

# Export Control

**Tim Muller, M.S., CBSP**  
**272-5993**



The University of New Mexico

HEALTH SCIENCES CENTER

# Export Control

- ▶ **Export control laws** (“ECL”) are U.S. federal laws and regulations that regulate the export of strategically important products, services and technologies to foreign persons.
  
- ▶ **Foreign person(s)**
  - Any foreign government
  - Any foreign corporation or organization that is not incorporated or organized to do business in the U.S.
  - Any individual who is not a U.S. citizen or lawful permanent resident of the U.S. (green card holder)



The University of New Mexico

HEALTH SCIENCES CENTER

# Export Control

## ▶ **What is an export?**

- Transfer of controlled technology, information, equipment, software or services to a foreign person in the U.S. or abroad by any means. (e.g. shipping outside the US, visual inspection or written oral disclosure)

## ▶ **Why do we have these laws?**

- Restrict exports of goods and technology that could aid our adversaries militarily
- Prevent proliferation of weapons of mass destruction
- Prevent terrorism
- Comply with U.S. trade agreements and sanctions



The University of New Mexico

HEALTH SCIENCES CENTER

# Export Control

## ▶ Federal Agencies

- State Department: International Traffic in Arms Regulations (**ITAR**)
  - Military technologies
- Commerce Department: Export Administration Regulations (**EAR**)
  - Dual use technologies with civilian or military applications (e.g., biologicals, chemicals, satellites, software, computers)
  - EAR's list of controlled technologies is called the Commerce Control List (CCL)
    - Bureau of Industry and Security (BIS) website
- Treasury Department, Office of Foreign Assets Control (**OFAC**)
  - Prohibits certain transactions with countries subject to boycotts, trade sanctions and embargoes (e.g., Balkans, Burma, Cuba, Iran, Iraq, Liberia, Libya, North Korea, Sudan, Syria, and Zimbabwe)



The University of New Mexico

HEALTH SCIENCES CENTER

# Export Control

- ▶ **Impact of Export Controls on Research**
- ▶ If a research project involves controlled technologies, the researcher may be required to obtain a government license before:
  - Sending or taking equipment, chemicals or technologies subject to EAR or ITAR outside the U.S.
  - Allowing Foreign researchers or students participating in research subject to EAR or ITAR (known as a “deemed export”)



The University of New Mexico

HEALTH SCIENCES CENTER

# Export Control

- **General Rule:** *UNM faculty and employees may not send or take export-controlled equipment, chemicals or technologies to foreign persons without a license from the U.S. Government, unless an exclusion applies.*
- ❑ The majority of research at UNM will be covered under an exclusion to the Export Control Law requirements
  - Public Domain Exclusion (ITAR, EAR)
  - Education Exclusion (ITAR, EAR)
  - Employment Exclusion (ITAR only)
  - Fundamental Research Exclusion (ITAR, EAR)



The University of New Mexico

HEALTH SCIENCES CENTER

# Export Control

- ▶ **Public Domain Exclusion (ITAR, EAR)**
- ▶ No license is required to export or transfer 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
  - Websites accessible to the public.
- ▶ Note: the public domain exclusion applies to information and research results -- not physical equipment, substances, etc.



The University of New Mexico

HEALTH SCIENCES CENTER

# Export Control

- ▶ **Education Exclusion (ITAR, EAR)**
- ▶ No license is required to transfer 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 (ITAR)**
- ▶ No license is required to share information subject to export control laws with a foreign national if the foreign national:
  - Full-time, bona-fide employee of the University
  - Not a national of certain countries of concern
  - Has a permanent address in the U.S. while employed at the University
  - Has been informed in writing not to transfer the information to other foreign nationals





The University of New Mexico

HEALTH SCIENCES CENTER

# Export Control

- ▶ **Fundamental Research Exclusion**
- ▶ No license is required for 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 distinguished from research where the results are restricted for proprietary reasons



The University of New Mexico

HEALTH SCIENCES CENTER

# Export Control

- ▶ **The Fundamental Research Exclusion - Is Void if:**
- ▶ The University 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





# Export Control

## Export Control Exclusion Screening Form

- ▶ This form needs to be completed
- ▶ Certain answers will trigger a review for export control issues
- ▶ Your research may fall under an exclusion

UNM		EXPORT CONTROL EXCLUSION SCREENING FORM		
Principal Investigator (PI): Answer the following questions Yes or No and return to the Contract and Grant Administrator (CGA) working on your proposal/grant/contract/agreement. For more information, go to: <a href="http://research.unm.edu/exportcontrol/">http://research.unm.edu/exportcontrol/</a> or the Export Control Exclusion Screening Tip Sheet: <a href="http://research.unm.edu/exportcontrol/Tips.pdf">http://research.unm.edu/exportcontrol/Tips.pdf</a> .				
Proposal Title: _____				
PI: _____		Funding Agency/Institution: _____		
PreAward Tracking Number: _____		Previous # (if continuation): _____	Est. Start Date: _____	
Fundamental Research Exclusion		Yes	No	Unknown
Will the information be published and shared broadly in the scientific community?				
Are there any proprietary or U.S. government publication or access dissemination restrictions in the contract?				
Are there any restrictions on foreign national participation or requirements for U.S. citizens only in the contract?				
Will there be any foreign nationals and/or persons holding dual citizenship involved with the project? Provide the name and nationality of each individual if known or when available:				
Is any portion of the project being conducted at a site other than UNH? (Subawardees, Collaborators, Consultants, Other [select one]). If "Yes," where?				
Will items and/or materials be shipped outside the United States? If "Yes," what? where? and to whom?				
Is travel outside the US anticipated? If "Yes," where?				
Educational Information Exclusion				
Is the information commonly taught at schools and universities? (Please see Export Control Exclusion Screening Tip Sheet for more information.)				
Are courses about this information listed in published course catalogs?				
Other Terms Mentioned or Discussed Within the Project Documentation If "Yes" is indicated, please include a brief description.				
Encryption Software? (If yes, fill out the "Checklist for Encryption Software..." form)				
Select Agents? If "Yes," what is it?				
Trade Secrets?				
Sanctioned or Embargoed countries?				
ITAR (International Traffic in Arms Regulation) or Munitions List? If "Yes," #				
EAR (Export Administration Regulations) or export control? If "Yes," #				
<b>***IMPORTANT NOTICE TO PI***</b>				
<b>Consequence of Non-Compliance</b>				
Failure to comply with US export control laws can result in severe penalties to the individual that can include the following: Civil penalties up to \$500,000 for each violation; Criminal penalties can be applied up to \$1,000,000 each violation; and/or Imprisonment for up to 10 years.				
PI Signature: _____		Date: _____		
Print PI Name: _____		Phone/Email: _____		
Received By (Pre Award CGA): _____		Date: _____		
For Internal Office Use Only:				
Date submitted to export@unm.edu: _____		Date Returned to CGA: _____		
Determination: _____				
				Reviewer: _____



The University of New Mexico

HEALTH SCIENCES CENTER

# Export Control

## Violations of Export Control Laws

- Civil penalties up to \$500,00 for each violation
- Criminal penalties up to 1,000,000 for each violation
  - Prison
  - Loss of exporting privileges
- 2009 – Dr. John Roth, University of Tennessee
  - Illegally exported military research technical data
  - Violation of Arms Export Control Act
  - Sentenced to 48 month in prison
- 2004 – Dr. Thomas Butler, Texas Tech
  - Illegally exported *Yersinia pestis* without a license & committed other crimes
  - Sentenced to 24 month in prison
  - Dr. Butler agreed to pay a \$37,400 civil penalty / loss of exporting privileges for 10 years



The University of New Mexico

HEALTH SCIENCES CENTER

# Export Control

## HSC Export Control

**Office: BMSB.B83**

**E-mail: [HSCexport@salud.unm.edu](mailto:HSCexport@salud.unm.edu)**

**Website: [http://hsc.unm.edu/research/export\\_control.html](http://hsc.unm.edu/research/export_control.html)**

**Tim Muller, M.S., CBSP**

**272-5993**