

EXPORT NEWS

Laptops and Border Searches

International travelers should be aware that laptops, cell phones and other “electronic devices” can be searched and seized by U.S. Customs and Border Protection (CBP) or by Immigration and Customs Enforcement (ICE) when entering or departing the country. Electronic devices include computers, disks, drives, tapes, mobile phones and other communication devices, cameras, music players and any other electronic or digital devices. Electronic contents may be copied and shared with other agencies. The Department of Homeland Security (DHS) considers such items to be similar to other luggage and therefore subject to random search without reasonable suspicion. Court rulings have upheld that policy. Both CBP and ICE are departments within DHS.

This policy has been debated in Washington and challenged by privacy groups. New directives were issued by DHS in August in response to the outcry. See

http://www.dhs.gov/ynews/releases/pr_12513_93255852.shtm to read the directives from both CBP and ICE.

If you would like to arrange for internal export training for your department or college, please contact Nora Moriarty at njm1@email.arizona.edu or 626-2437.

NCURA 51st Annual Meeting

The National Council for University Research Administrators (NCURA) held their 51st annual meeting October 21-24 in Washington DC. The meeting included several workshops and seminars that focused on export controls, demonstrating the growing interest and continued need for education and outreach on these important regulations. On Wednesday, October 21, NCURA held two workshops entitled “Export Licenses and Other Government Approvals (ITAR)” and “The “How To’s” of Dual-Use and OFAC Licensing.”

The first session was run by experienced export officials from University of Alaska, Fairbanks, California Institute of Technology and The University of Texas at Austin and covered Commodity Jurisdiction Requests, filing DSP-5s (permanent export licenses), Technical Assistance Agreements and Voluntary Disclosures.

The second session was run by experienced export professionals from Stanford University and University of Oklahoma and, as its title suggests, covered Dual-Use and OFAC licensing, as well as disclosures to Commerce and Treasury.

Additionally, on Thursday, a seminar entitled “Congratulations, You’re a University Export Control Officer! Now What?” was held. Compliance officers from University of Missouri, University of Tennessee and Duke University spoke during that session and a discussion group followed.

All of the sessions were full and all were very informative for administrators new to these regulations. Email njm1@email.arizona.edu, if you’d like a copy of the handouts.

DDTC Limits Use of USML Category XXI in License Applications

On September 8, 2009, DDTC published [a notice on its website](#) that, effective immediately, all license submissions that identify USML Category XXI – Miscellaneous Articles must include an attached copy of one of the following two documents authorizing use of Cat XXI or the application will be subject to Return Without Action: A copy of a DDTC Commodity Jurisdiction determination letter identifying the commodity as controlled under the USML at Cat XXI; or an official letter from the Director, Office of Defense Trade Controls Policy granting permission to use Cat XXI. DDTC has observed a recent increase in the use of Cat XXI for items which should be properly categorized under a well defined USML category.

President Obama Nominates Erick Hirschhorn to Head BIS

On September 11, 2009 President Obama announced that his nomination of Erick Hirschhorn to be Under Secretary of Commerce for Industry and Security. Hirschhorn is currently a partner in the Washington, D.C. office of Winston & Strawn LLP.

DDTC Posts Updated Guidelines for Licensing of Foreign Person Employees

On September 30, 2009, DDTC posted updated guidance for licensing Foreign Person employees under DSP-5s. To download the guidance, go to http://www.pmdtc.state.gov/licensing/document s/WebNotice_LicensingForeign.pdf.

DDTC Posts New Agreements Guidelines

On October 7, 2009, DDTC posted revised guidelines for submitting Technical Assistance Agreements (TAAs), Manufacturing License Agreements (MLAs) and Warehouse and Distribution Agreements (WDAs). Most of the changes in the revised guidelines relate to electronic submission of TAAs and MLAs though DDTC’s electronic filing system. Electronic filing of agreements will become mandatory in 2010. To download the new guidelines go to: <http://www.pmdtc.state.gov/licensing/agreement.html>.

Federal Register Notices of Interest

[Fed. Reg. 74 FR 45990](#) - On September 8, BIS amended the EAR to make revisions to three sections that are used by the U.S.G. as the basis for placing persons onto the Entity List. These three sections specified license requirements for exports and reexports to persons listed on the Entity List, however; the sections were silent regarding whether or not the scope of the licensing requirements included transfers (in-country). This rule adds transfers (in-country) to the scope of the license requirements under each of the three sections.

[Fed. Reg. 74 FR 45985](#) - On September 8, BIS revised two existing License Exceptions concerning exports and reexports of gift parcels to Cuba and of personal baggage taken by individuals leaving the U.S. for travel to Cuba. It also creates a new License Exception authorizing the export and reexport to Cuba of certain donated consumer communications devices, including certain computers and software, mobile phones, and satellite receivers. It revises the scope of existing licensing policy regarding certain telecommunications links including satellite radio and satellite television services.

[Fed. Reg. 74 FR 52880](#) - On October 15, BIS amended the Encryption Simplification Rule. BIS published the interim final rule entitled “Encryption Simplification” on October 3, 2008 (73 FR 57495). This rule removed §744.9 of the EAR, which set forth requirements for authorization from BIS for U.S. persons to provide technical assistance (including training) to foreign persons with the intent to aid a foreign person in the development or manufacture outside the U.S. of encryption commodities or software that, if of U.S.-origin, would be “EI” controlled under ECCNs 5A002 or 5D002. Section 744.9 was added to the EAR in 1996 when jurisdiction over dual-use encryption items was transferred from State to Commerce. However, other parts of the EAR that referred to §744.9 were inadvertently not removed. This rule removes these references. Other corrections are made to harmonize with revisions made in the “Encryption Simplification” rule published October 28, 2008