

DRAFT

Temple University

Office of the Vice President for Research

Export Control Policy: Draft 9/17/2020

Questions or comments can be provided to exportcontrol@temple.edu
by October 15, 2020

Introduction and Purpose

Temple University strives to maintain a diverse and vibrant academic community that welcomes foreign researchers and encourages international collaborations for the general advancement of human knowledge through research, education and innovation. This goal reflects our value to support a culture of academic freedom in which our institution is a setting for the exchange of ideas and the broadest possible dissemination of knowledge and information at the local, national and international scale.

Temple University also has the role and responsibility to uphold the laws of the United States government and the research regulatory policies that are applicable as a part of our participation in federally funded grant programs. The regulations enacted by the federal government to preserve the security and defense interests of the United States government include Export Administration Regulations (“EAR”), 22 CFR § 120-130, International Traffic in Arms Regulations (“ITAR”), 15 CFR § 730-774, and a number of embargo and sanction regimes administered by the Treasury Department’s Office of Foreign Assets Control (“OFAC”). These regulations are commonly referred to as “Export Control Laws”. Within university settings, Export Control Laws apply not only to the physical export of technology overseas, but also to the deemed export of controlled technical information to foreign persons within the United States.

Export Control Laws define Foreign Persons as follows: any individual who is not a U.S. citizen; or any individual who is not a US permanent resident alien (“green card” holder); or any individual who is not a protected individual (e.g., refugees, or have political asylum); any foreign corporation/business/organization/group not incorporated or organized under U.S. law; and foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions). Foreign Nationals is the term used to differentiate between all foreign persons and those who owe allegiance to a state; permanent residents and protected individuals of the U.S. are considered Foreign Persons but not Foreign Nationals for the purpose of determining the applicability of Export Control Laws to the activities of the university.

The purpose of this Export Control Policy is to affirm Temple University’s commitment to comply with Export Control Laws; promote faculty and staff awareness of Export Control Laws as they relate to University activities; provide guidance on the University’s requirements under Export Control Laws; and identify the available resources to assist faculty and staff in adhering to the university’s Export Control Policy.

Export Control Regulations

[International Traffic in Arms Regulations \(ITAR\)](#)

The International Traffic in Arms Regulations (ITAR) (22 CFR § 120-130) are regulations administered and enforced by the U.S. Department of State that govern the export of defense articles, defense services, and related technical data of an inherently military nature. In addition, the United States Munitions List

(USML) defines twenty-one broad Categories of technologies controlled under the ITAR (22 CFR § 121.1). The USML categories define ITAR controlled technologies in broad enough terms to encompass virtually any technology that is designed, modified, configured, or adapted for military use. The university's responsibility is to assess the export control status of technologies that are subject to the ITAR based on both the category of the technology and the adaptation of a technology that results in the potential for military use.

[Export Administration Regulations](#)

The Export Administration Regulations (EAR) (15 CFR § 730-774) are administered and enforced by the U.S. Department of Commerce and govern the export of dual use technologies having both military and civilian applications. The technologies controlled under the EAR are listed in the Commerce Control List (CCL) (15CFR § 738, Supp.1). The CCL defines EAR controlled technologies with detailed specifications and assigns to each an Export Control Classification Number (ECCN). The ECCN must then be compared to the Commerce Department's Country Chart (15 CFR § 738, Supp. 1) to determine the controls applicable to a given country. In assessing the export control status of dual use technologies; as a result the CCL controls a variety of technologies — such as lasers, optical lenses, biological agents, and imaging devices —that do not have immediately apparent applicability for military uses.

[Office of Foreign Asset Control \(OFAC\)](#)

The U.S. Department of the Treasury's Office of Foreign Asset Control administers and enforces economic and trade sanctions against certain foreign countries, organizations, persons, and regimes that are designated as threats to the national security, foreign policy, or economy of the United States by Congress. A current list of nations subject to U.S. sanctions (along with regulatory guidance) is available at the [OFAC website](#). U.S. sanctions vary by country. However, virtually all transactions with (and, in some cases, travel to) the comprehensively embargoed countries such as Cuba, Iran, North Korea, Sudan, and Syria are prohibited. In addition, the Department of the Treasury publishes lists of Specially Designated Nationals (SDN) with whom virtually all transactions are prohibited.

Policy Scope

This policy applies to all Temple University investigators, faculty, staff, visiting scientists, postdoctoral fellows, students, scholars, and any other person working at or for Temple University. The policy sets forth the basic responsibilities that all such persons must meet in conducting their research, teaching, clinical, or other activities at or on behalf of the university.

Policy Statement

It is Temple University's policy to comply with all relevant laws and regulations applicable to the University or its activities, including the Export Control Laws. **No university personnel, including faculty, staff, visiting scientist, postdoctoral fellows, students, scholars, or any other person working for or at Temple University, may transfer any controlled items, services, information, or technology in violation of the Export Control Laws or in violation of the policies and procedures implemented by the University as part of its export compliance program.**

It is the university's role and responsibility to assure compliance with the Export Control Laws by conducting its research and other activities under the Fundamental Research Exclusion to the Export Control Laws. All projects subject to restrictions based on the requirements of Export Control Laws will be reviewed on a case-by-case basis by the Office of the Vice President for Research (OVPR) in consultation with the appropriate school, college, or university offices to determine whether the risk of an export control violation can be adequately managed. This may include obtaining an export license from the appropriate federal agency or by implementing physical and informational safeguards to prevent unlicensed foreign

nationals from accessing the export controlled technology. Under these specific conditions, a restricted research project or other activity may be acceptable to the University with approval from OVPR.

For those activities that fail to qualify for an exception or exclusion to the Export Control Laws, it is the policy of Temple University to take all reasonable precautions necessary to prevent unlawful access to ITAR- and EAR-controlled technologies by non-U.S. persons. Investigators will take all measures prescribed by law or required by the University's Export Control Manager to prevent unlicensed foreign nationals from gaining access to ITAR- and EAR-controlled technology. This may include, when appropriate, the development and implementation of a Technology Control Plan to document the safeguards the University has put in place to prevent such access. When an export-control license is required by law, no research or other activity will commence until the license is obtained.

Roles and Responsibilities

Export Control Manager

The Office of the Vice President for Research will designate an Export Control Manager (ECM) to be responsible for export control oversight for the university, including the development of training, education, and assessment tools, and the implementation of policies and procedures to assure the University's ongoing compliance with the Export Control Laws. The ECM will work in partnership with faculty and administrators to assure that the University's export compliance procedures adequately address the University's obligations under the Export control Laws. When appropriate, the ECM will assist faculty in obtaining export control licenses for foreign nationals working on export controlled projects, or assist them in developing a Technology Control Plan to restrict unlawful access to such technologies. The ECM will also undertake such other compliance activities as are authorized under the ECM's Delegation of Authority.

The Export Control Manager reports to the Vice President for Research or an approved designee.

Institutional Official

Temple University's Institutional Official or designee represents Temple University in official export control matters such as registrations, commodity jurisdiction and classification requests, licensing, and voluntary self-disclosures. They have the authority to sign paperwork binding the University in proceedings with any agency with export control oversight. Temple University's Institutional Official is the Vice President for Research or designee for all export compliance purposes.

Faculty & Investigators

University investigators and faculty, in consultation with the ECM, bear primary responsibility for assuring export compliance for all their research, teaching, clinical, or other University activities. The specific export responsibilities for investigators and faculty are set forth in the University's Export Control Roles and Responsibilities defined below, as are the roles and responsibilities of the University's administrative offices, area specific compliance offices, and other University offices and personnel. This includes the following:

- Understanding how the Export Control Laws may affect their activities and when to call the University Export Control Manager (ECM) for assistance.
- Assuring that they and their staff are informed about export controls and the resources available to enable compliance.
- When necessary, coordinating with the ECM to obtain an export license from the appropriate federal agency prior to employing foreign nationals on projects that are export controlled,

complying with the conditions of the license, and ensuring that personnel with access to their laboratory also comply.

- Prohibiting access by unlicensed foreign nationals to any controlled technology or controlled technical data that does not qualify for an exclusion to export control regulations. This may require compliance with a Technology Control Plan.
- Contacting the ECM for Restricted Party Screening of travel destinations, shipping destinations, and potential collaborators and visitors as appropriate.
- Establishing and maintaining standards of export control compliance for their laboratory and the personnel under their direction.

Any questions regarding the University's export control policy or the University's expectations under the Roles and Responsibilities should be directed to the ECM at exportcontrol@temple.edu.

Central Administrative and Compliance Offices

Each central administrative and area specific compliance office will be responsible for assuring the University's export compliance with respect to that specific office's areas of control or responsibility. The ECM shall work with each such office to develop internal export control procedures. The internal procedures may be modified from as is necessary to ensure the University's ongoing compliance with the Export Control Laws.

Export Control Advisory Committee

The Export Control Advisory Committee (ECAC) provides guidance and makes recommendations to senior university officials and to the Export Control Manager on export control policies and procedures at Temple University. Members of the ECAC provide input on education and training, compliance programs and policy, technology and tool needs, and provide subject matter expertise in their areas of responsibility. They assist with development of export control compliance action plans and periodic program reviews, and facilitate communication throughout the University community about the importance of export control compliance. The ECAC is chaired by the Export Control Manager. Membership of the ECAC includes the Institutional Official, representatives of cooperating entities listed below, and other members who may have subject expertise relevant to the proceedings of the committee.

Cooperating Entities and Focus

- The Office of the Vice President for Research to assure institutional adherence with the Export Controls Policy
- The Office of Research Administration to assist with award submissions and post award management processes related to Export Control Laws.
- Environmental Health and Radiation Safety (EHRS) and the Institutional Biosafety Committee (IBC) on issues related to controlled biologicals.
- The Office of International Students and Scholar Services (ISSS) to assess the need for deemed export licenses for foreign national students and scholars.
- The Office of Technology Commercialization and Business Development on various aspects of grants that may trigger the need for export licenses, export control concerns in contract agreements or other contractual concerns, and material transfer and license agreements with foreign parties.
- The Office of University Counsel on issues of export control compliance when appropriate.
- The Division of Purchasing to potentially identify purchases, shipments, or new vendors of concern.
- The Office of Research Regulatory Compliance to provide education and outreach related to export controls in collaboration with schools, colleges, and other central offices.
- Information Technology Services (ITS) on export control issues related to information technology and security, use of computer technologies in international settings, and other technology use issues.

- Human Resources (HR) on issues related to foreign staff and visitors when appropriate.
- Principal Investigators and administrative staff to provide guidance and assistance with export control compliance.

Additional Considerations

Export Control Licenses

Faculty may on occasion engage in research or other activities that require foreign nationals to have access to ITAR- or EAR-controlled technologies. In all such cases, an export license must be obtained from the Department of State or Department of Commerce prior to allowing foreign nationals access to the controlled technology or controlled technical information. Faculty should be aware that the application process can take from three to six months, depending on which agency has jurisdiction, the nature of the technology, and the foreign national's country of origin. There are no guarantees that a license will be granted. Inquiries about the licensing of foreign nationals should be directed to the Export Control Manager (ECM) at exportcontrols@temple.edu.

Transactions with Sanctioned and Other Countries

U.S. trade sanctions may limit the University's ability to collaborate with persons and entities in certain embargoed countries. In particular, faculty will consult with the ECM prior to dealing with any persons or entities in comprehensively embargoed nations such as Cuba, Iran, Syria, North Sudan, and North Korea. The shipping of items or transmittal of technical information to persons or entities in the embargoed countries is almost categorically prohibited and should not be undertaken without consulting the University's Export Control Manager. Travel to embargoed countries is allowed, if at all, only under exceptional circumstances. Further guidance on specific embargoes and sanctions can be found on the OVPR Research Compliance website, here: research.temple.edu/research-compliance/export-control.

Travel & Shipping

It is the responsibility of faculty and departmental personnel to assure that all international travel and physical shipments abroad comply with the Export Control Laws. In assessing the export control implications of such activities, faculty should remain mindful that seemingly routine activities, such as carrying controlled technical data on a laptop (or other electronic storage media) to an overseas destination, or disclosing controlled technical data at a closed conference abroad, may constitute a violation of the Export Control Laws. Questions about the export-control status of a proposed trip or export can be directed to the ECM at exportcontrols@temple.edu.

International Communications and Deemed Exports

It is the responsibility of all University personnel, including faculty and staff, to assure that all communications of technical information comply with the Export Control Laws. In assessing the export compliance implications of such communications, faculty should remain mindful that even informal communications of controlled technical information to collaborators abroad can constitute a violation of the Export Control Laws, as can communications of controlled technical information to foreign nationals within the United States (i.e., "deemed exports"). Any doubts about the export-control status of a proposed communication should be resolved in favor of contacting the ECM at ovpr@temple.edu.

Education and Audits

The Export Control Manager will develop and make available educational materials to assist faculty and investigators in meeting their obligations under the Export Control Laws. The Export Control Manager may also require formal export control education and training for investigators, faculty, and staff who will have

access to export controlled technologies in the course of their work. The ECM and other appropriate compliance offices will have the authority to conduct periodic audits of University research and other activities to assure the University's ongoing compliance with the Export Control Laws. The ECM Creates, coordinates, and maintains records of export license applications, technology control plans, H-1B Form I-129 certification recommendations, and other export control issues in accordance with federal regulations and University policies and procedures.

Sanctions

Violations of the Export Control Laws carry significant criminal and civil penalties for both the University and its investigators. Criminal penalties include up to ten (10) years incarceration and fines up to \$1,000,000 per violation. Violations may also debar the University from receiving future federal funding. In addition to governmental penalties, the failure by University personnel to comply with the Export Control Laws, or with the University's export compliance procedures, may result in a recommendation for sanctions by the University, Dean, or Vice President for Research.