



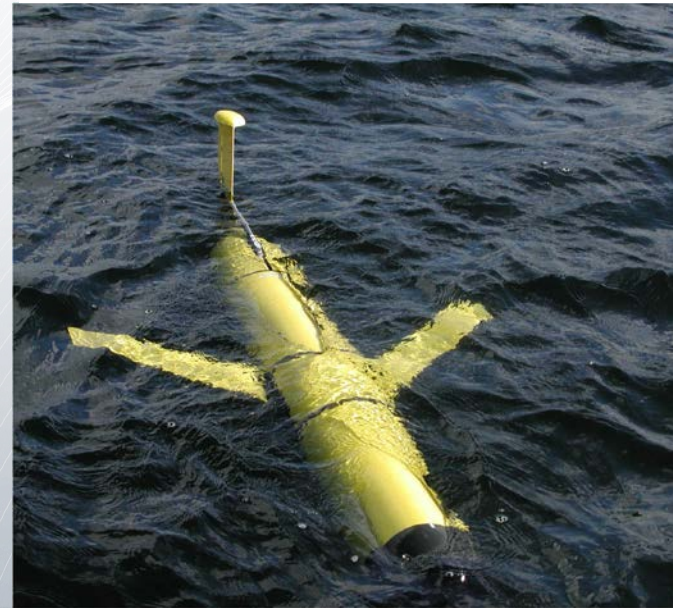
Introduction to Export Control Compliance: Awareness and Education

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**Export Compliance Officer | Export Control Office
Office of Research Compliance**

What are Export Controls?

- Export controls are the U.S. laws and regulations that govern the **transfer of controlled items or information to foreign nationals, countries, and entities** for reasons of national security and foreign policy.



Export Control Compliance at UGA

- **How and why did this program develop?**

- Dec. 2012, Feb. 2013 - Institutional Effectiveness Review of OVPR
 - Recommended investigating the implementation of a formal export control program
- April and May 2013 - Fischer and Associates Export Control Assessment and Recommendations
- Dec. 2013 – Fischer and Associates on campus training
- July 2014 – Export Compliance Officer joins UGA

UGA Export Control Assessment

- Conducted by Fisher & Associates
- Based on interviews and discussions with more than 40 faculty members and administrators
- **Goals**
 - Identify risk sensitive activities (both research and non-research)
 - Outline compliance requirements
 - Provide user-friendly compliance tools
 - Address resource considerations



Export Control Regulations and Their Application



Who are the Regulators?



Department of State, Directorate of Defense Trade Controls

International Traffic in Arms Regulations (ITAR)

- Relates to military and defense articles and services, designed or configured for military applications, with no equivalent civilian or commercial products
 - Controlled items found on the US Munitions List



Department of Commerce, Bureau of Industry and Security

Export Administration Regulations (EAR)

- Relates to “dual use” (civilian and military) items, information or software
 - Controlled items found on the Commerce Control List



Department of Treasury, Office of Foreign Assets Control

- Administers and enforces economic and trade sanctions

Commerce Department Controls

Commerce Control List (EAR)

Commerce Control List Categories

Category 0 – Nuclear & Miscellaneous
Category 1 – Materials, Chemicals, Microorganisms, and Toxins
Category 2 – Materials Processing
Category 3 – Electronics
Category 4 – Computers
Category 5 – Part 1: Telecommunications
Part 2: Information Security
Category 6 – Sensors and Lasers
Category 7 – Navigation and Avionics
Category 8 – Marine
Category 9 – Aerospace and Propulsion

Five Product Groups

Product Group A – Systems, Equipment, and Components
Product Group B – Test, Inspection and Production Equipment
Product Group C – Material
Product Group D – Software
Product Group E – Technology

- **Export Control Classification Number**
 - e.g, 5A992.c
 - Describes item and indicates controls
 - Items under Commerce jurisdiction but not on CCL are EAR99

State Department Controls

United States Munitions List (ITAR)

- I. Firearms, Close Assault Weapons and Combat Shotguns
- II. Guns and Armament
- III. Ammunition/Ordnance
- IV. Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
- V. Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- VI. Surface Vessels of War and Special Naval Equipment
- VII. Ground Vehicles
- VIII. Aircraft and Related Articles
- IX. Military Training Equipment and Training
- X. Personal Protective Equipment
- XI. Military Electronics
- XII. Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIII. Materials and Miscellaneous Articles
- XIV. Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- XV. Spacecraft and Related Articles
- XVI. Nuclear Weapons Related Articles
- XVII. Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated
- XVIII. Directed Energy Weapons
- XIX. Gas Turbine Engines and Associated Equipment
- XX. Submersible Vessels and Related Articles
- XXI. Articles, Technical Data, and Defense Services Not Otherwise Enumerated



What is regulated?

- **Physical Export**

- An actual shipment or electronic transmission, out of the United States, of controlled items, services, or technology (including temporary exports)

- **Deemed Export**

- Release or disclosure of certain controlled information or technology/technical data to any foreign person within the United States

- **Transactions with Restricted Parties**

What is an “Export?”

- An item or information sent from the U.S. to a foreign destination, or technology disclosed to a foreign national, here or abroad



Equipment



Software



Technical Data/
Technology



Physical, electronic,
oral, or visual means





Deemed Export

Release of certain controlled technology to foreign national within the US \equiv Deemed export to that foreign national's country of nationality

NOTE: Persons with permanent resident status or US citizenship and persons granted status as “protected individuals” are exempt from the deemed export rule.

Normal operation of Commerce Department controlled “dual-use” equipment by foreign nationals is typically not a deemed export.

Export Controls Implicated When



Military Applications



Concern about an Export's Destination



Concern about the End-Use



Sanction Restrictions

Potential Scenarios

- Transactions with restricted parties
- Contractual restrictions on publishing or foreign national participation
- Receiving 3rd party export controlled information
- “Use,” beyond normal operation, of certain “dual-use” items or technologies controlled by the Commerce Department
 - Foreign national participation
- Research on, or use of, military items or technologies controlled by the State Department
 - Foreign national participation
- International shipments (What is being shipped and to whom?)
- Traveling outside of the U.S. with controlled items or information
- Collaboration with a researcher or institution from outside the U.S.

Export Control Exclusions



Fundamental Research Exclusion (FRE)

- Fundamental Research is defined by the National Security Decision Directive 189 (NSDD189) as “**basic or applied research in science and engineering, the results of which are ordinarily 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 ordinarily are restricted for proprietary or national security reasons.”
- **Fundamental Research Exclusion** (*most UGA research*)
 - Generally, foreign nationals are allowed to engage in normal operation of EAR controlled items
 - Except if “use ” includes
 - Operation, Installation, Maintenance, Repair, Overhaul, AND, Refurbishing
 - Or if explicitly controlled for one or more of the individual “uses” above
 - ITAR does not allow the use of controlled instruments or operational data by foreign nationals under FRE (or Public Domain)
 - Protection lost if there are publication and/or foreign national participation restrictions

Exclusions/Exceptions to Control

■ Educational Information

- Covers information commonly taught in schools
- EAR excludes information released in academic catalog-listed courses or labs
- ITAR excludes information concerning general scientific, mathematics, or engineering principles

■ Public Domain (ITAR) and Publicly Available (EAR)

- Information that is published and which is generally accessible or available to the public

■ Bona Fide Employee Exemption (*ITAR only*)

- Access to ITAR-controlled “technical data”
- Several conditions must be met

■ EAR Temporary Export Exception

- Several conditions must be met



Limits of the FRE

- **The Fundamental Research Exclusion does not cover**
 - Exports of controlled hardware, software, or technology (even temporary exports)
 - Export controlled activities- “defense services”
 - Training related to defense articles or furnishing of technical data to foreign nationals
 - Transactions involving embargoed or sanctioned parties/countries

Application to University Research





Do all controlled exports to every country require an export license?

- NO, under the EAR
 - Depends on the item, its control, and the destination country
- YES, under the ITAR
 - About two dozen countries are prohibited

What about temporary export?

EAR item



Temporary Export Exception:
(Numerous Qualifications to meet)
Type of export
Destination
Duration of Export

Does it require a license
for permanent export?

What about temporary export?

ITAR item or data



Applies even if only sent to
international waters or airspace

**NO TEMPORARY EXPORT
EXCEPTION**

**A license is always
required.**

What about Deemed Export licensing?

EAR item



Unlikely a Deemed Export license will be required as normal operation of equipment is generally not controlled

Maybe, if license required for permanent export AND foreign national access goes beyond normal operation

What about Deemed Export licensing?

ITAR item or data



Defense articles and technical data will always require a license from the State Department for foreign national access in the U.S.

Always, unless the Bona Fide Employee Exemption is available

Once I have a license, am I done?

No...

The license may carry specific government restrictions or limitations on the export activity like duration of the license, re-export certification, and access restrictions.



Potential Consequences of Violations and Best Practices



Penalties and Sanctions

Penalties

| | Department of Commerce (EAR) | Department of State (ITAR) | Department of the Treasury (OFAC) |
|---|--|--|--|
| Civil Penalties | <ul style="list-style-type: none"> Fines of up to \$250,000 per violation (or twice the amount of the transaction) Suspension or debarment from government contracts Revocation of export privileges | <ul style="list-style-type: none"> Fines of up to \$500,000 per violation Suspension or debarment from government contracts Seizure and forfeiture of article Revocation of export privileges | <ul style="list-style-type: none"> Fines of up to \$250,000 per violation Suspension or debarment from government contracts |
| Criminal Penalties (willful violation) | Fines of \$1 million per violation, up to 20 years imprisonment | Fines of up to \$1 million per violation, up to 10 years imprisonment and debarment | Fines of up to \$1 million per violation, up to 10 years imprisonment |

Sanctions

There are severe sanctions, in addition to the criminal and civil penalties, that may be imposed for violations, including:

- termination of export privileges
- suspension and/or debarment from federal government contracting
- loss of federal funds
- voluntary disclosure of violations serves as a "mitigating factor" in deciding penalties.




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Former University of Tennessee Professor John Reece Roth Begins Serving Four-Year Prison Sentence on Convictions of Illegally Exporting Military Research Data

U.S. Attorney's Office
 February 01, 2012

Eastern District of Tennessee
 (865) 545-4167

KNOXVILLE, TN—On January 18, 2012, John Reece Roth, a former professor of electrical engineering at the University of Tennessee (UT) in Knoxville, began serving a four-year prison sentence for his September 2008 convictions. Roth had been on bond pending his appeals, all of which were unsuccessful. He self-surrendered to the federal correctional facility in Ashland, Kentucky.

Roth was convicted after a jury trial in U.S. District Court in Knoxville, of conspiracy, wire fraud, and 15 counts of exporting "defense articles and services" without a license. As a UT professor, Roth obtained an U.S. Air Force (USAF) contract to develop plasma actuators to control the flight of small, subsonic, unmanned, military drone aircraft. During the course of that contract, he allowed two foreign national students to access export controlled data and equipment, and export some of the data from the contract

Enforcement Actions

- **University of Michigan:** Research Fellow charged with conspiracy to export to an embargoed country
 - Refurbished MRI coil to Iran
 - Wanted to re export to Iran via Netherlands
 - Likely would have been a licensable “humanitarian” export
 - Other criminal charges: Conspiracy to smuggle goods, money laundering, obstruction of justice
- **UMASS-Lowell:** Center for Atmospheric Research shipped EAR99 atmospheric device to Pakistan Space & Upper Atmosphere Research Commission (Civilian Space Agency)
 - \$100,000 fine waived if no further violations during a two-year probationary period
- **Texas Tech University Health Sciences Center:** Unlicensed export (via FedEx) of 30 vials of Yersinia Pestis (Plague bacteria) to Tanzania
 - 1C351 Human and Zoonotic pathogens and toxins
 - False statements on FedEx Air Waybill – “lab materials”
 - Unauthorized export of YP
- **Florida Atlantic University:** Professor caused the export of a thermal imaging camera to Syria
 - Export required a license
 - One year denial of export privileges

Export Control Examples

- Commerce Control List (EAR-Controlled)

- Purchasing Example

- Handheld computer with an ECCN of 7a994
 - “Navigation direction finding equipment”
 - Regional Stability and Anti Terrorism Controls

- License or documented exception required to export (permanently or temporarily to controlled destination)
 - Foreign national access (deemed export) will not require a license

- Commerce Control List (EAR-Controlled)

- Purchasing Example

- Open Path CO2/H2O Analyzer with no ECCN, so EAR99

- License likely required to export to Cuba, Crimea, Iran, North Korea, Syria, Sudan
 - Otherwise, No License Required; unless prohibited end use or end user
 - Foreign national access will not require a license except, potentially, for Cuban nationals

Export Control Examples

- Short Wave Infrared Camera
 - Controlled by the State Department
 - Category XII.c
 - Will require Technology Control Plan for use on campus, with limited foreign national access unless permission is received from the State Department
- Temporary export to any foreign country will require State Department permission



Export Control Examples

- Potential visiting scholar from China Academy of Engineering Physics (CAEP)
- Individual and Institute screened against restricted party lists
 - Individual is not on any restricted party list
 - Institute is on Commerce Department “Entity List”
 - Entities who have engaged in activities that could result in diversion to WMD programs and/or engages in activities contrary to U.S. interests
 - Anything exported to an entity listed entity would require a license application
- Impacts:
 - Would require review of all equipment and technology the visitor would access or could potentially access
 - Would potentially require a license application for access to certain types of technology
 - License exceptions are limited
 - Reward may not outweigh level of risk
 - CAEP is technology complex responsible for research, development, and testing of China’s nuclear weapons
 - The “Los Alamos” of China

Best Practices and How the Export Compliance Officer Can Help

- **Research with publication or foreign national participation restrictions**
 - Implement a Technology Control Plan to prevent unauthorized access by foreign nationals
 - When possible, license the foreign national access
- **International Shipments**
 - Screen recipient against restricted party lists
 - Make sure no license is required for shipment or hand carrying abroad
 - Ascertain any customs filing requirements

Best Practices and How the Export Compliance Officer Can Help

- **Purchase (or classification) of export controlled equipment**
 - Procurement asks vendors for classifications
 - Assist with classification of equipment already on campus
 - Self classify or ask vendor/manufacturer
 - Submission of Commodity Classification request to Commerce or Commodity Jurisdiction request to State
- **International travel and immigration services**
 - Travel to sanctioned and embargoed countries
 - Immigration Services screens foreign nationals against sanctions lists as part of visa petition process
- Updated questions during **Sponsored Programs** proposal submission and award process
 - Research with an inherent military or space application or that involves ITAR listed items requires strict compliance processes

Best Practices and How the Export Compliance Officer Can Help

- **Is it controlled?**
 - Items have an ECCN, EAR99, or ITAR Category
 - Restrictions on publication and/or foreign national participation may indicate a project itself, is controlled
- **Just because there is a control, it doesn't necessarily mean your research will be seriously affected**
 - If controlled, check for any applicable exclusions
 - Implement a Technology Control Plan and/or apply for license
- **Applying for a license**
 - If potentially EAR controlled, license application review takes at least 30 days
 - If potentially ITAR controlled, license application review takes at least 60 days
 - Vendor/Manufacturer, Name of item, Model Number, Any Specifications of Item, Any EAR or ITAR classification
 - Export Compliance Officer will need time to complete license application before submitting to relevant agency

Compliance Plan

- Develop Focal Point Administrators
- Create and update Export Control website
 - <http://research.uga.edu/export-control/>
- Conduct awareness workshops
- Coordinate with variety of on campus departments and units in implementing compliance processes
- Work to the “YES”

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