



UNIVERSITY OF MISSOURI - COLUMBIA EXPORT COMPLIANCE MANAGEMENT PROGRAM



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I. INTRODUCTION

The national security, foreign policy, and economic interests of the United States shape export control and sanctions regulations, which are designed to achieve various objectives such as preventing the proliferation of weapons of mass destruction, advancing U.S. economic interests at home and abroad, aiding regional stability, implementing anti-terrorism and crime controls, and protecting human rights.

The U.S. Government tightly regulates the export of not only equipment but also the export of the associated parts and components. The export of “technology” is also regulated. Technology includes both technical data, such as blueprints and manuals, and technical assistance that involves design, services (including the transfer of knowledge), and training. The U.S. export control system generally restricts the export of defense articles,¹ defense services, and/or “dual use” commodities and technologies that have both commercial and military applications. U.S. laws even control U.S.-origin equipment and technology after it is exported (i.e., restricting the reexport or retransfer abroad to third parties).

Economic sanctions also limit exports to, and other transactions with, specific foreign countries, regimes, entities, and/or individuals engaged in activities that conflict with U.S. policy. There are economic embargoes against a number of countries and most transactions by U.S. persons with these countries, their citizens, and/or businesses located and incorporated therein are prohibited.

Three principal agencies regulate exports from the United States:

- (1) The U.S. Department of State Directorate of Defense Trade Controls (DDTC)² administers export control of defense articles and defense services under the International Traffic in Arms Regulations (ITAR);
- (2) The U.S. Department of Commerce Bureau of Industry and Security (BIS) administers export control of less-sensitive defense items and technology, “dual-use” items, and purely commercial goods under the Export Administration Regulations (EAR); and
- (3) The U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) administers economic sanctions against embargoed countries and restricted parties under specialized regulatory actions or executive orders.

Other government agencies (i.e., the Department of Energy, Nuclear Regulatory Commission, Department of Agriculture, etc.) may also have regulations that restrict certain exports. While this Program focuses mainly on DDTC, BIS, and OFAC, all applicable regulations should be considered before engaging in any activity that may be subject to export control or sanctions regulations.

II. EXPORT CONTROLS, SANCTIONS, AND UNIVERSITIES

While the responsibility for ensuring MU complies with export control and sanctions regulations is housed in the Office of Research, these regulations apply to all University activities, even those that do not involve research. For example, entering into contracts with foreign entities or restricted parties, sending money to denied parties or to entities in embargoed countries, international travel with a University-issued laptop, or shipping items out of the United States all have export compliance implications for MU.

¹ A [glossary](#) of common export compliance terms can be found at the end of this document.

² See “[Commonly Used Acronyms](#),” found at the end of this document.

However, the majority of MU's export and sanctions compliance challenges are related to the University's research activities. Export controls and economic sanctions create a unique struggle in an academic research environment because compliance requires balancing concerns about economic development (through the safeguarding of proprietary business information) and national security against the traditional concepts of academic freedom in research and the unrestricted publication and dissemination of research findings and results.

While U.S. policymakers recognize "the linkage between the free exchange of ideas and scientific innovation, prosperity, and U.S. national security is undeniable"³—and that foreign students, faculty, and visitors have made substantial contributions to university research missions—there is still concern over the potential transfer of controlled technologies to other countries and the consequences for U.S. national interests. Therefore, U.S. government agencies require that universities understand and comply with export control and sanctions regulations.⁴ All MU personnel must be mindful of export control implications across all campus activities, paying particular attention to their impact on research efforts, whether externally sponsored or funded through other mechanisms.

III. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

Under the International Traffic in Arms Regulations (ITAR), the Directorate of Defense Trade Controls (DDTC) regulates the export and reexport of defense articles, defense services and related technical data from the United States to any foreign destination, or to any foreign person located in the United States or abroad (a "deemed export"). The ITAR contains the United States Munitions List (USML) which lists those commodities, related technical data, and defense services controlled for export purposes.

A. ITEMS CONTROLLED UNDER THE ITAR

The ITAR regulates the export of defense articles, which are inherently military items and the associated information needed for the design, operation, repair, maintenance, etc. of defense articles. In other words, the ITAR covers not just physical items, but also the technical data, "know-how," and software required to run those items. Because the "know how" associated with a defense article is controlled, training another person on that "know how" may also be a controlled activity known as a defense service.

The ITAR also controls the parts, components, and technology incorporated into an item, unless otherwise noted in the USML.⁵ Some non-military items (such as commercial satellites with

³ National Association of College and University Attorneys Publication Series, *Negotiating the Minefield: The Conduct of Academic research in Compliance with Export Controls*, Carol T. Carr, 2006, available at <http://www.higheredcompliance.org/resources/publications/Export-Controls-Pub.pdf>

⁴ GAO Report "Export Controls: Agencies Should Assess Vulnerabilities and Improve Guidance for Protecting Export-Controlled Information at Universities," December 2006, available at <http://www.gao.gov/new.items/d0770.pdf>

⁵ If an item contains any components that are controlled under the ITAR, the entire item is thereby controlled under the ITAR (an unwritten DDTC policy commonly called the 'see through' rule. "The 'see-through' rule was most succinctly articulated in the State Department's [Draft Charging Letter](#) in the Boeing 'QRS-11' matter, as follows: 'the QRS-11 is covered by the U.S. Munitions List' and 'did not cease to be controlled by the ITAR simply by virtue of its inclusion into a non-USML flight instrument.'" Global Trade Law Blog, *Military Electronic Export Reform: Let the Chips Fall Where They May*, Scott Maberry and Reid Whitten, posted on December 4, 2014, <http://www.globaltradelawblog.com/2014/12/04/military-electronics-export-reform-let-the-chips-fall-where-they-may/>

specific characteristics⁶) and certain chemical precursors, toxins, and biological agents, are also controlled under the ITAR. In addition, there may be occasions when an ITAR item is used for research unrelated to that item's military purpose: it is important to understand that the ITAR designation applies to an item regardless of how it is being used.

B. THE UNITED STATES MUNITIONS LIST

The United States Munitions List (USML) enumerates defense articles and defense services (including related technical data), as designated by the Arms Export Control Act of 1979, and groups them into 21 categories (see [Exhibit A](#)). An electronic version of the USML is available on the Department of State website at https://www.pmddtc.state.gov/regulations_laws/itar.html, and shall be, for purposes of this manual, the appropriate authority for the contents of the USML.

C. JURISDICTION AND CLASSIFICATION⁷

Determining the jurisdiction and classification of items is crucial for compliance with the U.S. export control system. Verifying whether an item is subject to the jurisdiction of the ITAR is the first step taken when establishing the applicable controls on the export, retransfer, or reexport of that item. DDTC has the ultimate responsibility over determining whether an item is subject to regulation under the ITAR. The item should be presumed to be ITAR controlled until it is determined not to be enumerated on the USML. Jurisdictional determinations are typically based on criteria that include whether it is predominantly used in civil or military applications.⁸

After the jurisdictional status of an item is resolved—whether or not it is subject to the ITAR—the next step is to determine its classification status (e.g., where on the ITAR's USML the item is described). This step must be completed before a determination can be made as to whether a license or other authorization is required to export, retransfer, or reexport the item to the proposed destination or end-user, or for the proposed end-use.

Export control regimes encourage exporters to self-classify items wherever possible. If self-classification is not possible, a Commodity Jurisdiction (CJ) request can be submitted to DDTC to determine the appropriate classification under the ITAR. University employees should contact the Office of Export Controls (OEC) prior to attempting to classify an item. If a CJ determination is necessary, the OEC will file the request on behalf of the University.

D. EMBARGOED COUNTRIES UNDER THE ITAR

DDTC maintains a list of countries under U.S. or United Nations arms embargoes which are subject to more stringent export restrictions under the ITAR. License exemptions are not available for ITAR exports to these countries. The State Department has a policy of denying license applications to export, or otherwise engage in transactions involving, ITAR-controlled defense articles and/or

⁶ "Spacecraft, including satellites and space vehicles, whether designated developmental, experimental, research, or scientific, or having a *commercial, civil, or military* end-use, that [meet one or more of thirteen listed characteristics]" are enumerated in Category XV-Spacecraft and Related Articles. (22 CFR §121.1, emphasis added.)

⁷ 'Classification' here refers to the analysis and selection of a USML category for a defense article. It is not a reference to information that, for national security purposes, has been classified pursuant to Executive Order 13526 and is subject to the National Industrial Security Program (NISP).

⁸ More information about the criteria used by DDTC in providing a commodity jurisdiction determination can be found in 22 CFR §120.4 (Commodity Jurisdiction).

defense services to certain countries;⁹ license applications for other countries are reviewed and approved on a case-by-case basis. A complete list of U.S. arms embargoes is available online at: https://www.pmdtdc.state.gov/embargoed_countries/index.html.¹⁰

E. AUTHORIZATION TO EXPORT UNDER THE ITAR

With very few exceptions, the export of defense articles and defense services is restricted to all non-U.S. destinations and to all foreign persons in the U.S. Through their research activities, MU personnel are typically engaged only in the creation of data that is not subject to the ITAR, or are engaged primarily in the fabrication of articles for experimental or scientific purposes. No license is needed if only U.S. persons are involved or have access to defense articles or defense technology in the United States.

If MU researchers desire to involve foreign persons in an ITAR-controlled, restricted research project, it is likely that it will be necessary to obtain a license from DDTC. The University must apply for and receive permission from DDTC in the form of an export license before any export of a USML item, release of ITAR-controlled technical data, or provision of a defense service can occur.

F. REGISTRATION WITH THE DIRECTORATE OF DEFENSE TRADE CONTROLS (DDTC)

Any U.S. person or entity that manufactures, brokers, or exports defense articles or services must be registered with DDTC, and registration is required prior to applying for a license or utilizing some license exemptions. The University is registered with DDTC and renews its registration annually. MU regularly reviews research projects and available license exemptions to determine if a license is required to complete the project. Assistance from the faculty involved in such projects is critical and expected in order to accept restricted research. Any request for licensing must be routed to the OEC for review, processing and submission to DDTC. University employees may not independently submit license applications or register with DDTC for any University-related activity.

IV. EXPORT ADMINISTRATION REGULATIONS

The Bureau of Industry and Security (BIS) regulates the export of commercial and dual-use products and technology under the Export Administration Regulations (EAR). The EAR cover a wide range of products and technologies, which are enumerated on the Commerce Control List (CCL). The product classification process is highly technical and licensing requirements are dependent upon the type of product, the final destination (country and recipient), and the intended end use.

A. ITEMS CONTROLLED UNDER THE EAR

Generally, all non-ITAR items of U.S.-origin, wherever located, are subject to the EAR. Foreign-made items that incorporate a defined amount of controlled U.S. origin technology or software may also be subject to the EAR.

The EAR requires a license for the export of a wide range of commercial items that have potential military use (commonly called “dual-use” items), or that otherwise have non-military strategic

⁹ At this time, arms embargoes with strict policies of denial are in place against Belarus, Burma (Myanmar), China, Cuba, Iran, North Korea, Syria, and Venezuela.

¹⁰ See also 22 CFR §126.1: Prohibited export, imports, and sales to or from certain countries.

value to the U.S. In addition, under the recent process of “Export Control Reform,” a large number of items previously under regulation by the ITAR have been transferred to control by the EAR. Thus, the EAR now also regulates certain lower-level military products. Unlike the ITAR ‘see through’ rule, the EAR typically—though not always—considers the complete product being exported rather than each subcomponent of the item (i.e., a ‘black box’ approach). Purely commercial items generally have few export restrictions.

B. THE COMMERCE CONTROL LIST

Items subject to control under the EAR are enumerated on a list of products called the Commerce Control List (CCL). If an item (including the technology and/or software associated with that item) is listed on the CCL, it may require a license prior to export, depending upon the country to which it will be exported and other factors.

Items listed on the CCL are assigned an Export Control Classification Number (ECCN) based on a category and a product group. The first digit of an ECCN represents the category, and each of the ten categories is divided further into five product groups, represented by the second digit of an ECCN (see [Exhibit B](#)). The last three digits establish the stringency of the controls: numbers beginning with a ‘zero’ or ‘one’ (e.g., 4A001), indicate highly rigorous controls while those beginning with a “nine” (e.g., 4A994), are subject to lower levels of control.

Many commercial goods are not listed on the CCL and do not have an associated ECCN. These goods are designated as EAR99 and generally consist of low- level technology and consumer goods. Although they are not specifically enumerated on the CCL, EAR99 items are still subject to the EAR; they generally can be exported without a license to any destination other than to an embargoed country, to a restricted party, or for use in certain prohibited end-uses.

An electronic version of the CCL is available on the BIS website at <http://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>, and shall be, for purposes of this manual, the appropriate authority for the contents of the CCL.

C. JURISDICTION AND CLASSIFICATION¹¹

As discussed above, DDTC is the ultimate authority on whether an item is under the jurisdiction of the ITAR or the EAR. DDTC encourages exporters to self-classify the product. If doubt exists, a CJ request may be submitted to DDTC to determine whether an item is ITAR- or EAR- controlled. (See [Part III\(B\)](#) above for the process to request a CJ.) Items that do not fall under ITAR jurisdiction are controlled by the Department of Commerce Bureau of Industry and Security (BIS) under the EAR.

Once jurisdiction under the EAR is established, the next step is to classify the item on the CCL. As with jurisdiction, the regulatory agencies encourage exporters to self-classify the item. Self-classifications of items that are under the jurisdiction of BIS will be performed by the OEC, in conjunction with the PI, sponsor, manufacturer, and other parties as appropriate to identify the accurate Export Control Classification Number (ECCN) on the CCL. However, if the OEC is unable

¹¹ ‘Classification’ here refers to the analysis and selection of a CCL category for a commodity. It is not a reference to information that, for national security purposes, has been classified pursuant to Executive Order 13526 and is subject to the National Industrial Security Program (NISP).

to determine the ECCN, the next step will be to submit a “Classification Request” to BIS.¹² Additionally, to ask for guidance in regards to interpretations of the EAR or to determine whether a license is required, or would be granted, for a particular transaction, the OEC can file a request for a non-binding “Advisory Opinion.”

If an item is improperly exported as a result of an erroneous self-classification, the University is liable for any violation of the EAR: MU employees should contact the OEC prior to attempting to classify an item. If a classification request or advisory opinion is necessary, the OEC will file the request on behalf of the University.

D. AUTHORIZATION TO EXPORT UNDER THE EAR

An item’s ECCN dictates the need for an export license. For each ECCN, the CCL will provide the “Reasons for Control” (license requirements), available license exceptions, a list of items or technology controlled by that ECCN, and other valuable information. The “Reasons for Control” applicable to the ECCN are cross-referenced against the country of ultimate destination in the EAR’s “Country Chart”¹³ to determine whether an export license is required for a transaction.

Registration with the BIS electronic licensing system is required prior to applying for a license; MU is registered with BIS. Any request for licensing must be routed to the OEC for review, processing and submission to BIS. University employees may not submit license applications or register with BIS independently for any University-related activity.

E. ANTI-BOYCOTT RESTRICTIONS

Anti-boycott regulations, administered by BIS under the EAR, were first implemented to prevent U.S. businesses from participating directly or indirectly in the Arab League’s boycott of Israel. While the Arab League’s boycott has lessened over the years (but still remains in effect in some countries), the regulations were broadly written so as to apply to any boycott not endorsed by the U.S. government.

U.S. law prohibits U.S. businesses and their employees from agreeing to participate in, further, or support an international boycott of any country that is a United States ally, or that is not sanctioned by the United States. Anti-boycott restrictions prevent MU from agreeing to actions that include:

- (1) refusing to do business in or with a boycotted country or person;
- (2) discriminating against persons based on race, religion, sex, national origin, or nationality;
- (3) furnishing information about business relationships in or with a boycotted country; or
- (4) providing information about the race, religion, sex, national origin, or nationality of another person.

The Treasury Department publishes a list of countries which “require or may require participation in, or cooperation with, an international boycott.” As of July 26, 2017, that list includes Iraq,

¹² BIS provides assistance with determining the specific ECCN of a dual-use item listed on the CCL. However, if doubt exists as to whether an item is ITAR- or EAR-controlled, BIS forward the issue to DDTC for jurisdiction determination before proceeding with classification.

¹³ http://www.bis.doc.gov/index.php/forms-documents/doc_view/14-commerce-country-chart See Exhibit B for additional information about using the Country Chart.

Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen.¹⁴ MU personnel should take care when reviewing and negotiating contracts or other agreements with entities from these countries.

Boycott requests can take many forms and may not always be obvious. One example is a request for a certification that goods are not coming from a specific country, such as, “In the case of overseas suppliers, this order is placed subject to the suppliers being not on the Israel boycott list published by the central Arab League.”¹⁵ A request for information about a business relationship with a specific country or about a person’s race, religion, or national origin may also signal a boycott request.¹⁶

MU employees may not agree to contractual terms requiring participation in a boycott under any circumstances. Please contact the OEC or Business Services for assistance concerning such requests: U.S. persons asked to engage in these types of activities are mandated by law to report the request to BIS or the Internal Revenue Service.

V. ECONOMIC SANCTIONS PROGRAMS AND RESTRICTED PARTY LISTS

Economic sanctions are used to achieve foreign policy and national security goals by isolating the targets of the sanctions and depriving them of resources. Other goals of sanctions programs are to compel the targets to change their practices; to penalize the targets for their practices; and to make a political statement of opposition to those practices. Sanctions regulations help prevent U.S. persons and organizations from doing business with terrorist organizations, embargoed countries, nationals of some targeted countries, international narcotics traffickers, and other specified entities engaged in activities related to the proliferation of weapons of mass destruction or other threats.

The Office of Foreign Assets Control (OFAC) in the Department of Treasury implements most of the active sanctions programs under the umbrella of the Foreign Assets Control Regulations (FACR). OFAC acts under Presidential wartime and national emergency powers, and through the authority granted by specific legislation such as the International Emergency Economic Powers Act (diamond trading, Sudan, Iran, Zimbabwe, the Balkans, terrorism, narcotics, nonproliferation, Syria & Burma) and the Trading with the Enemy Act (Cuba & North Korea).¹⁷ OFAC has the authority to prohibit U.S. persons and corporations from making payments, providing services, or exporting/providing anything of value¹⁸ to embargoed

¹⁴ List of Countries Requiring Cooperation With an International Boycott, 82 Fed. Reg. 147 (August 2, 2017). *Federal Register: The Daily Journal of the United States*.

¹⁵ BIS, Examples of Boycott Requests, at <https://www.bis.doc.gov/index.php/enforcement/oac/7-enforcement/578-examplesof-boycott-requests>.

¹⁶ Association of University Export Control Officers, *Guidance Paper: Antiboycott Compliance*, Issued June 2017, at <http://aueco.org/wp-content/uploads/2016/12/Antiboycott-Guidance.pdf>

¹⁷ Other major OFAC laws include the Iraqi Sanctions Act (Iraq); the United Nations Participation Act (Iraq and diamond trading); International Security and Development Cooperation Act (Iran); The Cuban Democracy Act (Cuba); The Cuban Liberty and Democratic Solidarity Act (Cuba); The Antiterrorism and Effective Death Penalty Act (Cuba, North Korea, Iran, Iran, Syria and Sudan); the Foreign Narcotic Kingpin Designation Act; the Syria Accountability and Lebanese Sovereignty Act; and more.

¹⁸ Under OFAC regulations, providing a service may be construed as providing something of value even if no payment is made. This potentially includes many activities that occur in a university environment, such as the exchange of unpublished data or research results or testing/analysis of samples with colleagues in certain embargoed countries.

countries, governments, businesses, organizations, or individuals. OFAC can impose controls on business transactions of all kinds and freeze any assets that are under U.S. jurisdiction. OFAC also prohibits travel to,¹⁹ and certain other dealings with, some embargoed countries.

A. SANCTIONED COUNTRIES

U.S. economic sanctions prohibit most transactions between a U.S. person and (1) persons or entities in an embargoed country or (2) the government of an embargoed country. This prohibition includes importing and exporting goods and services (directly or indirectly), as well as a U.S. person's "facilitation" of transactions between foreign parties and a sanctioned country. More limited sanctions programs may block specific transactions or require licenses under certain circumstances for exports to a number of countries.

There are a handful of countries commonly referred to as "OFAC countries" or "embargoed destinations"—a few of the most widely known in recent years have been Cuba, Iran, North Korea, and Syria—to whom comprehensive trade sanctions, administered by OFAC, have been applied. While U.S. policy is normally to deny export licenses for trade with countries under comprehensive sanctions, exceptions do exist which permit exports or the provision of services in specific circumstances.

The OFAC electronic version of the sanctions programs shall be, for purposes of this manual, the appropriate authority for the contents of the sanctions, and is available on the OFAC website at <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx> (select "Resources" tab for information on specific sanctions programs).

While most sanctions are administered by OFAC, other government agencies have additional embargos and jurisdiction over certain exports prohibitions. BIS maintains lists of designated persons and entities to whom exports may require a license or be otherwise restricted. BIS also has implemented comprehensive embargoes against certain countries and limited embargoes for specific categories of items to countries subject to United Nations Security Council arms embargoes. DDTC also maintains a list of embargoed countries (see [III.E](#) above).

B. RESTRICTED PARTY LISTS

As part of its enforcement efforts, OFAC publishes lists of individuals and companies owned by, controlled by, acting for, or acting on behalf of targeted countries. OFAC also lists individuals, groups, and entities, such as terrorists and narcotics traffickers, designated under sanctions programs that may not be tied to specific countries. Collectively, these lists are referred to as the "Specially Designated Nationals And Blocked Persons List (SDN)." Other U.S. Government agencies maintain a number of lists of individuals or entities barred or otherwise restricted from entering into certain types of transactions with U.S. persons. All lists must be screened to ensure that the University does not engage in a transaction with a barred entity. MU has purchased software for the OEC to expedite screening of all government lists of restricted parties. University employees should contact the OEC prior to attempting to search these lists.

¹⁹ Currently, OFAC only limits travel to Cuba. Travel restrictions were eased significantly under the Obama administration but were not removed entirely, and the Trump administration made additional changes to some travel restrictions and tightened recordkeeping requirements. The OEC should be consulted prior to any University travel to Cuba to ensure compliance with the most current regulations.

C. AUTHORIZATION TO EXPORT, PROVIDE SERVICES, OR CONDUCT OTHER UNIVERSITY BUSINESS UNDER OFAC SANCTIONS

There are many OFAC sanctions programs: each is based on a unique set of foreign policy priorities and therefore each program is distinct and different. Some programs are comprehensive in scope, prohibiting most unlicensed activities. Other programs may be more focused and target a specific activity or activities. Additionally, because sanctions are political in nature and utilized to bring about changes in behavior, OFAC regulations are constantly being revised. University employees should contact the OEC prior to attempting to apply the sanctions regulations.

Each sanctions program specifies the activities that are exempt from embargo and the activities that are permissible under a general license (without requiring prior government approval). Activities that are not exempt or do not fall under a general license may be allowed under a specific license upon application by the University and approval by OFAC or the appropriate agency. If clarification by OFAC or another agency, or a license to conduct the activity, is necessary, the OEC will file the request on behalf of MU. University personnel may not independently file a license application to conduct University-related business.

VI. PENALTIES FOR VIOLATIONS

A. GENERAL OVERVIEW

Any person or entity that

- (1) brokers, exports, or attempts to export a controlled item without prior authorization or in violation of the terms of a license, or
- (2) exports goods or services, engages in financial transactions, or otherwise acts contrary to or in violation of sanctions regulations,

may be subject to criminal or civil penalties, or both. Typically, multiple unauthorized exports will result in multiple violations in connection to each shipment. Therefore, a series of violations occurring over a period of time could result in exorbitant fines, criminal prosecution and jail time, or both.

B. DEFENSE EXPORT VIOLATIONS

The Arms Export Controls Act (AECA), the implementing legislation for the ITAR, provides that willful (criminal) violations can incur fines of up to \$1,000,000 per violation, twenty years of imprisonment, or both. In addition, the Secretary of State may assess civil penalties, which can exceed \$1 million per violation,²⁰ in addition to, or instead of, any other penalty. The articles exported or imported as a result of a violation, and any vessel, vehicle or aircraft involved in such violation, are subject to seizure. DDTC may also order that the violator be debarred, or prohibited from exporting defense items, for a period of time. The State Department will also publish a press release regarding the violation, leading to negative publicity for the offender.

²⁰ Under the ITAR, violations of different provisions of the Arms Export Control Act will carry different penalties. Violations associated with the improper export of USML items currently carry a civil penalty not to exceed \$1,111,908. (§127.10)

C. DUAL-USE/COMMERCIAL ITEM EXPORTS AND ANTI-BOYCOTT VIOLATIONS UNDER THE EAR

The Export Administration Act of 1979, the primary statutory authority for the EAR,²¹ establishes fines for export violations for items subject to the EAR and anti-boycott violations, which can exceed \$1,000,000 per violation in criminal cases, and \$289,238 per violation in most administrative (civil) cases.²² In addition, criminal violators may be sentenced to prison time up to 20 years. Administrative penalties may include the denial of export privileges that would prohibit an individual or a U.S. company from exporting for a designated period of time.

D. VIOLATIONS OF SANCTIONS REGULATIONS

The potential civil penalties that may be assessed in the event of a violation may change across the various OFAC sanctions programs and can exceed \$1 million depending the specific program an entity or person under which a violation occurs. Those who violate economic or trade sanctions imposed under the International Emergency Economic Powers Act (IEEPA), which is the primary sanctions regime the University is most likely to encounter, may be subject to a maximum civil penalty of \$284,582 per violation, with the exception of exports to Cuba or North Korea under the Trading with the Enemy Act (TWEA). Violations of the TWEA are subject to a maximum civil penalty of \$85,236 per violation. The U.S. Government can also criminally prosecute willful violations and in such circumstances, fines may reach \$1 million per violation and imprisonment of up to 20 years. In addition, where there is egregious conduct by the offender, BIS (who assists OFAC in enforcing sanctions) may suspend export privileges.

E. VOLUNTARY DISCLOSURES

Export and sanctions regulations are complex and accidental or inadvertent violations may occur. DDTTC, BIS, and OFAC all have mechanisms in place for violations to be self-disclosed. These agencies will consider a voluntary disclosure (or lack thereof) as an aggravating or mitigating factor when determining whether to assess penalties for a violation.

Mitigating factors include whether

- (1) the disclosure was made voluntarily;
- (2) the violation was a first offense;
- (3) compliance procedures were implemented;
- (4) steps were taken to improve compliance after discovery of violations; and
- (5) the incident was unintentional, resulting from a mistake of fact or a good faith misapplication of the laws.

Aggravating factors include:

- (3) willful or intentional violations;
- (4) failure to take remedial action after discovery;
- (5) lack of a compliance program; and
- (6) deliberate efforts to hide or conceal a violation.

²¹ For the complete legal authority for the EAR, including the Export Administration Act of 1979, the International Emergency Powers Act, as amended, other statutory provisions related to the EAR, and associated Executive Orders and other Presidential documents, see http://www.bis.doc.gov/index.php/forms-documents/doc_download/876-legal-authority-for-the-export-administration-regulations-2014

²² Under the EAR, the maximum penalty is the greater of the listed fine or five times the value of the illegal transaction.

MU encourages University employees to come forward with concerns about potential export or sanctions violations. Employees can report export compliance concerns directly to the OEC. Anonymous reporting is available to University personnel through the “Ethics and Compliance Hotline,” which can be accessed by calling a toll-free number, 1-866-447-9821, or by logging on to <https://www.compliancehelpline.com/UM.jsp>.²³ All efforts will be made to investigate credible claims of potential violations and provide appropriate protections to the individual(s) filing such claims, per UM Policy HR-520²⁴ and other policies.

VII. KEY ISSUES IN UNIVERSITY RESEARCH

A. DEEMED EXPORTS

Both the ITAR and the EAR place controls on deemed exports: a deemed export occurs when controlled technical data (ITAR), technology (EAR),²⁵ or software source code (EAR) is released or otherwise transferred to a foreign person in the United States. In other words, technical data, technology, or source code does not need to cross the physical borders of the United States in order to be considered an “export.” Deemed exports may be made orally, visually, virtually, or by other means, such as:

- demonstrations;
- oral briefings;
- telephone calls or messages;
- presentations at conferences and meetings;
- collaborations with foreign colleagues;
- laboratory or plant visits;
- faxes or letters;
- design reviews;
- exchange of electronic communications;
- hand-carried documents, hardware or drawings; or
- posting non-public data on the Internet or the Intranet;

The issue of deemed exports is particularly relevant in university research where information is exchanged openly and broadly. While a university may only occasionally be involved in the shipment abroad of tangible items, most often faculty and students are engaged in teaching and research. Whenever teaching or research involve controlled equipment or technology and foreign students or researchers, export compliance management may be needed even those activities are occurring solely in the United States.

B. U.S. PERSONS AND FOREIGN PERSONS

The University of Missouri is a public institution with a large population of foreign students, staff, visiting scholars, and faculty who are engaged in all aspects of the University’s operations and are significant participants in the University’s research mission.

²³ For more information, contact the hotline to ask how the hotline works or access the following “frequently asked questions” (FAQs) link: <https://www.compliancehelpline.com/clientInfo/2991/FAQs.pdf>.

²⁴ <https://www.umsystem.edu/ums/rules/hrm/hr500/hr520>

²⁵ Under the EAR, the deemed export rule does not apply to physical items/products. Technology is information used in the “development, production, or use” of a product.

Under the export control regulations,²⁶ a U.S. person is defined as a U.S. entity or a U.S. citizen, a person lawfully admitted for permanent residence in the United States (i.e., green card holder), or a person who is a protected individual under the Immigration and Naturalization Act (i.e., certain classes of asylees). Generally, a U.S. person may be engaged in export controlled activities without a license.

A foreign person is defined as anyone who does not meet the definition of a U.S. person. When making an export license determination, BIS considers the country(ies) of which a foreign person currently holds citizenship or permanent residence status. DDTTC, on the other hand, evaluates all countries (past AND present) of which a foreign person has held citizenship or permanent residence status.

C. INFORMATION NOT SUBJECT TO OR EXCLUDED FROM EXPORT CONTROLS

Most MU research and educational activities are not subject to export controls, or—if controlled—do not require licensing. Both the ITAR and the EAR have special provisions relating to information that is not subject to export controls, including limited exclusions regarding the release of information in the context of university research and educational activities. The sanctions regulations also have exceptions for certain “information and informational materials.”

1. PUBLICLY AVAILABLE INFORMATION

The ITAR and the EAR do not control information which is published and/or otherwise generally accessible or available to the public. While both regulatory regimes are moving toward a more common definition of “published” and “public domain”, the ITAR and the EAR vary in the specific information that qualifies as publicly available and each should be consulted as appropriate before making any determination as to whether information should be considered to be publicly available and thus exempt from control.²⁷

In general, information that has been made available to the general public with no restrictions on access or further dissemination is not subject to export or sanctions controls. This includes—but is not limited to—information that is available

- through sales at newsstands and bookstores, or through subscriptions available with no restrictions on who may obtain the information;
- at libraries open to the public or from which the public can obtain documents;
- through patents or published patent applications available at any patent office; or
- through unlimited distribution at a conference, meeting, seminar, trade show or exhibition that is generally open and accessible to the interested public.²⁸

2. EDUCATIONAL INFORMATION

In general, MU faculty do not need to worry about information they present in the classroom being subject to export controls. Both the ITAR and the EAR exempt from control general educational information related to items listed on the USML or CCL.

²⁶ Note that the definitions for a U.S. and a foreign person differ for purposes of the OFAC sanctions. Please contact OEC for assistance with the application of any sanctions program.

²⁷ See 22 CFR § 120.11 for the ITAR definition of public domain; and 15 CFR §734.7 for the EAR definitions relating to published information.

²⁸ Under the ITAR, presentations at a conference, meeting, seminar, etc. only fall in the public domain for domestic, U.S.-based events. Presentation abroad may still require a license and the OEC should be consulted.

ITAR: The definition of ‘technical data’ does not include “information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities.”²⁹

EAR: Information and ‘software’ that “are released by instruction in a catalog course or associated teaching laboratory of an academic institution” are not subject to the EAR.³⁰ The information will not be controlled even if the course contains recent and unpublished results from laboratory research, so long as the university did not accept separate obligations with respect to publication or dissemination of those results, e.g., a contractual publication restriction.

The transfer of technology associated with *most* EAR controlled equipment in an educational setting generally does not create a deemed export concern.³¹ However, foreign persons may not use or operate ITAR-controlled equipment (“defense articles”), even in the context of an educational setting, without obtaining a license prior to use/operation.³² Questions about the applicability of export control regulations to equipment in a teaching lab can be directed to the OEC.

3. RESULTS OF FUNDAMENTAL RESEARCH

National Security Decision Directive (NSDD) 189, *National Policy on the Transfer of Scientific, Technical and Engineering Information*, was issued on September 21, 1985, and affirmed on November 1, 2001. NSDD 189 provides the generally accepted definition of fundamental research, which provides the basis for export compliance decisions relative to ‘fundamental research’ exclusions provided under both the EAR and ITAR.

As a result of Export Reform, the EAR also now includes a definition of fundamental research that is similar to that in NSDD 189.

*Fundamental research means research in science, engineering, or mathematics, the results 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.*³³

A revised ITAR definition of fundamental research that is more closely aligned with the EAR definition resulting from the export reform process is anticipated. One key area in which the two definitions currently differ is that there is a requirement under the ITAR that research must be performed at accredited institutions of higher learning in the United States in order to qualify as fundamental research. Under the EAR, fundamental

²⁹ 22 CFR §120.10(b)

³⁰ 15 CFR §734.3(b)(iii)

³¹ Under the EAR, if a student “is receiving technology in the context of instruction in a catalog course (or associated teaching laboratories) of an academic institution, then that technology is not subject to the EAR and no license is required for the release of that technology. See §734.3(b)(3)(iii) and §734.9. Deemed Export Q&As available on the BIS website at <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear/14-policy-guidance/deemed-export>, retrieved June 6, 2017.

³² See the [glossary](#) at the end of this document for definitions of technical data, defense service, export, and release.

³³ 15 CFR §734.8(c)

research may occur at facilities other than accredited institutions of higher learning in the United States.

Both the ITAR and the EAR are clear that that fundamental research only applies to the information (ITAR) or technology (EAR) that results from research, and does not apply to physical “things” (i.e., prototypes, equipment, etc.) that arise through a research project. Fundamental research also does not apply to research conduct or the inputs to a research project. If, in the conduct of a project, a foreign person may be required to operate a controlled lab instrument or engage in other activities requiring government approval, a license may be required even if the research *results* are intended to be openly disseminated. Likewise, if the research project is dependent upon the receipt of controlled technology such as third party proprietary information that is subject to the EAR or the ITAR, and that information is to be kept confidential, a license may be required before it can be released to a foreign person even if the research otherwise qualifies as fundamental research.

University based research is not considered fundamental research if MU or its researchers accept restrictions on the publication of or access to scientific and technical information resulting from the project or activity. This includes any informal “side deals” between project staff and a sponsor that would remove the fundamental research exclusion, which is in violation of MU policy.

i. Prepublication Review

While the ITAR does not currently address prepublication review, the EAR is useful in interpreting the limitations on fundamental research.³⁴ The EAR instructs that prepublication review by a sponsor of university research solely to ensure that the publication will not inadvertently divulge proprietary information that the sponsor has initially furnished, or compromise patent rights, does not constitute a restriction on publication. Such a review must also be conducted in a reasonable timeframe and not cause more than a “temporary delay” in publication.

ii. Participation Restrictions vs. Funding Restrictions

On occasion, a research sponsor may limit recipients of funds associated with the award to U.S. citizens or permanent residents. Often, these restrictions are associated with federally funded training programs whose citizenship restrictions result from a policy mandate to enhance U.S. capabilities or manpower in certain areas of science, engineering, or medicine. These types of funding restrictions are not participation restrictions imposed as “specific national security controls” if foreign persons are otherwise permitted to participate in the project and there are no publication restrictions associated with the project. Examples of funding restrictions that do not nullify fundamental research are NIH and NSF training grants.³⁵

³⁴ See §734.8(b) *Prepublication Review* and the FAQs related to “Revisions to the Definitions in the Export Administration Regulations (Sep 1, 2016) at <https://www.bis.doc.gov/index.php/forms-documents/compliance-training/export-administration-regulations-training/1554-ear-definitions-faq/file>

³⁵ See also NASA’s restrictions on funding activities with China: NASA funds may not be used to “participate, collaborate or coordinate bilaterally in any way with China or any Chinese-owned company.” This funding

4. RELEASE TO “BONA FIDE, FULL-TIME EMPLOYEES”³⁶

In very limited circumstances, under both the ITAR and the EAR, University personnel can release controlled, unclassified technical data in the U.S. to a foreign person. Application of this exemption is specific and dependent upon meeting a prescribed set of requirements:

- (1) The foreign person is a bona fide and full-time, regular employee of MU;
- (2) The employee’s permanent abode throughout the period of employment is in the United States;³⁷
- (3) The employee is not a national of an embargoed country;³⁸ and
- (4) The University informs the employee in writing that the disclosed information, technology, technical data, source code, etc. may not be transferred to other foreign persons without prior government approval.

Foreign students, postdoctoral associates, and visiting scholars will generally not qualify for this exemption. MU employees may not apply this exemption independently for any University-related activity. Please contact the OEC for assistance.

5. INFORMATIONAL MATERIALS & PUBLISHING ACTIVITIES³⁹

OFAC sanctions permit, without requiring a license, the export or import of information and informational materials, to *most* sanctioned countries. This does not permit the export of controlled technical data, which would still require a license from DDTC or BIS, nor the export/import of “information and informational materials not fully created and in existence at the date of the transaction.” In addition, “the substantive or artistic alteration or enhancement of informational materials” is a service requiring an OFAC license unless engaging in certain peer review or style and copy editing activities. None of these exceptions apply when engaged directly with sanctioned governments, though in limited circumstances OFAC may allow these activities with an academic institution that would otherwise be considered an agency or instrumentality of a sanctioned government.

MU employees may not apply these exemptions independently for any University-related activity. Please contact the OEC for assistance.

restriction is a policy decision about how funds coming to MU can be used and it not necessarily an export control that restricts a Chinese citizen from participating on a NASA-funded project. “‘China’ or ‘Chinese-owned’ means the People’s Republic of China, any company owned by the People’s Republic of China, or any company incorporated under the laws of the People’s Republic of China. Chinese universities and other similar institutions are considered to be incorporated under the laws of the PRC and, therefore, the funding restrictions apply to grants and cooperative agreements that include bilateral participation, collaboration, or coordination with Chinese universities.” [NASA PIC 12-01A](#)

³⁶ ITAR §125.4(b)10 and EAR §740.13(f)

³⁷ “The requirement that the employee’s ‘permanent abode throughout the period of employment’ is understood to mean ‘residence throughout the period of employment.’ Employees who return home for short periods of time (for example, over winter break) are not disqualified from qualifying as an ‘employee’ for [these] purposes.” Association of University Export Control Officers guidance document “Bona fide, Full-time Employees (BFE),” Apr 28, 2016, available at <http://aueco.org/wp-content/uploads/2016/04/bonafideemployeaeuecoguidance.pdf>.

³⁸ ITAR: §126.1 or EAR Country Group D:5 (see Supplement No. 1 to Part 740 of the EAR)

³⁹ *Office of Foreign Assets Control Guidance on Certain Publishing Activities*, dated 28 Oct 2016, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/guidance_on_certain_publishing_activities.pdf

D. USE OF EXPORT CONTROLLED OR RESTRICTED RESEARCH IN GRADUATE STUDENT THESES OR DISSERTATIONS

MU's "Electronic Thesis and Dissertation Guidelines"⁴⁰ prohibit graduate students from using research data or other content that could be subject to publication or disclosure restrictions as the basis for their theses and/or dissertations. Pls should take this into consideration and discuss with graduate students before placing them on restricted research projects. Restricted research is permitted for graduate students engaged in nonthesis or nondissertation research.

E. SECURE RESEARCH

The University of Missouri has a Facility Clearance (FCL), with obligations to safeguard classified and controlled unclassified information (CUI) and other export-controlled items and technology. The University complies with the National Industrial Security Operating Manual (NISPOM) and the University of Missouri Standard Practice Procedures for Security (SPP) when performing secure research. Due to the overlap with the ITAR,⁴¹ secure research projects will generally require the implementation of a Technology Control Plan (see [Section VIII.D](#)).

VIII. UNIVERSITY OF MISSOURI EXPORT CONTROL AND SANCTIONS COMPLIANCE PROCEDURES

A. STANDARD OPERATING PROCEDURES

The OEC has implemented Standard Operating Procedures that outline the processes implemented to ensure compliance with this Export Compliance Management Program.⁴²

B. COMMITMENT TO COMPLIANCE

"The mission of the University of Missouri, as a land-grant university and Missouri's only public research and doctoral-level institution, is to discover, disseminate, preserve, and apply knowledge. The university promotes learning by its students and lifelong learning by Missouri's citizens, fosters innovation to support economic development, and advances the health, cultural, and social interests of the people of Missouri, the nation, and the world."⁴³ While the University of Missouri endorses the principles of freedom of inquiry and open exchange of knowledge, and has adopted these principles into its Collected Rules and Regulations,⁴⁴ the University intends to comply with export control and sanctions regulations.

The University and the Office of Research reiterate a commitment to academic freedom; welcome the contributions of international staff, students, and visitors; and assert that research conducted by the faculty, staff, and students is in the public domain and considered fundamental research. Most MU research is therefore exempt from licensing requirements. However, where export control and sanctions regulations are applicable to MU activities, or the University accepts restricted research projects, full compliance with the law is required.

⁴⁰ <http://gradstudies.missouri.edu/forms-downloads/repository/etd-guidelines.pdf>

⁴¹ USML Category XVII (Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated) covers "all articles, technical data and defense services that are classified in the interests of national security."

⁴² See http://research.missouri.edu/policies/by_department.

⁴³ <https://www.umsystem.edu/ums/about/mission/>

⁴⁴ See CRR 310.010 Academic Freedom and Economic Security of Academic Staff at https://www.umsystem.edu/ums/rules/collected_rules/faculty/ch310/310.010_academic_freedom_and_economic_security_of_academic_staff

MU is committed to export controls and sanctions compliance, and the Office of Export Controls (OEC) is tasked with advising and assisting the University community in its compliance obligations. More information and resources regarding export controls, sanctions, and other regulations that impact University activities can be found at the OEC website, http://research.missouri.edu/compliance/export_controls/, or by contacting the OEC.

C. RESPONSIBILITY FOR EXPORT CONTROL COMPLIANCE

1. EMPOWERED OFFICIALS

As a part of the DDTC registration process, there are designated Empowered Officials at MU who have the authority to represent the University before DDTC in matters related to registration, licensing, CJ requests, or voluntary disclosures. While certain oversight functions may be delegated to others, only the Empowered Officials have the power to bind the University in any proceeding before DDTC.

2. OFFICE OF EXPORT CONTROLS

The OEC reports to the Associate Vice Chancellor for Research. The OEC has the authority and the responsibility for the implementation of the University's Export Compliance Management Program by:

- Identifying University activities that are impacted by export control and sanctions regulations;
- Developing procedures to ensure the University remains in compliance;
- Recommending processes and procedures to the senior administration to strengthen compliance;
- Educating the University community about export control and sanctions regulations and University compliance procedures;
- Monitoring and interpreting legislation;
- Working with others on campus to cultivate a culture of compliance;
- Assisting investigators, project staff, and campus offices when research or research results are export controlled;
- Seeking legal assistance as deemed necessary about classification and in filing license applications; and
- Implementing appropriate measures to limit unauthorized access to restricted research projects (see [Section VIII.E](#)).

3. OFFICE OF SPONSORED PROGRAMS ADMINISTRATION

The Office of Sponsored Programs Administration (OSPA)⁴⁵ provides assistance to the OEC in identifying and managing restricted research activities by:

- Notifying the OEC upon identification of restrictive language or any other export compliance red flags in agreements for sponsored research;⁴⁶
- Negotiating with sponsors to remove restrictive language, if possible;

⁴⁵ See the OSPA Sponsored Programs Procedures Guide "Identifying and Managing Restricted Research" at <http://research.missouri.edu/ospa/SPPG> for additional information.

⁴⁶ Export and sanctions regulations are statutorily based: they apply regardless of whether the University receives funding via a grant, cooperative agreement, or contract, and whether or not the EAR or ITAR are cited explicitly in the award document, unless covered by an exemption or exception.

- Implementing any recommended measures for the management of restricted research projects.

4. UNIVERSITY MANAGERS

Academic and administrative deans, directors, and department heads share the responsibility of overseeing export control compliance in their respective schools, departments, centers, or institutes and supporting the OEC in implementing procedures as deemed necessary by the OEC for export control and sanctions compliance.

5. PRINCIPAL INVESTIGATORS

The principal investigator (PI) on a research project has the best understanding of his or her research and thus is best suited to advise the OEC whether the particular technology, data, or information involved in that research is subject to export control regulations. PIs should carefully review the information on export controls and sanctions compliance provided in this document and on the OEC web site, and contact the OEC with questions or to request additional training.

Before beginning any research, the PI should determine whether any export control or sanctions issues may be present by reviewing the RFP or solicitation, and any award documents, for export control markings or indications that the sponsor requires pre-approval rights over publications or the participation of foreign persons. The PI should also evaluate projects for the potential for:

- Shipping equipment to a foreign country;
- Collaborating with foreign colleagues in the U.S. or abroad;
- Training foreign persons in using equipment; or
- Working with a country subject to U.S. economic sanctions.

If any such issues are identified, or if there are questions, the PI should contact the OEC for assistance. After work on the project has begun, the PI should also notify the OEC prior to implementing any changes that may result in the application of export controls or sanctions regulations, such as a change in the scope of work or the addition of new staff to the project.

If a project constitutes restricted research or is otherwise subject export controls or sanctions regulations, the PI must adhere to any applicable contractual restrictions, OEC policy, or the terms of a government-issued license and cooperate fully with the University's efforts to monitor compliance.

D. ANALYSIS OF SPONSORED PROJECTS

An analysis should be performed when a PI submits a proposal, receives an award, or changes the scope of an existing project. The OEC and OSPA have developed an in-depth process⁴⁷ describing the review of sponsored research for export and sanctions compliance concerns, an overview of which is outlined here.

⁴⁷ See OEC Standard Operating Procedure "OEC Coordination with Office of Sponsored Programs Administration" at http://research.missouri.edu/policies/by_department

1. INITIAL REVIEW

The OSPA will look for red flags, such as those listed below, indicating possible export control or sanctions issues:

- references to U.S. export regulations (beyond a mere statement requiring the University to comply with the law);
- restrictions on publication or dissemination of the research results;
- specific national security related controls;
- pre-publication approval from sponsor;
- proprietary or trade secret claims on project results;
- limitation of access or participation to U.S. citizens only;
- involvement of foreign sponsors or collaborators;
- travel, shipping, or work performed outside the U.S.;
- military applications of the project results; or
- funding as a subrecipient or directly from the Department of Defense (DoD) and any of its component offices, ⁴⁸ the National Aeronautics and Space Administration (NASA), the Department of Homeland Security (DHS), or other U.S. government agencies known to utilize restrictive clauses when contracting.

2. FINAL REVIEW

If the initial review flags a possible export controls issue, the project will be referred to the OEC for final review. Upon completing the final review, the OEC will advise the PI and the OSPA concerning export control applications to the project, the restrictions on access by foreign persons, and any other relevant requirements pursuant to the ITAR and/or the EAR.

E. TECHNOLOGY CONTROL PLAN

The OEC will work with the PI to develop and implement a Technology Control Plan (TCP)⁴⁹ for restricted research projects to secure controlled technology from access by unlicensed foreign persons. The TCP will include physical and information security measures appropriate to the project. All project personnel will be briefed on the procedures authorized under the TCP, certify agreement to comply with all security measures outlined in the TCP, and have that certification authorized by the OEC before being allowed access to a restricted research project under a TCP.

F. LICENSING

A foreign person must be specifically licensed for each restricted research project in which s/he is participating and a TCP, as described above, must be implemented for any project with a licensed foreign person. A license is also required for MU personnel or units to engage in conduct otherwise restricted or prohibited under a sanctions regime.

MU personnel may not independently apply for an export or sanctions license to conduct university business. When a license is needed, the OEC will prepare the necessary documentation for obtaining a license and an Empowered Official or other authorized University official will submit the application. All parties involved should be aware that license applications require

⁴⁸ http://www.dtic.mil/whs/directives/collections/files_internal/components.pdf

⁴⁹ See OEC Standard Operating Procedure "Technology Control Plans" at http://research.missouri.edu/policies/by_department

considerable time and effort to prepare, in addition to the (usually extensive) length of time needed for the government to evaluate and make a licensing determination.

G. DEEMED EXPORT ATTESTATION

The U.S. Citizenship and Immigration Services (USCIS) now requires that MU perform a “deemed export attestation” during the processing of H-1B visa applications for foreign national employees being hired in specialty occupations. Specifically, the University must evaluate whether a deemed export license will be required before a foreign employee on an H-1B visa can access controlled products or technology in order to perform the work specified on his or her application. An attestation about the applicant’s need for a license is a required section of the visa application.

Many of the foreign persons employed by the University under H-1B visas as scientists or researchers conduct fundamental research, which is not subject to export control requirements and does not require an export license. However, not all research qualifies as fundamental research, and an export license may be required for a foreign national employee. After the OEC makes a licensing determination, the OEC will work with the International Center and sponsoring department to ensure that the deemed export attestation in the visa application is completed correctly⁵⁰ and that the OEC submits a deemed export license request if necessary.

H. INTERNATIONAL ACTIVITIES

Travel with, or transmissions of, controlled data to destinations outside the U.S. can have export control implications. A license may be required depending on the items, data, or software leaving the United States, the destination country(ies), and/or whether defense services are provided to a foreign person. However, an exception or exemption from license requirements may exist. Any University employee intending to travel with or transmit controlled data, or transport controlled equipment, outside the U.S. should first consult with the OEC.

A license exception⁵¹ may be available for EAR-controlled items, technology or software (items) such as research instrumentation or a MU laptop if the individual traveling outside the U.S. can certify that he/she:

- Will ship or hand-carry the items for University of Missouri business purposes only;
- Will return within 12 months of departure from the U.S., or certify the destruction of the items;
- Will keep the items within his/her effective control;
- Will take necessary security precautions to protect against the unauthorized export of technology; and
- Will not ship or hand-carry the items without first consulting with the OEC.

A license exemption⁵² may be available for ITAR-controlled technical data transmitted outside the U.S. if the individual transmitting the technical data can certify that:

- The technical data is to be used overseas solely by a U.S. Person(s);
- The U.S. person(s) overseas is an employee of the University of Missouri or the U.S. Government and is not an employee of a foreign subsidiary;

⁵⁰ See OEC Standard Operating Procedure “I-129 Deemed Export Attestation” at http://research.missouri.edu/policies/by_department

⁵¹ 15 CFR §740.9

⁵² 22 CFR §125.4(9)

- If the information is “Classified,” for national security purposes under the National Industrial Security Program (NISP), it will be sent overseas in accordance with the requirements of the NISP Operating Manual (NISPOM); and
- No export will be made to countries embargoed under the ITAR.⁵³

All exceptions or exemptions must be documented and approved by the OEC with records maintained according to the applicable regulation and/or the OEC records retention Standard Operating Procedure.⁵⁴

I. TRAINING PROGRAMS

The OEC will prepare updated training materials and will ensure that employees or students engaged in an export controlled project receive the appropriate briefing. The OEC will also maintain records of training or briefings provided. General export control information and presentations will be available for the university community online at the OEC web page.⁵⁵

J. RECORDKEEPING

The OEC shall maintain export-related records consistent with the UM record retention policy and applicable agency requirements, and records shall be retained no less than five years after the project’s TCP termination date or license termination date, whichever is later.⁵⁶ Records that should be retained include all memoranda, notes, correspondence (including email), financial records, shipping documentation, as well as any other information related to the export activities.

K. CONTINUOUS MONITORING

In order to maintain the export compliance program and ensure consistent adherence to U.S. export laws, the OEC may conduct internal reviews of TCPs and certain projects. The purpose of the reviews is: (i) to identify possible violations; and (ii) to identify deficiencies in training, procedures, etc. that can be rectified.

L. DETECTING AND REPORTING VIOLATIONS

It is the policy of the OEC to voluntarily self-disclose violations as required by law.⁵⁷ MU personnel who suspect a violation has occurred must immediately notify the OEC, an Empowered Official, or report through the University of Missouri “Ethics and Compliance Hotline.” The OEC will conduct an internal review of the suspected violation and, as appropriate, will provide the cognizant government agency a thorough narrative account. Upon engagement with a government agency, the OEC will follow the government agency’s instructions concerning continued investigation and processing.

M. DISCIPLINARY ACTIONS

All UM personnel responsible for export controls and sanctions compliance or participating in restricted research projects shall be made aware of the substantial criminal and civil penalties imposed for violation of the export regulations including personal liability, monetary fines and

⁵³ 22 CFR §126.1 (Prohibited export, imports, and sales to or from certain countries)

⁵⁴ See the [Recordkeeping](#) section of this document.

⁵⁵ http://research.missouri.edu/compliance/export_controls/

⁵⁶ See OEC Standard Operating Procedure “Recordkeeping” at http://research.missouri.edu/policies/by_department

⁵⁷ See OEC Standard Operating Procedure “Violations” at http://research.missouri.edu/policies/by_department

imprisonment. Should disciplinary action be deemed necessary, appropriate action shall be taken as provided under the UM Collected Rules and Regulations and/or the UM Human Resources Policy Manual.

Exhibit A

THE UNITED STATES MUNITIONS LIST

22 CFR §121.1

Category I.	Firearms, Close Assault Weapons and Combat Shotguns
Category II.	Guns and Armament
Category III.	Ammunition/Ordinance
Category IV.	Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
Category V.	Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
Category VI.	Surface Vessels of War and Special Naval Equipment
Category VII.	Ground Vehicles
Category VIII.	Aircraft and Related Articles
Category IX.	Military Training Equipment and Training
Category X.	Personal Protective Equipment
Category XI.	Military Electronics
Category XII.	Fire Control, Laser, Imaging, and Guidance Equipment
Category XIII.	Materials and Miscellaneous Articles
Category XIV.	Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
Category XV.	Spacecraft and Related Articles
Category XVI.	Nuclear Weapons Related Articles
Category XVII.	Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
Category XVIII.	Directed Energy Weapons
Category XIX.	Gas Turbine Engines and Associated Equipment
Category XX.	Submersible Vessels and Related Articles
Category XXI.	Articles, Technical Data, and Defense Services Not Otherwise Enumerated

Exhibit B

THE COMMERCE CONTROL LIST

Supplement No. 1 to Part 774

Categories

- | | |
|--|--|
| 0 -- Nuclear Materials, Facilities and Equipment and Miscellaneous | 5 -- Telecommunications and Information Security |
| 1 -- Materials, Chemicals, "Microorganisms" and Toxins | 6 -- Lasers and Sensors |
| 2 -- Materials Processing | 7 -- Navigation and Avionics |
| 3 -- Electronics | 8 -- Marine |
| 4 -- Computers | 9 -- Aerospace and Propulsion |

Product Groups

- | | |
|--|---------------|
| A. Equipment, Assemblies and Components | D. Software |
| B. Test, Inspection and Production Equipment | E. Technology |
| C. Materials | |

Reasons for Control

- | | |
|------------------------------------|-------------------------------|
| AT = Anti-Terrorism | NS = National Security |
| CB = Chemical & Biological Weapons | NP = Nuclear Nonproliferation |
| CC = Crime Control | RS = Regional Security |
| CW = Chemical Weapons Convention | SS = Short Supply |
| EI = Encryption Items | UN = United Nations Embargo |
| FC = Firearms Convention | SI = Significant Items |
| MT = Missile Technology | SL = Surreptitious Listening |

Country Chart⁵⁸

Countries	Reason for Control															
	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Guyana	X	X		X		X	X	X	X	X	X	X		X		
Haiti	X	X		X		X	X	X	X	X	X	X		X		
Honduras	X	X		X		X	X	X	X	X	X	X		X		
Hong Kong	X	X				X		X	X	X				X		
Hungary	X					X		X	X							
Iceland	X			X		X		X	X							
India	X	X	X	X	X	X	X	X	X	X		X		X		
Indonesia	X	X		X		X	X	X	X	X		X		X		

⁵⁸ If there is an "X" in the column based on the reason(s) for control of the 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 the ECCN and country of destination, no export license is needed unless exporting to an end-user or end-use of concern or any other General Prohibition applies.

Definitions

Arms Export Control Act (AECA) -- The AECA provides the authority to control the export of defense articles and defense services. The AECA charges the President to exercise this authority, which has been delegated to the Secretary of State. The International Traffic in Arms Regulation (ITAR) implements the AECA.

Commerce Control List – A list of items (including materials, software, and technology) under the export control jurisdiction of the Bureau of Industry and Security, U.S. Department of Commerce. These items may include purely civilian items, “dual use” items, or exclusively military items that are not controlled under the International Traffic in Arms Regulations (ITAR).

Commodity Jurisdiction (CJ) -- The purpose of a commodity jurisdiction request is to determine whether an item or service is covered by the USML and therefore subject to export controls administered by the U.S. Department of State pursuant to the AECA and the ITAR.

Controlled Unclassified Information (CUI) – Information that law, regulation, or government-wide policy requires to have safeguarding or disseminating controls, excluding classified information. (Classified information is information that Executive Order 13526 or the Atomic Energy Act of 1954 requires to have classified markings and protection against unauthorized disclosure.)

Controlled Technical Information (CTI) – Technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. CTI is marked with one of the distribution statements B through F. The term “CTI” does not include information that is lawfully publicly available without restrictions or is marked with distribution statement A. (“Technical Information” means technical data or computer software.)

Deemed Export – Releasing or otherwise transferring “technology” or source code (but not object code) to a foreign person in the United States. . Such a release is “deemed” to be an export to the home country or countries of the foreign person. Technology (or source code) is “released” for export when it is available to foreign persons for visual inspection (such as reading technical specifications, plans, blueprints, etc.) in which technical data is revealed; when it is exchanged orally; or when it is made available by practice or application under the guidance of persons with knowledge of the technology.

Defense Article – Any item or technical data (these include military and commercial, navigational, research satellite and space related items, equipment, vehicles, instrumentation, software, and materials), designated by the Department of State in the International Traffic in Arms Regulations. This term includes technical data recorded or stored in any electronic or physical form, models, mockups or other items that reveal technical data directly relating to items on the United States Munitions List. It does not include basic marketing information on function or purpose or general system descriptions.

Defense Service – Furnishing technical data or assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; or, military training of foreign units and forces.

Development – Related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.

“Dual Use” – In general, refers to items that have both commercial and military or proliferation applications. This term informally differentiates Export Administration Regulation (EAR)-controlled items that can be used both in military and other strategic uses and in civil applications from those whose primary function is weapons or military related use/design and are thus subject to the controls of the Department of State or subject to the nuclear related controls of the Department of Energy or the Nuclear Regulatory Commission.

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, software, or technical data subject to either EAR or ITAR to a foreign person in the United States (see “Deemed Export”).

Technology, software, or technical data is “released” for export through:

- (1) Visual inspection by a foreign person 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 (EAR) – Export Administration Regulations are issued by the United States Department of Commerce, Bureau of Industry and Security (BIS) under laws relating to the control of certain exports, re-exports, and activities related to items on the Commerce Control List.

Export Control Classification Number (ECCN) – An alpha-numeric designation (i.e., 1A984 or 4A001) used to identify items for export control purposes. An ECCN categorizes items based on the nature of the product, i.e. type of commodity, technology or software and its respective technical parameters. The ECCN provides valuable information on the reasons for control of the item, which transactions may require an export license based on the country of destination, and which license exceptions, if any, may apply. All ECCNs are listed in the Commerce Control List (CCL). Items that are “subject to the EAR” but not identified on the CCL are identified by the designator “EAR99.”

Empowered Official – A U.S. person who is legally empowered in writing by the University to sign ITAR export license applications or other requests for approval on behalf of MU; who understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability, and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations.

The Empowered Official has the independent authority to (i) inquire into any aspect of a proposed export or temporary import by the applicant, (ii) verify the legality of the transaction and the accuracy of the information to be submitted; and (iii) refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

Foreign Assets Control Regulations (FACR) – Foreign Assets Control Regulations are issued by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), which administers and enforces economic 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.

Foreign Person(s) – Persons who are not U.S. citizens, aliens who are not “Lawful Permanent Residents” (Green Card), [8 USC § 1101(a)(20)] or other “Protected Individuals” under the Immigration and Naturalization Act [8 USC §1324b(a)(3)] designated an asylee, refugee, or a temporary resident under amnesty provisions. A foreign person also means any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do business in the U.S.

Fundamental Research – “Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly...as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security concerns.”-National Security Decision Directive 189 Also defined in the EAR at [§734.8\(c\)](#) as “research in science, engineering, or mathematics, the results 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.”

Information or Informational Materials -- The term information or informational materials includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds. (31 CFR §560.315)

International Traffic in Arms Regulations (ITAR) – International Traffic in Arms Regulations are issued by the Department of State, which has responsibility for the control of the permanent and temporary export and temporary import of defense articles and services.

License – A document issued by the appropriate export agency that authorizes an export, reexport, or other regulated activity as outlined on a license application prepared and submitted by the University.

License Exception – An authorization described in the EAR that allows the export or reexport, under specific conditions, items subject to the EAR that otherwise would require a license. Unless otherwise indicated, these License Exceptions are not applicable to exports under the licensing jurisdiction of agencies other than the Department of Commerce.

Production – Means all production stages, such as: product engineering, manufacture, integration, assembly (mounting) inspection, testing, and quality assurance.

Publication or Dissemination Restriction – Any contractual language or verbal agreement that allows a sponsor to prohibit, approve, or otherwise limit publications resulting from research and development. Allowing a sponsor a period of time to review proposed publications for comment or to request removal of proprietary or pre-patentable material does not necessarily constitute a publication restriction.

Public Domain – Information which is published and which is generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions which 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 can obtain documents; (5) through patents available at any patent office; (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 (i.e., unlimited

distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency; and (8) through fundamental research.

Reexport – Shipment or transfer from one country to another, or a deemed export to a citizen of a country other than the one in which the deemed export occurs.

Release – Technical data (ITAR) and technology or software/source code (EAR) are “released” when revealed through visual or other inspection by a foreign person, or oral or written exchanges with foreign persons.

Restricted Parties – Individuals and entities with whom the University may be prohibited by law from engaging in export transactions, or who may require a license or other government approval in order for the University to export to or engage in controlled transactions. These include individuals and entities appearing lists that include, but are not limited to: (1) the Department of Commerce Denied Persons List, Entity List, and Unverified List; (2) the Department of State Debarred Parties List and Designated Terrorist List; and (3) the Department of Treasury Specially Designated Nationals and Blocked Persons List.

Restricted Research – University research, development, or testing that is subject to export controls such as the EAR or ITAR, sanctions regulations, controlled information restrictions, and/or security restrictions and may require a license or other government approval for foreign person participation. Research is considered restricted if it requires the University to: (i) accept publication restrictions; (ii) accept access and dissemination controls; (iii) accept federally funded research with contract-specific national security restrictions; (iv) accept third-party controlled items or information; or (v) provide 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 person participation.

(Re)transfer – A change in the end use or end user within the same foreign country.

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

Technical Assistance – Technical assistance may take forms such as instruction, skills, training, working knowledge, consulting services and may involve transfer of “technical data.”

Technical Data – Information which is 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, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, instructions or documentation.

Technology – Specific information necessary for the “development”, “production”, or “use” of a product. The information takes the form of ‘technical data’ or ‘technical assistance’.

[United States Munitions List \(USML\)](#) – Enumerates the articles, services and related technical data designated by the Department of State as defense articles and defense services pursuant to the Arms Export Control Act.

Use – Operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing.

U.S. Person – Any individual who possesses U.S. citizenship, any individual who is granted U.S. permanent residence (“Green Card” holder), or any individual who is granted status as a “protected person” under 8 U.S.C. 1324b(a)(3). Any corporation/business/organization/group incorporated in the United States under U.S. law is also considered a U.S. Person, as is any part of the U.S. Government.

Commonly Used Acronyms

AECA	Arms Export Control Act
BIS	Bureau of Industry and Security
CCL	Commerce Control List
CJ	Commodity Jurisdiction Request
DDTC	Directorate of Defense Trade Controls
EAR	Export Administration Regulations
ECCN	Export Control Classification Number
FACR	Foreign Assets Control Regulations
ITAR	International Traffic in Arms Regulations
OEC	Office of Export Compliance
OFAC	Office of Foreign Asset Controls
TCP	Technology Control Plan
USML	United States Munitions List

References

Arms Export Control Act (html)	22 USC §2778
Atomic Energy Act of 1954, as amended (html)	42 USC §2011
Bureau of Industry and Security, U.S. Department of Commerce (BIS)	
Directorate of Defense Trade Controls, U.S. Department of State (DDTC)	
DoD Instruction 5230.24, "Distribution Statements of Technical Documents	
DoD Policy Memorandum Contracted Fundamental Research (26 Jun 2008)	
DoD Policy Memorandum Fundamental Research (24 May2010)	
Executive Order 13526 Classified National Security Information	
Executive Order 13556 Controlled Unclassified Information	
Export Administration Act of 1979 (pdf)	50 USC §§4601-4623
Export Administration Regulations (EAR) (html) (.pdf)	15 CFR §§730-774
Foreign Assets Control Regulations (FACR) (html)	31 CFR §§500-599
International Traffic in Arms Regulations (ITAR) (html)	22 CFR §§120-130
National Industrial Security Program Operating Manual	
National Security Decision Directive 189 (21 Sep 1985)	