Overview of Technology Control Plans, Visitor Control and Compliance

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CONTENTS

Export Control Overview

Applicable Regulations

State	Commerce	NRC	Energy	Treasury

International Traffic in Arms Regulations

Export Administration Regulations

Nuclear Regulatory Commission

Department of Energy Regulations

Office of Foreign Assets control

"ITAR" "EAR" "NRC" "DOE" "OFAC"

Export Controls: Basics

Regulations

- International Traffic in Arms Regulations (ITAR) – specially designed military technologies Defense Articles and Defense Services

- Export Administration Regulations (EAR) - commercial and certain types of military technologies

Purpose

- Protect IP, national security, and further foreign policy interests

- Prevent weapons proliferation, narcotics trafficking, etc..

Reasons

- Crime control, anti-terrorism, non-proliferation, regional stability, short supply, national security, embargoes, sanctions, practices (human rights, etc..), chem/bio agents, encryption, firearms, missile tech, surreptitious listening, military technology

UCF

Technology Lists

| ITAR – USML (abridged)	
Cat I:	Firearms
Cat II:	Guns and Armament
Cat III:	Ammunition / Ordinance
Cat IV:	Launch Vehicles, Missiles, Rockets
Cat V:	Explosives and Propellants,
Cat VI:	Ships
Cat VII:	Ground Vehicles
Cat VIII:	Aircraft
Cat IX:	Training Equipment
Cat X:	Protective Equipment
Cat XI:	Military Electronics
Cat XII	Optical and Imaging
Cat XIII:	Materials
Cat XIV:	Chem / Bio & Equipment
Cat XV:	Spacecraft and Satellites
Cat XVI:	Nuclear Weapons
Cat XVII:	Classified Articles
Cat XVIII:	Direct Energy Weapons
Cat XIX:	Gas Turbine Engines
Cat XX:	Submersible Vessels
Cat XXI:	Miscellaneous

EAR – CCL (abridged)

Cat 0: Nuclear Materials, Facilities, Equipment & Misc.

Cat 1: Materials, Chemicals, Microorganisms and Toxins

Cat 2: Material Processing

Cat 3: Electronics

Cat 4: Computers

Cat 5: Telecommunications and Info Security

Cat 6: Sensors and Lasers

Cat 7: Navigation and Avionics

Cat 8: Marine

Cat 9: Propulsion, Space Vehicles & Equipment

Commerce Control List (CCL)

Commerce Control Category List	
0	Nuclear Materials, Facilities, And Equipment (and Miscellaneous Items)
1	Materials, Chemicals, Microorganisms and Toxins
2	Materials Processing
3	*Electronics* Design, Development, and Products
4	*Computers*
5 Part 1	*Telecommunications*
5 Part 2	Information Security
6	*Sensors and Lasers*
7	*Navigation and Avionics*
8	Marine
9	*Aerospace and Propulsion*

Five Product Groups	
A	Systems, Equipment and Components
B	Test, Inspection and Production Equipment
C	Material
D	Software
E	Technology

Export Control Classification Number (ECCN)

9 = Aerospace and Propulsion

A = Systems, Equipment and Components

004 = Item number

9A004
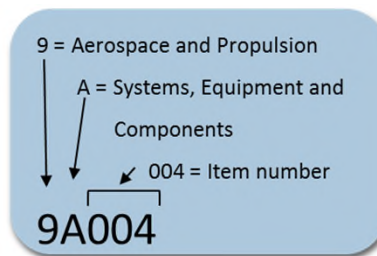
9E003 is the ECCN for the Turbine Technology. Use Supplement 1 to 15 CFR §774 for the full list of ECCNs.

Key Concepts

Physical Export: Sending, transferring or taking a tangible item outside of the U.S. (also, re-export)

Deemed Export: Disclosing (including oral or visual disclosure) technical data, technology, or source code to a non-U.S. Person, in the U.S. or abroad

Defense Service: Providing technical assistance, training, or defense services to a non-U.S. Person, whether in the United States or abroad

Foreign person: Anyone not a US Citizen or Permanent Resident

Release

Technology and software are released through:

1. Visual or other inspection by a foreign person of items that reveals technology or source code.

2. Oral or written exchanges of information with a foreign person in the U.S. or abroad

3. Any act causing the release of technology or software through the use of access information (i.e. Information that allows access to encrypted technology or encrypted software in an unencrypted form. Examples include decryption keys, network access codes, and passwords).

Controls Beyond the Lists

Destinations:

- Country

- Company/Entity

- Individual

Denied Parties: Supplement No. 4 to Part 744 of the EAR.

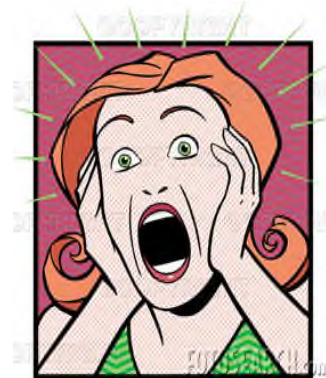**Voluntary Self Disclosure:** It is better to self-disclose than not say anything.

Parade of Horrors

◦ Potential harm to national security and foreign policy interests

◦ Negative impact on research institution, including harm to reputation

◦ Loss of funding

◦ Significant civil & criminal fines

◦ Investigation costs

◦ Debarment

◦ Incarceration

Identifying export control requirements and implementing security measures

Key Requirements

- Policy

- Operating procedures

- Security procedures - Technology control plan (TCP)

- Training

- Recordkeeping

- Monitoring / audit function

Partnership

Buy in from different units is key!

Training, training, training -
◦ Provide training to new hires
◦ Provide annual update training

Update and communicate-
◦ Provide feedback and accept feedback on processes
◦ Openly communicate on future changes and timelines

Core Units

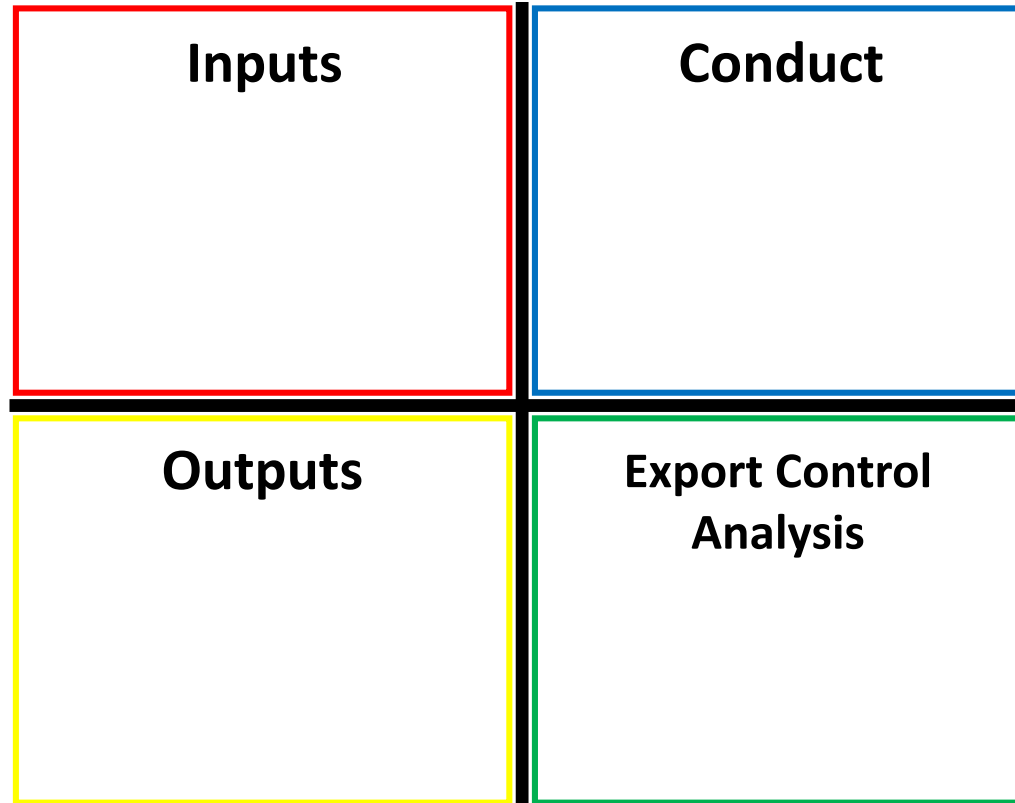|		
Human Resources	Sponsored Programs	General Counsel
Visa Office	Purchasing	Finance & Acct.
Admissions	Env. Health & Safety	Travel
International Programs	Information Technology	
Property	Shipping	

What does being "subject" to export controls really mean?

1. **Something about the activity is unallowable by law, or**

2. **Something about activity is not public or cannot be made public, and**
   - *Inputs* provided by the sponsor
   - Research *conduct* (i.e. the things you do)
   - *Output* resulting from the activity

3. **Whatever is not public is also identified on a control list**
   - EAR Commerce Control List (CCL)
   - ITAR U.S. Munitions List (USML)
   - NRC List

4. **Technologies on the control list are "off limits" to foreign persons**
   - Things in the lab
   - Information, know-how and technical data
   - Research results
   - IT systems and data

Assessment Method

Inputs	**Conduct**
Outputs	**Export Control Analysis**

Inputs

EAR	ITAR
Receiving non-public domain technology or software?	Receiving
Receiving proprietary Info., techniques, methods, know-how, etc..	– Defense articles?
	– Technical data?
NDA, CDA, PIA, MTA	Receiving ITAR end-items, components, accessories?
◦ Export Controlled?	– CUI, CDI, CTI?
EAR controlled equipment or materials	– DD2345 MCTD?
◦ Deemed export?	– DD254?

Conduct

EAR	ITAR
Deemed export via equipment "use" Is the activity outside of FRE?	Defense article research equipment? • Advanced technology development • Defense service?

Contractual Conditions
- Access (IT systems, facilities, equipment software)
- Dissemination/distribution limitations
- Pre-publication approval
- Foreign national participation

Outputs

EAR	ITAR
Proprietary research results Results generate an EAR controlled item? Specially designing something not subject to export controls to EAR? Reports	• Fabrication of defense article? • Specially designing something not subject to export controls to ITAR? • Results are ITAR technical data (Born ITAR) • Distribution limited reports?

International Shipping

• Physical shipments

Impacts

Restrictions may require

- The implementation of security protocols

- Additional US Government oversight

- Prior US Government approval

- Restricted international collaboration, travel, foreign persons

- Contractual negotiation

Templates

- Key: Develop multiple templates to streamline processes and to document a good faith effort at compliance.

- Export Assurance Terms and Conditions

- ITAR Technology Control Plan

- EAR Technology Control Plan

- Documentation templates

Technology Control Plan

A TCP is simply a plan that secures the project information/equipment from access by non-U.S. persons. TCP helps to mitigate risk and protect technology

At UCF required:

- With a DDTC Technical Assistance Agreement (TAA)

- With a Deemed Export license.

- For EAR 500/600 series equipment and associated technology.

- When a non-disclosure agreement indicates certain controlled information will be discussed, exchanged, or stored on campus.

- With ITAR controlled research projects.

Technology Control Plan

- Person responsible for managing TCP.

- Description of project, scope, and background.

- Bona Fide Full-Time employee exemption/licenses.

- Escort/visitor procedures.

- Physical Security details.

- Information Security details.

- Procurement information.

- Shipping / Transporting details.

- Personnel and proof of training completed.

- Location of research/work.

- When to contact OICEC.
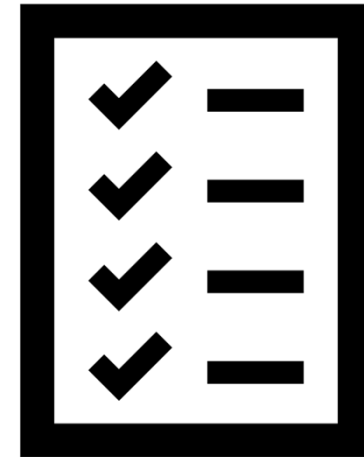
Visitors

- Three general categories
  - Visiting Scholars
  - Volunteers
  - Other

- Assess Early
  - Visa process
  - IT account process

- Training for responsible personnel
  - Faculty
  - Students
  - Facility Managers
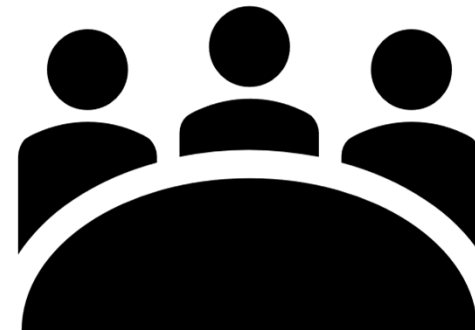
Monitor activities subject to a TCP.

Key: Don't just write a plan.

- Establish a time frame and criteria for monitoring TCPs.

- Access risk and identify issues.

- Work with the researchers/employees to simplify processes and update security procedures as needed.

Audit the Export Control Program

Key: Don't just write a policy.

▪Establish a time frame on how often templates will be reviewed for
revisions (annually, every two years, etc..).

▪Simplify processes.

▪Access risk and obtain input from upper management

Licensing

Commodity Jurisdiction Request

- If unsure whether a commodity is subject to the ITAR or the EAR, can submit a CJ request

- Benefits of a CJ Request:
  - Certainty as to classification
  - Free and no registration required

  Form DS-4076:
  http://www.pmddtc.state.gov/commodity_jurisdiction/index.html

Applying for a license

- At UCF the Office of Export Controls Compliance is the only unit authorized to submit licenses on behalf of UCF.

- Applying for a license takes time!
  - Requires input from the researcher, foreign grad student, or foreign collaborator

- License must be in place <u>before</u> work begins.

- In addition to the license, a technology control plan (TCP) is generally required.

Licenses and Agreements

- At UCF the Office of International Collaboration and Export Control is the only unit authorized to submit licenses on behalf of UCF.

- Technical Assistance Agreements (TAA)

- DSP = "Department of State Protocol"
  - DSP-5:
    - Permanent export of hardware and/or technical data.
    - Employment of a foreign national

- DSP-73: Temporary export of hardware and/or technical data.

- DSP-85: For exports of classified defense articles and technical data.

- DSP-61: Temporary import of hardware

- BIS-748P

Full Time Employee License Exemptions

- **Regulations:** ITAR 125.4(b)(10) and EAR 740.13(f)

- **General Rule:** Applies to foreign persons who are **full-time regular employees** (no grad students regardless of hours worked) of U.S. institutions of higher education with permanent abodes in U.S. throughout employment.

- **Exceptions to the Exemptions:** Certain disqualifying criteria

Arms Embargoes (22 CFR 126.1)

Certain countries are subject to UN or U.S. arms embargoes or restrictive licensing policies. These countries are identified in 22 CFR 126.1 and are generally referred to as "126.1 Countries"

◦ Licenses generally are subject to a policy of denial

◦ Generally, no license exemptions are available

◦ Embargo applies to nationals of 126.1 countries

◦ http://www.pmddtc.state.gov/embargoed_countries/index.html

UCF

Licensing

- Step 1-ITAR Registration (22 CFR 122.1). Any person (including entities and individuals) who manufactures defense articles, exports defense articles, or furnishes defense services

- Step 2-Purchase a ACES Digital Certificate

- Step 3- Designate users

- Step 4- Gather documents
  - Resume
  - Technical specifications
  - Passport
  - Visa
  - Cover letter/supplemental explanation

Licensing

- Step 5- Submit the application

- Step 6-Track the application

- Step 7- Meet with the Foreign National
  - Go over the license
  - Sign the TCP
  - Sign the NDA

- Step 8- Annual Reporting Requirements

Resources

Resources and Contact Information

U.S. Directorate of Defense Trade Controls: https://www.pmddtc.state.gov/ddtc_public/ddtc_public

U.S. Bureau of Industry and Security Website: https://www.bis.gov/

UCF Export Control Website: https://www.research.ucf.edu/ExportControl/index.html

U.S. Department of State Consolidated Denied Party Screening Tool: Consolidated Screening List (trade.gov)

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