Defining Export Controls

What is an Export?
- Occurs when a controlled physical item or controlled information is transmitted outside the United States borders.

Deemed Export
- Occurs when a controlled physical item or controlled information is transmitted to a foreign person in the United States.
- Deemed to be an export to the home country or countries of the foreign person.

Defining "Foreign Person"

Foreign Person
- Individuals in the United States in nonimmigrant status.
- Individuals unlawfully in the U.S.
- Branch of foreign government or any foreign corporation or group that is not incorporated or organized to do business in the U.S.

Exclusions
- U.S. citizen.
- Lawful, permanent resident of the U.S.
- Refugee.
- Protected political asylee.
- Someone granted temporary residency under amnesty or special agricultural worker provisions.
Export Control Laws

- Growing intersection of cutting-edge research with national security and foreign policy
- Many foreign students seek education from U.S. Universities
- Universities are becoming a focal point for export control compliance

9/11 changed everything...

Export Control Laws

- Why?
  - Advancement of foreign policy goals
  - Export of goods and technology that might contribute to military expertise of adversaries
  - Prevent proliferation of weapons of mass destruction
  - Fulfill international obligations (treaties)
  - Prevent terrorism

- Laws apply broadly—not just to sponsored research
  - Visitors
  - Employment
  - Financial Transactions
  - International Travel
  - International Collaboration

9/11 changed everything...

Where do export control laws come from?

- Export Administration Regulations (EAR)
  - Department of Commerce Bureau of Industry and Security (BIS)
  - Dual use items

- International Traffic in Arms Regulations (ITAR)
  - Department of State Directorate of Defense Trade Control (DDTC)
  - Defense/Military Items

- Office of Foreign Assets Control (OFAC)
  - Department of Treasury
  - Boycotts, embargoes, sanctions (countries, entities, individuals)
System Policy and Agency Rules and Procedures

- System Policy 15.02, Export Controls
  - Required Agency Rules have been approved by System
    - 15.02.99.A (X, V), Export Controls
    - Originally sent to System July 5, 2012
    - Approved January - February 2013
    - Commitment of compliance
  - Agency Procedures approved
    - 15.02.99.A (X, V)1-1, Export Controls
    - Directs employees to the AgriLife Export Control Manual for detailed procedures in relation to export controls

Export Control Laws Exclusions

- Fundamental Research Exclusion (FRE)
  - Basic and applied research in science and/or engineering where the resulting information either is ordinarily published and shared broadly in the scientific community, or where the resulting information has been or is about to be published
- Educational Information
  - General scientific, mathematical, and engineering principles released by instruction in catalog courses and associated teaching laboratories
- Public Domain/Publicly Available
  - Information that is published or generally accessible or available to the public
    - Applies so long as the federal government has not imposed export controls or restrictions as a condition of funding and there is no reason to believe that the exported information will be used for weapons of mass destruction

How do exclusions affect AgriLife?

- Fundamental Research Exclusion (FRE)
  - EAR 734.8
    - "Fundamental research is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community."
  - Negating the FRE
    - Publication Restrictions
    - Side Deals (NDAs or acceptance of export-controlled information)
    - Sponsor Approval Prior to Publication
    - Defense Services
    - ITAR
    - Restricting Foreign National Participation
Questions to Ask

- Confusion with the FRE
  - Information that "arises during or results from" the research
  - No blanket exemption for information that is transferred
  - Preexisting export controlled technology

- Does the research...
  - Involve military, defense, chemical or biological weapons, encryption, space, or other dual-use/export restricted technologies?
  - Collaboration with foreign colleagues?
  - Transfer or shipment of equipment or funding outside the U.S.?
  - Take place outside of the U.S.?
  - Involve use of export-controlled items or information provided by a third party?
  - Involve contractual restrictions (publication or access to results)?
  - Involve collaboration with sanctioned or embargoed countries?
  - Involve end-use violates existing export controls?

Sponsored Research

- Invention Disclosures
- Technology Commercialization Coordination and Screening

Red Flags - Incorrect Assumptions

- "The information can't be controlled to <country A> because they're our allies."
- "We can't call it ITAR because the sponsor won't tell us what the end-use is."
- "My document is marked both 'controlled' and 'uncontrolled when printed.' My copy is printed, so it's uncontrolled."
- "I'm not conducting any research that could affect national security."
- "The item I'm taking to <embargoed or sanctioned country B> isn't controlled per se."
**Financial Transactions (International Involvement)**

- AgriLife Administrative Services
- Vendor Setup
- Outgoing Wire Transfers
- Procurement (over $10k)
  - Internal Screening Process
  - Forwarded to AgriLife Risk and Compliance for appropriate export controls checks
  - No business process change for employees
- Accounts Receivables
  - AG-712, Restricted Party Screening Request
  - Department/Unit responsibility

**Conferences Allowing International Participation**

- AgriLife Conference Services
  - Roster Access
  - Restricted Party Screening
  - PI Consultation

- Other Management
  - PI responsibility to notify AgriLife Risk and Compliance
  - Restricted Party Screening
  - PI Consultation

**Non-Sponsored Contracts and Agreements**

- AgriLife Contracts
  - MOUs
  - MOAs
  - Independent Contractors
  - MTAs

- Internal Screening Process
  - Forwarded to AgriLife Risk and Compliance for appropriate export controls checks
  - No business process change for customers
International Shipments

**Individual**
- Ultimately the individual's responsibility

**Agrilife Risk and Compliance**
- Works closely with individuals when shipping controlled items or information

NOTE: There's no centralized shipping department within AgriLife or on campus, which elevates the risk and ultimately leaves the responsibility on the individual.

International Visitors

- Visitor Exchange Program
  - Non-Exempt
  - AG-713/5VS
  - Host Responsibility
  - Restricted Party Screening

- Other Visitors
  - Exempt
  - Host Responsibility
  - Restricted Party Screening

- Agency Procedures

International Employment

- AG-717, Checklist for Export Controls Issues When Hiring Foreign Nationals
- Submitted with new hire paperwork, after the employment offer has been extended
Training and Violations

What should I know?

- TAMU System
  - TrainTraq Course #2111212, Export Controls and Embargo Tracking
  - Currently not required for all employees
  - Required for AgriLife employees to participate in opportunities with international travel
  - Projects involving personal or institutional physical travel
  - An initial training was conducted in 2010
  - Every 2 years

- Violations
  - Empowered Official: Assistant Director for Risk and Compliance
  - Can be reported to the Empowered Official or via Ethics Point Hotline
  - Severe institutional and individual sanctions
    - Including but not limited to: loss of research funding, loss of export privileges, civil and criminal penalties up to avoidable imprisonment
    - AG-716, Non-Compliant Employee

Communications Plan

How to get the word out

1. Sent initial email announcing AgriLife's commitment of compliance (sent signed by Directors on July 11, 2013)
2. Sent a series of emails announcing process changes one-by-one (most complete)
3. Presented at the AgriLife Staff Conference
4. Provide face-to-face training sessions

Implementation

- Phase 1 – Sponsored Research
- Phase 2 – Training Opportunities
- Phase 3 – International Travel
- Phase 4 – Wire Transfers
- Phase 5 – Independent Contractors
- Phase 6 – Conferences
- Phase 7 – Non-Sponsored Contracts
- Phase 8 – Procurement
- Phase 9 – Equipment
- Phase 10 – Shipments
- Phase 11 – Vendors
- Phase 12 – International Visitors
- Phase 13 – Employment

International Travel

AgriLife Export Controls Compliance Program Manual: Section 7

- AG-710: International Travel Export Controls Acknowledgment
- AG-715: International Travel to Extreme Risk Countries
- System International Travel Questionnaire
- Agency Procedures
  - 24.01.99.A1X, V0.01, International Travel
- International Travel Video
  - TrainTraq 2111728
- Weekly Email
- AD-HOC “AGRILIFE, ISO702FORERIGN ONE” for 02 ADLOC Employees
Contacts

AgriLife Risk and Compliance
http://agrilife.tamu.edu/risk-compliance/
Export Controls Compliance Program
http://agrilife.tamu.edu/risk-compliance/export-controls

Lauren Schroeder | lschroeder@ag.tamu.edu | 979-458-3289
Bob Hensz | rhensz@tamu.edu | 979-845-4766