.”
  • Restricted party screening (and continuous screenings) of sponsors, vendors, donors
  • Review of existing sponsorship agreements

• Proclamation – Visas, Chinese military-civil fusion
Hypothetical Case Study 1

- Industry Consortium - Geological
- Seismic, proprietary information; fundamental research output
- Russia sanctions
  - EAR Part 746, Supplement No.2, Russian Industry Sector Sanctions
  - OFAC Directive 4
- Team: PI, ORA, ECO, and OGC
- International members: Attest
Hypothetical Case Study 2

• Defense project
• CUI, Export Controls
• Rapid tunneling
• 1) ITAR, 2) EAR
• TCP
• License determination
• No license required
Recent Trends related to Foreign Influence

Kelly J. Hochstetler
Inextricable Links to Concerns About Foreign Influence

• Federal Sponsor are taking a closer look at
  • Other Support
  • All professional positions, appointments and affiliations

• Foreign Talent Programs
  • FBI Public Service Announcement 7/16/20

• PRC’s Military Civil Fusion Program
  • Increased scrutiny of F and J visa applicants affiliations

• Section 117 Reporting of Foreign Contracts & Gifts
Vetting Foreign Entities & Activities: Beyond Export Controls

- Expanded Use of Restricted Party Screening
  - Job applicants
  - Visiting students and scholars
  - Vendors
  - Institutions Hosting University Researchers
  - Academic Agreements
  - Student applicants
  - Donors
  - Research Sponsors, Subs and Collaborators
Providing Information About Foreign National Team Members

• Certification Requests from Sponsors
  • Formal Requirements in Agreements
  • Informal Inquiries

• Examples of Requested Certifications
  • Participation of Foreign Nationals
  • Foreign Talent Program Participation
  • Foreign Military Affiliation

• Additional Challenges
  • Dual-Appointments
  • IPAs
Case 1: NETL Award Requirement

- You receive an award from NETL for a fundamental research project which includes a requirement that all foreign nationals complete and submit NETL F 142.1-1A.

- The cover sheet indicates that
  - **Purpose**: Determine unclassified access to DOE/NETL facilities, personnel, information, programs, equipment, or technologies regardless of location.
  - **Disclosure**: Failure to provide the information may result in denial of access to DOE or contractor facilities, and/or DOE/NETL personnel, information, programs, equipment, or technologies regardless of the location.
## INSTRUCTIONS FOR SECTION A – PERSONAL DATA (NETL F 142.1-1A)

| Block 1a. | If no middle name, enter “NMN.” |
| Block 3. | Access by foreign nationals 17 years of age or younger who are involved in non-work-related activities, are exempt from the NETL foreign national access request, review, and approval process. |
| Block 9. | A U.S. Social Security Account Number (SSAN) is required for all foreign nationals on assignment. |
| Block 10. | Other identification documentation may include driver’s license, student ID, Employment Authorization Document, Form I-797C (Notice of Action), etc. |
| Block 17. | All foreign nationals with an F-1 Student Visa (and J-1 Visa students) must provide a list of all schools attended and the graduation dates from each school. In addition, a letter from the host school (Responsible Officer or Designated School Official) is required stating that the student is enrolled full-time (12 hours per week minimum) prior to access start date. A copy (pages 1 and 2) of the USCIS Form I-20 A-B/ID (Certificate of Eligibility for Nonimmigrant (F-1) Student Status - for Academic and Language Students), or Form DS-2019 (Certificate of Eligibility for Exchange Visitor (J-1) Status) must also be provided by the student’s host school. |

Return the completed form to your NETL point of contact with this OUO Cover Sheet.
Case 2: NSF Funded Facility Affiliation Inquiry

A Chinese national graduate student at your institution has a jointly funded fellowship he is conducting at an NSF funded facility. After seeing an announcement about the President’s Directive involving Chinese F and J students and scholars, the director of the NSF funded facility asks your institution to certify that the funded student does not have any ties to the People’s Liberation Army or any entity engaged in China’s Military Civil Fusion Program.
Controlled Unclassified Information (CUI) & Cybersecurity Maturity Model Certification (CMMC)

Johanna R. Eagan
Controlled Unclassified Information (CUI) is “information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls.”

32 CFR 2002.4(h)
# CUI Registry – Groups/Categories

<table>
<thead>
<tr>
<th>Critical Infrastructure</th>
<th>North Atlantic Treaty Organization (NATO)</th>
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<tbody>
<tr>
<td><strong>Defense</strong></td>
<td><strong>Nuclear</strong></td>
</tr>
<tr>
<td><strong>Export Control</strong></td>
<td>Patent</td>
</tr>
<tr>
<td>Financial</td>
<td>Privacy</td>
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<tr>
<td>Immigration</td>
<td>Procurement &amp; Acquisition</td>
</tr>
<tr>
<td>Intelligence</td>
<td>Proprietary Business Information</td>
</tr>
<tr>
<td>International Agreements</td>
<td>Provisional (Homeland Security)</td>
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<tr>
<td>Law Enforcement</td>
<td>Statistical</td>
</tr>
<tr>
<td>Legal</td>
<td>Tax</td>
</tr>
<tr>
<td>Natural &amp; Cultural Resources</td>
<td>Transportation</td>
</tr>
</tbody>
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Common CUI Types

• Controlled Technical Information is *technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination.*

• Covered Defense Information is Controlled Technical Information that is
  • Marked or otherwise identified in the contract and provided to the contractor by the DOD, and
  • Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract
Safeguarding CUI

• NIST SP 800-171 – Sets forth the required security requirements to protect CUI on non-federal systems.

• NIST SP 800-172 – Final Draft published July 2020 to supplement 800-171 (formerly NIST SP 800-171B)

• Effective Coordination between IT, Research Compliance and Sponsored Programs
Cybersecurity Maturity Model Certification (CMMC)

- CMMC combines various cybersecurity standards and best practices and map these controls and processes across several levels that range from basic to advanced.
- Requires an audit and certification by independent third party organizations
- Anticipated that it be required for doing work for the DOD
Identifying Research with CUI

• Look for RFPs or Contracts that include any reference to:
  • NIST SP 800-171
  • NIST SP 800.53
  • FAR 52.204-21
  • DFARS 252.204-7000, 252.204-7008, 252.204-7012
  • Controlled Unclassified Information (CUI), Controlled Technical Information (CTI), or Controlled Defense Information (CDI)

• Documents received from project sponsor or collaborator are labeled with “Controlled,” CUI, CTI, or CDI
Case Study 1 – Third Party Software

• DOD Contract with CUI/CDI Designation

• School is receiving data from several collaborators

• Anticipated utilization of a third party software modeling tool… That is not CUI compliant.
Live Question & Answer Session