OBJECTIVES

• To provide basic knowledge of International Traffic and Arms Regulation (ITAR)
• Understanding what is ITAR restricted
• Understanding contractual requirements
What is the Intent of ITAR?

- Restrict exports of goods and technology that could contribute to the military potential of adversaries
- Prevent proliferation of weapons of mass destruction (nuclear, biological, chemical)
- Prevent terrorism
- Comply with U.S. trade agreements and trade sanctions against other nations

What are the Export Control Laws and their Federal Agencies?

- State Department: International Traffic in Arms Regulations (ITAR), which pertain to inherently military technologies

- Commerce Department: Export Administration Regulations (EAR), which pertain to “dual use” technologies (civilian or military use)
Who Can Access?

**Eligible:**

*U.S. Person*
Meaning a person (as defined in § 120.14 of the ITAR) who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person as defined in § 120.16 of this part.

**Who Can Access? cont’d**

**Not Eligible:**

*Foreign Person*
*Foreign person* means any natural person who is not a lawful permanent resident as defined by 8 U.S.C.1101(a)(20) or who is not a protected individual as defined by 8 U.S.C.1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).
“OK, SO I WHAT DOES THIS ALL MEAN…”

HOW DO I KNOW WHAT TECHNOLOGY IS ITAR RESTRICTED?

Export Guidance

CCL
(Dual Use Technology)

USML
(Military Technology)
What is Considered Export Controlled?

ITAR:
• Defense articles, defense services, related technical data list under the 21 categories on US Munitions List (USML)
• Inherently military in nature (designed to kill/defend against death in military situation)
• Includes weapons, chemical and biological agents, vehicles, missiles, equipment, all satellites

What is Considered Export Controlled? (cont’d)

EAR:
• Covers dual-use items (items designed for commercial purposes but that can have military applications (computers, pathogens, etc)
• Covers both the goods and the technology listed under the 10 categories in the CCL.
• Balances foreign availability, commercial and research objectives with national security
ITAR includes equipment with potential non-military applications

- Example 1: Vaccines, antidotes and medical diagnostics specifically designed to protect against or counter chemical and biological warfare agents.

- Example 2: Powerful explosives, propellants and incendiary agents (including, e.g., propellants having a force constant of more than 1,200 kJ/Kg).

- Example 3: Global Positioning System (GPS) that can operate at speeds in excess of 515 m/sec (1,000 nautical miles/hours) and at altitudes in excess of 18 km (60,000 feet) or designed or modified for use with unmanned air vehicles.

Technical Data Regulated by ITAR

- Technical Data -- information required for the design, development, production, manufacturing, assembly, operation, repair, testing, maintenance or modifications of defense articles, which are regulated by ITAR.

- Examples of Technical Data:
  - Blueprints, drawings, plans, instructions, diagrams, photographs.

- Technical Data Exclusion: “Technical Data” does not include information concerning general scientific, mathematical or engineering principles commonly taught at universities or information in the public domain.
Export Administration Regulations ("EAR")

- EAR covers equipment, materials and other technologies with both commercial and military applications, the so-called "dual use" technologies (e.g., chemicals, satellites, software, computers, etc.).

- EAR’s list of controlled technologies is called the Commodity Control List (CCL) and is available at http://www.bis.doc.gov/policiesandregulations/ear/index.htm

What if my item is not list under the USML or CCL?

Defense Technology Security Agency (DTSA)

International Program Office (IPO)

Foreign Disclosure Officer (FDO)
Exclusions from Export Control Laws

- Public Domain Exclusion (ITAR, EAR)
- Education Exclusion (ITAR, EAR)
- Employment Exclusion (ITAR only)
- Fundamental Research Exclusion (ITAR, EAR)

Public Domain Exclusion

- Information and research results that are generally available to the interested public through:
  - Libraries, bookstores, or newsstands,
  - Trade shows, meetings, seminars in the U.S. open to the public,
  - Published in certain patent applications, or
  - Websites accessible to the public.
Education Exclusion

- Information to students, including students who are foreign nationals, concerning general scientific, mathematical or engineering principles commonly taught in school, colleges or universities.

Employment Exclusion

- Information is not subject to export control laws with a foreign national if the foreign national:
  - is a full-time, bona-fide employee;
  - is not a national of certain countries of concern;
  - has a permanent address while employed in the U.S.; and
  - has been informed in writing not to transfer ITAR information to other foreign nationals.
Fundamental Research Exclusion

• Information generated under fundamental research, defined as basic or applied research in science or engineering
  – at an accredited institution of higher learning in the U.S.; and
  – resulting information is ordinarily published and shared broadly in the scientific community.
• Fundamental research is to be distinguished from research with results, which are restricted for proprietary reasons.

The Fundamental Research Exclusion Is Void If:

• A company accepts any contract clause in the sponsored research contract that:
  – Gives the sponsor the right to withhold from publication information resulting from the research;
  – Forbids the participation of foreign nationals; or
  – Otherwise operates to restrict participation in research and/or access to and disclosure of research results.
Grants vs. Contracts

• Grants
  – Used for the purpose of granting fundamental research.
  – Little or no restrictions (i.e., public release)

• Contracts
  – Used mainly for “defense services” purposes.
  – May contain restrictions/classification (i.e., Limited distribution, DD254, etc.)

What Do I Need to Know When Awarding Grants or Contracts?

• The United States Department of Defense ("DoD") has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement ("DFARS") Parts 204, 235, and 252 to address contractor requirements to comply with export control laws and regulations when performing DoD contracts.
What Do I Need to Know When Awarding Grants or Contracts? (Cont’d)

DFARS 252.204-7008, Requirements for Contracts Involving Export-Controlled Items.

• This clause applies when the requiring activity has given the contracting officer pre-solicitation notice that performance of the contract is expected to involve export-controlled items. It requires the contractor to comply with all applicable laws and regulations regarding export-controlled items, including the requirement for contractors to register with the Department of State in accordance with the ITAR.

What Do I Need to Know When Awarding Grants or Contracts? (Cont’d)

• The recently introduced DFARS clause recognize that export control requirements may impact the execution of a contract

• Development of a RFP should consider disclosure as a basis to determine if foreign involvement is appropriate in a prime and/or sub capacity
What Do I Need to Know When Awarding Grants or Contracts? (Cont’d)

• Compliance with ITAR is the contractor’s responsibility: the contractor is responsible for determining applicability of export control regulations.

• The contractor is responsible for registering with DDTC, as required under ITAR for all manufacturers of defense articles, regardless of whether the manufacturer is actually exporting any defense articles.

• The contractor has the responsibility to flow-down the compliance requirements to all subcontracts that are expected to involve export-controlled items.

References

International Traffic and Arms Regulation (ITAR)

Export Administration Regulation (EAR)

Contact Security Department or Foreign Disclosure Officer for help
Thank you for your attention!

QUESTIONS