EXPORT CONTROL PROCEURES

COLORADO
STATE
UNIVERSITY

Contents

Introduction

The purpose of this document is to provide guidance and standard procedures to facilitate compliance with United States export control laws and regulations at Colorado State University; to establish the procedural framework for handling export control matters; and to clarify the responsibilities of certain departments and officials with respect to export controls.

Export Control Policy

Colorado State University established Export Control Policy 7-2001-009. The Office of Policy and Compliance maintains the Policy Library, in which this policy resides. The policy applies to all employees of the University and mandates the creation and maintenance of these Export Control Procedures (ECP).

A core value of Colorado State University is openness in research and the free dissemination and publication of research results and findings. It is the policy of Colorado State University to comply with all United States export control laws and regulations governing the transfer of controlled tangible items, software, technology, and information to a foreign national or to a foreign country. Research, scholarly, and other activities of the University are subject to these export controls. If a person seeks to export a controlled item or technical data, the person must first secure the appropriate license(s) or approvals in accordance with this policy and all procedures prescribed by the Office of Vice President for Research.

In the university setting, we are primarily concerned with:

- ## International Traffic in Arms Regulations (ITAR) enforced by the Department of State under 22 CFR §§ 120-130. These cover defense related articles and information used for military purposes such as: explosives, chemicals delivery systems, and biological agents.

- ## Export Administration Regulations (EAR) enforced by the Department of Commerce under 15 CFR §§ 730-774. These cover everything else such as grain, office equipment, automobiles, software and computers.

- ## Office of Foreign Assets Control (OFAC) Regulations enforced by the Department of the Treasury under 31 CFR §§ 501-598. These cover economic sanctions and general embargoes, and limit any exports to certain countries.

It is important to emphasize that licenses from the U.S. government are only required for items listed as export-controlled. While the vast majority of exports do not require the prior approval, exports of controlled items or destined for countries subject to embargoes or sanctions may require government issued licenses.

An export can be any of the following:

- Actual shipment of any covered goods or items;
- The electronic or digital transmission of any covered goods, items, or related goods or items;
- Any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any foreign national wherever located; or
- Actual use or application of covered technology on behalf of or for the benefit of any foreign entity or person.

Exemptions to Regulations

Important license exceptions exist in both the ITAR and EAR for fundamental research and information considered to be in the public domain. Similarly, an educational information exclusion applies to catalog courses and teaching labs. See specific definitions and citations for these exceptions in the Definitions section.

Decision Tools

Export Compliance Review Flow Chart

CSU Export Control Review Interactive Decision Tree (Coming soon)

Roles and Responsibilities

Empowered Official – Vice President for Research – Oversee Compliance

Lead CSU compliance with export control laws and regulations by creating a culture of compliance and supporting the Export Control Administrator in the following ways:

- Supervise the efforts of the Export Control Administrator
- Provide adequate human and financial resources to the Export Control office,
- Review and sign all export license applications, as appropriate,

Export Control Administrator – Manage Export Control Compliance

Support compliance with export control laws and regulations in a decentralized decision-making environment, and enhance the CSU research enterprise through the following activities:

- Direct the efforts of the Export Control office
- Conduct outreach to the university community and provide professional development training to faculty and staff in export control
- Serve as liaison between University employees and federal agencies
- Review contracts, grants, cooperative agreements, international research and development agreements, memoranda of understanding, material transfer, and other agreements, as appropriate
- Support sponsored research negotiations by recommending removal of unnecessary export control clauses, identifying applicable exclusions, and establishing Technology Control Plans (TCPs) or applying for licenses where warranted
- Register the University with the Directorate of Defense Trade Controls, at the U.S. Department of State, and cover the expense through the Export Control budget
- Oversee restricted party screening of potential employees, scholars, and visitors and support campus partners to resolve true or possible matches
- Subscribe to service for screening export-restricted parties, and make this resource available to campus employees who require it, while protecting the privacy of screened individuals and organizations
- Review visa petitions and sign export compliance certifications for H-1B and J-1 scholars, as appropriate
- Receive notifications of international travel and provide export-related advice
- Advise faculty and staff on export control issues related to sponsored research, hiring international scholars or employees, international shipping, international travel, and institutional and high performance computing
- Maintain records in accordance with federal mandates.

When the ECA anticipates that a controlled export may occur, takes at least one of the following actions:

- Advise faculty and staff to prevent the unauthorized export of controlled technology to foreign nationals from countries subject to export restrictions or export to restricted individuals or entities;
- Work with faculty and staff to establish a TCP to avoid release of controlled technology;
- Apply for the appropriate license(s), for example to the Department of State, Commerce, or the Treasury, or establish a Technical Assistance Agreement (TAA) for any controlled export(s); or
- Secure and document an exemption or exclusion for the export such that the potentially applicable control(s) do not apply.

Deans, Research Associate Deans, and Department Chairs

Enhance compliance with export control laws and regulations by creating a culture of compliance. In collaboration with the Export Control office, facilitate professional development training on export control for the following:

- Researchers,
- Research administrators,
- Business and financial officers, &
- Faculty, staff, and students who:
    - Conduct potentially export-restricted research,
    - Work with potentially export-controlled equipment,
    - Hire international scholars,
    - Host international visitors,
    - Make or arrange international trips, or
    - Ship, make electronic transfers, or share technology internationally.

Appropriate forums for professional development include the Council of Research Associate Deans, meetings of department chairs, department or faculty meetings, college business officer meetings, information technology staff, and the online training development system to which CSU subscribes, CITI.

Faculty and Staff – Wide Range of Potentially Restricted Activities

All faculty members, administrators, and others employed by or acting on behalf of the University are required to comply with CSU's Export Control Policy. While export control issues often arise in the context of research, they are by no means limited to research activities. Early consultation with the ECA will allow the greatest opportunity to avoid delay and any possible violation. It is the responsibility of every person employed by, or acting on behalf of the University to report any potentially controlled export to the ECA in advance of any:

- Research related to export-controlled technology,
- International partnership with sanctioned countries or restricted parties,
- International travel with controlled items, data or technologies – register with the Office of Risk Management and Insurance ahead of travel, and identify any potential export restrictions to the Export Control office,
- International shipment, electronic transfer, or sharing of technology or data,
- Hiring international employees,
- Hosting international visitors, or
- Other potentially export-controlled activity.

Office of Sponsored Programs – Identify Potentially Restricted Research

Coordinate export control professional development training with the Export Control office for OSP staff and for research administrators across campus. Identify potential export control concerns in contracts, cooperative agreements, research grants, or material transfer agreements, and bring these to the attention of the Export Control office. Provide statements of work or other documentation to the Export Control office for review.

Work with Export Control office to identify export control risks as early as possible for mitigation. Perform or coordinate restricted party screening for international research partners.

General Counsel

Provide counsel to the Empowered Official and Export Control Administrator to protect University employees and the institution. Participate in periodic risk assessments to help prioritize those areas in greatest need of attention by the Export Control office and the campus. Advise on license requirements, technology control plans, and contracting issues.

Procurement and Contracting – Screening Vendors or Contract Parties

Perform restricted party screening for vendors and contractual partners. Coordinate screening results with the Export Control office when those results identify a match or apparent match for resolution. Identify potential export control concerns in contracts or other agreements, and bring those, along with supporting documentation to the awareness of the Export Control office. These concerns could include the listing of a vendor or a contractual partner as a restricted party, the country in which CSU activities are planned, or restrictions on the items, software, technology, or information to be purchased or shared.

Central Receiving and Mail Services – International Shipping

Guide departments in reviewing export control concerns prior to making international shipments, using the international shipping checklist. Identify potential concerns and bring them to the attention of the Export Control office. This review includes a consideration of the items, software, technology, or information to be shipped outside the United States, the person or organization receiving the shipment, and any economic sanctions or embargoes against the country of destination. Do not ship items internationally without a satisfactory export control review conducted by the department.

International Programs – Visas for International Scholars

Lead efforts to support CSU faculty and staff in recruiting highly qualified international scholars and employees for research or other work at the University (H-1B and J-1 Scholar visas). Provide export

compliance questionnaires from departments seeking international scholars to the Export Control office, along with any useful background information that may help the Export Control Administrator determine if there are export control concerns.

Considerations in the export control review of visa petitions from departments include the following:

- Restricted party screening results for the international scholar,
- Alerts or restrictions on the visa applicant's home country,
- Restricted party screening results for the scholar's previous institution,
- Nature of the research proposed for the scholar,
- Export controls on any sponsored research in the supervisor's laboratory, and
- The degree of risk of unauthorized disclosure of export-controlled technology in the supervisor's home department.

As required, the Export Control Administrator establishes a TCP or secures a federal export license in collaboration with the requesting department and International Programs.

Human Resources – Restricted Party Screening

Perform restricted party screening for all new hires as part of the University background check process. Coordinate screening results with the Export Control office for resolution when those results identify a match or apparent match.

Research Integrity and Compliance Review Office (RICRO)

Coordinate with the Export Control office on questions of research compliance that impact both RICRO and Export Control. Coordinate with the Export Control office for professional development training for RICRO staff and for members of research compliance committees across campus, including Biosafety, Institutional Review Board (IRB), and the Institutional Animal Care and Use Committee (IACUC). Identify potential export control concerns in research protocols, and bring these to the attention of the Export Control office. For example, Biosafety faces restrictions from both the Centers for Disease Control and Prevention and ITAR or EAR. Of particular interest in this area is dual use research of concern (DURC). Research involving human or animal subjects could be export restricted, based on international partners, research locations, or the terms of research agreements.

Research Services – Information Management

Create and maintain the Kuali Research (KR) Export Control (XC) module for management of Export Control Activities at CSU. Make known the benefits of the XC module to the Kuali community of universities.

Risk Management and Insurance – International Travel, Risk Assessment

Provide daily reports to the Export Control office of upcoming international travel by CSU employees on official business, Allow the Export Control Administrator to select countries for which employees' travel plans should be reported.

Work with the Export Control office, the Office of General Counsel, and additional functions on campus to conduct periodic risk assessments that allow the Export Control Administrator, the Empowered Official, and the Research Associate Deans to prioritize Export Control requirements.

Federal Agency Purviews and Penalties

Responsibilities of the primary federal agencies involved in Export Control.

	Department	Covers
ITAR	State	Military items
EAR	Commerce	Dual-use goods, technology, chemicals and software, low level military items
OFAC	Treasury	Trade prohibitions with sanctioned countries/entities
	FBI & DHS	Law Enforcement

Penalties

There are severe civil and criminal penalties, including fines and imprisonment, for violating the export control laws and trade sanctions and both the organization and the individuals involved are subject to these penalties. The University and the individual(s) involved may also lose their right to export, and/or be suspended or debarred from government contracting. The criminal and civil penalties for unlawful export and disclosure of information in violation of U.S. export control laws and trade sanctions include the following, depending on the items involved and the jurisdiction:

ITAR: Criminal penalties can reach up to $1 million per violation and 20 years imprisonment for individual willful violations. Civil penalties imposed upon departments, agencies, and officials can reach up to $500,000 per violation. A person or university found to be in violation of the ITAR (under the Arms Export Control Act (Arms Export Control Act) can be debarred from contracting with the government and could lose their export privileges.

EAR: Criminal violations by the university can incur penalties up to $1 million for each willful violation. For individuals, these penalties can reach up to $1 million or 20 years imprisonment, or both,

per violation. Civil penalties for both the university and individuals can reach up to $250,000 per violation, or two times the value of the export, whichever is greater. These violations can also result in a denial of export privileges as well as other potential collateral penalties.

OFAC: Penalties will range depending upon the sanction regime in question. Criminal violations by the university can reach up to $10 million per violation, and criminal penalties for individuals can reach $5 million per violation or 30 years in prison, or both. Civil penalties can be imposed up to $1,075,000 per violation, or two times the transaction in question, whichever is greater.

Definitions

COMMERCE CONTROL LIST (CCL) - List of items under the export control jurisdiction of the Bureau of Industry and Security, of the Department of Commerce. The CCL is found in Supplement 1 to Part 774 of the EAR.

CONTROLLED COUNTRY. The Directorate of Defense Trade Controls in the United States Department of State publishes a list of Country Policies and Embargoes. Exports of defense articles and defense services to these countries requires a license. The United States Department of Commerce publishes a list of each country and its particular export control status in Supplement 1 to Part 738 of the Export Administration Regulations (EAR). The degree of control determines which technologies the U.S. subjects to export control for that country. These lists change over time. The United States Department of the Treasury, Office of Foreign Assets Control (OFAC) publishes a list of Sanctions Programs and Country Information.

DEEMED EXPORT. Exports are referred to as "deemed exports" when they involve the sharing of technology or source code with a foreign national within the United States. A deemed export takes place through an oral or written disclosure of information, or through visual inspection. Examples include, but are not limited to, foreign nationals participating in a research project; face-to-face communications such as meetings and seminars; email messages, telephone conversations, and publication of materials on a website; and visual encounters such as in a laboratory, whether or not the foreign person is authorized to be present in such areas.

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

DUAL-USE - Items that have both commercial and military applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also "subject to the EAR", as are certain "low level" military items (see §734.2(a) of the EAR). Items with no specific ECCN are designated as "EAR99."

EDUCATIONAL INFORMATION EXCLUSION - One of the most important exclusions from the EAR and ITAR that applies to universities is the exclusion for educational information. Under the EAR, information and software taught in course catalog courses and teaching laboratories associated with these course catalog courses are not export controlled. (Certain encryption does not meet this exclusion.) See 15 CFR 734.9.

EXPORT. An export includes any of the following: 1) actual shipment of any covered goods or items to a foreign destination; 2) the electronic or digital transmission of any covered technology, software, data, or other materials to anyone outside the United States, including U.S. citizens, or to a foreign entity, individual, embassy, or affiliate at any location; 3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any foreign national (a deemed export, see above); or 4) actual use or application of covered technology on behalf of, or for the benefit of, any foreign entity or person anywhere. Examples include (but are not limited to) export of unpublished research findings, entities or persons, biological specimens, microorganisms, toxins, electronics, computers, telecommunications, lasers, and sensors. Traveling with any of these items (e.g., bringing along a laptop with controlled software or data) is also an export even if the intent is to retain control of it while traveling.

EXPORT ADMINISTRATION REGULATIONS (EAR) - Regulations promulgated and implemented by the Department of Commerce that regulate the export of commercial, "dual use", and "low level" military items, software and related technology. This includes items identified on the Commodity Control List (CCL), Title 15 CFR 774, Supplement 1, as well as restrictions on exports to specified persons, entities, countries, and end-uses.

EXPORT CONTROL. The federal laws and regulations governing the export of commodities, software, technology, goods and materials, and data. These laws and regulations include the EAR, OFAC sanctions programs, the U.S. State Department's International Traffic in Arms Regulations (ITAR). Additional federal agencies with export control regulations include the Department of Agriculture, Department of Energy, Nuclear Regulatory Commission, Food and Drug Administration, Patent and Trademark Office, and the Fish and Wildlife Service.

EXPORT CONTROL CLASSIFICATION NUMBER (ECCN). The designation assigned
by the Bureau of Industry and Security (BIS) at the Department of Commerce to an item, technology, or software that is restricted by the Commerce Control List (CCL).

EXPORT LICENSE. An export license is an express prior governmental approval for the export or
deemed export of controlled technology or goods, issued by the controlling agency. An export license may be necessary, depending on the destination country or nationality of the persons involved, if University activities do not fall within the fundamental research exclusion (see below) or other exclusion. Licenses often require several weeks or months to acquire, and in some cases may be denied.

FOREIGN NATIONAL OR FOREIGN PERSON. Any person who has not been granted (i)
U.S. citizenship; (ii) permanent U.S. residence, as demonstrated by the issuance of a permanent residence card, i.e., a "Green Card"; or (iii) status as a "protected person" under 8 U.S.C. 1324b(a)(3), e.g., political refugees, political asylum holders, etc. This includes persons in the U.S. such as students, businesspeople, scholars, researchers, technical experts, etc. A foreign person 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.; any international organization, foreign government and any agency or subdivision of a foreign government.

FUNDAMENTAL RESEARCH. Defined by National Security Decision Directive 189 as "basic
and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community." Export regulations from both the State and Commerce Departments expressly recognize fundamental research, and exclude its results from licensing or other authorization requirements. Research that involves restrictions on publication of or access to results, restrictions on foreign national participation, or any other dissemination restrictions will not qualify as fundamental research for export control purposes.

INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR) - 22 CFR Sections
120-130, are the regulations promulgated and implemented by the Department of State which regulate defense articles and defense services and related technical data listed on the U.S. Munitions Control List (USML), 22 CFR § 121.

PUBLIC DOMAIN – Under the ITAR, information that is published and that is generally accessible
or available to the public is not export controlled. Examples include: (a) sales at newsstands and bookstores; (b) subscriptions that are available without restriction to any individual who desires to obtain or purchase the published information; (c) second class mailing privileges granted by the U.S. government; (d) libraries open to the public or from which the public can obtain documents; (e)

published patent applications and issued patents; (f) unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, in the United States; (g) any public release after approval by the cognizant U.S. government agency; and (h) 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. This is distinguished from research of which the results are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research is not considered fundamental research if:

- The University or its researchers accept restrictions on publication of scientific and technical information resulting from the project or activity, or
- The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable (22 CFR 120.11).

RE-EXPORT. Re-export means an actual shipment or transmission of items subject to export

regulations from one foreign country to another foreign country. Shipment or transmission may occur in any of the following ways: physical transfer, phone, e-mail, in person (e.g., lab tours, meetings), or electronic transmission of data. A re-export also occurs when there is a "release" of technology or software (source code) subject to regulation in one foreign country to a national of another foreign country. The export or re-export of items subject to export control that are intended for a recipient in, or will transit through, one country to another subsequent country are considered to be exports to the subsequent country. Any export regulations triggered by an export to the subsequent country must then be satisfied. Depending upon the item(s), the applicability of export controls may vary according to the destination country.

RESTRICTED PARTY SCREENING. Various government agencies maintain a list of

individuals or entities who are restricted from entering into certain types of export, trade and financial transactions with U.S. persons. CSU is responsible for checking potential research partners, shipping destinations, procurement sources, and international scholars, etc. against these more than 50 lists, resolving any possible matches, and determining whether an export license or other measure is appropriate, as a result.

TECHNOLOGY CONTROL PLAN (TCP). A technology control plan outlines how identified

export controlled items will be handled and secured to prevent access by unapproved foreign persons. TCPs address the physical security of labs, offices, and other work areas as well as the security of data on computers and computer networks, and appropriate locations for discussions of export-restricted work. TCPs require identification of all persons accessing the controlled technology. A TCP template is available on the CSU Export Control website.

USE (Under the EAR) - Operation, installation (including on-site installation), maintenance (checking),

repair, overhaul and refurbishing of a good.

References and Resources

- CSU Export Control Website
- CSU Policy: Export Control – September 2015
- Board of Governors Signed Resolution - October 2012
- International Traffic in Arms Regulations (ITAR)
- Export Administration Regulations (EAR)
- Office of Foreign Assets Control (OFAC) sanctions programs
- National Security Decision Directive 189
- Arms Export Control Act
- Export Controlled or Embargoed Countries
- CSU Travel Advice
- Technology Control Plan Template