



University of Rochester

Export Compliance Program Manual

E-mail: export@rochester.edu

Additional information: <https://www.rochester.edu/orpa/compliance/#export>

Disclaimer

The content of this Manual is intended only as guidance, may contain errors and is not a substitute for directly reviewing applicable laws/regulations. Additionally, this Manual has been specifically tailored for the University of Rochester; those outside the University of Rochester community should not rely on the information herein.

Commonly used abbreviations

BIS – Bureau of Industry and Security (Department of Commerce)

CFR – Code of Federal Regulations

DDTC – Directorate of Defense Trade Controls

EAR – Export Administration Regulations

Global Engagement - Office of Global Engagement (University of Rochester)

ISO – International Services Officer (University of Rochester)

ITAR – International Traffic in Arms Regulations

LLE - Laboratory for Laser Energetics (University of Rochester)

OFAC – Office of Foreign Assets Control (U.S. Department of the Treasury)

ORPA – Office of Research and Project Administration (University of Rochester)

TCP – technology control plan

U.S.C. – U.S. Code



University of Rochester commitment to complying with U.S. export control laws

The University of Rochester is committed to complying with U.S. export control laws, including the International Traffic in Arms Regulations ([ITAR](#)) administered by the Department of State, the Export Administration Regulations ([EAR](#)) administered by the Department of Commerce, and the specific economic and trade sanctions administered by the U.S. Department of the Treasury, Office of Foreign Assets Control ([OFAC](#)).

It is important that the University community be familiar with U.S. export control laws in order to ensure compliance. University faculty, staff and students are expected to identify potential export related concerns. These could include sending/carrying an export controlled item out of the U.S.; sponsor mandated publication approval requirements or restrictions on project personnel participation or receipt of export controlled information or an ITAR controlled item. University personnel should notify export@rochester.edu or the [Office of Research and Project Administration](#) in advance of any research proposal submission that may have export related concerns or potential exports (including deemed exports).

An overview of U.S. export control laws for the University of Rochester community is available online: <https://www.rochester.edu/orpa/compliance/#export>

Teaching and information resulting from research at the University of Rochester are largely not subject to U.S. export control laws because they result from fundamental research, are published and/or constitute information concerning general scientific, mathematical, or engineering principles commonly taught at a university. That said, the University may need to apply for and receive an export license if sending an export controlled item out of the U.S. Careful consideration must also be given to the end use and/or end user of an item exported from the U.S. (e.g. military end uses/users; restricted parties). Also, situations may exist in which the University may need to apply for and receive a deemed export license and/or implement a technology control plan if receiving or developing export controlled information (e.g. under a confidentiality agreement), or working with an ITAR controlled item. Such a technology control plan must be reviewed by the Committee on Science and Security and will include:

- University commitment to export compliance
- Description of the export controlled item
- Project personnel (and restricted party screening)
- Physical security controls
- IT security controls
- Self-evaluation
- Training

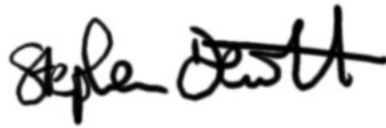
Certain projects that are approved by the President of the University as an exception to the [University's policy on OPEN RESEARCH AND FREE DISSEMINATION OF IDEAS AND INFORMATION](#) may be subject to export control laws and require access restrictions for personnel to work on the project. Any export controlled projects must be clearly defined, reviewed by the Committee on Science and Security, and a corresponding technology control plan shall be implemented.

It is the University's intention that all University transactions and activities be in compliance with U.S. export control laws. Violations of U.S export control laws may be subject to both criminal and significant administrative penalties, and violators may also lose their export privileges.

The University of Rochester is committed to helping faculty, staff and students understand U.S. export control laws and ensure the University's compliance.

Any questions regarding U.S. export compliance, including requests for export compliance training, updates to the University's export compliance efforts, the need for an export or OFAC license, the legitimacy of a transaction and/or potential violations shall be directed to: Josef Mejido, Export Control Officer export@rochester.edu.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Dewhurst". The signature is written in a cursive, somewhat stylized font.

Stephen Dewhurst
Interim Senior Vice President for Research
Vice Dean for Research, School of Medicine & Dentistry
University of Rochester

UNIVERSITY OF ROCHESTER

POLICY

OPEN RESEARCH AND FREE DISSEMINATION OF IDEAS AND INFORMATION

The University is committed to maintaining a teaching and research environment that fosters open research and exchange of ideas, encourages the creation and dissemination of new knowledge and promotes academic freedom. It is the policy of the University that it cannot accept extramural research support that would impose a fundamental limitation on the freedom to publish or otherwise limit, restrict or censor the dissemination of research results. A fundamental limitation is defined as any publication restriction other than a temporary restriction only to ensure that there is no inadvertent disclosure of proprietary information and/or to ensure that any patent rights are protected.

While funding sponsors may limit their financial support to particular groups (such as U.S. citizens), they may not prohibit the participation of others in University research or education. It is the policy of the University that it will not undertake research that would prohibit students, scholars, staff and faculty, whether US or foreign citizens, from participating in intellectually significant portions of educational and research activities at the University.

Exceptions to this policy may be made only in the rare instances where the area of work is extremely important to the University's educational or research mission or necessary to serve the best interests of society, and these considerations outweigh the principles of the University set forth in its policies expressed above. Such an exception must be approved by the President. If an exception to this policy is approved, the President will decide whether it is appropriate to communicate the exception and the reasons therefore to the Faculty Senate and/or the Board of Trustees.

Policy adopted by the Faculty Senate on April 17, 2007

¹ https://www.rochester.edu/ORPA/assets/pdf/policy_OpennessResearch.pdf

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i. Background

a. U.S. export control law introduction and background

The U.S. Government controls the export of many different materials, information, software and services. Further, the U.S. Government restricts transactions with certain individuals and/or entities that are on various restricted party lists. Collectively, such laws, regulations and restrictions are referred to herein as “U.S. export control laws.”

Generally, there are two different types of “exports”²:

- Sending, transmitting, or carrying something out of the U.S.;
- Releasing export controlled information or source code to a foreign person in the U.S. (often referred to as a “deemed export”)

In the context of export compliance, it is also important to understand the distinction between a U.S. person and a foreign person. Generally, a U.S. person³ is a U.S. citizen, a U.S. permanent resident (e.g. green card holder), or a protected individual as defined by 8 U.S.C. 1324b(a)(3) (e.g. admitted as a refugee, or is granted asylum). A foreign person⁴ is someone who is not a U.S. person. The term ‘person’ also includes entities (e.g. companies, universities) and governments.

b. Restricted Party Screening⁵

The U.S. government updates, maintains and enforces specific ‘restricted party lists’ that may be relevant to University of Rochester activities. Practically, if a person or entity appears on a restricted party list, there may be limitations imposed on the University’s intended activity or the University may be prohibited from proceeding with a transaction or collaboration with such party.

Here are a few restricted party lists that are particularly applicable to the University’s export compliance efforts:

- [Specially Designated Nationals and Blocked Persons List \(SDN\)](#)

² EAR - [§734.13](#); ITAR – [§120.50](#)

³ EAR – [part 772](#); ITAR - [§120.62](#)

⁴ EAR – [part 772](#); ITAR - [§120.63](#)

⁵ See also https://www.rochester.edu/orpa/compliance/export/us/page_01.html

- "Their assets are blocked and U.S. persons are generally prohibited from dealing with them."
 - University of Rochester should not engage in any activities with an individual or entity on the SDN list
- [Entity List](#)
 - Individuals and entities that are named on the Entity List are subject to specific export license requirements for anything that is subject to the EAR.
 - If the University of Rochester wanted to send any tangible item (or information that is not the result of fundamental research or not published/publicly available to a party on the Entity List) then the University would have to apply for and receive an export license from the U.S. Department of Commerce before sending/sharing that item or information
- [Unverified List](#)
 - Parties listed on the Unverified List (UVL) are ineligible to receive items subject to the EAR by means of an export license exception. Also, exporters must file an Automated Export System record for all exports to parties listed on the UVL and obtain a statement from such parties on the Unverified List prior to exporting, reexporting, or transferring to such parties any item subject to the EAR which is not subject to a license requirement.
- [Department of State Arms Export Control Act Debarred Parties](#)
 - These individuals and entities have been convicted of violating or conspiracy to violate the Arms Export Control Act, and consequently are subject to "statutory debarment" pursuant to the AECA and the ITAR. They are prohibited from participating directly or indirectly in the export of defense articles (including technical data) and defense services.

ORPA, Global Engagement, LLE and Advancement have licenses to [Visual Compliance](#) to perform restricted party screening. Visual Compliance screens against the above named lists, along with many others, including federal debarment lists; FBI, Homeland Security, U.S. Marshal, Drug Enforcement Administration lists; and various restricted party lists maintained by other countries. If you have any questions about screening relevant parties, please reach out to ORPA and/or Global Engagement.

Also, the [Consolidated Screening List](#) is a free, publicly available, resource to perform restricted party screening against the lists noted above in the bullet points, along with a few others.

Restricted party screening should be a baseline due diligence step before entering into a contract, collaboration or sharing information or materials with a party.

c. **OFAC Sanctions** ⁶

The Office of Foreign Assets Control (OFAC) is part of the United States Treasury Department. OFAC administers a several sanctions programs. “The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.” For a complete list of the OFAC sanctions, please review: [OFAC Sanctions Programs and Country Information](#)

OFAC sanctions include, but are not limited to, restrictions on transactions and activities involving:

- [Cuba](#)
- [Iran](#)
- [North Korea](#)
- [Syria](#)
- [Donetsk, Luhansk, and Crimea regions of Ukraine](#) (see also: [link](#))
- [Russia](#)

It's very important to familiarize yourself with applicable OFAC sanctions if planning activities with these countries/regions, because OFAC sanctions can be very restrictive.

For example, if a researcher wanted to present at a conference in Iran, the University would need to apply for and receive an OFAC license prior to that individual leaving for their intended trip.

Also, if you engage in peer review activities involving an OFAC sanctioned country, please note that some peer review activities may require a specific license from OFAC before you are permitted to provide such services (see [Office of Foreign Assets Control Guidance on Certain Publishing Activities](#) and also our "[Common Questions and Answers - Cuba and Iran OFAC Sanctions](#)").

Note that students at the University of Rochester from OFAC sanctioned countries are generally permitted to engage in all activities that are in alignment with their visa, and that are permitted under U.S. export control laws.

Please contact the [International Services Office \(ISO\)](#) with visa questions and the [Office of Global Engagement](#) if you have any questions about hosting international visitors.

If your research, teaching or work involves anyone in Cuba, Iran, North Korea, Syria or the Crimea region of the Ukraine, please contact [Josef Mejido](#), the University's Export Control Officer to help determine applicable restrictions and potential paths forward.⁷ Keep in mind

⁶ See also https://www.rochester.edu/orpa/compliance/export/ofac/page_00.html

⁷ See also <https://www.rochester.edu/orpa/compliance/export/distance/>

that except as specifically authorized under the respective applicable OFAC exemptions, general or specific licenses...exports, imports, and/or transactions of commodities, technology, money and/or services are generally prohibited.

– OFAC Penalties and Enforcement Actions^{8 9}

Civil Penalties and Enforcement Information

31 CFR Appendix A to Part 501 - Economic Sanctions Enforcement Guidelines:

II. F. Criminal Referral. In appropriate circumstances, OFAC may refer the matter to appropriate law enforcement agencies for criminal investigation and/or prosecution. Apparent sanctions violations that OFAC has referred for criminal investigation and/or prosecution also may be subject to OFAC civil penalty or other administrative action.

d. Export Administration Regulations (EAR)^{10 11}

The Export Administration Regulations (EAR) are administered by the U.S Department of Commerce, Bureau of Industry and Security (BIS).

§ 730.3 “DUAL USE” AND OTHER TYPES OF ITEMS SUBJECT TO THE EAR¹²:

The term “dual use” is often used to describe the types of items subject to the EAR. A “dual-use” item is one that has civil applications as well as terrorism and military or weapons of mass destruction (WMD)-related applications. The precise description of what is “subject to the EAR” is in § 734.3, which does not limit the EAR to controlling only dual-use items. In essence, the EAR control any item warranting control that is not exclusively controlled for export, reexport, or transfer (in-country) by another agency of the U.S. Government or otherwise excluded from being subject to the EAR pursuant to § 734.3(b) of the EAR. Thus, items subject to the EAR include purely civilian items, items with both civil and military, terrorism or potential WMD-related applications, and items that are exclusively used for military applications but that do not warrant control under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 et seq.).

⁸ <https://www.treasury.gov/resource-center/sanctions/CivPen/Pages/civpen-index2.aspx>

⁹ See also https://www.rochester.edu/orpa/compliance/export/penalties/page_00.html

¹⁰ <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

¹¹ See also https://www.rochester.edu/orpa/compliance/export/ear/page_00.html

¹² <https://www.bis.doc.gov/index.php/documents/regulation-docs/410-part-730-general-information/file>

- Export Control Classification Number (ECCN)

If something is subject to the EAR, then we need to determine the applicable export control classification number (ECCN).

Here is a [summary of what the ECCN letters and numbers actually mean](#). Items controlled under the EAR, and their associated ECCNs, appear on the [Commerce Control List](#). The Commerce Control List is broken down into Categories 0 through 9:

<u>Category 0 - Nuclear Materials Facilities & Equipment [and Miscellaneous Items]</u>
<u>Category 1 - Materials Chemicals Microorganisms and Toxins</u>
<u>Category 2 - Materials Processing</u>
<u>Category 3 - Electronics Design Development and Production</u>
<u>Category 4 - Computers</u>
<u>Category 5 Part 1 - Telecommunications</u>
<u>Category 5 Part 2 - Information Security</u>
<u>Category 6 - Sensors and Lasers</u>
<u>Category 7 - Navigation and Avionics</u>
<u>Category 8 - Marine</u>
<u>Category 9 - Aerospace and Propulsion</u>

The first number in an ECCN represents which Category 0 through 9 it is associated with. The letter identifies which product group the ECCN is for:

- A. Systems, Equipment and Components
- B. Test, Inspection and Production Equipment
- C. Material
- D. Software
- E. Technology

The three numbers following the letter provide further categorizations and ordering of the ECCNs. For example, generally speaking, higher numbered ECCNs (e.g. 3A999) have fewer export restrictions than lower numbered ECCNs (e.g. 3A001).

Also, keep in mind that a system, piece of equipment, component and/or material (e.g. having an ECCN with an “A”, “B” or “C” in it, may have associated software (having an ECCN with a “D” in it) and/or technology (having an ECCN with a “E” in it) (note: “technology” under the EAR pertains to information). Each ECCN has specific reasons for control that determine the applicable export licensing requirements.

In addition, remember that even if a particular software or information/technology may have an ECCN that relates to it, if that software or information/technology is published, the product of fundamental research¹³ and/or is released by instruction in a catalog course or associated teaching laboratory, then that software and/or information/technology is not subject to the EAR.

NOTE: Under the EAR (and also the ITAR) the fundamental research exclusion from U.S. export control laws only applies to information. Physical objects, including items like viruses, bacteria and equipment are subject to U.S. export control laws, even if created or utilized during a fundamental research project, and may require an export license prior to export out of the U.S., including “deemed exports” to foreign persons physically located in the U.S.

For any given item, there are generally three different ways to determine the applicable ECCN:

- ask the manufacturer (they likely will know the ECCN), and then verify the ECCN based on a technical expert’s understanding of the item
- self determine the ECCN by reviewing the Commerce Control List
- ask the Department of Commerce to make a determination on the ECCN (please consult with the University’s Export Control Officer, [Josef Mejido](#) before proceeding with this approach)

In case you do not know which Category of the Commerce Control List to search for a particular item, you can try doing key word searches in the [Commerce Control List index](#) or the compiled PDF with [Commerce Control List Categories 0 through 9](#) combined in one document. Note that it is sometimes necessary to try various key word searches before finding a particular ECCN.

If an item does not specifically appear on the Commerce Control List, then instead of having a specific ECCN it is designated under a catchall category “EAR99”. Examples of EAR99 items include a bicycle, coffee mug, and a pen.

¹³ See https://www.rochester.edu/orpa/assets/pdf/compl_EAR_ITAR_FunResExclusion.pdf

Once you know the applicable ECCN for an item, you can then determine if an export license is required for the specific scenario you are interested in.

– What is not subject to the EAR?¹⁴

- Items (including information and software) that are exclusively controlled for export or reexport by the following U.S. Government departments or agencies are not subject to the EAR:
 - ITAR (e.g. defense articles; defense services),
 - OFAC (specific economic and trade sanctions),
 - NRC (e.g. nuclear material, equipment, and components)
 - DOE (e.g. technology or assistance related to nuclear material),
 - Patent and Trademark Office (e.g. exports of unclassified technology in patent applications)
 - Department of Defense and Department of State Foreign Military Sales Program

- [§ 734.3\(b\)\(3\)](#) of the EAR specifically states that information and “software” that fall into the following categories are not subject to the EAR:
 - published, as described in § 734.7;
 - arise during, or result from, fundamental research, as described in § 734.8;
 - are released by instruction in a catalog course or associated teaching laboratory of an academic institution;
 - appear in patents or open (published) patent applications available from or at any patent office, unless covered by an invention secrecy order, or are otherwise patent information as described in § 734.10;
 - are non-proprietary system descriptions; or
 - are telemetry data as defined in Note 2 to Category 9, Product Group E (see Supplement No. 1 to part 774 of the EAR).

¹⁴ See also https://www.rochester.edu/orpa/compliance/export/ear/page_00.html

– Exports¹⁵

In terms of exports, there two main categories (section [734.13](#) of the EAR):

- actually shipping, carrying or transmitting something out of the country
- releasing or otherwise transferring information/technology or source code (but not object code) to a foreign person in the United States (which is known as a “deemed export”)
 - any release in the United States of “technology” or source code to a foreign person is a deemed export to the foreign person's most recent country of citizenship or permanent residency

The reasons for export control are specified for each ECCN, and then you match up the reason for control with the applicable country in the [Commerce Country Chart](#). If there is an “X”, then you need an export license, or need to see if a license exception applies (the EAR has various license exceptions).

– Penalties under the EAR^{16 17}:

Violations of the Export Administration Regulations, 15 C.F.R. Parts 730-774 (EAR) may be subject to both criminal and administrative penalties. Under the Export Control Reform Act of 2018 (50 U.S.C. §§ 4801-4852) (ECRA), criminal penalties can include up to 20 years of imprisonment and up to \$1 million in fines per violation, or both. Administrative monetary penalties can reach up to \$300,000 per violation or twice the value of the transaction, whichever is greater. In general, the administrative monetary penalty maximum is adjusted for inflation annually.

Violators may also be subject to the denial of their export privileges as further described below. A denial of export privileges prohibits a person from participating in any way in any transaction subject to the EAR. Furthermore, it is unlawful for other businesses and individuals to participate in any way in an export transaction subject to the EAR with a denied person.

¹⁵ See also https://www.rochester.edu/orpa/compliance/export/ear/page_02.html

¹⁶

[https://www.bis.doc.gov/index.php/enforcement/oe/penalties#:~:text=Parts%20730%2D774%20\(EAR\),fines%20per%20violation%2C%20or%20both.](https://www.bis.doc.gov/index.php/enforcement/oe/penalties#:~:text=Parts%20730%2D774%20(EAR),fines%20per%20violation%2C%20or%20both.)

¹⁷ See also https://www.rochester.edu/orpa/compliance/export/penalties/page_00.html

e. [International Traffic in Arms Regulations \(ITAR\)](#) ^{18 19}

The ITAR is administered by the U.S. Department of State, Directorate of Defense Trade Controls (DDTC)

The ITAR controls the export and temporary import of defense articles and defense services. Defense articles are specifically listed on the [U.S. Munitions List](#). With respect to technical information, there are carve outs under the ITAR for public domain information, information commonly taught at universities, and also information that results from fundamental research. The export of a defense article out of the U.S., and the release of technical data to a foreign person in the U.S. (deemed export) are both activities that would likely require an export license, and the University would likely need to be [registered with the Directorate of Defense Trade Controls](#).

If you have any reason to believe you have an ITAR controlled item, or have access to ITAR controlled technical data, please contact [Josef Mejido](#), the University's Export Control Officer.

A [defense article](#)²⁰ means any item or technical data designated in the [U.S. Munitions List](#).²¹

- the U.S. Munitions List is sometimes referred to as the USML
- Note: the USML contains items and technical data that someone may not necessarily think of as “military”

A [defense service](#)²² means:

- *The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;*
- *The furnishing to foreign persons of any ITAR controlled technical data, whether in the United States or abroad; or*
- *Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by*

¹⁸

https://www.pmdtcc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=%2024d528fddbfc930044f9ff621f961987

¹⁹ See also https://www.rochester.edu/orpa/compliance/export/itar/page_00.html

²⁰ ITAR - §120.31

²¹ ITAR – Part 121

²² ITAR - §120.32

correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

Technical data²³ means: for purposes of this subchapter:

(1) Information, other than software as defined in §120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.

(2) Classified information relating to defense articles and defense services on the U.S. Munitions List and 600-series items controlled by the Commerce Control List;

(3) Information covered by an invention secrecy order; or

(4) Software (see §120.45(f)) directly related to defense articles.

(b) The definition in paragraph (a) of this section does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain as defined in §120.11 of this subchapter or telemetry data as defined in note 3 to Category XV(f) of part 121 of this subchapter. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

Public domain²⁴.

(a) Public domain means information which is published and which is generally accessible or available to the public:

(1) Through sales at newsstands and bookstores;

(2) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;

(3) Through second class mailing privileges granted by the U.S. Government;

(4) At libraries open to the public or from which the public can obtain documents;

(5) Through patents available at any patent office;

²³ ITAR - §120.33

²⁴ ITAR - §120.34

(6) Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;

(7) Through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency (see also §125.4(b)(13) of this subchapter);

(8) Through 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. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

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

Export²⁵.

(1) An actual shipment or transmission out of the United States, including the sending or taking of a defense article out of the United States in any manner;

(2) Releasing or otherwise transferring technical data to a foreign person in the United States (a “deemed export”);

(3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR by a U.S. person to a foreign person;

(4) Releasing or otherwise transferring a defense article to an embassy or to any of its agencies or subdivisions, such as a diplomatic mission or consulate, in the United States;

(5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad; or

(6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited

²⁵ ITAR - §120.50

purposes (see §126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.

(b) Any release in the United States of technical data to a foreign person is deemed to be an export to all countries in which the foreign person has held or holds citizenship or holds permanent residency.

Registration²⁶. The ITAR also requires anyone who engages in the U.S. in the business of manufacturing or exporting or temporarily importing defense articles, or furnishing defense services, to register with the Directorate of Defense Trade Controls (see **Part 122** of the ITAR)

– **Penalties under the ITAR**^{27 28}

DDTC Compliance Actions²⁹:

Violations

ITAR violations may result in civil and/or criminal penalties, which can include both fines and debarment (legal exclusion from transactions subject to the ITAR). The Directorate of Defense Trade Controls is responsible for civil enforcement of the regulations, while the Department of Justice handles criminal matters.

ITAR violations can have other consequences as well, including the denial/revocation of licenses and other export authorizations, compliance oversight, and the loss of business opportunities.

Alleged civil violations of the ITAR are often resolved through a consent agreement between the alleged violator and the Department. Consent agreements often include a monitoring component, remedial steps, and a monetary penalty, and can run for several years.

Penalties

Civil

Pursuant to **ITAR §128**

- \$1 million+ per violation
- **Debarment**

²⁶ ITAR - §122

²⁷

https://www.pmdtcc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=e1999c7fdb78d300d0a370131f96193d

²⁸ See also https://www.rochester.edu/orpa/compliance/export/penalties/page_00.html

²⁹

https://www.pmdtcc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=e1999c7fdb78d300d0a370131f96193d

- Generally settled through a negotiated Consent Agreement

Criminal

Pursuant to [AECA](#) 22 U.S.C. 2778(c)

17. \$1 million, or up to 20 years' imprisonment
18. [Debarment](#)

ii. Important export compliance considerations in the context of University activities (consult with Josef Mejido, Export Control Officer, export@rochester.edu with any questions)

- University activities excluded from or not subject to the EAR or ITAR:
 - Fundamental research results³⁰
 - Published/public domain information or software
 - Commonly taught in schools / taught in course or associated teaching lab

- Anytime University faculty, staff or students want to send an item out of the U.S., the University needs to determine if an export license is required (by determining the applicable export control classification number (ECCN) under the EAR; or if the item is controlled under the ITAR)
 - Note that the term “item” is broad and is often used to cover information, software, equipment and/or material. Also, the term “technology” is often used to mean information.

- The following scenarios need to be discussed with the University’s Export Control Officer, Josef Mejido, export@rochester.edu since the University may need to implement a technology control plan³¹:
 - Any ITAR controlled items as defined by the US Munitions List (USML) (including technical data and software) at the University must be identified (due to the broad definitions of a ‘defense service’, ‘deemed export’ and ‘technical data’ under the ITAR)
 - Export controlled information or software the University may receive under a confidentiality agreement
 - Export control end user statements/agreements or technology control plans when the University receives an item from another party
 - Any situations in which information or software developed at the University does not fall into one of the categories: published; results from fundamental research; or commonly taught in class/released in a catalog course or associated teaching lab

³⁰ See https://www.rochester.edu/orpa/assets/pdf/compl_EAR_ITAR_FunResExclusion.pdf

³¹ See also [technology control plan](#)

- Anytime a project may have publication restrictions or personnel access restrictions (e.g. contrary to the University's openness in research policy)

iii. Roles and Responsibilities of key individuals/offices at the University for export compliance

- **Faculty, staff and students:**

University faculty, staff and students are expected to identify potential export related concerns (e.g. sending/carrying an item out of the U.S.; publication approval clauses; restrictions on project personnel participation; receipt of export controlled information or an ITAR controlled item) and notify export@rochester.edu or the **Office of Research and Project Administration** in advance of any research proposal submission or potential export (including a deemed export) that they become aware of.

- **Committee on Science and Security:**

University committee, chaired by the University's Interim Vice President for Research, focused on campus wide export control and science and security compliance. This committee makes recommendations directly to the Vice President for Research and President of the University.

- **Export Control Officer:**

Josef Mejido, M.S., J.D.
josef.mejido@rochester.edu
export@rochester.edu

The Export Control Officer provides University wide export compliance support.

- **Office of Research and Project Administration (ORPA) (see also) :**

Reviews research proposals, sponsored projects and related research agreements (including unfunded agreements such as material transfer, data use/transfer and confidentiality agreements) and performs initial assessment to determine if further review by the University's Export Control Officer and/or the Committee on Science and Security should be performed.

- **Global Engagement:**

The central point of contact for any University units or external institutions interested in international travel, activities, or engagement.

Global Engagement coordinates with the International Services Office (ISO), performs restricted party screening, and discusses export compliance and science and security issues on an ad hoc basis with the Committee on Science and Security, and the University's Export Control Officer.

- **International Services Office (ISO):**
ISO provides services to international students, scholars, employees, and other visitors to the University of Rochester, as well as the departments that host and support them, including: Issuing immigration documents; Advising on relevant immigration matters; Meeting US reporting requirements; Offering information on adjusting to life and culture in the US and at Rochester.

ISO handles the **Form I-129 Petition for Nonimmigrant Worker – Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States – H-1B / O-1 petitions**, and coordinates restricted party screening with Global Engagement. ISO discusses export compliance and science and security issues on an ad hoc basis with the Committee on Science and Security, and the University's Export Control Officer

- **Office of Counsel:**
Oversees all aspects of the University's legal services.
Office of Counsel discusses export compliance and science and security issues on an ad hoc basis with the Committee on Science and Security, and the University's Export Control Officer
- **UR Ventures:**
UR Ventures protects, develops, and commercializes the intellectual property arising from research at the University of Rochester.

University faculty and staff are encouraged to disclose intellectual property developed in the course of their work/research at the University to UR Ventures as early as possible.

UR Ventures coordinates restricted party screening of contracting parties (e.g. in connection with licensing agreements) with Global Engagement or ORPA, and discusses export compliance and science and security issues on an ad hoc basis with the Committee on Science and Security, and the University's Export Control Officer.

- **Environmental Health & Safety (EH&S):**
EH&S discusses export compliance and science and security issues on an ad hoc basis with the Committee on Science and Security, and the University's Export Control Officer. (e.g. University Export Control Officer discusses material transfer agreement (MTA) export compliance related matters with the University's Biosafety Officer Sonia Rosenberger (srosen22@safety.rochester.edu) when sending biological material out of the U.S.)

- **Laboratory for Laser Energetics:**

LLE maintains a strict export control program. LLE export compliance questions shall be discussed with:

- LLE Export Control and Intellectual Property Committee (ECIPC)
 - Pat McKenty, Chair
 - Petros Tzeferacos, Co-Chair
- Christopher (Chris) Deeney, Director LLE and Empowered Official
- Josef Mejido, Export Control Officer [export@rochester.edu]
- Grant Mark, Facility Security Officer, LLE

- **Advancement:**

The Office of Advancement helps grow giving, advocacy, and engagement in support of the University of Rochester's mission.

Advancement performs restricted party screening as needed and discusses export compliance and science and security issues on an ad hoc basis with the Committee on Science and Security, and the University's Export Control Officer.

iv. University of Rochester export compliance process and procedures

– Export compliance review of research projects/program and related agreements

The **Office of Research and Project Administration**³² serves and guides the University of Rochester Community on all aspects of sponsored programs administration by providing:

- pre and post award services
- stewardship of external sponsored funding
- training and education
- information systems pertinent to research administration and funding

All sponsored project proposals, awards and related contracts (including collaboration agreements; material transfer agreements; data use/transfer agreements; confidentiality agreements) shall be submitted to ORPA for review to help ensure compliance with applicable export control laws and University policy.

Staff in ORPA shall perform an initial assessment of all such research proposals, awards and related contracts and discuss with the University's Export Control Officer on an ad hoc basis.

The following is an incomplete list (and in no particular order) of examples that may warrant further export compliance review:

- clauses that require sponsor approval of any publication resulting from the research;
- restrictions on access or participation based on nationality or citizenship;
- any indication that the research may not be fundamental research;
- sending items (including information and/or software) out of the U.S.
- military applications of the project results;
- assertions that the project results will be proprietary or trade secrets;
- international travel, international shipping/transport, or performing activities in another country;
- involvement of foreign sponsors or collaborators in other countries;
- any indication that the University may receive export controlled information;
- involvement of an ITAR controlled item / ITAR controlled technical data
- references to compliance with export control laws beyond simply stating both parties must comply with applicable laws/regulations;
- [252.204-7012](#) or [252.204-7000](#) clause;

³² <https://www.rochester.edu/orpa/>

University collaborators and/or contracting parties should be screened by ORPA (or Global Engagement; Advancement; LLE)) to assess if they are a restricted party³³.

– **Technology Control Plans (TCPs)**

The purpose of a Technology Control Plan (TCP) ³⁴ is to ensure compliance with export control laws by outlining specific steps and safeguards to control access to, and dissemination of export controlled items, information/technology, software, etc.

A TCP also documents each project personnel's obligations and the University's commitment to export compliance.

A TCP generally contains the following elements:

- University commitment to export compliance
- Description of the export control item and/or information
- Project personnel (and restricted party screening)
- Physical security controls
- IT security controls
- Self-evaluation
- Training

Examples of when the University may need to implement a technology plan are:

- receiving export controlled information under a confidentiality agreement
- having access to an ITAR controlled item / ITAR controlled technical data
- having a **9x515 and 600 series ECCN** EAR controlled item
- releasing "development"; "production" or "use" ("use" is defined to mean all six elements of: operation, installation, maintenance, repair, overall and refurbishing) technology about an item, in which such information is not already published, is not the result of fundamental research, and/or is not taught in a catalog course or associated teaching lab at the University

Please contact **Josef Mejido**, the University's Export Control Officer, if you think you may need to setup a TCP.

³³ [restricted party screening](#) (internal link)

³⁴ See also https://www.rochester.edu/orpa/compliance/export/tcp/page_00.html

See also page 21 and 22: [BIS - Export Compliance Guidelines: The Elements of an Effective Compliance Program](#)

– **Export compliance review of international agreements**

University agreements with foreign institutions that are not reviewed by ORPA should be routed through the [Office of Global Engagement](#), Office of Counsel or UR Ventures. Office of Counsel and UR Ventures will discuss such international agreements with ORPA and/or Global Engagement on an ad hoc basis. ORPA and/or Global Engagement will perform restricted party screening and assess export compliance and/or science and security³⁵ risks as applicable

– **Outgoing international exports**

University personnel are responsible for contacting the University's Export Control Officer (Josef Mejido, export@rochester.edu) for an export compliance assessment prior to sending any/all items out of the U.S.

See also the "International travel" section below for relevant information about outgoing international exports.

– **International travel**³⁶

Registering travel (individually or completed by department) in the University's [Travel Registry](#)³⁷ is required for staff and strongly encouraged for faculty. Please contact Global Engagement's [Director of Global Travel Risk Management](#)³⁸ for questions about the Travel Registry or about international travel.

If you plan on traveling to a country or region subject to [OFAC sanctions](#) (e.g. Cuba, Iran, North Korea, Syria, Crimea region of Ukraine) you must consult with [Josef Mejido](#), the University Export Control Officer, well in advance to discuss applicable OFAC and/or export restrictions and seek any necessary U.S. government licenses.

Virtually every item you take or send out of the country is considered any export under U.S. export control laws.

- If the item (including tangible objects, software, export controlled information) is subject to the [ITAR](#), an export license from the U.S. Department of State is almost certainly required before being able to take or send the item out of the U.S. Also, the University will likely have to register with the [U.S. Department of State Directorate of Defense Trade Controls](#) prior

³⁵ See <http://www.rochester.edu/research/pdfs/international-research-guidelines.pdf>

³⁶ See also https://www.rochester.edu/orpa/compliance/export/travel/page_00.html

³⁷ <http://www.rochester.edu/global/travel/faculty-and-staff-travel/>

³⁸ travelsecurity@rochester.edu

to being able to export the ITAR controlled item. In these situations you must contact [Josef Mejido](#), the University Export Control Officer.

- If the item is subject to the [EAR](#) (including tangible objects, software, export controlled information), it may require an export license from the U.S. Department of Commerce before being able to take or send the item out of the U.S.
 - The first step in figuring out if an export license is required for an item is to [determine the applicable export control classification number \(ECCN\)](#)
 - Once we know the ECCN for the item, we then need to check the specific reasons for control associated with that particular ECCN, and then consult the Commerce Country Chart to see if any export license is required to take or send that item to a particular country (see above)
 - Even if an export license is required under the EAR, an [export license exception may apply](#)

– **University developed intellectual property**

University developed intellectual property should be discussed with [UR Ventures](#) early in the process when research may lead to inventions and/or copyrightable works.

UR Ventures and/or the applicable faculty member shall discuss any intellectual property with the University Export Control Officer that may be subject to U.S. export control laws (e.g. trade secrets / information or software that are not the result of fundamental research or which the researcher has no plans to ever share broadly within the research community).

UR Ventures shall work with ORPA or Global Engagement in connection with any agreements (e.g. confidentiality agreements; licensing agreements) to perform restricted party screening³⁹ and assess export compliance and/or science and security⁴⁰ risks as applicable

– **Export Authorization**

ORPA is permitted to submit export and/or OFAC license applications on behalf of the University of Rochester. The U.S. Department of Commerce/BIS and the U.S. Department of State/DDTC require institutional authorization and individual login accounts to seek and obtain export licenses.

³⁹ [restricted party screening](#) (internal link)

⁴⁰ See <http://www.rochester.edu/research/pdfs/international-research-guidelines.pdf>

Also, the Committee on Science and Security and the University's Export Control Officer should be consulted before applying an export license exception (e.g. bona fide and full time regular employee export license exception under the EAR ⁴¹).

Please reach out to the University's Export Control Officer (export@rochester.edu) with any questions about obtaining an export or OFAC license.

– **Record Keeping**

All records related to export compliance matters must be maintained for a period of five (5) years. Any questions related to record keeping in the context of export compliance should be directed to export@rochester.edu.

– **Export Compliance Training**

Training is a critical component of the University's export compliance program.

An overview of U.S. export control laws for the University of Rochester community is available online: <https://www.rochester.edu/orpa/compliance/#export>

Export compliance training is required for all University faculty, staff or students prior to being named on a technology control plan, or otherwise engaging in an export controlled project at the University. Such export compliance training shall be discussed with/provided by Josef Mejido, Export Control Officer, export@rochester.edu.

LLE export compliance training shall be also discussed with:

- LLE Export Control and Intellectual Property Committee (ECIPC)
 - [Pat McKenty](#), Chair
 - [Petros Tzeferacos](#), Co-Chair
- [Christopher \(Chris\) Deeney](#), Director LLE and Empowered Official
- [Josef Mejido](#), Export Control Officer [export@rochester.edu]
- [Grant Mark](#), Facility Security Officer, LLE

– **[Form I-129 Petition for Nonimmigrant Worker](#) – Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States – H-1B / O-1 petitions**

⁴¹ EAR - [§ 740.13\(f\)](#)

All University related U.S. immigration procedures should be coordinated through the [International Services Office \(ISO\)](#).

As part of the I-129 Petition for Nonimmigrant Worker form⁴², the University needs to certify whether or not an export license is required from the U.S. Department of Commerce or U.S. Department of State to release technology or technical data to the respective foreign person named in the I-129 form.

Hosting faculty members, Department Chairs or Division Chiefs will be asked by ISO to complete a form and certify to the following (provided only as an example; ISO will provide the actual form/certification as applicable):

Certification by Hosting Faculty Member, Department Chair or Division Chief

I, _____, hereby certify to each of the following:

- *All information that will be released or provided to the above named beneficiary will be:*
 - *Already published / in the public domain;*
 - *Information resulting from fundamental research; and/or*
 - *Information released by instruction in a University catalog course or associated teaching laboratory*

- *The beneficiary will not work with anything subject to the ITAR*

Printed name:

Signature:

Title:

Department:

Date:

– **Visas**⁴³

The University of Rochester is authorized to sponsor visas for foreign nationals to enter the U.S. and be present at the University for study, research and exchange, and for employment. For

⁴² https://www.uscis.gov/system/files_force/files/form/i-129-pc.pdf?download=1

⁴³ See <http://www.rochester.edu/research/pdfs/international-research-guidelines.pdf>

students, faculty, staff or researchers on the University's visa sponsorship, all U.S. immigration procedures should be coordinated through the [International Services Office \(ISO\)](#). Once on campus, any change in the student's or scholar's department, field of study, access, funding, or any other immigration affirmations must be reported and coordinated through ISO; otherwise individuals risk jeopardizing their visa status.

Departments and units hosting individuals who are on visas not sponsored by Rochester should notify the [Office for Global Engagement](#) of the visitor's name, home institution, citizenship and nationality, purpose and duration of visit.

Global Engagement and ISO will work together to perform restricted party screening, and discuss applicable restricted party screening results and/or export compliance concerns with the University's Export Control Officer on an ad hoc basis.

– **Hosting Foreign Visitors**⁴⁴

The University fully supports the hosting of foreign visitors, including students, researchers, officials and other individuals to advance our mission.

Contact the [Office of Global Engagement](#) if you have questions about hosting an international visitor to the University. Global Engagement will perform screening to ensure the visitor and/or their home institution are not on any applicable restricted party lists ⁴⁵.

Special measures may need to be taken if the visitor has an ongoing affiliation with a restricted party or if the University site being visited contains export controlled equipment, software, source code or other confidential information. Access to such facilities may need to be restricted or a license issued by the U.S. Government may be required to allow the visitor access. Also, export compliance measures may need to be implemented if collaborations continue when the visitor returns to their home institution. Scenarios in which the University may need to take additional export compliance measures to ensure compliance are:

- The visitor, or their home institution, is a restricted party
- Providing information or software to the visitor that is not:
 - the result of fundamental research;
 - already published; or
 - released in a catalog course or associated teaching laboratory
- shipping, taking or sending an item to a destination outside the U.S.

All faculty, staff and students of the University are encouraged to contact the University's [Export Control Officer](#) for assistance with export compliance.

⁴⁴ See <http://www.rochester.edu/research/pdfs/international-research-guidelines.pdf> for additional guidance

⁴⁵ See [restricted party screening](#) (internal link)

In certain situations it may be possible to host a visitor from a restricted party (e.g. visiting student from a university on the U.S. Department of Commerce's [Entity List](#)⁴⁶). Such arrangements must be discussed with Global Engagement, the University's Export Control Officer and the Committee on Science and Security, and a memo similar to the following must be reviewed, approved and signed by the hosting faculty member/Department Chair:

⁴⁶ <https://www.bis.doc.gov/index.php/documents/regulations-docs/2326-supplement-no-4-to-part-744-entity-list-4/file>



_____, 2020

University of Rochester

RE: Visiting Student -- U.S. Department of Commerce's Bureau of Industry and Security Entity List

Dear Dr. _____,

This memo provides our collective understanding related _____ visiting student arrangement at the University of Rochester:

- _____ is a visiting student from the _____
- _____ is an "Entity" on the United States Department of Commerce's Bureau of Industry and Security Entity List for all items subject to the Export Administration Regulations [EAR]
- All studies, research and activities by _____ while at the University of Rochester shall be in alignment with _____ visa
- All information provided / available to _____ shall be released by instruction in a catalog course or associated teaching laboratory, and shall already be in the public domain and/or be the product of fundamental research
- While at the University of Rochester, all research conducted by _____ shall be fundamental research, the results of which shall be published or would ordinarily be published and shared broadly within the research community, without restriction for proprietary or national security reasons
- No one from the University of Rochester shall export any information / technology or tangible item(s) to the _____ without first contacting Gunta Lidars, Associate VP for Research Administration, and Josef Mejido, Export Control Officer.

_____ (PI)

_____ (Department Chair)

Date:

Date:

Josef A. Mejido, M.S., J.D.
Export Control Officer
Date:

Gunta J. Lidars
Associate VP for Research Administration
Date:

– **End use certifications** (e.g. when receiving equipment or software from another party)

If any faculty or staff receive an end use certification that specifies necessary compliance with U.S. export control laws, consult with Josef Mejido, Export Control Officer, export@rochester.edu prior to signing.

– **Gifts** ⁴⁷

If an employee of the University is presented with or receives a gift from any source in connection with their research, this should be reported to Advancement for proper handling. The Department of Education requires the University to report gifts received from foreign sources, with financial penalties for failing to report.

Advancement will performed restricted party screening as applicable, and discuss restricted party screening results with the Committee on Science and Security and/or the University's Export Control Officer on an ad hoc basis.

– **Internal Monitoring / Risk Assessment**

Audits of projects and technology control plans at the University, and export compliance training for relevant University faculty, staff and students will be evaluated/performed by the University's Export Control Officer. Potential gaps in the University's compliance efforts shall be discussed with the Committee on Science and Security, and the Research Compliance Committee.

– **Violations**

Members of the University of Rochester community are expected to report suspected violations of U.S. export control laws (including OFAC sanctions) to the University. Suspected incidents of export-related noncompliance may be reported to:

- [Josef Mejido](#), Export Control Officer, (585) 273-4512.
- the [Integrity Hotline](#), (585) 756-8888, which is staffed by the URMCompliance Office

See also Section IV. Reporting Violations and Whistleblower Protection of the University of Rochester [Code of Conduct](#).

⁴⁷ See <http://www.rochester.edu/research/pdfs/international-research-guidelines.pdf>