

THE UNIVERSITY OF IOWA

**EXPORT CONTROL
COMPLIANCE
PROGRAM
MANUAL**

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The University of Iowa Export Control Compliance Program Manual

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I. University of Iowa Statement of Commitment to Export Control Compliance

It is the policy and long-standing commitment of the University of Iowa to advance education and research by promoting and protecting academic freedom and disseminating information in an open and freely accessible manner. University policy further supports the free and open participation of students, faculty, and others in research and educational activities without regard to their nationality. It is also University policy to comply with all legal obligations applicable to its various activities, including legal obligations imposed by U.S. export control laws and regulations.

For reasons of national security, foreign policy, and domestic economic and trade interests, the U.S. government has enacted laws and implemented regulations that have serious implications for research and other activities routinely carried out by the University. Generally referred to as the export control regime, these include the International Traffic in Arms Regulations (ITAR), administered by the Department of State; the Export Administration Regulations (EAR), administered by the Department of Commerce; and the economic and trade sanctions program administered by the Department of the Treasury through its Office of Foreign Assets Control (OFAC).

These regulations impose controls on the provision of certain services and access to, or transfers of, physical items, computer software, and technical information, as well as restrictions relating to economic and trade sanctions. The regulations control the transfer of technical information to foreign nationals, even when those transfers take place in the United States (considered a “deemed export” to the foreign country). The regulations also prohibit engaging in transactions or providing services to entities and individuals who appear on barred or specially-designated nationals lists.

Although most research conducted at the UI and on university campuses is fundamental research and thus excluded from the application of export control regulations, *there are important exceptions*. Faculty and staff need to be aware that university research involving export-controlled technologies, as well as transactions and exchanges with designated countries, entities, or individuals, may require the University to obtain prior approval from the relevant regulatory agency before engaging in the transaction/exchange or before allowing foreign nationals to participate in University research, collaborating with a foreign company, and/or sharing research data, materials, or equipment with persons who are not U.S. citizens or permanent residents. *The consequences of violating export control regulations can be very significant, and may include the loss of research funding and/or federal contracting privileges, the imposition of significant civil fines for individuals as well as institutions, and even criminal sanctions, including imprisonment.*

The University of Iowa is dedicated to the principles of academic freedom and will take all appropriate measures to ensure that its research and scholarly activities remain unrestricted and freely accessible. However, when it is determined that export control regulations apply to specific research projects or to other University activities, the University is committed to full compliance with the law. In such cases, and when export control issues are presented outside the research context, it is the responsibility of University faculty and staff to be aware of and comply with export control laws and with the University’s procedures designed to ensure compliance. To this end, the University has created its Export Control Compliance Program and this Manual.

Because these laws are complex, the University has provided and urges its employees to use the informational tools provided at <http://dsp.research.uiowa.edu/export-controls-home>. In addition, the University provides training on export controls and has designated two Export Control Coordinators in

the Division of Sponsored Programs to assist with export control issues (available at 335.2123 or export-control@uiowa.edu).

II. Key Personnel Responsible for Export Control Compliance

A. Empowered Official

The University has designated the Sr. Assistant Vice President for Research and the Executive Director of the Division of Sponsored Programs as its Empowered Officials for export control matters. In this capacity, the Empowered Official exercises oversight responsibility for the Export Control Compliance Program and is authorized to represent the University before the relevant regulatory agencies with regard to licensing, commodity jurisdiction and classification requests, and voluntary or directed disclosures. While certain of these responsibilities may be delegated, only the Empowered Official has signatory authority to bind the University in any matter before any government agency with export control responsibilities. The Empowered Official has the authority to act independently with respect to any of the University's export-controlled activities and may stop any such activity that may be in violation of U.S. export control laws.

B. Export Control Coordinators

Two Export Control Coordinators in the Division of Sponsored Programs (DSP) provide export control guidance to DSP, to University researchers who are or may be involved with export-controlled projects, and to the University community through coordination with those University units designated as Export Control Liaisons. In general, the Export Control Coordinators perform the following functions:

- Assist in DSP's initial export control assessment of sponsored research projects, including the review of the terms of proposals and agreements, to determine whether the research or related activity is subject to export controls
- When a sponsored project is determined to be subject to export controls and no exclusions or exemptions are available, the Export Control Coordinators
 - Work with researchers to facilitate understanding of and compliance with export control requirements
 - Assist Principal Investigators (PIs) in the development of a Technology Control Plan (TCP) for projects that involve export-controlled items or information to ensure compliance with export control requirements
 - Where necessary, prepare for the Empowered Official applications for export control licenses, commodity jurisdiction requests, and commodity classification requests
 - Inform the PI in writing of any restrictions imposed by any license or other approval obtained for the project, and obtain the PI's confirmation of understanding and acceptance of those restrictions
 - Monitor export-controlled research projects to ensure that the research is conducted consistent with the requirements of any TCP, license, or other approval
 - Conduct restricted party screening when needed
 - Maintain records pertaining to the management of export control issues in sponsored research projects
- Develop and implement procedures for DSP relating to the identification and management of export control issues in sponsored research projects;
- Provide administrative support to the University's Export Control Compliance Program

- Coordinate the compliance activities of the University's Export Control Liaisons and provide guidance to those units on export control issues
- Develop and provide training and education to the University community on export control compliance requirements, including developing and maintaining the University's export control website as an educational resource for the University community
- Update the University's Export Control Compliance Program Manual
- Serve as members of the University's Export Control Advisory Committee
- Consult the Office of General Counsel on legal issues arising from the University's export control compliance activities

C. Principal Investigators

The PI has the best understanding of his or her research and therefore the best information as to whether the particular item or technology involved in that research is or may be covered by export control regulations. The PI is responsible for doing the following:

- The PI should carefully review the information on export controls provided on the University's export controls web site at <https://research.uiowa.edu/dsp/export-controls-home>. Additional training on export controls is provided by the Export Control Coordinators and is available to PIs, their departments, and their departmental administrators. PIs who work in areas potentially subject to export controls are responsible for understanding the basic requirements of the law, the importance of compliance with those requirements, and when to seek help to identify and manage an export controls issue.
- Before beginning any research, and in a timely enough manner to permit any potential issues to be clarified and/or resolved, the PI should determine whether any export control issues may be presented in his or her project. Basically, any research activity may be subject to export controls if it involves the actual export or "deemed" export of any goods, technology, or related technical data that is either 1) "dual use" (commercial in nature with possible military application) or 2) inherently military in nature.

Work in the following areas is considered high risk:

- Engineering
- Space sciences
- Computer Science and Information Systems
- Biomedical research with lasers
- Research with encrypted software
- Research with controlled chemicals, biological agents, and toxins

In addition, any of the following raise export control questions for the project:

- Sponsor restrictions on the participation of foreign nationals in the research
- Sponsor restrictions on the publication or disclosure of the research results
- Indications from the sponsor or others that export-controlled goods or information will be furnished for use in the research
- The physical export of controlled goods or information
- Collaboration with foreign colleagues

- If any such issues are identified, or if any question exists, the PI should contact an Export Control Coordinator for help with determining whether any export control restrictions may apply to the research.
- After work on the project has begun, the PI should notify an Export Control Coordinator prior to implementing any changes that may give rise to the application of export controls, such as a change in the scope of work, the addition of new staff to the project, or the actual export of physical items or software to another country.
- If any export control issues are identified at the contract or grant proposal stage by the staff in the Division of Sponsored Programs, the PI should cooperate fully with DSP to determine the application of export control regulations to the research.
- If it is determined that export controls apply to the project, the PI must adhere strictly to any applicable restrictions and cooperate fully with the University's efforts to monitor compliance. The PI is responsible for ensuring that any controlled materials are managed according to any Technology Control Plan implemented for the research.
- In general, researchers should avoid entering into any type of agreement that could destroy the fundamental research exclusion by restricting publication or dissemination of the research results (such as non-disclosure or confidentiality agreements relating to research, MTAs with confidentiality provisions, and research agreements with confidentiality provisions) or by limiting the participation of foreign nationals in their research.

D. Export Control Advisory Committee

The University's Export Control Advisory Committee is an ad hoc committee that is appointed by and reports to the Vice President for Research. It is chaired by the Empowered Official and is comprised of representatives from the Division of Sponsored Programs, the Office of the Vice President for Research, the Office of General Counsel, and each of those units designated as Export Control Liaisons. In addition, the Advisory Committee will include a faculty representative from the College of Engineering, the Department of Physics and Astronomy, and the Department of Computer Science.

The Advisory Committee will assist the University in the implementation of its Export Control Compliance Program by:

- Providing input on elements of the Export Control Compliance Program that impact their areas of responsibility
- Conducting an annual review of the Export Control Compliance Program to identify and recommend needed improvements to the program and to specific compliance procedures
- Recommending policy development or revision in the area of export controls
- Assisting with the dissemination of export control compliance information to the University community

E. Division of Sponsored Programs

The Division of Sponsored Programs (DSP) within the Office of the Vice President for Research performs an initial export control assessment for each proposed research project with external funding. In this process, DSP staff review submissions, awards, and contracts, as well as confidentiality agreements and incoming material transfer agreements, to identify potential export control issues affecting sponsored projects. Such issues are reflected in terms that contain export control language as well as terms that restrict access to or prohibit publication results, limit the participation of foreign nationals in the project, or otherwise render the fundamental research exclusion inapplicable. Where such provisions are present, DSP staff will attempt to negotiate their removal or acceptable modification. DSP's initial review also includes an export control assessment of the project based on responses provided by the Principal Investigator on the project Routing Form. If the presence of problematic terms in the submission, grant, or agreement cannot be resolved or if the PI indicates that a project may be subject to export controls, the project is forwarded to one of the Export Control Coordinators for additional review and action.

F. Office of the Vice President for Research

The Office of the Vice President for Research implements the University's policy on free and open access to its research. As such, the Vice President for Research has the final authority to determine whether or not the University will accept research restrictions in its grants and contracts, including those restrictions that related to export controls.

G. Office of General Counsel

The Office of General Counsel (OGC) serves as legal advisor to the University. The OGC has designated the Deputy General Counsel for Research to provide legal advice and counsel on issues involving the application of export controls to University activities. As needed and in its judgment, the OGC may engage the services of outside counsel with specific expertise in export control compliance matters.

H. Export Control Liaisons

Export Control Liaisons are those University units (outside the Division of Sponsored Programs) whose daily work responsibilities may have export control implications. Each Export Control Liaison is responsible for export control compliance in that unit and has developed export control compliance procedures specific to the work conducted there. Those procedures will be kept on file in the units, as well as on file centrally in the Division of Sponsored Programs as part of the documentation of the UI's compliance program. Each Export Control Liaison has appointed a staff member to oversee and implement those procedures and to coordinate that activity with the University's Export Control Coordinators.

To enable the Export Control Liaisons to carry out their compliance responsibilities, the University has provided Visual Compliance as a resource for designated personnel in those units. Visual Compliance is a software tool that enables the units to conduct their own Restricted Party Screening and identification of export controlled items on the Commerce Control List and the U.S. Munitions List.

1. Purchasing/Accounts Payable

This office is responsible for payments for goods and services to vendors, some of whom are foreign parties or entities, and for purchases of physical items that may be subject to export controls. Purchasing/Accounts Payable has implemented procedures to assist the University's export control compliance efforts, including screening new vendors for listed persons/entities and embargoed countries; reviewing purchase agreements for evidence that items are subject to export controls; and obtaining accurate export control information from vendors about their products. When a purchased item is subject to export control restrictions, the item is marked as being export-controlled on the purchase requisition for inclusion in the Capital Asset Tracking system and notice of the restriction is provided to an Export Control Coordinator and the acquiring department.

Training is available to anyone interested, but is particularly targeted for individuals whose role is to initiate the requisition for the purchase of goods and services.

2. Travel

It is the responsibility of University employees traveling on University business to follow travel guidelines, including those relating to export controls.

The University is developing information for the University community on the export control implications of international travel. This resource will be located on the Travel Office website located at <https://uiowa.edu/ap-purchasing/international-travel#export>. Issues addressed in this online resource include travel with export-controlled devices or materials (laptops, cell phones, encryption software, data/technology, drawings, etc.); sharing controlled data/technology at closed conferences (i.e., which are not open to all technically-qualified members of the public and where attendees are not permitted to take notes); business transactions with restricted persons or entities; financial transactions and exchanges of goods/services to/with/in sanctioned/embargoed countries; and travel to sanctioned/embargoed countries.

The Travel Office notifies members of the University community planning international travel when the Department of State has issued a travel warning for the particular destination.

3. Surplus/Inventory Tracking

University Capital Assets Management tracks University equipment valued at more than \$5,000 using the Asset Management module of the PeopleSoft accounting system. Procuring departments notify Capital Assets when such equipment is export controlled. This information is shared with an Export Control Coordinator. In addition, University Surplus checks this inventory prior to selling or otherwise disposing of equipment. If the equipment is noted as being export controlled, Surplus works with an Export Control Coordinator to determine whether the restriction still exists and, if so, that the equipment is sold or disposed of in compliance with export control laws.

4. International Programs

International Programs provides leadership and support for internationally-oriented teaching, research, creative work, and community engagement. Its mission includes internationalizing the University curricula; promoting international scholarship and educational exchange and linkages with individuals and institutions abroad; and enhancing the University experience for international students and scholars.

Any agreements for the purchase of goods or services from foreign vendors are subjected to Restricted Party Screening in Purchasing. Agreements to be performed by UI employees outside the U.S. and agreements for international exchanges are reviewed by an Export Control Coordinator with regard to activities and exchanges of information that may raise export control or OFAC issues, including the provision of defense services. International Programs will work with an Export Control Coordinator to obtain any licenses applicable to the activities regulated by such agreements.

One of the resources provided by International Programs is International Student and Scholar Services, which serves international students and scholars in F-1 and J-1 status. ISSS issues the DS-2019 for foreign scholars in both paid and unpaid status when departments wish to invite them to campus. The Office of Admissions issues initial I-20 and DS-2019 forms that allow international students to apply for F-1 and J-1 statuses, respectively, and ISSS handles subsequent updates to the documents and monitors immigration status issues. ISSS reports student immigration compliance to the federal government in the SEVIS system (Student and Exchange Visitor Information System, a web-based system maintained by the Department of Homeland Security/Immigration and Customs Enforcement for data on international students and exchange visitors in the U.S.). ISSS provides employment authorization for immigration purposes when appropriate under the following conditions: F-1 students who do internships off-campus (CPT), F-1 students who exceed 20 hours/week on-campus (CPT), F-1 students who do internships off-campus after graduation (OPT), J-1 students who work on-campus up to 20 hours/week (Academic Training), and J-1 students who work on-campus more than 20 hours/week or off-campus in an internship for any number of hours (Academic Training).

Departmental requests to bring international scholars to the University are vetted through ISSS and any export control issues identified are addressed before ISSS creates the immigration document.

5. Immigration Services

The Office of Faculty and Staff Immigration Services in Human Resources manages visa applications, including modifications and renewals, for institutionally-sponsored employees. H-1B visas require the employer to certify on Part 6 of the I-129 Petition for Non-Immigrant Worker that no license is required to employ the foreign national with respect to the described scope of work. In order to make this certification, Immigration Services requires the hiring department to complete the Deemed Export Compliance Questionnaire to create a fact-based record supporting the certification that a license is not required to employ the foreign national. Any export control issue identified relating to the hire is referred to an Export Control Coordinator for resolution.

6. Information Technology Services

Information Technology Services (ITS) is responsible for oversight of all uses of information technology by the University of Iowa. Three ITS departments have shared responsibilities in the management of export control issues. The Information Security and Policy Office oversees the appropriate use of information technology systems, services, equipment, and information, consistent with University security guidelines, standards, and policy, as well as federal and state regulations. This office consults with an Export Control Coordinator to provide technical assistance and guidance for IT security plans required for research projects governed by a Technology Control Plan. The ITS Campus Software Program Office manages the procurement and use of software to meet compliance with licensing requirements, and assists with export control issues connected with such licenses. Finally, ITS Research Services manages University high performance computer (HPC) systems, which have export control requirements regarding user access and use of the system; this office works with an Export Control Coordinator on such issues. Technology Control Plans are maintained for each HPC system.

7. Environmental Health and Safety

The Office of Environmental Health and Safety (EHS) has a comprehensive lab safety and compliance program related to biological agents, controlled chemicals, radiological materials, and other hazardous materials. EHS also implements the University's program relating to the possession, use, and transfer of select agents. EHS provides online training courses for University employees with lab access about the proper handling, disposal, security, and shipping of these materials, including basic information on the applicability of export controls. The EHS Director (or designee) has access to the Visual Compliance database and search engine to determine the export control classification of materials and technology that fall under EHS purview and to conduct Restricted Party Screening on persons who possess or request access to select agents. These determinations will be provided to (and, where needed, confirmed with) an Export Control Coordinator. The EHS member of the Institutional Biosafety Committee will consult with an Export Control Coordinator regarding any potential export control issues that may arise in that committee's review of biohazardous agents.

8. University of Iowa Research Foundation

The University of Iowa Research Foundation (UIRF) commercializes University of Iowa-developed technologies and inventions through licensing and new venture formation, and manages the subsequent revenue stream. The UIRF is responsible for identifying export control issues presented by out-going material transfer agreements, non-disclosure agreements, invention disclosures, and licensing and option agreements. The UIRF has access to Visual Compliance software for this purpose. The UIRF consults with an Export Control Coordinator for resolution of any identified export control issues.

9. Activities not Associated with Specific Units

Shipping

Shipping is a decentralized activity at the University. However, the University expects its employees who ship items (e.g., equipment, materials, biological materials, chemicals) outside the U.S. to be responsible for complying with export control laws as well as USPS, UPS, and

FedEx guidelines. The University provides basic export control training to those involved in shipping from campus locations. Shipments may be regulated for export control purposes depending on the item, destination, recipient, and end-user. Any shipment to an embargoed country must first be reviewed and approved by an Export Control Coordinator.

III. Communications with Regulatory Agencies

Export control/OFAC license applications will be prepared by an Export Control Coordinator in the name of the Empowered Official on behalf of the University. Technical Assistance Agreements will be reviewed by an Export Control Coordinator and signed on behalf of the University by the Empowered Official. The Empowered Official has the authority to request advisory opinions from the relevant regulatory agencies, the authority to suspend University activities that may be in violation of export control/OFAC regulations, and the authority to submit voluntary disclosures of export control/OFAC violations as required to the relevant regulatory agency.

IV. Training

The Export Control Coordinators, in consultation with the Empowered Official, the Export Control Liaisons, and other applicable offices, develop, implement, and maintain an appropriate University training program on export control/OFAC compliance. The training program includes both basic and advanced information and both in-person and online training. In addition, Export Control Liaisons are trained on the use of Visual Compliance software relevant to their needs. The Export Control Coordinators are also responsible for the development and maintenance of a University website devoted to export control/OFAC compliance to be used as a substantive resource for members of the University community.

V. Recordkeeping

The University maintains accurate records and documentation relating to all of its activities and transactions to which export control or OFAC requirements apply. These records and documentation will be retained for a period of time consistent with current regulatory requirements, but in no event fewer than five years from (1) the date of the export, reexport, or any other termination of an export- or OFAC-related activity or transaction (under the EAR) or (2) the date of expiration, suspension, or revocation of a license or other approval (under ITAR). OFAC-related records will be retained for a minimum of five years from the date the OFAC-related issue arises.

The University's Empowered Official oversees the process for maintaining records and documentation relating to the implementation of export control and/or OFAC requirements to University activities and transactions.

- A current copy of the University's Export Control Compliance Program Manual and any attachments is kept on file in the Division of Sponsored Programs.
- Export control/OFAC records relating to the University's research activities are maintained in the Division of Sponsored Programs by the Export Control Coordinators. The objective will be to retain those records that substantiate the University's compliance with applicable export control/OFAC regulations. Records and documentation to be maintained in this context include, but are not limited to, the following:

- Documentation of the processes/procedures developed by the Division of Sponsored Programs for the administrative implementation of the University's Export Control Compliance Program as it relates to research;
 - Documentation of determinations about the applicability/inapplicability of export controls to a specific research project, including documentation of classification decisions issued by the relevant regulatory agency and documentation of the applicability of any exceptions or exemptions from the regulations;
 - Licensing applications and all information related to the preparation of such applications;
 - Issued licenses or other regulatory permissions;
 - Applications for registration with regulatory agencies;
 - Documentation of training activities conducted and attendance at/participation in such activities;
 - Documentation of any restrictions imposed on specific research projects in terms of access to export-controlled information or materials, including any applicable Technology Control Plan, and compliance with any such restrictions/plan; and
 - A copy of the results of any reviews of projects with Technology Control Plans, as well as documentation of any corrective actions taken in response to such reviews.
- Records relating to export control/OFAC compliance in the areas represented by the Export Control Liaisons are maintained by designated personnel in each of those respective units. Such records may be subject to periodic reviews conducted under the authority of the Empowered Official and/or the Export Control Advisory Committee.

VI. Monitoring

To maintain compliance with its export controls program, the Export Control Coordinators conduct reviews of Technology Control Plans on at least an annual basis. Such reviews are designed to detect inconsistencies between the TCP and actual practice, to identify needed revisions in training requirements and applicable procedures, and to ensure that changes to the law or sponsor terms/conditions are applied to the project. Substantial deficiencies in compliance will be brought to the attention of the Empowered Official, who has the authority to halt an on-going project if needed pending correction of any such deficiencies. In addition, on an annual basis, the Export Control Advisory Committee reviews the University's Export Control Compliance Program to identify and recommend needed improvements to the program and to specific compliance procedures. This review may include an audit of documentation of export control/OFAC compliance in the Export Control Liaison units.

VII. Detecting/Handling/Reporting Suspected Compliance Violations

Any University of Iowa employee or student who has reason to believe an export control or OFAC violation has occurred should immediately inform the University. Suspected violations may be reported to the UI's Empowered Official (335.2123) or through the University's EthicsPoint Hotline (https://secure.ethicspoint.com/domain/en/report_custom.asp?clientid=9723). In either case, the reporting party may remain anonymous. The Empowered Official will review the concern in consultation with the Office of General Counsel. If it is concluded that the allegation has merit following this consultation and a full review of the matter, the University will make a good faith voluntary disclosure of the probable violation to the relevant regulatory agency and comply with any instructions and/or recommendations provided by the agency. The University will also review and revise any procedures that may have been involved to prevent similar violations from occurring in the future.

VIII. Implementation of Corrective Action

Any member of the University community who fails to comply with export control/OFAC regulations may be subject to disciplinary action up to and including termination/separation from the University as provided for in relevant University policies.

IX. Overview of U.S. Export Control Regulations and OFAC Programs

The export control regulations most frequently encountered in the university setting are the following:

A. Export Administration Regulations (EAR)

The Export Administration Regulations (EAR), 15 CFR §§730-774 (<http://beta-www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>) are administered by the U.S. Department of Commerce Bureau of Industry and Security (BIS). They regulate the export of so-called "dual use" items, i.e., goods and related technology designed for commercial purposes but which could have military applications, such as computers, aircraft, and pathogens. The list of EAR-controlled items (the "Commerce Control List" or "CCL") is published at 15 CFR §774, Supplement 1) (<http://beta-www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>). A searchable list of CCL items is available at (<http://beta-www.bis.doc.gov/index.php/regulations/search-the-ear>).

The CCL categorizes covered items into the following ten categories (which each have subdivisions):

- 0) Nuclear materials, Facilities and Equipment, and Miscellaneous
- 1) Materials, Chemicals, Microorganisms, and Toxins
- 2) Materials Processing
- 3) Electronics
- 4) Computers
- 5) Telecommunications and Information Security
- 6) Lasers and Sensors
- 7) Navigation and Avionics
- 8) Marine
- 9) Propulsion Systems, Space Vehicles, and Related Equipment

For goods and technology listed on the CCL, a license will be required for export, unless an exclusion or exemption applies. Where embargoed countries are involved, a license will be denied. Current

information regarding countries of particular concern may be found at <http://www.ustreas.gov/offices/enforcement/ofac/programs/>.

There is an additional “catch-all” category in the regulations, the “EAR 99,” which covers any good or technology that is “subject to the EAR” as defined in 15 CFR §734.3(a) but is not on the CCL. Items in the EAR 99 category may or may not require a license, depending on the country involved, the individual(s) to whom the export will be made, and the proposed use of the item.

B. The International Traffic in Arms Regulations (ITAR)

The International Traffic in Arms Regulations (ITAR), 22 CFR §§120-130 (<http://pmdtc.org/reference.htm>), are administered by the U.S. Department of State, Directorate of Defense Trade Controls (DDTC). They regulate the export of defense articles, defense services, and related technical data (“defense” meaning that the government has determined the article, service, or data to be inherently military in nature). The list of ITAR-controlled items is published at 22 CFR §121 (the “US Munitions List” or “USML”) and is available at (http://pmdtc.org/docs/ITAR/2004/22cfr121_Part_121.pdf).

The USML covers 21 categories (including chemical and biological agents in addition to various weapons, vehicles, missiles, equipment, and electronics) and is less specific than the EAR CCL. Again, the items on the list have been determined by the Department of State to be inherently military in nature (basically, items designed to kill or defend against death in a military context). Most satellites and related technology are currently controlled by ITAR. Unless a specific exclusion or exemption applies, licenses are required for the export of an USML-listed item.

C. Applicable Export Control Definitions

Export control decisions depend on a clear understanding of the following terms. When making specific application determinations, however, the official regulatory definition should be consulted.

Export: This term is defined very expansively in the export control regulations. Generally, an export includes any: (1) actual shipment of any covered goods or information; (2) the electronic or digital transmission of any covered goods, information, or related goods or information; (3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software, or technical data to any foreign national; or (4) actual use or application of covered technology on behalf of or for the benefit of any foreign entity or person anywhere. Reference should be made to the official definition of export under the EAR and ITAR when determining whether a specific act constitutes an export. As “export” is currently defined, it precludes a foreign national (either faculty or student) from participating in research that involves covered goods or information without first obtaining a license from the appropriate government agency where no license exception applies.

Deemed Export: An export of covered goods, information, or source code (except encryption source code) is “deemed” to take place when it is released to a foreign national within the United States. See 15 CFR §734.2(b)(2)(ii) (EAR). Such an export is “deemed” to be an export to the country of nationality of the foreign national.

Foreign National: Any person other than a U.S. citizen, a lawful permanent resident of the U.S. (i.e., a green card holder), or a “protected individual” (i.e., a refugee or person seeking asylum; see 8 USC §1324b(c)(1,2)).

Defense Service (ITAR at 22 CFR §120.9):

(1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;

(2) The furnishing to foreign persons of any technical data controlled by ITAR (see §120.10), whether in the United States or abroad; or

(3) Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice. (See also §124.1.)

Fundamental Research: Basic or applied research in science and/or engineering at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research which results in information that is restricted for proprietary reasons or pursuant to specific U.S. Government access and dissemination controls. “Fundamental research” is defined in the EAR at **15 CFR §734.8** and in ITAR at **22 CFR §120.11**.

Public Domain: Information that is published and generally accessible to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions available without restriction to anyone who may want to purchase the published information; (3) through second class mailing privileges granted by the U.S. Government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition that is generally accessible to the public and is in the United States; (7) through public release (i.e., unlimited distribution) in any form (not necessarily published) after approval by the cognizant U.S. government department or agency; and (8) through **fundamental research**. 22 CFR §120.11.

Technical Data (ITAR at 22 CFR §120.10):

(1) Information, other than software as defined in 22 CFR §120.10(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation.

(2) Classified information relating to defense articles and defense services;

(3) Information covered by an invention secrecy order;

(4) Software as defined in 22 CFR §121.8(f) directly related to defense articles;

Excluded from this definition is information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities or information in the public domain as defined in 22 CFR §120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

D. Exclusions/Exemptions from Export Control Regulations

There are several common exclusions and an exemption that may remove University research from the application of export control restrictions.

Fundamental Research Exclusion: Fundamental research (basic or applied research in science and/or engineering at an accredited institution of higher learning in the U.S that results in information that is ordinarily published and shared broadly within the scientific community) is excluded from export control regulations. This means that where University research meets this definition, information (but not controlled goods, equipment, or materials) resulting from that research may be disclosed to foreign nationals and that disclosure is not subject to export control restrictions.

University research **will not qualify** for this exclusion if the University or researcher accepts any restrictions on the publication of the information resulting from the research (other than limited prepublication review by research sponsors to ensure that proprietary information is not inadvertently disclosed in publication or to ensure that publication will not compromise the patent rights of the sponsor) or any restrictions on who may participate in the research.

It is important to remember two things about the fundamental research exclusion: 1) it applies only to information and 2) it **does not apply** to a sponsor's existing proprietary information when some or all of that information is required to be held confidential.

Educational Instruction Exclusion: Export control regulations do not apply to commonly-taught educational information released in academic catalog-listed courses or in teaching labs associated with those courses. This means that a faculty member teaching a University course may discuss what might otherwise be export-controlled information or technology in the classroom or lab without an export control license even if foreign national students are enrolled in the course. This exclusion is based on the recognition in ITAR that "information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain" should not be subject to export control restrictions. 22 CFR §120.10. This exclusion does not apply to encrypted software.

Public Domain/Publicly Available Exclusion: Information that is published and generally available to the public (see "public domain" definition above), as well as publicly available technology and software, is outside the scope of the export control regulations. This exclusion does not apply to encrypted software, to information if there is reason to believe it may be used for weapons of mass destruction, or where the U.S. government has imposed access or dissemination controls as a condition of funding.

Exemption for Disclosures to Bona Fide Full-time Employees: Export control regulations exempt disclosures of unclassified technical data in the U.S. by U.S. universities to foreign nationals where 1) the foreign national is the University's bona fide full-time regular employee, 2) the employee's permanent abode throughout the period of employment is in the U.S., 3) the employee is not a national of an embargoed country, and 4) the University informs the employee in writing that information disclosed may not be disclosed to other foreign nationals without governmental approval.

This exemption is likely to be less available than the three exclusions discussed above. In addition, most graduate students are not regular full-time University employees and disclosures to them will not qualify for this exemption.

E. OFAC Sanctions Program and Barred Entities Lists

In addition to the EAR and ITAR, the Department of Treasury's Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.

Sanctions/Embargos on Countries: OFAC prohibits most transactions between a U.S. person and persons or entities in the so-called "embargoed" countries, including the import/export of direct/indirect goods and services and facilitating transactions between foreign parties and an embargoed country. Embargoed countries include Cuba, Iran, North Korea, Syria, and Sudan. The complete and updated list of countries included in the boycott program may be viewed at <http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>.

Barred Persons/Entities Lists: OFAC and other federal agencies maintain lists of persons and entities barred or otherwise restricted from entering into certain types of transactions with U.S. persons. The University uses Visual Compliance software to conduct regular screening of these lists (referred to generally as "Restricted Party Screening") to avoid entering into transactions with barred persons or entities.

- The OFAC Specially Designated Nationals List may be viewed at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.
- The Department of Commerce Bureau of Industry and Security maintains several lists at <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list>.
- The Department of State maintains a List of Debarred Parties at <http://www.pmddtc.state.gov/compliance/debar.html>.

X. Attachments

Under development