



Export Controls: An Overview

The University of Florida acknowledges and appreciates Virginia Tech for granting UF permission to use, and alter their presentation on Export Controls for Virginia Tech Faculty and Principal Investigators

May 2013

Export Controls for Faculty, Staff and Students

- **What is an Export?**
- **Who Controls Exports?**
- **What Technologies are Restricted?**
- **Why Does the University of Florida Care About Export Controls?**
- **Who are Foreign Nationals/Foreign Persons?**
- **What Countries are of Concern?**
- **Export Controls for Researchers and Staff**
- **Future Trends**

What is an “Export”?

(ITAR 22CFR § 120.17; EAR 15 CFR § 734.2(b))

- **Sending or taking an item, software or information out of the U.S. except by mere personal knowledge, or transferring registration, control, or ownership in the U.S.;**
- **Disclosing (including oral or visual disclosure) controlled info to a Non-U.S. Person, in the U.S. (also known as a deemed export) or abroad;**
- **Performing technical assistance, training, or other defense services for, or on behalf of a Non-U.S. Person, whether in the United States (also known as a deemed export) or abroad; and**
- **Re-exporting from foreign countries items or info of U.S. origin (including some foreign-made items that incorporate U.S.-origin components or technology).**

Who Controls Exports?

International Traffic in Arms (ITAR)

Department of State

“Items that are inherently military in character”

Export Administration Regulations (EAR)

Department of Commerce

“Items that are Dual Use (predominantly civil in nature with military applications) or strictly civil”

Who Controls Exports?

Office of Foreign Asset Control (OFAC)

Department of the Treasury

**“Financial transactions/travel to embargoed/
sanctioned countries”**

Other Agencies Involved:

- *Dept. of Energy*
- *Nuclear Regulatory Commission*
- *Census*
- *Dept. of Homeland Security*
- *Customs*

ITAR: U.S. Munitions List (22 CFR § 121)

There are 21 categories of technologies controlled by the US Munitions List under ITAR.

- I** **Firearms, Close Assault Weapons, and Combat Shotguns**
- II** **Guns and Armament**
- III** **Ammunition/Ordnance**
- IV** **Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, Mines**

ITAR: U.S. Munitions List (22 CFR § 121)

- V** Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- VI** Vessels of War and Special naval Equipment
- VII** Tanks and Military Vehicles
- VIII** Aircraft and Associated Equipment
- IX** Military Training Equipment and Training
- X** Protective Personnel Equipment and Shelters

ITAR: U.S. Munitions List (22 CFR § 121)

- XI** **Military Electronics**
- XII** **Fire Control, Range Finder, Optical and Guidance and Control Equipment**
- XIII** **Auxiliary Military Equipment**
- XIV** **Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment**
- XV** **Spacecraft Systems and Associated Equipment**

ITAR: U.S. Munitions List (22 CFR § 121)

- XVI** Nuclear Weapons, Design and Testing Related Items
- XVII** Classified Articles, Technical Data and Defense Services not Otherwise Enumerated
- XVIII** Directed Energy Weapons
- XIX** Gas Turbine Engines and Associated Equipment
- XX** Submersible Vessels, Oceanographic and Associated Equipment
- XXI** Miscellaneous Articles

EAR: Commerce Control List

(15 CFR § 774 Suppl 1)

- 0 Nuclear Materials, Facilities & Equipment & Miscellaneous**
- 1 Materials, Chemicals, Microorganisms and Toxins**
- 2 Materials Processing**
- 3 Electronics Design, Development and Production**
- 4 Computers**

EAR: Commerce Control List

(15 CFR § 774 Suppl 1)

- 5 Telecommunications & Information Security**
- 6 Sensors and Lasers**
- 7 Navigation and Avionics**
- 8 Marine (ships & vessels)**
- 9 Propulsion Systems, Space Vehicles and Related Equipment**

Why Does the University of Florida Care About Export Controls?

- **Unauthorized transfer of export controlled items to Foreign Nationals/Foreign Persons or transactions with sanctioned countries individuals or entities may violate Export Control Laws**
- **Researchers may develop, receive or use export controlled data, materials, equipment, software, and technology/technical data**
- **Research may involve sanctioned/embargoed country Foreign Nationals/Foreign Persons or foreign travel**

Violations and Penalties

Failure to comply with U. S. export control laws can result in **severe penalties**

ITAR: (Individual and Entity)

- Criminal Fines: \$1M and/or 10 Years in prison
- Civil Fines: \$500K and Forfeitures

EAR and OFAC (Individual and Entity):

- Criminal (Willful): \$1M or 5X value of export and/or 20 years in prison
- Civil Fines: \$250K per violation or 2x the value of the transaction, whichever is greater

Who are U. S. Persons?

(ITAR § 120.15; EAR §§734.2(b)(2) & 772)

Persons usually (but not always) permitted to access export controlled information without restriction.

- **U.S. Citizens**
- **U.S. Permanent Residents (Green Card)**
- **Other “Protected Individuals” (8 USC §1324b(a)(3))**
 - **Designated an asylee or refugee**
 - **Temporary resident under amnesty provisions**
- **Any entity incorporated to do business in the U.S.**

Who are Foreign Persons/ Foreign Nationals?

Foreign Person: Any foreign interest and any US Person effectively owned or controlled by a foreign interest.

- Includes foreign businesses not incorporated in the U.S. and persons representing other Foreign Persons
- Includes: H1B Work Visa, F1 Study Visa, J1 Training Visa, E1 Investors Visa, TN Work Visa, L1 Intra-Company Transfer Visa, K and V Fiancée Visas.
- EAR does not use the term Foreign Person, instead refers to “foreign national”.

Foreign National: Any person who is not a citizen or national of the United States.

Bona Fide Employee Exemption

ITAR Specific (22 CFR § 125.4(b)(10))

ITAR exemption for access **to *ITAR-restricted technical data***: 22 CFR § 125.4(b)(10)

- Full-time employees at U.S. institutions of higher learning;
- With a permanent abode in the United States throughout the period of employment
- Not applicable to Grad students or some post docs, etc.
- Not applicable to Embargoed/Sanctioned countries
- Not applicable to ITAR-restricted defense articles, components of defense articles or defense services (training)

Deemed Export

(ITAR 22 CFR § 120.17(4)&(5));(EAR 15 CFR § 734.2(b)(ii))

ITAR: “Export” includes “disclosing (including oral or visual disclosure) or transferring **technical data to a foreign person**, whether in the U.S. or abroad” and “**performing a defense service** on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad”

EAR: “Any release of **technology or source code** subject to the EAR to a foreign national. Such release shall be **deemed to be an export** to the home country or countries of the foreign national.”

Technical Data and Deemed Exports (ITAR) (22 CFR §120.10)

(1) “Information . . . 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;...software directly relating to defense articles...including] but...not limited to the system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis and repair.

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

Technical Data and Deemed Exports (ITAR) (22 CFR §120.10)

- (3) Information covered by an invention secrecy order;**
- (4) Software . . . directly related to defense articles;**
- (5) This definition *does not include* information concerning **general scientific, mathematical or engineering principles** commonly taught in schools, colleges and universities or information in the public domain . . . It also *does not include* **basic marketing information** on function or purpose or general system descriptions of defense articles.”**

Defense Services and Deemed Exports (ITAR) (22CFR § 120.9)

Defense service means:

- 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;” or**
- 2. “The furnishing to foreign persons of any technical data controlled under this subchapter (see § 120.10), whether in the United States or abroad.”**

Technology and Deemed Exports (EAR) (15 CFR § 772)

“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 services.
- **“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.

Export Restricted Countries ITAR

(22 CFR § 126.1)

Exports of ITAR-restricted defense articles and technical data to any foreign country or foreign person requires a license or other approval (some exceptions- Canada, NATO)

Per 22 CFR 126.1 a number of countries are proscribed countries and exports to these countries or to persons from these countries are prohibited

ITAR – Proscribed Countries

(22 CFR § 126.1)

- **Afghanistan***
- **Burma**
- **Belarus**
- **Congo (Formerly Zaire)**
- **Cuba**
- **Cyprus***
- **Eritrea*** (eff 3/6/06)
- **Haiti***
- **Iran**
- **Iraq**
- **Ivory Coast***
- **Lebanon** (eff 8/11/06)
- **Liberia***
- **Libya**
- **North Korea**
- **People's Republic of China**
- **Rwanda***

ITAR – Proscribed Countries

(22 CFR § 126.1)

- **Somalia***
- **Sudan***
- **Syria**
- **Vietnam**
- **Venezuela*** (eff 8/17/06)
- **Yemen***
- **Zimbabwe***

The ITAR Proscribed Countries is subject to change.

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Export Restricted Countries: EAR

- **Restricted countries determined by the technology to be exported**
- **Particularly stringent controls apply to: China, former Soviet Union, Middle East, India, Pakistan, Eastern Europe, North Korea, Vietnam, embargoed or sanctioned countries (e.g., Cuba, Iran, North Korea, Sudan, and Syria)**

Sanctioned Countries: OFAC

<http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>

Comprehensive Sanctions:

- **Cuba**
- **Iran**
- **North Korea**
- **Sudan**
- **Syria**

Limited Sanctions:

- **Balkans**
- **Iraq**
- **Ivory Coast**
- **Liberia**
- **Myanmar (Burma)**
- **Zimbabwe**

Restricted Access Parties

(May include US Persons and entities)

Key lists:

- **Department of Commerce Denied Persons [BIS]**
- **Department of Commerce Entity List [BIS]**
- **Department of Commerce "Unverified" List [BIS]**
- **U.S. Treasury Department Specially Designated Nationals and Blocked Persons [OFAC]**
- **Department of State Designated Terrorist Organizations**
- **Department of State Terrorist Exclusion List (TEL)**

How Can Universities Violate Export Laws: ITAR/EAR?

- **Transfer of export controlled equipment, materials, technology/technical data, software, or providing defense services to an unauthorized non US Person without a government approved license or other government approval (ITAR/EAR)**
- **Allow a Foreign National to “use” export EAR controlled equipment, materials, items (deemed export) or have access to defense articles and technical data about a defense article (deemed export)**

How Can Universities Violate Export Laws: OFAC?

- **Transactions involving designated foreign countries or their nationals.**
- **Transactions with respect to securities registered or inscribed in the name of a designated national.**
- **Importation of and dealings in certain merchandise.**
- **Holding certain types of blocked property in interest-bearing accounts.**
- **Transactions with specific entities or individuals known as “specially designated nationals,” found in the Specially Designated Nationals List ("SDNL").**

Division of Research Compliance

Export Control Strategy

- **Assist in minimizing the number of awards with export control restrictions**
- **Ensure that the cost of security for a Sponsored Project is borne by the Sponsor**
- **Adequately protect those awards that have export control restrictions to prevent license violations**
- **PIs play a key role in this strategy**

Who's Who in Export Controls?

Empowered Official:

Dr. Irene M. Cooke, Asst. VP and Director
Division of Research Compliance
(352) 294-1632; irenecooke@ufl.edu

Division of Research Compliance: ***(Non HSC Departments and Faculty)***

Brandi Boniface, Assistant Director
(352) 392-2369; boniface@ufl.edu

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Activities Not Subject to Export Controls

Many university activities are not subject to export controls:

- **Public Domain/ Publicly Available Information**
- **Educational Information**
- **Fundamental Research**
- **Humanitarian Projects**
- **Information & Informational Materials**
- **National Security Controls**

Public Domain/Publicly Available Information

(22 CFR § 120.11) and (15 CFR § 734.7)

Applies when the information is already in the public domain and does not have restrictions on who may access.

ITAR: Informational materials that are already published and found in newspapers, books, libraries, presented at publicly available conferences, trade shows, in journal articles, etc.

EAR: In any form or format whether published or intended to be published. Includes websites to the public for free without hosts knowledge or control of who visits.

Educational Information

- **General science, math, and engineering commonly taught at schools and universities (ITAR (22 CFR § 120.11))**
- **Information conveyed in courses listed in course catalogues and in their associated teaching labs of any academic institution (EAR (15 CFR § 734.9))**

Fundamental Research

“Fundamental research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly...as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security concerns.”

-National Security Decision Directive 189

Fundamental Research

(22 CFR § 125.1(a) , 22 CFR § 120.11 (8)) & (15 CFR §§ 734.8, 734.11)

1. **Basic or Applied Research**
2. **At an accredited U.S. institution of higher learning**
3. **In the U.S.**
4. **No publication controls or foreign national access restrictions exist for the activity**
5. **Federally funded w/no access and no specific National Security restrictions**

In general: as long as the above conditions are met, research results that “would ordinarily be published and shared broadly within the scientific community” may be excluded from ITAR or EAR restrictions **even if** the subject area is on the USML or CCL.

Fundamental Research

(22 CFR § 125.1(a) , 22 CFR § 120.11 (8)), (15 CFR §§ 734.8, 11 & BIS Deemed Export FAQ22))

Caution:

- **Fundamental research covers the informational results of the research **not** the items or software resulting from the research**
- **Fundamental research does not cover technology/software/items that are already designated as subject to export controls**
- **Fundamental research may not apply to some research areas- e.g. WMD, Encryption**

Fundamental Research

(15 CFR §734.8, 11)

Publication Clauses - exceptions

- **Sponsor may include “review” clauses to remove company business proprietary information and/or patentable information**
- **A short (30-90 day) prepublication review period (not approval) for patent protection or to permit a sponsor to remove inadvertently included sponsor-proprietary information does not destroy exemptions**

Humanitarian/Informational

(31 CFR § 500, 572, 206)

Humanitarian Projects (OFAC)

- Country specific restrictions

Information and informational materials

- Books, movies, music, etc.
- Informational materials must be “in being” at time of transaction

EAR also has a humanitarian gift *exception* (15 CFR § 740.12)

National Security Controls

22 CFR § 125.4(a) & 15 CFR § 734.11(a)

ITAR: “Transmission of classified information must comply with the requirements of the Department of Defense Industrial Security Manual and the exporter must certify to the transmittal authority that the technical data does not exceed the technical limitation of the authorized export.”

EAR: “If research is funded by the U.S. Government, and specific national security controls are agreed on to protect information resulting from the research, §734.3(b)(3) of this part will not apply to any export or reexport of such information in violation of such controls. However, any export or reexport of information resulting from the research that is consistent with the specific controls may nonetheless be made under this provision.”

University Export Control Issues

Many university activities **are subject to export controls – exclusions (fundamental research, educational, public domain, other) may not always apply!**

Proprietary Research

(15 CFR § § 734.8, 734.11, 22 CFR § 125.1(a))

Research having any of the following:

- **Publication restrictions**
- **Access restrictions (foreign nationals)**
- **Contract-specific national security restrictions**

Development

(FAR 35.101, 15CFR§734.8(a), & 22CFR§125.4(c)(3))
& BIS Deemed Export FAQ #22

Activities that are **not** basic or applied research

- **Design, development, testing, or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives**
- **Design engineering, prototyping, and engineering testing (watch especially software!)**

“Use” Technology under EAR

(15 CFR § 772.1)

Providing foreign nationals “**use**” of equipment, or “**use**” technology as a deemed export may require a license-

EAR Definition of “Use”:

- “Operation, installation (including on-site installation) maintenance (checking), repair, overhaul, **and** refurbishing.”
- Deemed exports do not include the mere transfer of the actual controlled materials or items without **any** associated information.

International

- **Research outside the United States**
- **Research with foreign collaborators & sponsors**
- **Outreach programs**
- **Graduate student education**

Defense Services (ITAR)

(22 CFR § § 121.1 Cat XV(f); 124.1; 125.4)

- (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 under this subchapter (see § 120.10), whether in the United States or abroad**

Defense Services (ITAR)

(22 CFR § § 121.1 Cat XV(f); 124.1; 125.4)

(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.)

Caution: A defense service can occur even if all of the information being utilized is in the public domain.

Prohibited Activities

(15 CFR § § 732.2(b)(1); 736.2(b)(7); & 744.6)

Weapons of Mass Destruction Proliferation

Caution: no license exceptions

- **Chemical or Biological Weapons (*D-3 Countries*)**
- **Nuclear Weapons (*D-2 Countries*)**
- **Missile Technology (*D-4 Countries*)**

EAR General Prohibition 7

(15 CFR §§ 732.2 (7) & 732.3(j))

Support of Proliferation Activities

- **US Persons may not engage in any activities prohibited by §744.6(a) or (b) of the EAR, which prohibits the performance, without a license from BIS, of certain financing, contracting, service, support, transportation, freight forwarding, or employment that you know will assist in certain proliferation” activities described further in part 744 of the EAR. There are no License exceptions to this General Prohibition Seven in part 740 of the EAR unless specifically authorized in that part. (15 CFR § 744.6(e))**

PI Activities Potentially Subject to Export Controls

Research for foreign entities/governments

USML/CCL related research producing end items or software

Actual exports of materials, items, information, or software outside of the U.S.:

- ***Examples: GPS receivers, Sprayers, select agents, computers with high end encryption, or controlled technical data***

Visiting Scientists/International Conferences

Non Disclosure & Material Transfer Agreements

Division of Research Compliance Strategy

Catch export control issues early in the award phase

- **If foreign students/researchers will be involved, licenses/approvals can be obtained, but may take months to obtain**
- **There may be security costs associated with controlling access to restricted items – these costs should be included in the proposal to be borne by the sponsor**

Division of Research Compliance Strategy

Preserve the Fundamental Research Exemption

- **Negotiate out publication/foreign person restrictions**
- **Modify publication/ foreign person restrictions to give sponsor review rights specific to protecting preexisting sponsor proprietary information and patentable subject matter**
- **In Master Research Agreements, make export controls applicable on a task by task basis**

What Happens if I Accept Export Controlled Research?

PI Obligations:

- **Accepting an export controlled project creates a potentially licensable situation for the university requiring extra security measures**
- **PI is responsible for preventing any unauthorized disclosure in violation of export control laws**

What Happens if I Accept Export Controlled Research?

Actions required for your Sponsored Project:

- **Export Control Training**
- **Commodity Jurisdiction/Classification**
- **Technology Control Plan**

Technology Control Plan (TCP)

Required Elements

- ***Institutional Commitment***
- ***Commodity Jurisdiction and Classification***
- ***Physical Security Plan***
- ***Information Security Plan***
- ***Personnel Screening/ Training Policy***
- ***Self-assessment***

TCP: Commodity Jurisdiction and Classification

Under what law is the project restricted?

- **Commodity Jurisdiction ITAR/EAR/DoE/OFAC**

What exactly in the project is restricted?

- **Technology Classification (in collaboration with Sponsor, DSR, Gen Counsel and/or Commerce Department)**

Who can have access and who can't?

- **License/ license exception determination**

TCP: Commodity Jurisdiction

The USML and the CCL

United States Munitions List (ITAR) Part 121

- http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf

Commerce Control List (EAR) Part 774

- http://www.access.gpo.gov/bis/ear/ear_data.html

TCP Commodity Jurisdiction and Classification

Seek government/sponsor concurrence

Resolve intellectual property issues-

- ***If your invention becomes defined as an ITAR “defense article”, it may prevent you from using your IP in other civilian applications without a license from the Government***

TCP: Institutional Commitment

- **University-wide Technology Control Plan specifies the university's commitment to comply with export control laws**
- **UF's DDD dated May 19, 2008 on Export Controls provides information on Export Controls at the University of Florida**

TCP: Physical Security Plan

Suggested Security Measures (varies depending upon project):

- **Physically Segregated Space**
- **Badging**
- **Building/Lab/Office Access**
- **Visitor Logs**
- **Escorts**

TCP: Information Security Plan

Suggested Security Measures (varies depending upon project):

- **Server Folder Access, Firewalls, Passwords/ backup to US Persons only server or BU hard drive**
- **Clean Desk Policy, Central Storage, Locked Desk**
- **Security Marking**
- **Data Discard Policy**
- **Transfer- secure email/mail policy**

TCP: Personnel Screening/Training

Required Measures

- **Screen all project personnel/ visitors, subcontractors against restricted access lists (*provide names - as they appear on Passports- to DRC and we will conduct this check for you*)**
- **All project personnel with access to export controlled items, software or technical data are required to attend an initial session on export controls and an annual update**

TCP: Self Assessment

- **PI notifies DRC when there are changes to the project that may affect export control status (e.g., change or project scope, change in personnel, international travel or etc.)**
- **PI and Department are responsible for annual project certification of compliance and scheduling annual training session with DRC for all persons on the project**

Managing the Export Controlled Project



***Are there any Export Control Violations
Under My Bed?***

What Can Trigger an Export Control Review?

- **Change of project scope**
- **Change of project personnel/parties (e.g., subcontractors, grad students)**
- **Foreign travel**
- **Visiting foreign scientists/others**
- **Shipping export controlled equipment, materials or software overseas without a license or other required approval**
- **Notification of a potential export control violation**

What If An Export Control Violation Occurs?

- **Remove foreign persons/foreign nationals from access**
- **Secure the export control restricted commodity, software, technology or technical data**
- **Contact DSR**

Coordinate with DSR and General Counsel

What if I am Contacted by an Enforcement Agency?

- **Ask to see the Agent's badge of authority**
- **Cooperate with the Agent**
- **Contact DSR**
- **If Possible ask that any interview or discussion be conducted with Security Officer and DSR**

Future Trends

- **More export control restrictions**
- **Export Control Reform**
- **DoD, Commerce and State releasing revised guidelines**
- **Widespread China-specific restrictions for many EAR-restricted technologies**
- **More projects that will be considered export control restricted**
- **Audits by enforcement agencies**

Export Control Glossary

- **CCL** *Commerce Control List*
- **EAR** *Export Administration Regulations*

Department of Commerce/dual use and strictly civil technologies

- **ECCN** *Export Control Classification Number*
- **ITAR** *International Trafficking in Arms Regulations*

Department of State/Military technology and defense services

Export Control Glossary

- **OFAC** *Office of Financial Assets Control*
Department of the Treasury/financial dealings with sanctioned/embargoed countries
- **TCP** *Technology Control Plan*
- **USML** *United States Munitions List*