

OTHER DUTIES AS ASSIGNED: EXPORT CONTROL AT A PUI

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TIMELINE

Jan. 2012

- Start as Acting Associate Dean for Research
- Hear the phrase “export control”

Spring 2012

- Receive a forwarded letter regarding a piece of controlled equipment

Later
Spring 2012

- Discover that there seem to be export control issues associated with everything

EXPORT CONTROL - WHAT IS IT?

A **transfer** of **export-controlled** items, information, or assistance out of the U.S. or to a **foreign person** within the U.S.

WHAT IS A TRANSFER?

- ◉ Physically sending or taking items out of the U.S.
- ◉ Electronically transmitting controlled information out of the U.S.
- ◉ Releasing or disclosing controlled information visually or verbally to a foreign person in the U.S. or abroad
- ◉ Transferring ownership of a “defense article” to a foreign person in the U.S.
- ◉ Providing assistance related to controlled items or information abroad or in the U.S. to a foreign person

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WHAT IS EXPORT CONTROLLED?

- ◉ Items - goods, equipment, materials, software
- ◉ Information - data, source code
- ◉ Assistance - help with the above

- ◉ That are regulated by the government

- ◉ That originate in the U.S., regardless of where they may be now
- ◉ That are in the U.S., regardless of where they came from

SIUE'S EXPORT-CONTROLLED ITEM

- ◉ In the Department of Chemistry
- ◉ Associated with two other pieces of equipment in a complex arrangement that I'm assured no student could get to easily
- ◉ Housed in a locked, restricted access room with expensive equipment that Chemistry keeps a close eye on

EXPORT CONTROL - WHAT IS IT?

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WHO IS A FOREIGN PERSON?

- A person who is
 - not a U.S. citizen
 - is not a lawful permanent resident of the U.S.
 - is not otherwise a protected individual as defined in Title 8 Section 1324 of the U.S. Code
- A foreign entity or group not incorporated or organized to do business in the U.S.
- A foreign government, including agencies and subdivisions of the government

SIUE'S EXPORT-CONTROLLED ITEM

- ◉ Received a list of the international faculty
- ◉ But are they foreign persons? Or are they citizens or green card holders?

HIRING SITUATION

- ◉ A unit wanted to hire an Iranian living in Canada.
- ◉ That unit has an export-controlled fermenter.
- ◉ The person would be working with the fermenter.

THE COMMERCE COUNTRY CHART

Commerce Control List Overview and the Country Chart

Supplement No. 1 to Part 738 page 3

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
	Bulgaria ³	X					X		X	X						
Burkina Faso	X	X		X		X	X	X	X	X		X		X		
Burma	X	X	X	X		X	X	X	X	X		X		X		
Burundi	X	X		X		X	X	X	X	X		X		X		
Cambodia	X	X		X		X	X	X	X	X		X	X			
Cameroon	X	X		X		X	X	X	X	X		X		X		
Canada	X										X					

TMP CERTIFICATION

- ◉ Export License Exception for Professional Temporary Exports/Reexports
- ◉ EAR makes an exception to licensing requirements for the temporary export or reexport of certain items, technology, or software for professional use as long as certain criteria are met. The exception does not apply to:
 - data that does not meet the fundamental research exclusion
 - EAR satellite or space-related equipment, components, or software
 - technology associated with high-level encryption products
 - items, technology, data, or software regulated by the Department of State's International Traffic in Arms Regulations (ITAR)
 - when traveling to Iran, Syria, Cuba, North Korea, Libya, or Sudan.

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WHO'S INVOLVED?

Commerce Department Bureau of Industry and Security (BIS)	State Department Directorate of Defense Trade Controls (DDTC)	Treasury Department Office of Foreign Assets Control (OFAC)
Regulates commercial and dual-use items and related information and services	Regulates inherently military and space-related items and associated information and services	Regulates travel and transfers of value to sanctioned and embargoed countries as well as persons and entities of concern
Export Administration Regulations (EAR)	International Traffic in Arms Regulations (ITAR)	
Commerce Control List (CCL)	U.S. Munitions List (USML)	Specially Designated Nationals (SDN) List
Entity List		
Export licensing	Strict controls, typically all foreign persons need a license	Licensing

SIUE AND CUBA

Cuban &
Caribbean
Center

CHINESE SPONSOR OF ENGINEERING RESEARCH

- ◉ Can we do business with this sponsor?
- ◉ Would anything about this research potentially fall under export control?

IS THERE ANY WAY TO AVOID EXPORT CONTROL?

- ◉ ITAR - rarely
 - Bona fide full time employee exemption: disclose unclassified technical data to full-time employees in the U.S. provided they are notified in writing about not re-exporting
- ◉ EAR - multiple exceptions and exemptions available
 - TMP: items and information temporarily taken abroad as tools of the trade
 - BAG: items and information temporarily taken abroad for personal use
 - Contract controls exemption: information resulting from government-sponsored research governed by an agreement containing “specific national security controls”
- ◉ For information and source code, there are three possibilities.
 - Public domain /publicly available exclusion
 - Educational information exclusion
 - Fundamental research exclusion

PUBLIC DOMAIN/PUBLICLY AVAILABLE

Applies to information that is already published and found:

- in libraries open to the public, newsstands, bookstores, unrestricted subscriptions, and free websites
- in published patent information
- at public conferences, meetings, seminars, and trade shows

EDUCATIONAL INFORMATION

○ ITAR

- General science, math, and engineering commonly taught at schools and universities
- Focused on subject matter

○ EAR

- Information conveyed in courses listed in course catalogues and in their associated teaching labs of any academic institution
- Focused on venue

FUNDAMENTAL RESEARCH

- Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which are ordinarily restricted for proprietary reasons or for specific national security reasons
- Applies to information, not items or certain encryption source code
- May not apply to certain information or source code under ITAR

MORE ON FRE

- Allows the information to be transferred abroad without restriction
- Allows foreign nationals to participate in research involving information or software that would otherwise be controlled without having to get a deemed export license
- Can be voided by accepting a contract clause that:
 - restricts access to or disclosure of research results
 - requires pre-publication approval

GPS UNIT GOING TO PERU

- ◉ Anthropologist got external funding to study monkeys in Peru
- ◉ With an Peruvian collaborator
- ◉ And needs to take a GPS unit

GPS HITS

- 1. Designed or modified for use in "missiles"; or 2. Designed or modified for airborne applications and having any of the following:
 - 2.a. Capable of providing navigation information at speeds in excess of 600 m/s (1,165 nautical mph);
 - 2.b. Employing decryption, designed or modified for military or governmental services, to gain access to GNSS secured signal/data; or
 - 2.c. Being specially designed to employ anti-jam features (e.g. null steering antenna or electronically steerable antenna) to function in an environment of active or passive countermeasures.Items:
 - a. Employing a decryption algorithm specially designed or modified for government use to access the ranging code for position and time; or
 - b. Employing 'adaptive antenna systems'.Note: 7A005.b does not apply to GNSS receiving equipment that only uses components designed to filter, switch, or combine signals from multiple omni-directional antennae that do not implement adaptive antenna techniques. Technical Note: For the purposes of 7A005.b 'adaptive antenna systems' dynamically generate one or more spatial nulls in an antenna array pattern by signal processing in the time domain or frequency domain.

WHAT ARE THE MAIN EC ISSUES?

◉ Deemed export concerns

- Any sponsored or revenue generating activity
- Purchasing (especially software)
- I-129 (visa) attestations
- Foreign national visitors
- Online education and file sharing

◉ Physical export concerns

- International travel
- Shipping
- Technology transfer
- International research (including foreign sponsors)

AND WHAT HAPPENS IF THERE'S A VIOLATION?

◉ Fines and/or jail

- Criminal (willful) violations
 - University: up to \$1 million per violation
 - Individuals: up to \$1 million per violation and/or up to 20 years in prison
- Civil violations
 - Up to \$500,000 per violation

◉ Other potential consequences

- Debarment
- Deportation of involved foreign nationals
- Seizure or forfeiture of goods
- Damaged reputations

EC TASK FORCE CONVENED BY THE PROVOST

Members from across campus

Representing
Admissions
Human Resources
Information Technology Services
International Student Services
Immigration
Purchasing
Purchasing
Property Control
Property Control
Legal Counsel
College of Arts and Sciences
Graduate School/Office of Research and Projects
School of Engineering
School of Pharmacy

EC LISTSERV

Sign up at:

<https://lists.service.ohio-state.edu/mailman/listinfo/export-control>

QUESTIONS?

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