Export Control Program

PI & PM Training

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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
Why Do We Care (about Export Control)?

- It’s the law
- These regulations can affect:
  - What type of research we do
  - Who we hire
  - Who we can share information with
  - Who we work with (collaborators / sponsors)
  - Where we ship items
  - What items we ship
  - Level of security for projects / labs
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
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- 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

Thomas Butler, M.D., Texas Tech (Mar 2004)
• Reported 30 vials of Yersinia pestis missing from his lab
• Investigation found he had illegally exported the Y. pestis
• Convicted on 47 counts, including making fraudulent statements & export control
• Sentence:
  • 2 years in prison; $37K fine
  • Denial of export privileges for 10 yrs
  • Resigned from Texas Tech

Teledyne LeCroy, New York (June 2015)
• 2 violations of exporting oscilloscopes (3A292) to Beihang University, China (an entity-listed university)
• Failed to get export licenses & file accurate Shippers Export Declarations; value of oscilloscopes < $16K
• $75K fine; max fine could have been as high as $8M

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, biological agents, 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 a 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 effect on UW-Madison activities**
- **Different regulations, agencies, lists & means of implementation**
- **They can be very difficult to navigate**

Rev. N, 10/23/15
Important ITAR Categories (22 CFR 121 - 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, ebola, 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
Shipping

• **Who?**
  - To whom are you shipping the item? Is the contact person or organization a restricted party?
  - Do you know who the end user is?

• **What?**
  - Some items require an export license (i.e., military equipment; spaceflight H/W or S/W; select agents; some lasers; high speed cameras)

• **Where?**
  - E:1 Countries: Iran, North Korea, Sudan, Syria – Major restrictions
  - OFAC & US Embargo List: Balkans, Belarus, Burma, Central African Republic, Cote d’Ivoire, Cuba, Congo, Iran, Iraq, Lebanon, Liberia, Libya, N. Korea, Somalia, South Sudan-related, Sudan, Syria, Ukraine-related (Russia), Venezuela, Yemen-related, Zimbabwe
  - ITAR Prohibited Countries (22CFR 126.1): Afghanistan, Belarus, Burma (Myanmar), Central African Republic, China, Cote d’Ivoire, Congo, Cuba, Cyprus, Eritrea, Haiti, Iran, Iraq, Lebanon, Liberia, Libya, N. Korea, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, Zimbabwe

Contact the ExCO if you need assistance determining if you need a license
Shipping (cont.)

- Shipping regulations need to be considered when exporting items

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

For additional information & examples, see the Shipping training @ https://kb.wisc.edu/images/group156/shared/ExportControl/shippingtraining.150105.pdf
International Travel

• Where?
  • Similar destination concerns as shipping

• Why?
  • Conferences, meetings – What do you plan to discuss?
  • Research – Is this fundamental research?

• Who?
  • Are you meeting with specific persons?
  • Some foreign universities are subject to restrictions by the federal gov’t

• What?
  • An export license may be required when traveling and taking something on a plane either in checked or hand-carried luggage
  • Hand-carry to a foreign country = ship to a foreign country
International Travel (cont)

• **Hand-carried items:**
  - Complete a commercial invoice and forward to your customs broker to complete the EEI filing

• **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

For additional information, see the Travel training @
https://kb.wisc.edu/images/group156/shared/ExportControl/travel.150106.pdf
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)
Export Licenses

- **Not the “end of the world”**
  - It typically takes 1-2 months to submit and receive approval on licenses from the Depts. of Commerce and State
  - 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 the need for a license?
    - Is there an exception we can use?
    - Type of license (EAR or ITAR)
    - When is the license needed?
Contact Information
For Additional Information, Contact:

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

UW Export Control Website:
http://grad.wisc.edu/respolcomp/exportcontrol/