How Proposed Export Controls Changes Affect Fundamental Research

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MAXIMUS Higher Education Practice

• Headquartered in Northbrook, IL
  o Satellite Offices in:
    ➢ Denver, CO, Lexington, KY, Columbus, OH, Phoenix, AZ, Charlottesville, VA, Bluffton, SC, and Albany, NY

• Backed by a $1.7 billion multinational corporation
  o Gives our practice unparalleled financial stability and the resources to invest in developing expertise in Federal regulations and guidance
MAXIMUS Higher Education Practice

• Serves over 150 colleges, universities, and university hospitals in 49 states plus universities in Puerto Rico and the US Virgin Islands
  o 90 top 100 research institutions
  o Less than $1M to $1B in research

F&A and Other Rate Consulting Services

• F&A Cost Rate Proposal Preparation (Long and Short Form) and Negotiation (DHHS-CAS & ONR/DCAA)
• Space Surveys/Reviews
• Fringe Benefit Rates
• Federal Disclosure Statement (DS-2) and Direct Costing Policy
• Service Centers and/or Recharge Centers Rates and Policies

F&A Software

• Comprehensive Rate Information System
  o Over 150 universities use CRIS
• WebSpace – Space Utilization Software
  o Over 50 universities use WebSpace
Grant Management Compliance and Internal Controls

- Effort Reporting Consulting and Software
- Uniform Guidance Diagnostic – High Level Review
- Federal Compliance/Risk Assessment (C/RA) – In-depth Review
- Grant Management Help Desk Services
- Online Grant Management Training and Onsite Faculty Training
- Learning Management and Continuing Education Software
- Research Operational Reviews – Business Process Review and Improvement
- Policy and Procedure Assistance
- Transition Staffing
- Audit Response Assistance
- Export Control Compliance
- And more

How Proposed Export Controls Changes Affect Fundamental Research

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Topics

- U.S. Export Control Reform Initiative & Recent Government Rulings
- “Definitions” Proposed Ruling
- What Does it Mean for University Compliance?
- Closing Remarks

Export Control Reform (ECR) & Proposed Rulings
Commerce vs. State

- Department of Commerce
  - Dual-use and “less significant” military-use physical items, technology, and software
- Department of State
  - Physical commodities, technical data, software, and technical services for military/defense purposes
- Single Control List and Licensing Agency
- Primary Enforcement Coordination Agency
- One IT system

Types of Changes Under ECR

- Jurisdiction
- Classification
- Interpretation and Definitions
- Enforcement
Recent Government Rulings

Proposed Rulings

• Definitions
• Destination Control Statement
• Intrusion & Fire Arms
• USML Category XIV and Category XVIII
Overview of “Definitions” Ruling

- Federal Register Notices:
  - 80 FR 31505 (Department of Commerce)
  - 80 FR 31525 (Department of State)

- Goal – harmonization

- Scope – key relevant terms

- Differences remain
“Fundamental Research” Exclusion

• Previously relied on NSDD-189
  “‘Fundamental research’ means basic and applied research in science and engineering, the results of which ordinarily are 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.”

• Codify into the regulations

• Boundary – still challenging to discern

Educational Materials

• What happened to the EAR’s “Educational Materials” section?
• Still a defined exclusion, just moved
• See description of “not subject to the EAR”
“Export / Not an Export”

• Deemed export
  ▪ Explicitly included in definition of an “export” in EAR and ITAR
  ▪ Provides clear harmonization

• Dual-citizenship under the EAR
  ▪ Previously in advisory opinion/informal guidance
  ▪ Codifies the same concepts

• Not an export if secured using end-to-end encryption. See details to apply correctly!

Export and Releasing Technology

• Hand-in-hand with proposed end-to-end encryption clauses

• Providing the decryption key (or password, etc...)
  ▪ With knowledge
  ▪ Clear text
  ▪ Foreign national

• New section describing “release” of technology and software
“Peculiarly Responsible”

- Used in context of “technology” being required for an item’s performance

- Currently: phrase is used in EAR definition of “required” and “specially designed”

- Proposed ruling
  - Defined using “catch and release” approach
  - “Catch” section provides clarity, references “development, production, use”
  - “Release” section – lengthy, read carefully

Continued Differences

**EAR**
- Published
- Technology
- U.S. Persons
- Peculiarly responsible

**ITAR**
- Public domain
- Technical data
- U.S. Persons – unique
- Peculiarly responsible - unique
Impact on University Compliance

Areas of Greater Risk at Universities

• Research Proposals / Departments
• Material & Technology Transfers
• Personnel
• International Shipping
• International Travel
• Purchasing / Procurement
• Environmental, Health, and Safety
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Research / Material & Technology Transfer

- Fundamental research
  - In-depth discussions with faculty/researchers – still required
  - Document the rationale

- Analysis of technical information
  - Controlled under an ECCN or EAR99?
  - Publicly available or not?
  - Document sources of data (public internet sites, technical datasheets)
Research / Material & Technology Transfer

- Leverage ability to use end-to-end encryption (pending final ruling)

- Does not eliminate need for TCP when handling controlled technology
  - On campus
  - Small business incubator

Personnel

- Deemed exports & technology exports

- Leverage ability to use end-to-end encryption (pending final ruling)

- Does not change I-129 visa required attestation
  - Engagement with HR, Student Services, or Immigration Services
International Shipping

- Destination Control Statement (DSC) proposed ruling

- DSC and classification both required in overall shipping documents

- Timely to revisit your international Shipping processes

- Continued challenge: central vs decentralized shippers

Closing Remarks
What Next?

Definitions Ruling
• Public comments due by August 3, 2015
• Watch for Final Ruling and its effective date

DSC Ruling
• 80 FR 29551 (Commerce)
• 80 FR 29565 (State)
• Published May 29, 2015
• Public comments were due by July 6, 2015

Summary
• Export Control Reform continues to be active.

• Definitions proposed ruling has many implications for the academic research community.

• Key concepts/terms affected include fundamental research, export, and release.

• Use of “end-to-end encryption” is explicitly covered.

• Public comments are due by August 3, 2015.
Free Useful Resources

• Previous MAXIMUS webinars
  http://www.maximus.com/higher-education/webinars

• Previous MAXIUMS Export Control Fundamentals Webinar
  http://www.maximus.com/higher-education/export-controls-compliance

• Federal Register Notices

• NCURA You Tube Tuesdays on Export Controls
  https://www.youtube.com/playlist?list=PL95ECA26C627D89B6

MAXIMUS Export Controls Services

• Export Controls Risk Assessments

• Customized Live and Virtual Training

• Policy guidance and development

• Export Control Process Improvements

• Guidance on Controlled Technology
  (TCPs, classification analysis)
Questions?

Join us at our MAXIMUS Annual Meeting

- September 16 – 19 in Miami, FL
  - Eden Roc Hotel
  - Now open to non-clients
  - Topics include CRIST™, F&A, effort reporting, Uniform Guidance, internal controls, and more
  - 5 F&A roundtables hosted by our MAXIMUS expert consultants
    - DHHS – all 4 regions
    - ONR

➢ Visit link below for more info:
  https://highereducation.maximus.com/usersmeeting
Upcoming Conferences We Are Attending:

• NCURA: August 2 – 5
  Washington, DC

• FDP: September 2 – 5
  Washington, DC

• SRA Int’l: October 17 – 21
  Las Vegas, NV

Thank you for attending!!

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http://www.maximus.com/higher-
education/export-controls-
compliance