Export Control Program

Researcher Training

University of Wisconsin – Madison

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Introduction
What is Export Control?

- Export control consists of a group of federal laws / 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
  - Primarily for national security purposes
  - Some economic reasons as well
  - Dual Use: commercial items that could have military, national security or proliferation applications
    - Ex: computer technology and software, sensors, lasers
Why Do We Care (about Export Control)?

- It’s the law (we need to comply with the regulations)
- 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
Definitions
Export

- **Physical Export**: Sending or taking anything out of the United States in any manner, except mere travel outside of the U.S. by a person whose personal knowledge includes technical data; including:
  - Shipping – commercial shippers or hand-carry
  - Verbal transfer of technical data (i.e., phone, Skype)
  - Electronic transfer of technical data (i.e., e-mail, fax, text, social media)
  - Items: computers, equipment, biological agents, materials, substances, etc.
- **Deemed Export**: See next page
- **Defense Service**: Performed for or on behalf of a foreign person or organization
Deemed Export

- Transfer (oral or visual disclosure) of technology, information or data to a foreign person within the U.S. is deemed to be an export to that person’s home country
  - Deemed exports are treated in the same manner as a physical export to a foreign country
  - Foreign person needs to have knowledge to understand/interpret what they are seeing/hearing

- 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. Person. A U.S. Person is:
  - 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
Regulations
## ITAR

<table>
<thead>
<tr>
<th>Name of Regulation:</th>
<th>International Traffic in Arms Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency:</td>
<td>State Dept.</td>
</tr>
<tr>
<td>Items Controlled:</td>
<td>Military equipment &amp; information</td>
</tr>
<tr>
<td>Listing:</td>
<td>United States Munitions List (22 categories) – 22CFR 121</td>
</tr>
<tr>
<td>Comments:</td>
<td>Treats all foreign destinations the same</td>
</tr>
</tbody>
</table>

### UW Examples:

- **Category IV:** Launch vehicles, missiles, rockets,....
  - StarTracker

- **Category VII:** Tanks and military vehicles
  - Terrain displacement under treded vehicles

- **Category XII:** Fire Control, optical, guidance and control equip.
  - NIR detector
  - AERI crycooler

- **Category XV:** Spacecraft systems and associated equipment
  - GOES-R
**Name of Regulation:** Export Administration Regulations  
**Agency:** Commerce Dept.  
**Items Controlled:** Dual use items & information  
**Listing:** Commerce Control List (10 categories) – 15CFR 774, Supp 1  
**Comments:** Need for a license depends on commodity, destination country, reason for control & exemptions  
**UW Examples:**  
- **Category 1:** Select agents  
- **Category 3:** Electronics, such as multimeters, digital I/Os, D/A converters and integrated circuits  
- **Category 4:** Computers and related equipment  
- **Category 5:** Telecommunications equipment, ethernet switches, remote control power switches, encryption software  
- **Category 6:** Lasers, optical sensors
## FACR

<table>
<thead>
<tr>
<th><strong>Name of Regulation:</strong></th>
<th>Foreign Asset Control Regulations</th>
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</thead>
<tbody>
<tr>
<td><strong>Agency:</strong></td>
<td>Treasury Dept.</td>
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<tr>
<td><strong>Items Controlled:</strong></td>
<td>Foreign assets (bank accounts)</td>
</tr>
<tr>
<td><strong>Listing:</strong></td>
<td>Specially designated nationals list</td>
</tr>
<tr>
<td><strong>Comments:</strong></td>
<td>More concerned with whom you are communicating rather than what you are communicating</td>
</tr>
</tbody>
</table>
| **Examples:**           | • Benevolence International Foundation, Oak Lawn, IL  
                          | • Ukrainian-Mediterranean Airlines, Kiev, Ukraine  
                          | • Malek Ashtar University of Technology, Tehran, Iran  
                          | • Electronics Institute, Damascus, Syria  
                          | • A-Team Chemicals Company LTD., Bangkok, Thailand  
                          | • China Enriching Chemistry Limited, Shanghai, China  
                          | • Proton Petrochemicals Shipping Limited, Nicosia, Cyprus |
Software

- Software can be included in any of the export control 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 rules under 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

For additional information on software, please see: https://kb.wisc.edu/images/group156/shared/ExportControl/software.160317.pdf
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 schools, 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.
Services

- **Service - Work done for hire that is not considered research**
  - University exemptions do not apply

- **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)
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 -

**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

**Teledyne LeCroy, New York (June 2015)**
- Exporting 2 oscilloscopes (3A292) to Beihang University, China (an entity-listed university)
- Failed to get export licenses & file accurate shipping documentations;
- Value of oscilloscopes < $16K
- Fine = $75K
Identifying Issues
Finding export control issues is much like looking for a golf ball in a haystack.
Discovering Issues

The Export Control Office reviews a number of processes to unearth issues, including:

- **Project Screening** – Using the WISPER screening tool
- **Visa Certification** – For H-1B and O-1 visas
- **Outgoing International Material Transfer Agreements (MTAs)**
- **International Travel** – Weekly review of Concur bookings
- **Vendor Screenings**
- **Project Reviews** – Questions from staff regarding projects, staffing, shipping, etc.
Red Flags
For Export Control

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 NDA

3) Shipping items or information overseas

4) Working with foreign collaborators here or abroad
International Shipping & Travel
International Shipping

- **Who?**
  - To whom are you shipping? Is the recipient 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; night vision goggles)

- **Where?**
  - **E:1 Countries: Crimea, Cuba, Iran, North Korea, Sudan, Syria – Major restrictions**
  - **OFAC & US Embargo List:** Balkans (western), Belarus, Burundi, Central African Republic, Cuba, Congo, Iran, Iraq, Lebanon, Libya, N. Korea, Somalia, South Sudan-related, Sudan and Darfur, Syria, Ukraine/Russia-related, Venezuela, Yemen-related, Zimbabwe
  - **ITAR Prohibited Countries (22CFR 126.1):** Afghanistan, Belarus, Burma, Central African Republic, China, Congo, Cuba, Cyprus, Eritrea, Haiti, Iran, Iraq, Lebanon, Libya, N. Korea, Somalia, Sudan, Syria, Venezuela, Zimbabwe

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.)

- **AES Submissions**
  - U.S. Customs will require you to submit an Electronic Export Information filing (EEI) two (2) hours prior to your departure if you are carrying:
    - If the item being hand-carried requires an export license
    - The value of the items hand-carried are $2500 for a single tariff code (Schedule B code)
    - Rough diamonds

- **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 the country

- **Clean laptop program**
What Do You Do When You Find An Issue?
Lab Security

- In some cases lab security needs to be implemented to prevent unauthorized persons from having access to controlled items
  - Lab security measures are described in the TCP

- Types of security
  - Lab: Door locks, key access
  - Equipment: Lockouts
  - Materials: Lockboxes
  - Computer: Password protection, encryption

- Adequate control may prevent need for deemed export licenses
Technology Control Plan (TCP)

- Prevent unauthorized access to controlled equipment, materials, technology, software, information or data

- Written plan describing:
  - What items are controlled
  - Where the items are located
  - Who can have access
  - How the access is controlled (see lab security)

- Developed in collaboration between PI and Export Control Office

- All lab staff should review and sign off on TCP

- Adequate control may prevent need for deemed export licenses
Export Licenses

- **Not the “end of the world”**
  - Typically takes 1-2 months to submit and receive approval on licenses from the Depts. of Commerce and State
  - Export Control Office submits about 6 license applications a year *(average 2010-2017)*

- **Notify Export Control Office 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:

- **Tom Demke, UW-Madison Export Control Officer**  
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- **Bethany Nelson, UW-Madison Export Control Coordinator**  
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- **Ben Griffiths, UW Senior Legal Counsel**  
  ben.griffiths@wisc.edu  263-7400

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

**UW Export Control Website:**  
https://research.wisc.edu/compliance-policy/export-control/