Is My Project Export Controlled (EC)?

Compliance with US Export Regulations

Natascha Finnerty, Export Compliance Officer
November 19, 2014
Export Control (EC) Regulations

- Have been around since the end of WWII
- Export Regulations are complex
  - They are administered by multiple government agencies. National Security is the main reason for control for both defense articles and commercial items
- SD 611 will be coming out
  - Know when to contact Export Compliance Officer (ECO) (export@si.edu)
  - Standard Operating Procedures (SOPs) to support the screening and approval of export activities
Reason for Export Controls

• Prevent the increase of the military strength of an adversary

• Further US foreign policy vis a vis governments that violate human rights or the democratic process

• Prevent the proliferation of weapons of mass destruction (WMD)

• Thwart efforts by terrorists and bad non-state actors (drug kingpins, money launderers, etc.)
SI’s Compliance Program Prevents Export Violations

A violation can result in

• Fines
  – ($10,000 to $1,000,000) or 2 x the value of the exported item
• Jail terms
  – 10 years
• Debarment
  – 3 to 20 years
• Loss of government contracts
  – rescinding of all export licenses
• Negative publicity
  – on government websites and in the press
• Administrative actions and penalties can be imposed on management or the individual.
Examples

• In 2013, University of Massachusetts Lowell was fined $100,000 for exporting to a party on the Entity List in 2007.

• Johns Hopkins University was fined for violating the Antiboycott regulations

• On July 1, 2009, Dr. Roth, a Professor Emeritus at the University of Tennessee, was sentenced to 48 months in prison and two years of supervised release. He engaged in a conspiracy to transmit export controlled technical data to non-US nationals from the People’s Republic of China and Iran.
Recent situations

- Purchase of supplies in **Syria** to preserve cultural heritage sites
- Signing an agreement with **Saudi Arabian** entity
- Purchasing a photograph from an **Iranian** artist
- **Exporting** Lithium batteries, tags and receivers to Ecuador
- **Folklife Festival** to showcase **Cuba**
SI Export Compliance Officer

Position was created to ensure compliance:

• Analyze SI risks of export violations

• Facilitate scholar’s research and export activities
  – Develop compliance program - written SOPs dealing with controlled items, non-US persons, export authorizations, sanctioned countries, Antiboycott, and maintaining records

• **Train** key units and Research Centers in the export requirements and develop **Gate Keepers**

• Liaise with SI and the government for export licenses and export license exemptions
International Regimes that Control “Sensitive” Exports

- **Wassenaar Arrangement**
  - (National Security Goods that are commercially available)

- **Missile Tech Control Regime**
  - (Missile technology)

- **NATO, Near NATO Ally**
  - (Defense trade - China is proscribed)

- **Nuclear Suppliers Group**
  - (Items that can be used in nuclear weapons)

- **Australia Group**
  - (Equipment, chemical and biological items)
Agencies that Regulate Controlled Items, Software or Data

**Department of State**

**Directorate of Defense Trade Controls**
- Regulates defense articles, subassemblies, parts and technology, including satellite-related activities and infrared items

**Department of Commerce**

**Bureau of Industry and Security**
- Regulates “dual use” commercial items, production equipment, software and technology. These are items that have a strategic purpose with respect to national security, foreign policy, missile technology, proliferation, regional stability and crime control

**Bureau of Census**
- Collects trade statistics and manages export clearance for other agencies

**Department of the Treasury**

**Office of Foreign Assets Controls**
- Issues general and specific licenses for all exchanges and financial transactions with sanctioned countries
BIS publishes proposed rule: Updated Statements of Legal Authority for the Export Administration Regulations
US Government Restricts

Strategic items, materials, equipment and technology

– Export of strategic items for conventional weapons
  • (NS – national security)
– Facilitating illegal weapons
  • (CB – chemical and biological weapons, NP - nuclear proliferation, MT – missiles as delivery systems)

– Examples - Research Centers
  • CEPS - MARS Rover, Hi-Rise camera
  • SAO – Chandra, detectors for Whipple, IR camera for IRAC, atomic clock for Event Horizon Telescope
  • Biological research – vaccines, pathogens, parasites
  • Equipment used – IR detectors, underwater acoustics

• Developing Subject matter experts who know the lists
### Review the CCL

- **Alphabetical Index**
- **10 CCL Categories**
### Commerce Control List

List of items, organized into 10 categories (0 – 9)

- National security, crime control, encryption, regional stability, chemical or biological weapons, nuclear proliferation, items in short supply

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**Export Administration Regulation Downloadable Files**

Details

These are the unofficial electronic EAR files created by BIS. The legally official text of the EAR is provided via the Federal Register publications. Incorporation of revisions pursuant to Federal Register regulatory publications are completed by BIS with the best of our abilities. While we strive for perfection, we do make mistakes from time to time. You may email any issues you find.

If formatting/editorial changes have been made to a file, the modified date will reflect that the file has been updated, but the date will only be changed when a regulatory change has been made to the file.

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<td>Category 7 - Navigation and Avionics</td>
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Item (per the EAR) 6A004

A. (Commercial) Commodities (hardware, tangible finished good)
B. Production Equipment
C. Materials to make the item
D. Software
E. Technology to design, manufacture, use, repair, or maintain the item

6A004 stands for a National Security item controlled by Wassenaar Arrangement.
Export Compliance Terms (EAR)

- Item
- Export
- Reexport
- Commerce Control List (CCL)
- Export Classification Control Number (ECCN)
- Deemed Export and US Person
- Subject to the EAR
- US Munitions List
Deemed Export
(Interns, fellows, subcontractors or collaborators)
§734.2(b)(2)(ii)

- Release of technology or source code to a non-U.S. person in the United States
  - Release is considered an export to their home country

6E001

6E001 “Technology” for the “development” of equipment, materials or “software” controlled by 6A (except 6A991, 6A992, 6A994, 6A995, 6A996, 6A997, or 6A998), 6B (except 6B995), 6C (except 6C992 or 6C994), or 6D (except 6D991, 6D992, or 6D993).

- Note: Does not apply if they are a permanent resident, Dual-citizens if one citizenship is U.S., Individuals granted asylum or refugee status
Foreign National Licenses

- **EAR**
  - needs a license or “Technology and Software Restricted Letter of Assurance”

- **ITAR**
  - needs a license or Technical Assistance Agreement
  - Cannot disclose to persons from countries that are proscribed, includes China

Licenses take about 8 weeks for approval
“Subject to the EAR”
A Multiple Step Analysis

Are you a U.S. Person?

Is the item in the US or US technology?

Is the item copyrighted material, fundamental research or publicly available (free)?

Is the party a US subsidiary or branch office?

- **NO**
- **YES**
- **NO**

Not Subject
10 General Prohibitions (GP) of the EAR

10 Export “Commandments”

- Prohibitions 1 – 3
  - Strategic items
- Prohibitions 4 – 10
  - Activity Controls
GP 1 - 3

- Is the item to be exported now in the US, and on the CCL (Commerce Control List)?
- Is it a US item being incorporated into a foreign items and then re-exported from one foreign country to another?
- Is it a direct product of US technology and export controlled?

- Classification can be done internally.
- If doubt, we can send it in for confirmation to BIS
Does not necessarily mean it needs an export license

• EAR has a complex system of preferred treatment with countries that share same export control laws
  – Canada, Europe, Japan, Australia, New Zealand, sometimes South Korea
  – Specific items can be exported “No License Required” even when the item is on the CCL

• Items must comply with “Activity Controls”
If it is on the CCL

- Look for the Reason for Control and the country
- If there is an “X” in the box, it needs an export license
Approval of non US person

- OFI contacts me with offer letter
- OCON contacts me with PO for contractor
  - Check the name against denial lists
  - Check the country

- Contact the scholar/PI
  - Confirms that their project is not export-controlled or instruments are not on a list
  - Must certify to State Dept. for H1B visa approval
Activity Controls

• Government Restricts Certain Activities (EAR and OFAC)
  – General Prohibitions 4 – 10
  – If you are ‘subject’ to EAR, then you must consider all activities with foreign persons and countries – exporting, providing a service, or funding
    • Is the country under a sanction?
    • Is the party on a list?
Trade Sanctions
(US Treasury Dept.)

• Cuba, Iran, North Korea, Sudan and Syria
  – Since 1996, we can provide Humanitarian Aid, educational and cultural exchanges, educational materials, aircraft safety items, food and farm assistance to all countries
Country Sanctions

5 “CINSS”

- Contact export@si.edu to determine license requirements

- OFAC issues 2 types of licenses
  - General License – permissible activity
  - Specific License – does not qualify for General License
  - Is there a reporting requirement?

- Prohibited – facilitation, other activities that are not related to medical supplies, education, food, aircraft safety, cultural exchanges
There are many denial lists

- We have a tool to search the lists –
- MK Denial.com – instructions are on the EC website – www.cfa.harvard.edu/spp/ec
- Need to screen non-US collaborators and sponsors, especially from countries listed on SDN – Columbia, Mexico, Afghanistan, etc.
www.MKDenial.com
for screening – due diligence

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Just the right amount, vs. too many
How Do We Comply?

• Identify awards, activities and modifications with
  – export clauses
  – international travel
  – purchase of equipment that will be sourced from a non-US vendor or exported to a non-US site

• Identify areas of research that may be subject to control based on equipment, technology or sanctioned country

• Educate gatekeepers through regular email notices
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<th>EXPORT QUESTION</th>
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| 1.a | SANCTIONED COUNTRY REVIEW:  
Does your project involve any sanctioned countries, (financial transaction or travel to sanctioned countries?) (See lists on Treasury Dept.’s Sanctioned Countries: (currently Cuba, Iran, North Korea, Sudan, Syria) |     |    |
| 1.b | Does the program involve travel to places of conflict or neighboring places of conflict/embargoes?  
(Check OIR website for travel advisories)                                                                                                           |     |    |
| 2   | COMPLIANCE WITH BOYCOTT RESTRICTIONS:  
Are you dealing with countries in the Middle East or Muslim countries in Asia?  
http://www.cfa.harvard.edu/spp/ec/ecpolproc.html                                                                                                  |     |    |
| 3   | CONTROLLED ITEMS:  
Does the project involve the export of instruments, computers, processors chemicals, laboratory equipment, biological items, marine technology, aircraft, GPS, tracking, weapons, crime control (finger printing or space qualified)?  
Does your project involve any controlled materials, technology, or services listed on the EAR/Commerce Control List (http://www.access.gpo.gov/bis/ear/ear_data.html)  
or the ITAR/U.S. Munitions List (See our controlled items list)  
(http://www.pmddtc.state.gov/regulations_laws/itar_official.html)  
or otherwise specifically designed, developed, configured, modified or adapted for military or space-based applications?  
(i.e., is the research for NASA and/or does the contract include foreign national restrictions? If yes, contact ECO.)  
Refer to Classifying ITAR- and EAR-controlled items Procedure.  
See fundamental research in 3.a  

If any responses are yes, contact ECO  export@si.edu |
| 3.a | FUNDAMENTAL RESEARCH CRITERIA FOR SCIENTIFIC SUBJECTS:  
Is any of the information or software, or results subject to publication restrictions?  
(To meet fundamental research criteria, is must be qualified as below:  
• is ordinarily published and shared broadly within the scientific community;  
• is not restricted (either through written or oral agreement) by the sponsor for proprietary reasons or national security controls; and  
Is not subject to specific U.S. Government access and dissemination controls) |
| 4   | DOES THE ACTIVITY INVOLVE INTERNATIONAL COLLABORATION OR SUPPORT?  
All foreign parties with whom we collaborate or offer/receive financial support must be screened against US Denial Lists. |     |    |
| 5   | EXPORT CLEARANCE:  
Will goods be exported that are valued at more than $2500, or restricted by export license, and/ or are hazardous/dangerous goods? Contact ECO. |     |    |
DECISION TREE: SI PROGRAMS FLAGGED FOR INTERNATIONAL ACTIVITY OR EXPORT LICENSE

Is there cultural or financial activity with countries or persons from sanctioned countries? Cuba, Iran, North Korea, Sudan and Syria?

- **YES**: Contact ECO
- **NO**

Are you dealing with countries in the Middle East (excluding Israel)?

- **YES**: Contact ECO
- **NO**

Does your project have any technology related to or are you exporting items on the US Munitions List or Commerce Control List on a detailed level? IR instruments, detectors, satellite tracking, telemetry, chemicals, lab equipment, biologicals, rad hardened components, fire arms, surveillance, etc.

- **YES**: Contact ECO
- **NO**

Are there any clauses in the award that identify export-control restrictions?

- **YES**: Contact ECO
- **NO**
Test your Knowledge. . .

- PI at NZP wants to go to Cuba to study migratory birds
- PI at SMA received samples from Cuba and need to go there

- Export license - Qualifies for research General License if research will be published and the time of stay is limited to work time. No Cuban vacations!
DECISION TREE: SI PROGRAMS FLAGGED FOR INTERNATIONAL ACTIVITY OR EXPORT LICENSE

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- **YES** Contact ECO

Are there any clauses in the award that identify export-control restrictions?

- **YES** Contact ECO

- **NO**
Look for Boycott Language

- Award or activity is in Islamist country
  - Review Antiboycott procedure
  - Look for prohibited language – samples in procedure
  - Contact ECO or Office of Antiboycott Compliance (OAB)
    - Fax the sample clause
    - OAB will advise verbally if permissible or prohibited
    - Strike language, may need to report it
    - Transportation clauses are often exempt
EXAMPLE - BAHRAIN

- **Prohibited Boycott Condition in a Purchase Order:**
  - "In the case of overseas suppliers, this order is placed subject to the suppliers being not on the Israel boycott list published by the central Arab League."

- **Reportable boycott condition in an importer’s purchase order:**
  - "Goods of Israeli origin not acceptable."

- **Reportable boycott condition in a letter of credit:**
  - "A signed statement from the shipping company, or its agent, stating the name, flag and nationality of the carrying vessel and confirming ... that it is permitted to enter Arab ports."

- **Prohibited Boycott Condition in a Contract**
  - "Israeli Clause:
    The Seller shall not supply goods or materials which have been manufactured or processed in Israel nor shall the services of any Israeli organization be used in handling or transporting the goods or materials."

- **Prohibited Condition in a Contract**
  - "The Contractor shall comply in all respects with the requirements of the laws of the State of Bahrain relating to the boycott of Israel. Goods manufactured by companies blacklisted by the Arab Boycott of Israel Office may not be imported into the State of Bahrain and must not be supplied against this Contract. For information concerning the Boycott List, the Contractor can approach the nearest Arab Consulate."
DECISION TREE: SI PROGRAMS Flagged for International Activity or Export License

**Is there cultural or financial activity with countries or persons from sanctioned countries? Cuba, Iran, North Korea, Sudan and Syria?**

- **YES**: Contact ECO
- **NO**: Continue

**Are you dealing with countries in the Middle East (excluding Israel)?**

- **YES**: Contact ECO
- **NO**: Continue

**Does your project have any technology related to or are you exporting items on the US Munitions List or Commerce Control List on a detailed level?** IR instruments, detectors, satellite tracking, telemetry, chemicals, lab equipment, biologicals, rad hardened components, fire arms, surveillance, etc.

- **YES**: Contact ECO
- **NO**: Continue

**Are there any clauses in the award that identify export-control restrictions?**

- **YES**: Contact ECO
- **NO**: Continue
### Controlled items for SI – non-space

**ITAR in Times Roman**

**EAR in Arial**

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<th>DESCRIPTION</th>
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<tr>
<td>8A001</td>
<td>a. Manned, tethered submersible vehicles designed to operate at depths exceeding 1,000 m;</td>
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<tr>
<td></td>
<td>b. Manned, untethered submersible vehicles having any of the following:</td>
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<tr>
<td></td>
<td>b.1. Designed to ‘operate autonomously’ and having lifting capacity of all the following:</td>
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<td></td>
<td>b.1.a. 10% or more of their weight in air; and</td>
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<td>b.1.b. 15 kN or more;</td>
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<tr>
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<td>b.2. Designed to operate at depths exceeding 1,000 m; or</td>
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<td>b.3. Having all of the following:</td>
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<td>b.3.a. Designed to continuously ‘operate autonomously’ for 10 hours or more; and</td>
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<td></td>
<td>b.3.b. ‘Range’ of 25 nautical miles or more;</td>
</tr>
<tr>
<td>8A001</td>
<td>c. Unmanned, tethered submersible vehicles designed to operate at depths exceeding 1,000 m and having any of the following:</td>
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<td></td>
<td>c.1. Designed for self-propelled maneuver using propulsion motors or thrusters controlled by 8A002.a.2; or</td>
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<tr>
<td></td>
<td>c.2. Fiber optic data link;</td>
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<td>d. Unmanned, untethered submersible vehicles having any of the following:</td>
</tr>
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<td>d.1. Designed for deciding a course relative to any geographical reference without real-time human assistance;</td>
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</tbody>
</table>
Test Your Knowledge

- The award is from NASA
  - The PI is designing and launching a sounding rocket to test telescope optics
  - The Vatican wants the Apollo 14 Space gloves that carried the lunar bible.
Items are on the USML/CCL

- Need to obtain proposal and award with SOW
- Need to discuss with PI
DECISION TREE: SI PROGRAMS FLAGGED FOR INTERNATIONAL ACTIVITY OR EXPORT LICENSE

- Is there cultural or financial activity with countries or persons from sanctioned countries? Cuba, Iran, North Korea, Sudan and Syria?
  - YES: Contact ECO
  - NO: Are you dealing with countries in the Middle East (excluding Israel)?
    - YES: Contact ECO
    - NO: Does your project have any technology related to or are you exporting items on the US Munitions List or Commerce Control List on a detailed level? IR instruments, detectors, satellite tracking, telemetry, chemicals, lab equipment, biologicals, rad hardened components, firearms, surveillance, etc.
      - YES: Contact ECO
      - NO: Are there any clauses in the award that identify export-control restrictions?
        - YES: Contact ECO
        - NO:
Is the research for NASA and/or does the contract include non-US national restrictions?

- NO

Are you dealing with countries where there have been UN peacekeeping actions?

- NO

Will goods be exported that are valued at more than $2500 or are hazardous?

- NO

Did you check names of all parties against the US government Denial Lists and were there hits?

- YES: Contact ECO

- NO: Complete!
7. Contact Shipping and OCON

- How equipment will be shipped?
  - by courier, forwarder or hand carried?
  - Ensure export clearance filing is completed (called EEI) for all exports over $2500 per schedule B number.

- Is it coming back? Who owns it?

- Ensure records are maintained
  - Refer to Export Clearance procedure
DECISION TREE: SI PROGRAMS FLAGGED FOR INTERNATIONAL ACTIVITY OR EXPORT LICENSE

Is the research for NASA and/or does the contract include non-US national restrictions?

- YES: Contact ECO
- NO: Are you dealing with countries where there have been UN peacekeeping actions?

- YES: Contact ECO
- NO: Will goods be exported that are valued at more than $2500 or are hazardous?

- YES: Contact ECO
- NO: Did you check names of all parties against the US government Denial Lists and were there hits? (use link on export compliance website)

- YES: Contact ECO
- NO: Complete!
8. Does the research involve persons prohibited?

• Parties on a Denial List
  – Entities List
  – Denied Persons List
  – Debarred List
  – Specially Designated Nationals List
  – Unverified List
Obtaining an Export License

• For a person in the US – (deemed export license)
  – What are they receiving, what will their “output” be?

• To share information with a person not in the US – permanent export license for technical data
  – What are they receiving?

• Can request approval from the Sponsor in writing
What if we think there is a violation?

- 5-year statute of limitations
- Contact the ECO
- export@si.edu

617-496-7557
QUESTIONS?

Contact me if you are:

• Dealing with one of the 5 CINSS!
• Dealing with a “country in the news”
• Exporting equipment, even hand carries over $5000
• Dealing with controlled research and collaborating with non-US persons