



Export Control Compliance Manual

2016

Export Control laws are complex and specific to each circumstance. Rules, regulations, and laws related to export control are updated frequently. This manual is meant to serve as a guide to provide basic information related to export controls. It should not be relied upon exclusively nor should it be considered legal advice. For further information related to export controlled items or research, please contact the University of South Florida's Export Control Officer.

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I. Overview of Export Control Regulations

A. Introduction

The United States has a complex set of federal laws and regulations governing how information, technologies, and commodities can be transmitted overseas or to foreign nationals in the U.S. U.S. export controls are in place to protect U.S. national security; to prevent the proliferation of weapons of mass destruction; to further U.S. foreign policy including the support of internal agreements, human rights, and regional stability; and to govern U.S. economic stability. Export controls apply to all types of institutions, organizations and individuals in the U.S., including universities.

The University of South Florida (USF) anticipates that research, instruction, and public service will be accomplished openly and without prohibitions on the publication and dissemination of the results of academic and research activities as permitted by law. However, while research in a university setting normally can be conducted openly and without restrictions, academic inquiry may require the use of certain technology that is controlled by or produces results which are subject to federal export control regulations.¹ The University is committed to the highest level of compliance with all applicable export control laws and regulations. The export control program is in place to ensure all USF System personnel are aware of and comply with export control laws and regulations, as well as the University's written instructions and procedures. There are severe institutional and individual penalties for violations of export control laws, including but not limited to, the loss of research funding, loss of export rights, civil and criminal fines, and imprisonment.

Before discussing the regulations governing export controls, it is critical to have an understanding of the definition of an "export." In general terms, an export can be any one of the following things:

¹ USF System Policy 0-316, Export Control Compliance

- Actual shipment of goods, technology, or information out of the boundaries of the U.S. regardless of method.
- Transmission of technology, technical data, or know-how to a foreign destination, for example through verbal conversations, email, fax, internet posting or deposits in shared servers.
- Transmission of technology, technical data, or know-how to a non-U.S. person, even in the U.S. When information is transferred to a foreign person within the U.S. it is deemed to be an export to the individual's country of origin or citizenship. Such transfers of information are known as "deemed exports" and may be subject to export controls depending on specific circumstances.

Several agencies govern export controls in the U.S. Among them, three principal federal agencies regulate export: (1) the U.S. Department of State regulates the export of defense articles, defense technical data, and defense services through the Directorate of Defense Trade Controls (DDTC); (2) the U.S. Department of Commerce administers export of primarily civil items through the Bureau of Industry and Securities (BIS); and (3) the U.S. Department of Treasury administers trade sanctions and exports to embargoed countries through the Office of Foreign Asset Controls (OFAC).

While the discussion that follows focuses on these three agencies, it is important to remember that meeting the requirements of one agency alone is not sufficient. The application of the regulations of all agencies collectively is required to remain in full compliance with export controls.

B. Export Controls at Universities

Export control presents a unique challenge for universities. There is a need to balance national security concerns with the customary practice of allowing unrestricted publication, dissemination, and the general pursuit of knowledge. Export control laws relate to many activities at the University of South Florida (USF). For example, taking a USF-owned laptop containing sensitive information to a conference in some foreign countries may require a license. Shipping biological samples to a research student at a foreign university for use in their dissertation research, or shipping robots for a competition outside the U.S. may require a license.

Many cutting-edge technologies, including defense items, are being developed at leading universities around the country by both U.S. and foreign students and faculty. U.S. export control agencies place the onus on the university to comply with regulations and ensure that technologies and information are properly protected.

Even though much of the research conducted at USF is not subject to export controls, it is important the university community be aware of when export controls may apply. Export control laws may apply to research activities when controlled data, equipment or information is used in research; when equipment or materials are being shipped to another country; or when traveling internationally.

The following is a brief explanation of the regulations that most commonly apply to university research and how they impact USF. The information should be used only as an introduction to export control regulations and should not be relied upon as legal advice. Investigators are encouraged to contact the USF System Office of Export Controls when they are contemplating research or other activities that may be subject to export controls laws or regulations.

C. Military Items: Department of State Regulations (ITAR)

Regulatory Authority and Scope

The Department of State Directorate of Defense Trade Controls (DDTC) administers the export and import regulations of defense articles and services through the execution of the International Traffic in Arms Regulations (ITAR).² The ITAR contains the United States Munitions List (USML). All items listed on the USML are controlled and may require a license. With rare exceptions, if any component or part of an item is controlled by the ITAR, the entire item is controlled. For example, the navigation system in a robot designed by USF for an engineering competition may be export controlled, making the whole robot export controlled.

Many items that are designed for military use are also used in research for completely non-military purposes. For example, night vision goggles, which are commonly used in the military,

² 22 CFR §§120-130

may be used to study a nocturnal animal's habits in the dark. It is important to understand that the ITAR designation is related to the item (night vision goggles) and not its intended end use at USF (the study of nocturnal animal habits).

Important ITAR Definitions

In order to understand the ITAR, it is important to understand the terms commonly used within its regulations, such as “defense article”, “technical data”, and “defense services.” Additionally, it is important to understand how the ITAR defines “fundamental research” and “public domain” information. See Section II, Exclusion from Export Controls), for further information.

Defense Article³ – means any item or technical data that is specifically designed, developed, configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the USML. “Defense article” also includes models, mock-ups, or other items that reveal technical data that has significant military or intelligence applicability and is related to an item enumerated on the USML.

Technical Data⁴ - includes any information which is required for the design, development, assembly, production, manufacture, operation, repair, testing, maintenance or modification of a defense article. Technical data may include drawings or assembly instructions, blueprints, photographs, operations and maintenance manuals or documentation of such information. Technical Data includes classified information, information covered by an invention secrecy order, and software directly related to defense articles. However, technical data does not include general scientific, mathematical or engineering principles commonly taught in schools, information present in the public domain, general system descriptions, or basic marketing information on function or purpose.

Defense Service⁵ - includes providing assistance, including training, to a foreign person in the U.S. or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a

³ 22 CFR § 120.6

⁴ 22 CFR § 120.10

⁵ 22 CFR § 120.9

defense article, as well as providing technical data to foreign persons. It also includes military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign person in the U.S. or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

The USML Categories

The USML is the official list of defense articles and defense services. These items are broken into 21 categories. For a complete listing of USML categories and detailed descriptions, please access the Department of State Directorate of Defense Trade Controls website at:

https://www.pmdtc.state.gov/regulations_laws/itar.html

Exporting under the ITAR

An export, as defined by the ITAR, means the sending or taking of a defense article out of the U.S. in any manner, disclosing or transferring technical data to a foreign person, whether in the United States or abroad, or performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the U.S. or abroad.⁶ This definition is extremely broad and includes taking a laptop with controlled data outside of the U.S. or allowing a foreign person to view or use a defense article in the U.S.

Generally, any U.S. person or entity that manufactures, brokers, or exports defense articles or services is required to register with the DDTC.⁷ Only registered persons or entities may apply for a license or utilize an exemption to export a defense article or service. Most licenses require the inclusion of certificates and supporting documentation for consideration. Licenses are reviewed by DDTC on an individual basis for determination and approval of the request.

USF is a DDTC registrant, since some activities of the University are considered to be manufacture and export of USML defense articles and technical data. Therefore, faculty members are not required to register individually to request a license or utilize an exemption. No license is

⁶ 22 CFR § 120.17

⁷ 22 CFR §122.1

required if only U.S. persons⁸ will have access to defense articles, technical data, or defense services. Most research conducted at USF falls under an ITAR exemption. Licensing exemptions are described in detail in Section II, Exclusion from Export Controls.

Commodity Jurisdiction

The DDTC has the responsibility to determine if an article falls under the jurisdiction of the ITAR for the purposes of export controls. The DDTC encourages entities to self-classify an item under the USML, however, if there is any doubt as to whether an item is subject to the ITAR an official commodity jurisdiction request should be submitted to DDTC. Determinations are based on the origin of the technology and whether it is predominately used in civil or military application. At USF, the Export Control Officer will assist with the submission of commodity jurisdictions, as well as, any licensing of export technology if required.

In the event of an incorrect jurisdiction or classification determination, the exporter is liable for any resulting export control violations. Self-classification may be particularly difficult in the university environment. The USF Export Control Officer can help you determine whether a particular item or technology is controlled. In certain cases, the University may submit the item to DDTC for formal classification. It is always best to contact the USF System Office of Export Controls when determining export jurisdiction. Incorrect determinations that are not verified by the Export Control Officer, and which result in violations, can result in personal liability to the individual and can be grounds for personnel action.

D. Non-Military Items: Department of Commerce Regulations (EAR)

Regulatory Authority and Scope

The Department of Commerce Bureau of Industry and Security (BIS) controls the export of non-USML items. Such items are controlled through the Export Administration Regulations (EAR).⁹ The EAR also controls purely commercial items in support of U.S. embargos and trade

⁸ U.S. Person is defined as a natural person who is a lawful permanent resident or a protected individual and also includes any entity, organization or group that is incorporated to do business in the U.S.; any federal, state or local governmental entity.

⁹ 15 CFR § 730-774

sanctions. While there are some parallels to the ITAR, there are also major differences in regulations and relevant agency functions.

Many activities are not subject to EAR. In addition to items exclusively controlled by another agency, such as a defense article controlled under the ITAR, there are several exclusions listed in the EAR that eliminate certain items and activities from control under the EAR. These include published information, information and software resulting from fundamental research, and educational information. It is important to understand the definitions and limitations of these exclusions in order to correctly apply them to particular activities and situations. More detail on exclusions is contained in Section II, Exclusion from Export Controls.

EAR Definitions and Concepts

Export is an actual shipment or transmission of items subject to the EAR out of the U.S. or the release of technology or software subject to the EAR in a foreign country or to a foreign national either in the U.S. or abroad.¹⁰

Deemed Export is the release of technology or source code to a foreign national in the U.S. The release is deemed to be an export to the last permanent residence status/citizenship of the foreign national. This can occur through demonstration, oral briefing, site visit, or through transmission of non-public data that will be received abroad.

Re-export is an actual shipment or transmission of items subject to EAR from one foreign country to another foreign country.

The Commerce Control List (CCL)

Items subject to specific control and licensing under the EAR are assigned an Export Control Classification Number (ECCN) on the Commerce Control List (CCL). Each ECCN is composed of 4 numbers and 1 letter (e.g. 3A233 is the ECCN for mass spectrometers). The category and product group generally described the item and the remaining three digits of the ECCN relate to item specifications. For a complete listing of ECCNs, please visit: <http://www.bis.doc.gov>

The EAR system is somewhat more complex than the ITAR. Under the EAR, licensing requirements depend on where the item is being exported to, who the item is being exported to, and its intended end-use. ECCN entries include a listing of the reasons for control that can be used in

¹⁰ 15 CFR § 732.2(b)

determining if an export license is necessary. While the most common reasons for control are anti-terrorism and national security, there can be other reasons a license is required. For further information on classifying an item and understanding the reasons for its control, please speak with the USF Office of Export Controls.

Items that are subject to the EAR but not to a specific control or licensing policy are not described by a specific ECCN on the CCL; such items are designated EAR99. Items or technologies identified as EAR99 are subject to the lowest level of control, meaning they can be exported to *most* countries (i.e. those not subject to comprehensive embargo) without a license provided they are not going to a prohibited end-user or for a prohibited end-use.

License Exceptions

The EAR contains a number of license exceptions. A complete listing of license exceptions can be located at 15 CFR §740. It is important to understand that there are limitations to the use of these exceptions and that the use of these exceptions may require record keeping and notification. More than one license exception may apply to a proposed activity. In such cases, the license exception with the smallest number of restrictions should be used to minimize the compliance burden. USF personnel are encouraged to speak with the Export Control Officer when determining whether a license exception is appropriate for use on their proposed activity.

The TMP exception allows for the temporary export of an eligible item or software, by a USF employee, without restriction on nationality, for activities such as professional presentations, field research and teaching. It is important to understand that there are limitations to the use of this license exception. It is best to consult with the Office of Export Controls on issues related to travel abroad.

Classifying Items under the EAR

BIS encourages the University to self-classify items using detailed descriptions of the items or technologies. However, in the event of an incorrect classification, the exporter is liable for any resulting export control violations. Self-classification may be particularly difficult in the university environment where cutting edge-research pushes the boundaries of existing technologies, and in fact

may not precisely meet the technical specifications as described in the existing CCL listings. When unsure about a self-classification, the University may submit the item/technology to BIS for a formal classification only after ensuring the item is not listed on the USML. USF personnel may attempt to classify items; however, it is necessary to always contact the Office of Export controls for a final determination of the classification number. Incorrect classifications that are not verified by the Office of Export Controls, and which result in violations, can result in personal liability to the individual and can be grounds for personnel action.

E. Economic Embargoes: Department of Treasury (OFAC)

Regulatory Authority and Scope

The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury administers and enforces economic embargoes and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, 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 the economy of the United States. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.¹¹ OFAC sanctions are country specific, and are subject to frequent change based on changing foreign policy decisions or directives.

U.S. economic sanctions broadly prohibit most transactions between a U.S. person and persons or entities in an embargoed country, including Cuba, Iran, North Korea, Syria, and Sudan. The embargoes generally prohibit importation and exportation of goods as well as financial transaction restrictions with the embargoed country. Separately, OFAC maintains a list of Specially Designated Nationals (SDNs) with whom it is prohibited to conduct almost any activity.

As of the effective date of this manual, OFAC sanctioned countries include the Balkans, Belarus, Burma, Central African Republic, Cote d'Ivoire, Cuba, the Democratic Republic of Congo, Iran, Iraq, Lebanon, the Former Liberian Regime of Charles Taylor, Libya, North Korea, Somalia,

¹¹ The OFAC website can be located at: <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

Sudan, Syria, Ukraine, Yemen and Zimbabwe. Additional activity based programs include sanctions against narcotics trafficking, terrorism and terrorist supporting organizations, proliferation of weapons of mass destruction, transnational criminal organizations, and trade in certain rough diamonds. This list is subject to change. For the most up-to-date list, please visit:

<http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>

While most sanctions are administered by OFAC, both BIS and DDTC have jurisdiction over certain export prohibitions, such as exports to Syria¹² and Cuba or arms exports to certain countries. Each sanction or embargo program is independent and different. An activity that may be eligible for a general license under one sanction regulation may not necessarily be exempted from control programs of other agencies. When exporting technology or items, it is best to confer with the Office of Export Controls prior to export.

Sanctions programs apply to universities in important and unexpected ways. As just one example, the prohibitions against providing services to certain sanctioned countries may affect how and where University personnel may present, teach, and travel. Since the “export” of a “service” includes the provision of a service anywhere when the benefit of the service is received in the sanctioned country, the provision of online course instruction and services may be subject to certain sanctions programs. Check with the Office of Export Controls if you have questions about the applicability of U.S. sanctions to any University activity.

F. Other Agencies

Other agencies with regulatory authority over exports include, but are not limited to, the following:

- **Nuclear Regulatory Commission**, Office of International Programs (nuclear equipment and materials), <http://www.nrc.gov/>
- **Department of Energy**, Office of Export Control Policy & Cooperation, (nuclear technologies and services which contribute to the development or production of special nuclear material), <http://www.energy.gov>
- **Department of Justice**, Drug Enforcement Administration, Office of Diversion Control (drugs of abuse, chemicals and precursors), <http://www.deadiversion.usdoj.gov/>
- **Food and Drug Administration**, drugs, biologics, medical devices and investigational drugs, <http://www.fda.gov/>
- **Department of the Interior**, Chief Office of Management Authority, Fish and Wildlife Service, endangered species, <http://www.fws.gov/>

¹² 15 CFR § 746

G. Other Considerations

Records and Record Retention

The ITAR, EAR, and OFAC have stringent record retention requirements related to licensing and the use of exceptions. Under each set of regulations, the record retention period is five (5) years after the completion of the activity. Records that should be kept include memoranda, notes, correspondence (including email), financial records, shipping record, as well as other information related to the export. When a license or exception is used, additional records documenting the applicability of the license or exception may be required.

Shipment of items controlled under the EAR and ITAR should be clearly marked as controlled with the regulatory information cited. Any licensed export, as well as exports with a dollar value greater than \$2,500, must be entered into the Department of Census Automated Export System (AES) prior to the export of the item or information. While commercial freight forwarders will normally handle this entry into AES, the Office of Export Controls is able to assist.

Penalties for Violations

Violation of export control laws can result in both civil and criminal penalties including fines and imprisonment. These can be applied to the individual(s) responsible as well as the University. While the regulations establish maximum fines, the fines may be imposed for each occurrence so the total fines may be very large. For example, if multiple transfers of technology through deemed exports occur, the fine for each violation of the export control law can be multiplied by the number of persons who received the technology through the deemed export. Also, a single unauthorized export of an item may result in multiple violations, each carrying its own penalty. Maximum civil penalties are up to \$500,000 per occurrence. Maximum criminal penalties are up to \$1 million and up to 20 years in jail. Additionally, violations may result in the loss of export privileges for future transactions or even debarment from participating in future federal contracts.

When assessing penalties, DDTC, BIS, and OFAC will consider mitigating and aggravating factors. Mitigating factors include: whether the disclosure was made voluntarily; whether the violation was a first offense; whether the entity had compliance procedures; whether steps were taken to improve compliance after discovery of the violation; and whether the incident was due to inadvertence, mistake of fact or good faith misapplication of the laws. Aggravating factors include:

willful or intentional violations; failure to take remedial action after the discovery; lack of a compliance program; and deliberate efforts to hide or conceal a violation.

Violations of export control laws discovered at USF should immediately be reported through Ethics Point, to the Export Control Officer, or to the Office of General Counsel. If there is a question as to whether or not an activity would be a violation, the Export Control Officer should be called or an anonymous question should be submitted through Ethics Point. Ethics Point can be reached at <https://secure.ethicspoint.com/domain/media/en/gui/14773/index.html> or 1-866-974-8411. Requests and inquiries can also be sent to exportcontrol@usf.edu.

II. Exclusions from Export Control

General Overview

Universities in the U.S. have a long tradition of inventing and developing leading edge technologies that are important for national security and economic competitiveness as well as for educating and training scholars from around the world. In recognition of this role, the EAR, ITAR, and sanction regulations specifically exclude or exempt certain types of information and data from the scope of export controls. Many of these exemptions are directly applicable to university research and instructional activities. Although the specific terminology varies among the regulations, they generally exclude information that is published or provided in catalog listed courses. Most university research and academic activities fall within these exclusions and are therefore not subject to export control; however, some university activities are not covered by these exclusions.

The exclusions that most often apply to university activities are covered in the following paragraphs.

Publicly Available (EAR); Public Domain (ITAR); or Information and Informational Materials (OFAC)

The ITAR and EAR do not control information that is published and generally available to the public. Similarly, certain sanctions programs contain exemptions for “information and informational materials.” Note that even though the three regimes have similar scope, the ITAR, EAR, and sanctions vary in the specific information that qualifies as publicly available.

ITAR provision: The ITAR describes information in the *public domain*¹³ as information that is published and generally accessible or available to the public. Information in the public domain includes information available through:

- Sales at newsstands and bookstores;
- Subscription or purchase without restriction to any individual;
- Materials sent by mail; e.g. periodicals and newspapers;

¹³ 22 CFR §§ 120.10(a)(5) and 120.11

- Libraries open to the public;
- Patents available at any patent office;
- Unlimited distribution at a conference, meeting, seminar, tradeshow or exhibition, generally accessible to the public, **in the United States**;
- Public release in any form after approval of the cognizant U.S. Government agency;
or
- *Fundamental research* in the U.S. (see fundamental research section below for further information and definitions).

**Note that release on the internet is not currently in the definition of published information.*

EAR provisions: The EAR does not control publicly available technology if it is already published or will be published.¹⁴ Information is published when it becomes generally accessible to the interested public in any form, including;

- Publication in periodicals, books, print, etc., available for general distribution *free or at cost*;
- Readily available at libraries open to the public or university libraries;
- Patents and open patents applications available at any patent office; or
- Released at an open conference, meeting seminar, trade show, or other gathering open to the public.

The EAR requires that publication is available for distribution free or at a price not to exceed the cost of reproduction and distribution; however, the ITAR does not have such a requirement. The EAR does not specify where an open conference, meeting, seminar or trade show must take place, and thus, allows EAR information to be presented at a foreign conference as long as the conference is open to all technically qualified members of the public and attendees are permitted to take notes. Unlike the EAR, the ITAR limits participation in conferences and similar events to those that are taking place in the United States.

¹⁴ 15 CFR §§ 734.3(b)(3) and 734.7. Additionally, as described further below in the discussion of “Fundamental Research, some information that arises from research of the type that is “ordinarily published” is also exempt.

OFAC provisions: “Information and informational materials” are generally excluded from the licensing requirements of most OFAC sanctions. The exclusion applies to “publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.”¹⁵ This provision only applies to already existing information. There can still be restrictions on payment for the creation of new publications.

Educational Information

Both the ITAR and the EAR address the issue of information that is generally available through teaching at schools and universities. Such information does not fall under the jurisdiction of export controls, even if the subject is about an item or technology listed the USML or CCL.

- **ITAR provision:** The ITAR specifically provides that the definition of “technical data” does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities.¹⁶
- **EAR provision:** The EAR provides that publicly available “educational information” is not subject to the EAR, if it is released by instruction in catalog courses and associated teaching laboratories of academic institutions. Participation in the course should be open to any qualified student enrolled at the academic institution.¹⁷

Fundamental Research

Several universities worked with the federal government to establish a national policy for controlling the flow of information produced in federally funded fundamental research at colleges, universities and laboratories. In 1985, this resulted in the issuance of National Security Decision Directive 189 (NSDD 189), National Policy on Transfer of Scientific, Technical and Engineering Information. NSDD 189 provides the following definition of fundamental research that has guided

¹⁵ Similarly, but not identically, defined in each country-specific sanction regulation issued by OFAC; the specific quote provided in the text of this paragraph is taken from the Iranian Transaction Regulations (31 CFR Part 560.315).

¹⁶ 22 CFR § 120.10(a)(5)

¹⁷ 15 CFR §§ 734.3(b)(3) and 734.9

universities in making licensing decisions relative to fundamental research exclusions provided under both the ITAR and the EAR.

Fundamental Research means basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community, 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 reasons.¹⁸

Research conducted by scientists, engineers, or students at a university is normally considered fundamental research. University research is not considered fundamental research if the university or its researchers accept any access or dissemination restrictions on the project.

Both the EAR and the ITAR provide that information published and generally accessible to the public through fundamental research is not subject to export controls. However, there are certain restrictions. In order to take advantage of this exemption:

- Such information must be produced as a part of basic and applied research in science and engineering and must be broadly shared within the scientific community;
- Research must be conducted at an accredited institution of higher learning located in the U.S.
- While information resulting from fundamental research is not subject to export controls, an export license may be required if during the conduct of the research an export controlled item is provided by the sponsor of the research project, by a research partner institution, or introduced from previous research studies at USF.

Under both the ITAR and the EAR, research performed at universities will not qualify as fundamental research if the university (or the principal investigator) has accepted any restrictions on access, nationality, publication or other restrictions on dissemination.

¹⁸ 22 CFR §120.11 & 15 CFR §734.8

- **ITAR provision:** the fundamental research exception does not apply to research, the results of which are restricted for proprietary reasons, or specific U.S. Government access and dissemination controls.¹⁹
- **EAR provision:** fundamental research is distinguished from proprietary research and from industrial developments, design, production, and product utilization, the results of which are ordinarily restricted for proprietary reasons or specific national security reasons.²⁰ Under the EAR, university-based research is not considered fundamental research if the university or its researchers accept restrictions (other than review to ensure no release of sponsor-provided patentable information) on publication of scientific and technical information resulting from the project.²¹

The EAR provides that prepublication review by a sponsor of university research solely to ensure that the publication would not inadvertently divulge proprietary information that the sponsor has initially furnished, or compromise patent rights, does not constitute restriction on publication for proprietary reasons.

The EAR also has provided examples of “specific national security controls” which will trigger export controls. These include requirements for prepublication review and approval by the Government, with right to withhold permission for publication; restriction on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research.²²

While the ITAR does not contain such descriptive provisions, the EAR is instructive as to interpreting the limitations on fundamental research.

Full-time University Employees

Under a specific exemption, the ITAR allows a university to disclose unclassified technical data in the U.S. to a foreign person who is the university’s *bona fide* and full-time regular employee. The exemption is only applicable if:

- The employee’s permanent dwelling throughout the period of employment is in the U.S.;

¹⁹ 22 CFR §§ 120.11(a)(8) and 120.10(A)(5)

²⁰ EAR § 734.8(a)

²¹ EAR § 734.8(b)(5)

²² EAR § 734.11 (b)

- The employee is not a national of a country to which exports are prohibited pursuant to ITAR § 126.1 (see current list of countries at: http://www.pmddtc.state.gov/embargoed_countries/index.html)
- The university informs the individual in writing that the technical data may not be transferred to other foreign persons without prior written approval of DDTC; and
- The university documents the disclosure of technical data under the exemption providing: (1) a description of the technical data; (2) the name of the recipient/end-user; (3) the date and time of export; (4) the method of transmission (e.g. e-mail, fax, FedEx); (5) the ITAR reference, i.e. ITAR § 125.4(b)(10), *Full-time University Employee*.

This exemption only applies to the transfer of *technical data*. No exemption is available where the foreign full-time employee will be provided with a *defense service*. A license is required whenever the foreign employee is provided with training in order for the foreign employee to perform his or her job. The key determination here is whether the foreign employee has the technical skill to perform his job, or whether he or she will obtain on-the-job technical training regarding ITAR controlled items or technology. Additionally, if the foreign full-time employee will have technical exchanges with other parties (e.g. the sponsor), then a Technical Assistance Agreement (§120.22) will be required.

III. Export Controls at the University of South Florida

USF investigators engage in a broad range of innovative and important research both in the U.S. and overseas. These activities include the sharing and development of products, goods, hardware, software, and/or materials, as well as research involving technology that may be subject to U.S. export control laws and regulations.

Recently there has been a heightened level of government scrutiny of all export activities with an accompanying emphasis on enforcement. Federal agencies are increasingly focused on universities and their compliance with export regulations. Non-compliance with export regulations can lead to substantial criminal and monetary penalties imposed on both individual researchers and institutions. Additionally, non-compliance with export regulations can lead to denial of export privileges and the loss of federal funding.

USF is committed to the highest level of compliance with all applicable export control laws and regulations pertaining to the conduct and dissemination of our research and to the export of tangible items such as equipment, components or materials and intangible items such as software and information. While our primary mission is education, research and service, the responsibility remains to balance the service of this mission with safeguarding national assets through the adherence to export regulations, rules and laws of the U.S. Government.

A. Key Actors

Empowered Officials

The Empowered Officials for USF have been formally designated as individuals with oversight for the export controls compliance program. Empowered Officials have the authority to:

- Oversee all USF export licensing or approval activities, including signing license applications or other documentation relating to such licensing or to exporting approval;
- Approve any and all written exceptions to export control requirements;
- Represent USF before export control regulators in matters related to registration, licensing, commodity jurisdiction and classification requests, and voluntary disclosures; and

- Bind the university in any proceeding before any government agency with export control responsibilities.

While certain oversight functions may be delegated, only an Empowered Official may sign paperwork binding the university in proceedings with DDTC, BIS, OFAC, or any other government agency with export control oversight.

USF System Office of Export Controls

The Office of Export Controls (OEC) serves as the central resource for export control information and coordinates the overall export compliance management program for the USF System. The OEC assists faculty, staff and administration in navigating the complex environment of export control regulations. The OEC initiates and maintains collaborative interactions with relevant USF System stakeholder offices, including, but not limited to, General Counsel, University Audit & Compliance, Purchasing Services, International Services, Controller/Travel, USF World and other administrative offices. The OEC:

- Serves as a liaison between USF and federal agencies regarding export control matters;
- Mitigates risk to USF System and its employees and ensures compliance with all federal export control regulations;
- Conducts appropriate monitoring of research and non-research related activities (e.g., travel, payments, and shipments abroad) as they relate to export control;
- Drafts export control determinations including equipment classifications and license exceptions/exemptions; identifies and recognizes embargoed and sanctioned countries; screens end users and countries;
- Signs and submits license applications and institutional registrations;
- Conducts compliance and program effectiveness assessments in coordination with University Audit & Compliance (UAC);
- Serves as a resource and advisor to faculty, students, and staff, and actively engages clients to use export control resources;
- Develops, implements, and delivers, system wide, educational materials and training programs covering all matters of export control;
- Develops policies and procedures relative to export control compliance and manages continuous improvement of compliance programs and policies.

Faculty Members

Faculty members have expert knowledge of the type of information and technology being utilized in university activities, including research projects, presenting at conferences and discussing research results with fellow faculty and collaborators. As set forth in the USF System's export

control policy, faculty members share in the responsibility of export control compliance. Prior to beginning any research project or other activity that may be subject to export controls, faculty should notify the OEC the activity is planned. Faculty members are responsible for:

- Consulting with and providing assistance to the OEC to ensure that controlled technical data or technology used, produced, or developed by them, or under their supervision, is categorized correctly under export control regulations;
- Knowing and complying with the terms and conditions of their agreements and funded awards, including export controls and limitations, if any, on publications of research data and results;
- Assisting in preventing unauthorized exports and, through the OEC, applying for government licenses where appropriate;
- When applicable, developing and adhering to a technology control plan for controlled items, technical data, and software; and
- Ensuring that staff, students, and trainees under their supervision are made aware of any applicable requirements and that they receive adequate training in how to conduct their activities in compliance with those requirements.

B. Key Cooperating Offices

Research Integrity & Compliance

The Office of Export Controls is located in Research Integrity & Compliance (RIC). RIC ensures research performed within the university system is safe and ethical; facilitates the conduct of research; and complies with applicable regulations, laws, and institutional policies, thereby promoting a culture of integrity in research. To this effect, they are the governing body responsible for oversight of export controls within the USF System. RIC is under the purview of the Sr. Vice President for Research, Innovation, and Economic Development.

Sponsored Research

Sponsored Research (SR) works closely with the OEC to assist with the identification of export control risks at the proposal, contract, and award negotiation stages of the research process. SR personnel are provided training and lists of red flags to help them identify potential export

control risks within agency announcements, as well as within terms and conditions of awards and contracts.

Office of the General Counsel

The Office of the General Counsel (OGC) advises the OEC on legal matters. The OGC provides final determinations on contract language for standard agreements and provides guidance on the development of internal policies and procedures related to export controls. The OGC contracts with outside counsel who specialize in international trade law to assist, as needed, with complex export control issue resolution and to provide guidance on interpretation of laws and regulations.

USF World

The Office of International Services (OIS) within USF World manages visa applications, including modifications and renewals, for institutionally sponsored employees and exchange visitors/scholars. Although most foreign nationals who are full-time USF employees are in the U.S. on H1-B visas, there are a small number holding other types of visas. OIS files all I-129 (Petition for a Nonimmigrant Worker) applications on behalf of the University. Each I-129 requires the sponsoring department or supervisor to include a Deemed Export Questionnaire. Similarly, OIS oversees the J-1 Exchange Visitor/Scholar Program. Both the Deemed Export Questionnaire and the USF Exchange Visitor/Scholar Request Forms come to the OEC for review and approval. These forms assist the OEC to perform the export certifications prior to each foreign national coming to USF. Final visa processing by OIS cannot occur without all approval signatures.

Most International Agreements are processed through USF World. USF World assists the OEC by screening international entities to ensure they are not listed on any debarred or restricted party lists. Potential matches are brought to the OEC for determination and resolution.

Purchasing Services

University procurement functions are managed by USF Purchasing Services. This office assists the OEC by requesting item classification (e.g. ECCN or USML category code) from vendors through the inclusion of export controlled language in USF's purchase order terms and conditions.

When an item is subject to export control restrictions, the Purchasing department will notify the OEC when the vendor sends an export classification prior to shipping an item to USF.

Controller's Office

The USF Controller's Office manages vendor set-up and maintenance through the Accounts Payable department. Representatives from Accounts Payable assist the OEC by screening new foreign vendors to ensure USF is not interacting with an entity or individual listed on a restricted parties list. Any potential matches are forwarded to the OEC for final review and approval or denial.

Additionally, the Controller's Office is responsible for the University PCard program, through the PCard Services department. PCard Services assists the OEC by including a brief introduction to export controls in the mandatory PCard training for all users. The purpose of this brief introduction is to heighten awareness of export control regulations for all PCard users. PCard Services works with the Bank issuing P-cards to ensure purchases from comprehensively sanctioned countries and entities are blocked.

Travel

The USF Controller's Office Travel Department is responsible for review and audit of travel Expense Reports. Travel sends a weekly report of approved travel Authorizations and Expense Reports for USF travelers travelling to sensitive countries. The OEC further reviews international travel to sensitive countries by interacting with University faculty or personnel who are traveling. The purpose of this interaction is not to approve or deny travel, but to ensure personnel and faculty are protected from potential issues.

USF Health International

USF Health International manages all Health international general agreements for collaboration and screens the potential collaborative partner to ensure they are not entering into an agreement with a restricted party. They screen partners through *Visual Compliance* and potential matches are sent to the OEC for review and resolution.

USF Office of Information Security

The USF Office of Information Security (OIS) works with the OEC to ensure requirements regarding information security and data protection for TCPs or contracts which include specific IT requirements. Depending on the circumstances, a TCP may be accompanied by a Controlled Technical Information System Security Plan (ISSP) and a USF IT Research System Security – Acceptable Use Policy Agreement (AUP). OIS develops and maintains these plans. They manage the related data security requirements and subsequent monitoring of these plans in conjunction with the OEC.

University Audit & Compliance

University Audit & Compliance periodically conducts internal audits of the OEC to assess the adequacy of the internal control structure, including the effectiveness and efficiency of operations and compliance with applicable laws and regulations.

C. Processes & Procedures

Export Control Review

An export control review should occur when a Principal Investigator (PI) submits a proposal or receives an award, prior to the execution of a contract, or when changes to the scope of an existing project occur. The Sponsored Research Administrator (SRA) will perform an initial review of the documents. The SRA will look for the following red flags:

- References to U.S. export control regulations;
- Restrictions of publication or dissemination of research results, including but not limited to, pre-publication approval by sponsor;
- Restrictions on access to the project based on citizenship or nationality;
- Proprietary or trade secret assertions;
- Involvement of foreign persons or collaborators, other than bona fide foreign national employees;
- Foreign travel, shipping or research performed abroad;
- Military applications as a result of the project;

- Deliverables, other than reports, publications and presentations that will be available to the general public (e.g. prototypes, models, software and algorithms); and
- Funding from sponsors such as Department of Defense, Department of Energy, National Aeronautics and Space Administration or Department of Homeland Security.

If red flags are identified; the SRA will forward the file to the Export Control Officer for review.

The OEC will perform a formal review and advise if any export control issues are determined to be in effect for the project. This can include restrictions on access by foreign persons and/or publication restrictions, as well as any other relevant requirement pursuant to the EAR, ITAR or sanctions and embargoes managed by OFAC.

All foreign sponsors, collaborators, or partners are screened via *Visual Compliance* software to ensure they do not appear on the SDNs or restricted parties list. USF employees who are foreign nationals are not required to be screened prior acceptance of a grant or contract.

Technology Control Plan

When a project is determined to contain export controlled items, data or technology, the OEC will work with the PI to develop a Technology Control Plan (TCP). The TCP will implement a management plan to secure the item(s), software and technical data and to ensure unlicensed foreign nationals do not gain access. The TCP will contain the following:

1. A commitment to export control compliance;
2. Identification of the controlled item(s), software and technical data and the applicable commodity, jurisdiction and/or classification;
3. A physical security plan for securing the item(s) and related technical data;
4. An information/computer security plan for securing the related technical data and software;
5. Personnel screening measures; and
6. Personnel training records.

Award Specific Training

Awards that contain specific export control terms will be managed in compliance with export control regulations. USF personnel who work on export controlled awards will be briefed and

trained, by the OEC, on the requirements of the awards. Training is the foundation of success for export control compliance. The most common export control contractual conditions are as follows:

- Requirements that locks be changed on an office or lab where research will take place; keys and/or combinations can only be issued to approved project personnel.
- Requirements for specialized locked cabinets that cannot be easily moved.
- Requirements for marking export control-listed technical data.
- Requirements that firewalls and secure passwords be installed on all computers to secure and monitor network access to and from the computer restricting use to designated personnel only.
- Requirements that data stored on drives with network access or backup servers must be secured by encryption, or stored on external portable hard drives.
- Requirements for record keeping, end of project shredding and wiping of electronic data.

General export control information and training is available through the Export Control Program website at: (<http://www.research.usf.edu/export-controls>). This website also provides access to USF System export control policies, procedures, checklists, and forms.

Licensing

If a project or activity is export controlled and requires the need to involve a foreign national or ship an item out of the country, the OEC may apply for an export license to allow the export. Each individual foreign national requires a separate license. Partnerships with or shipping to entities listed on a restricted party list or in a sensitive country may also require a license. A license application can take months for approval. Please be aware of the time frame necessary for the application process.

License Exceptions for Foreign Travel

Travel or transmissions of data to destinations outside of the U.S. can also implicate export control violations. A license may be required depending on the item taken, the country visited or if “defense services” will be offered to foreign nationals. However, a license exemption or exception may exist. Please confirm with the OEC prior to travel or dissemination of technology or information to see if the event qualifies for the use of an exception. Use of a license exception requires approval by the OEC prior to travel or shipping.

A *license exception*²³ may be available for EAR controlled items, technology, or software if the individual traveling outside of the U.S. can certify that he or she:

1. Will ship or hand-carry the items, technology or software for University business only;
2. Will return the items, technology, or software within 12 months of leaving the U.S.;
3. Will keep the items, technology, or software within his or her effective control;
4. Will take necessary security precautions to protect against the unauthorized export of the technology; and
5. Will not re-export to a foreign national or comprehensively sanctioned country.
6. The technical data is to be used overseas solely by a U.S. person(s);

Please note that there are limitations on the availability of the exceptions. Any individual intending to travel or transmit export controlled items, technical data or technology outside the U.S. or to a foreign national within the U.S. must first contact the OEC. The Export Control Officer has final authority on the application of the proposed license exceptions and may consult with counsel if necessary in making the determination. All exceptions must be documented prior to use and records must be maintained for a minimum of five years after the end of the project, export or travel.

Detecting and Reporting Violations

It is the policy of the University of South Florida to voluntarily self-disclose export control violations as appropriate. Any individual who suspects an export control violation exists should immediately contact the Export Control Officer or report anonymously through Ethics Point.

The University maintains a strict policy of non-retaliation: the good-faith report of a violation or suspected violation may not be the basis of retaliation against the person so reporting.

Penalties for export violations can be severe, including criminal and civil penalties. The Export Control Officer will conduct a preliminary investigation of the suspected violation, as appropriate, by gathering information about the personnel, items, circumstances and communications involved. If it is determined that a violation occurred and a self-disclosure is

²³ 15 CFR §740.1

appropriate under USF policy, an Empowered Official will submit a letter to the government agency responsible with a thorough account of what has occurred. Once this letter has been sent, USF System will comply with further directions from the government agency. The USF Office of Export Controls will direct the development and implementation of corrective actions, as appropriate, to prevent and detect future similar violations.

Acronyms

AECA	Arms Export Control Act
BIS	Bureau of Industry and Security
CCL	Commerce Control List
CFR	Code of Federal Regulations
CJ	Commodity Jurisdiction
DDTC	Directorate of Defense Trade Controls
EAA	Export Administration Act
EAR	Export Administration Regulations
ECCN	Export Control Classification Number
ITAR	International Traffic in Arms Regulations
OEC	Office of Export Controls
OFAC	Office of Foreign Assets Control
PI	Principal Investigator
RPS	Restricted Party Screening
SR	Sponsored Research
TCP	Technology Control Plan
USC	United States Code
USF	University of South Florida
USML	United States Munitions List