

# Export Controls @ UF



## Developmental Items Funded by DoD (Part II)

In the July 2013 edition of the Export Controls@UF newsletter we discussed the new DoD funded developmental items language that is found in many, but not all, of the revised United States Munitions List (USML) categories.

Per this new language, developmental items created under US Department of Defense (DoD) funding agreements (i.e., contract, grant or other agreements) can become International Traffic in Arms (ITAR) controlled based solely on the fact that the effort was funded by DoD.

Since July 2013 there have been several USML categories that have included this language. Specifically:

**Category V** Developmental explosives, propellants, pyrotechnics, fuels, oxidizers, binders, additives, or precursors

**Category VI** Developmental surface vessels of war, and specially designed parts, components, accessories, and attachments

**Category VIII** Developmental aircraft

**Category X** Developmental personal protective equipment and specially designed parts, components, accessories, and attachments

**Category XI** Developmental electronic equipment or systems

**Category XIII** Developmental armor

**Category XV** Secondary or hosted payload (satellite), and specially designed parts and components

**Category XX** Developmental submersible vessels and related articles (cont'd on page 2)


**Division of Research Compliance**

**Why comply with export controls?**

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.

## A Message from the UF Empowered Official



*Irene M. Cooke, D.V.M Ph. D. Assistant Vice President and Director Division of Research Compliance*

In this issue of Export Controls @ UF you will find an update on the DoD Developmental items issue addressed in the July 2013 edition, a write up on the revised DFARS 252.204-7000 Release of Information (Aug 2013) clause as well as brief articles on

other issues impacting Export Controls.

Please contact the Division of Research Compliance's Export Control Office at 352-392-3526 if you have any questions regarding this newsletter or export controls in general.

Sincerely,  
Irene

Inside this issue:	
Developmental Items Funded by DoD (Part II) (cont'd)	2
The Transition from the ITAR to the EAR	2
DFARS 252.204-7000	3
Satellites Transitioning to the EAR...Some but not All	4

## Export Control Reform Update II (cont'd)

The 2014-2015 UF EC Working Group Meetings:

- **October 9, 2014\***
- **January 8, 2015**
- **April 9, 2015**
- **July 9, 2015**
- **October 8, 2015**

All UF EC Working Group meetings will take place from 10–11 in 264 Grinter Hall.

\*The location for the October 9th FBI presentation may change depending upon the number of persons who RSVP.

All of the USML categories including this problematic language provide for a 1 year transition period so that the affected community can ensure that the appropriate fixes are in place to mitigate any ITAR control implications.

As you will recall the fixes are:

1. Obtaining a Commodity Jurisdiction from the US Department of State verifying that the developmental item is not ITAR controlled; or,
2. Having the DoD agreements officer add language to the DoD agreement stating that the DoD developmental items to be created under the effort have both military and civil applications.

In order to ensure that the DoD funding issue has as little impact as possible on University of Florida efforts the Division of Research Compliance (DRC) recommends that all DoD proposals include the following statement:

The developmental outcomes and

their specially designed parts, components, accessories and attachments created under this DoD funded R&D effort has both military and civil applications (i.e., [include examples if known]). As such, the University of Florida, expects that the resulting agreement specify that any outcomes, whether or not identified as a deliverable, is being developed for both civil and military applications.

DRC and the Research Administrator that negotiates and accepts awards from Sponsors will ensure that the language is included, as appropriate, in any DoD funded award.

As a reminder the agreement language fix does not provide for any relief from items explicitly enumerated on the USML. For example, swarming technologies for unmanned aircraft would maintain its ITAR status even if the DoD funding agreement included the recommended language.

## Export Control Reform: The Transition from the ITAR to the EAR

One of the positive outcomes of export control reform is that many items/efforts that were previously ITAR controlled have moved to the more user friendly Export Administration Regulations (EAR). However, as with any change there are some aspects that are not as positive. For example, there are some items/efforts that have either moved from the EAR to the ITAR or through export reform it is now clear that the item/effort was always ITAR controlled.

In order for the Division of Research Compliance (DRC) to better assist faculty in this transition we are asking that any faculty whose efforts are in the following technical areas to contact DRC so that we can verify that the export control status of the item/effort has not changed.

- Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- Explosives and Energetic Materials, Propellants, In-

centary Agents, and Their Constituents

- Surface Vessels of War and Special Naval Equipment
- Ground Vehicles
- Aircraft and Related Articles
- Military Training Equipment
- Personal Protective Equipment
- Military Electronics
- Materials and Miscellaneous Articles
- Spacecraft Systems and Related Articles
- Nuclear Weapons Related Articles
- Gas Turbine Engines and Associated Equipment
- Submersible Vessels and Related Articles

There are a number of USML categories where final rules have not yet been issued. DRC will be able to assist faculty in these technical areas once the final rules have been issued.

**Want to learn more about export controls? Need to attend an export control session in order to be involved with a controlled project? Contact the Division of Research Compliance's Export Control Office at 352 392-3526 to schedule a session.**

Research Compliance

### **FBI Presentation: Operation Lone Raider Presentation**

**October 9, 2014 from 10–11**

**Location: TBD (provided to those who RSVP)**

Operation Lone Raider is a presentation on the investigation of Khalid Al-Dawsari. Al-Dawsari was a Saudi student national living in the United States who was acquiring chemicals and components from public businesses in the United States to construct an IED that was assessed to be used in a crowded Dallas night club.

**RSVP to [boniface@ufl.edu](mailto:boniface@ufl.edu)**

### **Export Control Contacts @ UF**

#### **General Information, Restricted Party Screening and Training:**

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### **DFARS 252.204-7000 Disclosure of Information Clause**

The DFARS 252.204-7012 Disclosure of Information clause has been a troublesome clause for years as it requires contractors and subcontractors to obtain Department of Defense (DoD) Contracting Officer's authorization prior to the release of any information generated under or about the associated contract. The inclusion of this clause in the UF contract or subcontract (if US is a subcontractor) is problematic as it not only impinges on the academic freedom of the faculty, staff and students working on the project but it also eliminates the fundamental research exclusion (FRE).

Fundamental Research is defined in National Security Decision Directive—189 (NSDD 189) as basic or applied research where the results are typically shared within the scientific community (i.e., no publication and/or foreign national restrictions). The FRE protects as free from the ITAR and the EAR the informational results of fundamental research. This does not free from the regulations items/software that are generated as part of the research nor does it exclude from the export control regulations information and items used in the conduct of fundamental research that are already export controlled. It does however free from the export control regulations the informational research results of the effort.

Most university research fits within the definition of fundamental research. However, if UF accepts publication restrictions like that found in 252.204-7000 then the FRE is nullified and the informational results of the effort as well as any items/software that arose in the research could be export controlled.

In the past when UF received a contract direct from DoD we attempted to negotiate the clause out of the contract. For the most part, if DoD concurred that the UF effort was fundamental research the clause would be removed as the prescription for the clause allowed for its removal.

It was much trickier in those circumstances where UF was a subcontractor to another party as the clause was required flow down to UF. In many cases neither the prime nor DoD were willing to remove the clause from UF's portion of the effort. It was further complicated as neither the prescription nor the clause itself specifically allowed for a situation where the prime award required the clause, but the UF Subcontracted effort did not.

In August 2013, the DFARS 252.204-7000 clause was revised so that University based subcontracted fundamental research efforts were specifically excluded from having to **(cont'd on page 4)**

#### **Export of Equipment or Materials:**

**Biologics, Chemical, etc.**  
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#### **Other Items**

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#### **Travel to Embargoed or Sanctioned Countries:**

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#### **General Counsel's Office**

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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, services and technical data.

## Research Compliance

### DFARS 252.204-7000 Disclosure of Information...(cont'd)



obtain the DoD Contracting Officer's prior approval to release information created under or about the DoD contracted effort. This revision to the clause now allows for universities to maintain academic freedom and the fundamental research exclusions for their portion of the effort even in situations where the prime effort requires the 252.204-7000 clause.

This relief is not automatic. The university, the prime contractor and DoD all have to take specific actions at the proposal and award stage to ensure that the university is protected.

At the proposal stage the university and the prime contractor have to agree that the university effort is fundamental research. The PI should include a statement in all DoD subcontract proposals that it is the university's opinion that the university subcontract effort is fundamental research. If the prime contractor agrees with this statement then the prime contractor needs to include language in the proposal

to DoD indicating that the university subcontracted effort is scoped to be fundamental research.

At the award stage the Contracting Officer (in collaboration with the program officer) has to agree that the university effort is scoped to be fundamental research. If the DoD Contracting Officer concurs and makes the determination that the university subcontracted effort is fundamental research then the Contracting Officer has to state in writing (preferably as part of the prime award) that the university effort has been determined to be fundamental research.

Once the university effort has been negotiated and scoped to be fundamental research and it is appropriately documented in writing by the Contracting Officer the university is free to release the information it generates under the contract or about the contract without further DoD authorization.

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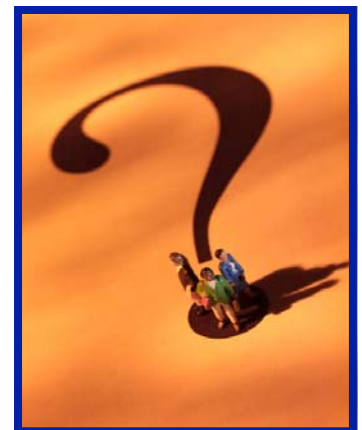
### Satellites Transitioning to the EAR...Some but not All

The final rule transitioning satellites from the ITAR to the EAR has been released and goes into effect on November 10, 2014. Per this rule many, but not all satellites will move from the ITAR to the EAR.

The satellites that will stay on the ITAR include but are not limited to those satellites that autonomously track objects in real time using imaging, infrared, radar or lasers; are specially designed to be used in formation; have remote sensing capabilities that meet certain performance thresholds; have radar remote sensing capabilities; or, provide space based logistics, assembly or servicing of spacecraft with thrusters.

The biggest move from the ITAR to the EAR was not the satellites themselves, but were instead the satellite's components, parts, accessories, attachments, equipment or systems (Components). Prior to export reform, satellite Components were ITAR controlled unless one had received an official Commodity Jurisdiction the US Department of State indicating that the item was EAR. Now after November 10, 2014 the only Components that will be ITAR controlled are those specifically identified in USML Category XV.

Please contact DRC for more information on the satellite changes or to confirm whether or not your effort is subject to the ITAR or EAR.



## QUESTIONS

Call us at 352-392-3526