Meeting Agenda

Research Board

Date: 3 November, 2011
Time: 1500-1630
Location: Watkins 302

I. Communications

(See Attached)

II. Discussion

a. Proposal for Energy seed-funding (K. van Bibber)
b. Review of Centers (D. Kuska)

III. Action Item

a. Sub-Committee Selection for Proposal Evaluation
Supporting Documents:
Communications
Research Board Agenda
3 November 2011

1. Research Administration Update
   • Status of FY12 Budget Proposal Templates
   • Status of Responsible Conduct for Research (RCR) Module
   • Status of Implementation of NSF RCR modules for students/post-docs.
   • Status of 10% Hold-Back on FY12 Carryover Accounts
   • FY12 Indirect Policy on Grandfathering of Carryover Accounts and pending projects
   • Deputy RSPO vacancy

2. Dean’s Update
   • Who Can be a PI? Feedback
   • Brief report on visit to GTRI & proposal for joint research programs
   • Update – Radiation Safety Program
   • VP-DoR Search Committee process

3. Research Professoriate Committee
   • Membership: Research Professor Tim Stanton (OC), Research Associate Professor Amela Sadagic (MOVES), Research Assistant Professor Sandi Leavitt (NS), Research Professor Wieslaw Maslowski (OC), Interim Dean Phil Durkee (originally the Chair representative)
   • Committee Unofficial Charter:
     - define the non-tenure track positions (this will tie in with the update of the Faculty Handbook)
     - review fair pay/fair work
     - promotion process for non-TT
     - research strategy: non-TT research faculty critical to investment in NPS
   • Approach of Committee:
     - take a holistic view but focus in to set areas above.
   • Report:
     - Identification of issues
     - supporting documentation
     - recommend policy statement

4. FY12 Budget Status
   • RIP fully funded for known hires: $3,924K
   • Institutes: $400K
   • Center for Decision, Risk, Controls, and Signal Intelligence: $317k
   • NIFR Programs (Post Doc Cost-sharing; tech transfer; IRB; Recap): $500kK
   • Dean’s Indirect Investment Funding: $517K
   • No indirect for Research Recap
5. Proposals for Energy Seed Funding
   - $250K from Dean’s Investment Funding + $75k requested from IMET
   - Call for Proposals
   - Today’s Action Item
     - Select Sub-Committee from Research Board to evaluate proposals
       (one rep from each School; one Institute rep; one at-large rep)
     - Discuss criteria for evaluation

6. Center Review
   - Schedule Centers for Review (3 per month)(those centers established prior
     to January 2009)
   - Require read ahead on Center activities since formed or last review
   - 15-minute presentation before Review Board
   - Vote to continue/discontinue; renewal is for three years

dk/2 Nov 11
Supporting Documents:
AILA Liaison Export Control Attestation Requirement
AILA Practice Pointer:
The New Export Control Attestation Requirement on Form I-129

Q: Where is the export control question on the new Form I-129 and what does it say?

Part 6 of the new version of Form I-129 states:

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

☐ A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or

☐ A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data to the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.

The petitioner must check one of the above boxes on the form.

Q: What is controlled “technology” and “technical data”?

“Technology” and “technical data” that are controlled for release to foreign persons are identified on the Export Administration Regulations (EAR) Commerce Control List (CCL) and the International Traffic in Arms Regulations (ITAR) U.S. Munitions List (USML). The Department of Commerce Bureau of Industry and Security (BIS) administers the EAR. The Department of State Directorate of Defense Trade Controls (DDTC) administers the ITAR.

The EAR uses the term “technology” to refer to information for the development, production or use of “dual-use” products or software. “Technology” that is required for the development, production or use of items on the EAR’s CCL may be subject to export licensing and other restrictions, depending on the nature of the technology, the destination, the end-user and end-use. An export of controlled technology or technical data can occur when it is disclosed to or transferred to a foreign person, whether in the United States or abroad. Specifically, section 734.2(b)(2)(ii) of the EAR (15 CFR §734.2(b)(2)(ii)) states that an export of technology to a foreign national in the United States is “deemed to be an export to the home country or countries of the foreign national.” This is commonly referred to as the “deemed export” rule.
While the ITAR does not use the phrase “deemed exports,” the ITAR contains a similar concept. Section 120.17(a)(3) of the ITAR (22 CFR §120.17(a)(3)) states that an export occurs when “technical data” is disclosed (including oral or visual disclosure) or transferred to a foreign person in the United States.

Therefore, if an export license is required to export EAR controlled technology or ITAR controlled technical data to a certain country, an export license or other authorization will be required to disclose or transfer such technology to a foreign national of that country who is located in the United States.

Q: Where can I find the applicable regulations?

BIS is responsible for issuing “deemed export” licenses for the release to foreign persons of EAR controlled technology. DDTC is responsible for issuing export licenses and authorizations for the release of ITAR controlled technical data to foreign nationals in the United States.

Information about the EAR and how to apply for a deemed export license from BIS can be found at www.bis.doc.gov. Information about EAR’s requirements pertaining to the release of controlled technology to foreign persons is at www.bis.doc.gov/deemedexports.

Information about the ITAR and how to apply for an export license from DDTC can be found at www.pmddtc.state.gov. Information about the ITAR’s requirements pertaining to the release of controlled technical data can be found at http://www.pmddtc.state.gov/faqs/license_foreignpersons.html.

Q: Why is this issue relevant to a visa petition on behalf of a nonimmigrant foreign national?

As noted above, U.S. law prohibits the “export” of controlled technology and technical data to certain foreign nationals located within the United States without a license to do so. U.S. law treats as an export the release of controlled technology or technical data to a foreign national working in the United States, even if the company does not engage in any other exporting activities.

Technology or source code is considered “released” for export when it is made available to foreign nationals for visual inspection (such as reading technical specifications, plans, blueprints, etc.), when technology is exchanged orally, or when technology is made available by practice or application under the guidance of persons with knowledge of the technology. Such exports of controlled technology or technical data must be authorized through an export license issued by the appropriate government agency before release to the nonimmigrant foreign national.

Therefore, to properly complete the new I-129 form, an employer must first classify the technology or technical data that will be released to or be accessed by a prospective foreign national employee to determine whether an export license may be required to be obtained from BIS or DDTC before releasing such technology or technical data to the foreign national.

Q: To what visa classifications does the new attestation apply?

H-1B, H-1B1, L-1, and O-1A.
Q: When does the new form take effect?

I-129 petitions received by USCIS on or after December 23, 2010 must be on the new version of the form that includes the reference “Rev. 11/23/10” in the lower right hand corner. USCIS will reject petitions using previous editions of the form beginning on this date.

Q: What advice should I give to my clients regarding this question on the form?

To protect your client, as well as yourself, it is important to alert your clients to the new attestations and the relevant instructions. Accordingly, you should ensure that the I-129 signatory has directly addressed the issue before he or she signs the I-129. One way to do this would be to specifically send the text of the I-129 instructions along with the links noted above to your clients, along with a summary statement, such as:

"Please note that USCIS now requires employers filing Form I-129 for H, L, and O visa status on behalf of foreign nationals to certify that they have (1) reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), and (2) have made a determination as to whether or not an export control license is required to release any controlled technology or technical data to the foreign national. If an export license is required to be obtained before such release, the employer must attest that the worker will not be exposed to covered technologies without first obtaining an export license covering the foreign worker. We wish to make sure that you do not make a misrepresentation on Form I-129 in this regard, which in itself would be a violation of federal law. Read all of the forms and know that you are signing under penalty of perjury.

Export classifications and licensing determinations can be complex. If your client asks for your help with making the determination, unless you have reviewed the EAR and ITAR in detail and fully understand all aspects of the export control regulations, it is best to refer clients to an attorney who has expertise in export control law to make the determination as to which box to check.

Q: Where can I or my clients learn more?

In addition to the BIS and DDTC links above, the BIS website has a series of six training modules called “Essentials of Export Controls.” The training modules can also be downloaded in .pdf format. There is also a chapter on export controls in Martin Lawler's Professionals: A Matter of Degree, published by AILA."