Guidelines for Purchasing and Property Control

The University’s Purchasing Department is responsible for ensuring that the purchasing process is accomplished ethically and in compliance with all applicable laws, regulations, and policies, including export controls. The following guidelines articulate the functions of the Purchasing Department that call for procedures to ensure compliance with export controls. The guidelines will be incorporated into the University’s Export Control Management System (ECMS).

Training on export controls should be provided to Purchasing and Property Control employees as necessary to ensure a current and cohesive understanding of the regulatory requirements. Any questions about the content of these guidelines or exports/imports in general should be sent to the Office of Export Controls (OEC).
Exporting

Physical exports of tangible items and goods should always be screened for license requirements by the OEC. This information is shared with staff, faculty and deans during training, but the Purchasing Department may become aware of physical exports that should be flagged for export control review.

For example, if surplus equipment is being donated to an organization in another country, the Purchasing Department should provide the OEC with the following information:

- The name of the individual responsible for the shipment
- A description of the equipment or materials being exported
- The name of the individual and organization receiving the export

The OEC will perform a restricted party screening, license screening, and any other screenings necessary prior to approving the export. The OEC will apply for any export licenses that may be necessary for the particular transaction. The OEC will also work with the individual(s) initiating the export as well as the Purchasing Department to retain any records necessary to comply with the recordkeeping provisions of export control regulations.
**Importing**

Importing certain items could require permits or licenses from U.S. government agencies. Specifically, the importation of defense articles\(^1\) requires a permit, and in the event that the Purchasing Department is aware of a defense article being imported, it should immediately notify the OEC.

The Purchasing Department has a contract with a licensed Customs Broker that is responsible for lawfully importing goods or materials into the U.S. However, in the event that an employee in Purchasing is concerned that a defense article is being imported, the OEC should be notified immediately, regardless of the involvement of the Customs Broker.

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\(^1\)“Defense article” is a term used by the State Department. It is defined as any item or technical data found in §121.1 of the ITAR (the United States Munitions List). This term includes technical data recorded or stored in any form, models, mockups or other items that reveal technical data directly relating to items designated in §121.1. As a general rule of thumb, any item that is specifically designed, developed, modified or adapted for military or intelligence applications could be a defense article. Specific examples include military aircraft, military electronics, ammunition, ordnance, missiles, rockets, explosives, military vehicles, etc. Satellites are also included in the definition of a defense article, even if they are research, communication, or scientific satellites.
Purchasing scientific or technical equipment

Purchasing scientific or technical equipment is essential for a University’s functions. The following guidance is intended to provide for the timely flow of information between the OEC and the Purchasing Department.

When purchasing scientific or technical equipment, occasionally a source or vendor may provide information about the particular product’s export control status. Most commonly, this information will take the form of an export control classification number (ECCN)\(^2\). For example, a vendor may state that a particular item is controlled by 6A005. If this information is provided, Purchasing should forward it to the OEC along with a description of the item being purchased, the name of the OU employee and department requesting the purchase.

Occasionally, Purchasing may discover information stating that the item(s) being purchased are subject to the ITAR\(^3\), USML\(^4\), or MTCRA\(^5\). This information may contain any of the foregoing acronyms, and it may also contain a specific category or paragraph (i.e. This item is found on the USML Cat. VIII).

This type of information indicates that the article involved could be a defense article\(^6\). The purchase should be halted and the OEC should be notified in the event that this type of language is in a purchasing contract.

It is also possible that a vendor may provide language indicating that the equipment is not for public purchase. Contract terms may specify that the equipment is not approved for public consumption, unlimited distribution, etc. In the event that this type of language is included in a contract it should be flagged and sent to the OEC for review, as this may be a vendor’s way of indicating that there are export control restrictions on the particular item.

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\(^2\) An ECCN should always consist of five characters, the first being a number, the second being a letter (A through E), and the last three being numbers.

\(^3\) International Traffic in Arms Regulations (22 CFR 120-130).

\(^4\) United States Munitions List (found in 22 CFR 121.1).

\(^5\) Missile Technology Control Regime Annex (found in 22 CFR 121.16).

\(^6\) See footnote 1.
Property Control

Public surplus auctions for dual use equipment are permitted pursuant to guidance issued by the Bureau of Industry and Security (BIS) within the Department of Commerce\(^7\). Additionally, as a public land grant institution, the University is obligated by statute to dispose of surplus equipment through public auctions and other public sales.

For export control purposes\(^8\), the guidance issued by BIS addresses the public auction of dual use items. There should not be a need to involve the OEC provided that:

1. The sales are open to the public
2. The items are not accompanied by notes, operating manuals, technical specs, etc\(^9\)
3. The items are not marked in a restrictive way\(^10\)
4. There are no “red flags” in the transaction\(^11\)
5. The sale does not include any defense articles or classified items\(^12\)

In the event that Property Control is concerned that an item may be a defense article, classified item, or that other issues such as red flags exist, the item should be flagged and held from public auction while the OEC is notified.

Additionally, language in the sales contract for all items auctioned to the public should include provisions on export controls. The OEC will provide language that is appropriate for this purpose.

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\(^7\) Advisory Opinion issued December 6, 2004 by the Bureau of Industry and Security titled “Public sale of US equipment to a foreign national and the "deemed export" rule”.

\(^8\) It’s important to note that other offices at OU, i.e. Radiation Safety and Environmental Health and Safety may have additional issues to address with public auction of equipment.

\(^9\) The OEC would need to verify that this type of information could be released to the public prior to the sale. As a practical matter it would be simpler to remove this information prior to the public sale.

\(^10\) For example, equipment that is marked with language indicating it is not intended for public release should be flagged and held from auction.

\(^11\) Guidance on red flags will be provided by the OEC during training.

\(^12\) Guidance on identifying defense articles and classified items will be provided by the OEC during training.
Conclusion

The Purchasing Department is an important part of the University’s Export Control Management System, both through its purchasing and property control functions. By utilizing the processes described above, the OEC and Purchasing can ensure compliance with applicable export controls.

Additionally, these same tools and ongoing training foster a culture of compliance within the University. The information in these guidelines will be updated and amended as necessary to maintain a functioning ECMS.