

Export Controls @ UF



ITAR Inventory Tracking Initiative

Although there are several export regulations that UF must comply with most equipment, software and materials fall under either the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).

In almost all cases a license or other US Government authorization is needed for EAR or ITAR controlled equipment, software or materials to be exported to a country for which the item is controlled. An export license or other US Government authorization is required even if the export will be on a temporary basis and the item will be returned to the US.

However, regulations pertaining to access and operation of controlled items by non US persons in the US varies greatly depending upon whether the equipment,

software, or material is controlled by the EAR or the ITAR.

Under the EAR a deemed export only occurs when technology (aka 'production', 'development', or 'use' information) or source code software controlled for a specific country is released in the US to a non US person from that country. Further, many items under the EAR are controlled only for a specific subset of countries. Thus, in most cases, an EAR controlled item can be accessed and operated by a non US person while in the US without an export license or other US Government authorization. This is true even if the non US person is from a country for which the item is controlled.

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A Message from the UF Empowered Official



Thomas E. Walsh, Ph. D.
Director
Division of Sponsored
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In this issue of Export Controls @ UF you will find a description of two initiatives. The first initiative is to identify and track ITAR controlled equipment, software and materials. The second initiative involves inventorying certain chemicals of interest as required by various US Government regulations. Other articles include an update on the

US Government's on-going Export Control Reform, as well as brief articles on other aspects of Export Controls.

Please contact DSR at 352-392-3526 if you have any questions regarding this newsletter or export controls in general.

Sincerely,
Thomas E. Walsh

Division of Sponsored Research

Why is compliance important to me?

Export control violations can result in penalties and fines which may apply to an individual, the institution or both.

- Administrative Penalties include loss of export privileges or suspension and debarment from government contracting;
- Monetary fines can be up to \$1 million per violation; and,
- Jail time can be up to 20 years per violation.

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Calendar of Events:

- The next meeting of the UF Export Controls Working Group will be held on January 19, 2012 in 223A Grinter Hall from 10:30–11:30.
- The next meeting of the North Florida Counterintelligence Domain Working Group is scheduled for Wednesday, February 1, 2012 at the Florida State College at Jacksonville - Deerwood Center.

ITAR Inventory Tracking Initiative (cont'd)

For example, if a piece of equipment is EAR controlled for Canada a non US person from Canada can access and operate the equipment without a license or other government authorization as long as they do not have information for all 6 elements of use (installation, repair, maintenance, operation, overhaul and refurbishing).

A word of caution, there are proposed regulations that will remove for some equipment the requirement for all 6 elements to be present to require a license. If implemented as proposed a license will be necessary in some instances under EAR even if only operation information is involved.

The ITAR and associated State Department official guidance however requires that an export license be obtained prior to a non US person having access to or operating any item or software on the United States Muni-

tions List (i.e., items that are ITAR controlled). To further complicate matters, ITAR controlled items are controlled for all countries in the world even Canada.

In order to ensure that UF is compliant with the ITAR regulations UF will be inventorying, labeling and tracking ITAR controlled equipment, materials, and software. Once identified, the item will be tagged with a green label which identifies the item as ITAR controlled and indicates that the College designated contact or the Division of Sponsored Research must be contacted prior to moving the item or providing non US persons access to the item.

The College of Engineering is currently beta testing the ITAR Inventory process to identify any issues and develop resolutions to these issues. Once the College of Engineering beta test is completed the process will be rolled out to the rest of campus.

A Brief Update the US Export Control Reform Initiative

In the last 15 months there have been numerous proposed regulatory changes; however, very few of these items have become final rules. Following is a brief explanation of some of the proposed rules currently under discussion.

ITAR

The State Department has issued proposed rules under the ITAR pertaining to the definition of defense services, brokering activities, and the term 'specially designed'. Additionally, State has issued proposed rules for the rewrite of USML Categories VI, VII, VIII, XIX, XX. The main purposes for the proposed rules is to clarify what is controlled under the ITAR and to move items (mainly parts and components) from the ITAR to the EAR. State has also proposed rules pertaining to brokering, replacement parts and the see through rule.

EAR

Commerce has also proposed rules under the EAR for moving items off of the ITAR to the EAR as well as reciprocal proposed rules to the USML Categories VI, VII, VIII, XIX, and XX rewrites.

ITAR/EAR

Additionally, Commerce and State have announced that they will be issuing proposed rules to harmonize terms found in the ITAR and the EAR such as public domain/publicly available, Technology/Technical Data, Specially Designed, Fundamental Research, etc.

10 CFR Part 810

The Department of Energy released a proposed rule which completely rewrites 10 CFR Part 810. The purpose of this rewrite covered many areas such as clearly defining what information is controlled, which countries require a license, verifying that deemed exports

exist under 10 CFR Part 810 and specifying basic scientific research is not controlled, but applied research is controlled.

Department of Defense

DoD proposed a clause that if implemented would mandate information security under all DoD contracts. Enhanced Safeguarding would be mandated under some but not all DoD contracts.

OFAC

Last but not least there were a large number of OFAC regulation on Syria, Iran, Sudan and Cuba issued.

The next edition of the Export Controls @ UF will be dedicated to discussing issued final rules and their impact on UF research efforts.

International Travel with UF Owned Laptops

If faculty, staff or students will be traveling to another country with a University of Florida (UF) owned laptop or any other UF owned equipment/property the person traveling must submit a Foreign Travel Request through Asset Management (see <https://myassets.fa.ufl.edu/os/ftalogin.php>). When completing the Foreign Travel Request the following information is needed:

- Tag ID of the property
- UF ID of person traveling
- Dates of travel (can include multiple trips for up to a year)
- Destination country(ies) for the travel

Once Asset Management receives the Foreign Travel Request, Asset Management will review the request for export control purposes and contact the Division of Sponsored Research as needed. Once the review is complete Asset Management will issue a letter to the person submitting the request specifying what actions are needed. The letter will indicate whether or not an export license or some other US Government authorization may be needed. If there are no export control licensing requirements identified for the item(s) to be taken to the countries identified the travel may proceed without further action.

This letter applies to the equipment and any standard operating or business application software. Any Specialized/Scientific Software and/or Technical Data contained on the computer may be subject to export controls and require a license. Please contact DSR at 352 392-3526 prior to traveling if you plan to take any controlled Specialized/Scientific Software or Technical Data.

UF Export Control Metrics*

Estimates based on records of items issued and in process as of 11/2011

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|---|-------------------------|
| Projects Reviewed: | 1030 since January 2010 |
| Technology Control Plans: | 125 since June 2008 |
| ITAR Licenses: | 17 since June 2010 |
| EAR Licenses: | 5 since June 2008 |
| Technical Assistance Agreements: | 2 since February 2011 |
| Commodity Jurisdictions: | 5 since November 2010 |
| Commodity Classifications: | 2 since January 2010 |
| Restricted Party Screenings: | 1175 since January 2008 |
| Deemed Export Certification Reviews: | 437 since February 2011 |

Export Control Contacts @ UF

General Information, Restricted Party Screening and Training:

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Export of Equipment or Materials:

Biologics, Chemical, etc.

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Other Items

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As a public institution of higher education, UF employs foreign nationals, collaborates with international partners on research, education and services, and hosts foreign visitors in connection with international exchange programs, international students, and other business and collaboration agreements. It is the intent of UF to employ foreign nationals, collaborate with foreign nationals and host international visitors, both long and short term, in the most welcoming manner possible while also assuring compliance with U.S. laws and regulations governing the export of certain items (including equipment, software code, chemicals, biological materials, and other things) and technical data.



2012 Chemical Inventory:

A Collaborative Effort between Environmental Health and Safety and the Division of Sponsored Research

To comply with various US Government regulations, the University of Florida (UF) will be initiating in January 2012 an annual inventory of chemicals of interest located in University facilities. In order to ensure compliance while at the same time not unduly burdening Faculty and Staff with multiple requests, Environmental Health and Safety (EHS) and the Division of Sponsored Research (DSR) are collaborating to obtain this required information.

As currently planned, EHS will contact, via e-mail, UF Faculty members responsible for one or more labs that con-

tain chemicals. The e-mail will direct the Faculty member to download from the DSR forms website the Chemical Inventory Checklist (CIC). Once downloaded the CIC must be completed by the Faculty member or their designee and then uploaded to a secure website maintained by DSR and EHS.

If none of the listed chemicals are located in the faculty member's lab(s), then the Faculty member need only respond to the original e-mail message from EHS stating that none of the chemicals of interest are used and/or stored in their lab(s).

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Frequently Asked Questions

What is technology? Per section 772 of the EAR Technology is specific information necessary for the "development", "production", or "use" of a product. The information takes the form of "technical data" or "technical assistance".

Technical assistance--May take forms such as instruction, skills training, working knowledge, consulting service and may involve transfer of "technical data".

"Technical data"— May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

What is a release of technology or software? Per 734.2(b)(3) of the EAR Technology or software is "released" for export through:

- (i) Visual inspection by foreign nationals of U.S.-origin equipment and facilities;
- (ii) Oral exchanges of information in the United States or abroad; or
- (iii) The application to situations abroad of personal knowledge or technical experience acquired in the United States.



QUESTIONS
Call DSR at 352-392-3526