



**University of
Dayton**

**EXPORT CONTROL
COMPLIANCE MANUAL**

Prepared by:

Export Control Office

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I. Introduction

This Export Control Compliance Manual (ECCM) is intended to describe the University of Dayton's Export Control Compliance Program, i.e., how the University of Dayton complies with Export Administration Regulations and International Traffic in Arms Regulations (ITAR), as well as other relevant federal oversight, as required. Failure to comply with these laws and regulations may result in civil or criminal fines to the individual and/or the University, as well as imprisonment, debarment, or other sanctions.

This ECCM applies to all University employees who intend to export United States commodities, technology, or technical data to a foreign country. This Manual also applies to any employee who intends to share technology or technical data with a foreign person, whether it occurs inside the United States or abroad. This sharing of technology or technical data is termed a **deemed export**.

The University's Export Control Office (ECO) provides direct support to the University community in complying with export regulations by providing export license determinations, education and awareness to employees, export control compliance risk assessments, maintenance of export records, and related services, as required. The ECO also serves as the University point of contact with external agencies regarding export control compliance matters, including the FBI, Customs and Border Control, and DHS.

For additional information about the University of Dayton Export Control Compliance Program, contact the Export Control Office at export@udri.udayton.edu or (937)229-5527. The Export Control Office may also be contacted by mail at Export Control Office, University of Dayton Research Institute, 300 College Park, Dayton, Ohio 45469-7756.

II. List of Abbreviations

BIS	Bureau of Industrial Security, Department Commerce
CCL	Commerce Control List
CGO	Contracts and Grants Office
CJ	Commodity Jurisdiction
CUI	Controlled Unclassified Information
DDTC	Directorate of Defense Trade Controls, Department of State
DFAR	Defense Federal Acquisition Regulation
EA	Export Administrator
EAR	Export Administration Regulations
ECCN	Export Control Classification Number
ECCM	Export Control Compliance Manual
ECO	Export Control Office
EO	Empowered Official
DH	Division Head
DHS	Department of Homeland Security
FAR	Federal Acquisition Regulation
FBI	Federal Bureau of Investigations
FN	Foreign National(s)
FRE	Fundamental Research Exclusion
GL	Group Leader
ITAR	International Traffic in Arms Regulations
OFAC	Office of Foreign Assets Control, Department of the Treasury
NPN	New Project Notification
PI	Principal Investigator
PPF	Proposal Preparation Form
RPS	Restricted Party Screening
RSO	Research Security Office
SDN	Specially Designated Nationals and Blocked Persona List
UD	University of Dayton
UDRI	University of Dayton Research Institute
USML	United States Munitions List
VPR	Vice President for Research

III. Definitions

Bureau of Industry and Security (BIS) – The bureau at the U.S. Department of Commerce responsible for enforcing the Export Administration Regulations (EAR). [15 CFR 730-774]

Commerce Control List (CCL) – A list of export controlled items contained in the EAR.

Deemed Export – A release of technology or technical data to a foreign national in the U.S. is considered to be an export to that person’s country or countries of citizenship. This is called a deemed export in that it is “deemed” to be an export to that person’s country.

Directorate of Defense Trade Controls (DDTC) – The directorate at the Department of State responsible for the administration and enforcement of the International Traffic in Arms Regulations (ITAR). [22 CFR 120-130]

Dual-Use – EAR-controlled Items that can be used both in commercial applications and in military and other strategic uses. [15 CFR 772.1]

End Use – The use of exported item.

End User – The individual who will receive the exported item.

Export – An item (such as a commodity, technology, software, design plans, specifications, technical data, clothing or building materials) is sent from the United States to a foreign destination.

Export Administration Regulations (EAR) – Department of Commerce Bureau of Industries and Security (BIS) regulations [15 CFR Parts 730-774] implementing the Export Administration Act of 1979 (EAA), as amended, and the International Emergency Economic Powers Act, as amended.

Export Control Classification Number (ECCN) – A number assigned to each specific category of items or technology listed in the CCL of the EAR. Items that do not have a specific ECCN are classified as EAR99.

Export License – A written authorization provided by the appropriate governing authority (such as BIS or DDTC) detailing specific terms and conditions under which an export, deemed export, or re-export of export controlled items, information, technology, services or other regulated activities are allowed.

Foreign National –

- Any individual who is not a U.S. citizen; or
- Any individual who is not a U.S. permanent resident (Green Card holder); or
- Any individual who is not a protected individual (e.g. refugees, or have political asylum); or

- Any foreign corporation/business/organization/group not incorporated or organized under U.S. law; or
- Foreign government and any agency or subdivision of foreign governments (e.g. diplomatic missions)

[15 CFR 772.1]

Foreign Person – Any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means 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 agency or subdivision of foreign governments under the ITAR. [22 CFR 120.16]

Fundamental Research – Any “basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community...” is not subject to export control regulations under the Fundamental Research exclusion. See National Security Decision Directive 189 (NSDD 189).

International Traffic in Arms Regulation (ITAR) – Department of State Directorate of Defense Trade Controls (DDTC) regulations [22 CFR 120-130] implementing the Arms Export Control Act [22 USC 2778] and Executive Order 11958, as amended.

License Exclusion – An exclusion from the requirement to obtain an export license under the EAR or ITAR.

Permanent Resident – A non-U.S. citizen who is authorized to live and work in the United States indefinitely, unless their status as a permanent resident is revoked.

Public Domain – This term applies to information and software (with the exclusion of some encryption software) that is already published and is generally accessible to the general public through bookstores, libraries, patents and public patent applications, open conferences, seminars, trade shows, or other publications available for general distribution (including websites).

Restricted Party Screening – Screening of all parties involved in the export transaction against U.S. and International sanctions and embargoes.

Technology – Information necessary for the “development,” “production,” “use,” operation, installation, maintenance, repair, overhaul, or refurbishing of an Item. Technology may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information revealed through visual inspection. [15 CFR 772.1]

U.S. Person – Any individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20), or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3) It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. [22 CFR 120.15].

United States Munitions List (USML) – A list of articles, services, and related Technical Data designated as Defense Articles and Defense Services pursuant to sections 38 and 47(7) of the Arms Export Control Act, 22 U.S.C. 2778. [22 CFR 121.1(a)]

IV. Statement of Management Commitment

University of Dayton Commitment to Export Control Compliance

The University of Dayton is committed to maintaining the highest standard of ethical conduct and compliance with federal laws and regulations which aim to protect national security and secure our nation's economic interests.

In particular, this commitment involves compliance with United States export control laws and regulations – collectively referred to as export controls - including those that are implemented by the Department of Commerce through the Export Administration Regulations (EAR) and the Department of State through the International Traffic in Arms Regulations (ITAR), as well as those imposed by the Treasury Department through the Office of Foreign Assets Control (OFAC). Because of the complexity of these laws and regulations and the nature of the University of Dayton's research enterprise, export control compliance for our research activities is evaluated on a case-by-case basis.

It is important that University faculty, researchers, and staff who are supporting sponsored research programs with export control requirements become and remain knowledgeable of export controls in order to maintain the University's commitment to export control compliance. In addition to threatening our national security, unauthorized release of technology or commodities or unauthorized transfers of technology to foreign persons may result in serious consequences, to include loss of the University's export privileges, damage to the individual and the University's reputation, suspended or cancelled contracts, or criminal and civil penalties to the individual and the University.

The University's Export Control Office is available to help employees navigate the environment of export control compliance, answer questions regarding export control compliance, perform export reviews, investigate real or potential violations, and provide ongoing export control compliance training to all University of Dayton employees. The Export Control Office may be contacted at export@udri.udayton.edu.

John Leland, PhD, PE
Vice President for Research

V. What is an Export?

An export occurs when an item (such as a commodity, technology, software, design plans, specifications, technical data, clothing or building materials) is sent from the United States to a foreign destination.

The mode of export does not matter. An export of a laptop to another country, the emailing or telephone conversation of technical data, and taking a work computer containing export controlled information outside the U.S are all examples of exports and subject to the export regulations. An item is also an export even if it leaves the U.S. or is returned from the U.S. to its foreign country of origin.

A release of technology or technical data to a foreign national in the U.S. is considered to be an export to that person's country or countries of citizenship. This is called a deemed export in that it is "deemed" to be an export to that person's country. ***Deemed exports are the primary concern of the University because it routinely employs foreign nationals on sponsored research and its faculty, staff and students frequently collaborate with foreign researchers.*** Deemed exports and foreign nationals will be discussed further in Chapter IX of this Manual.

VI. U.S. Export Laws and Regulations

The export, including the deemed export, of U.S. commodities, technology and software is controlled by various federal laws and regulations which are enforced by a number of federal agencies.

For the purpose of this policy, the two primary regulations that impact the University of Dayton (UD) are Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR). However, there are other laws and regulations which, combined with EAR and ITAR, comprise the federal export control regime (see Chapter XIV for applicable regulations and reference documents).

The EAR controls the export of "dual use" commodities, software and technology that are primarily for commercial use but may also be used for a military application. The EAR is administered by the Department of Commerce Bureau of Industry and Security.

The ITAR controls the export, and temporary import, of defense articles that are for military applications as listed on the U.S. Munitions List. The ITAR is administered by the Department of State Directorate of Defense Trade Controls.

Violations of export control laws and regulations can result in severe civil or criminal fines and imprisonment as well as any combination of other penalties and consequences, such as suspended or cancelled contracts, debarment, loss of revenue, and loss of customer trust.

VII. Roles and Responsibilities

All University employees are responsible for complying with U.S. export laws and regulations.

The following functions are responsible for the management of UD's export control compliance program and serve as resources to employees for guidance relating to export control compliance.

Export Control Office

The Export Control Office (ECO) is staffed by the Export Administrator and Assistant Export Administrator. The ECO is responsible for the overall administration of the Export Control Compliance Program. The Export Administrator serves as the Empowered Official in matters relating to registration, licensing, commodity jurisdiction and classification requests, and voluntary or directed disclosures.

The ECO's primary roles and responsibilities include:

- Performing export license reviews
- Performing restricted party screening
- Applying for export licenses, commodity jurisdiction and commodity classification requests
- Conducting periodic risk assessments
- Investigating instances that may indicate real or potential export violations and reporting any violations to the appropriate parties, as required by regulation or law
- Maintaining export related records pursuant to XIV. Retention and Recordkeeping Section of this Manual
- Developing export control compliance education and training for employees
- Ensuring that employees working on research programs receive annual appropriate training and providing specialized training on request
- Interfacing with federal and local departments and agencies as necessary
- Monitoring and interpreting export laws and regulations
- Implementing and updating procedures and guidelines to comply with federal export laws and regulations
- Coordinating with the Research Security Office in ensuring consistent protection of Controlled Unclassified Information (CUI) that typically is also export controlled
- Promoting awareness of export regulations and relevant University procedures

Vice President for Research

The Vice President for Research represents the Senior Leadership in overseeing UD's export control compliance program while ensuring that proper resources and support are available to the ECO in carrying out its duties. The Vice President for Research also serves as a liaison between ECO and other university leaders as necessary.

Contracts and Grants Office

The ECO works in close cooperation with the Contracts and Grants Office (CGO) and is an integral part of the pre-award and post-award processes within CGO. The Contracts and Grants Office (CGO) provides assistance in export control compliance by working closely with the ECO in identifying export control contract issues and negotiating solutions with sponsors. The Subcontracts Team within CGO also works closely with the ECO in identifying export control subcontract issues and negotiating solutions with subcontractors.

The CGO:

1. Reviews solicitations, proposals, and awards to identify restrictions or exemptions that may have an export control impact in coordination with ECO's export review
2. Reviews international agreements and notifies ECO of potential export control issues
3. Acts as the University's representative in negotiating contractual export control matters
4. Refers PIs and other employees to ECO with export control questions or concerns

UD/UDRI Research Administrators

UD and UDRI employees with managerial or supervisory authority, typically University Department Chairs or UDRI Division Heads and Group Leaders ("Research Administrators") are responsible for assisting Principal Investigators (PI) in identifying international components and potential export control issues; notifying the ECO of any potential export control issues; and working with the PI to gather information requested by the ECO in conducting an export license review or otherwise ensuring export control compliance. Additionally, Research Administrators are responsible for overseeing export control compliance in their areas of responsibility and for supporting ECO in the implementation of this manual and as otherwise deemed necessary by the ECO for export control compliance.

Research Administrators who oversee foreign nationals or have export restricted research should view export control compliance as an ongoing part of their responsibilities.

Principal Investigators or Project Director

The individuals responsible for leading sponsored projects, typically referred to as the Principal Investigators (PIs), are expected to be knowledgeable regarding the information and technology used for their projects. They must consult with the ECO before exporting commodities, technology, or software. PIs should also consult with the ECO before sharing technology with a foreign national, i.e., deemed export.

PIs must also:

1. Work with the ECO to understand their obligations under export control laws and regulations.

2. Assist the ECO to correctly and properly identify and classify export controlled items or technology.
3. Ensure that export controlled items and technology are properly protected against unauthorized access.
4. Ensure export control compliance by periodically reviewing their project(s).
5. Brief employees and students on their export control obligations when working on sponsored research.
6. Understand that sharing technology or technical data with a foreign national is export controlled and is a deemed export to that person's country which is subject to export laws and regulations.

Other Individuals

All persons who are retained by or working in any capacity at or for UD/UDRI are obligated to conduct their work in accordance with all United States export control laws and regulations. University personnel, depending on their occupations, may be required to receive regular and/or specialized export control compliance training as determined to be necessary by the Vice President for Research, the ECO, and/or the employees' supervisor.

VIII. Export Review Process

ECO follows the process outlined below to ensure due diligence in performing export reviews. The purpose of an export review is to:

1. determine if an export license is required to send an item or technology to another country, or to share technology or technical data with a foreign national (deemed export);
2. determine if there are one or more exemptions to the requirement to apply for an export license; and
3. identify contractual restrictions that might otherwise control the access to information (e.g., classified information or foreign national restrictions).

An Export Review Form is used by the ECO to capture this information and serve as a record of an export review. The following sections describe in more detail what is involved in the export review process.

a) Commodity Jurisdiction and Classification Determination

The export review process starts with this question: What is the item that is being exported and which export regulation controls that item?

Items that are designed, built, or modified for a military use (e.g., aircraft, weapons) fall under the jurisdiction of the Directorate of Defense Trade Controls, Department of State. The classification of these items is determined by matching them to one of 21 categories within the ITAR USML.

Items that are dual use –primarily intended for commercial use but may also be used in a military application (e.g. laptop computers) – fall under the Bureau of Industrial Security, Department of Commerce. The classification of these items is determined by matching them to one of nine categories and one of five product groups in the EAR.

The DDTC may be requested to perform a Commodity Jurisdiction Request if the ECO is not sure which agency controls the item. BIS may also be consulted to assist in properly classifying an item under the EAR.

ECO uses a web-based service called Visual Compliance to identify commodity jurisdictions, i.e., whether EAR or ITAR applies, and the corresponding classification determinations. This service is updated daily and is also used by the ECO to perform restricted party screenings and to access updates on export laws and regulations.

b) End User and End Use

The next questions in an export review are: who will receive the item and what will it be used for?

ECO must determine who the customer is and what country they are in. Some countries, organizations, and individuals are subject to trade sanctions, embargoes and other

restrictions under U.S. and international law which may prevent an export from taking place.

Will the item be used as intended? Due diligence demands that ECO identifies indicators of possible misuse of the item (e.g., acts of terrorism), transshipment of the item to a country of concern, or other indicators of non-compliance.

c) Restricted Party Screening

The next step in an export review is to screen all parties involved in the export transaction against U.S. and international sanction and embargo lists. ECO uses Visual Compliance to screen parties against these lists.

d) Export License Exemptions

ECO next considers exemptions from the requirement to obtain an export license. While an export license may not be required in many cases, there are exemptions that are specific to institutions of higher learning that may be available under certain circumstances. Applicability of an export license exemption must be determined by the ECO.

- **Fundamental Research Exemption**

The fundamental research exemption from licensing requirements applies to basic and applied research in science and/or engineering in the U.S. where the resulting information is *ordinarily* published and shared broadly in the scientific community. This exemption does not exist if the award terms include specific access and dissemination controls (e.g., classified research or military critical technology).

- **Public Domain**

The public domain exemption applies to information and software (with the exclusion of some encryption software) that is *already* published and is generally accessible to the general public through bookstores, libraries, patents and public patent applications, open conferences, seminars, trade shows, or other publications available for general distribution (including websites).

- **Educational Information Exemption**

The EAR exempts from controls information that is educational (i.e., information released by instruction in catalog-listed courses at the university), including through lectures, instruction in teaching laboratories, and inclusion in course materials. The EAR's educational information exemption also extends to software, with the exception of certain encryption software.

The ITAR exempts from controls information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities.

- **Other Exemptions**

There are also other export license exemptions that may be available depending on specific circumstances or criteria. These exemptions can be considered during the export review process.

e) **Export Licenses**

When an export license is required, a license application is submitted by the ECO to BIS or DDTC as appropriate. The application must be approved, and an export license issued, before an item can be exported or for a deemed export to take place. The license will be for a specific duration and may also contain conditions that may restrict the items use, capabilities, or resale.

f) **Pre-Award Export Review**

A pre-award export review may be initiated when a proposal is submitted for a potential award with the completion of a Proposal Processing Form (PPF). The PI needs to contact the ECO for an export review if any of the following questions on the PPF are answered yes:

- Will a foreign national be required to perform this work?
- Will a foreign entity be required to perform this work?
- Is the sponsor a foreign entity (not incorporated in U.S.)?

g) **Post-Award Export Review**

A post-award export review may be initiated after the New Project Notification (NPN) is sent to a PI when a new award is received. The following notice is included in every NPN in order to alert the PI to notify the ECO for an export review when it is appropriate:

EXPORT COMPLIANCE AND CONTRACT REVIEW NOTICE
(Effective Feb. 2021)

In order to ensure compliance with US Federal Export Laws and Regulations, foreign nationals will not be permitted to charge to sponsored programs without prior approval from the Export Administrator. If you intend to have a foreign national work on this program, intend to export technology or commodities, or expect to host visiting foreign nationals on this program, please email export@udri.udayton.edu for review and approval.

In order to ensure compliance with contractual requirements, permanent residents will not be permitted to charge to sponsored programs without prior approval from the Director, Contracts and Grants. If you intend to have a permanent resident work on this program, please email export@udri.udayton.edu for review and approval.

Examples of a typical export review are as follows. A PPF that answers “Yes” to “Is the sponsor a foreign entity (not incorporated in the U.S.)?” will trigger an export review by the ECO. The PI will be requested to provide information as to what the item or technology is that will be exported, who the sponsor is, what country the sponsor is located in, what the end use of the item or technology is, and whether it will be re-exported to another country. Additional details may be requested as the export review progresses. The ECO will determine if an export license is required or if an applicable license exemption is available.

The above also applies for awarded projects, but it is important that an export may not occur until ECO notifies the PI that a license exemption is available or until an export license is granted.

h) Export of Items, Material or Software to Foreign Countries

When there is a need to export an item, material, or software to a foreign recipient, the following steps shall occur:

- Ensure that the Export Review Process has been completed.
- The Export Office notifies the PI of the export review results along with a copy of the export license (if applicable).
- The PI engages our freight forwarder and U.S. Customs broker – Miami Valley Worldwide (<https://www.miamivalleyworldwide.com>), in coordination with Purchasing and Property Records – for shipment of the item on our behalf. The PI will also complete any required forms that are needed by Miami Valley Worldwide, as well as furnishing a copy of the export license (if required) to facilitate the shipment of the item(s).

IX. Deemed Exports and the Foreign National Approval Process

As discussed in Chapter V of this Manual, a release of technology or technical data to a foreign national in the U.S. is considered to be an export to that person's country or countries of citizenship. This is called a deemed export in that it is "deemed" to be an export to that person's country. *Deemed exports are the primary concern of the University because it routinely employs foreign nationals on sponsored research and its faculty, staff and students frequently collaborate with foreign researchers.*

Review Process for Foreign Nationals

A foreign national is defined as:

- Any individual who is not a U.S. citizen; or
- Any individual who is not a U.S. permanent resident (Green Card holder); or
- Any individual who is not a protected individual (e.g. refugees, or have political asylum); or
- Any foreign corporation/business/organization/group not incorporated or organized under U.S. law; or
- Foreign government and any agency or subdivision of foreign governments (e.g. diplomatic missions)

Foreign nationals may include tourists, students, business people, scholars, researchers, technical experts, military personnel, etc.

The ECO will perform the following steps before a foreign national will be authorized to charge labor to a sponsored program.

1. Determine if the work will be for a Grant or a Contract.
 - 1.1. If it is for a Grant and it is for fundamental research, then no export license is required, but an Export Review must be completed and reviewed by the Grant Administrator.
 - 1.2. If it is for a Contract, an Export Review needs to be completed to determine whether an Export License is required. Then, the Export Review must be reviewed by the CGO Director.
2. For the Export Review:
 - 2.1. Describe what work the foreign national will be performing (based on information provided from PI).
 - 2.2. Determine the export classification of goods and/or services.
 - 2.3. Check the country of the foreign national.
 - 2.4. Determine if an export license is required, if there are any exemptions, and if there are any sanctions against the person/country.
 - 2.5. Review the contract(s) to see what is stated about foreign nationals working on the contract. This step is performed by CGO.
 - 2.6. Forward the Export Review to the CGO Director for review.

3. If permission is needed from the sponsor, the ECO will construct a letter to the sponsor to request permission for the foreign national to work on the program, submitted by CGO. In the letter include the:
 - 3.1. Country of the foreign national
 - 3.2. Name of the foreign national
 - 3.3. Prime contract number
 - 3.4. Subcontract number(s), if applicable
 - 3.5. What work will be performed by the foreign national
 - 3.6. Export Review summary
 - 3.7. Route the letter to the CGO Director for review and approval.
4. Following receipt of the authorization by the CGO Director, email the letter to the appropriate sponsor contact. The contact can be found in Costpoint under the application path of Contracts-Contracts-Contracts-Manage Contracts-Sponsors/Contracts tab or in the contract documents.
5. Once the sponsor responds and approves the work, the CGO Director will sign the Export Review form, and the Export Administrator will authorize the foreign national to charge against that specific project(s) in Costpoint Time & Expense.
6. Export Control Office will proceed to the Foreign National Labor Charging Process.

Review Process for Permanent Residents

As stated in the NPN, referenced in Chapter XIII, in order to ensure compliance with contractual requirements, permanent residents will not be permitted to charge to sponsored programs without prior approval from the Director, Contracts and Grants. If a PI intends to have a permanent resident work on this program, the PI should contact ECO who will confirm the employee's status as a permanent resident and request review of terms and conditions by CGO. CGO will review the award terms and conditions and identify and comply with requirements for approval to assign work to permanent residents, if any. ECO will coordinate this review but an export review is not required for permanent residents.

X. Export Control Compliance Risk Assessments

An annual export control compliance risk assessment is part of the University of Dayton's program for export control compliance with Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR).

The risk assessment is comprised of a review of ten common risks taken from *U.S. Department of Commerce Bureau of Industry and Security Export Guidelines – The Elements of an Effective Export Compliance Program Section 2) Risk Assessment*. The Guidelines are found at <https://www.bis.doc.gov/index.php/documents/pdfs/1641-ecp/file>. These risks include the following:

1. Export of an item, software or service without a license or proper authorization
2. Unauthorized release of sensitive or controlled technology – Deemed Export, i.e., release to a foreign national without proper authorization
3. Weak export compliance structure
4. Lack of communication regarding export compliance
5. Poor relationships with export facilitators
6. Nonexistent or underdeveloped export clearance procedures
7. Unknown end-user
8. Unknown end-use
9. Unaware of diversion risk
10. Violating anti-boycott law (EAR 760) and prohibited by anti-boycott laws

For the risk assessment each risk is ranked on a level of (L) Low, (M) Medium, or (H) High. Mitigations are listed when in place and opportunities for improvement are indicated, when applicable.

Not all of the risks identified in this assessment have the same impact on the University as they would for a company that exports commodities. The University's primary export is technology or technical data that are shared with University foreign national employees and students. As such, unauthorized deemed export is generally considered a high risk of noncompliance with export regulations for the University. Therefore, the University necessarily has robust mitigations in place to reduce the risk of noncompliance with regard to deemed export. Conversely, the University does not produce products and therefore, very rarely exports any end use items, thus mitigating the risks of noncompliance of this type of export.

The annual risk assessment is reviewed and signed by the Vice President for Research, Director, Contracts and Grants, and Export Administrator.

XI. Export Control Compliance Audits

Export control compliance audits will periodically be performed by the University's Department of Internal Audit, Division of Audit, Risk & Compliance. The Department of Internal Audit is an independent business partner that evaluates the activities of the University as a service to the Board of Trustees and Management. The frequency of export control compliance audits is determined by the Department of Internal Audit.

XII. Training

Employees working on sponsored research programs that involve technology and technical data are required to participate in basic export control compliance training on an annual basis. On-line training is accessed and tracked via BioRaft to ensure compliance with this annual training requirement. Training materials are also available through the internal Research website, InSite. Additional export training is also provided by ECO in a variety of formats, in person or online, as well as upon request for specific training by anyone at UD. The ECO is responsible for remaining current on regulatory changes impacting export compliance and updating training materials as needed.

XIII. Red Flags

The Bureau of Industry & Security (BIS) provides guidance on red flags to look for that could indicate that a transaction may violate export control laws.

Know Your Customer

- The customer or purchasing agent is reluctant to offer information about the end use (or end-user) of a product.
- The customer has little or no business background.
- The customer is willing to pay cash for a very expensive item when the terms of the sale call for financing.
- The customer is unfamiliar with the product's performance characteristics but still wants the product.
- The customer declines routine installation, training, or maintenance services.
- When questioned, the buyer is evasive or unclear about whether the purchased product is for domestic use, export, or reexport.
- The customer uses only a "P.O. Box" address or has facilities inappropriate for the items ordered.
- The customer is known to have, or is suspected of having, unauthorized dealings with embargoed countries.

Know Your Product

- The product's capabilities do not fit the buyer's line of business: for example, a small bakery places an order for several sophisticated lasers.
- The product ordered is incompatible with the technical level of the country to which the product is being shipped.

- Customer’s order is for parts known to be inappropriate, for which the customer appears to have no legitimate need (e.g., there is no indication of prior authorized shipment of system for which the parts are sought).

Delivery

- Delivery dates are vague, or deliveries are planned for out-of-the way destinations.
- A freight forwarding firm is listed as the product’s final destination.
- The shipping route is abnormal for the product and destination.
- Packaging is inconsistent with the stated method of shipment or destination.

XIV. Export Violation Investigation and Reporting

An export violation occurs when a commodity is exported or a deemed export occurs without prior authorization or in violation of an existing export license. Early detection, reporting and investigation of real, or perceived, export violations are key components of an effective export compliance program. Corrective action, as well as self-disclosures to pertinent government agencies, is also crucial. As such, the University has established guidance regarding notification and investigation of export control violations.

All employees are responsible for reporting any actual, or suspected, export violations. Employees may submit a report using any of the options below:

1. In writing or verbally to an immediate supervisor or manager.
2. To the ECO verbally or at export@udri.udayton.
3. Through UDRI’s ethics hotline at ethics@udri.udayton.edu.
4. Anonymously through the University “Privately Speaking Line” at 855-550-0654 or visit <http://www.udayton.ethicspoints.com>.

Retaliation against any person who in good faith reports an actual or suspected violation of U.S. export control regulations or the University’s export compliance policies is prohibited.

Upon the receipt of a report, the ECO will initiate an internal investigation and collaborate with appropriate parties to determine if a violation occurred. An investigation may involve a team comprised of the ECO, Vice President for Research, Office of Legal Affairs, UD IT/RITO and other University officials or federal agencies as necessary or required. If a violation is substantiated, the ECO will consult with the Vice President for Research and Office of Legal Affairs to determine the University’s response. The ECO will also coordinate reporting a violation to federal authorities, sponsors, University officials, etc., as appropriate.

A written report will document the investigation procedure, findings, and corrective actions taken. The report will be retained pursuant to the export compliance document retention requirements.

Submitting a Voluntary Self-Disclosure

The federal government encourages the prompt submission of voluntary self-disclosures to the appropriate oversight agency (e.g., Department of Commerce, State, or Treasury) if an organization believes it may have violated export control laws and regulations.

Additional disclosures to the sponsor, the Department of Defense, the Department of Justice, and/or other federal agencies may be required based upon the findings of the investigation. Disclosures are an excellent indicator of the intent to comply with U.S. export control requirements and can be a significant mitigating factor when determining whether to assess penalties for a violation.

Depending on the nature of the potential violation and the amount of time needed to conduct a comprehensive assessment of the issue, an organization may submit an initial voluntary self-disclosure followed by a full disclosure once the internal investigation is completed.

If a violation is confirmed, a root cause analysis will be conducted to ensure that all instances of noncompliance have been identified for inclusion in the self-disclosure. Corrective action and disciplinary measures will be taken as appropriate based on the investigation's findings. As a corrective action measure, the Export Control Administrator is authorized to suspend or terminate an activity if it is determined that the activity is not in compliance or will lead to noncompliance with export control laws and regulations.

The disclosure should include what corrective actions have been implemented to help avoid any recurrence, any other mitigating factors that may exist, and documentation of the University's export compliance program.

An export violation is a serious matter in that there are criminal penalties for the University and the individual(s) involved with fines up to \$1,000,000, 20 years in prison, or both for serious willful violations. There also civil penalties with fines up to \$500,000 and possible loss of export privileges that may be in addition to, or in lieu of criminal penalties.

XV. Retention and Recordkeeping Requirements

Under U.S. Export Control Regulations, records must be retained for five years after the completion of the activity and made available to the regulating authority upon request. Records that must be retained include all memoranda, notes, correspondence (including email), financial records, shipping documentation, as well as any other information related to the export activities. Additionally, when a license exception (EAR) or license exemption (ITAR) is used, or if a record is requested from a regulatory authority, additional records documenting the applicability of the exception/exemption may be required and in some cases there may be additional reporting requirements.

XVI. Export Control Questionnaire

Is My Project Subject to Export Controls?

Many factors go into determining whether export controls apply, including the type of research or activity, foreign national participation, acceptance of export controlled information, and contractual restrictions.

Below are a few basic questions that can help identify whether export controls may be triggered. This is not an all-inclusive list but does cover many common scenarios.

Does my research or activity involve:

- ✓ Contractual restrictions?
 - Restrictions on the university's right to publish or disseminate project results or information
 - Restrictions on foreign national or permanent resident participation or project participants limited to U.S. citizens?
 - Sponsor approval prior to involving foreign nationals or permanent residents on project?
 - Publication restriction or limitation, such as sponsor approval prior to publication of research?
- ✓ Participation of a foreign national or permanent resident on the project?
- ✓ Foreign sponsors or subcontractors?
- ✓ Foreign visitors?
- ✓ Language in grant, contract, manufacturer, proposal or purchase documents that make specific reference to the International Traffic in Arms Regulations (ITAR) or Export Administration Regulations (EAR) (other than a general statement of compliance)?
- ✓ Sponsor re-export of the item or technology to another foreign country or person?
- ✓ International collaborations where controlled data is shared?
- ✓ Hand carrying export controlled items to foreign countries, e.g., laptops, GPS, unpublished research technical data?
- ✓ Receipt of any sponsor provided information or software marked "Export Controlled"?
- ✓ Shipping any physical item(s) including software and/or transmission of technical data to a foreign country?
- ✓ Travel to or through an embargoed or sanctioned country (Cuba, Iran, North Korea, Syria or Sudan)?
- ✓ Involvement with persons or entities from an embargoed or sanctioned country (Cuba, Iran, North Korea, North Sudan and Syria)?

If you answer yes to one or more of the questions above, or you have any questions about these or other types of situations that may involve export controls, please contact export@udri.udayton.edu for assistance and guidance.

XVII. Applicable Regulations and Reference Documents

National Security Decision Directive 189 (NSDD 189), fas.org/irp/offdocs/nsdd/nsdd-189.htm

U.S. Bureau of Industry and Security, bis.doc.gov

U.S. Bureau of Industry and Security – Know Your Customer Guidance,
<https://www.bis.doc.gov/index.php/all-articles/23-compliance-a-training/47-know-your-customer-guidance>

U.S. Commerce Department – Export Administration Regulations,
www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear
U.S. Commerce Department – License Exceptions 15 C.F.R. §740,
www.bis.doc.gov/index.php/documents/regulation-docs/415-part-740-license-exceptions/file

U.S. State Department – International Traffic in Arms Regulations, 22 C.F.R. §§120-130,
www.pmdtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=%2024d528fddbfc930044f9ff621f961987

University of Dayton Export Administration Policy
<https://udayton.edu/policies/research/export-administration-policypage1.php>

CHANGE LOG

Date	Ver.	Change	By Whom
June 2021	#1	Initial version	
August 2022	#2	Shipping, red flags, record retention, investigations	Kelli Tittle