



***GEO-CENTERS***

# **Export Control Licensing for Federal Technology Transfer Professionals**

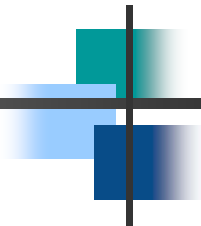
**A General Muddle**

**Tim Wittig**

Technology Management Group

GEO-CENTERS. INC.

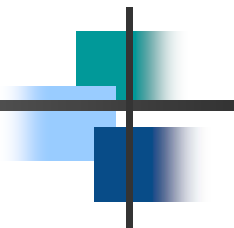
202 841 0655





## **Why Are You Telling Me All Of This?**

- Our CRADA Partners and Licensees Need to be Very Sensitive to These Issues
- We must be sensitive to Export Issues in
  - CRADA Negotiation
  - CRADA Performance
  - License Negotiation
  - Work for Others Activity
- **We need to make our partners sensitive!**

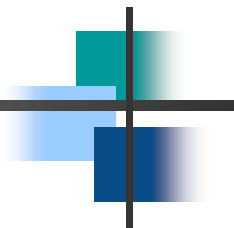




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## **What is an Export?**

- Any *Item Sent* from the United States to a Foreign Destination is an **EXPORT**.
  - An *Item* includes
    - Commodities (things that can be touched)
      - Clothes, Integrated Circuits, Mortars
    - Software
    - Technology
      - Manufacturing Drawings, Power Point Presentations





## **This is a Lawyers' Delight!**

- ***Sent*** includes:
  - By mail, hand as well as regular shipping methods
  - By facsimile, upload and download, e-mail, and conversations,
  - Gifts as well as sales
  - Shipment to a Wholly Owned Subsidiary of a US Firm
  - Re-exports
  - A Release to a Foreign National = an export to the National's home country
    - Watch out for the US citizen employee of a Foreign Firm

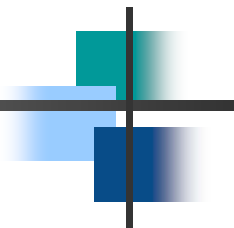




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## **When is a License Necessary?**

- **This Depends on The Nature of the Item**
  - **Military, or Dual Use**
    - State Directorate of Defense Trade 202 663 1282
    - They Requests Advice From DOD
  - **Nuclear Materials an Equipment**
    - NRC 202 622 2490
  - **Nuclear Technology and Technical Data and Materials**
    - DOE Office of Arms Control 202 586 2112 202
  - **Oversees Export of Controlled Substances**
    - DEA 02 307 2414
  - **Defense Related Technology**
    - Defense Threat Reduction Agency – Technology security 703 604 5186
  - **Toxic Waste**
    - Environmental Protection Agency 703 308 8751





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## **When is a License Necessary?**

### **It Depends on:**

- **The Country of Destination**
  - Cuba, Iran, Libya, North Korea, Sudan, and Syria Banned
  - The Commerce Country Chart
    - Bans specific commodities from specific countries (EAR part 738)
- **The Person to Receive the Export**
  - Is it banned Entity (EAR part 744)
  - Is he a Denied Person - list of 16 pages

"Name"	Street_Address"	"City" " State"	Country	Postal_Code	Effective Date
ABO (USA) INC."	"2653 N.W. 20TH STREET"	MIAMI" "FL"	"US"	"33142"	"12/15/2003"
ABRISHAMI, ELHAM"	"271 MONSARRAT DRIVE"	DUBLIN" " OH"	"US"	"43017"	"08/03/1998"
AGNESE, HELENE"	"37 RUE DE LA QUINTINIE"	"PARIS"	"FR"	"75015"	"07/11/1985"
AGNESE, SABA"	"37 RUE DE LA QUINTINIE"	"PARIS"	"FR"	"75015"	"07/11/1985"

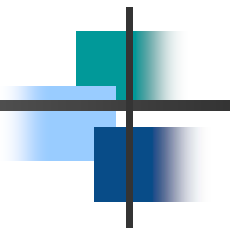


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## **When is a License Necessary?**

When the Item or Technology is described by the Munitions List  
22 CRF 121 et seq.

1. Firearms, Close Assault Weapons and Combat shotguns
  2. Guns and Armaments
  3. Ammunitions/Ordnance
  4. Launch Vehicles, Missiles, Rockets, Torpedoes, Bombs Mines
  5. Energetic Materials
  6. Vessels of War
  7. Tanks and Military Vehicles
  8. Aircraft and Associated Equipment
  9. Military training Equipment and Training
  10. Protective Personnel Equipment and Shelters
  11. Military Electronics
  12. Fire control and Range finders
  13. Auxiliary Military Equipment
- ETC. (see handout)





## **Is My Material On The List?**

- Submit a commodity “Jurisdiction Request “
- Goes to Department of State, Directorate of Defense Trade Controls
- This method identifies the appropriate licensing authority for an item
- Rules are found at 2 CFR 120.3 and .4 202 663 2719
- Send 9 collated sets of your request for a determination





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## **Not Included - Usually**

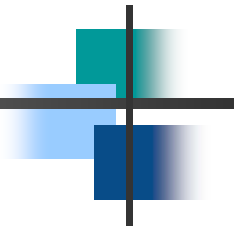
- Printed Books, Movies, etc
- Publicly Available Software
- Instruction at Academic Institutions
- Patents
- Open Conference/Publication
  - Open to Public, no restriction on attendance
  - Fundamental Research
    - University, Federal Agency or FFRDC





## **My Partner Needs Help!**

- **Department of State, Directorate of Defense Trade Controls (DTC):**  
Licenses defense services and defense (munitions) articles.
  - Tel. (202) 663-1282
- **Defense Threat Reduction Agency - Technology Security:** An agency of the Department of Defense (DoD) responsible for the development and implementation of policies on international transfers of defense-related technology, and reviews certain dual-use export license applications referred by Commerce.
  - Tel. (703) 604-5186 Fax: (703) 602-5842
- **Small Business Administration (SBA):**  
SBA provides a full range of export assistance services to small businesses, particularly those new to exporting, and offers counseling, training, managerial and trade finance assistance.
- **Exports.gov:**  
U.S. Government export portal



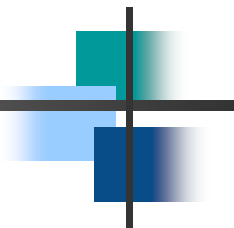


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### **But Wait, says Greg Taaffe!**

What about my CRADA and License Negotiations

- Dispute on whether DOD is subject to DOS rules
  - DOS only sends request for ruling to DOD
  
- What is the Guidance??????





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## Executive Order 12591 10 Apr. 87, Section 4, **International Sciences and Technology**

- The head of each Executive department, when negotiating licensing arrangements with foreign persons or industrial organizations (where these entities are directly or indirectly controlled by a foreign company or government), shall, **in consultation with Trade Representative**, give appropriate consideration to:
  - Whether such foreign companies or governments permit and encourage US agencies and organizations or persons to enter into CRADAs and licensing arrangements on a comparable basis;
  - Whether those foreign governments have policies to protect US intellectual property rights; and
- Whether, **where technology is subject to national security export controls under the laws of the US**, those foreign governments have adopted adequate measures to prevent transfer of strategic technology to destinations prohibited under such national security controls, either through CO COM or other international agreements to which the US and such foreign governments are signatories





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## **Consult with the Trade Representative**

- First Identify Foreign Persons and Companies
- Notice to Trade Rep of Intent
  - Provide a 30 day response cut-off
- If National Security Export Laws are involved, ask you International Office about:
  - Reciprocity in CRADA and IP Licenses
  - Protection of IP
  - Laws That Prevent Transfer





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## **General Advice**

- Talk to your International Officer
- Talk to your legal office
- Fax to Trade Rep with a 30 day fuse.
- Continue to Consult.





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**QUESTIONS??????**

**Please Call or Write!**

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