Export Control Program

PI & PM Training
(Level 2 Training)

University of Wisconsin - Madison

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Bethany Nelson - Export Control Coordinator
General Information
What is Export Control?

- Export control consists of federal laws and regulations that control certain commodities, technologies, information and data
- Limits what can be shipped out of the country and to whom it can be shipped
- Can limit access to information for certain foreign nationals and/or organizations
- Determines when a license is required to ship items or information abroad
Purpose of the Regulations

- To control the export of military and dual use products, technology and services to foreign persons or organizations
  - Dual Use: commercial items that could have military or proliferation applications
    - Ex: computer technology and software, sensors, lasers
  - Primarily for national security purposes
Purpose of Export Control Program

- To ensure that products, technology & services that are exported to foreign persons or organizations are transferred in compliance with United States export control regulations
  - **Licenses:** Appropriate export licenses are obtained prior to the transfer of items to foreign entities
  - **Training:** Organizations and staff affected by these regulations are being trained to identify issues of export control that may arise
  - **Non-compliances:** Non-compliances are reported & addressed quickly & effectively
Non-Compliances
Results of Non-Compliance

• *Civil & criminal penalties* levied against *individuals* & *organizations*

• *Disciplinary action* by university toward responsible *individual*

• *Bad press*

• *Loss of research funding*

*You can be held personally liable for non-compliance*
- Responsibility to comply lies with individual, not UW -

Case of J. Reece Roth - U of Tenn (Sept 2008)
- Retired professor in plasma physics
- Convicted on 18 counts of conspiracy, fraud & violating ITAR
- Gave 2 grad students from China & Iran access to sensitive info
- Sentence - 48 months in prison
  - Worst case: 175 yrs in prison; $15.5M

Humane Restraint - Waunakee (June 2012)
- Manufacturer of restraining devices for police & hospitals
- 32 charges of shipping restraints w/o export licenses
- $465K fine, reducible to $50K, if they do not commit additional violations over the next 2 yrs
Regulations
Export - Definition:

• **Physical Export:** Sending or taking anything out of the United States in any manner, except by mere travel outside of the U.S. by a person whose personal knowledge includes technical data;
  - Items: computers, equipment, viruses etc.
  - Information via e-mail, fax, over the phone etc.

• **Deemed Export:** Transfer (oral or visual disclosure) of technology, items, information & data to a foreign national within the United States
  - Deemed exports are treated in the same manner as an export to a foreign country

• **Other Activities The Government Considers An Export:**
  - Transfer of Registration, control or ownership of items covered by the U.S. Munitions list to a foreign person or organization; or
  - Disclosure to a foreign government of any defense article; or
  - Defense Service performed for or on behalf of a foreign person or organization
Deemed Export - Definition:

• *Transfer of information / data to a foreign person within the U.S. is deemed to be an export to that person’s home country*

• **Examples of deemed export:**
  
  • *Foreign collaborators @ UW working on controlled technology*
  
  • *Phone calls regarding controlled technology w/ foreign collaborators working @ another U.S. university*
  
  • *Taking foreign visitors on a tour of a lab where they can view design details of controlled technology*
  
  • *Discussions regarding controlled technology w/ foreign persons at conference w/in the U.S.*
Foreign Persons/Organizations

- A Foreign Person or Organization is anyone who is NOT a:
  - U.S. citizen or national
  - Permanent resident (green card holder) of the U.S.
  - A refugee, someone granted political asylum or someone granted amnesty
  - U.S. government agency and any state or local governments therein
  - U.S. company, business, LLC or partnership
  - U.S. university
### Current Regulations

<table>
<thead>
<tr>
<th>Parameter</th>
<th>ITAR</th>
<th>EAR</th>
<th>FACR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Regulation</td>
<td>International Traffic in Arms Regulations</td>
<td>Export Administration Regulations</td>
<td>Foreign Asset Control Regulations</td>
</tr>
<tr>
<td>Agency</td>
<td>State</td>
<td>Commerce</td>
<td>Treasury</td>
</tr>
<tr>
<td>What Does Regulation Control?</td>
<td>Military equipment &amp; information</td>
<td>Dual use items &amp; information</td>
<td>Foreign assets (bank accounts)</td>
</tr>
<tr>
<td>Control Listing</td>
<td>USML (United States Munitions List)</td>
<td>CCL (Commerce Control List)</td>
<td>Specially Designated Nationals List</td>
</tr>
<tr>
<td>Comments</td>
<td>Treats all foreign destinations the same</td>
<td>Need for license depends on commodity, destination country, reason for control &amp; exemptions</td>
<td>Depends on who (person or organization) you are communicating with</td>
</tr>
</tbody>
</table>

- **Please note that other government agencies maintain export regulations but they have less of an affect on UW-Madison activities**
- **Different regulations, agencies, lists & means of implementation**
- **They can be very difficult to navigate**
Important ITAR Categories (22 CFR121 - US Munitions List)

• Category IV - Launch Vehicles, Missiles, Rockets, Torpedoes
  • Ex. StarTracker

• Category XII - Fire Control, Optical, Guidance and Control Equipment
  • Ex. NIR detector, AERI cryocooler

• Category XV - Spacecraft Systems and Associated Equipment
  • Ex. GOES-R

*ITAR also regulates components and accessories that go into such items.*
### EAR Categories (15 CFR774, Supplement 1 - Commerce Control List)

<table>
<thead>
<tr>
<th>Category</th>
<th>Title</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Nuclear Materials, Facilities &amp; Equipment (and Miscellaneous Items)</td>
<td>Nuclear reactors &amp; associated equipment</td>
</tr>
<tr>
<td>1</td>
<td>Materials, Chemicals, Microorganisms, and Toxins</td>
<td>Viruses &amp; bacteria, such as those causing bird flu, botulism, dysentery, brucellosis</td>
</tr>
<tr>
<td>2</td>
<td>Materials Processing</td>
<td>Specific types of machining equipment</td>
</tr>
<tr>
<td>3</td>
<td>Electronics</td>
<td>Multimeter, multifunction instrument (digital I/O, D/A converter, totalizer)</td>
</tr>
<tr>
<td>4</td>
<td>Computers</td>
<td>Computers &amp; related equipment</td>
</tr>
<tr>
<td>5</td>
<td>Telecommunications &amp; Information Security</td>
<td>Ethernet switch, remote control power switch</td>
</tr>
<tr>
<td>6</td>
<td>Sensors and Lasers</td>
<td>Marine acoustic systems, optical sensors, lasers</td>
</tr>
<tr>
<td>7</td>
<td>Navigation and Avionics</td>
<td>Accelerometers, gyros</td>
</tr>
<tr>
<td>8</td>
<td>Marine</td>
<td>Submersible vehicles, marine boilers</td>
</tr>
<tr>
<td>9</td>
<td>Propulsion Systems, Space Vehicles and Related Equipment</td>
<td>Turbine engines</td>
</tr>
</tbody>
</table>
Software

• **Software can be included in any of the CCL categories**
  • *Please review any software that is involved with a project to determine if it is export controlled.*

• **Encryption**
  • *Encryption presents its own set of special issues under the EAR and ITAR*
  • *Use of encryption on any project may require a license when foreign nationals are involved*
  • *Even if a license is not required, a classification report may need to be submitted*
Exemptions for Universities

• **Fundamental Research Exemption (ITAR, EAR)**
  - No license is required for fundamental research - basic or applied research in science or engineering - at an accredited institution of higher learning in the U.S. and resulting in information that is ordinarily published and shared broadly in the scientific community.

• **Public Domain Exemption (ITAR, EAR)**
  - No license is required to export information or research that are generally available in the public domain. This does not apply to physical equipment, materials, substances, etc.

• **Education Exemption (ITAR, EAR)**
  - No license is required to transfer information to students, including foreign nationals, concerning general scientific, mathematical or engineering principles commonly taught in school, colleges or universities.

• **Employment Exemption (ITAR only)**
  - No license is required to transfer export controlled information to a foreign national if the foreign national: (1) is a bonafide, full-time employee of the UW, (2) is not a national of certain countries of concern, (3) has a permanent residence in the U.S while employed at the UW, (4) has been informed in writing not to transfer information to other foreign persons.
1) The contract contains one or more of the following:

- Publication restrictions
- Personnel restrictions
- Export control paragraph
  - Ask for ITAR or EAR classification

2) Technical information received under a Non-Disclosure Agreement

3) Shipping items or information overseas

4) Working with foreign collaborators here or abroad

RSP typically does not accept these restrictions
Export Licenses

• **Not the “end of the world”**
  • It takes 1-4 weeks to prepare and submit the license
  • Up to 3 months to get license approval
  • The Export Control Office submits about 6 license applications a year (average 2010-2014)

• **Notify Compliance Officer if an export license may be needed**
  • Develop license strategy
    ▪ Can we manage information to prevent need for license?
    ▪ Is there an exception we can use?
    ▪ Type of license (EAR or ITAR)
    ▪ When is the license needed?
Shipping

• Although not strictly export controls, shipping regulations need to be considered when exporting items

• An Electronic Export Information (EEI) submission needs to be filed through the AES system (the online customs system) at least 2 hours before air flight when:
  • An item is being shipped that requires an export license
  • The value of the items shipped >$2500 for a single tariff code (Schedule B code)
Travel

- An export license may be required when traveling and taking something on a plane either in checked or hand-carried luggage
  - Hand-carried items: complete a commercial invoice and forward to your customs broker to complete the EEI filing through the AES system
- Exemptions:
  - Tools of the Trade: For UW-owned equipment that is used for work purposes
  - BAG: For personally owned equipment that is taken out of the country
Services

- **Service - Work done for hire that is not considered research**
- **Examples:**
  - Analysis of unknown pharmaceutical substances
  - Manufacturing items that are incorporated into commercial devices
  - Providing materials for outside university or commercial research
- **Concerns**
  - Physical export of controlled items, technology or information to foreign persons
  - Services conducted at UW by foreign staff/students using controlled technology (deemed export)
Project Assessment Process
**Project Assessments:**

**Purpose**
- Determine if an export license is required to complete project tasks

**Timing**
- Completed early post-award
- Assessed by PIs, PMs or delegate
- All assessments documented
Project Assessments (cont.):

- **Started June 10, 2013**
  - Applies to proposals (and their subsequent awards) submitted after June 10, 2013

- **Does not apply to MTAs and FFS**

- **Developed in collaboration w/ RSP and numerous individuals from campus**
  - Development, programming and testing

- **No means to hold up proposals or awards currently**
**Project Assessments (cont.)**

**Tools:**

- **WISPER Screening Tool**
  - Compliance Question
  - Export Control Questions
  - No paper record keeping required

- **Export Control Assessment Form**
  - Full Project Assessment
  - Restricted Party Screening
WISPER Screening Tool

**Compliance Question**

- **Does the project involve research or services in a scientific, engineering or technology field?**
  - If answer is no, you have completed the export control assessment.

- Can’t sign proposal w/o answering compliance question

- Answered by PI or delegate

Refer to the Export Control Help page for assistance in answering the questions:

https://kb.wisc.edu/images/group156/shared/ExportControl/wisperhelpscreen.pdf
WISPER Screening Tool

- If the answer is yes, the PI will need to answer 2 questions on the Projects Tab
  - Does the project include Controlled Technology?
  - Is an Export or Deemed Export planned as part of this project?
  - These are multi-part questions
    - Yes to any part = Yes for the entire question
  - Answer during award set-up

If both questions are Yes, a full export control assessment is needed
Example

- A researcher in the Psychology department plans to ship a thermal imaging camera to India for a study. The camera is controlled under the EAR.
  - Does the project involve research or service in a scientific, engineering or technology field? **Yes**
  - Does the project include controlled technology? **Yes**
  - Foreign persons will participate in this project? **Yes**

**FULL EXPORT ASSESSMENT NEEDED**
**Export Control Assessment Form**

- **Full Project Assessment**
  - Used to determine if a license is required
  - Completed if yes is answered to both questions on Export Control tab of WISPER
  - Completed early post-award
  - Completed by PI w/ Point of Contact or Export Control Office (ExCO)

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### UNIVERSITY OF WISCONSIN – MADISON

**EXPORT CONTROL ASSESSMENT FORM**

**PROJECT IDENTIFICATION**

<table>
<thead>
<tr>
<th>MSN #:</th>
<th>PI / PM:</th>
<th>Sponsor:</th>
</tr>
</thead>
</table>

**PROJECT IDENTIFICATION**

- **This form shall be completed and signed (see p. 2) by the Principal Investigator.**

<table>
<thead>
<tr>
<th>TASK</th>
<th>RESPONSE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1 Are you sharing UV-developed, non-commercial encryption software (includes travel abroad or R&amp;D)?</td>
<td>Yes; export license may be needed, contact POC</td>
</tr>
<tr>
<td>Q2 Does the item or information support design, production or use of nuclear, chemical or biological weapons?</td>
<td>Yes; export license may be needed, contact POC</td>
</tr>
<tr>
<td>Q3 Item or information was developed under a sponsored agreement w/ publication restrictions beyond brief review?</td>
<td>Yes; export license may be needed, contact POC</td>
</tr>
<tr>
<td>Q4 Was item or information provided by a 3rd party under a non-disclosure or confidentiality agreement?</td>
<td>Yes, proceed to question Q4.1</td>
</tr>
<tr>
<td>Q4.1 Is item or information provided under the non-disclosure or confidentiality agreement central to the research or does the agreement restrict the ability to publish results?</td>
<td>Yes, export license may be needed, contact POC</td>
</tr>
<tr>
<td>Q5 Is the item a defense article, other than information or software, on the ITAR US Munitions List (USML)?</td>
<td>Yes, export license may be needed, contact POC</td>
</tr>
<tr>
<td>Q6 Is the information or software being shared considered technical data on the ITAR US Munitions List?</td>
<td>Yes, proceed to question Q6.1</td>
</tr>
<tr>
<td>Q6.1 Is the USML listed information or software in the public domain?</td>
<td>Yes, proceed to question Q6.2</td>
</tr>
<tr>
<td>Q7 Are you transferring items on the Commerce Control List (CCL) of the EAR?</td>
<td>Yes, proceed to question Q7.1</td>
</tr>
<tr>
<td>Q7.1 Is the CCL-listed item to be shipped to a foreign country?</td>
<td>Yes, export license may be needed, contact POC</td>
</tr>
<tr>
<td>Q8 Are you sharing information or software code that is on the Commeric Control List?</td>
<td>Yes, proceed to question Q8.1</td>
</tr>
<tr>
<td>Q8.1 Is the CCL listed information or software in the public domain?</td>
<td>Yes, proceed to question Q8.2</td>
</tr>
<tr>
<td>Q9 Is the transfer going to an embargoed or otherwise restricted location, or an entity restricted by a federal agency?</td>
<td>Yes, export license may be needed, contact POC</td>
</tr>
<tr>
<td>Q9.1 Is the transfer going to an embargoed or otherwise restricted location, or an entity restricted by a federal agency?</td>
<td>Yes, export license may be needed, contact POC</td>
</tr>
</tbody>
</table>

For RIF see “Export Control Assessment Form – Tutorial @ http://www.grid.wisc.edu/researchpolicies/eac/exportassessmentsform.html

Rev. E, 1/14/13, TAD

Page 1 of 2

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Rev. L, 9/29/14

**Export Control - L2**

Text version of Stanford flowchart
Export Control Assessment Form

- **Restricted Party Screening (RPS)**
  - The federal gov’t has lists of persons and organizations with which we are not allowed to conduct transactions
  - PI or delegate completes RPS section
  - Used to determine if gov’t restricts us from working w/ specific foreign collaborators

- **Signatures**
  - PI signs authorization & forwards to ExCO
  - ExCO conducts RPS (if needed)
  - ExCO reviews & signs assessment
Reassessments

- **Reassess Your Project** *(if any of the following change)*
  - Scope
  - **Destination** - New foreign destination added or change in foreign destination
  - **Staffing Changes** - Non-US Person added for ITAR/EAR-sensitive project
Contact Information
For Additional Information, Contact:

• **Tom Demke, UW-Madison Export Control Officer**
  tom.demke@ssec.wisc.edu  262-8659

• **Bethany Nelson, UW-Madison Export Control Coordinator**
  bcnelson2@grad.wisc.edu  261-1128

• **Ben Griffiths, UW Senior Legal Counsel**
  BGRIFFITHS@vc.wisc.edu  263-7400

• **Or e-mail:** exportcontrol@grad.wisc.edu

**UW Export Control Website:**
http://grad.wisc.edu/respolcomp/exportcontrol/
End of Presentation