

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. The 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 regulations, 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 persons, 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 U.S. government restricted lists.

Applicability of Export Control Compliance Requirements

Although most research conducted at The University of Iowa and on many U.S. 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 persons 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 to the extent allowed by law. 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 of Iowa has created its Export Control Compliance Program and this Manual.

The University of Iowa faculty and staff, including principal investigators for research projects, are responsible for compliance with export control regulations. Principal investigators should stay informed about the regulations and restrictions relevant to their projects, offer training to project team members, and maintain appropriate controls and records. Refer to Section II.C for additional details.

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 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 Associate 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

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.

- Perform TCP audits and maintain related documentation.
- Conduct restricted party screenings 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.
- Support The University of Iowa's Export Control Compliance Program by
 - Coordinating compliance activities of the University's Export Control Liaisons and providing guidance to those units on export control issues.
 - Developing and providing training and education to the University community on export control compliance requirements, including developing and maintaining the University's export control website as a resource for the University community.
 - Updating the University's Export Control Compliance Program Manual.
 - Serving as members of the University's Export Control Advisory Committee.
 - Serving as a member of the Drone Committee Advisory Group.
 - Serving as an advisory member of the Dual Use Research of Concern (DURC) 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 their 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](https://dsp.research.uiowa.edu/export-controls-home) at <https://dsp.research.uiowa.edu/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 their project. 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 cryptography or encryption 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 persons 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 persons in their research.

D. Export Control Advisory Committee

The University of Iowa's Export Control Advisory Committee is an ad hoc committee that reports to the Vice President for Research. It is chaired by an 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 related to export control compliance; and
- 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 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 persons 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 Proposal Routing Form or Non-monetary 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 of Iowa policy on free and open access to its research including as provided in The University of Iowa Policy Manual [II.27.2, Principles Governing Access to Research Information](#). As such, the Vice President for Research has the final authority to determine whether the University accepts research restrictions in its grants and contracts, including those restrictions 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 a Deputy General Counsel 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 University of Iowa'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 provides specialized software as a resource for designated personnel in those units. The software enables liaison units to conduct their own Restricted Party Screening and for select units, the identification of export-controlled items on the Commerce Control List and the U.S. Munitions List.

The Export Control Coordinators provide training to the Liaison unit representatives, including those using the export control compliance software.

1. Purchasing/Accounts Payable

This office is responsible for purchasing and payments of goods and services to vendors, some of whom are foreign parties or entities, and for purchases of physical items. 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 compliance with export control regulations; and obtaining accurate export control classification information from vendors about their products. Any applicable ECCN or ITAR category is added to the requisition. Notice of the ECCN or category is provided to an Export Control Coordinator for review and guidance on any further action needed to proceed with the purchase and the acquiring department.

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 Policy Manual [Chapter 22 – Travel](#) sets forth The University of Iowa travel policy.

Resources for the University community on the export control implications of international travel are located on the Travel Office website: <https://ap-purchasing.fo.uiowa.edu/travel/international-travel>. Resources include the IT Travel Checklist (see section H.7 below) and a section regarding Export Controls and International Travel.

3. Capital Assets Management

University Capital Assets Management tracks University equipment valued at more than \$5,000 using the Asset Management module of the PeopleSoft accounting system. The Capital Assets Management [website](#) includes a reminder to contact the DSP Export Control Coordinators prior to transfer of restricted equipment.

4. Surplus

Surplus restricts all auctions to North American Bidders only and all bidders are prescreened by the 3rd party vendor, GovDeals, for export control compliance. Any assets within an export control category are checked against the 3rd party software, Descartes Visual Compliance, along with consulting with Purchasing, Capital Asset Management, and the Export Control Coordinator

before selling of the asset. If export control restrictions apply, the property shall be sold or disposed of in a manner compliant with export control laws.

5. 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.

Agreements to be performed by University 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 (ISSS), 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. ISSS also 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 (On-Campus Work Authorization), 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).

When ISSS receives departmental requests to bring international scholars to the University, if export control issues are identified, ISSS confers with the Export Control Coordinators.

6. 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 person with respect to the described scope of work. 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 person. Any export control issue identified relating to the hire is referred to an Export Control Coordinator for resolution.

7. 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 (ISPO) 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. The Export Control Coordinators contact ISPO 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.

The Information Technology Security website includes an [IT Travel Checklist](#) with information and reminders for traveling.

8. Environmental Health and Safety

The Environmental Health and Safety Office (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 about the proper handling, disposal, security, and shipping (infectious substances/dry ice) of these materials, including basic information on the applicability of export controls. The Responsible Official/Alternate Responsible Official will notify the Export Control Coordinator whenever a Foreign Person applies to work on a project that is designated as Dual Use Research of Concern (DURC). 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 biological agents.

9. University of Iowa Research Foundation

The University of Iowa Research Foundation (UIRF) supports the commercialization of University of Iowa-developed technologies and inventions through licensing and support of new venture formation, and manages any subsequent revenue stream. The UIRF is responsible for identifying export control issues presented by non-disclosure agreements, invention disclosures, and licensing and option agreements entered into by UIRF. The UIRF has access to Descartes Visual Compliance software to perform restricted party screenings on potential contracting parties. The UIRF disclosure form asks PIs if the disclosure is related to research conducted under a project subject to a Technology Control Plan. The UIRF consults with an Export Control Coordinator for resolution of any identified export control issues.

10. Research Integrity and Security

The Research Integrity & Security Office within the Office of the Vice President for Research safeguards the integrity and security of research data to ensure that research data, funding and intellectual property are not misused or diverted. It oversees institutional compliance with the Federal Office of Science and Technology Policy (OSTP) requirements for Research Security Program Standards. This includes the requirement for export control compliance and training for applicable personnel and coordination of Responsible and Ethical Conduct of Research (RECR) training, which covers basic export control topics.

The Director of Research Integrity and Security is the designated institutional Research Security Officer (RSO) for the university of Iowa. The RSO works with the Empowered Officials for Export Control to investigate and resolve any reported breaches of institutional research security involving export control related matters. As proposed by OSTP's Research Security Program Standards, part of the resolution of reported breaches of research security includes specific and documented training regarding the issues related to the breach.

III. Communications with Regulatory Agencies

Export Control Coordinators coordinate the preparation and submission of license applications with the approval of an Empowered Official. Export Control Coordinators or Empowered Officials are the University employees who make official University requests and other communications with export control-related agencies.

IV. Training

The Export Control Coordinators, in consultation with the Empowered Officials, the Export Control Liaisons, and other applicable offices, develop, implement, and maintain an appropriate University training program on export control/OFAC compliance. Export Control Liaisons are trained on the use of Descartes Visual Compliance software relevant to their needs. The Export Control Coordinators are responsible for the development and maintenance of a University website devoted to export control/OFAC compliance.

V. Recordkeeping

The University maintains accurate records and documentation relating to its activities and transactions to which export control or OFAC requirements apply. These records and documentation will be retained 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 Officials oversee 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 pertinent 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
 - 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 (TCPs) on at least an annual basis. Such reviews are designed in part to confirm whether the written TCP needs to be revised to reflect current personnel and practices, 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 an Empowered Official, who has the authority to halt an on-going project if needed pending correction of any such deficiencies. The Export Control Advisory Committee reviews the University’s Export Control Compliance Program annually to identify and

recommend improvements to the program. 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 an Empowered Official 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. An Empowered Official will review the concern and determine appropriate actions in consultation with the Office of General Counsel.

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 <https://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 <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>. A searchable list of CCL items is available at <https://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 may be required for export.

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(c) but is not on the CCL <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734>.

Items in the EAR 99 category may 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, 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 <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M>.

C. Office of Foreign Assets Control (OFAC)

The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury 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, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. Information about OFAC is available at <https://ofac.treasury.gov/>.

OFAC issues a number of different sanctions programs. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals. OFAC maintains a Sanctions Programs and Country Information page.

Restricted Persons and Entity 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 subscribes to 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. Examples of restricted lists include the following.

- The OFAC Specially Designated Nationals List is available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.
- The Department of Commerce Bureau of Industry and Security provides screening lists at <https://www.bis.gov/>
- The Department of State maintains a List of Debarred Parties at https://www.pmdtc.state.gov/ddtc_public/ddtc_public?id=ddtc_kb_article_page&sys_id=c22d1833dbb8d300d0a370131f9619f0

D. Selected 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.

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 person within the United States. See 15 CFR §734.13(b)) (EAR) <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734/section-734.13>. Such an export is "deemed" to be an export to the country of nationality of the foreign person.

Defense Article (ITAR at 22 CFR §120.31) <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120/subpart-C/section-120.31>

(a) **Defense article** (note for DSP: something listed on USML – look @ 121.1 to condense this section) means any item or technical data designated in [§ 121.1 of this subchapter](#) and includes:

(1) Technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in [§ 121.1 of this subchapter](#); and

(2) Forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles.

(b) It does not include basic marketing information on function or purpose or general system descriptions.

(c) The policy described in [§ 120.3](#) is applicable to designations of additional items.

Defense Service (ITAR at 22 CFR §120.32) <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120/subpart-C/section-120.32>

(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 §120.33; <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120/subpart-C/section-120.33>), 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.

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: Basic or applied research in science, engineering or mathematics conducted at an accredited institution of higher learning in the U.S that results in information 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, and software (but not controlled goods, equipment, or materials) resulting from that research 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 or software 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 software and 2) it **does not apply** to a sponsor's existing proprietary information when such 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 person 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. 15 CFR §734.3(b)(3)(iii)4 <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734/section-734.3>. 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 persons where 1) the foreign person 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 persons 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.

Export: This term is expansively defined in the export control regulations. An export includes: (1) actual shipment of covered goods or information out of the United States; (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 person; (4) performing a defense service on behalf of, or for the benefit of a foreign person; (5) the release of previously encrypted technical data or (6) 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. (ITAR §120.50 <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120/subpart-C/section-120.50>) (EAR §734.13 <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734/section-734.13>)

Foreign Person: 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 <https://www.ecfr.gov/current/title-28/chapter-I/part-44>.

Fundamental Research: Basic or applied research in science, engineering, or mathematics 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** <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734/section-734.8> and in ITAR at 22 CFR 120.34(a)(8); <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120/subpart-C/section-120.34>

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**. Public domain is defined at 22 CFR §120.34 <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120/subpart-C/section-120.34>

Technical Data (ITAR at 22 CFR §120.33) <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120>:

(1) Information, other than software as defined in 22 CFR §120.40(g), 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 on the U.S. Munitions List and 600-series items controlled by the Commerce Control List;(3) Information covered by an invention secrecy order;

(4) Software see [§ 120.40\(g\) https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120#p-120.40\(g\)](https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120#p-120.40(g)) 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 §120.34 <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120/subpart-C/section-120.34>. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.