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ROCHESTER INSTITUTE OF TECHNOLOGY

**EXPORT COMPLIANCE PROGRAM**

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Message of the Provost

Rochester Institute of Technology is committed to full compliance with the laws and regulations of the United States, including those controlling the export of technologies, services and products. As a center of higher education, many of RIT's activities involve research on cutting-edge technologies. While most of the teaching and research activities at RIT are exempt from control as fundamental research, certain sponsored research may involve controlled technologies and trigger the application of U.S. export controls, thereby limiting the participation of foreign students and researchers in such projects.

RIT is conscious of the fact that it is of utmost importance to the university, its students and faculty to be able to provide education and research for the public good. The success of everyone from undergraduate students through senior faculty is measured by publication. On the other hand, the export regulators have placed the responsibility on the university to understand and comply with export controls. Although many of RIT's activities involve U.S. Government agencies, sponsorship of RIT's activities by such agencies does not supersede or remove RIT's responsibility to comply with U.S. export laws. Unauthorized exports can have a serious impact on U.S. national security and can result in the imposition of administrative, civil and criminal penalties against RIT and its employees.

For these reasons, it is the responsibility of every RIT employee to ensure that RIT's activities are in compliance with the laws of the United States. This requires that each employee fully understand and follow these laws. To assist in this understanding and compliance, RIT has developed an Export Compliance Program. Compliance requires each employee to continually scrutinize his or her activities to ensure that all teaching and research are conducted pursuant to the appropriate regulatory requirements. Any questions concerning this Export Compliance Program should be directed to the Office of Compliance & Ethics.

Jeremy Haefner

*Provost and Vice President for Academic Affairs*

List of Abbreviations

BIS Department of Commerce Bureau of Industry and Security

CCL Commerce Control List

CJ Commodity Jurisdiction

DDTC Department of State Directorate of Defense Trade Controls

DoD Department of Defense

EAR Export Administration Regulations

ECCN Export Control Classification Number

ITAR International Traffic in Arms Regulations

OFAC Department of the Treasury Office of Foreign Assets Control

PI Principal Investigator

SDN List Specially Designated Nationals and Blocked Persons List

SRS Sponsored Research Services

TAA Technical Assistance Agreement

TCP Technology Control Plan

USML United States Munitions List

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OVERVIEW OF EXPORT CONTROLS

# I. Introduction

The U.S. export control system generally requires export licensing for defense items, for items that have both commercial and military applications, and for exports to sanctioned persons and destinations. U.S. national security, economic interests and foreign policy shape the U.S. export control regime. The export laws and regulations aim at achieving various objectives, such as preventing the proliferation of weapons of mass destruction, advancing the U.S. economic interests at home and abroad, aiding regional stability, implementing anti-terrorism and crime controls, and protecting human rights.

These controls generally restrict the export of products and services based on the type of product and the destination of the export. In both the defense and high-technology sectors, the U.S. Government tightly regulates the export not only of equipment and components, but also of technology. Technology includes technical data, such as blueprints and manuals, as well as design services (including the transfer of “knowledge”) and training. U.S. laws assert jurisdiction over U.S.-origin equipment and technology even after it is exported (*i*.*e*., restricting the re-export or re-transfer to third parties). In addition to general export licensing, the United States maintains economic embargoes against a number of countries whose governments consistently violate human rights or act in support of global terrorism. Such embargoes bar most transactions by U.S. persons with these countries.

Three principal agencies regulate exports from the United States: the U.S. Department of State Directorate of Defense Trade Controls (DDTC) administers export control of defense exports; the U.S. Department of Commerce Bureau of Industry and Security (BIS) administers export control of so-called "dual-use" technology exports; and the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) administers exports to embargoed countries and designated entities.

# II. Export Controls and University Research

U.S. national security and economic interests are heavily dependent on technological innovation and advantage. Many of the nation's leading-edge technologies, including defense-related technologies, are being discovered by U.S. and foreign national students and scholars in U.S. university research and university-affiliated laboratories. As the Department of Defense (DoD) invests less and less of its funding on in-house research and development, university-based discoveries are becoming increasingly vital to national security and other U.S. interests. U.S. policymakers recognize that foreign students and researchers have made substantial contributions to U.S. research efforts, but the potential transfer of knowledge of controlled defense or dual-use technologies to their home countries could have significant consequences for U.S. national interests. The U.S. export control agencies place the onus on universities to understand and comply with the regulations.[[1]](#footnote-1)

Export controls present unique challenges to universities and colleges because they require balancing concerns about national security and U.S. economic vitality with traditional concepts of unrestricted academic freedom, and publication and dissemination of research findings and results. University researchers and administrators need to be aware that these laws may apply to research, whether sponsored or not. However, it also is important to understand the extent to which the regulations do not affect normal university activities.[[2]](#footnote-2)

# III. Export of Defense Articles and Services – International Traffic in Arms Regulations

Under the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130[[3]](#footnote-3), DDTC administers the export and re-export of defense articles, defense services and related technical data from the United States to any foreign destination, or to any foreign person, whether located in the United States or abroad. Section 121.1 of the ITAR contains the *United States Munitions List* (USML) and includes the commodities and related technical data and defense services controlled for export purposes. The ITAR controls not only end items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that make up the end item, or are otherwise incorporated into the item. Certain non-military items, such as commercial satellites, and certain chemical precursors, toxins, and biological agents, are also controlled.

## A. Items Controlled Under the ITAR

The ITAR uses three different terms to designate export controlled items – defense articles, technical data, and defense services. With rare exceptions, if an item contains any components that are controlled under the ITAR, the entire item is controlled under the ITAR. For example, a commercial radio that would normally not be controlled under the ITAR, becomes a defense article if it contains an ITAR-controlled microchip.

### 1. Defense article

is any piece of equipment (or component, or part thereof) or *technical data* that is specifically designed, developed, configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the USML.[[4]](#footnote-4)

### 2. Technical data

is any information for the design, development, assembly, production, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings or assembly instructions, operations and maintenance manuals, and the like, as well as e-mail or telephone exchanges where technical data are discussed.**[[5]](#footnote-5)**

### 3. Defense service

means providing assistance, including training, to a foreign person in the United States or abroad in the design, manufacture, repair, or operation of a defense article, as well as providing military training or advice to foreign military forces. Defense services also include informal collaboration, conversations, or interchanges concerning technical data.**[[6]](#footnote-6)**

## B. The USML Categories

The USML designates particular categories and types of equipment as defense articles and associated technical data and defense services.[[7]](#footnote-7) The USML divides defense items into 21 categories, listed below. An electronic version of the USML is available on the Department of State website at: <http://www.pmddtc.state.gov/regulations_laws/documents/consolidated_itar/Part_121.pdf>.

I Firearms, Close Assault Weapons and Combat Shotguns

II Guns and Armament

III Ammunition / Ordnance

IV Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

V Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents

VI Vessels of War and Special Naval Equipment

VII Tanks and Military Vehicles

VIII Aircraft and Associated Equipment

IX Military Training Equipment and Training

X Protective Personnel Equipment and Shelters

XI Military Electronics

XII Fire Control, Range Finder, Optical and Guidance and Control Equipment

XIII Auxiliary Military Equipment

XIV Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

XV Spacecraft Systems and Associated Equipment

XVI Nuclear Weapons, Design and Testing Related Items

XVII Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated

XVIII Directed Energy Weapons

XIX [Reserved]

XX Submersible Vessels, Oceanographic and Associated Equipment

XXI Miscellaneous Articles

## C. Classification

While DDTC has jurisdiction over deciding whether an item is ITAR- or EAR-controlled, it encourages exporters to self-classify the item. If doubt exists as to whether an article or service is covered by the USML, upon written request in the form of a Commodity Jurisdiction (CJ) request, DDTC will provide advice as to whether a particular article is a defense article subject to the ITAR, or a dual-use item subject to Commerce Department licensing.[[8]](#footnote-8) Determinations are based on the origin of the technology (*i*.*e*., as a civil or military article), and whether it is predominantly used in civil or military applications. University employees should contact the Office of Compliance & Ethics when classifying an item. If RIT needs to obtain a CJ determination, the Office of Compliance & Ethics will file the CJ request with DDTC.[[9]](#footnote-9)

## D. Definition of Export Under the ITAR

The ITAR defines the term “export” broadly. The term applies not only to exports of tangible items from the U.S., but also to transfers of intangibles, such as technology or information. The ITAR defines as an “export” the passing of information or technology to foreign nationals even in the United States – a concept generally referred to as “deemed export.”[[10]](#footnote-10) The following are examples of exports:

### 1. Exports of articles from the U.S. territory

* Taking a defense article out of the United States
* Transferring title or ownership of a defense article to a foreign person, in or outside the United States

### 2. Extra-territorial transfers

* The re-export or re-transfer of defense articles from one foreign person to another, not previously authorized (*i*.*e*., transferring an article that has been exported to a foreign country from that country to a third country)
* Transferring the registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite covered by the USML, whether the transfer occurs in the United States or abroad

### 3. Export of intangibles

* Disclosing technical data to a foreign person, whether in the United States or abroad, through oral, visual, or other means (commonly referred to as "*deemed export*")
* Performing a defense service for a foreign person, whether in the United States or abroad

## E. Authorization to Export

As a general rule, any U.S. person or entity that manufactures, brokers, or exports defense articles or services must be registered with DDTC.[[11]](#footnote-11) Registration is required prior to applying for a license or taking advantage of a license exemption.[[12]](#footnote-12) Once the registration is complete, an exporter may apply for an export authorization by submitting a relatively simple license application for the export of defense articles or technical data; or a complex license application, usually in the form of a Technical Assistance Agreement (TAA), for complex transactions that will require the U.S. entity to provide defense services. Most types of applications also contain additional certifications / transmittal letters, supporting documentation, and in some cases, non-transfer and use certification from the licensee and / or the foreign government of the licensee.

A university involved in research, the findings of which are controlled under the ITAR, must register with DDTC, unless the university is engaged only in the creation of unclassified technical data, or is engaged only in the fabrication of articles for experimental or scientific purpose, including research and development.[[13]](#footnote-13) However, if the university desires to involve foreign nationals in ITAR-controlled research, it must register with the ITAR to apply for employment authorizations or take advantage of any license exemptions. License exemptions specific to universities, as well as licensing procedures, are described in detail in the *Key Issues* section, below.

## F. List of Embargoed Countries Under DDTC Regulations

*ITAR Prohibitions*. In general, no ITAR exports may be made either under license or license exemption to Belarus, Burma, China, Cuba, Eritrea, Iran, North Korea, Sudan,[[14]](#footnote-14) Syria, and Venezuela. Further, exports to Afghanistan, Congo, Côte d'Ivoire, Cyprus, Haiti, Fiji, Iraq, Lebanon, Liberia, Libya, Somalia, Sri Lanka, Vietnam, Yemen, and Zimbabwe are subject to more limited restrictions. A complete list of U.S. arms embargoes is available at: <http://www.pmddtc.state.gov/embargoed_countries/index.html>.

# IV. Export of Commercial Dual-Use Goods and Technology – Export Administration Regulations

BIS regulates the export of commercial products and technology under the Export Administration Regulations, 15 C.F.R. Parts 730-774 (EAR).[[15]](#footnote-15) While there are some parallels to the ITAR, there also are some major differences in how the regulations and the relevant agencies function.

They are similar in that both agencies focus on “technology transfer” and have been increasingly focused on enforcement. They differ in that the EAR covers a wider range of products and technology, the product classification process is highly technical, and most importantly, the need for a license depends not only on the type of product but on its final destination.

## A. Items Controlled Under the EAR

Generally, all items of U.S.-origin, or physically located in the United States, are subject to the EAR. Foreign manufactured goods are generally exempt from the EAR re-export requirements if they contain less than a *de minimis* level of U.S. content by value. Such *de minimis* levels are set in the regulations relative to the ultimate destination of the export or re-export.

The EAR requires a license for the exportation of a wide range of items with potential “dual” commercial and military use, or otherwise of strategic value to the United States (but not made to military specifications). However, only items listed on the *Commerce Control List* (CCL) require a license prior to exportation. Items not listed on the CCL are designated as EAR99 items and generally can be exported without a license, unless the export is to an embargoed country, or to a prohibited person or end-use.[[16]](#footnote-16) The following summarizes the types of items controlled under the EAR:

* **Commodities**. Finished or unfinished goods ranging from high-end microprocessors to airplanes, to ball bearings.
* **Manufacturing Equipment**. This includes equipment specifically for manufacturing or testing controlled commodities, as well as certain generic machines, such as computer numerically controlled (CNC) manufacturing and test equipment.
* **Materials**. This includes certain alloys and chemical compounds.
* **Software**. This includes software specifically associated with particular commodities or manufacturing equipment, as well as any software containing encryption.
* **Technology**. Technology, as defined in the EAR, includes both technical data and services. Unlike the ITAR, there is generally no distinction between the two. However, the EAR may apply different standards to technology for “use” of a product than for the technology for the “design” or “manufacture” of the product.

## B. The CCL Categories

The CCL provides a list of very specific items that are controlled. The CCL is similar to the "dual-use" list adopted by other countries under the Wassenaar Arrangement,[[17]](#footnote-17) although the CCL has additional items. The CCL is divided into the nine categories below. The CCL is available online at <http://www.bis.doc.gov/policiesandregulations/ear/index.htm>.

|  |  |  |
| --- | --- | --- |
|  | CATEGORIES |  |
|  | 0. Nuclear related items & miscellaneous items  1. Chemical compounds, microorganisms and toxins  2. Materials processing  3. Electronics  4. Computers  5. pt-1 Telecommunications  5. pt-2 Information security (encryption)  6. Sensors & lasers  7. Navigation and avionics  8. Marine (vessels, propulsion, and equipment)  9. Aerospace and propulsion (includes aircraft & aircraft engines) |  |

## C. Classification

As discussed in *Overview*, Section III.C, DDTC has jurisdiction to decide whether an item is ITAR- or EAR-controlled. DDTC encourages exporters to self-classify the product. If doubt exists, the Office of Compliance & Ethics may submit a CJ request to DDTC to determine whether an item is ITAR- or EAR- controlled.[[18]](#footnote-18)

Once it is determined that an item is EAR-controlled, the exporter must determine its ECCN. BIS has two assistance procedures where the proper ECCN classification or licensing requirements are uncertain. A party can either request that BIS issue a "classification ruling" for a particular item, in which case BIS will determine or verify the ECCN of an item, or alternatively, a party can request an “advisory opinion” as to whether a license is required or would be granted for a particular transaction.[[19]](#footnote-19) While BIS provides assistance with determining the specific ECCN of a dual-use item listed on the CCL, if doubt exists as to whether an item is ITAR- or EAR-controlled, BIS will stay its classification proceeding and forward the issue to DDTC for jurisdiction determination.

Unlike the ITAR, for classification purposes BIS generally looks at the classification of the complete product being exported rather than at the classification of each subcomponent of the item (*i*.*e*., "black box" treatment), as opposed to the "look through" treatment under the ITAR.

## D. Definition of Export and Re-export Under the EAR

### 1. Export

. Export is defined as the actual shipment or transmission of items subject to the EAR out of the United States. The EAR is similar to the ITAR in that it covers intangible export of “technology,” as well as physical exports of items.

### 2. Deemed Export

. Under the EAR, the release of technology to a foreign national in the United States is "deemed" to be an export, even though the release took place within the United States. Deemed exports may occur through such means as a demonstration, oral briefing, or plant visit, as well as the electronic transmission of non-public data that will be received abroad.

3. **Re-export**

. Similarly to the ITAR, the EAR attempts to impose restrictions on the re-export of U.S. goods, *i.e*., the shipment or transfer to a third country of goods or technology originally exported from the United States.

4. **Deemed Re-export**

. Finally, the EAR defines "deemed" re-exports as the release of technology by a foreign national who has been licensed to receive it to the national of another foreign country who has not been licensed to receive the technology. For example, ECCN 5E001 technology may be exported to a university in Ireland under the license exception for technology and software, but might require a deemed re-export license authorization before being released to a Russian foreign national student or employee of that university in Ireland.

## E. Authorization to Export

Once determined that a license is required, an exporter can apply for export authorization from BIS. Unlike the ITAR, there is no requirement for formal registration prior to applying for export authorization. Additionally, the EAR has no equivalent to the TAA used in ITAR exports.

The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 C.F.R. Part 740, as well as review of the notes on applicable license exceptions following the Export Control Classification Number (ECCN) entry on the CCL.[[20]](#footnote-20)

Each category of the CCL contains ECCNs for specific items divided into five subcategories, A through E: "A" refers to specific systems or equipment (and components); "B" refers to test, inspection and production equipment; "C" refers to materials; "D" refers to software; and "E" refers to the technology related to that specific equipment. For example, a civil Global Positioning System (GPS) receiver would be classified under ECCN 7A105. The "7" refers to Category 7, *Navigation and Avionics*, and the "A" refers to the subcategory, *i*.*e*., equipment. Generally, if the last three digits begin with a 'zero' or 'one' (*e*.*g*., 7A001), the product is subject to stringent controls, whereas if the last three digits are a "9XX" (*e*.*g*., 7A991), then generally there are fewer restrictions on export.

Once an item has been classified under a particular ECCN, a person can determine whether a license is required for export to a particular country. The starting place is the information following the ECCN heading. It contains a "List of Items Controlled" that describes the specific items covered or not covered by the ECCN.

(1) *Determine Reason for Controls.* The "License Requirements" section provides notations as to the reasons for control. These reasons include:

|  |  |  |  |
| --- | --- | --- | --- |
| 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 Security |
| SS | Short Supply | XP | Computers |
| SI | Significant Items |  |  |

The most commonly used controls are Anti-Terrorism and National Security, while other controls only apply to limited types of articles. For example, ECCN 7D994 lists “License Requirements: Reason for Control: AT” (*i.e.*, anti-terrorism) and the following:

|  |  |
| --- | --- |
| Control(s) | Country Chart |
| AT applies to entire entry | AT Column 1 |

(2) *Apply Country Chart*. Once an item is identified as meeting the criteria for a particular ECCN, the user can refer to the chart found at 15 EAR § 738, Supp. 1. If the particular control applies to that country, a license is required. For example, Syria has an “X” under AT Column 1, therefore a license would be required unless an exception applied.

(3) *Exceptions*. The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 EAR § 740, as well as review of the notes on applicable license exceptions following the ECCN entry. These exceptions include:

|  |  |
| --- | --- |
| LVS | Excepts items of limited value (value is set under each ECCN). |
| GBS | Excepts items controlled for national security reasons to Group B countries. |
| CIV | Excepts items controlled for national security reasons to particular countries where end-user is civilian. |
| TSR | Excepts certain technology and software to certain countries. |
| APP | Excepts computer exports to certain countries. |
| TMP | Excepts certain temporary exports, re-exports, or imports,  including items moving through the U.S. in transit. |
| RPL | Excepts certain repair and replacement parts for items already exported. |
| GOV | Excepts export to certain government entities. |
| GFT | Excepts certain gifts and humanitarian donations. |
| TSU | Excepts certain mass-market technology and software. |
| BAG | Baggage exception. |
| AVS | Excepts aircraft and vessels stopping in the U.S. and most exports of spare parts associated with aircraft and vessels. |
| APR | Allows re-export from certain countries. |
| ENC | Excepts certain encryption devices and software. |
| AGR | Agricultural commodities. |
| CCD | Excepts consumer communication devices |
| STA | Excepts certain exports, re-exports and in-country transfers for strategic trade purposes |
|  |  |

License exceptions specific to universities, as well as licensing procedures, are described in detail in the *Key Issues* section, below.

## F. List of Embargoed Countries Under BIS Regulations

There is an overlap between the embargoed countries under BIS and OFAC regulations. Currently, the countries under embargo are Cuba, Iraq, North Korea, Iran, Rwanda, and Syria. For more details, see <http://www.bis.doc.gov/policiesandregulations/ear/746.pdf>.

# V. OFAC Economic Sanctions Program and Barred Entities Lists

Generally, OFAC is charged with administering exports to sanctioned countries and designated persons. Given ever shifting U.S. foreign policy, these sanctions are constantly changing. While most embargo regulations are administered by OFAC, BIS has jurisdiction over certain exports prohibitions, as is the case with exports to Syria. Economic sanctions programs are country-specific and very detailed in the specific prohibitions. One should be careful not to assume that a certain transaction that was allowable with one embargoed country is allowable in the next embargoed country. Regulations vary even between two of the most restrictive embargoes the U.S. maintains, those against Iran and Cuba.

## A. Countries Subject to a Comprehensive U.S. Embargo

U.S. economic sanctions, or embargo regulations, broadly prohibit most transactions between a U.S. person and persons or entities in an embargoed country, such as Cuba, Iran, North Korea, Sudan,[[21]](#footnote-21) and Syria.[[22]](#footnote-22) (Note that while the OFAC embargo on North Korea appears to be more limited in nature, you should treat it as a comprehensive embargo for practical purposes. In addition, there is an overlap with BIS regulations on North Korea.) This prohibition includes importation and exportation of goods and services, whether direct or indirect, as well as "facilitation" by a U.S. person of transactions between foreign parties and an embargoed country. OFAC has imposed more limited sanctions on Burma.

## B. List-Based Sanctions

In addition, there are list-based sanctions programs that block particular transactions or require licenses under certain circumstances for exports to certain individuals or entities. These list-based sanctions programs include the Somalia program, Counter Narcotics Trafficking program, Belarus program, Liberia program, Iraq program,[[23]](#footnote-23) and many others.

All individuals and entities subject to these list-based sanctions are identified on OFAC's Specially Designated Nationals (SDN List).[[24]](#footnote-24) See Section V.F. below. A number of the individuals and entities named on the SDN List are known to move from country to country but remain subjects of the SDN List. The prohibition against dealing with individuals and entities on the SDN List extends to entities owned or controlled by SDNs.

## C. U.S. Person for Purposes of OFAC Embargoes

The term U.S. person includes any U.S. entity, any citizen or permanent resident alien, and any person or entity physically present in the United States. The Cuba embargo extends to the foreign subsidiaries of a U.S. person. **This is particularly relevant to RIT foreign campuses**.

## D. Jurisdictional Limits of OFAC Embargo Programs

Generally, non-U.S. companies or entities operating outside of the United States are not subject to U.S. jurisdiction, unless they are handling U.S.-origin products, or in certain cases, where the program extends to the foreign subsidiaries of a U.S. person. Under U.S. law, the U.S. Government retains jurisdiction over U.S. products even after they are exported. A product or technology is generally considered of U.S.-origin for export control purposes if manufactured in the United States. Foreign manufactured goods containing U.S. components may also be considered of U.S.-origin for export purposes, if the foreign manufactured product contains above the *de minimis* level of U.S. content by value. The *de minimis* levels are 10 percent for embargoed countries.

The practical application of the extraterritoriality application of the U.S. embargoes is that a U.S. person may not export a U.S.-origin product or provide services, if he or she has reason to know that the end-destination of such product or service is an embargoed country or a designated individual.

## E. Exceptions to the Prohibition on Exportation and Facilitation

Certain transactions of a humanitarian nature, such as the donation of food and medicines, or **informational materials**, are generally authorized.[[25]](#footnote-25) In addition, some embargo programs provide for sales for inventory, *i*.*e*.,the sale of a product to a third country for inventory, even if the U.S. person has knowledge that some percentage of the product may be resold to an embargoed country, or commingled or incorporated into foreign manufactured products provided that the goods are not *exclusively* or *predominantly* destined to an embargoed country.

## F. Terrorist and Other Barred Entity Lists

Various 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. Particularly since 9/11, U.S. companies are beginning to become more assertive in attempting to place contractual terms with foreign companies related to these lists. Such lists must be screened to ensure that the university does not engage in a transaction with a barred entity.

* **Specially Designated Nationals and Blocked Persons List (SDN List)**. Maintained by OFAC, this is a list of barred terrorists, narcotics traffickers, and persons and entities associated with list-based sanctions. Generally, all transactions with such persons are barred. The *SDN List* is available at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.
* **List of Debarred Parties**. The Department of State bars certain persons and entities from engaging in the export or re-export of items subject to the USML (available at: <http://www.pmddtc.state.gov/compliance/debar.html>). Note that the number of countries subject to a U.S. arms embargo is much broader than those subject to OFAC embargoes. *See* <http://www.pmddtc.state.gov/embargoed_countries/index.html>.
* **Denied Persons List**. These are individuals and entities that have had their export privileges revoked or suspended by BIS. The *Denied Persons List* is available at: <http://www.bis.doc.gov/dpl/Default.shtm>.
* **Entity List**. These are entities identified as being involved in proliferation of missile technology, weapons of mass destruction, and related technologies. The *Entity List* is available at: <http://www.bis.doc.gov/Entities/Default.htm>.
* **Unverified List**. These are foreign persons and entities for which BIS has been unable to verify the nature of their operations. While transactions with these entities are not barred, special due diligence is required. The *Unverified List* is available at: <http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html>.
* **Excluded Parties List**. These are entities that have been barred from contracting with U.S. Government agencies. In general, companies cannot contract with such parties in fulfilling a U.S. Government contract, either as prime or sub-contractor. The *EPLS* is available at: <http://www.epls.gov/>.
* **Nonproliferation Sanctions** maintained by the Department of State. These lists are available at: <http://www.state.gov/t/isn/c15231.htm>.

# VI. Anti-Boycott Restrictions

The anti-boycott rules were implemented to prevent U.S. business from participating directly or indirectly in the Arab League’s boycott of Israel. The laws prevent U.S. persons from doing business under terms that would restrict that person’s ability to do business with other countries under a boycott not recognized by the United States. The Arab League’s boycott has lessened over the years, but still remains in effect in some countries. These restrictions are enforced by BIS. The applicable regulations are at 15 C.F.R. Part 760. In addition, the Department of the Treasury administers its own set of anti-boycott regulations, with similar reporting requirements, but with differing triggering events. Any contractual clause that indicates a request to boycott a country should be considered carefully; note that even if RIT refuses to engage in the boycott request, it may still be under an obligation to report the request.

Anti-boycott restrictions are most likely to appear in dealings with entities in certain Arab countries. As of this writing, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen continue to impose boycott restrictions on Israel and companies that do business with Israel. Iraq is not included in this list, but its status with respect to the future lists remains under review by the Department of Treasury.[[26]](#footnote-26) Egypt and Jordan have ceased participating in the boycott.

Note that there are strict reporting requirements even where the U.S. person refuses to participate in a requested boycott action.

#### a. Jurisdiction

These laws generally apply to any person or entity in the U.S., and to U.S. persons or entities abroad. As examples, the laws apply to:

* A foreign company’s affiliate or permanent office in the U.S.
* A U.S. company’s foreign affiliate’s transaction with a third-party if that affiliate is controlled by the U.S. company and involves shipment of goods to or from the U.S.

#### b. Red Flags

. The Commerce Department has set forth the following red-flags to look for as signs of anti-boycott restrictions:

* Agreements to refuse or actual refusals to do business with Israel or with blacklisted companies.
* Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality.
* Furnishing information about business relationships with Israel or with blacklisted companies.
* Furnishing information about the race, religion, sex, or national origin of another person.
* Paying or otherwise implementing letters of credit that include requirements to take boycott-related actions prohibited by the anti-boycott regulations.

These restrictions may appear on pre-printed portions of agreements.

#### c. Exception

. A major exception to the anti-boycott rules is the provision that permits compliance with the import requirements of a boycotting country. This exception permits firms to comply with import restrictions that prohibit imports from Israel or Israeli firms. The exception does not permit compliance with a boycott of blacklisted firms outside of Israel, nor does it allow for the issuance of a negative certificate-of-origin of any type. Other exceptions allow firms to provide country-of-origin information on the shipping documents, or information required for immigration or employment purposes. The exceptions can be found at 15 C.F.R. § 760.3.

#### d. Reporting

. Any U.S. person or entity who is asked to enter into an agreement or provide information that would violate anti-boycott laws must report this to BIS using Form BIS-621-P in accordance with 15 C.F.R. § 760.5. Information regarding the reporting of suspected anti-boycott activities can be found at <http://www.bis.doc.gov/ComplianceAndEnforcement/index.htm>. In addition, the U.S. Internal Revenue Service (IRS) requires U.S. taxpayers to report operations in or relating to boycotting countries and nationals and request to cooperate with boycott activities. *See* IRS Form 5713.

These reporting requirements apply even where the U.S. person or entity refuses to participate. Crossing out the boycott language in a proposed contract does not end the matter. The duty to report remains even where the requesting foreign entity accepts the redaction of the boycott language.

For more information on anti-boycott rules see  [http://www.bis.doc.gov/complianceandenforcement/antiboycottcompliance.htm.](%20http://www.bis.doc.gov/complianceandenforcement/antiboycottcompliance.htm.) The Office of Antiboycott Compliance has also set up an advice line for questions about the anti-boycott rules, which can be reached at (202) 482-2381.

# VII. Penalties for Export Violations

Generally, any person or entity that brokers, exports, or attempts to export a controlled item without prior authorization, or in violation of the terms of a license, is subject to penalties. Violators may incur both criminal and civil penalties. Although there is a maximum amount for a civil or criminal penalty, the actual penalty imposed is often multiplied. For instance, each shipment might be considered a separate violation, and BIS will often find multiple violations of related restrictions in connection to each shipment (*e*.*g*., export without a license, false representation, actions with knowledge of a violation, *etc*.). A series of violations occurring over a period of time may result in hundreds of thousands or even millions of dollars of penalties.

#### a. Defense exports

. The Arms Export Controls Act and the ITAR provide that wilful violations of the defense controls can be fined up to $1,000,000 per violation, or ten years of imprisonment, or both.**[[27]](#footnote-27)** In addition, the Secretary of State may assess civil penalties, which may not exceed $500,000 per violation.**[[28]](#footnote-28)** The civil penalties may be imposed either in addition to, or in lieu of, any other liability or penalty. The articles exported or imported in violation, and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition.**[[29]](#footnote-29)** Finally, the Assistant Secretary for Political-Military Affairs may order debarment of the violator, *i*.*e*., prohibit the violator from participating in export of defense items.**[[30]](#footnote-30)** While imposing criminal liability is fairly rare, many major U.S. companies have been assessed significant civil penalties in the millions of dollars.[[31]](#footnote-31) However, an investigation into the export practices of ITT Corporation, the leading manufacturer of military night vision equipment for the U.S. Armed Forces, resulted in the company's Night Vision Division being debarred from export of defense items for three years. In addition, pursuant to a plea agreement ITT agreed to pay a total of $100 million for its violations of defense export laws, one of the largest penalties ever paid in a criminal or civil case.[[32]](#footnote-32) More recently, in March 2010, BAE Systems (UK) pled guilty to violations of the Arms Export Controls Act and agreed to pay criminal fines in the amount of $400 million.[[33]](#footnote-33)

Both DDTC and BIS have stated that they believe that many universities are in violation of the regulations based on the low number of licenses received in relation to the number of foreign students enrolled.

#### b. Dual-use items exports and anti-boycott violations

. Similarly to the ITAR, violations of the EAR are subject to both criminal and administrative penalties. Fines for export violations, including anti-boycott violations, can reach up to $1,000,000 per violation in criminal cases, and $250,000 per violation in most administrative cases. In addition, criminal violators may be sentenced to prison time up to 20 years, and administrative penalties may include the denial of export privileges.**[[34]](#footnote-34)** A denial order is probably the most serious sanction because such order would bar a U.S. company from exporting for a period of years or bar a foreign entity from buying U.S. origin products for such period. In most instances, BIS reaches negotiated settlements in its administrative cases, as a result of voluntary self-disclosures of violations by companies and individuals. Voluntary disclosures constitute a major mitigating factor in determining penalties, reducing the amount of penalty by up to 50 percent, provided certain conditions are met, such as the implementing of a comprehensive compliance program.[[35]](#footnote-35)

#### c. Exports to an embargoed country

. Although potential penalties for violations of U.S. embargo and export laws vary depending on the country and product involved, an exporter may be subject to a maximum civil penalty of $250,000 per violation under OFAC regulations, with the exception of exports to Cuba.**[[36]](#footnote-36)** Violations of the Cuban embargo are subject to a maximum penalty of $65,000 per violation.**[[37]](#footnote-37)** The U.S. Government can also seek to criminally prosecute conduct where violations are willful and knowing. Such violations may reach $1,000,000 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 embargoes) may suspend the export privileges of a company.

In assessing penalties, DDTC, BIS, and OFAC will consider a number of factors, both aggravating and mitigating. Mitigating factors include (1) whether the disclosure was made voluntarily; (2) whether this was a first offense; (3) whether the company had compliance procedures; (4) whether steps were taken to improve compliance after discovery of violations; and (5) whether the incident was due to inadvertence, mistake of fact, or good faith misapplication of the laws. Aggravating factors include: (1) willful or intentional violations; (2) failure to take remedial action after discovery; (3) lack of a compliance program; and (4) deliberate efforts to hide or conceal a violation.

KEY ISSUES IN UNIVERSITY RESEARCH

# I. Deemed Exports

While exports are commonly associated with the shipment of a tangible item across the U.S. border, export controls have a much broader application. One of the most difficult issues with respect to export controls is the fact that an export is defined to include the transfer of controlled *information or services* to foreign nationals even when the transfer takes place within the territory of the United States. Though taking place inside the U.S., the transfer is “deemed” to be an export.

Both the ITAR and the EAR provide for deemed exports, even though in the case of defense exports the regulations generally speak of exports. While the ITAR distinguishes between the transfer of *technical data* and *defense services*, the EAR generally provides for the release of *technology*. Such transfer or release may be made through oral, visual, or other means. An export may occur through

* a demonstration;
* oral briefing;
* telephone call;
* leaving voicemail messages;
* laboratory or plant visit;
* presenting at conferences and meetings;
* faxes or letters;
* hand-carried documents, hardware or drawings;
* design reviews;
* the exchange of electronic communication;
* posting non-public data on the Internet or the Intranet;
* carrying a laptop with controlled technical information to an overseas destination; and
* collaborating with other universities / research centers through research efforts.

The issue of deemed exports is particularly relevant to university research because of the activities that normally take place at a university. While a university may be involved in the shipment abroad of equipment or machinery to participate in a conference, a joint project, or equipment loan programs, most often faculty and students are engaged in teaching and research. Whenever teaching or research are related to controlled equipment or technology, foreign students' or researchers' involvement may trigger export control compliance issues.

# II. U.S. and Foreign Persons

For purposes of defense and dual-use exports, 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 (8 U.S.C. § 1324b(a)(3) (*i.e*., certain classes of asylees).[[38]](#footnote-38) A **U.S. person** may be engaged in activities that are export controlled, unless there are some additional restrictions that limit participation to U.S. citizens. **For example, RIT has many research activities sponsored by NASA and the funding terms specifically limit participation in the research to U.S. citizens**.

The regulations define foreign person as anyone who is not a U.S. person. A special question arises with foreign persons who are dual nationals. While BIS looks at the person's most recent citizenship or permanent residence, DDTC also looks at the person's country of origin (*i.e*., country of birth). Therefore, under the ITAR, an export that generally may not require a license to a citizen of an EU country will still require licensing if the EU citizen was born in an embargoed country, such as Iran.

Note that the definitions for a U.S. and a foreign person differ for purposes of the OFAC embargoes. For a discussion, *see* *Overview* Section V.

# III. Information Not Subject to or Exempt from Export Controls

It is important to note that many of the activities that RIT engages in are not subject to export controls, or even 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 exemptions regarding the release of information in the context of university research and educational activities. Additionally, the embargo regulations have exceptions for certain information and informational materials.

## A. Publicly Available

The ITAR and the EAR do not control information which is published and generally accessible or available to the public. Note that even though the two regimes have similar scope, the ITAR and the EAR vary in the specific information that qualifies as publicly available.

* **ITAR provision:** The ITAR describes such information as information in the *public domain*.[[39]](#footnote-39) The information in the public domain may be obtained through:
  + Sales at newsstands and bookstores;
  + Subscription or purchase without restriction to any individual;
  + Second class mailing privileges granted by the U.S. Government;
  + At libraries open to the public;
  + Patents available at any patent office;
  + Conferences, meetings, seminars, trade shows or exhibitions **in the U.S.**, which are generally accessible to the public;
  + Public release in any form after approval of the cognizant U.S. Government agency;
  + Fundamental research in the U.S. (See *Fundamental Research* at *Key Issues* Section III.C.)
* **EAR provision:** The EAR does not control publicly available technology if it is already published or will be published.[[40]](#footnote-40) Information is published when it becomes generally accessible to the interested public in any form, including:
  + Publication in periodicals, books, print, *etc.*, available for general distribution **free or at cost**;
  + Readily available at libraries open to the public or university libraries;
  + Patents and open patents applications available at any patent office; and
  + Release at an open conference, meeting, seminar, trade show, or other gathering open to the public.

The EAR has provided some guidance with respect to "published" information.[[41]](#footnote-41) For example, a researcher who *plans* to publish in a foreign journal a scientific paper describing the results of his or her research does not require a license, even if the research relates to technology listed on the CCL, provided that there are no publication restrictions placed on publication. This approach is different from the ITAR, which does not provide for the *intent to publish* but requires that the results are published before the information can be exported. (While this ITAR rule appears illogical, there has been no clarification on this issue on from DDTC.)

Furthermore, while the EAR requires that the publication is available for distribution free or at price not to exceed the cost of reproduction and distribution, the ITAR does not have such a requirement.

Note also that the EAR does not specify where an open conference, meeting, seminar or trade show must take place, and thus allows, for example, participation at a foreign conference so long as the conference is open to all technically qualified members of the public, and attendees are permitted to take notes. Unlike the EAR, the ITAR limits participation in conferences and similar events to those that are taking place in the United States.

## B. Educational Information

Both the ITAR and the EAR address the issue of general educational information that is typically taught in schools and universities. Such information, even if it relates to items included on the USML or the CCL, does not fall under the application of export controls.

* **ITAR provision:** The ITAR specifically provides that the definition of "technical data" does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities.[[42]](#footnote-42)
* **EAR provision:** The EAR provides that publicly available "educational information" is not subject to the EAR, if it is released by instruction in catalogue courses and associated teaching laboratories of academic institutions.[[43]](#footnote-43)

Therefore, a university graduate course on design and manufacture of very high-speed integrated circuitry will not be subject to export controls, even though the technology is on the CCL. The key factor is the fact that the information is provided by instruction in a catalogue course. Foreign students from any country may attend this course because the information is not controlled.

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 accepted separate obligations with respect to publication or dissemination, *e*.*g*., a publication restriction under a federal funding.[[44]](#footnote-44)

## C. Fundamental Research

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

* Such information must be produced as part of basic and applied research in science and engineering and must be broadly shared within the scientific community (*i*.*e*., no restrictions on publication / dissemination of the research results); [[45]](#footnote-45)
* It is essential to distinguish the information or product that results from the fundamental research from the conduct that occurs within the context of the fundamental research;
* While the results of the fundamental research are not subject to export controls, an export license may be required if during the conduct of the research export controlled technology is to be released to a foreign national;
* Such export controlled technology may come from the research sponsor, from a research partner institution, or from a previous RIT research project.[[46]](#footnote-46)

It might be helpful to think of a project in terms of three phases: (1) pre-existing information; (2) conduct of research; and (3) research results. The researcher must then perform a two-step analysis:

**1) *Will there be any restrictions on publication or dissemination of the research results*?** If yes, the research does not qualify as fundamental. If no, then the research qualifies as fundamental and the end results may be released to foreign nationals.

**2) *Did the researcher use any pre-existing controlled data in conducting the fundamental research*?** If yes, no foreign nationals may participate in the conduct of the research even if they may receive the end results. If no, foreign nationals may participate in the research itself.

(*See* Appendix F, *Fundamental Research Flowchart* for a detailed step-by-step analysis.)

While both the ITAR and the EAR provide for fundamental research, the two regulators take a different approach in describing the circumstances under which university research qualifies as fundamental.

One major difference is that the ITAR requires that, to qualify as fundamental, research must be performed at *accredited institutions of higher learning in the United States*. Under the EAR, *accredited institutions of higher learning in the United States* is only one type of fundamental research described as university-based research.

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

* **ITAR provision:** the fundamental research exception does not apply to research the results of which are restricted for proprietary reasons, or specific U.S. Government access and dissemination controls.[[47]](#footnote-47)
* **EAR provision:** the fundamental research is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons.[[48]](#footnote-48) Under the EAR, university‑based research is not considered fundamental research if the university or its researchers accept restrictions (other than review to ensure no release of sponsor-provided proprietary or patent information) on publication of scientific and technical information resulting from the project.[[49]](#footnote-49)

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

The EAR also has provided examples of "specific national security controls" which will trigger export controls. These include requirements for prepublication review by the Government, with right to withhold permission for publication; restriction on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research.[[50]](#footnote-50)

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

## D. Full-time University Employees

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

* The employee's permanent abode throughout the period of employment is in the United States;
* The employee is not a national of a country to which exports are prohibited pursuant to ITAR § 126.1 (See list of countries under ITAR embargoes at *Overview* Section III.F); and
* The university informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of DDTC. (*See* a sample non-disclosure agreement at Appendix A.)
* Document the disclosure of technical data under the exemption providing: (1) a description of the technical data; (2) the name of the recipient / end-user; (3) the date and time of export; (4) the method of transmission (*e*.*g*., e-mail, fax, FedEx); (5) the ITAR reference, *i*.*e*., ITAR § 125.4(b)(10), *Full-Time University Employee*. *See* Recordkeeping Requirements at *RIT Procedures* Section X.

Note that the "full-time *bona fide* employee" requirement will preclude most foreign students and postdoctoral researchers from qualifying for access to technical data under this exemption. Generally, a H1B work visa would be required.

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

## E. Space Scientific Fundamental Research

The ITAR exempts an accredited U.S. institution of higher learning from needing a license for certain exports of defense articles controlled by Category XV(a) or (e), and related defense services, when fabricated only for fundamental research purposes.[[51]](#footnote-51) (*See* a detailed discussion of fundamental research at *Key Issues* Section III.C.)

Category XV(a) and (e) cover the following articles: spacecraft, including communications satellites, remote sensing satellites, scientific satellites, research satellites, navigation satellites, experimental and multi-mission satellites, as well as all specifically designed systems, subsystems, components, parts, and associated equipment.

To qualify for the licensing exemption, a U.S. university must:

* Export the articles or services to an accredited institution of higher learning, a government research center, or a government funded private research center located in a NATO country, or a major non-NATO ally. The following countries have been designated as a major non-NATO ally: Argentina, Australia, Bahrain, Egypt, Israel, Japan, Jordan, Kuwait, Morocco, New Zealand, Pakistan, the Philippines, Thailand, and Korea. Taiwan receives similar treatment.
* The export of articles and services must involve nationals exclusively of those countries.
* All the information related to the articles and services must qualify as the result of fundamental research, *i*.*e*., there must be no publication or dissemination restrictions.
* And, if for permanent export, the platform in which the article will be incorporated must be a scientific, research, or experimental satellite, used exclusively for fundamental research, and launched into space from these countries and by their nationals.

The defense services authorized for export under this exemption must be limited to discussions on assembly of the articles, or integrating them into a scientific, research, or experimental satellite. The defense services must not involve launch activities, including the integration of the satellite or spacecraft into the launch vehicle.

The exemption does not authorize the export of articles and information listed on the Missile Technology Control Regime (MTCR) Annex,[[52]](#footnote-52) or designated as significant military equipment on the USML, or otherwise controlled.

The satellite scientific research exemption can be used only in conjunction with the results of fundamental research, and has limited application. Generally, the authorized exports are only to the nationals of NATO countries and major non-NATO allies. Note, however, that the dual- or third-country national employees of authorized end-users might also be covered, provided that certain stringent requirements are satisfied.[[53]](#footnote-53)

# IV. Distance Learning

Distance learning provides a great opportunity for students who are not physically present on the main RIT campus to benefit from the courses and programs offered by the university. RIT offers both online courses and degrees, and the opportunity to attend classes taught by RIT professors at the campuses of foreign universities.

When addressing export control issues in the context of distance learning, RIT must be mindful not only of the ITAR or EAR export control classification of the information provided, but also of the application of U.S. economic sanctions.

**1. *Foreign students that are not subject to economic sanctions***. Generally, under the educational information exception, information released by instruction in schools, colleges, and universities is not subject to the ITAR or EAR (*see* *Key Issues*, Section III.B). Therefore, information that is generally taught at the RIT campus in the United States, may be taught online or at foreign campuses without the need to obtain licenses.

However, as a general matter, faculty should be mindful not to disclose findings that are the result of their research, if such research does not qualify as fundamental research. (*See* *Key Issues*, Section III.C.)

***2. Foreign students that are subject to economic sanctions***. In addition to general export controls, a layer of prohibition applies to nationals of embargoed countries, persons who are physically located in embargoed countries, and persons who have been identified on one or more of the barred entities lists. (*See Overview*, Sections D and E.)

IEEPA, the basis for most economic sanctions programs, specifically allows the exportation to any country, whether commercial or otherwise, regardless of format or medium of transmission, of informational materials. Generally, this allows the distribution of training materials to sanctioned individuals. However, allowing such individuals to sign up for a class or a degree would amount to providing a service, which is generally prohibited under the economic sanctions programs.

To avoid violating the economic sanctions prohibitions, RIT must screen all students against the barred entities lists, and determine their citizenship (or country of permanent residence[[54]](#footnote-54)) each time they register for a course. (For specific procedures, *see Procedures*, Section VII, *Screening*.)

RIT PROCEDURES WITH RESPECT TO EXPORT CONTROLS

# I. RIT's Commitment to Compliance with Export Controls

RIT conducts focused research to advance knowledge, enhance student learning experiences, and build its reputation in the scientific and technical communities while providing positive returns on sponsoring partners' investments. While RIT endorses the principles of freedom of inquiry and open exchange of knowledge, it is the university's goal to balance these against export controls.

The U.S. export control agencies place the onus on universities to understand and comply with the regulations. The government takes these laws very seriously – sanctions for violations can include steep fines and criminal liability for both the university and the individuals involved in a violation.

Especially since 9/11, scrutiny of compliance with export control regulations has greatly intensified. All researchers and educators at RIT need to understand their obligations under these regulations and make every effort to comply with export controls.

# II. Key Actors Responsible for Compliance with Export Controls

## A. Provost

The Provost is RIT's Empowered Official for export control matters. In this capacity, he or she has the authority to represent the university before the export control regulators in matters related to registration, licensing, commodity jurisdiction requests, or voluntary disclosures. While certain oversight functions may be delegated, the Provost alone has the power to sign such paperwork and bind the university in any proceeding before DDTC, BIS, OFAC, or any other government agency with export control responsibilities.

## B. Assistant Vice President of Compliance & Ethics

The Assistant Vice President of Compliance & Ethics is responsible for the overall oversight of export control compliance. He or she may provide specific assistance to the Department of Sponsored Research Services (SRS), or the Provost in identifying specific export control issues and providing assistance for their resolution. The Assistant Vice President of Compliance & Ethics is also responsible for conducting regular and *ad hoc* reviews and audits to determine whether the university complies with export controls. The Assistant Vice President of Compliance & Ethics advises the Provost on matters related to registration, licensing, voluntary disclosures or any other filing with DDTC, BIS, OFAC or other export control agency. In exercising his or her responsibilities, the Assistant Vice President of Compliance & Ethics may consult with the Office of Legal Affairs, or with outside counsel who specializes in export control issues. Any proposed changes to the procedures contained in this Program shall be submitted to the Assistant Vice President of Compliance & Ethics, who shall coordinate any such changes.

The Assistant Vice President of Compliance & Ethics (and/or his or her designee):

* Identifies areas at RIT that are impacted by export control regulations;
* Develops control procedures to ensure the university remains in compliance with export control regulations;
* Recommends procedures to the senior RIT administration to strengthen RIT's export control compliance;
* Educates inventors, principal investigators, centers and academic units, and other RIT employees about export control regulations and procedures followed at RIT
* Monitors and interprets legislation;
* Works with others on campus to facilitate understanding and compliance with export controls;
* Conducts training and outreach on export controls;
* Classifies a technology to determine whether it is export controlled when RIT desires to export it abroad or transfer it to foreign nationals within the United States;
* Assists investigators, researchers and offices within RIT when research or research results are export controlled;
* Seeks legal assistance when uncertain about classification and in filing license applications;
* Develops a Technology Control Plan (TCP) for each export-controlled project consistent with these procedures to aid the principal investigators (PIs) in meeting his or her export control responsibilities.

## C. Sponsored Research Services

The Vice President of Research, like the Provost, is also an Empowered Official for export control matters. SRS provides assistance and expertise with export controls by working closely with the Assistant Vice President of Compliance & Ethics in identifying export control issues and providing support for their solution.

* SRS provides assistance to PIs in reviewing the terms of a sponsorship agreement or grant to identify restrictions on publication and dissemination of the research results, and to help PIs negotiate out such restrictions.
* SRS works with PI’s to complete Export Control Checklists for every project and to send them to the Assistant Vice President of Compliance & Ethics for review.
* SRS is responsible for maintaining a centralized database of all documentation relating to a research project or education activity. Records must be maintained in electronic or paper format for 5 years after a project has been concluded.
* Once a project has been identified as export controlled, SRS coordinates with the PI’s, the Office of Compliance & Ethics, and the Human Resources Department to ensure that foreign nationals will be isolated from participation, in accordance with the TCP developed by the Office of Compliance & Ethics, unless the university applies for and obtains a license from the relevant agency.

The Office of Compliance & Ethics and SRS will provide a regulatory review to key university managers; prepare educational materials, such as checklists for international travelers; conduct continuous trainings for the university and coordinate the maintenance of a website on export control for the university community.

## D. Oversight Committee for Externally Sponsored Projects

The Oversight Committee has been instituted to review, develop, and manage procedures for implementing the Oversight Policy for Externally Sponsored Projects. The university has determined that external funding sources may have interests that do not coincide with those of RIT. In addition, the interests of individual faculty, who as professionals judge what scholarship ought to be pursued and how best to pursue it, may not always coincide with those of RIT, or with the interests of students or others. The Oversight Policy aims at striking a balance among the sometimes contending interests of the individual scholar, the external funding source, students and other participants, and RIT. Externally sponsored projects must also conform to professional, ethical, financial and legal standards, as well as contractual conditions specified by RIT.

## E. Key University Managers – Deans, Directors, Department Heads

Deans, directors, and department heads have the responsibility of overseeing export control compliance in their respective schools or departments, and assisting the Office of Compliance & Ethics and SRS in implementing the export compliance program. Key university managers must ensure that their staff receives regular training on export control issues to meet the university obligations under the laws.

## F. Researchers – Principal Investigators, Co-Investigators, Other

The researchers are the people who have expert knowledge of the type of information and technology involved in a research project or other university activity, such as presenting at conferences, and discussing research findings in class with fellow researchers or collaborators. The PIs are those that have control over negotiating the terms of an external funding agreement, and more specifically, restrictions on publication or dissemination, and foreign citizen participation. PIs must ensure that they do not disclose controlled information or transfer controlled articles or services to a foreign national without prior authorization as required. To meet their obligations, PIs:

* Must understand their obligations under export controls, and participate in regular trainings to help them identify export control issues.
* Must help the SRS and the Office of Compliance & Ethics to classify the technology involved in the research or other university activity, and identify foreign nationals that may be involved.
* If export control is likely, the PI should initiate the process of clearing foreign national participation well in advance to ensure that a license is obtained in a timely manner, or proper measures are taken to isolate foreign nationals from participation.
* If the PIs undertake an export controlled project, they must brief the students and other researchers involved in the project of their obligations under export controls.
* The PI cooperates with the Office of Compliance & Ethics in developing the TCP; it is the responsibility of the PI to follow and implement the TCP.
* If the project requires foreign travel, the PI ensures that he or she, and all researchers, students and staff working under his or her supervision on a specific project abide by and fill in the Foreign Travel Checklist attached as Appendix C.

## G. Other Educators – Support Staff, IT Staff, Human Resources Officers

Other educators play a substantial role in ensuring export compliance by providing technical support, administrative, IT, or human resource services. It is important that these employees receive a general overview of export controls to appreciate the intricacy of compliance and identify potential areas where their specific knowledge and skills may improve compliance.

## H. Students

U.S. and foreign students who are engaged in export controlled research must be briefed on export controls and sign an acknowledgement that they understand their obligations under export control laws, and will not disclose the controlled information to foreign nationals who have not been authorized to receive such information. Form attached at Appendix B.

# III. Activities that Trigger Export Controls Analysis

An export control analysis should be performed every time a PI or another educator engages in a new activity or changes the scope of an existing activity. SRS should immediately be contacted for assistance in completing the Export Control Project Checklist at Appendix D. Screening for export controls by project allows for an open learning environment and limits restriction on student participation only to a select number of projects. Some research or other university activities that may trigger export controls include:

* **New research project** – when the project is externally sponsored. Look for any restrictions on publications or disseminations that may change the status of the research from fundamental, and preclude foreign student participation. Export controls may apply even if the research is not funded by an outside sponsor.
* **Change in the scope** of an existing research project.
* **Develop a course curriculum** – note that generally the information taught in a catalogue course is not subject to export controls. However, be careful when disclosing the results of research if it did not qualify as fundamental research.
* **Distance learning –** this issue raises a number of export control red flags, and should be reviewed carefully with the Office of Compliance & Ethics.
* **Conference participation –** in developing materials and talking points, speakers must be mindful that export regulations may control the content of the speech.
* **Foreign travel –** PIs should abide by and use the checklist for foreign travel included at Appendix C
* **Donated equipment –** all technical and scientific equipment donated to RIT
* **Joint research project** – with another U.S. university or a foreign research center
* **Foreign students or researchers participation** – screen for export controls issues every time you engage a new person in a controlled activity
* **New hires –** a foreign national may not be able to become involved in all university activities, depending on his or her visa status and country of origin

It is likely that export controls will apply if the research involves military equipment or technology, encrypted software, listed controlled chemicals, bio-agents, or toxins

SRS will require an Export Control Project Checklist in the form of Appendix D be completed by the PI whenever there is:

* Performance by RIT required as part of an **Agreement** (even if not signed yet);
* Receipt of data, technology, or equipment from a sponsor as part of a sponsored research project or donation agreement; and
* An **Agreement** with RIT and a sponsor is signed.

**An Agreement as used above shall mean: a Sponsored Research Agreement, Applied Research Agreement, Student Corporate R&D Agreement, Appendix (under a master agreement), Sponsor Agreement, Equipment Loan Agreement.**

# IV. Red Flags

When reviewing an external funding proposal look for the following red flags that will indicate possible export control issues:

* Restrictions on publication or dissemination of the research results
* Restriction of participation only to U.S. citizens
* Pre-publication reviews
* Military applications of the project results
* Funding from the Department of Defense, the Department of Energy, the Army, the Air Force, the Naval Office, NASA, the National Reconnaissance Office, or other U.S. government agencies

Until you have determined that no export controls apply, ensure that foreign nationals will not be involved in the research or gain access to the research results.

# V. Best Practices in Negotiating External Funding

Remember that it is RIT's responsibility to comply with export controls. RIT has an obligation to monitor and prevent unauthorized transfers of controlled items and information, even if there is no specific language in the grant or contract that specifically addresses export control. Furthermore, while it is best practice to request that the sponsor clearly mark an item as ITAR- or EAR-controlled, the ultimate responsibility to protect controlled data from being released to a foreign national lies with the university. The lack of clear labeling may be a mitigating factor but does not exonerate RIT from liability should an unauthorized transfer occur.

In that respect, perform extensive screening of an external funding contract terms. When negotiating external funding:

* Ensure that the sponsor will provide explicit notice if a specific technology or information used in the research is controlled;
* Ensure that the sponsor will not place any restrictions on publication or dissemination of the research results (you may not always be able to secure this);
* Actively inquire whether foreign nationals may participate;
* Use a checklist for each project to determine whether it is subject to export controls. (*See* RIT Export Control Research Project Checklist at Appendix D.);
* If uncertain about a contract term, the classification of the technology, or any other issue, have the contract reviewed by the Assistant Vice President of Compliance & Ethics.

# VI. Vet Each Project or Activity

To vet a project or activity for export controls, RIT through its Office of Compliance & Ethics must answer the following questions: (1) is the project or equipment controlled; (2) what is it controlled for; (3) what are the specific control requirements; (4) who are the actors involved in the project; (5) is a license required; (6) does an exception apply; and (7) will you obtain a license or not accept the project. The following steps will be used by the Office of Compliance & Ethics with assistance of the PI and SRS to determine whether export controls apply:[[55]](#footnote-55)

1. Classify the technology and related information – determine whether it is listed on the USML or the CCL, or it is classified as EAR99.

2. If it is listed on the USML or the CCL, determine whether there is an applicable exemption or exception that allows the export or transfer of information to a foreign national. Refer to the discussion on information that is in the public domain / publicly available; educational information; information which is the result of fundamental research in *Key Issues* Section III.C. Note that there might be additional exemptions applicable to the specific situation. The Assistant Vice President of Compliance & Ethics shall determine whether an exemption applies on behalf of RIT.

3. The Office of Compliance & Ethics shall determine if there is technology or information that is controlled under the USML or CCL.

4. If the technology / information is controlled, RIT can either reject the project, confirm an exemption or exception will apply to the foreign national at issue, apply for a license to engage foreign nationals in the research, or isolate foreign nationals from participation in the research and access to the results of controlled research. PI’s shall coordinate this decision with the Office of Compliance & Ethics and SRS.

5. If the technology is classified as EAR99, there may be limitations on its export to an embargoed country or a barred individual. Screen the ultimate destination and end-user of an exported item. See a list of embargoed countries and various lists of barred individuals in *Overview* Section V.D.

Note that in some cases licensing may take two to nine months, so you should allow ample time if you plan to involve foreign students in a controlled project.

# VII. Screening

Generally, RIT should screen all students to determine their nationality and whether or not export controls apply. Such screening should be performed at the time a student applies for admission or, if a non-matriculated student, at the time of course registration. The student's nationality should be listed in the student's file maintained by HR, and this information should be readily available to the Office of Compliance & Ethics and SRS employees designated to work on export control issues.

## A. Students Attending Classes at the RIT Campus

A new student must report his or her nationality and visa status at the time of applying for admission, or at the time of registering for a course, if non-matriculated. A Human Resources officer must request that the student present original documents evidencing the indicated nationality / visa status, and make copies for the student's record.

RIT presumes that students holding valid U.S. visas have been cleared by the Immigration Service.

At the time a research project is identified as export-controlled, the PI must request nationality information for all students he or she intends to involve in the project and determine whether a license is required for that particular student.

## B. Students Attending Classes at Foreign Campuses

A student must report his or her nationality at the time of applying for admission, or at the time of registering for a course. RIT must arrange with the foreign campus staff to confirm the student nationality by requesting a valid official document, and include the student's nationality in the student's file.

Each time a student at a foreign campus registers for a class, his or her name must be screened against the barred individuals lists to confirm that the student is eligible to receive training from RIT.

## C. Students Attending Classes Online

Online studying presents the biggest challenge in terms of screening, because the nationality and visa information is based on self-reporting, and there is no in-person contact. RIT is working with its IT department to develop a check of the IP address from which the student logs in and connects to RIT online applications.

If the student has a U.S. IP address and represents themselves as non-foreign person, the student is treated as if the student is attending a class at RIT campus.

If the student has a foreign IP address, extra care must be exercised in determining the student's physical location, and ensuring that the student has reported correct citizenship information.

In addition, the student's name must be screened against the barred entities lists every time the student registers for a course.

# VIII. Licensing

When it is determined that a project or activity is export controlled and a license is needed to involve a foreign national, RIT may apply for an export license to allow the disclosure of information to foreign students and researchers. Note that each foreign student must be specifically licensed for each controlled project.

The Assistant Vice President of Compliance & Ethics will help prepare the necessary documentation for obtaining a license. The Provost or the Vice President of Research in his or her capacity as the empowered official must sign all paperwork related to ITAR licensing.

## A. ITAR Licensing

RIT is registered with DDTC as an exporter of hardware, technical data, and defense services. RIT's Registrant Code is maintained by the Assistant Vice President of Compliance & Ethics, and is renewed on an annual basis. The Assistant Vice President of Compliance & Ethics or his or her designee is responsible to ensure that the renewal registration is submitted in a timely fashion each year. RIT must maintain its registration active in order to apply for ITAR licenses or use an ITAR license exemption.

Most license applications are submitted online using the D-Trade system. More information on D-Trade is available at <http://www.pmddtc.state.gov/DTRADE/>.

### 1. Involve a Foreign Student or Researcher

. RIT may not use the *full-time university employees exemption* to involve its foreign students/researchers in ITAR-controlled projects because most student visas do not allow the student/researcher to have his or her permanent abode in the United States (See discussion at section *Key Issues*, Sec. III.D). However, RIT may request approval to engage a foreign national student/research enrolled at RIT, with a valid student visa, to work on an ITAR-controlled project by submitting a license application to DDTC. (Note: foreign students not to be confused with green card holders who are considered U.S. persons for purposes of export controls.)

The University must submit a DSP-5 license application. The duration of the DSP-5 will be no greater in length than the length of the work authorization (as evidenced by the visa) or the maximum length of a license (4 years), whichever is shorter. Licensing time for this application will be approximately two months.[[56]](#footnote-56) Some of the supporting information to be provided with the application includes:

* All nationalities
* Name of programs/commodities in which the student will be involved
* A copy of the foreign student's passport
* A copy of the foreign student’s work authorization in the U.S.
* Resume
* Project description
* Detailed description of the technical data and USML categories

Additionally, RIT needs to have the following documents on file with regard to the DSP-5: (1) Technology Control Plan; (2) Non-Disclosure Agreement (NDA); and (3) a DSP-83 - for access to manufacturing know-how or SME, if applicable.

2. Export of defense articles

**.[[57]](#footnote-57)** Below are some of the forms used for licensing of defense articles and related technical data.

* DSP-5: Application for permanent export of unclassified defense articles and related unclassified technical data.
* DSP-73: Application for temporary export of unclassified defense articles.
* DSP-61: Application for temporary import (and subsequent re-export) of unclassified defense articles.
* DSP-85: Application for permanent export of classified defense articles and related classified technical data.

### 2. Export of defense services

. For the licensing of defense services and related technical data use a Technical Assistance Agreement (TAA). Outside counsel may need to be involved in the preparation of a TAA. Obtaining a TAA may take up to two months so plan accordingly.

## B. EAR Licensing

License requests for items controlled on the Commerce Control List are made through SNAP-R (Simplified Network Application Process Redesign), BIS electronic system.[[58]](#footnote-58) SNAP-R allows exporters to file license applications online once they are participants in the SNAP-R program. For further information, *see* <http://www.bis.doc.gov/SNAP/index.htm>. (Note that while there is no registration requirement similar to that under the ITAR, before using SNAP-R you must submit a one time registration form to use the system, similarly to D-Trade registration.)

The procedures for submitting license requests are set forth in EAR Part 748. The requirements, including the type of supporting documentation, vary depending on the item and destination.[[59]](#footnote-59) End-use certificates, import certificates, delivery verification, or statements by the ultimate consignee may be required depending on the item and destination.[[60]](#footnote-60) Emergency expedited processing may be requested.[[61]](#footnote-61)

For additional information on deemed export licensing, *i*.*e*., authorizing foreign students or researchers to participate in an export controlled project, *see* <http://www.bis.doc.gov/deemedexports/deemedexpimprovements11_03.htm>. For guidelines on how to prepare an application for foreign nationals’ employment authorization, *see* <http://www.bis.doc.gov/deemedexports/foreignationals.pdf>.

Upon receipt of a license application, BIS has 90 days to process the request and BIS officials make a genuine effort to meet this deadline. The process itself varies depending on the item and destination. During the initial processing period (nine days), BIS should notify the applicant that it requires additional information; intends to deny the application; that no license is required; approve the application; or refer the application to other agencies for review (including DoD agencies). In addition, BIS may seek government-to-government assurances and may investigate the identity of the ultimate end-user.

Once issued, a license is generally valid under the specific terms of the application, and for a period of 24 months. BIS may revoke or suspend a license at any time without notice if BIS knows a violation has or will occur.[[62]](#footnote-62) Note that in the case of authorizing foreign national employment, BIS will grant an automatic six-month extension for licenses requiring renewal on written request and submission of a renewal application. Also, BIS will match the term of deemed export licenses to visa terms for visas with a term of more than two years.

## C. OFAC Licensing

The OFAC licensing process is notable for the absence of forms and set procedures, but the application process routinely takes three to six months at the shortest.

OFAC regulations for most countries contain special license provisions. These are specific types of activities that OFAC may license on a case-by-case basis. These include the sale of agricultural products, medicine, and medical equipment to most embargoed countries; certain financial transactions with specific countries; and sale of spare or repair parts to support a U.S. manufactured aircraft used in civil aviation.

License requests are usually in the form of a letter with supporting documents. The applicable regulatory provision will usually indicate the type of information required by OFAC. OFAC will assign an official in its licensing branch to review the application and send a confirmation letter to the submitter. As a practical matter, OFAC has a small staff and license requests can takes months to process. In addition, unless there is a regulatory provision allowing for issuance of a special license for that particular type of transaction, such as the export of food or medicine, OFAC will likely deny a license request.

# IX. Physical Security Issues

If you decide to undertake an export controlled project you must ensure that foreign nationals who have not been licensed to participate in such project or receive the results from such project are isolated from access to controlled technology. Ensure you have taken the following security measures to protect export controlled equipment and information where necessary:

* **Lab space** **use** – RIT endorses the open exchange of knowledge. However, if the university undertakes an export controlled project, it must ensure that the lab space where the research is conducted is secured to prevent unauthorized access by foreign nationals. The PI, in coordination with the Office of Compliance & Ethics and SRS, may designate an area which requires special procedures in terms of access (*e*.*g*., by requiring controlled access). To limit restriction, the PI should isolate individual tasks within the research project, and allow foreign student participation if specific tasks do not fall under export controls. Specific procedures relevant to each individual project will be described in the TCP to be developed by the Office of Compliance & Ethics and implemented by the PI.
* **Maintain logs** – if an area has been designated as restricted for purposes of export control, the PI and SRS, in coordination with the Office of Compliance & Ethics and in accordance with the TCP, must ensure that the access to, and movement out of, a designated area is logged or recorded.
* **Physical security of designated areas** – if the use of a lab area cannot be compartmentalized, ensure that only authorized personnel has access to such area by requiring use of entry permit badge.
* **Computers** – ensure that computers are secured and monitored, especially if used in a network. Access to controlled information should be limited by authorizing only certain individuals to view and have access to certain folders, drives, or servers via password protected login accounts or other means.
* **Student engagement** – screen, authorize, and monitor students' identity, nationality, and level of access.
* **Technical data** – provide training to researchers to ensure that notebooks or other documents containing export controlled information are not left in public areas.
* **Training** – project personnel need to be provided with export control training to ensure compliance. The Office of Compliance & Ethics will have training materials, and will be available to assist in such training.
* **Identification procedures** – ensure that all employees / students have identification that indicates their access to restricted areas. The university is generally an open environment, so restricted areas must be locked at all times and authorized persons must use a special card or similar device to gain access to restricted areas.
* **Foreign visitors –** RIT shall identify and screen foreign students and visitors to those facilities where export-controlled items are stored or used. This effort requires close coordination with the PIs in charge of a project and security at each lab / facility. All requests for visits to labs or areas where controlled items are stored or used shall be coordinated with the Office of Compliance & Ethics who will provide instructions regarding badges/escorts to ensure no unescorted foreign visitor is allowed access to controlled data without proper authorization.

# X. Recordkeeping Requirements

## A. Five-Year Retention Policy

RIT’s policy is to maintain export-related records on a project / contract basis for five years from the conclusion of a project or expiration of a license, whichever is longer. Unless otherwise provided for, all records indicated herein shall be maintained consistent with the RIT record retention policy. In general, records relating to each project / license should include:

* Contract / terms of funding
* License application / authorization and any related attachments
* End-use certificates (if required)
* Shipping documents (airway bill, bill of lading) for export of articles
* Automated Export System (AES) record – for export of articles
* List of researchers (include name, nationality, visa status, duration of work on project, specific tasks performed on the project)

(*See* Appendix G for specific documents to be retained.)

*Caution: Records must be maintained for exports which use a license exception. Such exports, including technical data, should be well documented as to the rationale why the license exception is valid.*

## B. Documenting Export of Technical Data Under an ITAR Exemption

When ITAR-controlled technical data is exported under an exemption, certain records of the transaction must be kept.[[63]](#footnote-63) Those records include:

* A description of the unclassified technical data
* The name of the recipient /end-user
* Date / time of export
* Method of transmission (*e.g.,* e-mail, fax, telephone, FedEx)
* The exemption under which the export took place

Note that information that meets the criteria of being in the public domain, being educational information, or resulting from fundamental research, is not subject to export controls under the ITAR, and therefore, the special requirement for recording when using an exemption does not apply. However, it is a good practice to provide such description for each project to establish a record of compliance.

On the other hand, disclosing information under the full time university employee exemption requires such recording. The Assistant Vice President of Compliance & Ethics, in collaboration with the PI, will prepare such documentation.

## C. BIS Requirements

BIS has specific record-keeping requirements associated with specific exports.[[64]](#footnote-64) The Office of Compliance & Ethics will identify the specific requirements on a case-by-case basis.

# XI. Training Program

Training is the foundation of a successful export compliance program. Well informed employees minimize the likelihood that inadvertent violations of the law will occur. The greatest risk of non-compliance of export laws and regulations occurs during casual conversations in person, on the telephone, or via e-mail. The way to prevent these types of violations is through awareness and training for all employees to the level necessary for their jobs.

Each employee will receive initial training at the time he or she is hired and annually thereafter if they are involved in export controlled work. Documentation of training will be maintained. Specific employees may be asked to sign a statement acknowledging he or she has been briefed on export control compliance and agrees to comply with export control laws. In addition to training materials, each employee who is involved in export control work will sign an acknowledgement of receipt and understanding of obligations under export control laws. (*See* form at Appendix B.)

## A. Levels of Training

Training should be conducted by export compliance personnel so that university employees can meet and become familiar with the export compliance staff. RIT has five levels of training:

### 1. Board of Trustees Briefings

. Top level briefings shall be provided to the Board of Trustees (or appropriate committee thereof). These briefings are to make the Board aware of export issues; explain Board members’ fiduciary responsibilities to ensure compliance; explain potential liabilities for non-compliance; and provide an overview of the university’s export compliance structure and process.

### 2. Key University Managers

. Training shall be provided to deans, directors, and department heads as necessary. This training will cover the same basic topics as the briefings to the Board, but in greater detail to reflect key university managers’ increased role in export compliance.

### 3. Introductory Training (university employees)

. Introductory training for employees shall provide the basics to RIT employees to avoid the type of casual violations discussed above, and to give the employee enough information to assist in export compliance. The introductory awareness training will generally explain:

* What an export is;
* The national security concerns underlying export compliance;
* How RIT’s activities relate to those underlying concerns;
* How exports are approved;
* How a violation occurs;
* Deemed export issues;
* The “red-flags” for potential export violations;
* The importance of each employee to the overall compliance system;
* The severe consequences for both the university and the individual employee if an export violation occurs;
* The identities of responsible export officials who should be contacted if export issues arise;
* Employees’ reporting obligations and requirements; and
* Identification of high-risk areas.

RIT will provide this training in one of the following ways: introductory lecture, videotape, printed materials, or through an Intranet site.

### 4. Intermediate Training (employees dealing directly with export control issues)

. This is for employees who regularly deal with export issues (including those in departments such as logistics, marketing, contracts, security, legal, public relations, and engineering). This training should be tailored to the specific job functions of the attendees, but will include those items listed for introductory training plus:

* Overview of the purpose and scope of export controls;
* Various license types and requirements;
* New project / activity review procedures;
* Requirements for entering into contractual relationships;
* Conference participation;
* Curriculum development;
* Technical exchanges through telephone, facsimile, electronic mail, or in person;
* Record-keeping requirements;
* Requirements for international travel with products or technical data;
* Screening procedures; and
* Possible administrative, civil, and criminal penalties for export violations.

This training will be provided by lecture or videotape and supplemented with either printed material or Intranet materials.

### 5. Advanced Training (Export Compliance Personnel)

. The Assistant Vice President of Compliance & Ethics, and his or her designee, and designated SRS employees should receive:

* Basic introductory training on relevant export regimes
* Periodic refresher training
* The Assistant Vice President of Compliance & Ethics and his or her designee should attend periodic conferences on exports (such as those given by BIS, DDTC, the Society for International Affairs (SIA), NACUA, and others) in order to ensure RIT’s compliance program is up to date

Should RIT begin handling classified government contracts, all employees holding security clearances must be given initial and recurrent security training in accordance with facility security plans. (NISPOM Chapter 3.)

## B. Training Materials and Records

The Assistant Vice President of Compliance & Ethics and SRS, will prepare appropriate training materials, which should be maintained.

The Office of Compliance & Ethics will maintain records of training provided to employees. The Office of Compliance & Ethics will coordinate with SRS and Human Resources Department to ensure that every employee or student engaged in an export controlled project receive the appropriate briefing.

# XII. Monitoring and Audit

In order to maintain RIT’s export compliance program and ensure consistent adherence to U.S. export laws, RIT may conduct internal reviews of various schools and departments to ensure compliance. The review scope will cover all aspects of the export process focusing on:

* Verifying proper classification procedures were used
* Determine whether licenses were obtained where necessary
* Determine whether export documentation was correct
* Confirm employees are using established procedures

The purpose of the reviews is: (i) to identify possible violations; and (ii) to identify deficiencies in training, procedures, *etc*., that can be rectified.

## A. Reviewer; Frequency of Reviews; Reports and Corrective Measures

Reviews of export compliance will be carried out by the Assistant Vice President of Compliance & Ethics (it is suggested that the designee be someone other than the designated export officer at the facility).

Reviews shall be conducted annually. The Assistant Vice President of Compliance & Ethics may also decide to perform an *ad hoc* review of the implementation of the export compliance program by a certain school or department. The Assistant Vice President of Compliance & Ethics will report the results of such reviews to the Provost and the Board of Directors to keep them informed of export compliance at the university.

## B. Confidentiality of Review Results

The goal of the internal reviews is to reduce the risk of future violations by checks on past-conduct. In order to ensure candidness by employees, these internal reviews shall be treated with utmost confidence, and disclosures made by employees shall not form the basis for disciplinary action. Further, the Assistant Vice President of Compliance & Ethics shall ensure that internal review documents are marked as confidential, and limit disclosure of these reviews within or outside the university.

# XIII. Detecting and Reporting Violations

An integral part of export compliance is that employees report suspected violations of export laws to appropriate authorities. Each employee therefore has the responsibility and duty to report suspected violations.

## A. Where to Report

Any employee that suspects RIT has or may be about to violate U.S. export laws should immediately report this to the Office of Compliance & Ethics.

## B. Confidential Treatment

Any report of violation will be treated confidentially. Senior Management will take steps to ensure no retribution, reprisal, or disciplinary action is taken against an employee who reports a suspected violation. (An employee who violates export laws may be disciplined for such violations; however, reporting such violation will be a mitigating factor.)

## C. Investigation

The Office of Compliance & Ethics and his or her designee shall immediately investigate any reports of possible violations. The investigation will include a review of relevant documentation and interview of relevant individuals, including the reporting employee.

## D. Reporting and Follow-up

The Assistant Vice President of Compliance & Ethics shall inform the employee making the disclosure of the outcome of any investiagation. If an investigation uncovers evidence of an actual violation of the export regulations, the Assistant Vice President of Compliance & Ethics, in coordination with the Provost and Senior Management, will take steps to report violations or suspected violations to the cognizant government agency.

# XIV. Disciplinary Action

In recognition of the seriousness of non-compliance, management will impose appropriate disciplinary action against any employee who violates the Compliance Program and/or any applicable law. Disciplinary action will be appropriate to the violation, including possible termination of employment, provided that the imposition of any disciplinary action shall be consistent and in accordance with RIT’s human resources procedures. Further, all managers and employees must also be aware of the substantial criminal and civil penalties imposed for violation of the exporting laws, and other regulations set forth in this Program. All managers and employees are also personally liable for criminal and civil penalties for those violations in which they participate. These can include imprisonment for substantial periods of time, as well as monetary fines.

## A. Specific Practices

An employee may be disciplined for any of the following:

* Non-compliance with the laws, regulations, or policies applicable to the employee’s work;
* Encouraging, helping or condoning non-compliance of laws or policies;
* Failure to report non-compliance of laws or policies; or
* Retaliation against an employee who reports a concern relating to non-compliance of laws or policies.

## B. Protection of Employees

No employee shall be punished solely on the basis that he or she reported what was reasonably believed to be an act of wrongdoing or a violation of the Export Compliance Program. However, an employee will be subject to disciplinary action if it is reasonably concluded that the report of wrongdoing was knowingly fabricated by the employee or was knowingly distorted, or exaggerated.

An employee whose report of misconduct contains admissions of personal wrongdoing will not, however, be guaranteed protection from disciplinary action. The weight to be given to the confession will depend on all the facts known to RIT at the time it makes its disciplinary decisions.

Appendix A

**NONDISCLOSURE AGREEMENT**

**Access to ITAR-Controlled Defense Articles or Technical Data by**

**Foreign National Employees in the United States**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name of foreign person), acknowledge and understand that any technical data related to a defense article covered by the U.S. Munitions List to which I have access per authorization by the U.S. Department, Directorate of Defense Trade Controls \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(state relevant export license/authorization number) and disclosed to me in my employment by Rochester Institute of Technology is subject to the export controls of the International Traffic in Arms Regulations (ITAR) (Title 22, Code of Federal Regulations, Parts 120-130). I also acknowledge and understand that should I inadvertently receive defense articles for which I have not been granted access authorization by the U.S. Department of State, Directorate of Defense Trade Controls, I will report such unauthorized receipt and acknowledge the transfer to be a violation of U.S. Government regulations.

In furtherance of the above, I hereby certify that all defense articles, including related technical data, to which I have access will not be used for any purpose other than that authorized by the U.S. Department of State, Directorate of Defense Trade Controls and will not be further exported, transferred, disclosed via any means (*e.g*., oral disclosure, visual access, facsimile message, telephone) whether in its original form, modified, or incorporated in any other form, to any other foreign person or any foreign country without the prior written approval of the U.S. Department of State, Directorate of Defense Trade Controls.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

Appendix B

**ACKNOWLEDGEMENT OF RECEIPT OF EXPORT COMPLIANCE PROGRAM MANUAL AND UNDERSTANDING OF OBLIGATIONS UNDER EXPORT CONTROL LAWS**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (insert name of individual) hereby acknowledge that I have received a copy of Rochester Institute of Technology Export Compliance Program manual. I further acknowledge that I have been briefed on export controls and understand that is the responsibility of RIT and its employees to comply with U.S. export control laws and regulations. I understand that U.S. laws impose both criminal and civil penalties for violation of export controls.

It is my duty to familiarize myself with the contents of the Export Compliance Program manual and ensure that I comply with U.S. export control laws. I will participate in export control training programs scheduled by RIT and will actively seek assistance from the Office of Compliance & Ethics if I need additional information for understanding export control laws and my specific obligations under the Export Compliance Program.

I further acknowledge that, in accordance with U.S. export control laws and RIT Export Compliance Program, unless authorized by law, I will not disclose or transfer to any other person or organization any controlled information, articles or services that I have in my possession in my capacity as an RIT employee.

I will advise any person to whom I may release controlled information or articles that he or she has the duty under the laws of the United States not to reveal such data without an appropriate export license to any other person who is not a U.S. person.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Signature and Date

Appendix C

|  | **Foreign Travel Checklist for Faculty & Staff** | **Done** | **N/A** |
| --- | --- | --- | --- |
|  | Obtain valid passport, visas, and immunizations, if required. Fill in the emergency information page of your passport. |  |  |
|  | If your travel is funded by a grant/contract, contact the Sponsored Research Services office (475-7984) to obtain sponsor approval prior to making travel arrangements (unless the foreign travel was specifically approved in the award budget). |  |  |
|  | If your travel is funded by a grant/contract, contact the Office of Compliance & Ethics for a briefing on how to comply with U.S. export control laws. |  |  |
|  | Read the Consular Information Sheets (and Public Announcements or Travel Warnings, if applicable) for the countries to be visited. http://travel.state.gov/travel/cis\_pa\_tw/cis/cis\_4965.html |  |  |
|  | Read the Centers for Disease Control health information for the countries to be visited. <http://www.cdc.gov/travel/destinat.htm> |  |  |
|  | Become familiar with local laws and customs of the countries to be visited. (Remember, while in a foreign country, you are subject to its laws.) |  |  |
|  | Make two copies of your passport identification page. This will facilitate replacement if your passport is lost or stolen. Leave one copy with your department or Dean's office. Carry the other with you in a separate place from your passport. |  |  |
|  | Leave a copy of your itinerary and travel arrangements with your department or Dean's office so that you can be contacted in case of an emergency. Include names, addresses, phone, and fax numbers. |  |  |
|  | Develop a plan for reporting: |  |  |
|  | 1. Medical or other emergencies or accidents that occur overseas: |  |  |
|  | 1. If you are a victim of a crime overseas: |  |  |
|  | 1. Planned evacuation in case of political unrest or terrorism: |  |  |
|  | Prior to departure, register with the nearest U.S. embassy or consulate through the State Department's travel registration website. Registration will make your presence and whereabouts known in case it is necessary to contact you in an emergency. https://travelregistration.state.gov/ibrs/ui/ |  |  |
|  | If entering into a contract with a foreign entity ensure that |  |  |
|  | Contract has been reviewed by Office of Compliance & Ethics (475-6111): |  |  |
|  | Contract has been reviewed by the Assistant Vice President of Compliance & Ethics/SRS to screen against potential export control violations or concerns. Refer to *Export Control Research Project Checklist* at Appendix D. |  |  |
|  | Contract has been signed in accordance with RIT signatory authority guidelines: |  |  |
|  | Contract has been signed by foreign entity and copy on file: |  |  |
|  | Names, addresses and phone numbers of primary contact left with department or Dean's office: |  |  |
|  | Check with your medical insurance provider. Does your insurance provide coverage overseas: |  |  |
|  | Contact the Risk Management Office (475-4903) regarding travel assistance coverage for yourself and others traveling with you: |  |  |
|  | Verify that travel will not be to an OFAC embargoed country as defined in the Export Compliance Program (*i.e.*, "Overview of Export Controls" at Section V.A) or identified by the Assistant Vice President of Compliance & Ethics. See <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. OFAC authorization is required to travel to certain embargoed countries. |  |  |
|  | While traveling, will you have items, documents (print and electronic versions), information, technology, or data that is not available in the public domain, is classified, or relating to any of the following:   1. Nuclear materials, weapons, facilities or equipment 2. Military Materials, Chemicals, Microorganisms or Toxins 3. Materials processing equipment (machine tools, ball bearings, etc.) 4. Military electronics, munitions, weapons (including dual use technology) 5. High speed computers, encrypted software 6. Telecommunication equipment 7. Sensors or Lasers 8. Navigation or Avionics 9. Marine submersible vessels, oceanographic and associated equipment 10. Propulsion systems, space vehicles, missiles or related equipment 11. Classified equipment, articles or technical data 12. Any other item that is listed on the U.S. Munitions List (USML) (<http://www.pmddtc.state.gov/regulations_laws/documents/consolidated_itar/Part_121.pdf>), or the Commerce Control List (CCL) <http://www.bis.doc.gov/policiesandregulations/ear/index.htm>)   If travelling to an embargoed country or travelling with any of the above items, contact the Office of Compliance & Ethics at 475-6111. |  |  |
|  | Do you know or have reason to believe that any information you will be transferring, releasing, or sharing or whether any of your activities you will engage in while traveling will have a (1) military, missile, or space use, (2) a nuclear, chemical, or biological weapons use, or (3) will provide a defense service? |  |  |
|  | While traveling, will you be transferring, releasing, or sharing any RIT-developed, non-commercial encryption software in source code or object code? |  |  |
|  | While traveling, will you have RIT-owned or personal laptops, smartphones, tablets, GPS devices, PDAs or other electronic devices? |  |  |
|  | While traveling, will you be attending any “closed” conferences or meetings that ae not open to all technically qualified members of the public and where notetaking is not permitted? |  |  |
|  | While traveling, will you be presenting any information at a conference or meeting that is not available in the public domain or fundamental research? |  |  |
|  | While traveling, will you providing any service (including medical assistance, data analysis, other consulting, etc.) or financial assistance to a foreign person, institution, entity, or organization (including hiring or contracting for personnel)? |  |  |
|  | While traveling, will you receive any monetary or other forms of compensation or consideration for your travel expenses or services from a foreign government, person, institution, entity, organization, or sponsor? |  |  |
|  | Upon return from your trip, forward your completed, approved Travel Expense Report to Accounts Payable for processing. Instructions for converting foreign currency to U.S. dollars for reimbursement is available at <http://finweb.rit.edu/controller/content/travel_book.htm#currency_conversion> |  |  |
|  | **Phone Numbers:**  Sponsored Research Services: 475-7985  Human Resources: 475-2424  Risk Management: 475-4903  Office of Compliance & Ethics: 475-6111  Controller: 475-2383 |  |  |

**Appendix D**

**PI's Signature:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Received by AVP, Compliance & Ethics:** \_\_\_\_\_\_\_\_\_\_\_

**Rochester Institute of Technology  
EXPORT CONTROL PROJECT CHECKLIST**

***A copy of the checklist must be forwarded to the Office of Compliance & Ethics, for review and approval prior to the commencement of any project. (Attach contract "Scope of Work" to this form)***

Use this checklist when reviewing:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Principal Investigator (PI): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SRS Project Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Originating Sponsor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Pass through Sponsor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
(if applicable)

* Initiation of major new sponsored projects
* Change of scope of an existing project
* Program award notices
* International collaboration (*i*.*e*., any time a foreign person is involved)
* Requests for proposals or project solicitations
* Any other documents related to proposals, contracts, cooperative agreements, and other arrangements for sponsored research projects to assure that they do not require secrecy or impose restrictions that would require an application under Federal export control regulations.

**Section 1***[To be completed by SRS representative]*

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Does the project or collaboration . . .** | **Yes** | **No** |
|  | Restrict participation (faculty, student, others) in the project based on country of origin or citizenship. |  |  |
|  | Allow only U.S. citizens participation |  |  |
|  | Grant the sponsor a right of pre-publication review  a. Publication subject to sponsor approval  b. Review only to protect sponsor IP or proprietary information; publication not subject to sponsor approval  *Attach the specific term language regarding pre-publication review.* |  |  |
|  | Limit publication or dissemination of the research results in any manner  *If yes, what is the specific restriction (attach the specific term language).* |  |  |
|  | Provide that any part of the sponsoring or contracting documents should not be disclosed |  |  |

**SRS representative Signature/Date**:

**Section 2 [*To be Completed by Principal Investigator (PI)*]**

| **Does the project or collaboration . . .** | | **Yes** | **No** |
| --- | --- | --- | --- |
|  | If research is funded by an outside sponsor, check “No”.  Otherwise, does the PI or RIT intend to withhold the research results for proprietary reasons and/or not share the research results in the scientific community? |  |  |
|  | Involve equipment, technology, data or services necessary to conduct the research that you have previously received, expect to receive or intend to request access to, from a   * Sponsor * Research partner   If yes, please describe the technology, data, or services: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |
|  | Involve equipment, technology, data or services:   * Developed by RIT as part of a previous sponsored research project. If yes, please provide SRS # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. * Subject to an RIT, Sponsor or Research Partner Technology Control Plan (TCP). If yes, please provide SRS # for the sponsored project associated with the TCP \_\_\_\_\_\_\_\_\_\_\_\_\_\_. * Using the WASP Technology?  If yes, have you received from the Office of Compliance & Ethics, and signed the TCP governing the use of the WASP technology?  Please contact the Office of Compliance & Ethics if you or anyone working on the project has not signed the TCP. * Using the use of III-V compounds?  If yes, have you received from the Office of Compliance & Ethics, and signed the TCP governing the use of III-V compounds? Please contact the Office of Compliance & Ethics if you or anyone working on the project has not signed the TCP. |  |  |
|  | If accepting equipment, technology, data or services as part of a project, is the information / article labeled or identified as "export controlled" by the sponsor? |  |  |
|  | Involve research containing source code for encrypted software (other than publicly available software distributed at no charge)? |  |  |
|  | Involve research, information or software that could be used for military or space applications? |  |  |
|  | Involve research, information or software that could be used in development of weapons of mass destruction (nuclear, biological, chemical), or their delivery systems? |  |  |

*PRF PI Page* **Section 3***[To be completed by the Office of Compliance & Ethics]*

|  | **Does the project or collaboration . . .** | **Yes** | **No** |
| --- | --- | --- | --- |
|  | Involve equipment, software, services or technology that is on the United States Munitions List (USML) under the International Traffic in Arms Regulations (ITAR): *see* <http://www.pmddtc.state.gov/regulations_laws/documents/consolidated_itar/Part_121.pdf> |  |  |
|  | Involve equipment, software, services or technology that is on the Commerce Control List (CCL) under the Export Administration Regulations (EAR): *see* <http://www.bis.doc.gov/policiesandregulations/ear/index.htm> |  |  |
|  | Involve technical information or instructions concerning equipment, software or technology on the USML or the CCL. |  |  |
|  | Provide data, services or conduct any transaction with an OFAC sanctioned or embargoed country as defined in the Export Compliance Program (*i.e.*, "Overview of Export Controls" at Section V.A) or identified by the Office of Compliance & Ethics. See <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. |  |  |
|  | Involve or is it anticipated to involve the shipment or hand-carry of any materials, prototypes, samples (including biological, chemical, or hazardous), equipment, hardware, software, technology, or technical data (drawings, schematics, etc.) outside of the U.S. or to any Foreign Persons. |  |  |
|  | Involve or is it anticipated to involve working with institutions, companies, or other organizations located abroad. If so, list all countries: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |
|  | Involve or is it anticipated to involve any performance at sites located outside of the U.S. If so, list all countries: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |  |
|  | Require or is it anticipated to require any travel outside of the U.S. If so, will travel include any of the following destinations: Cuba, Iran, North Korea, Sudan, or Syria. |  |  |

**Project is Export Controlled:** Yes  No

If the project is export controlled, the Assistant Vice President of Compliance & Ethics will develop a Technology Control Plan (TCP), in conjunction with the PI, to secure the controlled data, technology or services going forward during the course of the project.

**Signature/ Date:**

**The PI may not commence any activity on the project prior to the Assistant Vice President of Compliance & Ethics’ approval of this checklist**.

**Appendix E**

**RIT EXPORT CONTROL FLOWCHART**

***Information***

* USML technical data
* CCL listed technology / software

***Tangibles / defense services***

* USML / CCL listed articles
* USML defense services

Information / informational materials

Equipment, technology, software

NO

* not subject to ITAR / EAR
* EAR99

YES

**IS THE ITEM OR TECHNOLOGY**

**LISTED ON USML OR CCL?**

**(*if uncertain contact Office of Legal Affairs*)**

Is it going to an embargoed country / barred individual?

NO

YES

Apply for a license or do not export

No restrictions

on export

OK to:

* Disclose to foreign nationals
* Discuss at conferences
* Use in collaborative research

Is it:

* in the public domain / publicly available
* educational information
* result of fundamental research

NO

YES

Is there an exemption or exception available?

\* ***cannot use exemption / exception if export to embargoed countries or barred individuals***

YES

NO

Document use of exemption or exception and export

Apply for a license or do not export

The research does not qualify as fundamental research – cannot involve foreign nationals or disclose results to foreign nationals unless properly authorized (*e*.*g*., license / license exception)

* ***Try to negotiate restrictions out***
* ***Prepublication review by sponsor to determine whether results are patentable or that sponsor's proprietary information is not inadvertently disclosed is not a restriction on publication***
* ***Pre-publication review to obtain sponsor’s approval to publish is a restriction on publication***
* ***Requirement to use only U.S. citizens in research is a restriction on publication***

Can involve foreign nationals in **conduct** of research

**(1) cannot** use foreign national student or part-time employee to conduct research, unless properly authorized (*e*.*g*., license / license exception), or unless the nature of the research allows compartmentalizing

**(2)** **ITAR only:** **can** use foreign national full-time employee but must document and obtain a Nondisclosure Agreement

**Appendix F**

**FUNDAMENTAL RESEARCH EXCEPTION**

NO

YES

YES

NO

Can involve foreign nationals in conduct of research

The research does not qualify as fundamental research – cannot involve foreign nationals or disclose results to foreign nationals

NO

YES

Will RIT share the results broadly in the scientific community (and not withhold for proprietary reasons)?

NO

YES

NO

YES

Will RIT use pre-existing controlled data?

* Provided by sponsor
* Provided by research partner
* Developed by RIT
* In RIT's possession

The research qualifies as fundamental research – can disclose **results** to foreign nationals

***Review the terms of the contract***

Are there any publication / dissemination restrictions?

Is project funded by an outside sponsor

**Does topic / scope of research relate to an item listed on USML or CCL?**

Appendix G

**Records to be Maintained**

|  |  |  |
| --- | --- | --- |
| **Document** | **C.F.R. cite** | **Notes** |
| **ALL PROJECTS** |  | Include Technology Control Plan in file |
| **ITAR EXPORTS** |  |  |
| Registration Statement | 22 C.F.R. 122 | Include Form DS-2032, including all attachments, and any notifications of changes filed with DDTC in file. |
| Application for Licenses (DSP‑5, DSP‑61, DSP‑73) |  | File should include copies of: (1) application with transmittal letter and any attachments; (2) any correspondence with DDTC; (3) license authorization from DDTC; (4) relevant contract or purchase order; (5) Automated Export System (AES) record, and (6) air waybill or other shipping documents. |
| Exports Pursuant to Technical Assistance Agreement (TAA) |  | Include executed agreement and copy of authorization from DDTC in file. |
| Exports pursuant to License exemption (*e*.*g*., under full-time university employee) |  | Document reasoning for use of exemption and include in file together with all supporting documentation. |
| **DUAL-USE EXPORTS** |  |  |
| BIS Forms 7481 | 748.10 | Project file. |
| BIS Form 711 | 748.12(e) | Project file. |
| Statement by the Ultimate Consignee & Purchaser | 748.11, 740.6 | Project file. |
| End-User Certificate | 740.3(d)(1); 748.9; 748.10 | Project file. |
| Commercial invoices for exports2 | 762.2/758.6 | Project file / Office of Compliance & Ethics |
| Air waybills/bills of lading for exports2 | 762.2/758.6 | Project file /Office of Compliance & Ethics |
| Automated Export System (AES) Record2 | 758.3/762.2 | Project file /Office of Compliance & Ethics |
| International Import Certificates | 748.10(j) | Project file /Office of Compliance & Ethics |

1 Includes Form 748 and any accompanying attachments, riders, or conditions.

2 In case of export of articles.

**Appendix H**

**Assistant Vice President of Compliance & Ethics Contact Information**

**Assistant Vice President of Compliance & Ethics:** Erika Duthiers

**Telephone Number:** (585) 475-6111

**E-mail:** Erika.Duthiers@rit.edu

**Designee:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Telephone Number:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**E-mail:** ­­­­ ­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. *See* 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>. [↑](#footnote-ref-1)
2. *See* Council on Governmental Relations, "Export Controls and Universities: Information and Case Studies," February 2004, available at: http://[www.cogr.edu/viewDoc.cfm?DocID=151612](http://www.cogr.edu/viewDoc.cfm?DocID=151612). [↑](#footnote-ref-2)
3. The ITAR are promulgated pursuant to Section 38 of the Arms Export Control Act, 22 U.S.C. §§ 2778 *et seq*. [↑](#footnote-ref-3)
4. ITAR § 120.6. [↑](#footnote-ref-4)
5. ITAR § 120.10. Note that the ITAR uses the term "blueprints" to cover drawings and assembly instructions. [↑](#footnote-ref-5)
6. ITAR § 120.9. [↑](#footnote-ref-6)
7. *See* ITAR § 121.1. [↑](#footnote-ref-7)
8. *See* ITAR § 120.4. Note that DDTC has jurisdiction over determining whether an item is ITAR- or EAR-controlled. While BIS at Commerce provides assistance with determining the specific ECCN of a dual-use item listed on the CCL, if doubt exists as to whether an item is ITAR- or EAR-controlled, BIS will stay its classification proceeding and forward the issue to DDTC for jurisdiction determination. [↑](#footnote-ref-8)
9. Instructions on the content of a CJ and the filing procedure are available at <http://www.pmddtc.state.gov/commodity_jurisdiction/index.html>. [↑](#footnote-ref-9)
10. ITAR § 120.17. [↑](#footnote-ref-10)
11. ITAR § 122.1. [↑](#footnote-ref-11)
12. ITAR §§ 120.1(c) and (d); 122.1(c). [↑](#footnote-ref-12)
13. ITAR § 122.1(b)(4). [↑](#footnote-ref-13)
14. The policy does not apply to the Republic of South Sudan. [↑](#footnote-ref-14)
15. The EAR are promulgated under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420). From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (IEEPA). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001, which has been extended by successive Presidential Notices, has continued the EAR in effect under IEEPA. [↑](#footnote-ref-15)
16. EAR Part 734. [↑](#footnote-ref-16)
17. Information on the Wassenaar Arrangement is available at: <http://www.bis.doc.gov/wassenaar/default.htm>. [↑](#footnote-ref-17)
18. For a complete discussion, *see Overview*, Section III.C above. [↑](#footnote-ref-18)
19. *See* EAR § 748.3. [↑](#footnote-ref-19)
20. EAR Part 740. [↑](#footnote-ref-20)
21. The sanctions do not apply to the Republic of South Sudan. [↑](#footnote-ref-21)
22. With the exception of the embargo on Cuba, OFAC sanctions are promulgated under the International Emergency Economic Powers Act of 1977, 50 U.S.C. §§ 1701-1706 (IEEPA). The embargo on Cuba is promulgated under the Trading with the Enemy Act of 1917, 12 U.S.C. § 95a (TWEA). (On June 27, 2008, a Presidential Proclamation terminated TWEA authority with respect to North Korea; however, sanctions against North Korea continue under the IEEPA.) [↑](#footnote-ref-22)
23. The sanctions against Iraq extend beyond individuals and entities to include a prohibition on the trade in or transfer of ownership of Iraqi cultural property. [↑](#footnote-ref-23)
24. The complete updated SDN List is available at: <http://www.treasury.gov/ofac/downloads/sdnlist.txt>. [↑](#footnote-ref-24)
25. *See* 50 U.S.C. § 1702. [↑](#footnote-ref-25)
26. *See* Department of Treasury List of Countries Requiring Cooperation with an International Boycott, 76 Fed. Reg. 67791 (Nov. 2, 2011). [↑](#footnote-ref-26)
27. 22 U.S.C. § 2778(c) and 22 C.F.R. § 127.3. [↑](#footnote-ref-27)
28. 22 U.S.C. § 2778(e) and 22 C.F.R. § 127.10. [↑](#footnote-ref-28)
29. ITAR § 127.6. [↑](#footnote-ref-29)
30. 22 U.S.C. § 2778(g) and ITAR § 127.7. [↑](#footnote-ref-30)
31. For a thorough discussion of penalties imposed under the ITAR in the last few years, *see* John C. Pisa-Relli, "Monograph on U.S. Defense Trade Enforcement" (May 24, 2011), available at: <http://www.partneringforcompliance.org/documents/itar_enforcement_monograph_05242011.pdf>. [↑](#footnote-ref-31)
32. *See* Bureau of Political-Military Affairs; Statutory Debarment of ITT Corporation Pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations, 72 Fed. Reg. 18310 (Apr. 11, 2007). For a detailed account of the ITT Corporation investigation, *see* the U.S. Department of Justice press release "ITT Corporation to Pay $100 Million Penalty and Plead Guilty to Illegally Exporting Secret Military Data Overseas" (March 27, 2007), available at: <http://www.justice.gov/opa/pr/2007/March/07_nsd_192.html>. [↑](#footnote-ref-32)
33. For additional details, *see* <http://www.justice.gov/opa/pr/2010/March/10-crm-209.html>. [↑](#footnote-ref-33)
34. These violations are based on the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420), and inflation adjustments made in 15 C.F.R. § 6.4. From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (IEEPA). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001, which has been extended by successive Presidential Notices, has continued the EAR in effect under IEEPA. The USA PATRIOT Improvement and Reauthorization Act of 2005, signed into law on March 9, 2006 (Pub. L. No. 109-177, 120 Stat. 192 (2006)), increased the limit of civil penalties available under IEEPA to $50,000. On October 16, 2007, President Bush signed the International Emergency Economic Powers Enhancement Act, Pub. Law No. 110-96, which amends IEEPA by increasing civil penalties up to $250,000 per violation, and criminal penalties up to $1,000,000 per violation. [↑](#footnote-ref-34)
35. For a review of BIS investigations and penalties, *see* "Don't Let This Happen to You! Actual Investigations of Export Control and Anti-boycott Violations" (September 2010), available at: <http://www.bis.doc.gov/complianceandenforcement/dontletthishappentoyou_2010.pdf>. [↑](#footnote-ref-35)
36. Violations of most of the Economic Sanction Regulations are set under the IEEPA. *See* supra note 30. [↑](#footnote-ref-36)
37. The OFAC embargo of Cuba was promulgated under the Trading with the Enemy Act (TWEA). [↑](#footnote-ref-37)
38. ITAR § 120.15; EAR § 734.2(b). [↑](#footnote-ref-38)
39. ITAR §§ 120.10(a)(5) and 120.11. [↑](#footnote-ref-39)
40. EAR §§ 734.3(b)(3) and 734.7. [↑](#footnote-ref-40)
41. EAR Supplement No. 1 to Part 734, Questions A(1) to B(6). [↑](#footnote-ref-41)
42. ITAR § 120.10(a)(5). [↑](#footnote-ref-42)
43. EAR §§ 734.3(b)(3) and 734.9. [↑](#footnote-ref-43)
44. EAR Supplement No. 1 to Part 734, Questions C(1) to C(6). [↑](#footnote-ref-44)
45. ITAR § 120.11(a)(8); EAR §§ 734.3(b)(3) and 734.8(a). [↑](#footnote-ref-45)
46. *See* BIS Revisions and Clarification of Deemed Export Related Regulatory Requirements, 71 Fed. Reg. 30840, 30844 (May 31, 2006). (This interpretation of fundamental research by BIS, while not binding, is instructive as to how DDTC might interpret its regulations.) [↑](#footnote-ref-46)
47. ITAR §§ 120.11(a)(8) and 120.10(a)(5). [↑](#footnote-ref-47)
48. EAR § 734.8(a). [↑](#footnote-ref-48)
49. EAR § 734.8(b)(5). However, once the sponsor has reviewed and approved the release, the results may be published as fundamental research. [↑](#footnote-ref-49)
50. EAR § 734.11(b). [↑](#footnote-ref-50)
51. ITAR §§ 125.4(d)(1) and 123.16(b)(10). [↑](#footnote-ref-51)
52. The MTCR Annex can be found at <http://www.mtcr.info/english/index.html>. [↑](#footnote-ref-52)
53. *See* ITAR § 126.18. For use of this exemption, it is imperative that the entire provision be understood and followed. [↑](#footnote-ref-53)
54. For example, an Iranian national who has established a permanent residence in the United Kingdom will not be prohibited from enrolling in a class or a degree program under the OFAC embargo regulations on Iran. [↑](#footnote-ref-54)
55. *See* Appendix E for Export Control Flow Chart. [↑](#footnote-ref-55)
56. *See* DDTC Guidelines on Licensing of Foreign National Employment in the United States (Sept. 30, 2009), available at <http://www.pmddtc.state.gov/licensing/documents/WebNotice_LicensingForeign.pdf>. [↑](#footnote-ref-56)
57. DDTC Guidelines for preparing license applications are available at <http://www.pmddtc.state.gov/>. [↑](#footnote-ref-57)
58. For BIS guidance on licensing, see <http://www.bis.doc.gov/Licensing/index.htm>. [↑](#footnote-ref-58)
59. EAR Part 748 is available at <http://www.access.gpo.gov/bis/ear/pdf/748.pdf>. [↑](#footnote-ref-59)
60. EAR §§ 748.11, 748.13 and Supp. 4, 5. [↑](#footnote-ref-60)
61. EAR § 748.4(h). [↑](#footnote-ref-61)
62. EAR § 750.8. [↑](#footnote-ref-62)
63. ITAR §§ 122.5 and 123.26. [↑](#footnote-ref-63)
64. *See* EAR § 762.6. [↑](#footnote-ref-64)