

University of Nebraska at Omaha

Export Control Management Plan

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## Introduction

The objective of this Export Management and Compliance Program (EMCP) is to ensure that the University of Nebraska at Omaha's exports, deemed exports, reexports, transfers, and activities are transacted consistent with the Export Administration Regulations (EAR). Various departments have a role in the management of our export transactions and compliance with U.S. export laws and regulations. It is this University's expectation that each employee understands the standards described and the importance of creating a synergistic system to manage the overall export responsibilities.

A vital part of an EMCP is the establishment of mechanisms within the UNO's daily operational procedures that provide checks and safeguards at vulnerable points of the system. Such checks and safeguards help to ensure that the right questions are being asked to preclude activities that are contrary to U.S. export controls, and therefore inconsistent with this UNO's best interests.

An EMCP soundly implemented, coupled with good judgment, can greatly reduce the risk of inadvertently exporting to a restricted end-user, or exporting for a prohibited end-use or activity.

To ensure the integrity of this system, individual feedback and suggestions for strengthening the procedures are encouraged. For questions and to send feedback and suggestions related to the EMCP procedures, please contact: Roberto Robles, 402.554.2892, robertorobles@unomaha.edu.

The official, hard copy of this EMCP Manual will be maintained in the **Office of Research and Creative Activity** by **Research Compliance Officer** and will be updated annually. Also, the EMCP may be found posted on our website at: [unomaha.edu/office-of-research-and-creative-activity/index.php](http://unomaha.edu/office-of-research-and-creative-activity/index.php).

## Introduction to Export Control Regulations

Export control regulations address the distribution of strategically significant technology, services, and information to foreign nationals and foreign countries. United States export laws and regulations restrict the use of, and access to, certain sensitive or controlled technical information, materials, and technology. Export controls are used to regulate the export and re-export of military technologies and commodities that have both military and commercial applications, otherwise known as dual-use items. Restricted items include encryption technology, sensors and lasers, and some microorganisms and viruses.

There are two main export control regulating agencies that are most applicable to the university; the International Traffic in Arms Regulation (ITAR) and the Export Administration Regulations (EAR). In addition, the Department of Treasury's Office of Foreign Assets Control (OFAC) is responsible for promulgating economic and trade sanctions. A license or license exception is required to export goods and technologies contained in the EAR's Commerce Control List (CCL) and the ITAR's U.S. Munitions List (USML). In addition, licenses may be required in order to engage in activities regulated by OFAC and for sharing technology or information to a foreign national while in the United States as this is 'deemed' to be an export to the individual's home country.

In general, export control regulations may cover six main types of university activities:

- Research relating to satellites, utilizing encryption, or research that has potential military applications;
- Transfers of controlled information, including technical data, to persons and entities outside the United States;
- Shipment of controlled physical items, such as scientific equipment, to restricted individuals or countries;
- Verbal, written, electronic, or visual disclosures of controlled scientific and technical information related to export controlled items to foreign nationals in the United States.
  - Such a transfer is termed a "deemed export" and is regulated because the transfer is "deemed" to be to the country where the person is a resident or a citizen;
- Travel to certain sanctioned or embargoed countries for purposes of teaching or performing research; and
- Financial transactions or providing services to entities listed on federal restricted parties lists.

Penalties for violation of export regulations may be imposed by law and include substantial fines and/or imprisonment. Penalties for violations can apply to both individuals and institutions and include loss of exporting privileges, loss of federal funding or industry contract (for both the University and the individual), and negative public relations.

In situations in which export control regulations apply, UNO and its entities must be responsible exporters that abide to export rules and regulations set forth by the various agencies of the United States government. Individuals must obtain proper licenses or license exceptions prior to exporting any data, technology, or software, whether abroad or within the U.S. UNO faculty, students and staff must:

- Contact the Export Control Program staff prior to exporting any item, software, or technology to determine if an export license is required;
- Make all domestic and international shipments conform with applicable regulations governing the licensing, packaging, and shipment of said material; and
- Determine that entities with which the university collaborates and does business with are not listed on any federal restricted parties list

### **Important Concepts**

The term export, as used in export control regulations is defined broadly. Generally, an export includes any:

- Shipment of a commodity, technical data, source code or software out of the U.S.; or
- Release of technical data or source code to a foreign national, either inside the U.S. (deemed export) or abroad.

Disclosure of technical data or information of export-controlled items to a foreign national in the United States is considered a deemed export, and requires a license (this includes, for example, a foreign undergraduate student, graduate student, or post doc conducting research at UNO that is subject to export control regulations).

A foreign national is anyone who is not a U.S. person. A U.S. person is a U.S. citizen, lawful permanent resident alien (“green card holder”), refugee, or an asylee.

### **International Traffic in Arms Regulations (ITAR)**

The ITAR is administered by the U.S. Department of State’s Directorate of Defense Trade Controls (DDTC). The DDTC regulates defense articles and services and related technical data that is, defense articles and any information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of that article. Regulated items are identified on the U.S. Munitions List (USML).

### **Export Administration Regulations (EAR)**

The EAR is administered by the U.S. Department of Commerce’s Bureau of Industry and Security (BIS). The BIS regulates commodities that have military and commercial

applications, otherwise known as dual-use items. The list of controlled items is contained in the Commerce Control List (CCL).

### **Office of Foreign Assets Controls (OFAC)**

OFAC is administered by the U.S. Department of Treasury. OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, regimes, and individuals for the protection of national security, foreign policy or economic vitality 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.

### **Exceptions and Exclusions**

There are two significant exemptions or exclusions from the export control laws that apply to the University setting: the fundamental research exclusion and the educational information exclusion. It is of utmost importance that the University and its employees take no actions that would invalidate these exceptions. These exclusions provide a “safe harbor” within the law for exporting information to foreign nationals.

Fundamental Research means research in science, engineering, and mathematics, the result of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

If there are restrictions on publication (e.g., the sponsor prohibits the university from publishing results, or can review and remove material prior to publication) or there are limitations on access to the research results (e.g., foreign nationals are not allowed to participate in research), then the research does NOT fall under the fundamental research exclusion and is likely subject to export control regulations. Fortunately, much of the work conducted at a university falls under the fundamental research exclusion.

The educational information exclusion allows for the sharing of information that is normally taught or released by the university as part of the normal instruction in a catalog course or in an associated teaching laboratory is considered Educational Information and, as provided for under the federal regulations, is **NOT** subject to export controls. This would include general scientific, mathematical or engineering information commonly taught in colleges and universities; and information in the public domain (e.g., already published).

## **In general, how do faculty, staff, and student comply with export control regulations?**

There are a few activities at UNO where export control regulations could potentially apply. The following are the three that are the most prevalent.

### **International Travel**

Your travel to foreign countries is subject to export control laws and regulations. To avoid any entanglements with US and foreign import/export regulations, it is highly recommended that you contact the Research Compliance Officer to discuss your travel plans. When you contact the Research Compliance Officer, be sure to have your travel information available. Depending on your travel plans, you may be asked to take export control regulation awareness training through the CITI program website. You will receive an email with a link and instructions on how to access the CITI export control training.

### **Procedure for campus visits**

Sometimes foreign visitors come to our campus for various reasons; such as lectures, research, or tours. This activity could potentially be subject to export control laws and regulations.

For staff and/or faculty, the process is relatively easy to ensure that the activity doesn't violate any export control laws and regulations. You need to contact the Research Compliance Officer via telephone or email to discuss the visit. Please be aware that an export license may be required depending on the activity. In those rare instances when an unknown visit occurs, you should contact the research compliance officer as soon as possible to review, at least 2 hours prior to the visit.

When you contact the research compliance officer regarding the visit, please have the following information:

- Full name of visitor
- Individual's title
- Private/public sector employment status or organizational affiliation
- Country of origin and employment
- Immigration status, when applicable
- Purpose of the visit
- Topics to be covered during the visit

### **Following the Campus Visit or International Discussion**

Once the visit has completed, a copy of the final agenda for the visit or discussion with deviations clearly noted, if any, within three days of the visit to the research compliance officer for review. This should include copies of any materials that was shared with the visitors (e.g. PowerPoint presentations, journal articles).

## **Export Controls for Researchers**

Most research at UNO is free from export control law restrictions. However, if UNO accepts restrictions on publication of research results (other than limited time review) or on who may participate in a research activity, then the research may be subject to export controls. Proprietary information disclosed to UNO researchers by industry sponsors or collaborators may be subject to export controls.

Research outside of the U.S. with foreign collaborators or sponsors may have the potential to raise export control issues. It is important to have your foreign collaborators and sponsors screened.

The presentation of research results at an international conference may raise export control concerns. Some information may be export controlled depending on the information being shared as well as the audience you are presenting to. Finally, some research equipment may be export controlled, regardless of how it is used at UNO.

Many activities secondary to research are also subject to export control laws. For example, entering into a contract with people listed on government sanction lists, or sending money to certain countries, may require a license from the U.S. government. Other examples include shipping certain items, such as robotics from the UNO to certain foreign destinations, or a competition outside the U.S., or inert plasmids to a Ph.D. student writing her dissertation at a foreign university, might involve complying with the export control laws.

### **What is the role of the Primary Investigator (PI)/Researcher?**

Research team members play an important role in helping UNO remain compliant with the Export Control regulations. You can help UNO by:

#### **1. Knowing the controls on your research area:**

Even when performing fundamental research at UNO, you should understand the general applicability of the export control regulations to your research area. The fundamental research exclusions apply only to research conducted in the U.S.

#### **2. Knowing the controls on equipment, software, and research tools you are using:**

Much of the state of the art equipment, software, and technology used in research at UNO are subject to export control laws. By understanding if and how these items are controlled, you can help UNO make sure violations of the export regulations are prevented.



When you are aware of how the export control regulations apply to your research area and to your research equipment, software and technology, you will be able to assist UNO in remaining compliant in many activities including:

- **Sharing knowledge of export controls:**

When you are aware of export controlled information/technology/items in your research laboratory, make sure that others, particularly new lab members, are made aware of those controls and receive appropriate training on export controls.

- **Purchasing new equipment and materials:**

If a vendor indicates that an item or items are export controlled, or may not be exported from the U.S., contact the Export Compliance Office for assistance in making sure UNO is able to meet the vendor requirements.

- **International shipments:**

If you need to ship research materials or information internationally, the Export Compliance office will assist you in determining if any export licenses are required and in obtaining such licenses as necessary.

- **International collaborations and meetings:**

Understand the limits on fundamental research. For example, if you have developed an item, such as a robot or a biological vector that could increase the transmissibility of a pathogen in the conduct of fundamental research at UNO, an export license may be required in order to take that item abroad to a conference, competition, or for international collaboration.

- **Foreign national visitors to UNO laboratories:**

Make sure that international visitors have been screened before allowing access to export controlled items in UNO laboratories. Contact the Research Compliance Officer for assistance with the screening.

### **Where can I get more information?**

For further information on compliance with the export control laws at UNO, please visit our website at [www.unomaha.edu/office-of-research-and-creative-activity/index.php](http://www.unomaha.edu/office-of-research-and-creative-activity/index.php) or feel free to contact the Research Compliance Officer at 402.554.2892 or by email at [robertorobles@unomaha.edu](mailto:robertorobles@unomaha.edu).

## **Awareness Education and training**

Researchers at UNO will be required to take export control awareness training through CITI. Certain individuals will be required to take more in-depth training depending on their research areas and roles. You will receive an email with a link and instructions on how to access the CITI export control training.

Please refer to the CITI personnel training chart to see what category you may fall into. Contact the Research Compliance Officer with any questions and to start your CITI export control regulations train session.

## **Research Compliance Officer and compliance staff responsibilities**

The Research Compliance Officer responsibilities for campus visits is as follows:

1. The Research Compliance Officer shall evaluate the information to be shared and the facilities to be visited during the proposed campus visit or discussion to determine whether such information would be subject to export control regulations. In addition, the Export Control Program staff will screen the list of individuals involved in the discussion or campus visit against domestic and international entity lists.
2. The Research Compliance Officer shall inform the staff/faculty member whether export control regulations apply to technologies, information, countries, companies or individuals that are part of the proposed campus visit or discussion, including applicable licensing exclusions or exceptions.
3. The Research Compliance Officer shall provide instruction on necessary actions to be taken by the parties involved in the discussions in order to comply with all export control regulations.
4. The Research Compliance Officer shall debrief and review any materials following the visit with staff and/or faculty.

## Vetting Processes

Vetting transactions may be necessary for various activities including but not limited to research grants and contracts, research services agreements, international travel or collaborations, hiring foreign nationals, adding sponsors or vendors, making physical exports. To determine how the regulations may apply and to vet each transaction appropriately, specific information is required such as name of the person or entity and institution with which they are affiliated. The researcher should provide as much of this information as possible and provide it to the Research Compliance Officer to facilitate the vetting process. This information helps determine whether a request for jurisdiction and/or classification is necessary, export exceptions or exemptions apply, a license application needs to be filed, sanctions or embargoes apply, or whether a physical export can be made to the parties of the transaction.

The University of Nebraska at Omaha employs *Visual Compliance*<sup>™</sup> web service for performance of restricted parties, sanctioned countries and other screenings required by law. *Visual Compliance*<sup>™</sup> is a scalable, powerful, easy-to-use suite of automated trade, export and financial (OFAC) compliance software. More information can be found at [www.eCustoms.com](http://www.eCustoms.com).

The *Visual Compliance*<sup>™</sup> export control web service screens many U.S. government lists, including but not limited to:

Department of Commerce Bureau of Industry and Security (BIS) Denied Persons List

- Department of Commerce BIS Entity List
- Department of Commerce BIS Unverified List
- Department of State Arms Export Control Act Debarred Parties
- Department of State Designated Terrorist Organizations
- Department of State Terrorist Exclusion List (TEL)
- Department of State Nonproliferation Orders: Missile Sanctions, Lethal Military Equipment Sanctions, Chemical and Biological Weapons Sanctions, Nuclear Sanctions
- Department of State International Traffic In Arms Regulations (ITAR) Munitions Export Orders
- Department of Treasury Specially Designated Nationals and Blocked Persons, including Cuba and Merchant Vessels, Iran, Iraq and Merchant Vessels, Sudan Blocked Vessels
- Department of Treasury Specially Designated Terrorist Organizations and Individuals
- Department of Treasury Specially Designated Narcotic Traffickers and Narcotics Kingpins
- Department of Treasury Foreign Narcotics Kingpins
- Department of Treasury Foreign Persons Designated Under the Weapons of Mass Destruction (WMD) Trade Control Regulations
- U.S. Federal Register General Orders

Optionally, U.S. federal procurement program exclusion and medical program exclusion lists can be scanned by Visual Compliance software simultaneously.

- U.S. General Services Administration (GSA) List of Parties Excluded from Federal Procurement Programs
- U.S. General Services Administration (GSA) List of Parties Excluded from Federal Non-procurement Programs
- U.S. General Services Administration (GSA) List of Parties Excluded from Federal Reciprocal Programs
- U.S. Office of the Inspector General List of Individuals/Entities Excluded from Federal Health and Medicare Programs

#### Domestic

- Specially Designated Nationals and Blocked Persons (OFAC)
- Federal Bureau of Investigation (FBI) Wanted Fugitives
- FBI Ten Most Wanted Fugitives
- FBI Most Wanted Terrorists
- FBI Hijack Suspects
- FBI Seeking Information
- Food and Drug Administration – Clinical Investigators
- Food and Drug Administration – Debarment List
- Food and Drug Administration – Disqualified and Restricted
- Department of Homeland Security Most Wanted Fugitive Criminal Aliens
- Department of Homeland Security Most Wanted Most Wanted Human Smugglers
- U.S. Marshals Service – Top 15 Most Wanted
- U.S. Marshals Service – Major Fugitive Cases
- U.S. Drug Enforcement Administration – Major International Fugitives
- U.S. Central Command Iraqi SS Most Wanted
- Immigration and Customs Enforcement Most Wanted
- Office of Research Integrity PHS Administrative Actions
- U.S. Postal Inspection Service – Most Wanted
- U.S. Secret Service – Most Wanted
- Bureau of Alcohol, Tobacco, Firearms, and Explosives Most Wanted 11
- Air Force Office of Special Investigations – Top Ten Fugitives
- Naval Criminal Investigation Service – Wanted Fugitives

#### International

- Japan Foreign End-Users of Concern
- Canada Public Safety and Emergency Preparedness Listed Entities
- Politically Exposed Persons in Money Laundering Risk Countries (CIA)
- Australia Department of Foreign Affairs and Trade Consolidated List

*Visual Compliance*™ will recheck all entities and individuals daily automatically. Visual Compliance will send an email to the Research Compliance Officer if any individual has a positive result.

## **Visual Compliance™ Restricted Party Screening Process**

The following are the steps to run a restricted party screening in *Visual Compliance™*:

1. Log into *Visual Compliance™*
2. Once you have logged in, click on the RPS tab at the top of the page. See figure 1 for location.
3. You can search by an individual or a company name. For an individual, you can enter a last name if that is the only information you have available. The more name information you enter, the more accurate the results will be.
4. Select a country of origin.
5. Comment drop down box can be used to select the type of comment you are entering. In the open text box, you can enter notes, a project number, or other notes regarding the screening. Please note that any notes entered into this field will be part of the record.
6. Select the phonetic setting when you are search a phonetic spelling of a name or company. This will produce several results which you will have to review each to ensure the result is not your individual or company you are searching for.
7. You can select the fuzzy name search when you do not know how to spell the name of the individual you are screening.
8. *Visual Compliance™* has online training videos available to provide additional instruction on how to use the service.

## **Denied Persons**

An individual or entity may not take any action that is prohibited by a denial order issued under Part 766 of the EAR. These orders prohibit many actions in addition to direct exports by the person denied export privileges, including some transfers within a single country, either in the U.S. or abroad, by other persons. You are responsible for ensuring that any of your transactions in which a person who is denied export privileges is involved do not violate the terms of the order. Orders denying export privileges are published in the *Federal Register* when they are issued and are the legally controlling documents in accordance with their terms.

Denial orders are designed to cut off the access of denied parties to U.S.-origin items not only by denying such parties the right to export, but also by prohibiting third parties from dealing with a denied party in a transaction involving U.S. items. General Prohibition Four, found in Part 736 of the EAR, prohibits engaging in actions prohibited by a denial order. Denial orders generally apply to all items subject to the EAR, "No License Required" or License Exception eligible items as well as to items that require a license.

Note that it is necessary to screen not only against exporting or reexporting to a denied party, but also against (1) in-country transfers abroad of U.S.-origin items to a denied party, and, (2) the servicing of a denied party's U.S.-origin items. All such dealings are prohibited unless the facts are made known to and written permission is received from the Office of Exporter Services to engage in a particular transaction.

If you suspect that questionable, unauthorized, or illegal activities may have taken place, or that someone is asking you to participate in such activities, you should contact BIS's local Export Enforcement field offices, call its headquarters in Washington, DC at 202.482.1208, call its 24-hour Hot Line 800.424.2980.

## **Entity List**

The EAR provides that BIS may inform exporters individually or through amendment to the EAR, that a license is required for exports and reexports to certain end-users when there exists an unacceptable risk of use in or diversion to certain nuclear, missile, or chemical or biological weapons end-uses, or where the U.S. Government has determined that there is reasonable cause to believe that the entity has been involved, is involved, or poses a significant risk of involvement in activities contrary to the national security or foreign policy of the United States.

The Department of Commerce maintains export controls to limit the proliferation of chemical or biological weapons, nuclear weapons or explosive devices, and missile systems. General Prohibition Five (§736.2(b)(5) of the EAR) prohibits exports and reexport to certain end-users or end-uses without a license. In the form of Supplement No. 4 to Part 744, BIS maintains an "Entity List" to provide notice informing the public of certain entities subject to such licensing requirements.

Section 744.1 of the EAR provides that a license is required for exports and reexports to parties on the Entity List for specified items. For example, if the specified items are "all items subject to the EAR" then a license is required for all exports and reexports to the named party. However, if the Entity List specifies a narrower item category such as computers, then each export or reexport of a computer to that party requires a license. The license requirement for specified items exists regardless of the actual end-use. For items not specified in the list, you need to determine whether the end-use is a proliferation activity as described in Part 744 of the EAR, which would require a license.

If matches occur between your individuals and the Entity List, you will want to ensure that the exports to those individuals, companies, and/or entities are thrown off-line from the normal work flow and given closer attention. The RCO will place a "hold" within the first stage of the grant or work flow processing that prompts a referral of all of those exports destined to these customers to the RCO. The RCO can then verify that the customer is actually on the Entity List and determine the scope of the requirement, i.e. all items subject to the EAR, or specific items only, and whether a license application must be submitted for the transaction based upon General Prohibition Five, Part 736 of the EAR.

Decision path options for the Entity List matches might include:

- 1) Has my end-user been identified as presenting an unacceptable risk of use in or diversion to restricted activities by being named on the Entity List or have I been individually informed by BIS?
- 2) Is the prohibition for all items or is the prohibition narrowed to specific items? Your company may choose to have a match of a customer with an Entity named escalated to make this determination of whether the transaction should be processed by submitting a license application or whether the order should be cancelled.
- 3) Even if the Entity List prohibition does not capture your specific item(s) that you want to export, do you know that the items will be used in the design, development, production or use of rocket systems or unmanned air vehicles for the delivery of chemical, biological, or nuclear weapons?

### **Specially Designated Nationals**

The Department of the Treasury, Office of Foreign Assets Control (OFAC), maintains each of the following on a list of Specially Designated Nationals. Each type of designation is identified on the list by bracketed initials as follows:

- Specially Designated Global Terrorist (SDGT)
- Specially Designated Terrorists (SDT)
- Foreign Terrorist Organizations (FTOs)
- Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members (IRAQ2)

The list may be viewed at: [www.treas.gov/offices/enforcement/ofac/sgdn](http://www.treas.gov/offices/enforcement/ofac/sgdn)  
OFAC Compliance offers advice on what to do when you have matches at:  
[www.treas.gov/offices/enforcement/ofac/faq - sdn](http://www.treas.gov/offices/enforcement/ofac/faq-sdn)

### **List of Parties Debarred for Arms Export Control Act Convictions**

The Department of State, Directorate of Defense Trade Controls (DDTC) publishes parties (including entities and individuals) who have been convicted of violating or conspiracy to violate the Arms Export Control Act (AECA). As a consequence, they are subject to “statutory debarment” pursuant to section 38(g) (4) of the AECA and section 127.7 of the International Traffic in Arms Regulations (ITAR). Thus, these persons are prohibited from participating directly or indirectly in the export of defense articles (including technical data) and defense services.

The names of these parties and their ineligibility for defense trade have been previously published by DDTC in the Federal Register. Statutory debarment remains in effect unless the debarred person’s application for reinstatement of export privileges is granted by DDTC; Notice of reinstatement will be published in the Federal Register and the person’s name will be removed from the list. This list may be viewed at [www.federalregister.gov/documents/2011/05/23/2011-12628/statutory-debarment-and-reinstatement-of-bae-systems-plc](http://www.federalregister.gov/documents/2011/05/23/2011-12628/statutory-debarment-and-reinstatement-of-bae-systems-plc).



The Statutory Debarment List is a small subset of persons who may be “debarred” or ineligible to participate in the export of defense articles and defense services. In other words, the list does not include persons that may be ineligible under other AECA and ITAR prohibitions or restrictions (e.g., for violations of, or indictments under, other statutes specified in the AECA; ineligibility to receive export or import licenses from other U.S. Government Agencies; ineligibility for U.S. Government contracts). In addition, persons may be “administratively debarred” on a case-by-case basis resulting from the resolution of individual enforcement proceedings for violations of the AECA and ITAR. This list may be viewed at [www.pmdtc.state.gov/compliance/debar\\_intro.html](http://www.pmdtc.state.gov/compliance/debar_intro.html).

### **Proliferation Sanctions**

Several lists compiled by the State Department of parties that have been sanctioned under various statutes. The Federal Register notice imposing sanctions on a party states the sanctions that apply to that party. Some of these sanctioned parties are subject to BIS’s license application denial policy described in §744.19 of the EAR (15 CFR §744.19).

## How to Classifying Equipment, Supplies, Goods, etc.

The following will provide some guidance on the classification process. To begin, you will always start the screening process with ITAR classification as the ITAR takes precedence over all export control regulations. If an item is listed on the US Munitions List, it's subject to the State Department's ITAR. If the item is "specially designed" for one of the US Munition List items for which "specially designed" applies, it's subject to the ITAR, even though it might seem to be an EAR item. About half the USML categories include "specially designed" items. Otherwise, it's subject to the Commerce Department's EAR.

An item is "caught" by the "specially designed" criteria if its development resulted in properties peculiarly responsible for an item on the USML's achieving the performance, characteristics, or functions that make it ITAR-controlled, or if it's a part, component, accessory, attachment, or software for use with a USML item. However, it can be "released" from the "specially designed" criteria if it's a fastener, is equivalent to a non-USML item already in production, was developed for USML and non-USML items, was developed as a general purpose item, or if determined by the State Department to be subject to the EAR.

**Note that this is a summary:** the ITAR order of review is completely described in [§121.1\(b\)\(1\)](#). The State Department has designed a [decision tool](#) to help determine whether an item is "specially designed" ([www.pmddtc.state.gov/licensing/dt\\_OrderofReview.htm](http://www.pmddtc.state.gov/licensing/dt_OrderofReview.htm)).

### Classification under the ITAR

First step, review the general characteristics of the item, which should lead to the appropriate USML category, then match the particular characteristics and functions of the item to determine the specific entry within that category. There is review decision tool available to assist you: [www.pmddtc.state.gov/licensing/dt\\_OrderofReview.htm](http://www.pmddtc.state.gov/licensing/dt_OrderofReview.htm).

All ITAR-controlled exports require a license for the State Department, unless they qualify for one of several exemptions. Some ITAR items are classified as Significant Military Equipment, with stricter controls. All ITAR-controlled items require a license for export or for transfer to a non-US person anywhere, unless an exemption applies. The up to date regulations can be found at the following: [www.ecfr.gov/cgi-bin/text-id?SID=86008bdf1fb2e79cc5df41a180750a&node=22:1.0.1.13.58&rqn=div5](http://www.ecfr.gov/cgi-bin/text-id?SID=86008bdf1fb2e79cc5df41a180750a&node=22:1.0.1.13.58&rqn=div5).

You will need to prepare an agreement pursuant to the guidelines set forth by the State Department. Those guidelines can be found here: [www.pmddtc.state.gov/licensing/documents/agreement\\_guidelinesv4.4a.pdf](http://www.pmddtc.state.gov/licensing/documents/agreement_guidelinesv4.4a.pdf). The document is 223 pages long, the following are the key sections for quick reference:

General Guidance for Agreements	Section 3
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New TAAs/MLAs	Section 5
TAA/MLA Amendments	Section 6
Rebaselines	Section 9
Request for Proviso Reconsideration	Section 13
In Furtherance of Agreements	Section 15
Export Control Reform	Section 20

The following activities will generally require an agreement

<ul style="list-style-type: none"> <li>• Supporting Direct Commercial Sales to Foreign Parties</li> <li>• Providing Overseas Maintenance or Training Support</li> <li>• Release of Manufacturing Data or Rights</li> <li>• Supporting a Foreign Military Sales Case (Beyond scope of LOA)</li> </ul>	<ul style="list-style-type: none"> <li>• Technical Studies, Evaluations, Demonstrations or Consultations with Foreign Parties</li> <li>• Supporting U.S. government-Sponsored Foreign Contracts</li> <li>• Efforts to Import Technology from Abroad</li> </ul>
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Further ITAR licensing guidelines and instructions can be found here: [www.pmdtdc.state.gov/licensing/guidelines\\_instructions.html](http://www.pmdtdc.state.gov/licensing/guidelines_instructions.html).

### **Classification under the EAR**

Step 1. Contact the manufacturer, producer or developer to see if they have a current ECCN for the item. Keep in mind that ECCNs may change over time, so you still need to review the ECCN to be sure you are in agreement.

Types of proposed export(s) under the EAR:

- Commodity
- Software with Encryption
- Software without Encryption
- Technical Data with Encryption
- Technical Data without Encryption
- Service (i.e., repair, financing, freight forwarding, legal, technical, engineering, architectural assistance, etc.)

Step 2, in order to self-classify your item, you need a technical understanding of the item. Additionally, you need to be familiar with the structure and format of the CCL. To classify your item against the CCL, begin with a review of the general characteristics of your item. The CCL is divided into ten categories. The first digit of the ECCN represents the category (see exhibit A). Each of the ten categories is divided into five product groups, represented by the second digit of the ECCN (see list below). Once the

appropriate category and product group are identified, match the particular characteristics and functions of your item to one of the specific ECCNs that follow. If the ECCN contains a list under the “Items” heading, you should review the list to determine within which subparagraph(s) your item is identified.

#### Commerce Control List Categories

- 0 = Nuclear materials, facilities and equipment (and miscellaneous items)
- 1 = Materials, Chemicals, Microorganisms and Toxins
- 2 = Materials Processing
- 3 = Electronics
- 4 = Computers
- 5 = Telecommunications and Information Security
- 6 = Sensors and Lasers
- 7 = Navigation and Avionics
- 8 = Marine
- 9 = Propulsion Systems, Space Vehicles, and Related Equipment

#### Product Groups

- A. Systems, Equipment and Components
- B. Test, Inspection and Production Equipment
- C. Material
- D. Software
- E. Technology

If your item does not have a specific ECCN in any category of the CCL, then your item is designated as EAR99.

You may request an official classification from BIS using the electronic licensing system, SNAP-R. You must obtain a Personal Identification Number (PIN) and Company Identification Number (CIN) to access the online system. For further information regarding SNAP-R and PINs, visit our website at [snapr.bis.doc.gov/registration/Register.do](http://snapr.bis.doc.gov/registration/Register.do).

Step 3, once you have determined your ECCN: Next Steps Once you have classified the item, the next step is to determine whether you need an export license. You do this by cross-referencing the “Reasons for Control” of the item and the country of ultimate destination.

Below the main heading for your ECCN entry, you will find “Reasons for Control” (e.g., NS for National Security, AT for AntiTerrorism, CC for Crime Control, etc. – see listing below for complete listing of reasons for control) and a “Country Chart” reference associated with your item (e.g., NP Column 1). Some controls apply only to certain subparagraphs, so note carefully which apply to your item. Also, an item may have more

than one control associated with it. Next, turn to the “Commerce Country Chart” (Supp.1 to Part 738).

Reason for Control Categories:

- AT Anti-Terrorism
- CB Chemical & Biological Weapons
- CC Crime Control
- CW Chemical Weapons Convention
- EI Encryption Items
- FC Firearms Convention
- MT Missile Technology
- NS National Security
- NP Nuclear Nonproliferation
- RS Regional Stability
- SS Short Supply
- UN United Nations Embargo
- SI Significant Items
- SL Surreptitious Listening
- Reference: [www.bis.doc.gov/index.php/forms-documents/doc\\_view/14-commerce-country-chart](http://www.bis.doc.gov/index.php/forms-documents/doc_view/14-commerce-country-chart)

If there is an “X” in the column based on the reason(s) for control of your item and the country of destination, a license is required, unless a License Exception is available. If there is no “X” in the control column(s) specified under your ECCN and country of destination, you will not need an export license unless you are exporting to an end-user or end-use of concern or any other General Prohibition applies. For additional information on License Exceptions, General Prohibitions, or End-Users of concern, refer to “Introduction to the Commerce Department’s Export Controls.” Copy of Country Listing is located in appendix.

Step 4, getting a license. Based on your ECCN(s) and the country chart included in Part 738, Supplement 1 of the EAR, what are the appropriate export authorizations for your products?

- License Required
- Eligible for License Exception(s)
- No License Required
- Reference: [www.bis.doc.gov/index.php/forms-documents/doc\\_download/743-740](http://www.bis.doc.gov/index.php/forms-documents/doc_download/743-740)

Instructions for Submitting a Commodity Classification Request to BIS using the Simplified Network Application Process (SNAP – R):

First, to submit a License Application or Commodity Classification Request on-line, you first have to obtain a Company Identification Number (CIN) and Personal Identification Number (PIN) number. Here is UNO login information: Login ID: ExportUNO, Password: ecUNO2017!, CIN (Applicant ID): U703428, PIN: 70021# . Once logged in

you can submit the License Application (or Commodity Classification Request) online at [snapr.bis.doc.gov/](http://snapr.bis.doc.gov/). Be sure to go to the First Time User login. Please note that you will be prompted to change the password every 6 months.

Second, you will then create a License Application or Commodity Classification Work Item to submit. It is recommended that you use the MAV Grants Project/Form ID number for this. Be sure to read the instructions in the SNAP-R User Manual before you begin as it will answer all of your questions regarding how to fill out the form, at [www.bis.doc.gov/snapr/snapr\\_exporter\\_user\\_manual.pdf](http://www.bis.doc.gov/snapr/snapr_exporter_user_manual.pdf).

**NOTE:** Homeland Security, U.S. Department of State, Department of the Treasury's Office of Foreign Assets Control, U.S. Department of Justice, Department of Interior, Food and Drug Administration, U.S. Maritime Commission, or Nuclear Regulatory Commission are working on a single licensing portal which may be available in January 2017.

### **Screening the End-Use or End-User**

The purpose of implementing internal controls for the sections noted above is to prevent U.S. items or persons from contributing to proliferation of weapons of mass destruction or to other weapons activities. The person conducting the screening should ask themselves a specific set of questions to carefully screen the end-use or end-user.

Examples of such questions are, but not limited to, the following:

- Is the buyer evasive and unclear about whether the product is intended for domestic use, for export, or for reexport when questioned?
- Are orders for items inconsistent with the needs of the purchaser?
- Is equipment requested of a configuration incompatible with stated destination (e.g., 120 volts in a country with 220 volts)?
- Have the nonproliferation credentials of the recipient country been thoroughly screened?
- Has particular attention been paid to whether or not the product or service is intended for military use or subject to licensing?

### **Screening the Final Destination**

A screening of the final destination of item(s) should be done. Questions to ask are:

- Is the requested order suitable to improve existing equipment or plants for military use?
- Are there excessive safety or security measures in light of the nature of the equipment?
- Is equipment to be installed in an area under strict security control or adjacent to military-related facilities?

### **Screening the Shipping Procedures**

Careful screening should be conducted on the shipping procedures. Questions to ask are:

- Are delivery dates vague or are deliveries planned for out of the way destinations or is a freight-forwarding firm listed as the product's final destination?
- Is the shipping route abnormal for the product and destination?
- Is the packaging inconsistent with the shipping mode or destination?
- Are there unusual requests concerning labeling or shipment of goods?

The **Nuclear End-Use Check** is a check list designed to determine whether you know or are informed that an item subject to the EAR is destined to a restricted nuclear end-use (744.2); and a nuclear-related question was added to this Check to determine whether you know the item is for use in connection with a foreign maritime nuclear propulsion project to a nuclear maritime end-use (744.5).

The **Rocket Systems and Unmanned Air Vehicles End-Use Check** is a check list designed to determine whether you know or are informed that an item subject to the EAR is destined to a restricted end-use involving certain rocket systems (including ballistic missile systems and space launch vehicles and sounding rockets) and unmanned air vehicles (including cruise missile systems, target drones and reconnaissance drones) (744.3).

The **Chemical and Biological Weapons End-Use Check** is a check list designed to determine whether you know or are informed that an item subject to the EAR is destined to a restricted chemical and biological weapons end-use (744.4).

The **Military End-Uses and to Military End-Users Check** is a check list **drafted** to comply with 744.17, Restrictions on certain exports and reexports of general purpose microprocessors for military end-uses and to military end-users.

Other reasons for control by BIS include concerns involving: national security, regional stability, anti-terrorism, Fire-arms Convention, crime control, and United Nations sanctions (738.2).

### **Entering Determination in MAV Grants**

In MAV Grants, go to the Export Control Module and select the Projects link.

#### **New Projects**

- Click on “ADD NEW PROEJCT” button.
- In the Title box, enter the MAV Grants Project Number and Title
  - Example:
- In the Short Tile Box, enter the MAV Grants Form ID
  - Example:
- In the Status Box, select one of the following:

- NEW: For newly entered project and no export control determination has been made yet.
- UP FOR REVIEW: For projects that the export control determination review has started but further information is needed or is waiting for funding and will be reviewed in the future
- REVIEWED: For those projects that have been reviewed and export control determination has been completed.
- In the Start Date Box
- In the End Date Box
- Go down to the Subject to Export Control? Box
  - Select yes if your determination comes to the conclusion that it is export controlled
    - You will then have to select Equipment, Material, or Data
      - The Equipment Search Box can be passed
    - In the TCP In Place? Box, select either
      - Yes
      - No
  - Select No if our determination comes to the conclusion that it is export controlled
    - Enter you reason for the project not being export controlled.
- In the Foreign Travel Involve? Box, select either
  - Yes
    - Click on the List of Foreign Travel Box
    - In the new window, Enter the destination in the Destination Box
    - In the Date of Travel Box, enter the date
    - In the Purpose of Travel Box, enter the reason for the travel
    - In the Travel Advisory in Effect? Box, Select either yes or no depending on your search results on US State Department website.
  - No
- In the Associated People Box
  - Click if there is are associated persons
  - Enter the name in the Person Box
  - In the Lead PI Box, select either
    - Yes
    - No
  - In the Activity Participating in this Project? Box, select either
    - Yes
    - No
  - Listed in TCP? Select either
    - Yes
    - No
    - You will be prompted to attach a PDF file of the TCP.
  - Save, Save and Add Another or Cancel
- In the Comments Box, enter any notes, comments, and justifications necessary.
- Attach files if necessary.
- Check the box if the page is complete.



- Click on the Save button.

## Existing Projects

Review the listing of existing projects for the project you will update.

Click on the VIEW button to access the Export Control Project you want to update.

## International Travel Export Control Process

The following steps will walk you through the export control travel screening process.

1. Receive email from Travel and Transport which contains international travel bookings for that week.
  - Emails are generally received on Friday, but have been as late as the following Tuesday.
  - Click on the web link in the email to access the weekly travel report.
  - Click on the PDF icon in the upper right corner of the report to download the report in PDF format.
  - Click on the “Save” icon
  - Select the “R” drive
  - Then select “ORCA” folder
  - Select the “ORCA 2” folder
  - Select the “Export Control Screenings”
  - Select the “Travel” Folder
    1. The pathway will look like this: R:\ORCA\ORCA 2\Export Control Screenings\Travel
  - Create a new folder using the date of the travel report as folder name
    1. Example: “08 19 2016”
    2. The end pathway should look like this: R:\ORCA\ORCA 2\Export Control Screenings\Travel\08 19 2016
    3. Save the PDF file as the date and Booking Activity
    4. Example: “08 19 2016 Booking Activity”
2. Review the destination for each traveler
  - Determine if destination country is on OFAC restricted or Red Flag list?
    1. Utilize *Visual Compliance*™ and Export.gov website to look review restricted parties in destination country.
    2. Print results into PDF file and save in the appropriate Travel folder.
    3. Make determination of likelihood of traveler interacting with any party listed on restricted parties listing.
  - Check State Department Country listing for any travel advisories.
    1. If there are any advisories or warnings, make note in the screening report and notify traveler of the advisor/warning for destination country.
3. Review Traveler
  - Create a screening report in Microsoft Word
    1. At top of the page, type “Travel Screening [date]”
    2. Type the name of the first traveler, their job title, department, location, and contact information.

3. Save the "Travel Screening" document in the Travel folder you created earlier on the "R" drive.
4. Questions to ask ourselves:
  1. What type of research/work does traveler do?
  2. Does research/work involve ITAR/EAR controlled data or technology?
  3. What potential contact with individuals or entities listed on restricted party listing? High, Medium, Low, or None?
  4. What are potential tools of trade the traveler may take with them? Note: Always assume traveler will take laptop, smart phone, or tablet device.
  5. In the "Travel Screening" document, type "Assumption:" and type all potential equipment the traveler may take with them.
  6. Review each potential item for ITAR/EAR controls.
  7. Go through export classification process to determine controls.
  8. Check ITAR/EAR Controls to destination country.
  9. Type or copy restrictions for destination country as well as any Notes and pertinent sections of EAR/ITAR in the "Travel Screening" document.
  10. Enter all necessary information on the screening report for each traveler.
  11. Review CCL and USML for equipment restrictions or licensing requirements.
  12. Highlight and print only relevant pages of CCL and USML pertaining to the assumed equipment traveler may take with them.
  13. Highlight and print 738 Supplement country Listing and corresponding country notes.
4. Make determination and document in "Travel Screening" report
  - o Document all reasons for coming to your conclusion.
  - o Document rationale for utilizing exemptions, exclusions from licensing if a license is required for destination country.
  - o If a license will be required for destination country, the RCO will contact the traveler to request necessary information either in person, or by email.
  - o The RCO may request the traveler to complete the international travel check list.
  - o If license is required, utilize SNAP-R, DTAS, or OFAC webpage to obtain necessary licenses.
    1. EAR: [snapr.bis.doc.gov/snapr/](http://snapr.bis.doc.gov/snapr/)
    2. ITAR: [pmdt.c.state.gov/DTAS-Online/index.htm](http://pmdt.c.state.gov/DTAS-Online/index.htm)
    3. OFAC: [www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx](http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx)
  - o If no licenses are needed, provide traveler with FBI travel information and TMP or BAG travel documentation for UNO equipment (laptop, tablet, etc.).

- Save the document in the travel folder you created earlier.

## Preparing Documentation for Regulatory Submissions

Regulatory submissions can be confusing and time consuming. Each federal agency has online assistance and reference materials. For license applications, there are digital application processes for each agency. It should be noted that the federal government is in the process of developing a single portal for all agencies. When you complete an export license application package, it should be scanned and saved as a PDF pursuant to procedures as stated earlier in management plan. The following is a list of export license application websites:

- EAR: [snapr.bis.doc.gov/snapr/](http://snapr.bis.doc.gov/snapr/)
- ITAR: [pmdtdc.state.gov/DTAS-Online/index.htm](http://pmdtdc.state.gov/DTAS-Online/index.htm)
- OFAC: [www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx](http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx)

While we hope that we will never have to file a violation report, each agency has its own processes and forms. The following is a list of export violation reporting websites:

- EAR: [www.bis.doc.gov/index.php/enforcement/oe/23-compliance-a-training/44-recognizing-and-reporting-possible-violations](http://www.bis.doc.gov/index.php/enforcement/oe/23-compliance-a-training/44-recognizing-and-reporting-possible-violations)
- ITAR: Office of Defense Trade Controls Compliance (DTCC), DDTC Response Team at (202) 663-1282 or [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov).
- OFAC: [www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/ofac\\_data\\_delivery.pdf](http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/ofac_data_delivery.pdf)
  - You can email OFAC for assistance. The email address is: [OFACEnforcement@treasury.gov](mailto:OFACEnforcement@treasury.gov).

If you or researchers have any suspicious activities to report, you will contact the Federal Bureau of Investigation (FBI) Counter Intelligence immediately. Our FBI contact is Special Agent Robert Georgi, Omaha Division, 4411 South 121<sup>st</sup>Court, Omaha, NE 68137, 402.530.1268, [robert.georgi@ic.fbi.gov](mailto:robert.georgi@ic.fbi.gov).

## **Record management**

Export Control records will be stored on “R” Drive. The “R” drive is a secured, limited access server. The pathway to the export control data is R:\ORCA\ORCA 2\Export Control Screenings\Sub Folder Name\File Name. There are three main subfolders: Campus Visits, MAV Grants Projects and Travel. When naming a subfolder in the MAV Grants Projects folder, use the MAV Grants Project ID number and title to name the subfolder. If there is no corresponding MAV Grants Project Number, use the PI’s name and/or tentative project title. You will place all pre-screening and post screening documents the folder you created. Travel process was discussed in the travel screening process section. For Campus Visits, you will create a subfolder utilizing an appropriate title. You will save all the screening documents, licensing information, and determination documents in the folder you just created.

## **Training Documentation and Records Retention**

Maintaining records of training helps the university track and verify which faculty, staff, and students have received training. Training records are the hard-copy proof of assurance that the university’s expectations have been conveyed and that faculty, staff, and students have been advised of their role in supporting the university’s compliance efforts. It is recommended that a training record for each training event be maintained and that record include the date and place of training, the instructor(s) name, the subjects covered, and the identification of the faculty, staff, and students who attended the training. Each faculty, staff, and student’s personnel file should include a record of all export training received. It is recommended that training records be maintained along with other export controls documents for a period of five (5) years.

## Export Controls Regulations Glossary of Terms

**CFR** – The **Code of Federal Regulations** is the collection, by subject, of the general and permanent rules and regulations published in the *Federal Register* by the executive departments and agencies of the U.S. federal government. As an example of a CFR reference, the ITAR (see below) is 22 CFR §120-130, meaning Title 22 (Foreign Relations), [Chapter I - Department of State, Subchapter M - International Traffic in Arms Regulations], Part 120 (Purpose and Definitions) - Part 130 (Political Contributions, Fees, and Commissions).

**Commerce Control List (CCL)** – The CCL identifies specific items subject to the list-based controls of the Export Administration Regulations, under the export control jurisdiction of the Bureau of Industry and Security, U.S. Department of Commerce

**Commerce Control List (CCL) Category** – The CCL is divided into 10 categories: (0) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Chemicals, “Microorganisms,” and Toxins; (2) Materials Processing; (3) Electronics; (4) Computers; (5) Telecommunications and Information Security; (6) Lasers and Sensors; (7) Navigation and Avionics; (8) Marine; and (9) Propulsion Systems, Space Vehicles, and Related Equipment.

**Commerce Control List (CCL) Group** – Each of the 10 CCL categories is subdivided into five groups, representing the kinds, representing the types of controlled items: (A) Equipment, Assemblies, and Components; (B) Test, Inspection and Production Equipment; (C) Materials; (D) Software; and (E) Technology.

**Controlled Country** – Under the EAR, may refer to one of the countries subject to section 746 Embargos and Other Special Controls, or to a country included in one of the Country Groups defined in Supplement No. 1 to section 740 and used in conjunction with §740 license exceptions. Under the ITAR, may refer to a country identified in section 123.1 of the ITAR, Prohibited Exports, Imports, and Sales to or from Certain Countries.

**Deemed Export** – Release of technology or source code subject to the EAR to a foreign national in the United States is “deemed” to be an export to the home country of the foreign national under the EAR. Although the ITAR doesn't use the words "deemed export", disclosing or transferring technical data subject to the ITAR to any non-US person is considered to be an export "whether in the United States or abroad" (Section 120.17(a)(15) of the ITAR). This is a central export compliance concern for U.S. universities with international students, scholars, and faculty.

**Defense Article** – Any item or technical data designated in the ITAR's United States Munitions List (USML), including any technical data recorded or stored in any physical form, models, mock-ups, or other items that reveal technical data directly relating to a

“defense article” listed in the USML. “Defense article” does *not* include basic marketing information on function, purpose, or general system descriptions. (22 CFR §120.6)

**Defense Service** – Furnishing assistance (including training) anywhere (inside the United States or abroad) to foreign nationals in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles; or furnishing ITAR-controlled “technical data” to non-US persons anywhere, requires authorization from the State Department. (22 CFR §120.9). While transfer of public domain information is not a defense service, the State Department has said that “it is seldom the case that a party can aggregate public domain data for purposes of application to a defense article without using proprietary information or creating a data set that itself is not in the public domain.” [78 FR 31445].

**Dual-use** – Items that have both commercial and defense application. Items subject to the EAR are often referred to as “dual-use” (though commercial-only items also are subject to the EAR), perhaps because the Commerce Control List is very similar to the “Lists of Dual-Use Goods and Technologies” of the multilateral Wassenaar Arrangement, to which the U.S. is a party.

**End-use, End user** – The EAR controls the export of all items subject to the EAR, even those not subject to list-based controls, if they will finally be received by certain entities or used for certain applications.

**Export** – An actual shipment or transmission of items, services, or technical data subject to either the EAR or the ITAR out of the United States, or the release of technology or software source code (EAR), or technical data (ITAR), to a non-U.S. person in the United States. Technology, software, or technical data is “released” for export through:

1. Visual inspection by a foreign national of U.S. origin equipment and facilities
2. Oral exchanges of information in the United States or abroad
3. Transfer or shipment via any means (physical or electronic) to a foreign entity
4. Provision of a service, or the application to situations abroad of personal knowledge or technical experience acquired in the United States

**Export Administration Regulations** – The Export Administration Regulations (EAR), 15 CFR §730–774) are promulgated by the Department of Commerce to regulate the export of most items not controlled by the ITAR (defense items). “Items” includes products; equipment required to make controlled products or materials; materials required to make controlled products; software required to develop, produce, or use controlled items; and information required to develop, product, or use controlled items. Items specifically not controlled by the EAR include those controlled by another U.S. government department (items to embargoed countries, nuclear reactor items and technology, patent applications) and publicly available information, informational materials, software and technology.

**ECCN:** The Export Control Classification Number (ECCN) – a five-character alphanumeric classification used under the EAR to identify items on the Commerce Control List.

**Export License** – The approval documentation issued by an export agency authority authorizing the recipient to proceed with the export, reexport, or other regulated activity as specified on the application.

**Foreign National** - The EAR uses, but does not define, "foreign national". "National" is defined in 8 USC 1101(a)(20) as "a person owing permanent allegiance to a state". The net effect of EAR is comparable to the ITAR "foreign person": the deemed export rule, for instance, applies to "foreign nationals" but excludes permanent residents and protected individuals.

**Foreign Person** – Under the ITAR, a natural person who is neither a lawful permanent resident (green card holder) nor a protected individual (citizen or national of the U.S., special agricultural worker, admitted refugee or person granted asylum), a foreign entity (corporations, business associations, partnerships, etc.) not incorporated or organized to do business in the U.S., an international organization, a foreign government or an agency or subdivision of a foreign government. *[Usage note: this website uses "non-U.S. person" as an objective counterpart to "foreign person" for clarity when being read by people of all nationalities.]*

**Fundamental Research** – Basic or applied research in science and engineering where the resulting information is ordinarily published and shared broadly in the scientific community, is excluded from export controls.

- **Under the ITAR** (22 CFR §120.11(8)), only research at accredited institutions of higher learning in the U.S. can qualify as fundamental. University research will not qualify as fundamental research if: (1) the university or its researchers accept any restrictions on the publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher.
- **Under the EAR** (15 CFR §734.8), university research normally will be considered as fundamental research unless the university or its researchers accept sponsor restrictions on the publication of scientific and technical information resulting from the project or activity. Research at companies or outside the US can qualify as fundamental research when there are no restrictions on publishing the results. The EAR specifically permits limited prepublication reviews by research sponsors to prevent the inadvertent divulging of proprietary information provided to the researcher by the sponsor or to ensure that publication will not compromise the patent rights of the sponsor.

**Generally Authorized** – DoE's 10 CFR 810 and OFAC's sanctions programs identify activities which are in the scope of the controls, but are already determined to be

acceptable and can be conducted without additional approval as "generally authorized". The DoE regulations require the use of a general license to be reported.

**International Trafficking in Arms Regulations (ITAR)** – The International Trafficking in Arms Regulations (ITAR), 22 CFR §120-130, promulgated by the Department of State that control the export of articles, services, and related technical data whose predominant application is defense, as determined by the State Department. These “defense articles,” “defense services,” and related “technical data” are listed on the United States Munitions List (USML). In addition, since 1999 satellites and spacecraft have been subject to the ITAR, regardless of application. In November 2014, satellites and spacecraft not providing capabilities listed on the USML will move to EAR control, although under new, more restricted, "500 series" classifications.

**Office of Foreign Assets Control (OFAC)** – A part of the U.S. Department of Treasury that administers and enforces economic embargoes and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC acts under presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under U.S. jurisdiction.

**Public Domain** – Under the ITAR, information that is published and which is generally accessible or available to the public:

- (1) through sales at newsstands and bookstores;
- (2) through subscriptions that are available without restriction to any individual who desires to obtain or purchase the published information;
- (3) through second-class mailing privileges granted by the U.S. government;
- (4) at libraries open to the public or from which the public may obtain documents, including most university libraries;
- (5) through published patents;
- (6) through unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, **in the United States**;
- (7) through public release in any form after approval by the cognizant U.S. government department or agency; and
- (8) through *fundamental research* in science and engineering at **accredited institutions of higher learning in the United States** where the resulting information is ordinarily published and shared broadly in the scientific community. Public domain information is excluded from ITAR technical data controls.

For information in the scope of the ITAR, release by any other means requires State Department authorization.

**Publicly Available** – Under the EAR, software and technology (except 5D002 encryption software) that (i) are or will be published; (ii) arise during, or result from, fundamental research; (iii) are educational; (iv) are included in certain patent applications. Publicly available software and technology are excluded from EAR controls — but note that published 5D002 encryption software remains subject to the



EAR, except publicly available 5D002 encryption object code when the corresponding source code is publicly available. For software and technology in the scope of the EAR, it may be made publicly available by a person with the right to do so without further authorization from the Commerce Department (except 5D002 encryption software).

**Published** – Under the EAR, information is “published” when it becomes generally accessible to the interested public in any form, including:

1. periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution;
2. ready availability at libraries open to the public or at university libraries;
3. patents and open (published) patent applications available at any patent office; and
4. Release at an open conference, meeting, seminar, trade show, or other open gathering. Software and information is published when it is available for general distribution either for free or at a price that does not exceed the cost of reproduction and distribution.

**(Note:** published 5D002 encryption software remains subject to the EAR, except publicly available 5D002 encryption object code when the corresponding source code is publicly available.

**Reexport** – Refers to an actual shipment or the transmission of items subject to export regulations from one foreign country to another foreign country. For the purposes of the U.S. EAR, the export or reexport of items subject to the EAR that will transit through a country or countries to a new country, or that are intended for reexport to the new country, are deemed to be exports to the new country.

**Restricted Parties** – Individuals and entities with whom the university and its employees may be prohibited by law, or that require a license or other government approval, to export to or engage in controlled transactions. These include the Denied Persons List, Entity List, and Unverified List (Department of Commerce); the Debarred Parties Lists (Department of State); and the Specially Designated Nationals and Blocked Persons List (Department of Treasury).

**Restricted Research** – Defined as university research, development, or testing subject to: (i) publication restrictions; (ii) access and dissemination controls; (iii) federally funded research with contract-specific national security restrictions; (iv) accepting third-party controlled items or information; or (v) providing access to, or defense services on, a defense article. Restricted research is subject to EAR and ITAR regulations, and a license or other government approval may be required for foreign national participation.

**Sanctioned Countries** – Countries designated by OFAC as having limited or comprehensive trade sanctions imposed by the United States for reasons of antiterrorism, non-proliferation, narcotics trafficking, or other reasons.

**Specially designed** - Some items are subject to the ITAR or the EAR if they have properties, as a result of development, that meet or exceed the criteria in the US Munitions List (ITAR) or the Commerce Control List (EAR) — this is the "catch" — and are not a fastener or other low-control item — this is the "release". There are web tools for the ITAR and the EAR to help determine whether an item is "specially designed".

**Technical Assistance** – Under the EAR, instruction, skills training, working knowledge, and consulting services, which may involve the transfer of technical data. Similar to the ITAR's "defense service". The ITAR provides for Technical Assistance Agreements, which authorize transferring technical data and providing defense services.

**Technical Data** – (22 CFR §120.10) Refers to information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blueprints, drawings, plans, instructions, diagrams, photographs, etc. It may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, and manuals and instructions written or recorded on other media or devices such as disk, tape, or read-only memories. The ITAR 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.

**Technology** – Any specific information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, manuals, or software—or in intangible form, such as training or technical services) that is required for the development, production, or use of a good, but not the good itself.

**United States Munitions List (USML) – (22 CFR §121.1) The USML includes** articles, services, and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act (AECA).

**U.S. Person** – Under the ITAR, a natural person who is a lawful permanent resident (green card holder) or a protected individual (citizen or national of the U.S., special agricultural worker, admitted refugee or person granted asylum); or any entity (corporation, business association, partnership, etc.) incorporated in the U.S., or any federal, state, or local governmental entity. The EAR is effectively the same, although without explicit definition: the deemed export rule, for instance, applies to "foreign nationals" but excludes permanent residents and protected individuals. (Note that for the purpose of §744.6 Restrictions on Certain Activities of U.S. Persons, the EAR adds "any person in the United States".)

## CITI Export Control Personnel Training Chart

Module ID	Module Name	Travelers	Research Admin	University Staff	PIs, co-PIs, other senior project personnel	Grad students, postdocs, project personnel
16800	Introduction to Export Compliance	X	X	X	X	X
16810	Export Compliance and Collaborations		X	X	X	X
16812	Export Compliance and United States Sanctions Programs	X	X	X	X	X
16801	Export Compliance for Researchers: Part I				X	X
16802	Export Compliance for Researchers: Part II				X	
16803	Export Compliance for Research Administrators		X			
16805	Export Compliance and Biosafety	Only as needed				
16806	Export Compliance for Operational Departments			X		
16807	Export Compliance for International Shipping		X	X		
16808	Export Compliance and Purchasing		X	X		
16809	Export Compliance and International and Foreign Waters	Only as needed				