

# **Export Control Issues: University and National Laboratory Interactions**

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# General Issue

- ▶ How should a university and a national laboratory manage compliance with EAR requirements when exchanging information or working together?
- ▶ Typical Situation
  - The university is at least partially comprised of faculty or students who are foreign nationals;
  - The national laboratory is at least partially comprised of staff and visitors who are foreign nationals; and
  - The university and national laboratory want to exchange information or work together collaboratively.

# Important Definitions & Considerations

## ▶ Deemed Export

- *“Export’ ... includes ... [a]ny release of technology or source code subject to the EAR to a foreign national. Such release is deemed to be an export to the home country or countries of the foreign national.”* EAR § 734.2(b)(2)(ii).

## ▶ Reexport

- Actual shipment of items subject to EAR to a foreign country; or
- Release of technology or source code to a foreign national. See EAR § 734.2(b)(4)-(5).

# Important Definitions & Considerations

## ▶ Fundamental Research

- University research is generally fundamental unless:
  - Certain prepublication reviews change status of information;
  - Sponsor can information from publication;
  - University accepts publication restrictions; or
  - national security controls apply. See EAR § 734.8(b).

## ▶ Technology Transfer

- National laboratory operating contractors have a contractual obligation to transfer Federally funded technology to the commercial marketplace for the benefit of the U.S. economy.

# Exchanging Information

## ▶ Fundamental Research?

- If publically available or will be published without restriction – OK.
- If protected under an NDA or will be restricted from publication for some reason:
  - The exception most likely does not apply; and
  - Export control review and license, if necessary, is required.

## ▶ Typical NDA Issues

- University wants national laboratory to perform export control review for the university.
- National laboratory will not agree to do export control review for university due to risks and inability to manage university activities.

# Collaborative Research

## ▶ Issues Similar to NDAs

- Universities want national laboratories to conduct export control review for the university;
- National laboratory will not perform review for university.

## ▶ Project Management Issues

- Export control requirements may limit university student, faculty, or lab staff involvement in nonfundamental research project.
- Both parties must conduct an export control review before involving foreign nationals in nonfundamental research project.
- Project team members must be cognizant of team member nationalities and export status of project information to minimize the potential for a deemed export.

# Recommendations

- ▶ Parties must conduct their own export control reviews to minimize deemed export liability.
- ▶ Identify project team members for both parties before project starts and conduct export control review if foreign nationals are involved.
- ▶ Conduct export control review if a foreign national is added to the project midstream.
- ▶ Where possible, designate individuals who are U.S. citizens or permanent resident aliens to be the points of contact for information exchange.