

UC Export Controls Newsletter

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What are export controls?

U.S. Export Control legislation has been created by congress to protect the national security interests of our country and to enforce foreign policy. This is accomplished by requiring that items or information that are either leaving the United States or are being communicated to those that are foreign nationals* be screened prior to release to determine if they could be used in a military capacity, or to contribute to terrorism, nuclear proliferation, or in the drug trafficking trade. Especially after the attacks of September 11, 2001, enforcement of these laws has increased, and universities are being looked at closely. Significant penalties exist for violations of these laws, for both the university and individuals, so it is important to be aware of what these laws cover.

Exports are shipments or transfer of items out of the United States in any manner, including “deemed exports”, which are oral or visual disclosure or transfer of technical data to a foreign national, whether that occurs within the borders of the U.S. or without. It is important to remember that an export can be an intangible item just as well as a tangible one. For example, showing a foreign national around a research lab that contains export controlled equipment or information is considered a deemed export. Export controls govern the shipping of items, the transmitting of information via fax or e-mail (or other similar methods), and travel with or shipping of a laptop or other electronic devices to a foreign country. A license may be required for any of these situations.

There are several different agencies with separate regulations that govern exports. The ITAR (International Traffic in Arms Regulations) concerns military technologies and is administered by the State Department. EAR (Export Administration Regulations) concerns items and technology that are commercial in nature and is governed by the Commerce Department. The OFAC (Office of Foreign Assets Control) regulations concern sanctions against certain foreign countries, terrorism sponsoring organizations, and international narcotics traffickers, and is overseen by the Department of the Treasury.

Many activities at UC may fall under export controls including research projects, UC’s data center infrastructure, the encryption software used on UC computers, conferences that students, faculty, and staff attend, and software developed at UC. Each instance needs to be examined to determine if it is subject to export controls. In a University setting, there are several exclusions from export rules that are important to know. Most research conducted in the University is covered by a Fundamental Research exclusion. It covers basic and applied research where the results are widely published. If any restrictions on publication are accepted, or if the researchers are restricted to certain nationalities, then this exemption will not apply. Other exclusions would include information that is public domain (widely available) or information that is part of normal academic course material.

**A foreign national is any person that is not a U.S. citizen, a green card holder, or a protected individual. Foreign nationals also include Entities, such as companies that are not incorporated within the U.S., and agencies or subdivisions of foreign governments.*

By Emily Morgan, UC Information Security

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Spotlight

Training is available for any UC student, faculty or staff member.

Visit the [website for the UC Center for Continuous Professional Development](#) and look under “Compliance Training.” Click on the UC Information Security link.

You must log in with your UC credentials before you take the training (the same one you use for Blackboard, UC Flex, and other UC systems).

There is a quiz, but you may keep the PowerPoint open while you take the quiz.

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New regulations affect hiring of foreign nationals at UC

Effective December 22, 2010, all employers submitting Department of Homeland Security Form I-129 must certify compliance with deemed export rules as part of the application process with the Department of Homeland Security. At the University of Cincinnati, the Form I-129 is used for foreign national employees to obtain H-1B Specialty Worker, E-3, O-1 and TN immigration statuses. UC will now be required to indicate on the Form I-129 that it has reviewed the applicable Export Administration Regulations ("EAR") and International Traffic in Arms Regulations ("ITAR") and has made a determination as to the applicability of those regulations to the foreign national employee who will be the beneficiary of the I-129 petition.

The Form I-129 is currently completed by UC International Services at the request of the hiring department. Moving forward, hiring departments who request an I-129 petition on behalf of a foreign national employee will need to certify, at the Department/Division Head level, that the position will not involve technology and/or data that fall under EAR or ITAR. If it does, UC will not proceed with an immigration petition on behalf of the foreign national employee. Hiring departments will need to review UC's Export Controls website prior submitting a request to UC International Services to hire a foreign national employee on one of the immigration statuses above to ensure the position does not violate EAR or ITAR regulations.

By Ron Cushing, Director, UC International Services

US charges scientist with economic espionage

Could publishing a paper make you a spy?

Could publishing a scientific article constitute an act of economic espionage? That question lies at the heart of charges against a Massachusetts-based scientist accused of passing US trade secrets to China.

A Canadian citizen and permanent US resident was arrested on 13 July and has been charged under a law designed to protect intellectual property held by US companies. At a bail hearing last week in Massachusetts, the US government claimed that the scientist provided secrets belonging to Dow AgroSciences, based in Indianapolis, Indiana, to the Hunan Normal University in Changsha, China. If convicted of passing the secrets, said to be worth some \$100 million, the scientist could face up to 15 years in prison for each of 12 counts of economic espionage.

[Read more.](#)

Source: Nature News
Published: July 28, 2010
By: Sharon Weinberger

When you're dealing with interns and graduate students, most people don't understand how you can export an item by letting your graduate student know about it and look at it.

- Jeff Barger of the law firm Frohsin and Barger

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What's new in export controls?

Are reforms on the horizon?

Reforms in export control legislation have been talked about for some time, but it appears that steps are finally being taken to make at least some of those reforms happen. Stage I is currently underway. These are the tasks assigned to this stage:

- The Department of State (ITAR) and the Department of Commerce (EAR) and other relevant agencies are going to be on the same IT system sometime next year. This will make sharing information on what licenses have been granted by either department easier. Currently, there is no easy way for that information to be shared.
- Licensing processes are being streamlined and simplified to standardize the policies and processes between agencies.
- The current Munitions List and Commerce Control List are being refined to eliminate confusion as to jurisdiction for items. New criteria are being written to make it easier to screen items to see whether or not an item is subject to controls.
- An Enforcement Fusion Center will be created to synchronize all enforcement work to eliminate conflicts between agencies.
- Work will be started to create a single point where exporters can go to apply for all licenses regardless of the agency. This will allow exporters to apply to all 3 agencies in one convenient place.
- Currently, there are lists of individuals that are maintained by different agencies. Until the agencies are combined, a spreadsheet is available that is a consolidation of all lists. It is available for download [here](#).

Stages 2 and 3 will continue toward the goal of one list and one single licensing agency. However, stage 2 will require Congressional notification and additional funding, while stage 3 will need legislation to transition to the new export control system.

The White House site does not give any proposed timeline for completion of any of these stages, so it remains to be seen how soon exporters will start to see any changes. For right now, though, and in the foreseeable future, UC will need to continue to work through the maze that is current export control law.

For more information on the reforms:

- [Export Control Reform Website](#)
- [White House Press Release](#)
- [White House Fact Sheet](#)

By Emily Morgan, UC Information Security

Need more Information?

The UC Export Controls website contains information to help you determine if your project is going to be subject to export controls. There is a decision tree that will make it easy for you as you go through the questionnaire. There are relevant links to external as well as internal UC sites that deal with exports. The site tries to break down a complicated subject into easy to read sections. Check it out!

<http://www.uc.edu/infosec/export/>