Introduction to Export Controls and Embargoes

- key concepts and definitions
- high risk areas
- critical laws
- scope of controls
- export control lists
- resources

Export controls & embargoes

U.S. laws that regulate:
- the distribution of strategic items
- to foreign nationals and foreign countries
- implement sanctions.

For reasons of:
- National security
- National competitiveness
- Human rights
**EXPORT CONTROLS**

- Laws apply to activities of every US citizen and company when –
  - Sending or sharing controlled items to a restricted country.
  - Transmitting controlled items to foreign nationals from restricted countries within the U.S.
  - “Deemed Exports”

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**Some definitions**

- **Controlled items:**
  - Commodities (equipment, parts)
  - Software (esp. source code, high encryption)
  - Technology

- **Technology:**
  - Specific *information* necessary for the design or development, production or use of a product.

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**Some definitions**

- **Foreign National:**
  - Any person who is not a lawful permanent resident of the United States; except refugees and asylum-holders
  - Students, faculty, staff, visitors
  - Foreign corporations, business associations, partnerships, trusts, societies, etc.
High-risk areas:  
- engineering  
- computer sciences  
- encrypted software  
- biological agents  
- space sciences  
- biomedical research (lasers)  
- controlled chemicals  
- toxins  
- Research or "defense services" in certain foreign countries.  
- Sponsor restrictions on foreign nationals or publication.  
- Physical export of controlled items.  
- Financial Transactions with sanctioned countries or "specially designated nationals" (SDN)

Embargo Regulations  
- Department of the Treasury  
- Office of Foreign Assets Control (OFAC) implements U.S. sanctions / embargoes  
- Regulates:  
  - transfer of money,  
  - exchange of items/services of value,  
  - affiliation with Specially Designated Nationals (SDN),  
  - 22 currently embargoed entities,  
  - restrictions vary  
  - [http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx](http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx)
EXTRA CONTROL REGULATIONS

- Dept of State, Dir. of Defense Trade Controls
  - International Traffic in Arms Regulations (ITAR)
  - Military items or defense articles or technical data; space technology, certain biological agents and toxins
  - U.S. Munitions List (USML)

- Dept of Commerce, Bureau of Industry & Security
  - Export Administration Regulations (EAR)
  - Dual-use items: commercial and potential military use OR with international economic importance
  - Commerce Control List (CCL)

VISUAL

Why does Higher Ed care?

- U. of Tennessee: faculty doing USAF research
- Shared information w/ the Chinese
- University warned him; reported it
- Faculty member 4 years in prison

- Texas Tech faculty
- Shipped 30 vial of plague bacteria to Tanzania
- Reported it stolen...destroyed...
- Faculty member 2 years in prison
Why do PUIs care?

- Geology faculty doing research in Armenia, taking University’s magnetometer
  - On Commerce Control List
  - Restricted to Armenia
  - License required
  - Security measures (technology control plan)

Why do PUIs care?

- Faculty summer travel to Sudan (embargoed) and South Sudan (not).
  - Funded with institution funds.
  - Research topic raised concerns.
  - Cannot take any laptop, etc. to Sudan, no license available.
  - Cannot pay interview subjects (embargoes)
  - State Department Travel advisory.

Why do we care ... PENALTIES

Penalties in ONE word: **Severe!**

**Voluntary Disclosure mitigates penalties**

- Criminal
  - **University** – fine up to $1 million, or 5x the value of the export (the greater), for each violation
  - **Individual** – fine up to $250,000 and/or up to 10 years in prison for each violation

- Civil sanctions:
  - **University** – a fine of up to $500,000 for each violation
  - **Individual** – a fine of up to $500,000 for each violation
EXCLUSIONS

This is the good news!

- Fundamental Research
- Public Domain
- Educational Institution activities

 Applies to much of PUI’s activity

FUNDAMENTAL RESEARCH EXCLUSION (FRE)

APPLIES TO INFORMATION:

- Resulting from basic and applied research in science and engineering,
- Conducted at an accredited institution of higher education,
- Located in the U.S. and
- Ordinarily published and shared broadly in the scientific community, as long as it is...
- Not subject to publication or access controls.

FUNDAMENTAL RESEARCH EXCLUSION (FRE)

- Does not apply to commodities or materials.
- Publication or personnel approvals by sponsor invalidate the FRE – check contracts!
- Some technologies (advanced encryption) always ineligible for fundamental research exclusion
  - May not be available when controlled information that is already existing is used during research that otherwise meets the criteria for a fundamental research exclusion
EXCLUSIONS: PUBLICLY AVAILABLE

APPLIES TO INFORMATION:
- Already published and found in:
  - Libraries open to the public
  - Unrestricted subscriptions, newsstands, or bookstores
  - Published patent information
  - Conferences or exhibits (etc.) held in the U.S. (ITAR) or anywhere (EAR), which are generally accessible by the public
  - Unrestricted Websites

EXCLUSIONS: EDUCATIONAL ACTIVITIES

APPLIES TO THE CLASSROOM:
- General science, math, and engineering commonly taught at schools and universities (STATE)
- Information conveyed in courses listed in course catalogues and in associated teaching labs (COMMERCE)

KEY: Course is described in the catalog, information taught is in textbooks. May Not Apply to independent study

EXPORT or EMBARGO LICENSE

A LICENSE IS REQUIRED TO
- send or take or provide a controlled item/service
- to a controlled/restricted destination or
- to provide it to a foreign national from a controlled country when in the US.
- enter into transactions with an embargoed country or SDN, restricted entity
CONSIDER HIGH-RISK AREAS/DISCIPLINES

- Presentations/discussions of previously unpublished research at conferences where foreign national scholars may be in attendance.
- Research collaborations with foreign nationals from controlled countries and technical exchange programs involving controlled items/country.
- Shipping controlled research equipment abroad (almost always).
- Visits to your lab by foreign scholars (if equipment/country controlled, depends on level of access).

What is controlled?

- What is my item?
  - On the USML or CCL? Why?
- Where is it going?
  - A proscribed, controlled or embargoed country/foreign national?
- What will be the end-use?
  - Why are you taking the item?
- Who will receive it?
  - Screen! SDN, Restricted entities.

WHAT IS EXPORT CONTROLLED?

Commerce Control List Categories

- 0—Nuclear Materials, Facilities and Equipment and Miscellaneous
- 1—Materials, Chemicals, “Microorganisms,” and Toxins
- 2—Materials Processing
- 3—Electronics
- 4—Computers
- 5—Telecommunications and Information Security
- 6—Lasers and Sensors
- 7—Navigation and Avionics
- 8—Marine Technology
- 9—Propulsion Systems, Space Vehicles and Related Equipment

LICENSE MAY BE REQUIRED
WHAT IS EXPORT CONTROLLED?

Commerce Control List Groups
Within each category, items are arranged by group:

- A—Equipment, Assemblies and Components
- B—Test, Inspection and Production Equipment
- C—Materials
- D—Software
- E—Technology

WHAT IS EXPORT CONTROLLED?

US Munitions List - 21 categories total

- I - Firearms
- X - Protective Personnel Equipment
- XI - Military [and Space] Electronics
- XII - Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIV - Toxicological Agents and Radiological Equipment
- XVII - Classified Articles, Technical Data and Defense Services
- XX - Submersible Vessels, Oceanographic and Associated Equipment

WHAT IS EXPORT CONTROLLED?

- Defense Services (State – ITAR)
  - Furnishing assistance/training to foreign persons anywhere, in the use of defense articles;
  - Furnishing any technical data that is ITAR controlled.
The item

What list? What controls?
- State (USML) or Commerce (CCL)?
- Rule: its State until its Commerce.
- Commodity Jurisdiction or self-classify
  - State:
    - military items, defense services, space, satellites, classified, government labs...
  - Commerce:
    - research equipment, use technology...

Commerce: step-by-step

What is the item?
- Alpha index\(^1\) → potential ECCNs
- Look up ECCNs on CCL\(^1\)
  - if specs match, classify item and continue.
  - if specs do not match → EAR 99, no license.
- Note "reasons for control" code for ECCN.
- Note license exception codes, if any.

\(^1\) Part 774, Supplement 1

Commerce: step-by-step

Where is it going?
- Is the country restricted for your item?
  - Use "country chart" (Part 740, Supp. 1): reasons for control columns. “X” requires a license to that country.
Where is it going?

- Check "list based exceptions": identified by "country group"
- Check transaction based exceptions, e.g. Baggage
- Conclude: License Exceptions available and No License Required OR prepare to apply for a license
- Document use of any License Exception

One last thing ...embargoes

Where is it going/End-use/End-user…. more

- Is the country embargoed? (Treasury)
- Check Restricted Entities list, Specially Designated Nationals (Treasury)
- Use Export.gov consolidated list.

Can do this first!
EXAMPLE

- Smartphone
  - Listed by Commerce Dept. on the CCL: ECCN 5A992
  - Reason for control: Anti-terrorism (code AT1)
  - Countries controlled for Anti-Terrorism (AT1) - Sudan, Syria (Embargoed!)

- Software and data (i.e., technology) are classified separately from the commodity (hardware).

WHAT IS A LICENSE EXCEPTION?

IF A LICENSE REQUIRED, SEVERAL EXCEPTIONS:

- Temporary export of tools of the trade and Baggage (personal or professional use)
- Reasonable kinds and quantities of commodities and software can be taken overseas.
- BUT MUST remain under one's effective control
- Applies to: Laptops, smart phones, w/ commercial software.
- Must be documented.
- No controlled items may be taken to embargoed countries.

All exceptions are defined within the regulations.

EXPORT LICENSE PROCESS

REQUIREMENTS

- Detailed explanation
  - technology, use, principals (CVs), foreign nationals, travel plans, significance...

- Technology Control Plan
  - safeguards a University takes to protect items
  - Principals involved, complete activity description, resumes, supporting documentation
  - Required for "Deemed Exports" as well
Is it fundamental research?
Is it educational activity?
Is it publicly available info?
All are EXCLUSIONS from Export Control Laws

Export regulations cover only “listed” items and, therefore, the great majority of University activity is not on the covered items lists.
Fundamental research exclusion is negated by restrictions on publications or foreign nationals
“Export” does not necessarily mean out of the country; concept of “deemed export” critical (students, employees, guests)

Licenses may be needed for
- shipment of listed tangible items AND
- sharing research results/technical info (email!)
- some activities in embargoed countries
Individual License takes (a lot of) time
Penalties for noncompliance may be severe
License exceptions must be documented
BASIC CONCEPTS

- What is my item?
  - On a list? Why?

- Where is it going?
  - A controlled or embargoed country?

- What will be the end-use?
  - Why are you taking the item?

- Who will receive it?
  - Check the lists!

QUESTIONS

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RESOURCES

RESOURCES

University Sites:
- Vanderbilt
- Stanford — decision tree
- U. Texas at Austin
- Worcester Polytechnic Institute
- Council on Government Relations (COGR)

RESOURCES

- Commerce, BIS online training:
  - [http://www.bis.doc.gov/seminarsandtraining/seminar-training.htm](http://www.bis.doc.gov/seminarsandtraining/seminar-training.htm)
- Consolidated lists to check
  - [http://export.gov/ecr/ec_main_02348.asp](http://export.gov/ecr/ec_main_02348.asp)
- Treasury Embargoes FAQ
  - [http://www.treasury.gov/resource-center/sanctions/Pages/answer.aspx](http://www.treasury.gov/resource-center/sanctions/Pages/answer.aspx)