PURPOSE:
This policy is published to inform the University community of relevant information related to export control
regulations and participation by foreign nationals in University activities and research. The document will focus on:

• Requirements (Overview and Definitions)
• Guidelines for Research Projects

This document is intended to promote understanding of and compliance with the regulations by all persons
involved in research. It is highly recommended that you read the attached summary of export regulations prior
to reading this policy (National Association of College and University Attorneys Outline of Export Control
Material). If you have questions about how the export regulations apply to specific research, please feel free to
contact the Grants Specialist Supervisor/Facility Security Officer at 850-474-2825.

REQUIREMENTS:

I. Overview:

The Export Administration Regulations (EAR), promulgated and enforced by the Department of Commerce
(Commerce), and the International Traffic in Arms Regulation (ITAR), promulgated and enforced by the
Department of State (State), regulate the export of specific technologies for reasons of national security and
protection of trade. If University research is governed by the EAR or ITAR, the University may be obligated to
obtain a license from State or Commerce as a condition of: (1) allowing foreign nationals to participate in the
research; (2) conducting the research in cooperation with a foreign company or with foreign colleagues; (3)
sending research equipment to foreign countries; or (4) sharing research technology—verbally, visually, or in
writing—with persons who are not U.S. citizens or lawful permanent residents.

In addition to the EAR and ITAR, the Office of Foreign Assets Control (OFAC) in the Treasury Department
administers and enforces embargoes that have been imposed against specific countries based on reasons of
foreign policy, national security, or international agreements. The scope of such restrictions varies depending
on the country and may change from time to time. The embargoes may range from a prohibition on conducting
surveys to selling goods to travel restrictions. Full descriptions of all countries currently subject to embargoes
are available at http://www.ustreas.gov/offices/enforcement/ofac/sanctions/.

EAR, ITAR, and OFAC regulations have the potential to impact the quality of University research, limit
publication rights, prohibit international collaboration, and restrict research by students who are foreign
nationals, if the dissemination of University research is not in the public domain and the research does not
qualify for the fundamental research exclusion (see below). The consequences of violating these regulations
can be quite severe, ranging from loss of research contracts, to monetary penalties, to incarceration.

Since the events of September 11, 2001, the federal government's focus on export control laws and regulations
has both increased and expanded to include universities. As a result, now more than ever, Research and
Sponsored Programs (RSP), University Counsel and PIs need to work together to review research projects,
requests to ship equipment abroad, dissemination of technical knowledge, research and other agreements, to
determine whether export control regulations apply.

II. Definitions

Export control decisions depend on a correct understanding of the following terms which are summarized

below. The official regulatory definition should be consulted for specific applications.

**A. Export.** Export control regulations define “export” broadly. Generally, an export means (1) an actual shipment or transmission of items controlled under the EAR or ITAR out of the United States; (2) any written, oral or visual release or disclosure of controlled technology, information or software to a foreign national either in the U.S. or outside the U.S; or (3) any actual use or application of controlled technology on behalf of or for the benefit of any foreign entity or person anywhere. Therefore foreign national students may be prohibited from participating in research that involves controlled technologies without first obtaining a license from the appropriate government agency. The official definition of export under the EAR is available at [http://www.access.gpo.gov/bis/ear/pdf/772.pdf](http://www.access.gpo.gov/bis/ear/pdf/772.pdf) and the ITAR definition is available at [http://www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html). Both should be reviewed in consultation with the RSP when determining whether a specific act constitutes an export.

**B.** The **Export Administration Regulations (EAR)**, (Title 15, sections 730-774 of the Code of Federal Regulations (CFR)) are promulgated and enforced by the Bureau of Industry and Security in the Department of Commerce. Technologies and products that are controlled under the EAR are identified on the Commerce Control List (CCL), Title 15 CFR 774, Supp. 1, and 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 and Information Security; (6) Sensors; (7) Navigation and Avionics; (8) Marine; and (9) Propulsion Systems, Space Vehicles, and Related Equipment. The complete text of the EAR and CCL are available online at [http://www.access.gpo.gov/bis/index.html](http://www.access.gpo.gov/bis/index.html) and [http://www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html), respectively. Printed versions of the EAR and CCL may be obtained by contacting the RSP Grants Specialist Supervisor/Facility Security Officer (474-2825; crafalsk@uwf.edu). The EAR controls technologies and products that serve primarily civil purposes, but may also have military applications.

**C. Foreign Person.** Both the EAR and ITAR define “foreign person” as any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions), and any natural person who is not a citizen or lawful permanent resident of the United States (as defined by 8 U.S.C. 1101(a)(20) [http://www4.law.cornell.edu/uscode/8/1101.html](http://www4.law.cornell.edu/uscode/8/1101.html)) or who does not qualify as a protected individual (as defined by 8 U.S.C. 1324(a)(3) [http://www4.law.cornell.edu/uscode/8/1324.html](http://www4.law.cornell.edu/uscode/8/1324.html)).

**D. Fundamental Research,** as defined in EAR, means basic and applied research in science and/or engineering where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research the results of which are restricted for proprietary or specific national security reasons. University research will not qualify as fundamental research if: (1) the University or researcher accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent disclosure of their proprietary information or the compromise of the patent rights of sponsors; or (2) the research is federally funded and the University or the researcher accepts specific access and dissemination controls regarding the resulting information. The EAR definition of fundamental research is available at 15 CFR § 734.8 [http://www.access.gpo.gov/nara/cfr/aisdx_01/15cfr734_01.html](http://www.access.gpo.gov/nara/cfr/aisdx_01/15cfr734_01.html). The equivalent definition under ITAR, is located at 22 CFR § 120.11 [http://www.access.gpo.gov/nara/cfr/aisdx_01/22cfr120_01.html](http://www.access.gpo.gov/nara/cfr/aisdx_01/22cfr120_01.html).

**E. The International Traffic in Arms Regulations (ITAR),** 22 CFR §§ 120-130, are promulgated and enforced by the Directorate of Defense Trade Controls in the Department of State ([http://www.pmdtc.org/](http://www.pmdtc.org/)). Technologies, products and information that are controlled under ITAR are identified on the Munitions Control List (MCL), 22 CFR § 121.1. Complete, on-line versions of the ITAR and MCL are available online at: [http://www.gpoaccess.gov/cfr/index.html](http://www.gpoaccess.gov/cfr/index.html) and at [http://www.fas.org/spp/starwars/offdocs/itar](http://www.fas.org/spp/starwars/offdocs/itar). The ITAR controls technologies, products and information
that primarily serve military purposes.

F. **Public Domain** is defined in the ITAR (22 CFR 120.11) as information that is “published and 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; (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; and (8) through fundamental research as defined in paragraph D above. The EAR definition of Public Domain is located at [http://www.access.gpo.gov/nara/cfr/waisidx_01/15cfr734_01.html](http://www.access.gpo.gov/nara/cfr/waisidx_01/15cfr734_01.html).

**WORK FLOW:**

Guidelines for Research Projects

The University has developed the following processes and guidelines to help Contract Administrators, PIs and other persons engaged in research at the University decide whether the EAR/ITAR/OFAC regulations affect a particular research project and identify appropriate action to take.

The process for reviewing, managing, and complying with Export Control Regulations focuses on needs for (1) disclosure, (2) consultation, and (3) compliance. The following steps shall be followed:

1. Disclosure: The Researcher or Principal Investigator discloses the potential of an export control regulation issue to RSP.
2. Consultation: The PI and RSP staff will consult as follows:
   a. PI provides RSP with a detailed description of the project and its technical components and how export control regulations relate to the project.
   b. PI assists in review of technical/scientific determination regarding the applicability of the Commerce Control List (CCL) or the Munitions Control List (MCL). In situations where a technology is arguably covered by both the EAR and ITAR, the University may submit a Commodity Jurisdiction Request to the Directorate of Defense Trade Controls to decide whether Commerce or State has jurisdiction
   c. RSP staff assists with determination regarding the fundamental research exclusion and the public domain exemption.
   d. RSP staff, in consultation with University Counsel and the PI, will make the final determination of applicability of export control regulations.
3. Compliance:
   a. The PI and RSP staff will cooperate to develop a plan for compliance. The plan may include the decision on whether to seek contract modifications to eliminate the need for a license, to reject the contract, to apply for a license, or take other appropriate actions.
   b. The grants specialist(s) will work with the PI and other appropriate parties to implement the compliance plan.
   c. If a compliance plan is developed, the PI is responsible for adhering to it.

PIs/Key Personnel Responsibilities:
- PIs must cooperate with RSP in determining the applicability of export control requirements to research before starting any research and notify RSP of any known or potential export control requirements that could be applicable prior to starting any research.
- PIs must notify RSP well in advance of sending or carrying scientific equipment, including GPS equipment, and encrypted software out of the country in order to determine if a license is required. If the PI knows that a research contract, nondisclosure agreement or material transfer agreement may or
will require shipping, sending, or carrying scientific equipment out of the country or transmitting technology or knowledge to foreign persons, the PI should highlight those facts when submitting the contract to RSP.

- PIs should send all nondisclosure agreements to RSP prior to execution so RSP may review. If necessary, RSP will request modification of any provisions that could eliminate the exclusions from export control requirements.
- PIs must contact RSP before engaging in any research activities with persons in countries or foreign nationals from countries subject to OFAC control; e.g., Balkins, Burma, Cuba, Iran, Iraq, Liberia, Libya, North Korea, Sudan, Syria, and Zimbabwe among others. PIs should check the current lists whenever interaction with a foreign entity or person is anticipated at http://www.ustreas.gov/offices/enforcement/ofac/sanctions/
- Prior to implementation, PIs must notify RSP of any potential changes in the scope or staffing of research projects that could alter initial determinations about the applicability of export control regulations.

**RSP Director/Grants Specialist(s) Responsibilities:**

- The designated grants specialist(s) will review the research contract, nondisclosure agreement or material transfer agreement for any terms or provisions that restrict access to the research or research information, restrict the release of research results, limit the participation of foreign persons in the research or otherwise render the exclusion for fundamental research in applicable.
- If the University determines that provisions of the contract render the fundamental research and public domain exceptions inapplicable, the grants specialist(s) will coordinate a meeting to review the project with the PI, the RSP Director, and the University Counsel to determine whether the research is controlled under the CCL or the MCL. The PI may be requested to provide information via the Export Control Review Form Part II and return the completed form to the grants specialist(s) prior to this meeting.
- If the University determines that a license is required, the Director of RSP or a designee, will send written notice of that decision to the PI, grants specialist(s), Associate Vice President for Research, and the appropriate dean/vice president and the chair/director along with recommendations on how to proceed. Ultimately, a decision will need to be made whether to seek contract modifications to eliminate the need for a license, reject the contract, apply for a license, or take other appropriate actions. The grants specialist(s) will work with the PI and other appropriate parties to implement the determination.
- All export control decisions will be documented and kept on file by RSP.

**SUMMARY OF RESPONSIBILITIES:**

**PIs/Researchers/Chairs/Directors/Deans/Vice Presidents:**

- Become familiar with the University export control requirements and with the underlying requirements and regulations of the U.S. government related to export control issues. Although the RSP staff are available to assist through the process, the primary responsibility for disclosing potential export control issues and complying, with export control requirements and the UWF compliance plan lies with the PI.
- Review all collaborations, funding opportunities, contracts and scope of work to determine if any will require review of export control requirements before starting any research.
- Follow work flow outline above to ensure appropriate review steps are completed.
- Inform and instruct all project personnel who are involved with the research of the export control requirements and act as liaison for any situations in which export control requirements apply.
- Disclose promptly (as soon as knowledge is obtained) any violation or potential violation of the EAR/ITAR/OFAC regulations.
- In consultation with RSP staff, discuss and explore potential export control requirements with the sponsor’s program or technical administrators in proposal preparation, negotiation or reporting requirements and inform them of federal regulations and the University’s export control procedures.

**RSP Staff:**

Policy for Export Control
RSP Export_Control_Procedure.doc
10/23/2008
• Assist PIs in reviewing potential export control requirements and specific steps as outlined above.
• Inform applicable University employees or officers of potential export control requirements for a research project and potential violations.
• Document and follow up on all export control reviews and determinations.
• Provide or assist with training of research personnel in University export control policy and export control regulations.
• In consultation with the PI, discuss and explore potential export control requirements with the sponsor’s contract administrators in proposal preparation, negotiation or reporting requirements and inform them of federal regulations and the University’s export control procedures.

SUMMARY:

EAR/ITAR/OFAC regulations are federally-mandated responsibilities of all individuals who have access to or potential to distribute (passively or actively) restricted information to foreign entities and persons. The penalties for violating these regulations are far reaching and pervasive and may affect both the institution’s and the individual’s ability to conduct research with U.S. government agencies. Failure to comply with the requirements may result in loss of revenue, monetary or research restriction penalties, heavy fines or criminal prosecution of individual researchers and/or their supervisors.

Cooperatively, the PI, the RSP and the institution must seek to determine when export control regulations apply and to actively take steps to comply.

REFERENCES:

<table>
<thead>
<tr>
<th>No.</th>
<th>Description/Title</th>
<th>Source:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A2</td>
<td>Export Administration Regulations (EAR)</td>
<td><a href="http://www.access.gpo.gov/bis/index.html">http://www.access.gpo.gov/bis/index.html</a></td>
</tr>
<tr>
<td>A4</td>
<td>Munitions Control List</td>
<td><a href="http://fas.org/spp/starwars/offdocs/itar/">http://fas.org/spp/starwars/offdocs/itar/</a></td>
</tr>
<tr>
<td>A5</td>
<td>Definition of a Foreign Person</td>
<td><a href="http://assembler.law.cornell.edu/uscode/html/uscode08/usc_sec_08_00001101----000-.html">http://assembler.law.cornell.edu/uscode/html/uscode08/usc_sec_08_00001101----000-.html</a></td>
</tr>
<tr>
<td>A7</td>
<td>EAR definition of Public Domain is located at</td>
<td><a href="http://www.access.gpo.gov/nara/cfr/waisidx_01/15cf734_01.html">http://www.access.gpo.gov/nara/cfr/waisidx_01/15cf734_01.html</a></td>
</tr>
<tr>
<td>A8</td>
<td>Definition of Fundamental Research</td>
<td><a href="http://www.access.gpo.gov/nara/cfr/waisidx_01/15cf734_01.html">http://www.access.gpo.gov/nara/cfr/waisidx_01/15cf734_01.html</a></td>
</tr>
<tr>
<td>A9</td>
<td>Commerce Control List</td>
<td><a href="http://www.access.gpo.gov/bis/ear/ear_data.html">http://www.access.gpo.gov/bis/ear/ear_data.html</a></td>
</tr>
<tr>
<td>A10</td>
<td>National Association of College and University Attorneys Outline of Export Control Material</td>
<td><a href="http://research.uwf.edu/PDM/E.htm">http://research.uwf.edu/PDM/E.htm</a></td>
</tr>
</tbody>
</table>