



# EXPORT CONTROL COMPLIANCE

Advanced Annual Training 2016

# Export Control Organizational Chart



# Program Roles & Responsibilities

- Oversight Committee
  - Senior staff members are responsible for overall program review and support
- Export Control Specialist (Larry Wilson)
  - Administration of Export Control Plan
    - Creation of relevant documents and forms
    - Record keeping
    - Submission of license applications
    - Training
    - Assists with classification of export controlled materials

# Principal Investigator Responsibilities

- Principal Investigator / Project Leader
  - Proper handling of controlled material
  - Ensures all personnel involved with an export controlled project are properly instructed in the handling of controlled materials
  - Evaluation of projects/proposals for export control issues and documentation of that review
  - Ensure that visitors are vetted and have signed an NDA if required
  - Ultimately responsible for compliance with all export control laws and regulations
- All Staff
  - Responsible for the protection and proper handling of controlled items/data in their possession

# Export Control Policy Summary

- **Topic 135: Our Policy Statement**

- It is the policy of Southern Research Institute to fully comply with all applicable federal statutes, executive orders, regulations, and contractual requirements for the safeguarding of controlled commodities or technical information in its possession. This includes full and total compliance with export control regulations.
- Under no circumstances shall employees or other persons associated with Southern Research Institute (e.g. students, visiting scientists, etc.) engage in activities in contravention of U.S. export control laws.

# Southern Research Export Control Program

- **The purpose of the Export Control Program is to:**
  - Inform employees regarding policy and procedures.
  - Establish organization-wide processes to ensure we conduct technical work in a manner that is in compliance with all regulations.
  - Provide ongoing education and assistance to employees regarding compliance requirements.

# Review of Export Controlling Agencies

- The **Department of State** through the International Traffic in Arms Regulations (**ITAR**), (classified and unclassified defense materials and data) (Arms Export Control Act 1976)
- The **Department of Commerce** through the Export Administration Regulations (**EAR**), (unclassified dual use materials and data, proprietary data, and commercial products) (Export Administration Act 1979)
- The **Department of Treasury** through the Office of Foreign Assets Control (**OFAC**)(flow of money)
- The **Department of Census**, (trade statistics)

# Purpose of Export Control Laws

- Restrict export of goods and technology with military potential
- Prevent proliferation of weapons of mass destruction
- Advance U.S. foreign policy goals
- Protect economy and promote trade



# Key Definitions

- **Export** – Commodity, data, services, or technology that Southern Research ships/transmits out of the country
- **Deemed Export** – an export that doesn't necessarily leave the country but is transferred to a non-U.S. person
  - Technology or data behind an item is transferred to a non-U.S. person:
    - **Physically, Visually, or Orally**
  - It doesn't matter if the person is escorted or not.
  - Because very little of our research is actually shipped outside of our country, *deemed exports may be the greatest risk of significantly violating the EAR or ITAR regulations.*

# Key Definitions

- **Fundamental Research** – Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community.
  - Research that is **published or subject to publication and generally accessible to the public is considered fundamental research.**
  - Research **restricted from publication is NOT fundamental research (some government work and almost all commercial work)**
  - Research that **restricts access to only U.S. persons is NOT fundamental research**

**Fundamental Research is not subject to the EAR or ITAR regulations.**

# Key Definitions

- **U.S. Person** for the purpose of export compliance is:
  - U.S. citizen or
  - Permanent resident (green card) or
  - Protected individual, political asylee or under amnesty or
  - Business incorporated in the U.S.A.
- There are no licenses required for shipping ITAR or EAR controlled items to a U.S. person in the USA; unless that person or entity has been restricted or debarred. There may be licenses required for shipping controlled items to non-U.S. persons in the U.S.

# What is a Controlled Export?

- Commodities, data, services, and technology items listed on the United States Munitions List or Commerce Control List
- Items predominately military or dual-use (commercial and military application) in nature
- Items designed or modified for use in a defense article
- Technology- specific information required for the development, production, manufacturer, assembly, operation, repair, testing, maintenance or modification or use of defense or dual use articles (such as blueprints, drawings, photographs, plans, instructions or documentation)
- Proprietary Technology

# What is not Considered a Controlled Export?

- Export controlled information does not include:
  - basic marketing information on function or purpose
  - general system descriptions
  - information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities
  - information in the public domain
  - fundamental research data

# Export Control Plan or General Technology Control Plan

- Describes our efforts to control and protect the materials and data in our possession from those with no right to it.
- For situations not covered in this plan a “Specific Technology Plan” may be required.
  - A template is available on the Export Control web page.
- **Summary of Major Changes to Plan since 2014:**
  - Added requirement to evaluate all internal IR&D projects for Export Control Concerns.
  - Removed destination control statements from the manual, they are available on the Export Control page on SRInsider.

# Source of Information

- Southern Research's Export Control Program Information is found on SRInsider.
  - Items available:
    - Forms
    - Export Control Plan
    - Guidance Documents
    - FAQ's
    - Destination Control Statements
    - Links to Government sites
    - Training [Compliance Users List](#)
    - Process for Electronic Data Storage and Transmission of ITAR Data at ERC
    - Foreign Visitor Handling Process at ERC (New)

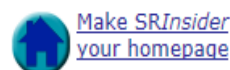
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## Regulatory Links

## Announcements & Events

### Temporary Credit Union Hours

Posted 02/18/16

Starting February 29, 2016, the Credit Union will only be open Monday, Wednesday and Friday from 9 am until 2 pm. We will be moving across the street to the Dental Arts Building in the coming months. After the move we will resume our normal operating hours.

We are also looking for someone to work part-time as an Assistant Manager. Please contact the Credit Union if you, or someone you know, are interested. We will be celebrating our 60th Anniversary in June. Be watching for further announcements here and on Facebook.

### Request for Proposals: Pilot Grants in Medical Device Development

Posted 02/17/16

AIMTech (Alliance for Innovative Medical Technology) has announced a request for proposals in medical device development. The RFP opportunity is open only to Southern Research and UAB researchers. For full details, see the full RFP [here](#).

### EH&S Transition

Posted 02/16/16

As many of you know, our Manager of

## Current News

### Benjamin Owusu Wins First Place in UAB's Darwin Day Poster Session

Posted 02/15/16

On February 11 and 12, 2016, UAB's departments of anthropology and biology hosted their annual Darwin Day events to celebrate scientific research in evolutionary biology and other disciplines. Events included a panel discussion, lecture, reception, and a poster session highlighting exciting new research. Southern Research's Benjamin Owusu (Drug Discovery) won first prize in the poster session for his presentation of his work on "Inhibition of Hepatocyte Growth Factor (HGF) Activation by SRI31215; A Novel Approach to Block Oncogenic HGF/MET Signaling." SRI31215 is a novel small molecule triplex inhibitor of the three key enzymes that process and activate HGF, which is crucial for tumor progression and the development of resistance to therapy. The poster highlights three crucial findings: 1) SRI31215 prevents proteolytic activation of HGF and inhibits signaling by HGF via its receptor, MET; 2) SRI31215 blocks crosstalk between tumor cells and HGF-producing fibroblasts, thus inhibiting tumor-promoting activity of fibroblasts; 3) SRI31215 overcomes HGF-

## CEO Corner



### [Strategic Update #3](#)

Posted 02/18/16

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**Regulatory Links**

- Controlled Docs
  - [DCM FAQ](#)
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## Regulatory Compliance

### Export Control Office

**Contact**

Larry Wilson  
Export Control Specialist  
Office: 205-581-2315  
Cell: 205-337-9625

**Forms**

[Export Control Review and Certification](#)

[Acknowledgement of Training and Non-Disclosure Agreement \(Employees\)](#)

[Meeting Checklist for Non-US persons at ERC](#)

[Non-Disclosure Agreement \(Non-Employees\)](#)

[Specific Technology Control Plan Template](#)

**Helpful Information**

- [Export Control Plan](#)
- [Subject to EAR/ITAR?](#)
- [Export Control Decision Tree](#)
- Statement of Registration (DS Form 2032) [Request copy](#)
- [EAR Guidance Document](#)
- [Foreign Visitor Handling Process at ERC](#)
- [ITAR Guidance Document](#)
- [ITAR Electronic Data Storage & Transmission Procedure](#)
- [Destination Control Statements \(EAR and ITAR\)](#)
- [Visual Compliance Users List](#)
- [Contact List](#)
- [FAQs](#)

**PowerPoint and Video Presentations**

# Internal Linkages

- IT Security Awareness and Acceptable Use Policy (network access controls, international travel);
  - “It only takes one employee to open one email for the spies to penetrate a company’s defense.” (FBI Counterintelligence bulletin)
- Government Security (NISPOM)
  - Classified work is also ITAR controlled.
- Visitor Control Policy

# Export Control Review - Certification Form 1

- Form found on SRInsider on “Export Control page” and in “Administrative Forms and Documents”
- Must be completed by the PI before each proposal goes to the Client. Included in this are IR&D proposals that must be reviewed with the form or evaluated by the VP before charge numbers are set up.
- PIRSI Export Control Review Submitted
  - (X)No (Acceptable with a comment, e.g. same client and scope as P15.xxxx, or add on to project xxxxx, or will be submitted before proposal sent, or pending)
- **Not acceptable to answer “No” on PIRSII unless it is the same client and scope and there is a reference to the prior project/proposal.**
- It is Important to Know Your Client
  - Client Company Name:
  - Client (Country): (If unsure ask: “Are you incorporated in USA?
  - Or Where are you incorporated?”)
  - End User (If Known and Different from Client):

# Export Control Review - Certification Form 1

- Section 1
  - Basic information
  - Question concerning Visual Compliance vetting. If the answer is NO or you are unsure, don't check the box. For vetting send email to Larry Wilson or local Visual Compliance user with point of contact (POC) and company name and country of incorporation; or submit the partially completed form after signing.
- Section 2
  - Evaluation questions (Depending on your answers some are not required, be sure to read the notes and helps on the form.)
  - Questions are used to determine how your project is controlled.
  - A question was added concerning subcontractors.

# Export Control Review - Certification Form 1

- Section 3
  - Certification (Know how your project will be controlled)
- Certification (Choose one of three)
  - 1. Does not involve technologies that are subject to either the EAR or ITAR. (This should normally only be checked if the project qualifies as fundamental research whose intent is to publish the results into public domain.)

# Export Control Review - Certification Form 1

- Certification (Choose one of three) continued
  - 2. Does, or may, involve technologies that are subject to either the EAR or ITAR, but will not be transferred in any manner to any non-U.S. person. (Used for domestic clients when only U.S. persons at Southern Research will participate or have access.)
  - 3. Is EAR or ITAR-governed technology and will not be transferred to any non-U.S. person without authorization, specifically: ECCN \_\_\_\_\_ or ITAR \_\_\_\_\_ (Identify category), (See Export Control Specialist for assistance. Used for domestic clients when the category is known or for all foreign clients.)

# Export Control Review - Certification Form 1

- Use submit button to send to Export Control Specialist; if known, include proposal number in the subject line of the email.
- Repeat evaluation if scope or restrictions change: such as:
  - Contract language indicates more restrictions than previously thought.
  - You discover that the company is foreign owned.
  - Change that requires export of regulated material/data.
- Keep a copy of Form 1 in project files for 5 years.

# Case Study - Know Your Customer!

- Production Products Inc. (PPI) was charged with exporting 3, EAR99 classed machines to CPMIEC in China without authorization. Specifically CPMIEC was on the denied parties list and PPI did not check the list before exporting. They were fined \$50,000.
- **The lesson: Ensure all clients are vetted before transferring even lightly controlled EAR99 material.**

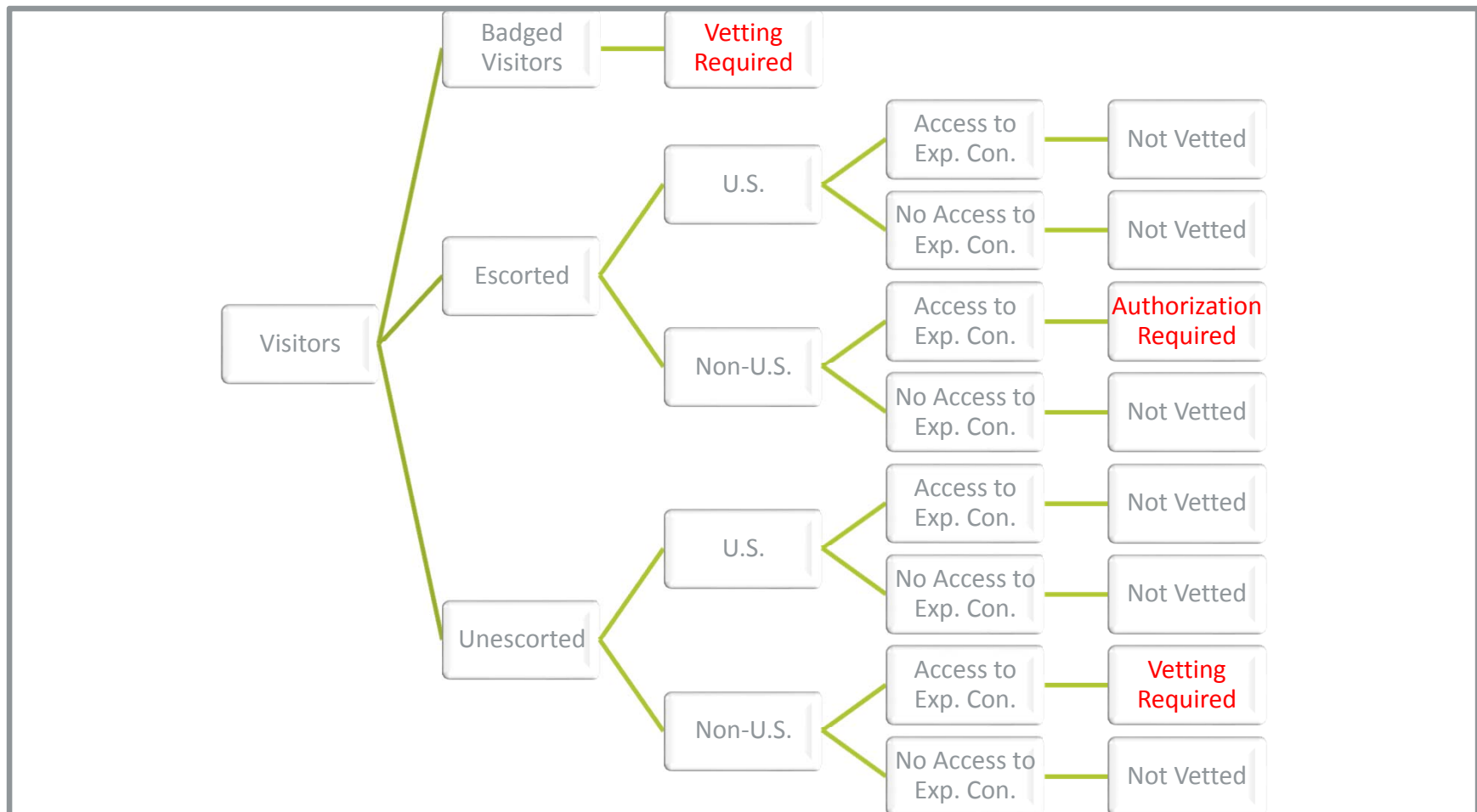


# Visual Compliance – Restricted Party Screening

## – RESTRICTED PARTY SCREENING

- a web based tool that electronically screens the various government lists for restricted parties.
  - Does not confirm citizenship status.
- Vetting is required for all vendors and most clients (U.S. Government clients are exempt)
  - Host is responsible for ensuring that any required vetting is accomplished before guest arrives.
    - Visitors that are required to be vetted should sign an NDA for export controlled technology before they arrive to avoid delays.
    - Host is responsible for ensuring visitors are shielded from export controlled technology and proprietary technology without proper authorization.
  - Vetting only has to be performed one time for each client/visitor/vendor for which it is required.
  - Only the following visitors require vetting: (chart on next page)

# Visitor Vetting Diagram



# How is Someone Vetted?

- **Vetting of individuals or clients with Visual Compliance can be accomplished by Export Control Specialist or designated “Visual Compliance Users” within your group. See the complete list on the Export Control Page of the SRInsider.**
- **Send the person’s name and company name and country of citizenship or incorporation to the Visual Compliance User.**

# Controlled Items at Southern Research

## Partial List

- **ITAR**
  - Micro DTG, category XII(e)
  - Ablative materials of advanced composites, category XIII(d)
- **EAR**
  - Experimental test compounds, category EAR99
  - Anthrax, category 1C351
  - High Pathogenic Avian Influenza Virus, category 1C351
  - Dengue Fever Virus, category 1C351
  - Herpes Simplex Virus, category EAR99
  - Carbon-Carbon brake material for commercial airliners, category EAR99
  - Selective Catalytic Reduction catalysts for NO<sub>x</sub> reduction, category EAR99

# Licenses

- Can be obtained for many items and personnel.
- They take time
  - ITAR average **60 days**.
  - EAR average **30 days**.
- License Exemptions/Exceptions:
  - EAR – Many apply, i.e. NLR (No License Required)
  - ITAR – Some apply but very specific and many limitations.
- Licenses can only be applied for by the Export Control Specialist.
- License requirements are dependent upon an item's technical characteristics, the destination, the end-user and the end-use.

# Specific Technology Control Plan - Form 4

- Typically used when project/material is export controlled and:
  - In locations other than ERC, or
  - Non-U.S. person working on a controlled project in which a “Deemed Export License” is required, or
  - Non-U.S. persons using a shared lab which contains export controlled material, or
  - Special data security requirements are needed, or
  - Special physical security requirements are required.

# Case Study - Deemed Export Violation

- The U.S. Department of Commerce's Bureau of Industry and Security (BIS), Office of Export Enforcement (OEE), reached a \$115,000 civil settlement with Intevac, Inc., of Santa Clara, CA. BIS fined the company for five violations of the Export Administration Regulations (EAR), including the unauthorized release of export controlled manufacturing technology to a Russian national working at its U.S. facility. The settlement involves "deemed export," releases of controlled technology made to a foreign national located in the U.S.
- The company shared blueprints, drawings and part numbers before a deemed export license was obtained.
- "Deemed export compliance is a top priority for the Bureau of Industry and Security," said David W. Mills, Assistant Secretary of Commerce for Export Enforcement. "Today's settlement highlights the need for companies to be vigilant to prevent the unauthorized release of U.S. technology and data."

# Export Shipping Procedures

- All tangible exports (**including data**) controlled by, or subject to, EAR and ITAR must adhere to the EAR and ITAR when being shipped, **even electronically**.
- All packages and commercial invoices must be marked with the appropriate ECCN, license number or exemption number when exported in order to avoid customs clearance problems.
- **New this year:** The Export Control Specialist will review commercial invoices for licensed shipments before shipping.
- Many controlled exports have to be reported to Customs prior to the shipment.
- Shipments reported to Customs will also have an Automated Export System (AES) # assigned that must be listed on the documents.



# Marking Statements for Technical Data

## Technical Data for DoD

- All export controlled technical data for DOD is required to be marked with a warning statement which can be copied and pasted from the Export Control web page.
- Technical Data for ITAR controlled projects should NOT be transferred by unencrypted email. (See the “**ITAR Electronic Data Storage and Transmission Procedure**” on the Export Control page of SRInsider for more information.)

# Destination Control Statements

- All export controlled commodities, except EAR99 items, that are exported must be marked with the appropriate destination control statement: (not required for domestic shipments but recommended)
- These statements sometimes change and current copy and paste versions are available on the Export Control Web page.

# Census Department Requirements

- Must report exports under the following conditions to U.S. Customs and Border Protection, BEFORE SHIPPING; (the Automated Export System (AES) confirmation number is placed on shipping documents):
  - Items shipped under a license authorization (EAR or ITAR).
  - Items shipped under a license exemption (ITAR only).
  - If the item is not controlled by an EAR license, i.e. EAR99, and its value is over \$2500.
  - All exports that are subject to the EAR and destined to the following countries regardless of value:
    - Cuba, Iran, North Korea, Sudan and Syria.
  - See Export Control Specialist for assistance, some couriers will submit this report for you.

# International Travel

- Everyone is free to take information “in their head” without a license. (you are NOT free to tell what you know without a license)
- Any export controlled information transferred must be pre-authorized by the appropriate agency and documented by the Principal Investigator/Project Leader for the particular destination and end use.
- Scrubbed computers with VPN access must be used.
- All electronic devices that interact with Southern Research servers must be password protected.

# OFAC (Case study)

## Many Small Violations Add Up - PayPal, Inc.

- OFAC which controls the flow of funds to embargoed countries charged PayPal, Inc. with violating OFAC regulations in supporting the transfer of funds to embargoed countries.
- PayPal processed 486 transactions for a total of \$43,934 to US sanctioned targets over the course of 3 years without authorization.
- PayPal settled for a \$7,658,300 fine, base fine was \$17,018,443.
- Why applicable to us? We need to be aware that multi-million dollar contracts are not necessary to receive a substantial fine and we should be diligent to “**know your client**”.

# Antiboycott

- The antiboycott provisions of the EAR prohibit U.S. persons from taking certain actions with intent to comply with, further or support unsanctioned foreign boycotts, including furnishing information about business relationships with or in a boycotted country or with blacklisted persons. These statements could slip into contract language and billing statements.
- Countries that may require support of international boycotts according to US Treasury: Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, Yemen (80 FR 39197, 1/27/16). Any work with companies in these countries should be thoroughly evaluated and approached carefully.
- If asked if we support boycotts, DON'T ANSWER, defer to the Export Control Specialist. Agreeing to the terms imbedded in contracts or RFP's is a violation.

# Antiboycott Violations

## Examples of Antiboycott Violations from Saudi Arabia and UAE Contracts or Request for Proposals

- "Vendor shall comply with the Israel boycott laws in performing his contractual obligations."
- "Certificate from insurance company stating that they are not blacklisted."
- "The quotation should not include any material manufactured or exported by Boycotted companies as per the Kingdom of Saudi Arabia regulations."
- "Buyer shall adhere to and implement the Arab Embargo and Boycott Regulations issued and revised from time to time by the Government of the United Arab Emirates."
- "We certify that neither the beneficiaries nor the suppliers of goods and services are subject to boycott."

# Import of ITAR Controlled Items

- Importation of many items on the United States Export Munitions List (USML, ITAR) is also controlled for importation
  - United States Munitions Import List (USMIL) contains items that are ITAR controlled in the USA.
- Permanent imports are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives and produces the USMIL
- Temporary imports are controlled by Department of State through ITAR regulations



# Record Keeping

- All documents associated with controlled exports should be retained 5 years from the end of the project or date of shipment, whichever is longer.
- Examples of records include: Proposal, contract, license, license exemption, bill of lading, commercial invoice, census documents, delivery receipt, commodity jurisdiction (CJ), Export Control Review and Certification (Form 1), Specific Technology Control Plan, PO, packing list, etc.

# Penalties

- Failure to adhere to export regulations could result in criminal and civil penalties
  - ITAR
    - Up to \$1,000,000 and up to 10 years in prison for each violation
  - EAR
    - Company
      - The greater of \$5,000,000 or ten times the value of the export
    - Individual
      - Up to \$1,000,000 and up to 10 years for each violation
  - Loss of facility security clearances
  - Loss of ability to participate in defense article research
  - Loss of employment

# Event Notification

- *Immediately* contact the Export Control Specialist or any Vice President for the following:
  - Any non-routine contact by a United States Government official or agency concerning exports or imports.
  - If a shipment from or to Southern Research is detained or seized by U.S. Customs.
  - Receipt of a subpoena related to U.S. export or import laws.
  - A suspected violation of export control laws or Southern Research's guidelines regarding exports.
    - If we self report a violation the fines may be waived and almost certainly will be reduced.
  - Any inquiries concerning Southern Research policies regarding non-U.S. sanctioned boycotted countries (e.g. Israel).

# Contact Information

- Export Control Specialist:
  - Larry Wilson (205) 581- 2315 office, (205) 337-9625 cell
    - Questions about this training or anything about exports.
  - If Larry is out contact Cathy Cozart (205) 581-2633
- Oversight Committee:
  - Jim Ault, Director of Quality
  - Sheryl Burrage, Senior HR Business Partner
  - Cathy Cozart, Director of Contracts and Proposals
  - Bill Grieco, VP Energy and Environment
  - Michael Johns, VP Engineering
  - David Rutledge, VP and CFO
  - Mark Suto, VP Drug Discovery
  - Veronica Tucker, Director of IT

# Acknowledgement

## Non-Disclosure Statement

I acknowledge and understand that any technical data or defense services related to defense articles on the U.S. Munitions List or dual use items on the Commerce Control List, to which I have access to or which is disclosed to me in the course of my employment by Southern Research Institute is subject to export control under U.S. Regulations. I hereby certify that such data or services will not be further disclosed, exported, or transferred in any manner to any non-U.S. person or to any foreign country without prior authorization of either the Office of Defense Trade Controls, U.S. Department of State, or the U.S. Department of Commerce and in accordance with applicable U.S. government security, National Industrial Security Program Operating Manual (NISPOM), and customs regulations.

# Acknowledgement of Training

By completing the following test:

1. I acknowledge that I have been briefed on the Export Control Plan for Southern Research Institute.
2. Accordingly, I understand the procedures as contained in the Export Control Plan and agree to comply with all Southern Research Institute and U.S. Government regulations as those regulations pertain to export controlled information or products.
3. If there are questions as to whether or not export authorization is required for an item I will contact the Export Control Specialist for assistance.

All of the following agencies have a part in export control regulations except:

- ☐ Department of State
- ☐ Department of Commerce
- ☐ Department of Treasury
- ☐ National Institutes of Health

## Advanced Annual Export Control Training

*Quiz - 13 questions*

Last Modified: Mar 09, 2016 at 03:39 PM

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