



Office of Regulatory Compliance

UNIVERSITY OF COLORADO  
DENVER | ANSCHUTZ MEDICAL CAMPUS

# **EXPORT CONTROL PROGRAM**

## Guidance Manual

# TABLE OF CONTENTS

- I. INTRODUCTION ..... 1**
- II. INSTITUTIONAL COMMITMENT ..... 1**
- III. DEFINITIONS ..... 2**
- IV. LIST OF ACRONYMS ..... 4**
- V. EXPORT CONTROL REGULATIONS ..... 5**
  - A. Department of Commerce Regulations (EAR) ..... 5
    - 1. Regulatory Authority and Scope..... 5
    - 2. The Commerce Control List ..... 6
    - 3. License Exceptions ..... 7
    - 4. Commodity Classifications..... 8
    - 5. Anti-Boycott Restrictions..... 8
  - B. Department of State Regulations (ITAR)..... 8
    - 1. Regulatory Authority and Scope..... 8
    - 2. USML Categories ..... 9
    - 3. Exporting under the ITAR ..... 9
    - 4. Commodity Jurisdiction ..... 10
  - C. Department of Treasury Regulations (OFAC)..... 10
    - 1. Regulatory Authority and Scope..... 10
    - 2. OFAC Licensing for Country Based Programs ..... 11
- VI. EXCLUSIONS FROM EXPORT CONTROLS ..... 11**
  - A. General Overview..... 11
  - B. Fundamental Research Exclusion..... 12
  - C. Public Domain/Publically Available Information ..... 12
  - D. Educational Information ..... 13
- VII. EXPORT CONTROL AT THE UNIVERSITY OF COLORADO | ANSCHUTZ MEDICAL CAMPUS .. 14**
  - A. Key Roles ..... 14
  - B. Procedures ..... 15

1. Export Control Review .....	15
2. Technology Control Plan.....	15
C. Training.....	16
D. Restricted Party Screening.....	17
E. Licensing .....	18
F. Record Retention.....	18
G. Monitoring and Auditing.....	20
H. Detecting and Reporting Obligations .....	20
I. Penalties for Export Violations.....	21
<b>VIII. APPENDICES .....</b>	<b>22</b>
A. Appendix A, Roles and Responsibilities .....	22

## I. INTRODUCTION

---

Research, scholarly, and other activities of the University of Colorado Denver | Anschutz Medical Campus (“University”) may be subject to the United States export control laws (“export controls”). Export controls are laws promulgated by the United States government and are administered by various Federal agencies including the Department of Commerce through the Export Administration Regulations (EAR-trade protection); the Department of State International Traffic in Arms Regulations (ITAR-national security); and the Department of Treasury Office of Foreign Assets Control (OFAC-economic and trade sanctions).

In many cases, basic and applied research may fall under one or more of the exemptions or exclusions provided in the regulations. In other cases, an export license or technology control plan may be required. Certain travel, procurement, and research activities are also covered by federal export control laws and may trigger an export control issue. For more detailed information on export control policies, and procedures addressing export control issues at the University, please contact the Office of Regulatory Compliance at [reg.compliance@ucdenver.edu](mailto:reg.compliance@ucdenver.edu) or visit the export control website at [ucdenver.edu/exportcontrol](http://ucdenver.edu/exportcontrol).

The purpose of this manual is to provide the University community with an overview of export control rules and regulations, the University’s commitment to export control regulations and provide faculty and staff with the necessary resources to ensure compliance with export control regulations.

## II. INSTITUTIONAL COMMITMENT

---

The University of Colorado as a system, including the University of Colorado Denver | Anschutz Medical Campus, supports and is committed to full and complete compliance with all United States export control laws and regulations. The overall mission of the University is to support and further the endeavors of education, service, research and the dissemination of knowledge. Notwithstanding the foregoing, the University recognizes the importance of balancing its mission with safeguarding national interests through the enforcement of the relevant export control rules and regulations, *supra*. Click here to view the [\*Institutional Statement of Export Control Commitment and Support\*](#).

### III. DEFINITIONS

---

**Deemed Export:** Release of information or technology subject to export control to any foreign national in the U.S. Such a release of information is considered to be an export to the foreign nationals' home country. The ITAR does not use the term "deemed export", however, disclosing or transferring technical data subject to the ITAR to any non-US party is considered to be an export whether it occurs in the U.S. or abroad.

**Dual Use Research:** Research that is conducted for legitimate purposes that generates knowledge, information, technologies, and/or products that can be utilized for benevolent or harmful purposes.

**Dual Use Research of Concern (DURC):** Life sciences research that, based on current understanding, can be reasonably anticipated to provide knowledge, information, products, or technologies that could be directly misapplied to pose a significant threat with broad potential consequences to public health and safety, agricultural crops and other plants, animals, the environment, material or national security.

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

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

**Export Administration Regulations (EAR):** EAR are under the purview of the Department of Commerce and regulate the control of most items that are not subject to ITAR (defense items). Items covered by EAR include products; equipment required to make controlled products of materials; materials required to make controlled products; software required to develop, produce, or use controlled items. Items specifically not controlled by EAR include those controlled by another U.S. government department (e.g., items to embargoed countries, nuclear reactor items and technology, patent applications) and publicly available information, informational materials, software and technology.

**Export License:** A written authorization provided by the appropriate governing regulatory authority detailing the specific terms and conditions under which export or re-export of export controlled items is allowed.

**Foreign National/Foreign Person:** Any natural person who is not a U.S. citizen, or who is not a lawful permanent resident of the U.S., or who does not have refugee or asylum status in the U.S. This definition also includes any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the U.S., as well as international organizations, foreign governments, and any specific agency or subdivision of foreign governments (e.g., diplomatic missions). The term “foreign national” is used in the EAR.

**Fundamental Research:** Research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons (15 C.F.R. § 734.8(c)) The complete definition and discussion of fundamental research, including university-based research is found at 15 C.F.R. § 734.8. University research is considered to be fundamental to the extent that researchers do not accept restrictions on the publication of scientific and technical information resulting from the research. Temporary delays in publication for the protection of sponsor proprietary information do not remove research from the fundamental domain. However, if that sponsor’s proprietary information is subject to the EAR, then that information remains subject in the conduct of the research.

**International Traffic in Arms Regulations (ITAR):** The ITAR regulations are promulgated by the Department of State and control the export of defense-related articles and services set forth on the United States Munitions List (USML). This includes items, information, and software “specifically designed, developed, configured, adapted or modified for a military, spacecraft or intelligence application.” These items, information, and software are identified on the USML. In general, ITAR-listed items that are not the tangible products of University fundamental research will require a license for access and use by all foreign persons.

**Office of Foreign Assets Control (OFAC):** OFAC is the office at the Department of the Treasury that administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes; terrorists; international narcotics traffickers; those engaged in activities related to the proliferation of weapons of mass destruction; and other threats to the national security, foreign policy or economy of the United States; this includes certain individuals and entities designated on various lists such as the Specially Designated Nationals (SDN) list. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and

other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

**U.S. Person:** A citizen of the United States, a lawful permanent resident alien of the U.S., (a Green Card holder), a refugee or someone in the U.S. as a protected political asylee or under amnesty. U.S. persons also include organizations and entities, such as universities, incorporated in the U.S. The general rule is that only U.S. persons are eligible to receive controlled items, software or information without first obtaining an export license from the appropriate agency unless a license exception or exclusion is available.

#### IV. LIST OF ACRONMYS

---

- AECA** Arms Export Control Act
- AES** Automated Export System
- BIS** Bureau of Industry and Security
- CCL** Commerce Control List
- CJ** Commodity Jurisdiction
- CU** University of Colorado Denver | Anschutz Medical Campus
- DDTC** Directorate of Defense Trade Controls
- EAR** Export Administration Regulations
- EC** Export Control
- ECCN** Export Control Classification Number
- ITAR** International Traffic in Arms Regulations
- OFAC** Office of Foreign Asset Controls
- SDN** Specially Designated National
- TCP** Technology Control Plan
- USC** United States Code
- USML** United States Munitions List

## V. EXPORT CONTROL REGULATIONS

---

### A. DEPARTMENT OF COMMERCE REGULATIONS

#### 1. Regulatory Authority and Scope

The Department of Commerce administers the EAR which cover dual use items. Dual use items have civilian uses, but may also have other military or other strategic use applications. For example, certain types of chemicals, pathogens, toxins, viruses, as well as certain equipment, such as a centrifuge, could be deemed to have dual use. Items that have dual use are classified on the CCL. The EAR covers the actual export of these items as well as the transfer of technical data about such items to a foreign national, both within and outside of the U.S.

The export of technical data, as defined and regulated by the EAR, includes the following:

- (1) An actual shipment or transmission of data out of the United States;
- (2) Release of technical data in the U.S. with the knowledge or intent that the data will be shipped or transmitted to a foreign country; and
- (3) Any release of technical data of U.S.-origin to a foreign country.

Under the EAR, technical data may not be exported unless (1) an appropriate license from the Department of Commerce is obtained, or (2) an appropriate exemption exists. License exemptions under the EAR include:

- Information arising during or resulting from fundamental research;
- Data released orally or visually at open conferences, lectures, trade shows, or other media open to the public;
- Publications that may be purchased without restrictions at a nominal cost or that are readily available at public libraries;
- Patents available at any patent office;
- Dissemination of educational information by instruction in catalogue courses and associated laboratories in academic institutions.

#### 2. The Commerce Control List

The CCL is found at 15 C.F.R. § 774 and is a list of items which are controlled for export reasons by the Department of Commerce (the CCL is available at <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>). Items included on the CCL are assigned an export control classification number (ECCN) based on a category and

product group. There are 10 categories, numbered 0 – 9, and five product groups, labeled A- E, within each category. The category and product group generally describe the item being classified, and the remaining three digits of the ECCN relate to the item specifications. An ECCN follows the nomenclature of “#α###”, where the first “#” is the category, “α” is the product group, and “###” identifies the reasons for control. As an example, a plasmid with certain genetic characteristics has an ECCN of 1C353. In general, “###”, with lower numbers are controlled to more destinations than those with higher numbers.

The categories and product groups are as follows:

<b>Commerce Control List Categories</b>	
0	Nuclear Materials, Facilities and Equipment and Miscellaneous
1	Materials, Chemicals, Microorganisms, and Toxins
2	Materials Processing
3	Electronics
4	Computers
5	Telecommunications and Information Security
6	Sensors and Lasers
7	Navigation and Avionics
8	Marine
9	Propulsion Systems, Space Vehicles and Related Equipment

<b>Commerce Control List Product Groups</b>	
A	Equipment, assemblies and components (finished or unfinished goods)
B	Test, inspection and production equipment (manufacturing equipment)
C	Material
D	Software
E	Technology

Under the EAR, the licensing requirements depend upon (1) what is being exported, (2) the destination for the export, (3) who will be using is the material/product, and (4) the reason for the use. The ECCN Entries include a listing of the reasons for control that can be used in determining if an export license is necessary. While the most common controls are for anti-terrorism and national security, many other potential controls exist. The complete list of controls

is found in [15 CFR § 742](#). The control list can be matched to the country chart to make a determination of whether or not a license is required and if an applicable license exception is available.

### 3. License Exceptions

In addition to the Fundamental Research Exemption (“FRE”), which is discussed later in this document, the EAR has license exceptions which authorize U.S. persons to export or re-export, under stated conditions, items subject to the EAR that would otherwise require a license. (See 15 CFR Part 740.) There are limitations on the use of license exemptions, and use of a license exception may trigger certain recordkeeping and notification requirements. Exceptions common for universities include BAG (baggage), i.e., personally-owned items taken abroad for personal use, and TMP (temporary imports, exports and re-exports) which applies to the temporary export of institution-owned equipment such as laptops and other equipment listed on the CCL for work-related activities such as professional presentations, teaching, and field research. There are limitations on the TMP exception, i.e., items must be returned to the U.S. within one year of export, and the item must remain within “effective control” of the person responsible for the equipment; if not returned to the U.S., documentation of disposal is required.

### 4. Commodity Classification

The Bureau of Industry and Standards (BIS) encourages exporters to use the detailed descriptions in the CCL to self-classify items to be exported. However, in the event of an incorrect classification, the exporter is liable for any resulting violations of the EAR and may be subject to resulting penalties. Self-classification may be particularly difficult in the University environment where cutting edge-research pushes the boundaries of existing technologies, and in fact may not precisely meet the technical specifications as described in the existing CCL listings. When unsure about a self-classification, the intended item/technology export may be submitted to BIS through the University’s export control office for a formal classification.

### 5. Anti-Boycott Restrictions

The EAR incorporates anti-boycott provisions which prohibit U.S. persons from participating in unsanctioned boycotts or restrictive trade practices. The laws prohibit certain activities including:

- Agreements to refuse or actual refusal to do business with or in Israel, or with blacklisted companies.
- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality.
- Agreements to furnish or actual furnishing of information about business relationships with or in Israel or with blacklisted companies.

- Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person.

There are certain, limited exceptions to this list of prohibitions. Any U.S. person who is asked to engage in the prohibited activities is requested to report the activity to BIS. Any University member who encounters boycott language is encouraged to contact the Office of Regulatory Compliance.

## ***B. DEPARTMENT OF STATE REGULATIONS***

### **1. Regulatory Authority and Scope.**

ITAR, administered by the Department of State, governs items which are deemed to be inherently military in character. The ITAR contains the USML, which includes defense articles and related technical data that are controlled for export purposes. In addition to the defense article or related technical data, constituent parts and components of the defense article are controlled under the ITAR.

Items listed on the USML which are subject to ITAR require a license form the Directorate of Defense Trade Controls (DDTC) at the State Department before export, unless the export falls under a specific exemption. ITAR exemptions include the public domain, fundamental research, and teaching exemptions.

### **2. USML Categories.**

As noted above, the USML is a list of defense articles and related technical data that are controlled for export purposes. The specific categories are listed below; more specific information about the categories and examples can be found at [22 CFR 121](#):

<b>Category No.</b>	<b>Category Name</b>
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	Surface Vessels of War and Special Naval Equipment
VII	Ground Vehicles
VIII	Aircraft and Related Articles

IX	Military Training Equipment and Training
X	Protective Personnel Equipment
XI	Military Electronics
XII	Fire Control, Laser, Imaging and Guidance Equipment
XIII	Materials and Miscellaneous Articles
XIV	Toxicological Agents, including Chemical Agents, Biological Agents, and Associated Equipment
XV	Spacecraft and related Articles
XVI	Nuclear Weapons Related Articles
XVII	Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
XVIII	Directed Energy Weapons
XIX	Gas Turbine Engines and Associated Equipment
XX	Submersible Vessels and Related Articles
XXI	Articles, Technical Data, and Defense Services not Otherwise Enumerated

### 3. Exporting under the ITAR

Under ITAR, “exporting” includes sending or taking a defense article out of the U.S., disclosing (including oral or visual disclosure) technical data to a foreign person whether in the U.S. or abroad, or performing a defense service on behalf of a foreign person whether in the U.S. or abroad. (See [22 CFR § 120.17](#) for a complete listing of export meaning under the ITAR.) This definition is extremely broad and includes taking controlled technical data out of the U.S. on a laptop computer, regardless of whether or not that information is viewed or accessed while abroad. It also includes allowing a foreign person to view or use a defense article in the U.S. Most exports of defense articles and defense services must be licensed by DDTC.

Generally, a U.S. person that manufactures, brokers or exports defense articles or services must be registered with the DDTC. Registration is required prior to applying for a license or taking advantage of some license exemptions. Registered entities, like the University, may apply for licenses, or permission, to export defense articles and defense services. DDTC reviews license requests on an individual basis, and consults with other agencies, such as the Department of Defense in consideration of the request. Exports of ITAR controlled items are prohibited to some countries and individuals. The list of proscribed destinations may be found at [http://www.pmdtcc.state.gov/embargoed\\_countries/index.html](http://www.pmdtcc.state.gov/embargoed_countries/index.html).

### 4. Commodity Jurisdictions

DDTC is responsible for determining if an item or technology falls within the scope of the ITAR or if the item/technology is under the jurisdiction of the Department of Commerce for the purposes of export controls. While it is possible to self-classify an item, DDTC should be consulted if there

is any doubt as to whether an article or service is subject to the ITAR. **Please contact the Office of Regulatory Compliance for assistance in submitting commodity jurisdiction requests or assistance in determining the applicability of export licensing requirements.**

### ***C. DEPARTMENT OF TREASURY REGULATIONS (OFAC)***

#### **1. Regulatory Authority and Scope**

OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the U.S. OFAC has authority to impose controls on transactions and exports from the U.S. or by U.S. persons to specific foreign persons, countries, and entities; OFAC may also freeze foreign assets that are under the jurisdiction of the United States.

As part of its enforcement actions, OFAC publishes a list of individuals and companies owned, controlled by, or acting on behalf of targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. These individuals and companies are collectively known as “Specially Designated Nationals” (SDNs). Assets of SDNs are blocked and U.S. persons are generally prohibited from dealing with them. Additional information about SDNs can be found on the [OFAC webpage](#). ***The Office of Regulatory Compliance has access to the most up-to-date version of the SDN list, and can assist in determining whether a person, institution, government, or other entity is prohibited from doing business with the University.***

#### **2. OFAC Licensing for Country Based Programs**

Country-specific sanction programs should be reviewed prior to conducting activities with an OFAC sanctioned entity or person, or in an OFAC-sanctioned country. Individual sanctions describe what is exempt from embargo (e.g., personal communications, exchange of informational materials), and generally will include activities which *are* permissible under an applicable license. If activities are allowed under a general license, then specific permission to engage in the activity is not required. However, it is advised to carefully review the conditions of the general license and use of the general license documented. Activities that do not qualify for a general license may be permissible under a specific OFAC license. Specific license requests must be submitted and approved by OFAC before engaging in the sanctioned activity. ***The Office of Regulatory Compliance will assist with determining whether a general license applies, and will also assist with any license requests.***

## VI. EXCLUSIONS FROM EXPORT CONTROL

---

### *A. GENERAL OVERVIEW*

Universities in the United States have a long tradition of developing and inventing leading edge technologies which are important for national security and economic competitiveness as well as for education and training scholars from around the world. In accordance with this role, the Departments of Commerce and State rules include safe harbors whereby unrestricted research and classroom teaching activities at U.S. universities are excluded from export control regulations. The majority of the University's academic and research activities fall within these exclusions and thus are exempt from export control; however, there will still be some University activities which are not covered by the exclusions. The most common exclusions applicable to higher education institutions are summarized below. **Please contact the Office of Regulatory Compliance regarding any questions about research projects, and whether or not it is included under one of these exclusions or exemptions.**

### *B. FUNDAMENTAL RESEARCH EXCLUSION*

Fundamental research is basic or applied research at accredited institutions of higher education in the U.S., which results in information that is ordinarily published and shared broadly within the scientific community; fundamental research is excluded from export control regulations (i.e., fundamental research exclusion (FRE)). In other words, when the University is conducting research which meets the FRE definition, the results may be shared with foreign nationals and such disclosure will not trigger export control restrictions.

The FRE will be lost if:

- (1) the institution or investigator accepts any restrictions on the publication of information resulting from the research, other than limited prepublication review by research sponsors to ensure that proprietary information is not inadvertently disclosed in publication, or to ensure that publication will not compromise the patent rights or the sponsor; or
- (2) the research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

Note as well that research may give rise to export issues if the primary research is conducted outside the U.S. Also, there is no general fundamental research exclusion that applies to defense articles under ITAR (as opposed to technical data); however, there are exclusions that apply to specific articles under certain circumstances.

### ***C. PUBLIC DOMAIN/PUBLICALLY AVAILABLE INFORMATION***

Information that is published and generally available to the public, as well as publicly available technology and software, falls outside the scope of export control regulations. Note the EAR and ITAR have different definitions of what constitutes publically available.

Under **ITAR**, information in the public domain means information that is published and generally accessible or available to the public. Information in the public domain may be obtained through:

- Sales at newsstands and bookstores;
- Subscriptions available without restriction to anyone who may want to purchase the published information;
- Second class mailing privileges granted by the U.S. Government;
- Libraries open to the public or from which the public can obtain documents;
- Patents available at any patent office;
- Unlimited distribution as a conference, meeting, seminar, trade show or exhibition that is generally accessible to the public and is in the U.S.;
- Public release (i.e., unlimited distribution) in any form (not necessarily published) after approval by the cognizant U.S. Government agency or department; and
- Fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.

Under the **EAR**, publically available technology that is already published or will be published is not controlled. Information is published when it becomes generally accessible to the interested public in any form, including:

- Publication in periodicals, books, print, or other means available for general distribution for free or at cost;
- Readily available at libraries open to the public or university libraries;
- Patents or open patent applications available at any patent office; or
- Information that is released at an open conference, meeting seminar, trade show, or other gathering open to the public

Other differences include the following:

- Requirement in the EAR that a publication may be distributed for free or no more than the cost or reproduction and distribution; ITAR does not have this requirement.
- The EAR is silent about where an open conference, meeting, seminar or trade show must take place, and therefore allows participation at foreign conferences as long as the

conference is open to all technically qualified members of the public, and attendees may take notes.

- ITAR limits participation in conferences and similar events to those occurring within the United States.

Under **OFAC**, generally, information and information materials are excluded from the OFAC licensing requirements. The exclusion is applicable to publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD-ROMs, artworks, and news wire feeds.

#### ***D. EDUCATIONAL INFORMATION***

Export control regulations do not apply to information released in academic catalog listed courses, or teaching labs associated with the courses. In other words, a faculty member teaching a course at the University may discuss what would otherwise be export-controlled technology in the classroom or laboratory without an export license, even if foreign national students are enrolled in the course. The exclusion stems from ITAR's recognition that "...information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain..." should not be subject to export control restrictions. The educational instruction exclusion does not apply to proprietary information, and certain information deemed classified or sensitive by the Federal government.

## **VII. EXPORT CONTROL AT THE UNIVERSITY OF COLORADO DENVER | ANSCHUTZ MEDICAL CAMPUS**

---

### ***A. KEY ROLES***

Export control requires full institutional commitment to ensure success. Senior University officials have a responsibility to ensure that adequate resources and management support exist to enable the institution to fully comply with export control rules and regulations, as well as resolution of any issues. In the event ITAR research is proposed, campus leaders will be consulted and approval will be requested from the Chancellor(s). The Chancellor(s) may delegate approval as appropriate.

A Roles and Responsibilities (R&R) guide is included as an attachment to this policy as Appendix A. The purpose of the guide is to ensure that the University is compliant with export control laws. A brief overview of some of the key export control responsibilities are noted below; all offices or individuals with EC roles can be found in the accompanying R&R guide.

Empowered Officials. The Associate Vice Chancellor for Regulatory Compliance is the Empowered Official for the University, and backup authority has been provided to the Export Control Officer for certain activities. The Empowered Official has the authority to represent the institution in matters related to registration, licensing, commodity jurisdiction and classification requests, and voluntary or directed disclosures. Only Empowered Officials may sign paperwork and bind the institution in actions with government agencies related to export control responsibilities.

Office of Regulatory Compliance. The Office of Regulatory Compliance (ORC) is the main institutional office of record with oversight of export control issues. Export control questions should be directed to the ORC.

Faculty Members. Faculty have expert knowledge about certain types of information and technology used in a research project or other University activity, such as presenting at conferences, and through discussions with fellow faculty and collaborators. Faculty members share in the responsibility of export control compliance. Before engaging in any research project or activities that may be subject to export controls, Faculty should consult with ORC/ECO.

Office of Grants and Contracts. The Office of Grants and Contracts (OGC) reviews sponsored project agreements for CU Denver | AMC. OGC has a primary gatekeeping responsibility in maintaining the FRE. OGC consults with ORC to ensure sponsored projects are in compliance with export control regulations.

Environmental Health and Safety. Environmental Health and Safety (EHS) is responsible for the biosafety program at the University, which can implicate export controlled substances, select agents, and dual use items of concern. EHS works closely with faculty using biological material and coordinates with ORC to ensure compliance with export control regulations.

## ***B. PROCEDURES***

### ***1. Export Control Review***

Export Control impacts a number of University offices. Faculty members/PIs are in the best position to understand how particular technology, data, or information involved in research may be subject to export control. Export control should be considered when a PI submits a proposal, receives an award, and prior to execution of a contract.

Other examples of when export control review should occur includes certain international travel activity; shipment of various goods and materials to certain locations; when entering into

collaborations with international partners including visiting scientists; during work with certain biologics and toxins including DURC; and when accepting funds from certain countries. These are just a few of the examples of when export control issues may arise. The *Roles and Responsibilities* chart, Appendix A, more fully outlines institutional responsibilities.

## 2. Technology Control Plan

A technology control plan (TCP) is a written document which outlines formal processes and procedures that University project personnel are required to follow to ensure that items and information of concern are not disclosed to any unauthorized personnel, or otherwise exported without appropriate U.S. government authorization (i.e., a license). A TCP ensures that all individuals working on a project understand their responsibilities and obligations under export control rules and regulations.

The following are examples of elements which may be part of a TCP:

- a. Institutional commitment to export control;
- b. Identification of applicable export control and items or technologies subject to the controls;
- c. A description of agreed upon security measures to control the item/technology, including, as appropriate, the following:
  - i. Laboratory compartmentalization;
  - ii. Marking;
  - iii. Locked storage;
  - iv. Electronic Security; and
  - v. Confidential communications
- d. Identification and nationality of each individual who will have access to the controlled item or technology;
- e. Personnel screening measures for granting access to the controlled item/technology.

All individuals must be informed of the terms and conditions of the TCP, and agree to comply with the TCP security measures, prior to accessing any export controlled items or technology.

## C. TRAINING

Training is a critical element of the institution's export management and compliance program. Because export control regulations change and technologies and their end-users are continually evolving, training is an important component within the Export Management and Compliance Program. The greatest risk of non-compliance of export laws and regulations occurs during casual conversations in person, on the telephone, or via email. Informed users minimize the likelihood that inadvertent violations of export laws and regulations will occur.

An important component of the export compliance program is the effective communication of policy and procedures to all employees. Anyone involved in export-related functions should understand export compliance responsibilities as they might relate to their responsibilities. ORC will prepare materials and provide appropriate training to ensure individuals as well as academic and administrative units possess a working knowledge of current export control regulations and specific requirements of the institution's compliance program.

ORC will maintain records of training or briefings provided. General export control information and presentations will be available for the institution community online at [ucdenver.edu/exportcontrol](http://ucdenver.edu/exportcontrol).

Training will be accomplished as follows:

1. Website. The ORC EC web pages contain important export control information and links. ORC works with gatekeeping central offices in an effort to direct web traffic to the EC pages.
2. Online Training. Training on export control will be done via the Collaborative Institutional Training Initiative (CITI) training program. ORC will provide recommendations on which specific modules within the CITI EC should be completed based on the role of the individual.
3. Other Training. Targeted training is appropriate if there are export control terms or conditions in a project and such determination of training will be based on a case-specific basis. ORC will ensure that appropriate training materials are available and that employees or students engaged in export controlled activities receive the appropriate briefing. ORC will also maintain records of training or briefings provided. Training may be done individually, in small groups, or as an overview for a larger audience.

## ***D. RESTRICTED PARTY SCREENING***

Restricted Party screening is an essential piece of export control compliance. The University has a license with eCustoms to use Visual Compliance, a web-based tool, to conduct restricted party screening of entities and individuals. Visual Compliance screens parties and entities against all government denied and restricted party lists as well financial services, law enforcement, and international lists. Visual Compliance also maintains an audit trail of restricted party screening activities and is dynamic in that the software rescreens previously screened parties on a nightly basis.

Restricted party screening is done by ORC for certain situations including:

- Parties named to technology control plans;
- Foreign subcontractors;
- Foreign national employees as part of the I-129 petition process.

## ***E. LICENSING***

The U.S. Department of Commerce must issue an export license or provide for an exemption from license requirements before any tangible item, software, or information located on the Commerce Control List may be exported or re-exported. Likewise, the U.S. Department of State must issue an export license or provide for an exemption from licensing requirements for any items, software, or information located on the U.S. Munitions List.

Licenses from OFAC may be required in support of international university activities in countries covered by economic and trade sanctions. Licenses from the Department of State or the Department of Commerce may be required for the export of University owned equipment in support of international activities. Additionally, export licenses may be required in order for foreign nationals to access controlled items or technology at the University. The Empowered Officials are the individuals at the University who are authorized to apply for licenses. In the event that a license is required, the ORC, in consultation with the Office of University Counsel as needed, will prepare and sign the necessary documentation for preparing the license request. The ORC, within the Export Control Division, will be responsible for maintaining records associated with license requests.

University personnel who are unsure about licensing requirements for proposed international activities or the use of controlled equipment by foreign nationals should consult ORC prior to engaging in the activity. Failure to secure the required licenses could subject University faculty or staff to potential criminal and civil penalties as well as University sanctions.

## ***F. RECORD RETENTION***

The ITAR, EAR and OFAC regulations all have strict record keeping requirements for regulated export activities. Under each of these sets of regulations, records must be retained for five (5) years after the completion of the activity; records must be available to the regulating authority upon request. Records that should be retained include all memoranda, notes, correspondence (including email), financial records, shipping records, and any other information related to the export activities. Moreover, when a license exception (EAR) or license exemption (ITAR) is used, additional information documenting the applicability of the exception/exemption may be required and in some cases there may be additional reporting requirements.

Shipment of items controlled under the ITAR or EAR should be clearly marked as controlled with the appropriate regulatory control cited. Any licensed export, as well as exports with a dollar value greater than \$2500 must be entered into the Department of Census Automated Export System (AES) prior to the export of the item or information. While commercial freight forwarders will usually handle the AES entry, the ORC is able to assist the University community with the export of items being hand-carried or technical data being mailed or electronically transmitted.

The University shall maintain export control related records in accordance with Federal and State of Colorado record retention policy and the University's records retention schedule. Accordingly, such records shall be retained no less than five (5) years after termination of the export controlled activity.

Information which 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 qualifies for an exception; however, it is the University's policy that all documentation for these analyses be maintained for five (5) years after the analysis has been done. In the event of any audit, this demonstrates that an assessment was done to determine the designation of exemption or exception.

BIS has a specific record-keeping requirement for export control records.<sup>1</sup> Generally, records required to be kept by EAR must be kept for a period of five (5) years from the project's termination date. However, if BIS or any other government agency makes a request for such records following a voluntary self-disclosure, the records must be maintained until the agency concerned provides written authorization concerning the records release.

The responsibility for records maintenance is further broken out below:

---

<sup>1</sup> See 15 C.F.R. § 762.6

- ECO recordkeeping includes:
  - Project Technology Control Plans
  - Documentation in support of all random-sample reviews of existing TCPs
  - Confirmation and record of training presentations
  - All documentation generated by the ECO or Empowered Official in pursuit of that individual's designated duties
  - Documentation of license requests and results
  - Other records as required
  
- Office of University Counsel
  - Documentation of any legal action, including but not limited to, filings, notices, settlements

## ***G. MONITORING AND AUDITING***

In order to maintain University's export compliance program in good order and to ensure consistent adherence to U.S. export laws, the ECO will conduct, at least annually, reviews of TCPs, and also at any time and as needed. This is in addition to the monitoring and visitation timelines already discussed.

The purpose of the review is to:

- Identify possible violations; and
- Identify deficiencies in training, procedures, etc., that can be corrected.

## ***H. DETECTING AND REPORTING OBLIGATIONS***

It will be the policy of the University to voluntarily self-disclose violations as required and identified. All federal agencies have dramatically increased the investigation in and successful prosecution of export regulation violations. The penalties for these violations can be very severe, including personal liability, monetary fines, and imprisonment. However, government agencies assign great weight to voluntary self-disclosures as a mitigating factor.

Any individual who suspects a violation has occurred must immediately notify the Export Control Officer, the Office of University Counsel, or EthicsPoint at 1-800-677-5590, or [www.ethicspoint.com](http://www.ethicspoint.com). The ORC will work with University Counsel to determine the appropriate follow-up to the notification, which may include a voluntary self-disclosure to the appropriate

governmental agency. An internal review of the suspected violation, including review of the circumstances, personnel, items, and communications involved, will be conducted by ORC in coordination with University Counsel as appropriate.

Once the review is complete, if it is determined that the cognizant governmental agency should be notified of a potential violation, the following information should be provided:

- The project's description and background;
- A description of the suspected violation;
- Which items and controlled categories were involved;
- The date(s) the violation(s) occurred;
- Which countries were involved;
- Individuals involved and their citizenships;
- An explanation of why the alleged violation occurred;
- Any corrective actions taken; and
- A statement regarding CU Denver | Anschutz's commitment to export controls compliance.

Once the initial notification and supplementary letter have been sent, the University will follow the government agency's instructions.

Violations of export control regulations by University personnel, including campus policies and procedure, may result in disciplinary or other corrective actions.

## ***I. PENALTIES FOR EXPORT VIOLATIONS***

Violation of the export control laws can result in both civil and criminal penalties including fines and imprisonment. Although there is a maximum amount for a civil or criminal penalty, the actual penalty is often multiplied. For instance, if multiple unauthorized shipments of the same item to the same end user were completed, each individual shipment could potentially incur the maximum penalty. Even a single unauthorized export may result in multiple violations (e.g. export without a license, false representation on shipping documents, acting with knowledge of a violation, etc.). Maximum civil penalties for violations under the OFAC, ITAR and EAR are \$500,000. Criminal violations can result in fines up to \$1,000,000 and criminal prison sentences can be up to 20 years for individuals engaging in the violations. Violation of the export control laws may result in the loss of future export privileges (EAR) or even from debarment from participation in future federal contracts (ITAR).

In assessing penalties, DDTC, BIS, and OFAC will consider mitigating factors. Mitigating factors include whether the violation was voluntarily disclosed; whether the violation is an isolated

incident or part of a pattern of continuing behavior; whether the institution had a compliance program in place at the time of the violations; whether steps were taken to improve the compliance program after the discovery of the violation; and whether the violation was due to inadvertence, mistake of fact, or a good faith misinterpretation of the laws.

## APPENDIX A, Roles and Responsibilities

---

Position or Office	Responsibilities
Faculty/PI	<ol style="list-style-type: none"> <li>1. Be aware of and in compliance with export control as well as institutional policies and procedures.</li> <li>2. Identify the purchase/use of biological agents (pathogens) or other regulated chemicals that have export control implications; notify EH&amp;S and ORC of any purchases of export controlled items.</li> <li>3. Track and control access to EC items; notify EH&amp;S and ORC as required.</li> <li>4. Assist ORC is correctly classifying technology and items that are subject to EC laws.</li> <li>5. Assist in developing and maintaining conditions of technology control plans for any activity data, or equipment where the need for a plan is identified.</li> <li>6. Ensure that research staff and students have been trained on the technology plan and on EC regulations that could apply.</li> <li>7. Ensure appropriate licenses, if applicable, have been obtained prior to sharing EC controlled information.</li> </ol>
Office of Regulatory Compliance	<ol style="list-style-type: none"> <li>1. Monitor and oversee the institution's export control program, including license reviews, license determinations, and submission of license requests.</li> <li>2. Conduct screening as needed for potential EC issues via commercial software package (Visual Compliance).</li> <li>3. Educate and advise the campus constituents on EC compliance requirements.</li> <li>4. Assist PIs and others when research involves export controlled equipment or information.</li> <li>5. Assist in the development of security and technology control plans (TCP).</li> <li>6. Maintain appropriate documentation and record-keeping related to EC, licensing, and other EC activities.</li> <li>7. Act as institutional office of record when communicating with Federal agencies; includes designation of Empowered Officials.</li> <li>8. Apply for licenses, commodity jurisdiction and commodity classification requests.</li> <li>9. Maintain EC website.</li> </ol>
Office of Grants and Contracts	<ol style="list-style-type: none"> <li>1. Review terms and conditions of sponsored projects award documentation; identify restrictions on publication and dissemination of research results; negotiate out restrictive language and clause that restrict the institution's ability to publish the research or participation/access by foreign nationals.</li> <li>2. Ensure EC language is included in agreements if applicable.</li> <li>3. Conduct or request EC screening as appropriate.</li> <li>4. Communicate potential EC issues to ORC and the PI.</li> <li>5. Communicate with ORC about changes in awards that necessitate additional review of the project for EC issues.</li> </ol>

<b>Environmental Health and Safety</b>	<ol style="list-style-type: none"> <li>1. Maintain inventories of chemicals and other regulated substances, including tracking controlled biologicals on campuses.</li> <li>2. Maintain listings of labs for the campuses, including access given to lab, and other details.</li> <li>3. Provide guidance about shipping chemicals and other controlled substances, and movement of labs; this includes having oversight and administration of the online Biological Shipping course.</li> <li>4. Manages the institutional Biosafety program. The Institutional Biosafety Committee (IBC) ensures researchers working with certain materials have appropriate approvals. This includes Dual Use Research of Concern (DURC) which may have EC implications.</li> <li>5. Manages the Select Agent program.</li> <li>6. Consult with PIs and departments on questions related to the safe shipment and handling of biological agents and pathogens.</li> </ol>
<b>Human Resources</b>	<ol style="list-style-type: none"> <li>1. Perform I-9 verification of employment eligibility for all new hires including monthly reporting to monitor I-9 forms. Perform monthly reviews for forms which have not been submitted and those that are due to expire.</li> <li>2. Work closely with ISSS office to track the status of CU sponsored international employees.</li> <li>3. Performs debarred party review for campuses.</li> </ol>
<b>Office of Information Technology (OIT)</b>	<ol style="list-style-type: none"> <li>1. Consult and assist on matters related to IT activities or services with potential EC implications for OIT and the campuses.</li> <li>2. Assist with the development of technology control plans (TCPs), as needed. (NOTE: ORC has responsibility for creating TCP's.)</li> <li>3. Provide applicable EC guidance on cloud computing including acceptable use of cloud servers and limitations to placing restricted information on cloud servers.</li> <li>4. Upon request, provide technical assistance on laptops and international travel. Assistance to consider may include providing "sanitized laptops" for international travel and providing information on how to handle emails and other forms of communication of information subject to EC regulations when outside the United States.</li> <li>5. Determine how and when new employees and students are provisioned for access to certain university-provided systems and technology.</li> </ol>

<b>Office of International Affairs (OIA)</b>	<p>1. Consult and assist the campuses to increase awareness of international opportunities and related risks, particularly when engaging in those activities with sanctioned individuals, entities, or countries.</p> <p>2. In consultation with ORC, provide assistance with EC information to be included in any contracts or memorandums of understanding (MOUs) when initiating international partnerships.</p> <p>3. Providing information as needed for the campuses' international travel activities. Assistance to consider may include informing travelers of the need to contact ORC or the OIT Technology to: 1) obtain information on restrictions of activities when traveling in certain international locations (e.g., OFAC sanctioned countries); 2) discuss the technology or data that can be taken to international locations; and 3) learn how to handle emails and other forms of communication of information subject to EC regulations when outside the United States.</p>
<b>International Student and Scholar Services (ISSS)</b>	<p>1. Consult and assist departments on the campuses to increase awareness of international collaboration and visa sponsorship opportunities and related risks, particularly when sponsoring scholars or students from certain at risk countries.</p> <p>2. Provide assistance and direction to the campus departments on the following: 1) the need for deemed export reviews prior to sponsoring certain visa types; 2) how FN's can obtain proper authorizations for on campus employment (e.g., social security numbers, offer letters, etc.); and 3) the necessity of informing ISSS of any changes in FN activities, for evaluation and reporting to the federal government through SEVIS and USCIS, as well as potential EC license review.</p>
<b>Facilities Management Business Services (FM)</b>	<p>1. Maintains oversight for mailing services for the Anschutz Medical Campus and University Hospital, as well as intercampus mail.</p> <p>2. Maintains oversight of vendors engaged to provide custodial services which could include access to restricted areas. In coordination with the badging office which is managed by the University policy department, access can be limited as needed.</p>
<b>Office of University Counsel</b>	<p>The Office of University Counsel serves in an advisory role to the central offices and to the campuses generally.</p>