

# Export Control Frequently Asked Questions (Asked During In-House Training Sessions)

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(Categories: General, [Vetting](#), [Project Evaluations](#), [Records](#), [Shipping/Travel](#))

## General

- Is the program implemented?
  - Yes overall, but there are still some parts in which the implementation details are still being worked out.
- Is a foreign company's proprietary work controlled by the export control regulations?
  - Yes, if it is imported into the USA and we then assist them by providing technical data or technical assistance we are in fact exporting the technical data which is subject to the export regulations.
- Where is the focus on the Export Control Program, engineering or life sciences?
  - The program applies to all areas of Southern Research. Generally speaking the life science areas are predominately subject to the Export Administration Regulations (EAR) whereas the Engineering groups have a mix of EAR and International Traffic in Arms Regulations (ITAR) that they are subject to.
- Do our clients ask about our Export Control Program?
  - Yes. Some of our clients send a questionnaire enquiring about our export compliance readiness; others have an export control clause in the contract. I suspect it will become more common place in the future.
- Are we registered with the State Department?
  - Yes
- Are export licenses required to ship to a company in the United States?
  - No, as long as that company is incorporated in the USA.
- If our client is a U.S. company and hires non-U.S. persons can we ship export controlled goods to them without a license?
  - Yes, the U.S. Company is responsible for controlling the data/product in its possession with respect to export control regulations.
- If a North Korean business incorporates in the USA can we ship to them without a license?
  - Yes, as long as they are not on the debarred list. Many enforcement actions are directed at non-U.S. persons that have incorporated in the U.S. to try to divert items to their home country; i.e. they are being watched by the authorities.
- If our client is a U.S. company, do we have to be aware if they export the data to a foreign company?
  - No, unless you suspect that the client is acting as a middleman for a questionable foreign company or country; otherwise the client's company is responsible for properly exporting the data.
- Can fundamental research data be published even if it concerns military or space applications?
  - Fundamental research data is data that can be published. The determination of what to do with the data should be made with the contracting officer before the project begins and should be spelled out in the contract. If the basic research data cannot be published it cannot by definition be fundamental research and would be subject to export control regulations.

- Are the servers at ERC accessible to employees at other locations? And will that be maintained?
  - They are not accessible to others and that will be maintained.
- Is internal email secure from others?
  - Yes, as long as no one shares their password.
- Are emails subject to the export control regulations?
  - Yes, if they contain EAR or ITAR controlled data.
- Is a U.S. Company's proprietary research subject to the Department of Commerce or Department of State export controls?
  - Yes
- Could a representative of an ITAR debarred company visit Southern Research?
  - Yes, with possible restrictions.
- How long does it take to get an ITAR license?
  - Currently the average time is 19 calendar days from the time a complete application is submitted.
- Is there a checklist for shipping?
  - A checklist is being developed and will be posted on SRInsider export control page.
- Will a video of the training be on-line?
  - Yes, it is available on the Export Control page of SRInsider
- Can ITAR or EAR controlled technical data be sent to the FedEx Printing Office?
  - Yes. FedEx has procedures for handling export controlled data but you must notify them that it is export controlled (ITAR or EAR) and then request that the files be deleted immediately after printing.
- Is someone on an H1B visa a U.S. person?
  - No
- Can we get into trouble by opening an email with a virus embedded?
  - Yes. Our computer system security could be defeated by a virus entering in through an email. Some computer viruses are designed to open portals in a firewall or look for data files and automatically send them out, at which point the proprietary data is distributed to others without our control.
- Can a principal investigator (PI) be a non-U.S. person?
  - Yes, but there may be restrictions. A non-U.S. person PI doing fundamental research is not restricted. A non-U.S. person PI doing proprietary research may have to obtain a license, depending on the type of work and the country of citizenship.
- Is dual citizenship an issue with regard to export control?
  - It depends on the type of work and the citizenships that the person holds. For EAR regulations the most recent citizenship is the citizenship of record. For ITAR all citizenships are evaluated.
- If a visitor requires a license do we have to wait until the license is received before letting them visit?
  - Yes
- Is data an export controlled product?
  - Yes, unless it can be categorized as fundamental research.
- Does giving a non-U.S. person visual access to an export controlled item count as a deemed export?
  - Probably, part of the definition of an export is: Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the U.S. or abroad.

- If we give our project report to a U.S. company are we responsible if they export it?
  - No, they would be responsible to make sure that it was properly authorized and marked for export. If we knew or suspected that it was going to be illegally exported to non-U.S. persons then we would be responsible.

## Vetting

- Why are we vetting our clients?
  - The regulations state that we cannot do business with a company on the restricted list and the easiest way to determine their status is to vet them with Visual Compliance.
- Have all of our current clients been vetted?
  - No, we are in the process of vetting all of the new clients with the intention that we will capture them all eventually.
- Do our clients vet us?
  - Unknown but probably; there is no regulation stating that they have to let us know just as we don't have to let them know.
- Are all of our vendors vetted?
  - Not currently, but soon will be.
- Should we tell our clients, visitors, etc. that they are being vetted and will be continuously re-vetted?
  - There is no regulatory requirement to do so or a prohibition against. As a company we can choose to or not.
- How will we know if a company that we are doing business with is added to the debarred list, or how often do we have to repeat the vetting process?
  - Visual Compliance rescreens all of the names that we have ever submitted each day and a report is emailed to me if the status changes for any of them. I will then contact the person that submitted their name for vetting and notify them of the change.
- After someone is vetted, do I still have to be concerned with what they have access to?
  - Yes, the vetting process only tells us they are not debarred. Depending on their citizenship and what they might have access to a license may be required for a site visit.
- How is the best way to vet a client?
  - Send the export control specialist an email with the full name, company name and company's country of incorporation.
- Does a visitor cleared through the government security office also need to be vetted with Visual Compliance?
  - Yes, the clearance with government security is predominately looking at U.S. citizenship status and may not review the debarred list.
- How long does it take to vet a visitor with Visual Compliance?
  - Minutes if I am at my computer but almost always within 1 day.
- How do we handle finding someone on the debarred list when they are vetted?
  - The requestor will be notified and he will contact the person in question to determine if the listing is real or mistaken identity. Visual Compliance doesn't use any personally identifiable information such as SS#, birth dates, etc., therefore false matches are possible. If the project is over when the person is added to the debarred list there is no violation for performing work prior to the debarment.
- What if work is ongoing and a client is added to the debarred list?

- The terms of the debarment will be reviewed; usually the on-going work is authorized to continue but no new work is authorized until the terms of the debarment is satisfied. Sometimes the debarment is only for certain types of work and other work can continue.

## Project Evaluations and Certifications

- Do we have to evaluate each project for export control purposes and turn in the evaluation sheet? What about repeat companies?
  - Yes, each project must be evaluated and the form submitted to the export control specialist as well as you retaining a copy for the project records. For repeat projects it is intended that you copy the original evaluation form, unless the form changes, and change any information as necessary before submitting it.
- During a project we may have to exchange data with several companies or on multiple occasions, do we have to evaluate each exchange of data?
  - No, by evaluating the project at the beginning, which would include the data transfers, you will be aware of what is controlled and what exchange, if any, would need a license. Any licenses needed can be obtained at the beginning of the project so that there will be no delay.
- Some of the information asked for in the project evaluation form is the same as that on the PIRS I form. Can that information be automatically used to populate the fields in the project evaluation form?
  - Not at this time.
- When does a project evaluation need to be reevaluated?
  - Whenever the scope of the work changes or more details are known that would affect the initial evaluation. Questions such as: Will you send a copy this data to our affiliate in country X?; or, U.S. company X was bought out by a foreign company.
- Who is liable when a mistake takes place and the incorrect classification is assigned to a product and it is exported illegally?
  - The company is legally liable for all exports made in its name. The sender could share in the liability if it was determined that the rules were intentionally broken.
- Will a proposal number be held up if the export control review is not completed before the PIRS I is submitted?
  - No, the number will be assigned, but the review should take place before the proposal is submitted to the client. Time estimates could drastically change if it is determined that a license is required or if it is determined that the client is debarred.
- Is there a way to streamline the review process to cover multiple, similar type, proposals with a single review?
  - Not at this time, each new proposal should have a completed Export Control Review and Certification form in the file. The problems to be solved with a blanket review would be the documentation of the vetting of each new client and the locations of the clients. If you know that the client has been previously vetted for you, you do not have to resubmit their name for vetting.
- Because most of the work that we do is proprietary, does that mean that it is not fundamental research even if it is basic science?

- Yes, proprietary data that is generated is not fundamental research according to the export regulations and is subject to the regulations.
- Does the Export Control Specialist need to audit each lab to determine what is sensitive to non-U.S. person visitors/employees?
  - Not necessarily, but I am available to help the PI become better aware of what in his lab is controlled and the control status of it.
- Do all grants fall in the fundamental research area and are then exempt from export control regulations?
  - Grants are almost always classified as fundamental research, but there could be some exceptions.

## Records

- Are electronic records appropriate for storage of export control records or do they have to be hard copies?
  - Electronic records are acceptable as long as they can be retrieved for up to 5 years.

## Shipping/Travel

- Can we send technical data to an affiliate overseas if requested/directed by the U.S. client?
  - We can, but we have to comply with the export regulations. It would be better to send it to the client and let them export it. There are more exemptions available for the client and their affiliates that would not apply to us.
- Can smart phones be carried when traveling out of the USA?
  - Yes, but they should be password protected and IT should be notified immediately if they are lost or stolen so that access to SRI networks from that device can be blocked.
- With regard to traveling with ITAR controlled material or data, how do we determine which countries are “safe” to travel through?
  - The authorization that you receive to transport that material/data, whether it’s a license or license exemption will specify the restrictions and that information should be determined at the start of a project.
- Is there a list of embargoed countries on the export control website?
  - Yes, there is a list in the Export Control Plan in section 3.14 of those countries that are currently embargoed.
- When exporting an item or data will the recipient need to be re-vetted before the transfer takes place?
  - Eventually no, because they will be vetted at the proposal stage and they are constantly being re-vetted each day when the lists are checked for updates. Until we complete the evaluation of every project each export should be cleared with the export control specialist before being exported.
- Why does the export control specialist have to know when someone is exporting a controlled item?
  - Some exports require a follow-up report be sent to the Department of State or Department of Commerce depending on the item. Also, some shipments have to be reported to customs before the shipment is made.
- If we open an email with export controlled data when traveling overseas is that information exempt from export control regulations?

- No, so it shouldn't be saved on the travel computer or transferred to a non-U.S. person.
- Why are some items cleared to be shipped to some countries without a license but other countries require a license?
  - When assigning status, the Department of State and Department of Commerce evaluate how each country controls imports and exports and the likelihood of unlawful diversion taking place.