

**NCURA Neighborhoods Chat**  
**Export Control Considerations at the Proposal Stage**  
**June 27, 2007**

Featured Guests: **Kay Ellis**, Director, University Research Programs, Oklahoma State University; **Susan Sedwick**, Associate Vice President for Research and Director, Office of Sponsored Projects, The University of Texas at Austin

Moderator

Welcome to today's chat Export Control Considerations at the Proposal Stage with Kay Ellis, Oklahoma State University and Susan Sedwick, UT-Austin, sponsored by the Pre-award Neighborhood. Let's start off by noting that Susan could not join us today but has taken the time to share some insights to advanced questions received from the Pre-award neighborhood subcommittee. So let's get started...

Moderator

Kay Ellis is the Director of University Research Programs at Oklahoma State University. She received a Bachelor of Science in Organizational Behavior/Human Resource Management from Southern Nazarene University and a Master in Human Relations from the University of Oklahoma. Ms. Ellis is the "empowered official" and the point of contact for export control issues on all the OSU campuses. She provides training in this area and oversees the procedures put in place to ensure the University's compliance with federal export control regulations. Ms Ellis has served as Secretary of NCURA Region V (Oklahoma and Texas) and was recently elected to Vice-Chair/Chair-Elect. She has presented on export controls at Region V meetings in Dallas, Galveston, Tulsa, Austin, and Arlington. She will be presenting on export controls at the National meeting in November. Welcome Kay!

Kay Ellis

Hello to everyone from "rainy" Oklahoma!

Moderator

If participants have comments/questions please type them in the rectangular box

Kay Ellis

First of all, I would like to let everyone know that at OSU we will do everything possible to avoid applying for a license!

Moderator

So, does that mean you have not received any licenses to date?

Kay Ellis

I have applied for a BIS Commerce license, but was told I didn't need it. I started a TAA for Dept. of State, and the PI decided to take the foreign national off the project. I HAVE applied for an OFAC license, which took 7 months to receive.

Moderator

As export controls are an extremely complex area what would you suggest folks keep in mind during the proposal stage?

Diane Meyer

What are the key things you look for in a proposal that might indicate Export issues and how do you handle them?

Kay Ellis

I would look for foreign nationals working on the project, travel outside the U.S., any restrictions (if indicated in the proposal) on publication or dissemination of information, and restrictions on foreign nationals working on the project. I would also check to see if you had to ship something outside the US.

Holly Benze

How did you start your compliance program? Do you have any advice for those just beginning?

Kay Ellis

Holly, the first thing I did was to enroll in a Bureau of Industry and Security (BIS) seminar on the basics of export control. Shortly after the BIS seminar, at the NCURA national meeting, I attended several seminars on export controls. I took the information I learned from the various seminars and put together my own presentation for faculty and staff at OSU.

I spent a lot of time on the phone talking to people at BIS and the Department of State trying to get clarification on the various issues. One of the presenters at the national meeting, an attorney from Arnold and Porter, was also very helpful. Once I felt comfortable with the information, I started making presentations throughout the campus. I also started posting export control information on a website (<http://research.okstate.edu/export.htm>) including the basics of export control, OSU policies, and federal resources. My advice for those just beginning is first make sure you have full commitment from those at the top.

Read the regulations and check the various government websites for updates (the web address above has links to the BIS, OFAC, and the Department of State's DDTC). If you can, enroll in BIS seminars, attend export control seminars and workshops offered at the NCURA national/regional levels, and develop a relationship with the folks at the BIS and the Department of State. I also have a contact now at OFAC because I had to apply for a license. Look at other university websites and ask if you can "borrow" export control information and create your own website. It has been my experience that other universities are more than willing to share – why reinvent the wheel!

Pollyanne Frantz

How do you explain something as complex as Export Controls to faculty without overwhelming them with details?

Kay Ellis

Pollyanne: When I first started giving presentations, I posted the seminar schedule on my website and sponsored programs listserv; emailed fliers to the Associate Deans for Research and to the key administrators in the various colleges; and put the information in the packets for new faculty. I found that method did not work well.

What seems to work best for educating faculty members is not to give a formal slide presentation, but to give a short 20-30 minute briefing at faculty departmental meetings. The briefing piques their interest, and many follow-up with questions regarding their particular research. OSU now offers a Research Administration certificate.

To complete the program, the research administrator must attend the required export control seminar. I also offer general export control seminars to anyone who wants to attend. In addition, it is important to have comprehensive, timely export control information on a central website.

Moderator

Susan Sedwick: While we provide a lot of information on our website and we remind faculty of these and other contractual obligations in our PI Memo that must be acknowledged by the PI on every award, I still find face-to-face briefings to be the most effective way to educate our constituents about export controls. I have developed a slide bank that I use to customize my presentations. I just don't think there is enough of a general understanding of these regulations to make online tutorials effective in conveying the concerns and making the information tangible to the different disciplines.

Holly Benze

Kay, on a similar vein, how did you cultivate faculty awareness of the requirements? The Vice President for Research sent out a memo to the entire university outlining the export control issues. This memo has been sent out periodically. In addition, he emails the Associate Deans for Research (typically before New Faculty Orientation) and asks that they contact me so that I can speak to their faculty regarding export controls. Once this email goes out, I follow through with a personal email asking for a time to present to their faculty.

Moderator

Susan Sedwick: I accomplish this mainly through monthly and customized briefings. I still feel the face time is important on this topic because 1) I don't believe there enough of a general understanding of the topic among faculty for web-based training to be effective; and 2) because the questions posed by those in attendance gives me insights into the types of activities on our campus that could pose a problem and on what revisions and additions I need to make in my presentation to ensure clarity. I can document why the decision was made that no license was required. I might have erred but I could show due diligence and justify my decisions.

Jeanne Galvin-Clarke

What, if anything, do you recommend doing (at the proposal stage) if the proposal includes any of the things you mentioned?

Kay Ellis

Jeanne, I would personally talk to the PI to determine if there are any export issues.

Holly Benze

Kay--Does your routing sheet or information sheet contain any questions that would give the research administration hints that export controls might be involved?

Kay Ellis

OSU's routing form asks the following questions: Is there confidential information? Has Confidentiality Agreement/NDA been signed? Has an MTA been signed? Do you or will you have foreign nationals involved with your research? Have EAR/ITAR regs been reviewed for this project? Does this project involve homeland security?

We route both proposals and awards at OSU. I am more concerned with this information at the award stage. At the award state, we use the "OSU Record of Export Control Review" (<http://research.okstate.edu/docs/ex-cont-rev-4-13-05.xls>) which also has questions that trigger export control evaluation. The routing form can be found at <http://www.research.okstate.edu> and click on Routing Forms and Guidelines.

Moderator

Susan Sedwick: At OU we added specific questions that provided greater insights specifically those specific to export controls and intellectual property. You can access the InfoSheet that must be completed to initiate a proposal action in that office at [http://research.ou.edu/proposal/infosheet/infotype/InfoMain\\_2004.asp](http://research.ou.edu/proposal/infosheet/infotype/InfoMain_2004.asp) I screen all proposals for the potential for export controls issues at UTA. Specifically, the types of information I look for are: Is the sponsor a DoD agency or a DoD prime or for profit company? Is any proprietary information involved? Will software be developed? Is there foreign collaboration or travel? I do this more holistically now than I did in the beginning.

Leerin Shields

JHU has an export controls piece in our online compliance module, but unfortunately it is not mandatory.

Moderator

Thanks Leerin, what about others out there??

Jeanne Galvin-Clarke

Do you have anything in place to monitor compliance? It would be relatively easy to handle physical shipments of equipment, but email to foreign nationals or foreign nationals working in a lab on another project is pretty tough to monitor. Does your institution feel providing the education to faculty as sufficient due diligence?

Kay Ellis

Jeanne, You are right, that is tough to monitor. We can only do our best efforts. I think educating the faculty, staff, and maintaining information on a website is sufficient.

Pollyanne Frantz

When you are "educating" faculty about export controls, do you include real life examples to demonstrate the seriousness associated with failure to comply?

Leerin Shields

I am interested in how many of you have a "dedicated" export controls compliance manager?

Moderator

Thanks Leerin--what do other have in place?

Kay Ellis

Pollyanne, yes, examples of monetary fines work well! I post some of the latest examples on my website under "What's New".

Holly Benze

How do export issues affect the pre-award side vs the post-award side of grants management?

Kay Ellis

At what I would consider the pre-award stage, we evaluate the research project for export control issues and determine if the fundamental research exclusion applies. If it does not apply, we then decide if the research technology falls under the EAR/ITAR, if a license is required, or if a TCP needs to be put in place. These steps would be taken before work on the project could begin. The post-award financial office needs to make sure they are not cutting checks to vendors on any of the denied lists. Of course, payment to foreign entities should raise a red flag. Post-award also deals with requisitions for items to be shipped outside the U.S. and the potential for a shipping license. By the way, TCP means Technology Control Plan. At OSU, if the items are to be shipped outside the U.S., quotes and requisitions must have the name and address of the person/entity. Obviously, export control review and management requires coordination between various departments.

Moderator

Susan Sedwick: The pre-award role is primarily one of educating campus constituencies about export controls, embargoes and sanctions; risk assessment; determination of whether the FRE applies or if a license is required; and, if required, in ensuring the appropriate license has been secured. The ongoing oversight for compliance throughout the period of performance is usually shared among several campus constituents including post-award financial offices who must monitor financial transactions for evidence of potential issues such as payments to foreign vendors and subcontractors. Export controls apply to all activities regardless of the funding source so activities such as foreign travel funded using internal funds or development accounts can raise export controls issues.

Holly Benze

Do you have a decision tree that would help faculty and research administrators make informed decisions?

Kay Ellis

Holly, I think the decision tree that Stanford has is excellent! I have a short one-page decision tree on my website (<http://research.okstate.edu/export.htm>). My goal is to get the faculty thinking about the issues. Hopefully, they will call me with questions, and we will make decisions together.

Moderator

Susan Sedwick: Steve Eisner at Stanford has developed an excellent tool and you can access that at [http://www.stanford.edu/dept/DoR/exp\\_controls/tree/tree\\_1.html](http://www.stanford.edu/dept/DoR/exp_controls/tree/tree_1.html)

Jeanne Galvin-Clarke

Is there anything you recommend doing in the contract negotiation stage? Any terms or FARS to watch out for, for example?

Kay Ellis

Jeanne, Good question! I think the DFARS clause that we all hate is the 252.204-7000, the Non-disclosure of Information. That one we definitely try to get out. Of course, publication restrictions would void the fundamental research exemption.

Nick Miller

Kay, could you discuss publication review vs restriction as it relates to the Fundamental Research Exclusion?

Kay Ellis

Nick, it is okay to for the sponsor to review; however, if the sponsor wants to approve before you can publish you have just lost the FRE.

Pollyanne Frantz

Do any of you utilize the eCustoms/Visual Compliance software? If so, have you found it to be useful? Are there other software modules that you have found to be helpful?

Kay Ellis

Pollyanne, We do use Visual Compliance. I find it very helpful!

Holly Benze

How did other departments get involved—personnel, admissions, material management, post office, travel, etc?

Kay Ellis

Holly, I personally contacted key people in other departments and spoke to them about export control issues, and many of them have attended my seminars. I now receive all the out-of-the-country travel requests from the Provost's office. I e-mail the employee a general briefing on export control issues related to university travel.

Candyce Lindsay

At Arizona State University we use Visual Compliance and find it very helpful for screening and license assistance.

Leerin Shields

We had a demo a few months ago and it seems like it would be very helpful. The fact that it will search all the sites for you would be a real timesaver!

Kay Ellis

Using Visual Compliance, a web-based export control screening tool (there are other versions available), I also attach a denied parties/entities list from the destination country. I work closely with the purchasing department and approve requisitions where equipment/items will be sent outside the U.S. Mailing Services also has a "seat" on Visual Compliance, and we work together to determine if a license is needed for items to be shipped outside the U.S. Through the financial aid office, I receive a list of international students who get their tuition paid by foreign entities, and I run a check on them through Visual Compliance. The accounting department (it handles travel), risk management, and international programs, all have information on their websites and links to mine regarding export control issues.

Moderator

Susan Sedwick: As a general rule, interest gets piqued when there is a potential problem. It is just an ongoing process. A culture of compliance is essential and I am evangelical in my efforts to make others aware of the issues that can be problematic and that I am here to help. I realize there are not many people out there that find this topic so compelling but I do and have taken on the challenge of trying to understanding the subtle nuances in the regulations that provide us the flexibility to operate within compliance. I have gained great insights by reading not only the regulations but by perusing the BIS, DDTTC and OFAC websites especially the speeches and advisory opinions.

Moderator

Are folks aware of other software products for this area? What about ListVUE from Vanderbilt?  
[www.listvue.com](http://www.listvue.com)

Kay Ellis

I tried several but found Visual Compliance to suit our needs the best. I have heard good things about the Vanderbilt product (and it's cheaper than Visual Compliance)!

Jeanne Galvin-Clarke

Please clarify: if we were to agree to restrict publications rights (heaven forbid!) would that risk the Fundamental Research Exception for all research at the University or only for that one project?

Kay Ellis

I am only going to speak for OSU, but we would consider it for that project only. We do not have a blanket policy and review each case.

Moderator

Good Jeanne! So to clarify research can be done that has both (publication restricted--for a particular research) and other research that still qualifies for FRE. Is that right?

Nick Miller

Kay, What about publication review for proprietary information of a non-sensitive nature ( ie crop varieties). Are these considered export controlled even though the sponsor has no problems with foreign nationals exposed to them?

Kay Ellis

Nick, can you explain further - I'm not sure what you mean.

Holly Benze

How do your organizations document the employment exclusion when export control issues arise?

Moderator

Susan Sedwick: I am assuming this question addresses the bona fide employee exemption under the ITAR. In those cases we would document in our files the permanent employment status of the employee, citizenship and country of birth (under ITAR you must consider all citizenships when dual citizenship is in effect as well as the country of origin), ensure that all employees are briefed on export controls and have the employee sign a certification that they will not release that information to any other foreign national. A sample certification form can be found on our homepage at <http://www.utexas.edu/research/osp/>

A question was posed at the recent FDP workshop on export controls to the Department of State DDTC officials regarding what constitutes "permanent abode" as required for this exemption. The response was favorably ambiguous in that there is no formal definition other than to ensure that the permanent employee is truly living in the US in a permanent status throughout their employment. Visiting scientists and students would not qualify.

Kay Ellis

I too am assuming this question refers to the full-time regular employee exemption under ITAR. OSU does not do much ITAR-related research. Four or five years ago we actually removed someone from a project because he was from China, a country prohibited at that time under section 126.1 (you cannot use the exemption if the employee is from a country prohibited pursuant to section 126.1). The few projects we do have that fall under ITAR have no foreign nationals involved in the research, and technology control plans have been set up to prevent access by foreign nationals.

Nick Miller

Kay, for clarification, how do you approach proprietary research with regard to foreign nationals working on these projects?

Kay Ellis

Nick, not all proprietary research is export controlled. You have to evaluate each project to determine if the technology is export controlled and if foreign nationals are involved. At OSU, we would put a technology control plan in place to isolate any controlled technology from access by foreign nationals. As I said earlier, we will do anything to prevent applying for a license, even if it means removing someone from a project. To be honest, our PIs really don't want to have to go through applying for a deemed export license or a TAA. (TAA is Technical Assistance Agreement issued by Dept. of State)

Gene Stein

Let's say a PI is going to an underdeveloped country---say Ghana---to do fertility and population research using remote sensing via satellite. It's NIH-funded and there are no publishing restrictions. What do we have to be aware of to avoid export issues? Computers and software are involved, but to what degree would an institution have to be concerned about research-related technology? Is asking the PI what he'll be bringing with him overseas be sufficient?

Kay Ellis

Gene, I think the issue here is shipping satellite equipment which is export controlled and would probably require a license.

Moderator

Gene--sounds complicated, feel free to contact Kay afterwards

Kay Ellis

Some universities do not accept agreements that void the fundamental research exclusion, and others will apply for a deemed export license if needed.

Holly Benze

What do other universities do to comply with deemed exports when the fundamental research exclusion is not available?

Kay Ellis

At OSU, the college research office administrator will evaluate the agreement and fill out the "OSU Record of Export Control Review" form (<http://research.okstate.edu/docs/ex-cont-rev-4-13-05.xls>). The administrators will often send the agreement to me to evaluate for export control issues. The PI may also have to answer some questions on the form. If the PI believes his/her research falls under the EAR/ITAR (or I have determined that it does by reviewing the agreement), we determine if there is controlled proprietary technology involved. At that point the PI and I will set up a technology control plan (TCP) if foreign nationals will be working on the project. Research cannot begin until the TCP is in place and everyone working on the project has read the TCP, the "Briefing on the Handling on Export-Controlled Information", and signed the "Technology Control Plan Certification" (<http://research.okstate.edu/export-forms.htm>). We would rather have a technology control plan in place than file for a deemed export license or a technical assistance agreement.

Moderator

Susan Sedwick: Many universities have policies that will not allow them to conduct research on their campuses outside the FRE and, thus, are prohibited from seeking licenses and technical assistance agreements from BIS and DDTC. Those institutions would not accept research projects that would require a license under the EAR or ITAR. Even those institutions must bend a bit when it comes to OFAC applicability to financial transactions. When research falls outside the FRE, and a license is required for the activity contemplated, many institutions apply for and receive license approval. Licenses most often come with stipulations and require ongoing oversight and recordkeeping.

Sharon Hoon

What about foreign nationals working on fundamental research, taking their work computers home to China for vacation. Should this be prohibited?

Kay Ellis

Sharon, I have a short paper posted on my website that goes into detail regarding this subject. The paper is titled "Export Control Concerns for Faculty and Staff: Research, Travel, and Shipping." Typically taking a laptop to China would not require a license UNLESS you have controlled TECHNOLOGY loaded. As long as the laptop has the typical Microsoft office suite software, there should not be a problem. Of course, if the PI has something of a military nature on his laptop, that could present a problem.

Moderator

Thanks to Kay and Susie for sharing their knowledge on a complicated topic. A special thanks to Candyce Lindsay of ASU for assisting in coordinating this and the rest of the Pre-award neighborhood subcommittee. We will post a transcript of this on the neighborhood website within a week. Good afternoon.