



**Export Control Compliance Program Guidelines**  
December, 2010

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## INTRODUCTION

Export controls and trade sanctions are the United States laws and regulations that control and restrict the release of critical technologies, software, equipment, chemical, biological materials and other materials, and services to foreign nationals and foreign countries for reasons of foreign policy and national security.

These laws apply to virtually all fields of science and engineering. They restrict the shipment, transmission or transfer of certain commodities, software, technology and services from the U.S. to foreign countries. Deemed exports, i.e. the release of controlled information to foreign nationals located in the U.S., are also restricted under these laws and regulations. Export control laws apply to **all** activities – not just sponsored research projects.

An export is:

- Shipment of a controlled commodity, equipment, material, or software outside of the U.S.;
- Disclosing controlled technology or technical data to a foreign national, whether in the U.S. or abroad;
- Performing technical assistance or defense services for or on behalf of a foreign national, whether in the U.S. or abroad;
- Exports within the U.S. are considered to be a “deemed” export to the foreign national’s home country.
- The following high risk disciplines have been designated for particular focus for export control compliance at UMD: **Engineering, Physics, Computer Science, Biomedical Research with Lasers, Research with Encrypted Software, Research with Controlled Chemicals, Biological Agents, and Toxins, and Marine Sciences.**

The following are factors to consider in determining the applicability of export regulations:

- 1) Is the activity considered fundamental research? (Will research results be published and publicly available?)
- 2) Is the activity limited to teaching or instructional activities?
- 3) Is there a physical export of a good?
- 4) Are foreign nationals restricted from participating in the activity?
- 5) What is the Item’s Export Control Classification Number (ECCN) or U.S. Munitions List (USML) category?
- 6) Where is it going (country)?
- 7) Who is the end-user (person or entity)? What is the intended end use?
- 8) Are you screening for persons or entities identified on any lists of sanctioned or barred persons or entities?
- 9) Is a license required? If so, is enough time allowed to secure one?
- 10) Will the activity involve a sanctioned or embargoed country?

These guidelines outline processes for members of the UMD community to follow to ensure that UMD is in compliance with all export control laws and trade sanctions.



University of Massachusetts Dartmouth  
Academic Affairs / Institutional Compliance  
Export Control Compliance Policy

Policy Number	ACA-C10-003
Effective Date	November 22, 2010
Responsible Office/Person	Office of Institutional Compliance
Related Policies	
Additional History	
Additional References	UML-Export Compliance Standard Operating Procedures UML-Export Control Compliance Guidelines

### I. Policy

The University of Massachusetts Dartmouth Policy on Export Control is to comply fully with the U.S. Export Control Laws and trade sanctions laws and regulations.

### II. Purpose

It is the mission and policy of the University of Massachusetts Dartmouth to conduct instruction and research openly and without prohibitions on the dissemination of learning or research activities. As a result, in most instances the requirements of the U.S. export control laws can be appropriately satisfied through reliance on available exclusions from export controls, such as exclusions for educational information, and information that is publicly available or in the public domain.

Export controls and trade sanctions are the United States laws and regulations that regulate and restrict the release of critical technology, software, equipment, chemical, biological materials and other materials, and services to foreign nations and foreign countries for reasons of foreign policy and national security.

These laws apply to virtually all fields of science and engineering and restrict the shipment, transmission or transfer of certain commodities, software, technology and services from the U.S. to foreign countries. Deemed exports, i.e. the release of controlled information to foreign nationals located in the U.S., are also restricted under these laws and regulations. Export control laws apply to **all** activities – not just sponsored research projects.

### III. Definitions

The U.S. Government agencies have primary export control regulatory responsibilities. The Department of Commerce through its Export Administration Regulations (EAR), the State Department through its International Traffic in Arms Regulations (ITAR) and the Arms Export Control Act (AECA), and the Treasury Department through the Office of Foreign Assets Control (OFAC) administer the export control laws and trade sanctions. The Commerce Department administers the Commerce Control List (CCL) and the State Department administers the U.S. Munitions List (USML)

University of Massachusetts Dartmouth  
Policy for Export Control Compliance  
ACA-C10-003

An export is:

- Shipment of a controlled commodity, equipment, material, or software outside the U.S.;
- Disclosing controlled technology or technical data to a foreign national, whether in the U.S. or abroad;
- Performing technical assistance or defense services for or on behalf of a foreign national, whether in the U.S. or abroad;
- Exports within the U.S. are considered to be a “deemed” export to the foreign national’s home country.

**IV. Procedures**

Faculty, administrators, and staff are expected to contact the Office of Institutional Compliance should they have any questions about the application of U.S. Exports controls or trade sanctions to their research or other activities. The procedures and guidelines on export control are more fully outlined at [http://www.atmc.umassd.edu/institutional\\_compliance/export.cfm](http://www.atmc.umassd.edu/institutional_compliance/export.cfm). The Office of Institutional Compliance will determine if exemptions or exclusions apply, or if a license is required. The Office of Institutional Compliance will make available export control training to faculty, administrators, and staff. Faculty, administrators, and staff should report any potential violations to the Office of Institutional Compliance.

**V. Responsibility**

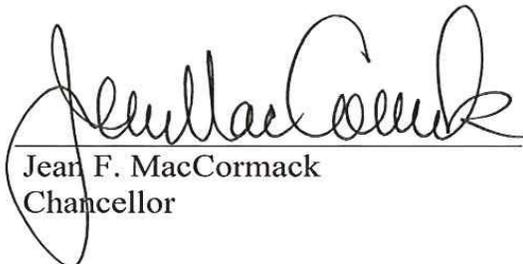
The Office of Institutional Compliance is responsible for developing and implementing an export control program. The Office of Institutional Compliance ensures that faculty, administrators, and staff comply with University export control procedures and guidelines, and federal export control regulations.

**VI. Attachments**

Export Compliance Standard Operating Procedures  
Export Control Compliance Guidelines

**VII. Approval and Effective Date**

Effective upon signature of the Chancellor

Approved:  Date: 11/22/10  
Jean F. MacCormack  
Chancellor

## FEDERAL LAWS, REGULATIONS, AND PENALTIES

Three U.S. Government agencies have primary export control regulatory responsibilities. The Department of Commerce through its Export Administration Regulations (EAR), the State Department through its International Traffic in Arms Regulations (ITAR) and the Arms Export Control Act (AECA), and the Treasury Department through the Office of Foreign Assets Control (OFAC) administer the export control laws and trade sanctions. The Commerce Department administers the Commerce Control List (CCL) and the State Department administers the U.S. Munitions List (USML).

The U.S. Government controls exports on a case-by-case basis, examining four factors: the destination, the good, software, technology or service, the end-user, and its end-use.

Mechanism	Governing Department	Covers
EAR	Commerce	Dual-use goods, technology, chemicals and software
ITAR	State	Military items; space-related technology and research
OFAC	Treasury	Trade prohibitions with sanctioned countries/entities

EAR and ITAR apply to: the transfer of specific physical items and information; the provision of specific services to persons and entities *outside* the U.S. (exports); and to the disclosure of specific information and the provision of specific types of services to foreign nationals *inside* the U.S. (deemed exports).

OFAC regulations restrict transactions with embargoed and sanctioned countries, persons and organizations involved in terrorism, drug trafficking and proliferation of weapons of mass destruction. Even when exclusions to EAR or ITAR apply, OFAC may prohibit payment, travel and the transfer of items, assets, and services of value to sanctioned nations (check the OFAC website [www.treas.gov/ofac](http://www.treas.gov/ofac) for the latest information about embargoed countries).

The majority of exports do not require government licenses. Licenses, however, are required for commodities, software, and technology that the U.S. Government considers “subject to the EAR” or are ITAR controlled. Export controlled transfers usually are required for one of the following reasons:

- The nature of the export has actual or potential military applications or economic protection issues;
- Government concerns about the destination country, organization, or individual;
- Government concerns about the declared or suspected end use or the end user of the export.

Even if an item appears on lists of controlled items, there may be exemptions, exclusions or exceptions that apply, such as the exclusion for “fundamental research”. For research to be considered “fundamental research” there cannot be personnel access restrictions or publication restrictions that apply.

The University will assist any member of the University community in complying with export control laws and trade sanctions, including securing licenses from U.S. Government agencies, where appropriate. However, the primary responsibility rests with the faculty member or

researcher as the individual most informed about the contemplated project and the technical nature and properties of the goods, software and technology.

Faculty and other researchers are responsible for:

- Knowing classification of and export compliance requirements for the equipment, software, chemicals, materials and technology they handle, lease or procure;
- Knowing whether the proposed research project will be subject to export control restrictions due to publication or other dissemination restrictions or personnel access restrictions;
- Knowing the classification of and export compliance requirements for company proprietary information they receive under a confidentiality obligation;
- Having an effective security plan to protect export controlled information in their possession, taking into account foreign nationals under their supervision;
- Complying with all export control requirements that apply to physical shipments, including proper shipping permits and making AES filings;
- Making export control analysis (including screening for sanctioned or embargoed persons, entities and countries) prior to foreign travel, sponsoring foreign visitors at UMD, engaging in research with foreign collaborators, engaging in research sponsored by foreign persons, or conducting research in foreign countries

More information, materials and forms are available at the OIC website at:

[http://www.atmc.umassd.edu/institutional\\_compliance/export.cfm](http://www.atmc.umassd.edu/institutional_compliance/export.cfm)

For step-by-step instructions on how to determine the ECCN of any good, software or technology follow the instructions on the Department of Commerce web page at <http://www.bis.doc.gov/licensing/exportingbasics.htm> Also, there is free online training available from the Department of Commerce at:

<http://www.bis.doc.gov/seminarsandtraining/seminar-training.htm>

A helpful tool for analyzing exclusions under the EAR for publicly available information is the Questions and Answers – Technology and Software Subject to the EAR which is found in Supplement 1 to part 774 of the EAR at <http://www.access.gpo.gov/bis/ear/pdf/734.pdf>

### **Other Federal Laws**

In addition to export control laws, select agents and toxins are also regulated by the Centers for Disease Control and Prevention (CDC) and / or the Department of Agriculture (USDA).

For more information about the regulations refer to <http://www.selectagents.gov/index.html>.

Shipment of these materials ordinarily requires an export license even where transfer exemptions may be available under select agents and toxins regulations.

Other activities are exclusively regulated by other laws and agencies. Examples include the Nuclear Regulatory Commission, the Department of Energy, the Food and Drug Administration, and the Drug Enforcement Agency, and those laws and regulations must be consulted and complied with.

## **Penalties**

There are severe civil and criminal penalties, including fines and imprisonment, for violating the export control laws and trade sanctions. The university and the individuals involved are each subject to these penalties. In addition, the government may revoke the University and / or the individual(s) involved ability to export. Entities and individuals found guilty may 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:

**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.

**ITAR:** Criminal penalties can reach up to \$1 million per violation and 10 years imprisonment for individual willful violations. Civil penalties imposed upon departments, agencies, and officials can reach up to \$500,000 per violation. A university found to be in violation of ITAR regulations can be debarred from contracting with the government and could lose its export privilege.

**OFAC:** Penalties range depending upon the sanction regime in question. Criminal violations by the university can reach up to \$1 million, and criminal penalties for individuals can reach \$1 million or 20 years in prison, or both. Civil penalties can be imposed up to \$250,000 per violation, or two times the transaction in question, or both.

## KEY TERMS AND DEFINITIONS

Even common words have very specific meanings within the export control laws. Below are the definitions of key terms used in the export control regulations. For additional guidance, see the EAR definitions: <http://www.access.gpo.gov/bis/ear/pdf/772.pdf> or ITAR definitions: [http://www.pmddtc.state.gov/regulations\\_laws/documents/consolidated\\_itar/2009/Part\\_120.doc](http://www.pmddtc.state.gov/regulations_laws/documents/consolidated_itar/2009/Part_120.doc)

**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. See [http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html).

The CCL is divided into ten categories: (0) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Chemicals, "Microorganisms," and Toxins; (2) Materials Processing; (3) Electronics Design, Development and Production; (4) Computers; (5) Telecommunications; (6) Sensors; (7) Navigation and Avionics; (8) Marine; (9) Propulsion Systems, Space Vehicles, and Related Equipment.

Every CCL category is subdivided into the same five groups, designated by the letters A through E, as follows: (A) Equipment, assemblies, and components; (B) Test, inspection and production equipment; (C) Materials; (D) Software; and (E) Technology.

**Deemed Export** – Whenever a foreign national on U.S. soil (or abroad) may be exposed to or is able to access in any manner export-controlled technology or software (EAR) or technical data required for the development, production or use of controlled articles, or performance of a defense service (ITAR). EAR citation is 15 CFR 734.2(b). ITAR citation is 22 CFR 120.17. Deemed exports do not include the mere transfer or access to controlled articles or materials without any associated information. It is “deemed” to be an export to the home country of the foreign entity or individual. Deemed exports may occur through such means as a demonstration, oral briefing, or plant visit, as well as the electronic transmission of non-public information or software. More information about “deemed exports” is available here: <http://www.bis.doc.gov/deemedexports/deemedexportssupplementqa.html>

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

**Defense Article** - Any item designated in the U.S. Munitions List. These items consist of articles which are specifically designed, developed, configured, adapted or modified for military application and related technical data. Examples include specified chemical agents, cameras designated for military purposes, specified lasers, and some GPS equipment and any directly related technical data. (ITAR 120.6)

**Defense Service** - Providing of assistance (including training) anywhere (inside the United States or abroad) to foreign persons in connection with the design, development, engineering, manufacture, production, or use of a defense article, and the furnishing of any

related technical data. (ITAR 120.9) The *Bona Fide* Employee Exemption does not apply to where the employee will be provided a Defense Service.

**Debarred Parties List** - List of individuals denied export privileges under ITAR and maintained by the State Department. Information can be accessed from <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>.

**Denied Persons List** - A list of persons who have been issued a denial order from the Commerce Department's Bureau of Export Administration (BXA). U.S. exporters and third parties in general are prohibited from dealing with these persons in transactions involving U.S. items. The list can be accessed from <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>.

**Dual-Use** - Items that have both commercial and military or proliferation 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" (see §734.2(a) of the EAR). Items with no specific ECCN are designated as "EAR99."

**Educational Information** – Under the EAR, information taught in course catalog courses and teaching laboratories associated with these course catalog courses are not export controlled. (Encryption software with symmetric key length exceeding 64 bits does not meet this exclusion.) 15 CFR 734.9 Under the ITAR, information or software concerning general scientific, mathematical or engineering principles commonly taught in universities or information in the public domain are not subject to export controls. 22 CFR 120.10 –11.

**Entity List** – Exports to foreign end-users engaged in proliferation activities are usually prohibited without a license. These are administered on a case-by-case basis. The list can be accessed at <http://www.bis.doc.gov/entities/default.htm>

**Export** - Includes any of the following: 1) actual shipment of any covered goods or items; 2) the electronic or digital transmission of any covered goods, items or related goods or items; 3) any release or disclosure, including verbal disclosures or visual inspections, of any controlled technology, software or technical data to any foreign national; or 4) actual use or application of controlled technology on behalf of or for the benefit of any foreign entity or person anywhere.

**Export Administration Regulations (EAR)** - Regulations promulgated and implemented by the Department of Commerce that regulate the export of goods, software and related technology identified on the Commodity Control List (CCL), Title 15 CFR 774, Supplement 1. The EAR also includes export restrictions, sanctions and embargoes to specified persons, entities and countries.

**Export Control Classification Number (ECCN)** - Identifies the Commerce Control List classification and related export requirements of commodities, software and technology subject to the export licensing authority of the Department of Commerce, Bureau of Industry and Security. All commodities, software and technology not specifically identified on the CCL are classified as "EAR99."

**Foreign National** – Under the EAR, means any person who is not a citizen or permanent resident of the United States. Under the EAR, the term applies to “persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals (i.e. has been admitted as a refugee or granted asylum). The term also refers to foreign entities.

**Foreign Person** - The ITAR uses the term “foreign person” rather than “foreign national” and it applies to any natural person who is not a lawful permanent resident or who is not a “protected individual”, and may also include any corporation, business association, partnership society, trust or any other entity, organization or group that is incorporated to do business in the United States. This also includes any governmental entity.

**Fundamental Research** – Under the EAR and the ITAR, fundamental research means basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons (EAR) or pursuant to specific U.S. government access and dissemination controls (ITAR).

**Fundamental Research Exclusions** - EAR provides that university research normally will be considered as fundamental research unless the university or its researchers accept personnel access restrictions or restrictions on publication of scientific and technical information resulting from the project or activity. The EAR specifically permits limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to insure that publication will not compromise any patent rights. The EAR citation is 15 CFR § 734.8.

The ITAR states that university research will not be deemed to qualify as fundamental research if: (1) the university or its researchers accept any restrictions on publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher. The ITAR citation is 22 CFR § 120.11(8).

*Note: Under the EAR and ITAR, even if no publication restriction exists, the fundamental research exclusion does not apply to the physical export of goods.*

**Good** - Any article, natural or man-made substance, material, supply, or manufactured product, including inspection and test equipment, and excluding technology.

**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. The USML is available at:  
[http://www.pmddtc.state.gov/regulations\\_laws/itar\\_consolidated.html](http://www.pmddtc.state.gov/regulations_laws/itar_consolidated.html)

**Lists to Check** – all transactions with potential export restrictions should be checked against the published lists of prohibited countries, persons and entities before proceeding. All of the lists can be accessed from

<http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>

**OIC** – The UMD Office of Institutional Compliance.

**Public Domain** – Under the ITAR, information that is published and that is generally accessible or available to the public are 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. 22 CFR 120.11

**Publicly Available** – The EAR uses the term “publicly available” rather than “public domain.” Under the EAR, information is publicly available when it becomes generally accessible to the public. In addition to the examples listed above, the EAR specifically provides that software that is available for general distribution is publicly available (except for encryption software with symmetric key length exceeding 64 bits). 15 CFR 734.7

**Reexport** - An actual shipment or transmission of items subject to export regulations from one foreign country to another foreign country. For the purposes of the EAR, the export or reexport of items subject to the EAR that will transit through a country or countries to a new country, or are intended for reexport to the new country, are deemed to be exports to the new country.

**Sanctioned Country** – Even when exclusions to EAR or ITAR apply, U.S. Treasury Department, Office of Foreign Assets Control may prohibit payment, travel and the transfer of items, assets, and services of value to sanctioned nations (check the OFAC website [www.treas.gov/ofac](http://www.treas.gov/ofac) for the latest information about embargoed countries).

**Specially Designated Nationals (SDN)** - Any person who is determined by the U.S. Secretary of the Treasury to be a specially designated national for any reason under regulations issued by the Office of Foreign Assets Control. U.S. persons are prohibited from having transactions with the persons listed in the Specially Designated Nationals List. The listed is located at <http://www.treas.gov/offices/enforcement/ofac/sdn/>

**Technical Assistance** - Technical assistance may take forms such as instruction, skills training, working knowledge, consulting services, and may also involve the transfer of technical data.

**Technical Data** - Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blueprints, drawings, plans,

instructions, diagrams, and photographs. These may take the form of blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, or read-only memories. The ITAR definition does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain, general system descriptions, or basic marketing information on function or purpose. (ITAR 120.10).

**Technology** - Any specific information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, manuals, software, or in intangible form, such as training or technical services) that is required for the development, production, or use of a good, but not the good itself. The information takes the form of technical data or technical assistance. *See* definition of “**use**” below.

**Use** - Technology for operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing of a good.

## **TRAINING PROGRAM**

The training program is a critical component of maintaining compliance with export control laws. The primary goal of training is to increase awareness of and maintain compliance with export control laws and trade sanctions. The program will educate the UMD community of its responsibilities under these laws and the UMD procedures in place for ensuring compliance. It is especially critical that faculty and administrative staff that direct or participate in research projects involving export controlled goods, technology or software participate in training provided through the Office of Institutional Compliance. The New Faculty Institute identifies new faculty and OIC provides export control training overview at the New Faculty Institute research seminar.

### **Training Topics**

Training includes an overview of the purpose of export controls, how export regulations apply to different activities, review of definitions and regulations, the importance of compliance, description of the high risk disciplines, and the types of exclusions, exemptions and exceptions that commonly apply. In addition, training covers security measures that should be followed, steps to follow for physical exports, instruction on how to determine the CCL or USML designation of items, information about applying for a license, when to suspect export control violations and red flags, internal review procedures, the importance of training, the importance of utilizing the OIC as a resource, and reporting of suspected violations.

The following introductory topics will be covered in faculty, staff and student training:

- Purpose of U.S. export control laws and UMD Export Control Guidelines
- Regulatory agencies controlling exports
- What is an Export and What Regulations Apply
- Deemed Exports and Foreign Nationals Defined
- U.S. Munitions List and Commerce Control List
- General Prohibitions on End Use and End Users
- Screening Customers Using Lists of Denied and Restricted Persons and Countries
- How to detect suspicious and inconsistent behavior (red flags)
- Screening for Embargoed Countries
- Fundamental research and educational information exclusions
- Examples of common license exceptions
- Who to contact about questionable transactions
- Enforcement of violations and severe sanctions and penalties
- Contact Persons for Further Assistance
- FAQs; Questions and Answers

Advanced Training Topics for Faculty, Administrative Staff and Students include:

- Contract language that restricts publication and personnel access
- Foreign sponsorship of research
- Physical export of goods and materials
- Nondisclosure agreements with foreign entities or persons
- Materials transfer agreements with foreign entities or persons
- Teaching or training activities that use or implement licensed technology

### **Department Training**

Special efforts will be taken to ensure that all departments in high risk disciplines such as Engineering (including Physics), Research with Lasers, Research with Encrypted Software, Marine Sciences, and Research with Controlled Chemicals, Biological Agents and Toxins receive training. For example, training may be scheduled during department meetings or other times which are convenient for those departments.

### **License Training and Briefings**

One-on-one training will be provided by the Director of the OIC to researchers who are involved in projects confirmed to involve export controlled technology. The type of training, date, and who was trained is recorded and kept on file in the OIC.

### **Other Materials**

While most training will be classroom style with opportunity for questions and discussion, additional information may be provided in the form of email notifications, institutional compliance newsletters and announcements, online training and information, and invited speakers. Useful materials and forms are available on the OIC website at [http://www.atmc.umassd.edu/institutional\\_compliance/export.cfm](http://www.atmc.umassd.edu/institutional_compliance/export.cfm)

### **Training Timelines**

Formal training events will be scheduled twice per year. One-on-one and administrative staff training is scheduled as necessary throughout the year by contacting the Director of OIC. In addition, export control training events are posted on the website at [http://www.atmc.umassd.edu/institutional\\_compliance/export.cfm](http://www.atmc.umassd.edu/institutional_compliance/export.cfm)

### **Training Records**

All records of training sessions will be maintained by the OIC for a period of five years. The records shall include date and place of training, sign-in sheets signed by persons attending, list of speakers, and the subjects covered.

## REGULATED ITEMS

### **ITAR Controlled Items**

The Department of State Directorate of Defense Trade Controls (DDTC) administers export control of defense items under the International Traffic in Arms Regulations, 22 CFR 120-130, pursuant to the Arms Export Control Act (AECA). Three terms are used to designate export controlled ITAR items: “defense articles,” “technical data,” and “defense services.” An item that also contains any ITAR controlled component is also controlled under the ITAR.

*Defense Article* means any piece of equipment (or component or part thereof), or technical data (as defined below), that is specifically designed, developed, configured, adapted, or modified for a military, missile, space, satellite, or other controlled use listed on the USML.

*Technical Data* means any information which is required for the design, development, assembly, production, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings or assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed. However, technical data does not include general scientific, mathematical, or engineering principles commonly taught in universities, information in the public domain, general system descriptions, or basic marketing information on function or purpose.

*Defense Services* means providing assistance, including training, to a foreign person in the United States or abroad in the design, development, engineering, manufacture, production, or operation of a defense article, as well as providing any related technical data to foreign persons. Defense services may include informal collaborations, conversations, or interchanges concerning technical data.

For details about the International Traffic in Arms Regulations, go to the website at: [http://www.pmddtc.state.gov/regulations\\_laws/itar\\_official.html](http://www.pmddtc.state.gov/regulations_laws/itar_official.html)

### **Definition of Export Under the ITAR**

The ITAR defines the term 'export' broadly. The term applies not only to exports of tangible items from the U.S. but also to transfers of intangibles, such as technology or information. The ITAR includes the release of controlled technical data to foreign nationals even in the U.S.

### **Authorization to Export**

Any U.S. person or entity that manufactures, brokers, or exports defense articles or defense services must secure a license prior to any export. Excluded from these regulations are activities limited to the creation of unclassified technical data, or the fabrication of defense articles for experimental or scientific purpose, including research and development. UMD does not engage in the manufacture of defense articles.

## Items Subject to the EAR

The Department of Commerce Bureau of Industry and Security regulates the export of commercial products, software and technology under the Export Administration Regulations (EAR), 15 CFR §§ 730-774. The EAR covers a wider range of products and technology, the product classification process is highly technical, and most importantly, the need for a license depends not only on the type of product but on its final destination.

Generally, all items of U.S. origin, or physically located in the U.S. are subject to the EAR. Foreign manufactured goods are generally exempt from the EAR re-export requirements if they contain less than a *de minimus* level of U.S. content by value. The EAR requires a license for the exportation of a wide range of items with potential 'dual' commercial and military use, or otherwise of strategic value to the U.S. (but not made to military specifications). However, only items listed on the Commerce Control List (CCL) require a license prior to exportation. The items are designated by "ECCNs." Items not assigned an ECCN are designated as "EAR 99" and can generally be exported without a license, unless the export is to an embargoed country, or to a prohibited person or end-use. Items are further organized into 5 groups as follows:

**Commodities** means finished or unfinished goods ranging from high-end microprocessors, to airplanes, to ball bearings.

**Manufacturing Equipment** includes equipment specifically for manufacturing or testing controlled commodities, as well as certain generic machines, such as computer numerically controlled manufacturing and test equipment.

**Materials** includes certain alloys and chemical compounds.

**Software** includes software specifically associated with particular commodities or manufacturing equipment, as well as any software containing encryption and the applicable source code.

**Technology** means information required for the development, production or use of a good and takes the form of technical data and technical assistance. For some ECCNs, there may be a distinction between technology for the "use" of a product and the technology for the "design" or "manufacture" of the product.

For details about the CCL, go to [http://www.access.gpo.gov/bis/ear/ear\\_data.html#ccl](http://www.access.gpo.gov/bis/ear/ear_data.html#ccl).

For the EAR regulations, go to [http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)

## Export Control Classification Number (ECCN)

Goods, software and technology on the CCL are primarily commercial in nature not military. (Items that have military application are covered under ITAR.) The CCL categorizes the goods and related technology covered into ten topical categories. Items are further designated by Export Control Classification Numbers (ECCNs). Items not assigned a specific ECCN fall under a catch-all category called "EAR99."

The fundamental difference in the EAR and ITAR is the EAR is concerned with “dual use” items (items designed for potential commercial purposes that can have military applications) and the ITAR with those that are inherently military in nature. Another difference is the treatment of fundamental research. In the ITAR, is it subsumed under “public domain” and in the EAR it is a separate and distinct category. In general, the EAR is clearer and more specific in its coverage than the ITAR.

In order to know whether you may export a dual use item, first you have to know how it is designated under the Commerce Control List (CCL) and check for license exceptions. Second, you have to check the Country Chart. Third, you have to check the proposed end- use. Fourth, you have to check the proposed end-user. The flow chart that follows shows the steps to determining whether or not a license is required under the EAR.

In determining the classification of an entire system, you generally consider the nature of the entire assembled system rather than the classification of individual components (with the exception of included information technology or encryption software). There are some helpful interpretations to assist you. See Interpretations 2 and 13 at 15 CFR 770.2. (By comparison, under the ITAR, a component that contains one single ITAR-controlled item would make the entire assembled system controlled.)

For step-by-step instructions on how to determine the ECCN of any commodity, software or technology follow the instructions on the Department of Commerce web page at <http://www.bis.doc.gov/licensing/exportingbasics.htm> Also, there is free online training available from the Department of Commerce at: <http://www.bis.doc.gov/seminarsandtraining/seminar-training.htm>



## KEY ISSUES IN UNIVERSITY ACTIVITIES

Export regulations require attention to several considerations in a University setting. Considerations and subsequent actions depend on evaluation of the recipient, the destination, involvement of controlled technology, and governmental jurisdiction to determine how the regulations apply and whether a license must be obtained. Most activities conducted at UMD are likely to qualify for license exclusions for information that is Publicly Available or in the Public Domain, such as the Educational Information Exclusion and the Fundamental Research Exclusion. Otherwise an export license may be required to allow for participation by foreign nationals or for foreign research collaborations. A helpful tool for analyzing exclusions under the EAR is the Questions and Answers – Technology and Software Subject to the EAR which is found in Supplement 1 to part 774 of the EAR or at <http://www.access.gpo.gov/bis/ear/pdf/734.pdf>.

### **Fundamental Research Exclusion (FRE)**

The term “fundamental research” means basic or applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community. Fundamental research is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons. Both the ITAR and EAR provide that information resulting from fundamental research is not subject to export controls. This is referred to as the Fundamental Research Exclusion (FRE).

Specifically, the EAR provides that the fundamental research exclusion applies so long as the university and its researchers do not accept restrictions on publication of scientific and technical information resulting from the project or activity, or personnel access restrictions. The EAR specifically permits customary prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to insure that publication will not compromise any patent rights. The EAR citation is 15 CFR § 734.8. Access and dissemination controls in government contracts with national security agencies normally do not trigger a license requirement as long as the university otherwise follows any national security controls imposed in the contract (15 CFR 734.11(a)).

By comparison, the ITAR states that university research will not be deemed to qualify as fundamental research if: (1) the university or its researchers accept any restrictions on publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher. The ITAR citation is 22 CFR § 120.11(8).

The Office of Research Administration (ORA) carefully reviews proposed research projects to ensure the scope of the work qualifies for the fundamental research exclusion. If further reviews are needed, OIC works to complete the export control analysis, with the technical assistance of the PI.

Verbal or written 'side deals' between a PI and sponsor to forego publication will invalidate the FRE and violate university policies that require that research shall be conducted openly and without prohibitions on the publication and dissemination of the results.

**Under the EAR and ITAR, even if no publication restrictions or personnel restrictions apply, the fundamental research exclusion does not apply to the physical shipment of goods.**

The use of sponsor or third-party trade secrets or other proprietary information in a research project which are subject to a confidentiality obligation will continue to be subject to export controls even though the research and the research results are covered by FRE. The EAR citation is 15 CFR § 734.8(b)(4). See illustration on next page.

A deemed export may occur if information, which is not otherwise publicly available, about the development, production or use of controlled articles is released to a foreign national. "Use" in this context means information about the operation, installation, maintenance (checking), repair, overhaul **and** refurbishing of a controlled article. EAR Part 772. All five aspects of use must be present to cause an export to occur. When instruction on use is based on a publicly available manual, the instruction is considered publicly available and not subject to the EAR.

### **Educational Information Exclusion**

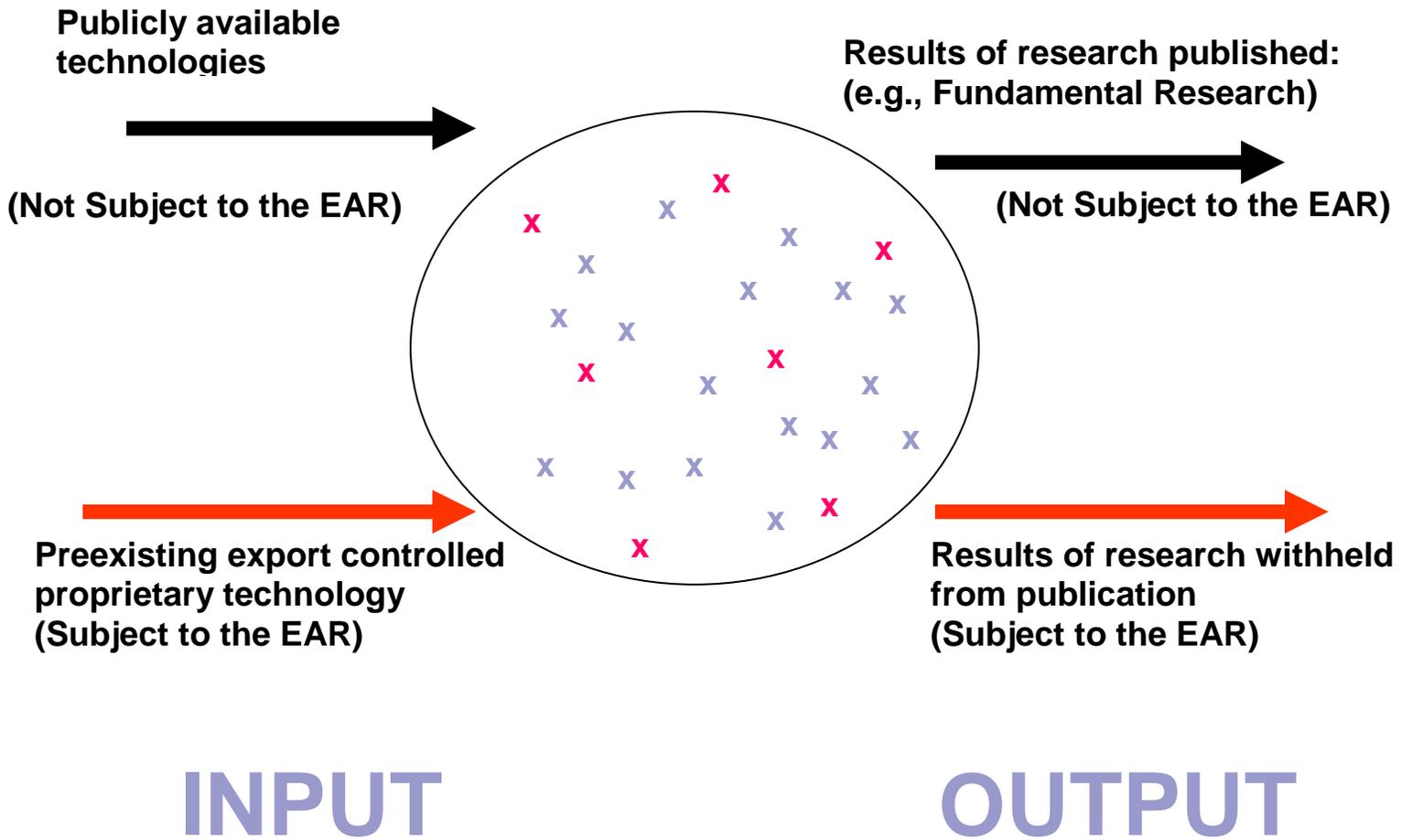
One of the most important exclusions from the EAR and ITAR export regulations that applies to universities is the exclusion for educational information. Under the EAR, information and software taught in course catalog courses and teaching laboratories associated with these course catalog courses are not export controlled. (Encryption software with symmetric key length exceeding 64 bits does not meet this exclusion.) 15 CFR 734.9

Under the ITAR, information or software concerning general scientific, mathematical or engineering principles commonly taught in universities or information in the public domain are not subject to export controls. 22 CFR 120.10–11.

### **Publicly Available Information / Public Domain**

All information that is publicly known is also not subject to export controls (with the exception of encryption software with symmetric key length exceeding 64 bits). Under the ITAR, information that is published and that is generally accessible or available to the public are said to be in the "public domain" and 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.

**Universe of Research**  
Adapted from Alex Lopes, Department of Commerce



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. 22 CFR 120.11

The EAR uses the term “publicly available” rather than “public domain.” Under the EAR, information is publicly available when it becomes generally accessible to the public. In addition to the examples listed above, the EAR specifically provides that software that is available for general distribution is publicly available (except for encryption software with symmetric key length exceeding 64 bits). 15 CFR 734.7

### **Physical Exports**

If a physical export is necessary, then implement the following sequential analysis. First, begin with the jurisdiction determination; then, proceed to the classification process. The researcher is typically the best person to assist with the determination of the Commerce Department ECCN classification of the item. An alphabetical guide to the Commerce Control List can be found at [www.access.gpo.gov/bis/ear/pdf/indexccl.pdf](http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf) to help with the classification.

Using the ECCN, it must be determined whether an export license is required. You are also required to know your customer and evaluate how the export will be used. The lists of barred or prohibited countries, persons and entities must be checked in the vetting process. For shipment of items subject to the EAR, you must check whether General Prohibitions 4-10 apply. (See: EAR Part 736). Watch for ‘red flags.’ These concerns must be addressed satisfactorily or the shipment should be aborted. In some instances, license exceptions may apply. The OIC can help make these determinations. The process may include completing a Request to Ship Materials Out of the U.S. and having an End User Certification Form completed by the end user.

An AES filing with the U.S. Census Bureau must be filed for exports requiring a license and all shipments of goods having a value greater than \$2,500. The filing must indicate either the applicable ECCN or that a license exception applies. Information is available here: <http://www.bis.doc.gov/exportlicensingqanda.htm>. Contact the OIC for assistance with this process.

### **Deemed Exports**

While exports are commonly associated with the physical shipment of materials across a U.S. border, export controls are much broader. They also include the transfer of technology or software, technical data, or performance of defense services to foreign nationals even when the transfer takes place within the U.S. This transfer is "deemed" to be an export. The issue of deemed exports is particularly relevant for university environments where students and faculty from every corner of the globe engage in teaching and research activities together. In many instances, the requirements of the export control laws can be appropriately satisfied through reliance on available exclusions from export controls, such as exclusions for educational information, and exclusions for information that is publicly available or in the public domain, including the fundamental research exclusion. UMD is committed to ensuring these exclusions are relied upon and satisfied. For example, with

respect to fundamental research, it is the policy of UMD that research shall be conducted openly and without prohibitions on the publication and dissemination of the results.

A “deemed export” under the ITAR involves the export within the United States to a foreign person of technical data, in other words information or software, required for the development, production or use of defense articles included in the USML. Technical data does not include information or software concerning general scientific, mathematical, or engineering principles commonly taught in universities, or information in the public domain, or general system descriptions, or basic marketing information on function or purpose. A deemed export under ITAR also includes performing a defense service on behalf of a foreign person.

A “deemed export” under the EAR involves the export within the United States to a foreign national of technology or software required for the development, production or use of a good. Importantly, information about “use” must include **all** of the following to constitute a deemed export: operation, installation, maintenance (checking), repair, overhaul **and** refurbishing. EAR Part 772. If the foreign national has access only to the technology that is necessary to operate the export controlled equipment, a release of “use” technology has not occurred. Further, the deemed export rule does not regulate the mere operation of controlled equipment. More information is available here:

<http://www.bis.doc.gov/deemedexports/deemedexportssupplementqa.html>

Deemed exports could occur through such means as a demonstration, oral briefing, or plant visit, as well as the electronic transmission of non-public information or software. Specific reference must be made to the relevant ECCN because what constitutes “technology” can vary. For example, in the case of select agents, “technology” includes information about disposal of the materials under ECCN 1E351. Technology and software that are not subject to the EAR would be excluded from export regulation, such as publicly available technology.

### **Supercomputers**

A common deemed export question relates to access by persons in the UMD community to supercomputers (designated by their adjusted peak performance or APP under Category 4 of the CCL). This is an example where mere access to or operation of a supercomputer does not constitute a deemed export. Faculty and technicians involved in the procurement, development or operation of such supercomputers are responsible for their proper management and supervision and should know what restrictions apply.

### **Encryption Software and Technology**

Faculty and students who work with encryption software and technology have a particularly complex compliance framework to maneuver within. As referenced above, encryption software (as well as associated technology) with symmetric key length exceeding 64 bits generally do not satisfy the exclusions on which universities ordinarily rely, including the educational information exclusion or the publicly available or public domain exclusion. However, there are recognized Department of Commerce clarifications and specific license exceptions that do apply.

As part of the Federal government's policy efforts to promote data security through encryption protections imbedded in mass market software and hardware products, it is permissible, while in the U.S. for non-U.S. persons to use any type of mass market encryption software products (covered under 5D992) and encryption hardware covered under 5A002 and 5B002. The Department of Commerce makes this clear in its policy statements. See, for example, the Department of Commerce's BIS encryption export policy located at [http://www.bis.doc.gov/encryption/encfaqs6\\_17\\_02.html](http://www.bis.doc.gov/encryption/encfaqs6_17_02.html) and the BIS guidance in Questions 17 of the following FAQs: <http://www.bis.doc.gov/deemedexports/deemedexportsfaqs.html#17>

Also, under License Exception ENC, non-U.S. persons who are employees, contractors or interns employed at UMD facilities can use encryption software (covered by ECCNs 5D002 and 5D992) with no license or prior government review required. This includes work developing or producing new products. 15 CFR 740.17(a)(2). In addition, special exemptions apply to certain kinds of encrypted medical end-use software and to temporary physical exports of tools of trade.

With respect to the physical shipments of software, under the EAR License Exception TSU, encryption source code or object code (covered by 5D002) may be exported without a license except to Iran, Cuba, North Korea, Syria or Sudan. 15 CFR 740.13. However, determining the applicability of the TSU exception is complex and you should contact OIC for help with the analysis.

Special exemptions apply to teaching encryption techniques. Encryption technology that is publicly available, including technology covered by ECCNs 5E002 and 5E992, are not subject to the EAR. Therefore, publicly known encryption techniques, algorithms and schemes may be shared and taught to non-U.S. persons within the U.S. (sharing of encryption software is a separate analysis). 15 CFR 734.3(b)(3). However, providing encryption technology controlled under 5E002 to students may require a license if it is provided with the specific intent to aid in the development of commodities or software controlled under 5A002 or 5D002. See License Requirement Note to ECCN 5E002.

### **Restricted Party Screening Lists**

Various U.S. Government agencies maintain a number of lists of individuals or entities barred or otherwise restricted from entering into certain types of export, trade and financial transactions with U.S. persons. All activities must be screened using these lists to ensure that UMD does not engage in a transaction with a barred entity or person.

**EAR Denied Persons List.** These are individuals and entities that have had their export privileges revoked or suspended by BIS. The list is at <http://www.bis.doc.gov/dpl/Default.shtm>

**EAR Entity List.** These are entities identified as being involved in proliferation of missile technology, weapons of mass destruction, and related technologies. The Entity List is at <http://www.bis.doc.gov/Entities/Default.htm>.

**Specially Designated Nationals and Blocked Persons List (SDN List).**

Maintained by OFAC, this is a list of barred terrorists, drug traffickers, and persons and entities associated with embargoed regimes. Generally, all transactions with such persons are barred. The list is at

<http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>.

**List of Debarred Parties (Excluded Parties List System).** The Department of State bars certain persons and entities from engaging in the export or re-export of items subject to the USML. The list is at <https://www.epls.gov/>

**Unverified List.** These are foreign persons and entities for which Department of Commerce has been unable to verify the nature of their operations. While transactions with these entities are not barred, special due diligence is required. It is available at

<http://www.bis.doc.gov/Enforcement/UnverifiedList/unverifiedparties.html>

**Persons Named in General Orders (Part 736, Supp. No. 1).** General Order No. 2 contains the provisions of the U.S. embargo on Syria and related matters. A link to the General Orders is available at <http://www.access.gpo.gov/bis/ear/pdf/736.pdf>

**Excluded Parties List.** These are entities that have been barred from contracting with U.S. Government agencies. In general, entities cannot contract with such parties in fulfilling a U.S. Government contract, either as prime or sub-contractor. The EPLS is available at <http://www.epls.gov/>

**Nonproliferation Sanctions** maintained by the Department of State. These lists are available at <http://www.state.gov/t/isn/c15231.htm>

**Supplier Classification of Items**

When, in the course of research activities, UMD receives materials from a sponsor and the PI cannot determine whether export controls apply, the OIC will contact the sponsor for export jurisdiction and classification information. If necessary, the sponsoring company is asked to complete a Supplier Classification Request Form to identify the types of materials involved and whether anything is export controlled.

**Immigration Sponsor Letters**

For Principal Investigators who want to issue a sponsor letter on behalf of a foreign person, the Dean of the College must approve any letters before they are sent. If the letter involves a high risk discipline or anyone from Country Groups D or E, the letter must be forwarded to the Director of Institutional Compliance for vetting and approval. The Director will consult with the Dean, as needed, in making a determination. The high risk disciplines for UMD are: Engineering (including Physics), Marine Sciences, Research with Lasers, Research with Encrypted Software, and Research with Controlled Chemicals, Biological Agents and Toxins. The list of country groups are located in Suppl. 1 to Part 740 which can be found at the EAR regulations database at: [http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html). The letter should be accompanied by the foreign person's resume and a copy of his/her recent publication abstracts. The PI is responsible to document activities of all sponsored foreign visitors and be able to provide records to verify such activities upon request.

## **International Travel**

When traveling abroad, UMD researchers should be familiar with export control regulations. Researchers need to make sure that any information discussed or items taken out of the U.S. are either not controlled, or if controlled, the proper licenses are in place. Researchers, as individuals, and UMD can be held liable for improperly transferring controlled technology. Thus, it is important to review and understand the federal requirements. Prior to discussing technology or making a presentation when traveling, verify that the technology, information, and/or commodity qualifies for an exclusion. Please note that the exclusions do not apply when controlled equipment or biological samples are hand-carried or shipped abroad. Biological samples should never be transferred without prior authorization.

Be aware that more than one license may be required for some travel. For example, travel to an OFAC embargoed country would require a license issued by the Treasury Department. An EAR license may be required as well depending on whether an export of controlled technology (information) is anticipated.

Exclusions that are relevant for researchers when traveling include:

- Published Information and Software – information that is generally accessible to the public through publication in books or periodicals, or information presented in the United States at a conference, meeting, seminar, trade show or other open gathering (members of the general public are eligible to attend and attendees are permitted to take notes) is considered to be in the public domain. Software available from a web site and accessible to the public is also considered to be publicly available. (Encryption software with symmetric key length exceeding 64 bits does not meet this exclusion.)
- Educational Information – Course material taught in U.S. universities in course catalog classes and information that is in the public domain fall within the educational information exception. (Encryption software with symmetric key length exceeding 64 bits does not meet this exclusion.)

Guidance for international travel is posted on the U.S. State Department website at [http://travel.state.gov/travel/cis\\_pa\\_tw/cis\\_pa\\_tw\\_1168.html](http://travel.state.gov/travel/cis_pa_tw/cis_pa_tw_1168.html)

All travel for UMD-related activities requires processing of the Travel Authorization Form prior to travel. The form should be submitted for approval at least 10 business days before travel begins. All foreign travel requires prior authorization by the respective Dean. Completion of the Travel Authorization Form in advance of foreign travel is the only means for qualifying for international travel insurance offered by UMD at no cost to you. The Travel Authorization Forms can be found at the end of these Guidelines. UMD Travel Guidelines are posted at: <http://www.umassd.edu/policies/activepolicylist/businessandfinanceoperations/employeeetravelpolicyguidelines/>

Travel to a country designated by the EAR as a Country Group D or E country must be vetted and cleared by the OIC prior to travel. The OIC clearance form is returned to the PI and Travel Accountant for final approval of the travel. The list of country groups are located in Suppl. 1 to Part 740 which can be found at the EAR regulations database at: [http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)

OFAC publishes travel guidelines for securing licenses for travel to embargoed countries. A useful guide for understanding the OFAC sanctions against Cuba is located at: <http://www.treas.gov/offices/enforcement/ofac/programs/cuba/cuba.pdf>

Travel guidelines for travel to Cuba are available at: [http://www.treasury.gov/offices/enforcement/ofac/programs/cuba/cuba\\_tr\\_app.pdf](http://www.treasury.gov/offices/enforcement/ofac/programs/cuba/cuba_tr_app.pdf)

OFAC also provides lists of approved companies to arrange for travel licenses and flights to embargoed countries. Authorized providers for travel to Cuba are available at [http://www.treasury.gov/offices/enforcement/ofac/programs/cuba/cuba\\_tsp.pdf](http://www.treasury.gov/offices/enforcement/ofac/programs/cuba/cuba_tsp.pdf)

## **Researchers**

For general travel with UMD-issued laptops, the PI should complete a Request for Temporary Export of Equipment or UMD Laptop to the OIC. The form has checkboxes for the PI to verify that no controlled or sensitive information is contained on the laptop. The OIC will issue a letter stating the approximate value of the computer and that no controlled or sensitive information is on it to provide to any customs agent should the PI be questioned during international travel.

Special care should be taken of computers that contain non-commercial, special purpose or certain encryption software. These items could be subject to seizure or customs duties and could pose a threat if stolen. See discussion above under “Encryption Technology.” If you need to travel with such items, an export review should be performed and if necessary, a license obtained prior to travel, and it should be completed well ahead of expected travel dates. Before initiating travel, the following questions should be considered to evaluate whether export regulations apply:

- 1) Do you plan to take any information or technology that is controlled?
- 2) Do you plan to travel to an embargoed destination?
- 3) Are you taking any biological materials? Identify the material(s).
- 4) Are you taking any equipment with you other than those identified as Tools of the Trade under the export regulations?

If the answer to any of these questions is 'yes', contact the OIC to determine how to proceed.

## **Export Control Checklist**

The Export Control Checklist is used by PIs to self-identify a proposed project that may involve exports and is therefore subject to export control regulations. Researchers need to be aware of potential export control issues so they can recognize and bring it to the attention of the appropriate individuals at UMD. It is critical for the researcher to provide input in the technical evaluation as they have control over the scope of the research project and understand the technology at issue. The checklist is used by ORA and the OIC at the grant and contract proposal stage to help identify whether export controls apply.

### **Technology Control Plans**

The purpose of a Technology Control Plan (TCP) is to outline procedures used by UMD for the protection of information and material identified under applicable federal directives governing the export of critical technology that may be received or developed in the course of performance of activities that are subject to export controls. Technology Control Plans must be developed and submitted for review and approval for any research that involves export controlled items, technology or data. The purpose is to identify authorized personnel and develop a physical and IT security plan to protect and control research information from access by unauthorized persons. Once the TCP is in effect, no personnel can be added to that project or facility without the prior approval of the OIC. The development of the TCP is a mandatory precursor to an application for a deemed export license or technical assistance agreement. The TCP will also establish what controls will continue upon completion of the project. Once a PI has a TCP in place for his/her office or laboratory, all immigration sponsor letters and all foreign visitors invited by that PI must be screened by the OIC.

### **Identification, Receipt and Tracking of ITAR Controlled Items**

A TCP is also required as a means for tracking and monitoring compliance when projects involving ITAR controlled items, including technical data, are identified. The Director of the OIC is responsible for oversight and licensing, including technical assistance agreements, of all projects in which defense articles are manufactured. This would include projects involving chemical or biological agents covered under USML Category XIV. Any such TCP for ITAR controlled items MUST bar access by all foreign persons, as there is no country-by-country analysis as in the EAR regulatory framework. UMD has a policy against acceptance of projects involving actual receipt of defense articles. There are no projects currently at UMD which involve the manufacture or export of defense articles.

### **Screening the Customer and Restricted/Prohibited Exports and Transfers**

As an educational and research institution, there may be numerous types of customers that may require screening. For example, sponsors, vendors, visitors and end users are screened depending on the nature of the activity. Attus Watchdog Pro is the software used for screening against all lists of proscribed countries and entities.

Before new sponsors are accepted into the sponsor PeopleSoft database, ORA personnel forward sponsor information to OIC for screening with ATTUS Watchdog Pro to screen proposed sponsors on the lists of proscribed countries and ineligible parties. The sponsor list is screened each calendar quarter to ensure sponsors remain eligible for transactions. Vendors are screened with ATTUS Watchdog Pro for approval before being entered by the Purchasing Department into the PeopleSoft system, which allows purchases to be made. In addition, vendors are screened at the time any payment is about to be made.

International students, faculty and visitors must report to the International Students and Scholars Office (ISSO) upon arrival at UMD. ISSO must request that the student present original visa and passport documents and make copies for the student's record and must process the visitor through the Department of Homeland Security's SEVIS database. UMD assumes that students holding valid U.S. visas have been cleared by the U.S. Citizenship and Immigration Services (USCIS).

Visiting scholars from foreign countries are provided sponsor letters which must be approved by the College Dean to support their visa application. Proposed visitors from Country Group D and E countries and visitors to departments within the high risk disciplines are screened by OIC before issuance of the sponsor letters.

For all physical exports reviewed by OIC, end users are identified and screened to evaluate whether a license is required or any exceptions may apply.

### **Large Equipment Purchases**

In the procurement process, the Purchasing Department asks the vendor to provide the ECCN or USML category, if known, for equipment purchases above \$75,000. This information, if received, is communicated to the PI or manager initiating the procurement for record-keeping and ensuring appropriate use and control of the purchased equipment.

## LICENSING INFORMATION

No matter how 'benign' an item may appear, it still may require a license to export or release to foreign nations. License requirements apply particularly to items controlled by multilateral export control regimes. In addition, some destinations and persons (individuals or groups) are subject to comprehensive export controls, including controls on all manner of consumer products.

A license may also be needed to "re-export" an item that was produced or originated in the United States. A "re-export" is the shipment or transmission of an item subject to the EAR from one foreign country to another foreign country. A re-export also occurs when there is "release" of technology or software (source code) that is subject to the EAR in one foreign country to a national of another foreign country.

The Commerce Department is responsible for licensing dual use items. The regulations on the export of goods and related technology are identified on the Commodity Control List (CCL), Title 15 CFR 774, Supplement 1. (The State Department is responsible for licensing items with military applications.)

The following general questions can be used to help determine whether an activity may require a license:

- 1) Is the person a U.S. Citizen or permanent resident (issued a green card)?
- 2) Is the information already published (for example on the Internet or in public libraries)?
- 3) Is it educational information covered in a course catalog course?
- 4) Is the technology disclosed in a published patent application or an issued patent?
- 5) Is the research considered fundamental research that will be published?
- 6) What is the jurisdiction and classification of the product – is it EAR 99, or something else?
- 7) Does a license exclusion or exemption apply?
- 8) If none of the above apply, a license may be required.

If an activity is controlled under the export regulations, then a license or other approval is needed from the respective oversight agency unless an exemption or exception applies.

Examples of situations where a license may be required include:

- research that involves defense, military, weapons, or space technologies
- export of a commodity or good outside of the U.S.
- attending a conference where registration is limited to U.S. citizens
- attending a conference outside of the United States
- activities where export control exceptions do not apply
- transfer of technical data about a controlled technology to a foreign national in or outside of the U.S.
- providing anything of value to someone from a sanctioned country, on the entity list, denied persons list, debarred (or excluded) parties list or any other restricted list.

When exclusions or exceptions do **not** apply (or if the transaction involves dealings with a sanctioned entity or country), then a license must be obtained for any deemed export, export, or re-export **prior** to the transfer of any information.

The following information is then needed to determine whether the U.S. origin product requires a license:

1. *Export Control Classification Number (ECCN)*. Certain items, notably those controlled by multilateral export control regimes, are on the Commerce Control List (CCL) (part 774 of the EAR) and are included under a specific ECCN. The ECCN in the CCL will also tell you the reason(s) for control. An item can be 'self-classified' with justification or BIS can also assist with classification when necessary. Contact the Director of Institutional Compliance for assistance. Items not listed on the CCL are designated as EAR99 items and generally can be exported without a license, unless the export is to an embargoed country, or to a prohibited person or end-use.

2. *The ultimate destination of the item*. The reason(s) for control listed in ECCNs on the CCL (part 774 of the EAR) needs to be matched with the country of ultimate destination in the Country Chart (part 738 of the EAR). The reason(s) for control, when used in conjunction with the Country Chart, will help to determine if a license is required to the ultimate destination. If it is determined that your export transaction requires a license, review the EAR to determine if any License Exceptions are available (part 740 of the EAR).

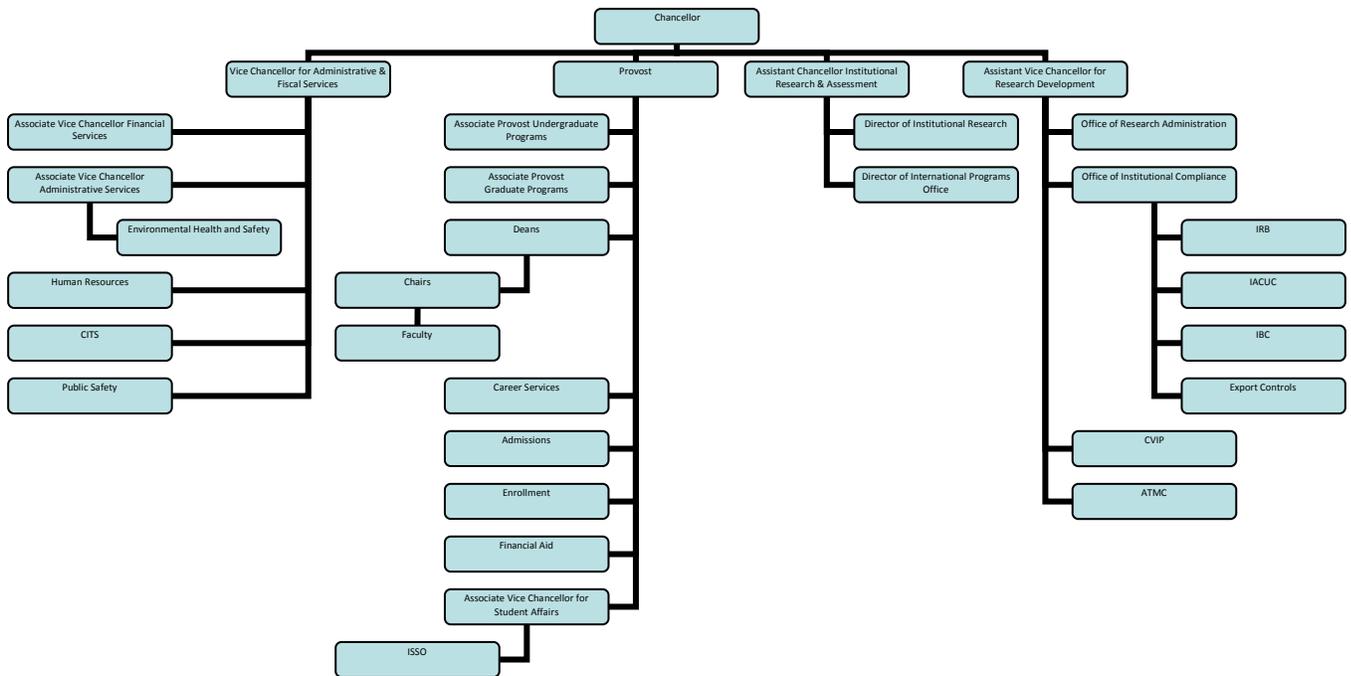
3. *The end-user and end-use for the item*. Even if determined that a license is not required based on the ultimate destination (or a license is required but a License Exception would generally apply), a license may be required because of the specific end-use or end-user. These are referred to under the regulations as the "General Prohibitions" and are found at Part 736 of the EAR. There are certain special restrictions that apply to persons (or entities) identified in the EAR, as well as to persons who are involved in weapons proliferation activities. In most instances, a license is required to persons identified in part 744 of the EAR for the export or re-export of all items subject to the EAR (i.e., all items on the CCL and all items classified as EAR99). There are certain end-uses that are prohibited. An end-user certification form may need to be completed by the end user to assist in the determination process.

The Director of the Office of Institutional Compliance is the UMD person approved to submit jurisdiction and classification requests as well as license applications to the Department of Commerce and Department of State. The Director will consult with Environmental Health and Safety with respect to any TCPs or license applications involving controlled chemicals or biological materials.

## ROLES AND RESPONSIBILITIES

In a University setting, it is necessary to coordinate export controls between departments as well as between academic and administrative sides of the institution so the program may be integrated fully across all levels of the institution. The processes should be clearly outlined so each department understands their responsibilities, information is forwarded to the appropriate party, and the necessary checks are completed and supporting documentation is on file. The UMD reporting structure is provided below for those areas involved in export control compliance and for scenarios expected to occur at UMD. Specific procedures for each department are outlined in a separate document titled the “Export Control Compliance Program Standard Operating Procedures.”

### Export Control Compliance Organizational Structure



### Institutional Commitment to Compliance Oversight

Compliance is a matter for top management attention and needs adequate resources for full implementation. The Compliance Oversight Committee is charged with development and oversight of the UMD export control compliance program. The Committee's purpose is to also ensure that UMD has the resources in place to assure compliance with export control and trade sanctions laws and regulations. The members of the Oversight Committee are knowledgeable about the EAR, Arms Export Control Act (AECA), ITAR and OFAC laws and regulations. As the leaders of each of their respective offices and functions, they oversee the implementation of the export control compliance program, these guidelines and the operating procedures in their respective departments and offices.

Compliance Oversight Committee consists of the Provost, Vice Chancellor for Administration and Fiscal, Vice Chancellor for Research Development, Director of the ORA, Director of ISSO, Office of General Counsel representative, and Director of OIC. This committee is responsible for administrative coordination and oversight of export control matters, including developing and implementing the export compliance program, including these guidelines and the Export Control Compliance Program Standard Operating Procedures.

The Provost's Office works with the vice chancellors, vice provosts, and deans to ensure compliance. Announcements are issued from the Provost and are posted under Export Controls at [http://www.atmc.umassd.edu/institutional\\_compliance/export.cfm](http://www.atmc.umassd.edu/institutional_compliance/export.cfm).

The Associate Vice Chancellor for Research Development reports to the Provost and Chancellor and is responsible for management of the Office of Research Administration (ORA). The Associate Vice Chancellor for Research Development is designated as an empowered official for export license applications and approves acceptance of any project that involves export restrictions.

The Office of Institutional Compliance (OIC) is the central office with primary responsibility for compliance functions, including export control compliance and is responsible for assisting with developing and implementing the export compliance program. It is lead by the Director of OIC. The Director works with the faculty, administrative staff and students to meet export control regulations, communicates about changes in regulations, maintains relevant records for all export control training and export activities, and provides support for license applications. OIC conducts outreach, education, training and advising of members of the UMD community to help ensure export control compliance. The Director of OIC is an empowered official for export license applications and is responsible for overseeing the annual review and update of the UMD Export Control Guidelines and the Export Control Compliance Program Standard Operating Procedures (SOPs), conducting periodic audits, and assisting with determination of ECCNs.

The OIC assists the Office of Research Administration (ORA) with the vetting of proposed projects, including sponsored research agreements and research services agreements, with the PI and proposed sponsors. The OIC is responsible for screening proposed activities with potentially proscribed countries or ineligible parties, monitoring compliance with TCPs, and screening international travel and visits by foreign nationals. The OIC maintains copies of all export control documents including license applications, policies, forms and guidelines, memoranda, notes, screens, correspondence, contracts, invoices and other financial records related to export controls, shipping documents, and records submitted to OIC for vetting and approval.

Office of Research Administration (ORA) is responsible for all extramural proposal submissions, accepts and administers grant awards, and negotiates contracts and other research-related agreements on behalf of the University. It reports to the Associate Vice Chancellor for Research Development. It is lead by the ORA director, responsible for pre-award and post-award activities. The ORA reviews all research contracts for terms or

provisions that might restrict access to or publication of research and technical data, set limits on personnel, or otherwise render inapplicable the exclusion for fundamental research or publicly available information. For the same reason, ORA also examines the nature of the work to determine whether it relies on use of third-party trade secrets or proprietary information that would prevent publication of the research results. Further, UMD policy on the free dissemination of research results prohibits the acceptance of contracts or grants with publication or dissemination restrictions.

Any proposed contract, grant, or award found by ORA to contain these restrictions is referred to OIC for analysis and ORA contacts the sponsor to attempt to negotiate it out. PIs are requested to complete an export control review form or checklist to assist OIC in making an export control assessment. If the restrictions cannot be negotiated out, it is the responsibility of the Associate Vice Chancellor for Research Development to consider whether there is a means for accepting the contract and its potential impact on dissemination of the resulting research results and academic progress of students.

All proposed research projects with foreign sponsors or which otherwise require physical exports are referred to OIC for the same analysis, review and approval, as well as for end user screens and licenses.

Research services agreements in many instances do not meet the fundamental research exclusion because they are typically specific projects conducted for companies with no intent to publish the results. Many of these projects, however, rely on the use of publicly available techniques and processes that are not export controlled. Research service agreements are submitted to ORA with a statement of work and a purchase order. If there is any question as to the nature of the work and whether it is export controlled, ORA sends the project to OIC for review.

Before new sponsors are accepted into the ORA database, ORA personnel forward sponsor information to OIC for screening with ATTUS Watchdog Pro to screen the proposed sponsors on the lists of proscribed countries and ineligible parties, using ATTUS Watchdog Pro. This same process is used each calendar quarter to screen the entire list of sponsors using ATTUS Watchdog Pro.

Environmental Health and Safety (EHS) is under the direction of the Assistant Vice Chancellor for Facilities. EHS has a robust and comprehensive laboratory safety and compliance program. EHS maintains a database of faculty and staff that work with biological agents, chemicals and other hazardous materials. EHS conducts periodic training of persons with access to laboratories about the proper handling, disposal, security and shipping of these materials, including export control awareness training. Also, no persons are allowed to use UMD procards to purchase chemicals and all chemical purchases and disposal is subject to EHS review and approval. Chemicals and biological agents are subject to many legal requirements which must be complied with. In fact, most of these materials are classified as dual use under the CCL. As a result, shipping training and other training sessions include discussion of export controls. EHS is available to assist members of the UMD community to comply with these laws and regulations.

Institutional Biosafety Committee (IBC) is a review body that oversees activities involving laboratory use of potentially hazardous biological agents. UMD is committed to ensuring the safe handling, storage and disposal of potentially harmful biohazardous materials for research or instructional projects. The Director of the OIC oversees and coordinates the work of the IBC. Many of these materials are classified as dual use under the CCL. IBC training includes information about export controls.

Human Resources is under the direction of the Vice Chancellor for Administrative and Fiscal Services. Human Resources notifies the OIC of all new hires by department. Human Resources is authorized to work with OIC to provide citizenship and nationality information to the OIC when needed to authorize personnel to work on projects. OIC is authorized to have access to HR personnel files to support applications for security clearances.

International Student and Scholar Office (ISSO) is under the direction of the Assistant Vice Chancellor for Student Affairs and is responsible to advise on compliance with immigration regulations for students, exchange visitors, and foreign national visiting faculty and staff. ISSO is responsible for processing immigration sponsor letters for proposed foreign visitors to departments. Unless accompanied by an export clearance form from OIC, before processing a visa application involving a person from a Country Group D or E country or submitted by a PI working within a high risk discipline, ISSO will refer the matter to the Director of OIC for review and approval and discussion with the PI before ISSO can issue the sponsor letter. Then, OIC will send the export clearance to the ISSO and the faculty member, once OIC review is complete. This process applies to all sponsor letters for a PI working on a project subject to a TCP.

Special Assistant to International Partnerships is under the direction of the Provost and helps to coordinate speakers and other temporary visits as part of the UMD international relations activities (short of activities requiring a sponsor letter or visa application). Before their arrival at UMD, the following information will be provided to the OIC for vetting and approval to bring visitors from country group D or E countries to UMD by means of the Short-term International Visit Request Form:

- legal name (as shown on legal credentials, e.g., passport, license, diploma)
- physical address (no post office boxes) and country
- date of the visit and location (name of PI, department or center)
- purpose of the visit with a complete description of activities to be conducted at UMD

All visitors who may receive payment for speaker fees or any services must be screened by Accounts Payable before any payment can be authorized.

Purchasing/Accounts Payable is under the direction of the Vice Chancellor of Administrative and Fiscal Services and is responsible for ensuring that vendors are screened and approved before being entered into the system that allows purchases to be made. Vendors are forwarded to the Amherst Campus for entry into PeopleSoft and are checked using WatchDog Pro. The Purchasing Department also secures letters of engagement for all freight forwarders and tracks the ECCNs of large equipment purchases. They consult with OIC if there are any

unusual export control provisions or other “red flags” in any equipment purchase or lease agreement.

Travel is under the direction of the Vice Chancellor for Administrative and Fiscal Services and is responsible for reviewing and ensuring compliance for all international travel. Any transactions that are questionable are forwarded to the OIC for review and vetting. They handle travel authorizations for all domestic and international travel. For international travel to any country group D or E country, Travel Forms A and B are forwarded to the OIC for vetting and approval. OIC then issues an Export Compliance Clearance Form to the traveler and travel accountant. Any restrictions are noted on the clearance form.

Shipping & Receiving is under the direction of the Vice Chancellor for Administrative and Fiscal Services. All shipments involving chemical or biological materials are the responsibility of EHS, with vetting and approval by OIC with respect to international shipments. Inquiries about international shipments can be referred to OIC for assistance. An Export Compliance Clearance Form will be sent to document the specifics about the transaction if OIC assists with the shipment. For any items that require an Automated Export System (AES) Direct filing, an approved freight forwarder should be used for the export.

Information Technology is under the direction of the Assistant Vice Chancellor for Computer and Information Technology Services and provides information services and technology support for all UMD employees and students, including computing services, connectivity and information security. Information Technology oversees all data security, electronic mail and computer policies and helps OIC to develop and implement Technology Control Plans. In addition, it is responsible for developing and maintaining an effective information technology security plan for UMD.

Public Safety the Compliance Oversight Committee consults with campus police and, as needed, engages the campus police in any investigation it may undertake regarding a possible violation or suspected security breach or theft.

Commercial Ventures and Intellectual Property (CVIP) is under the direction of the Associate Vice Chancellor for Research Development and is responsible for assisting in review of invention disclosures and determining the applicability of its transfer to commercial applications, as well as reviewing, under protection of non-disclosure agreements third party proprietary technologies. To prevent deemed exports, no foreign persons or foreign nationals shall be employed or work as students or interns in CVIP. From time to time, CVIP receives a request to handle a materials transfer agreement for receipt or transfer of materials to a foreign person, as well as confidentiality agreements with non-standard export control provisions or having other “red flags”. CVIP refers these requests to the OIC for export control review and approval.

Deans; Center Directors and Department Heads provide oversight of their respective departments and research centers to ensure compliance. They assist the OIC and the Provost in implementing the UMD export compliance program. They play a critical role in supporting, facilitating, and coordinating faculty and staff training. They play a critical role

in assessing the appropriateness of sponsoring a foreign visiting scholar or other foreign visitor in their departments and centers, and approving foreign travel requests.

Principal Investigators have the best understanding of his or her research and play the primary role in developing and directing all research projects. Therefore, PIs have the best information as to whether the particular technology, data, or information involved in that research is or may be covered by export control regulations. PIs also make decisions regarding equipment or technology and to whom it is transferred. Because there is a high penalty for non-compliance with export control regulations, it is critical for PIs to understand these regulations and work with the administrative staff in the OIC and ORA to evaluate technical aspects of export controlled items, technology, or data.

The PI is responsible for the following:

- Reviewing UMD information on export regulations provided on the OIC website;
- Participating in training and identifying staff and students to attend training;
- Determining whether there may be any export control issues to address before preparing a proposal or beginning any research;
- Communicating with OIC and ORA if any export control issues are identified or if any questions arise about export regulations;
- Cooperating with OIC in developing Technology Control Plans (TCPs) and applying for licenses and following the TCP to ensure compliance with all applicable restrictions;
- Adhering strictly to any applicable restrictions and cooperating fully with UMD's efforts to monitor compliance when export control regulations apply;
- Notifying the OIC as soon as any change is necessary for work on a controlled project, such as a change in the scope of work or the addition of new staff;
- When conducting outside consulting activities, export control compliance is the responsibility of the PI.

Administrative Assistants provide assistance to many departments and faculty throughout UMD. There is an emphasis on training of Administrative Assistants due to the importance of their role in assisting faculty to meet compliance procedures. They are typically involved with activities such as international travel authorization forms, shipments, purchasing, hiring documentation, and maintaining ProCard logs.

## **RECORD KEEPING**

UMD must comply with the various record keeping requirements of the EAR and ITAR and related laws and regulations. This is generally (and preferably) done by providing documents to the OIC, but in some instances includes keeping documents locally and providing copies to OIC. For example, the International Students and Scholars Office maintains all SEVIS program records and purchasing maintains all records of vendor screens. The export control records that are retained and secured include any licenses, license applications, policies, manuals, forms and guidelines, memoranda, notes, correspondence, screens, contracts, invoices and other financial records, shipping documents including bills of lading and Shipper's Export Declarations and Automated Export System (AES) records, records submitted to OIC for vetting including exclusion and exemption analyses, certificates, audit/review check sheets and reports, and the export control clearance form. Training records are also retained by OIC and include sign-in sheets signed by persons attending, date and location of training, speakers, and the subjects covered. Records are maintained for a period of five years from the expiration date of the authorization or date an exemption is claimed. Thereafter, the records shall be discarded consistent with the UMD record retention policy.

## **AUDITS AND REVIEW OF COMPLIANCE PROGRAM**

Audits are designed to systematically review and monitor the effectiveness of the UMD export control compliance program and ensure compliance with export control laws. Audits will be conducted by the OIC on an annual basis and on an ad hoc basis as needed.

Audit objectives related to export controls include but are not limited to the following:

- Understanding and assessing the adequacy of management policies designed to comply with all U.S. export control laws and regulations;
- Documenting and evaluating controls implemented to ensure compliance with policies;
- Through testing, determine the effectiveness of these Guidelines and the controls in place and, if necessary, recommend revisions to improve the effectiveness;
- Monitor compliance of research projects and departments with export license requirements, technology control plans and these compliance guidelines;
- Identify possible violations.

The OIC will evaluate and report to the UMD Compliance Oversight Committee on an annual basis on the results of its audits and the effectiveness of the export control compliance program. This process is used to identify needed modifications to the Guidelines and the SOPs to correct weaknesses identified in the compliance program. Based on this report, the Compliance Oversight Committee will report to the Chancellor on an annual basis on the effectiveness of the export control compliance program.

Audits are conducted by the Institutional Compliance Office and will include, but are not limited to:

- Verify that screen checks are being performed;
- Check training logs and records;
- Identify current training needs;
- Verify and ensure appropriate records are in compliance;
- Accuracy and conformity of export transaction documents;
- Foreign national procedures are effective;
- License and Technology Control Plan reviews;
- Stop/hold procedures in place if problems arise;
- Guidelines, procedures and forms updated to reflect any regulatory changes;
- Review procedures for supervisory sign-offs, task and information management between departments, including update contact persons for roles played by different departments;
- Assist departments with export control responsibilities to conduct annual internal assessments.

### **Annual Guidelines Review**

UMD Export Control Compliance Program Guidelines and Standard Operating Procedures (SOPs) will be reviewed and updated at least annually. The Director of the Office of Institutional Compliance oversees the annual review process, with review by the UMD Compliance Oversight Committee of the changes.

## **DETECTING AND REPORTING VIOLATIONS**

### **Commitment to Reporting**

An integral part of export compliance is that employees report suspected violations of export laws and these suspected violations are thoroughly investigated. It is the policy of UMD to voluntarily self-disclose violations as required. Members of the UMD community are expected to contact the OIC should they have any questions about the application of the export control laws to their research or other activities. UMD faculty, administrators, staff and students should report any potential violations to the OIC. No employee shall be punished solely on the basis that he or she reported what was reasonably believed to be an act of wrongdoing or a violation of the export control laws.

### **Compliance Hotline**

Suspected violations relating to export controls, as well as other compliance concerns, may be reported through the OIC at 508-910-9880. Messages are retrieved by the Director of Institutional Compliance and callers may remain anonymous. If callers do choose to identify themselves, the log of all calls is kept confidential.

### **Other Avenues for Reporting**

Other avenues for reporting suspected violations include: visiting the Director of Institutional Compliance, email [akarberg@umassd.edu](mailto:akarberg@umassd.edu) or sending a confidential memo by intercampus mail to the Compliance Director at ATMC 217F.

### **Investigation**

Once an alleged violation has been reported, an investigation will be initiated after consultation with the UMD Compliance Oversight Committee to determine the validity of the allegation and an appropriate response. If the allegation merits further fact finding and investigation, the Committee will work with the appropriate parties to conduct a thorough investigation. The results of its investigation are then made known to senior management to consider further action, including notification of the appropriate government agency and corrective action. All documents and records relating to any suspected violation must be immediately secured and maintained in accordance with all applicable record keeping requirements. Information Technology and Campus Police support these investigations as needed.

### **Government Subpoenas**

In the event any subpoena or other request for documents is received from any Federal agency, immediately contact the Office of the General Counsel for appropriate and timely response. Likewise, if a Federal agency representative arrives on campus, immediately contact the Office of the General Counsel. You shall not interfere with or obstruct any Federal agent or law enforcement officer in the performance of his/her duties.

## Export Control Decision Tools:

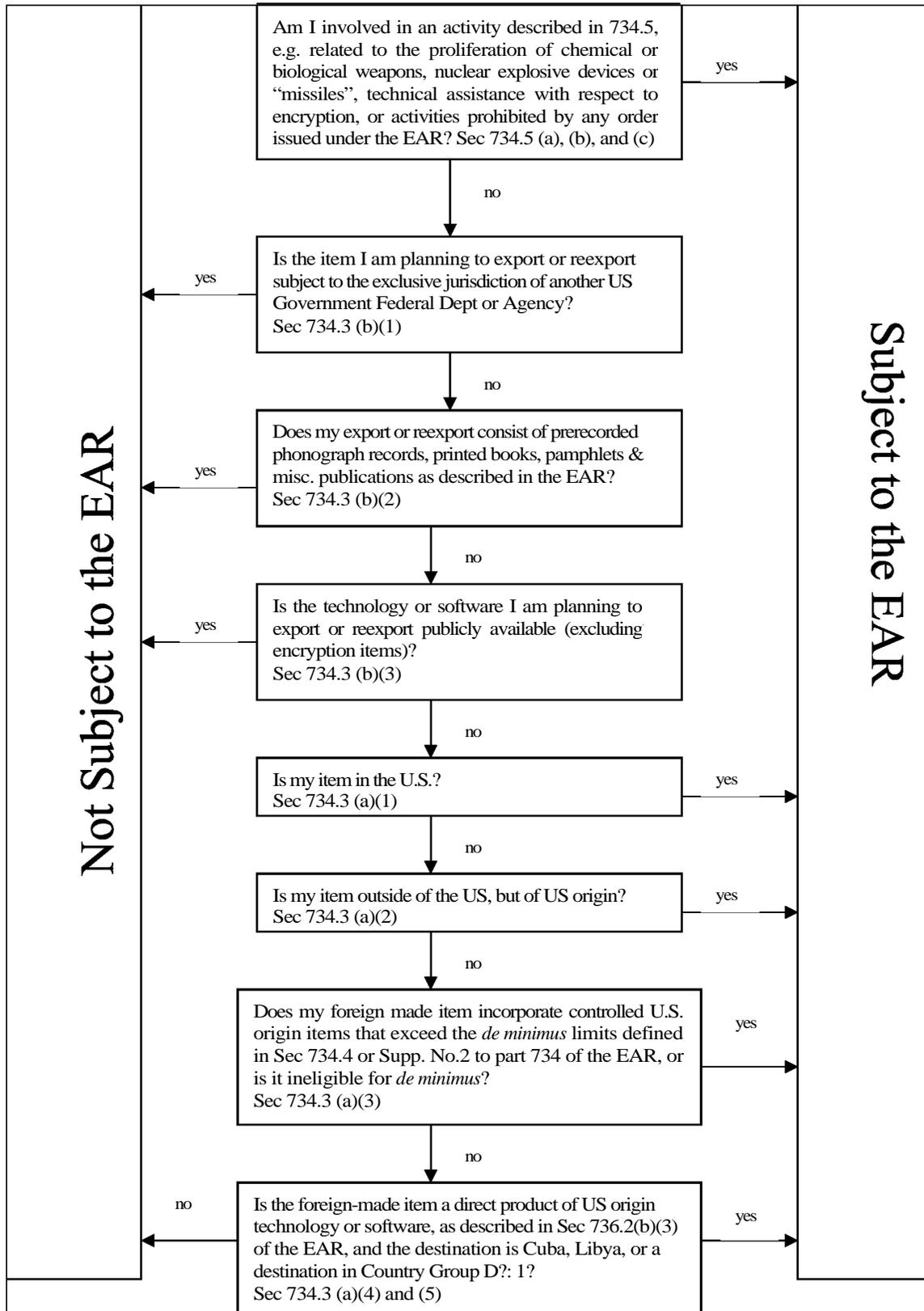
Is this Project Export Controlled?

<b>Fundamental Research &amp; Publicly Available Information**</b>	<b>Gray Area Moving from FR/PI to Export Controlled Technology</b>	<b>Export Controlled Areas, Applications and Intended Use</b>
Open Research – & applied	Author or Sponsor begin to discuss restricting dissemination	An area identified by the Government Agency as Export Controlled
Found in the public domain- released w/out	Approaching or getting close to application	Technology/Information out as proprietary or has intellectual property (declaration)
No proprietary or intellectual property considerations	Knowing or suspecting that the ultimate the objective will be controlled	Conveying or teaching technology, processes with intent of transferring Know-How abroad
Not associated with an area excluded by General Prohibitions, end use and user restrictions	Thinking about intellectual property	Detailed Design that Know-How
Intended or held out for the General Public	Preliminary optimization leading to design	Operating & Maintenance Manuals
Issued by the U.S. Government with the intent Openly Releasable	Thinking about making the technology or information proprietary	Technology Transfer- that helps or supports Export Control Technology
Data gathering or note taking		
<b>NO EXPORT CONTROL</b>	<b>GRAY AREA</b>	<b>EXPORT CONTROLS APPLY</b>

\* Note: Each technology area may use different terms/processes that needs to be taken into account. The degree of rigor is highly dependent on the criticalness of the technology under development.

\*\*Excludes General Prohibitions & End Use/User Restrictions

**Am I subject to Export Administration Regulations? (Supplement No. 2 to Part 732)**



## **UMD ONLINE RESOURCES**

[http://www.atmc.umassd.edu/institutional\\_compliance/export.cfm](http://www.atmc.umassd.edu/institutional_compliance/export.cfm)

### **Helpful Information**

- U.S. Bureau of Industry and Security website <http://www.bis.doc.gov/>
- Export Control Guidelines
- Differences between ITAR and EAR
- Briefing on Handling of Export-Controlled Information
- Export Controlled or Embargoed Countries, Entities and Persons
- Lists of Controlled Technologies
- Export Control Violations

### **Training Information**

- Powerpoint presentations
- Scheduled events

### **Forms**

- Annual Certification Export License Exception Temporary Exports/Re-exports
- Request for Annual Certification to Travel with UMD Issued Laptop
- Request to Ship Materials or Equipment Outside the U.S.
- End User Certificate Form
- Export Compliance Clearance Form
- Technology Control Plan Template
- Travel Authorization Form A and B
- PI Export Control Checklist
- Supplier Classification Request
- Freight Forwarder Example Letter of Engagement
- Sponsor Letter Template
- MOU Between UMD and Partner Universities