

# Compliance with Export Control Regulations

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# What is this all about?

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The Provost has asked the Office of Research Compliance to develop a program in export control compliance for the university.

And I need your help.

You may ask ...

Do we export anything from CMU?

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Not like this we don't.



But our faculty and students create knowledge and export it to the world.

# Export controls in a nutshell

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If you want to send *certain* things to *certain* foreign persons, places or countries, then you may need a license from the government.

“*Certain*” means being on a list maintained by a government agency.

# Objectives

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- Review the vocabulary of export controls
- Discuss the various regulations that control exports
- Discuss implications of complying with export regulations for universities and faculty
- Discuss why CMU needs an Export Control Compliance Program and how it can be organized ...
  - To be as unobtrusive as possible, and
  - Minimize demands on faculty time

# Export Controls - definition

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The array of federal regulations that apply to the export of **funds** or certain technologies (including **information** as well as materials or products) to non-US destinations, non-US organizations or to persons in the US or abroad who are neither US citizens nor permanent residents...”

Adrian Shelton, UNC

# Export Control Regulations are legally binding on US Persons

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- A US Person is a living person who is:
  - Citizen (by birth or naturalization)
  - Permanent resident (Green card holder)
  - Granted asylum
- Business, institution, group or agency incorporated in US

# Export Controls Affect Non-US Persons

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- Visiting scholars holding F-1 or J-1 visas
- Employees holding H1-B visas
- Businesses, corporations, groups or agencies not incorporated in the US



# Structure of the Regulations

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*There are 3 lists that control items, persons and entities*

- One list (EAR; Dept Commerce) deals with items that have military and nonmilitary uses
- Another list (ITAR; Dept State) deals with things that have military uses
- The third list (OFAC; Dept Treasury) contains names of persons, places such as companies or institutes, and countries that are restricted from receiving exports without a license

# Purposes of the Regulations

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- 1. Control proliferation of certain military technologies
  - 2. Control proliferation of some nonmilitary technologies that may have military applications (“dual use”)
  - 3. Protect US commercial technology advantages
  - 4. Enforce State Department opposition to flow of money to embargoed countries, entities, and persons
- } National Security
- Economics
- Foreign Policy

# Universities' Security Blanket - The Fundamental Research Exemption (FRE)

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Information, technological or otherwise, that is **publicly available** is not subject to the Export Administration Regulations (EAR) or International Trafficking in Arms Regulations (ITAR) (except for encryption object code and source code in electronic form or media) and thus does not *usually* require a license.

Therefore, dissemination of "fundamental research" does not *usually* require a license.

# Fundamental Research

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"Fundamental research" is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community.

It is distinguished from proprietary research and from industrial development, design, production, and product utilizations, the results of which ordinarily are restricted for proprietary and/or specific national security reasons.

A large segment of academic research is considered "fundamental research."

# Examples of University Export Violations

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- **University of Massachusetts at Lowell**, received a \$100,000 penalty from Bureau of Industry and Security (BIS). The exports in this case were not controlled items-all were classified as EAR99 (low level concern), but the recipient of the items was on the BIS Entity List. 2013
- **University of Michigan**, Mohamad Nazemzadeh, who was a Research Fellow in the Neurology Department at the time of his arrest, was prosecuted for sending a medical device to Iran, in 2013. (Case dismissed 2015.)
- **New York University-School of Medicine**, three researchers were charged for sharing non-public information with Chinese companies about their NYU work conducted through a grant from the NIH to develop new M.R.I. technologies. 2013
- **Georgia Institute of Technology** allowed Internet users in 36 countries, including China, and Iran, to view sensitive information that was intended only for federal employees and contractors. This course included 14 PowerPoint slides and was uploaded to Georgia Tech's servers. State Dept determined that violations had occurred. 2009
- **University of Tennessee –Knoxville** professor John Reece Roth was sentenced to 4 years in prison for violating the Arms Export Control Act by conspiring to illegally export technical information. 2009.
- **Texas Tech University** professor Thomas Campbell Butler, M.D., was sentenced to 2 years in prison for illegally exporting the *Yersinia pestis* (bacterium that causes human plague), which is a controlled item under the EAR and cannot be exported without the required export licenses. 2004



# What is our risk of not having an Export Control Compliance Program?

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- The risk of violating export control regulations is probably small
- Our total external funding for research is modest
  - All the universities on the previous list have several times more external funding than CMU
- No concerns from survey of labs for agents on the DURC list
- No concerns from audit of recent contracts
- In terms of compliance risks at CMU, my *guess* is:
  - Title IX >> Misconduct >> IRB >> Export Controls

# What do we have to worry about at CMU?

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## **Professors' travels**

- Where they go; where they shouldn't (without a license)
- What they take with them (laptops and tablets; intellectual property)
- What they bring back; what they leave behind

## **“Exports” to research collaborators in other countries**

- Stuff (such as samples) and ideas

## **Visiting researchers**

- What they can see and hear (Deemed exports)

## **Foreign students**

- What projects they can work on

## **Contracts with restrictions**

- Publication
- Embargoes (eg, doing business with Israel)

## **Student travel**

- The unfortunate case of Glenn Duffie Shriver from GVSU



# Developing an Export Compliance Program

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1. Organize a working group of stakeholders to develop policies and procedures  
Stakeholders = persons and offices that will be affected by the policies
2. Articulate and publish export control compliance policies and procedures
3. Determine who needs export training, what level of training is required, and how frequently the training should be delivered
  1. who to ask
  2. what to ask
  3. when to ask about export compliance
4. Conduct audits to determine effectiveness of the program



# Restricted Parties Screening

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*There are two areas of concern in Export Compliance that we should be able to address with modest additional effort and expenditure:*

- Screening foreign visitors against **denied persons** lists
  - This screen will also pick up US persons who are, for various reasons, on lists
- Screening foreign entities
  - Universities & research institutes that have relationships with faculty
  - Vendors

Screening is a common part of export compliance programs at most R1 universities. For example ...

# Screening @ UCSD

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We have our restricted party screening program set up as a distributed screening model with escalations to the Export Control Office for review and resolution or licensing. This past fiscal year we had 192 people on campus running RPS. The following areas are screened by either departmental staff or central office staff for responsibilities for international transactions:

- Foreign collaborations (including visitors, visiting scholars or visiting grad students)
- Awards or agreements or gifts with foreign entities
- International shipments
- Paying foreign persons or entities (for purchases, travel, reimbursement, etc.)
- Individuals with access to export restricted technology (NDAs, restricted research, technology control plans)

We had bulk screening done recently on all existing payees (including vendors) and all new vendors are screened as well as all foreign payees for disbursements.

As a result of our screening program we have been able to catch transactions with sanctioned countries, persons affiliated with restricted entities as foreign visiting scholars and foreign visiting grads, and file for export licenses for exports to a restricted entity. We calculated our potential risk mitigation at \$8M based on the ability to mitigate those risks by obtaining export licenses, implementing control plans or reworking transactions. See the comparison slide below for the metrics comparison between fiscal years.

# Overseas Travel

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- Restrictions associated with visiting foreign institutions or collaborating with foreign persons can range from:
  - None – *the most common case*
  - Certain topics or certain institutions – *requires a license from Department of the Treasury*
  - Discuss only what is already known – *license required (would be very difficult to obtain – “presumption of denial”)*
- The best way to prepare is to request a screening of the institutions you propose to visit
- Here are some examples

# Screening is fast and simple

REGISTERED USER: ROBERT BIENKOWSKI, MICH SYS - CENTRAL MICHIGAN UNIVERSITY

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### INDIVIDUAL AND COMPANY SCREENING

**Name:**

**Company:**

**Address:**

**City:**  **State:**

**Country:**

**Comment**


☐ Exact ☐ Phonetic ☐ Fuzzy Level

☒ Stemming ☒ Thesaurus ☒ Field Specific

☒ Remove business words

☐ ECCN for country controls check:

☒ Export ☒ Sanctions ☒ GSA

☒ Police ☒ PEP/OIG ☒ International  Reset Defaults

GSA data is updated in full every business day direct from SAM/EPLS.  
Fuzzy searches including GSA are automatically limited to level 2.  
Business endings is not selectable when already set as your profile default.  
Fuzzy or phonetic search with thesaurus often produces erratic results.

**SCREEN**

### BLOCKED FOREIGN NATIONALS BY COUNTRY

Display a checklist of blocked foreign nationals in a country:

**GO**

Many foreign nationals are not identified by country in the official sources.  
This query searches subscribed RPS lists [except GSA and PEP], including records having alternate country locations in Notes.


### BLOCKED ENTITIES AND FUGITIVE LISTS


Display a checklist of entities on the selected government list:


**GO**


### GEOGRAPHIC LOCATION FROM IP ADDRESS


Display geographic location of provided IP address:


 May entail a margin of error. **GO**

 RPS Changes

 GSA Changes

 Blocked Vessels

 IAEA Facilities

 Risk Country

# Results are usually easy to interpret

RPS Details		Close
Reference	ELT000024	
Description	BEN GURION UNIVERSITY Israel	
Notes	75 FR 29884 05/28/10 65_FR_12919 03/10/00 62_FR_4910 02/03/97. For computers above the Tier 3 level described in Section 740.7(d) (i.e., Tier 3 under APP). Case-by-case basis.	
Federal Register	<a href="#">75 FR 29884</a>	Restrictions apply to a specific technology
Source	Entity List [BIS]	
<a href="#">PDF</a>	<a href="#">PRN</a>	<a href="#">E-MAIL THESE RESULTS</a>

# Universidad Nacional, Bogota, Colombia

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## NO MATCHING RECORDS FOUND

Your search of the Visual Compliance Restricted Party Screening database failed to return any records.

### Search criteria:

Name: n/a  
Company: Universidad Nacional  
Address: n/a  
City: Bogota  
State: DE  
Country: Colombia [CO]

**No concerns about the university or the country**

### Search type:

For Exact matches.  
Stemming on, Thesaurus on, Field Specific on, Business words removal  
[Export, Sanctions, GSA, Police, PEP and International data groups.\*]  
GSA data is updated in full every business day direct from SAM/EPLS.

### Date of search:

Friday, April 19, 2019

### Time of search:

12:49 PM EDT

# Universidad de Havana, Cuba

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## NO MATCHING RECORDS FOUND

Sanctions, embargoes, or risk alerts apply to the country supplied for this entity.

Your search of the Visual Compliance Restricted Party Screening database failed to return any records.

### Search criteria:

Name: n/a  
Company: Universidad de Havana  
Address: n/a  
City: n/a  
State: n/a  
Country: Cuba [CU] \*

### Search type:

For Exact matches.  
Stemming on, Thesaurus on, Field Specific on, Business words removal  
[Export, Sanctions, GSA, Police, PEP and International data groups.\*]  
GSA data is updated in full every business day direct from SAM/EPLS.

### Date of search:

Friday, April 19, 2019

### Time of search:

12:51 PM EDT

### \*Country Notes:

The following conditions apply to the country supplied for this entity. For sanction [Programs Summary](#) for more information.

**No Concerns about  
university; alerts  
about country**

# Sichuan University, PR China

RPS Details		Close
Reference	ELT058207	
Description	SICHUAN UNIVERSITY No. 24 South Section 1, Yihuan Road 610065 Chengdu	
Notes	77 FR 58006 09/19/12 . For all items subject to the EAR. Case-by-case basis.  &lt;I&gt;Locations at:&lt;/I&gt; No. 24 South Section 1, Yihuan Road, Chengdu, 610065, China; No. 29 Jiuyanqiao Wangjiang Road, Chengdu, 610064, China; People's South Road, Chengdu, 610041, China; Shuangliu County, Chuanda Road, Chengdu, 610207, China.	
Federal Register	<a href="#">77 FR 58006</a>	
Source	Entity List [BIS]	
<a href="#">PDF</a>	<a href="#">PRN</a>	<a href="#">E-MAIL THESE RESULTS</a>

**Significant  
restrictions on  
university**



# Proposed Screening Activities

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- Foreign travel by faculty supported by CMU funds
  - Institutions visited; conference organizers; foreign collaborators
- Foreign grad/postdocs wishing to conduct research at CMU
  - Previous institutions; mentors
- Visiting faculty
  - Visitors' home institutions
- Foreign vendors
  - Are they doing business with sanctioned countries?
- Shipments to foreign addresses
  - Countries; institutions; consignees

# What Happens if We Get a Hit?

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- OCR would discuss the matter with the office, department, or faculty member making the request:
  - Consequences of proceeding
  - Process for obtaining a license
- OCR does not have veto power over travel; invitation to foreign persons; or proposed shipment
- If something is clearly illegal, then we would have to advise the provost and university counsel

# Red Flags for Grants & Contracts

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- Collaborations or interactions with persons or institutions in the *Embargoed Countries*:
  - North Korea, Iran, Syria, Crimea Region of Ukraine; Cuba
- Any contract that contains the terms:
  - export controls
  - embargoes
  - publication restrictions
  - US Citizenship required

*Please contact me if you are interested in developing policies for screening foreign travel or foreign visitors. Thanks!*

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