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UNIVERSITY OF PUERTO RICO  
MAYAGUEZ CAMPUS

# **EXPORT CONTROL RULES**

March 2013

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## **RULE STATEMENT**

The University of Puerto Rico, Mayaguez Campus (UPRM) is committed to compliance with United States of America (U.S.) export control laws and regulations applicable to research, teaching and service activities. Export control laws restrict the transfer, use, and/or release of certain materials, devices, and technical information, to foreign nationals overseas or within the U.S. The purpose of these laws is the protection of national security, endangered or threatened species, or foreign policy interests. The principal U.S. export control laws are the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR), and the Office of Foreign Assets Control regulations (OFAC). Failure to comply with these regulations may result in the imposition of criminal sanctions including fines, penalties and/or prison sentences for individuals, as well as fines, penalties, and cease-and-desist orders for future institutional activities or authorizations. It is the responsibility of all UPRM faculty members, staff and students to safeguard data, equipment, and/or technology controlled by these federal laws.

## **PURPOSE FOR THE RULE**

The UPRM encourages service and research activities that are conducted openly and without prohibition on the publication and dissemination of the results. UPRM personnel and students engage in a broad range of innovative and distinguished research both in the United States and outside U.S. borders. These activities include the sharing and development of products, goods, hardware, software, or materials (hereafter referred to as “items”), as well as research involving technology that may be subject to U.S. export control laws and regulations. The purpose of this rule is to provide publicity and clarification of the essential aspects of the laws and regulations concerning exports for the benefit of the University community, reaffirm our commitment to compliance, and explain how the University will provide our researchers, faculty, staff and students with the assistance they may need to ensure compliance with these laws.

The laws and regulations governing exports are detailed and complex. Employees with responsibility for UPRM’s export-control compliance program, or whose duties include a significant amount of work with foreign nationals, will be offered formal training sessions on the U.S. export-control laws and regulations, and their applicability to their jobs. All employees with managerial or supervisory authority over foreign nationals or projects involving materials or technology subject to export controls should consider export-control compliance as an important part of their daily responsibilities. It is particularly crucial to establish early in the process of any international collaboration the potential requirements for export-control authorization.

Fortunately, the majority of research, teaching and services conducted at UPRM are not subject to export control regulations, either because it does not involve export-controlled information and technologies, or because the research qualifies as excluded or exempted under one of the export control regulations.

## **WHAT IS AN EXPORT?**

The U.S. Export Administration Regulations (EARs), administered by the U.S. Department of Commerce, specifically indicates that exports are:

- Any shipment, transfer, or transmission out of the United States by any means (including hand-carrying) of any (this also includes re-exports)

- Goods (equipment, hardware, or materials)
- Technology (encrypted data, technical data, information, or assistance)
- Software / Codes (commercial or customs)
- Any transfer to any person or entity of goods, technology, or software by physical, electronic, oral, or visual means with the knowledge or intent that the item(s) be shipped, transferred, or transmitted to a non-U.S. entity or individual.
- Any disclosure of technical data or information to a foreign entity or individuals, by any means, inside or outside of the U.S. This includes interactions with foreign persons visiting or on temporary posts at the UPRM, or while UPRM internal stakeholders (faculty, staff, and students) are on foreign travel.
- Any transfer of goods technology, or software, by any means, to a foreign embassy or affiliate.

In export controls laws, exports include the transfer of tangible and intangible goods to a citizen, permanent resident or entity of a foreign national, regardless of where the transfer occurs. The transfer could be physical or virtual, to a foreign country, or within the U.S. When the delivery of export-controlled products or services is done in the U.S., it is called “Deemed Exports”. Some exempted foreign nationals are permanent United States citizens or protected nationals granted political asylum in the United States. Not all exports require an export license, just the ones that may affect national security, endangered or threatened species or foreign policy. The Department of the Treasury’s Office of Foreign Assets Controls (OFAC) deals with exports related to foreign policy issues. Exports of endangered or threatened species are regulated by the Department of the Interior’s U.S. Fish and Wildlife Service. In the case of national security related exports, the two main agencies are the Department of State’s Directorate of Defense Trade Controls (DTC) and the Department of Commerce’s Bureau of Industry and Security (BIS). The latter agency states that we should consider four key questions in the determinations of whether an export license is required:

- What are you exporting?
- Where are you exporting?
- Who will receive your item?
- What will your item be used for?

## **TYPES OF EXPORT CONTROL REGULATIONS**

The Departments of Commerce, State, and Treasury are the three agencies with export control responsibilities. The Department of Commerce regulates the exports of items and information that have civil applications. The Department of State regulates the exports of items that have military applications or that relate to space. The Department of the Treasury enforces country-specific embargoes. The other seven U.S. government departments or agencies with jurisdiction are: Nuclear Regulatory Commission, Department of Energy, Defense Technology Security Administration, Drug Enforcement Administration, Food and Drug Administration, Patent and Trademark Office, and Environmental Protection Agency. In certain circumstances, these agencies may require the University to obtain a license before the item or information is exported to another country or shared with a foreign national.

There are three primary sets of Federal regulations currently governing export controls. These are the Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR), and Office of Foreign Asset Control regulations (OFAC).

The **Export Administration Regulations (EAR)** is a set of regulations administered by the Commerce Department’s Bureau of Industry and Security (BIS). These regulations control "dual use" items and

technology related to these items that often have both civilian and military uses, such as computers, toxins, and chemicals. A listing of the items controlled by EAR is called the Commerce Control List (CCL). The CCL includes essentially all civilian science, technology, and engineering dual use items, which have commercial and military applications. Although most products and technology will not require a license ("EAR99 products and technology"), the exporter (faculty, researcher, staff or student) at the UPRM is responsible for verifying whether this license is required or not. In the case of the University, there are exclusions or exemption, such as technology exempted under the fundamental research exemption (see section on Licensing Exceptions). If the "dual use" item or technology involves a sanctioned or embargoed country under OFAC, or an individual or organization in one of the denied parties' lists, a license generally will be denied by the government.

The **International Traffic in Arms Regulations (ITAR)** is a set of regulations administered through the State Department's Directorate of Defense Trade Controls (DDTC). These regulations are designated for munitions and defense articles and services, as well as for certain space-related items. Military and other items controlled by DDTC are listed in the U.S. Munitions List (USML). Any service, article, or technical data specifically designed, developed, configured, adapted, or modified for a military or intelligence application or for use in space is generally subject to ITAR. None of the items on the USML are dual use items. As in the case of the EAR, ITAR has some license exclusions and exemptions for universities. Some military and space research at the UPRM may only require a Technology Assistance Agreement rather than an export license. Part 120 of the ITAR defines a Technology Assistance Agreement as "an agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing knowhow are not conveyed." Researchers and research administrators in defense services and articles, including space research will need to contact the UPRM Research and Development Center for assistance in a case-by-case situation. As in the case of the EAR, if the defense item involves a sanctioned or embargoed country under OFAC, or an individual or organization in one of the denied parties' lists, a license generally will be denied by the government.

The **Office of Foreign Asset Control (OFAC)** within the Department of the Treasury is responsible for the oversight of regulations pertaining to embargoed and sanctioned countries and to individual persons and entities who are from these countries or who have violated other laws. OFAC focuses economic and trade sanctions based on U.S. foreign policy and other national security goals. OFAC maintains a list of U.S. sanction or embargoes countries, as well as a list called "Specially Designated Nationals" that include terrorist individuals and organizations.

Exclusions and exceptions available under the other export control regulations (ITAR and EAR) do not necessarily apply to OFAC designated entities. In addition to the lists for embargoed countries and Specially Designated Nationals (SDN) maintained by OFAC, a number of other Federal agencies, including the BIS also maintain lists of sanctioned or wanted individuals and entities. U.S. nationals (see definition section) are expected to consult these lists when conducting business with foreign nationals abroad or within the U.S.

## LICENSING EXCEPTIONS

After determining whether the UPRM research, service or teaching activity is considered export controlled, the next step is to determine whether it requires licensing. If the activity is export controlled, the next step is to determine whether it qualifies under one of the exclusions or exemption from the application of export control licensing available to U.S. universities. The exclusions and

exemptions available for members of our community are *Fundamental Research Exclusion, Publicly Available / Public Domain Exclusion, Education Information Exclusion, and Exemption for Disclosure to Bona Fide Full-time Employees*. The first three are exclusions under both ITAR and EAR. The Education Information exclusion is only available in EAR. The Employment exemption is only available in ITAR.

*Fundamental Research* exclusion covers basic and applied research that is free from restrictions on publication and involves information that is not subject to any access or dissemination controls. University research will not qualify as fundamental research if the UPRM accepts any restrictions: (1) publication of information resulting from the research, other than limited prepublication reviews by sponsors, or (2) on the participation of foreign nationals in the research work. This exclusion applies only to the dissemination of research data and information not to the transmission of material goods. To be eligible for the fundamental research exemption, the research must take place at an accredited institution in the United States. Physical goods, software, encryption, research with no intention to publish results, or investigation conducted outside the U.S. does not qualify for the Fundamental Research Exclusion.

The *Publicly Available / Public Domain* exclusion covers information and research results already published, publicly available, and where no license is required for access to this information by foreign nationals. Examples of publicly available sites are libraries, bookstores, newsstands, trade shows, meetings, seminars in the U.S. open to the public, published in certain patent applications, websites accessible to the public and, courses listed in a university catalog of a general nature.

General scientific, mathematical or engineering principles commonly taught in academic institutions qualify as *Education Information* exclusion even if foreign nationals are enrolled.

In the *Exemption for Disclosure to Bona Fide Full-time Employees, also known as the Employment* exemption, ITAR license is not required to share information subject to export control laws if the foreign national is a full-time bona fide UPR employee, is not a national of certain banned countries, has a permanent address in the U.S. while employed at the UPR, and has been informed in writing not to transfer information to other foreign nationals. This exclusion does not apply to graduate and undergraduate students.

## **TO WHOM THE RULE APPLIES**

This rule applies to all individuals at UPRM -- faculty, staff, students, and visiting scholars -- that may be responsible for the export of goods and/or services, including deemed exports transferred within the U.S. Although export control is typically associated with technical fields, such as engineering, it applies to all fields. Examples of university activities that may be affected by export control laws and regulations are:

- Export of goods or services to other countries, such as documents or equipment.
- Publications and presentations
- International and national collaboration and technical exchanges.
- Hosting visiting scholars and researchers.
- Foreign travel, applies to all of our activities.
- Hiring foreign staff for research, teaching or service abroad.

## **EXPORT COMPLIANCE PROCEDURES**

The UPRM Research and Development (R&D) Center's website will provide the faculty, staff and students with decision trees, checklists and forms to verify whether their activity complies with U.S. export control laws and regulations. Independently of whether the activity is export controlled and before engaging in any economic transaction or transfer to third parties, the researcher, faculty, staff or student in charge of the activity is required to verify that these third parties are not on the U.S. prohibited parties' lists.

Most university activities are not export controlled. In the case when the activity is export controlled and requires an export license, the UPRM will decide whether or not to apply for one. Applying for a license takes time, institutional commitments and money. In the case of research, the researchers should determine from the proposal development stage whether it will or may require it.

To comply with Export Control Laws, the position of the Export Control Compliance Officer (ECCO) will be created under the direct supervision of the Director of the Research and Development Center. In addition, an Export Control Committee (ECC) will be constituted to advise and provide recommendations to the Export Control Officer and the R&D Center Director. The ECCO and the members of ECC committee will be appointed by the UPRM Chancellor.

## **MAIN AREAS AFFECTED BY EXPORT CONTROL LAWS AND LEGISLATIONS**

As of 2013, U.S. export control laws and regulations are under revision in the Export Control Reform. At the UPRM, the main areas affected by export control laws and regulations are research, teaching and service. The most common transactions are: (1) Foreign travel; (2) Disclosure of transfer to foreign persons, (3) Hiring a foreign national, (4) Overseas shipments; (5) Acquiring and using controlled items or data; (5) Dissemination of information; and (7) Accepting controlled items or data. Guidelines for each of the previously mentioned transactions will be maintained up-to-date at the R&D Center website.

## **RESEARCH**

Research is the area usually affected by export control laws and regulations. The general procedure for research at the UPRM is divided into five stages:

- **First stage:** Screening of prohibited parties lists of foreign nationals. This includes the screening of suppliers, employees, associates, research partners, among others. This screening must be done by the Principal Investigator (PI) of the project.
- **Second stage:** Determining whether the material, technology, service or equipment export (including deemed export) is listed on the CCL or USML or being sent to a sanctioned country by OFAC. This step is also done in deemed exports, as in the case of hiring, inviting or working with foreign nationals. This will be the responsibility of the PI of the project.
- **Third stage:** Determine whether a license is required (or a Technology Assistance Agreement - TAA in the certain cases in ITAR, see TAA in Definitions section). The PI will consult the ECCO on this matter. Depending on the findings, the ECCO will proceed with the next steps:
  - If a license is required, the decision will be referred to the ECC which recommends if the license should be requested or not. The ECCO and the R&D Center Director will consider the ECC recommendation and submit a proposal to the Chancellor for final decision. If the UPRM decides to apply for a license, the ECCO will prepare the proper documentation. **No export including deemed exports must be done until the license is received.**

- If a license is required, but a TAA is an option, the decision will be referred to the ECC. If the UPRM decides to make a TAA, the PI with assistance from ECCO will prepare the documentation. No export including deemed exports must be done until the license is received, or a TAA is done.
- If a license is not required, go to stage four.
- **Fourth stage:** If a license was approved and received or if a license was not required, the appropriate UPRM office will work with the PI to make the export transaction. The interested PI is responsible of other documentation related to the transaction. Example of export transactions are:
  - Overseas shipments
  - Disclosure or transfer of items to foreign persons
  - Hiring a foreign person will require also the approval of U.S. Citizenship and Immigration Services with all the required petitioners and sponsors.
  - Foreign travel
  - Acquiring and using controlled items or data
  - Accepting controlled items or data
- **Fifth stage:** All export decisions will be documented and kept at the Office of the ECCO. The PI will retain copies of final decisions.

## TRAINING

UPRM will provide up-to-date virtual and physical training on export control to researchers, research administrators and, staff involved in export related transactions. Researchers in export-controlled projects, particularly projects related to defense, military, space and “dual use” articles and services must attend these trainings before any proposal or transaction is submitted or executed. The Office of the ECCO will keep a record of training assistance and assessment. The UPRM Research and Development (R&D) Center’s website will provide the faculty, staff and students with a calendar of internal training opportunities, internal and external web-based training resources.

## PENALTIES FOR NON-COMPLIANCE

Penalties for violations can apply to both individuals AND institutions and include:

- Temporary loss of “exporting” privileges (usually for 30-90 days)
- Loss of federal funding or industry contract -- for the university and the individual
- Negative public relations and media exposure

## PENALTIES BY REGULATING OFFICE

- Department of State (ITAR)
  - Criminal: fines up to \$1,000,000 per violation AND up to 10 years in prison
  - Civil: seizure and forfeiture of articles, revocation of exporting privileges, fines of up to \$500,000 per violation
- Department of Commerce (EAR)
  - Criminal: fines \$50,000 to \$1,000,000 or five times the value of the export, whichever is greater, per violation, AND up to 10 years in prison
  - Civil: loss of export privileges, fines \$10,000 to \$120,000 per violation
- Department of Treasury (OFAC)
  - Criminal violations: fines up to \$1,000,000 per violation, AND up to 10 years in prison

- Civil penalties: fines \$12,000 to \$55,000 (depending on applicable law) per violation.
- Violation of specific sanctions laws may involve additional penalties

## CONTACT INFORMATION

The Export Control Compliance Officer (ECCO) is responsible for the oversight and dissemination of this policy. The Office of Export Control Compliance is located at the UPRM Research and Development Center (R&DC), office JD2. However, there are other offices at the UPRM that are knowledgeable about export control issues and provide assistance to community members, such as, the Office of Graduate Studies, Office of International Students and Exchange, Office of Human Resources, and Equal Employment and Immigration Services Office. The R&DC website will provide up-to-date contact information and links to other export control related offices.

The ECCO is the Empowered Official responsible for the execution of licenses and the ultimate management and control of this policy. Any licenses required under ITAR, EAR, or OFAC will be coordinated through this person. The ECCO can provide assistance in the process and may be reached at (787) 832-4040 extension 5250, at the R&DC or by email at [exporcontrol@uprm.edu](mailto:exporcontrol@uprm.edu).

## DEFINITIONS

**Commerce Control List (CCL).** The Commerce Control List is a list that includes commodities, software, and technology subject to the export licensing authority of the Bureau of Industry and Security. The CCL is contained in Supplement No. 1 to Part 774 of the Export Administration Regulations (EAR).

**Deemed Export.** In addition to the shipment of a commodity (e.g. a product) from the United States to a foreign country, the Export Administration Regulations state that the release of technology to a foreign national (even inside the United States) is also 'deemed' to be an export. 'Deemed' examples can include: Tours of laboratories by foreign nationals; Foreign students, staff, or faculty conducting export controlled research or working in a laboratory where export controlled research is being performed; Hosting foreign scientists; Emails, visual inspection, oral exchanges

**Defense Article.** Defense article is a term used by the U.S. Department of State. It is defined as any item or technical data found in 22 CFR §121.1 of the ITAR (the United States Munitions List). This term includes technical data recorded or stored in any form, models, mock-ups, or other items that contain or reveal technical data directly relating to items designated in 22 CFR §121.1 of the ITAR. It does not include basic marketing information on function or purpose or general system descriptions.

**Defense Service.** Defense service is a term used by the U.S. Department of State. It is defined as 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. Defense service also includes the furnishing of technical data controlled by the ITAR to foreign persons, whether in the United States or abroad. Additionally, it includes the provision of military training to foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad by correspondence courses; technical, educational or informational publications and media of all kinds; training aid; orientation; training exercise; and military advice.

**Dual Use.** Dual use describes tangible items, software, and/or technology that have both a potential civilian and military use.

**EAR.** Export Administration Regulations. Managed by the Bureau of Industry and Security (BIS) under the U.S. Department of Commerce (DOC).

**Educational Instruction Exclusion.** The sharing of general scientific, mathematical, or engineering information commonly taught in colleges and universities (including information in the public domain) is exempt from export control regulations.

**Empowered Official.** An U.S. national employed by the UPRM with management authority who is legally able to sign export licenses and other related requests. This person should understand the export regulations and the criminal and civil liabilities and administrative penalties for violating federal export control regulations of military and defense articles.

**Encryption Items.** The process of converting data or information into code is encryption. The phrase encryption item includes all encryption commodities, software, and technology that contain encryption features subject to export controls. Though most of these items are controlled through the EAR, items having a specific military function may be controlled through ITAR.

**Export.** Any item that is sent from the United States to a foreign destination is an export, including, but not limited to, commodities and software or technology, such as clothing, building materials, instrumentation, chemicals, biological materials, circuit boards, automotive parts, blueprints, design plans, retail software packages and technical information. The term also applies to re-exports or re transfers of controlled items for a use, end user, or destination not previously authorized (e.g., an item shipped from one foreign country to another).

**Foreign National:** Any person who is not a U.S. citizen, lawful permanent resident of the U.S., or individual who has been granted asylum in the U.S.; any foreign corporation, society or any other entity or group that is not incorporated or organized to do business in the US; and any foreign government.

**Fundamental Research Exclusion.** Fundamental Research as defined in the National Security Decision Directive 189 (1985, NSDD189) is "basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons."

**ITAR.** International Traffic in Arms Regulations. Managed by the U.S. Department of State (DOS).

**OFAC.** Office of Foreign Assets Control. Managed by the U.S. Department of Treasury (DOT).

**Petitioner.** A person who files an immigration petition or application. UPRM Employee seeking to support the application. May be referred to as the sponsor or UPRM employee.

**Public Domain/Publicly Available Exclusion.** As defined in 22 CFR §120.22, 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; (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 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 the 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.

**Re-export.** Re-export means an actual shipment or transmission of controlled tangible items, software, or information from one foreign country to another foreign country. The export or re-export of controlled tangible items, software, or information that will transit through a country or countries, or will be unloaded in a country or countries for reloading and shipment to a new country, or are intended for re-export to the new country, are considered to be exports to the new country, and thus are regulated by export controls.

**Refugees.** Refugees include a person who has been forced from his home and crossed an international border for safety; person protected by political asylum; or someone granted temporary residency under an amnesty provision).

**Resident Aliens.** Resident aliens are green card holder.

**Sponsor.** Person completing the U.S. Customs and Immigration Services' Form I-129, part 6. It applies only to H-1B, H-1B1, L-1, or O-1A visas. Part 6 asks for a certification connected with export controls.

**Technology Assistant Agreement.** As defined in 22 CFR §120.22, technology assistant agreement is an agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing knowhow are not conveyed. Should such rights be transferred, 22 CFR §120.21 is applicable.

**Technical Data.** As defined in 22 CFR §120.10, technical data is: (1) Information, other than software as defined in 22 CFR §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; (3) Information covered by an invention secrecy order; (4) Software as defined in 22 CFR §121.8(f) directly related to defense articles; This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in § 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

**U.S. Citizens.** U.S. citizens are individuals born in the United States, Puerto Rico, Guam, Northern Mariana Islands, Virgin Islands, American Samoa or Swain's Island; foreign-born children, under age 18, residing in the U.S. with their birth or adoptive parents, at least one of whom is a U.S. citizen by birth or naturalization; and individuals granted citizenship status by Immigration and Naturalization Services (INS).

**U.S. Nationals (also known as U.S. persons).** U.S. national includes U.S. citizens and other lawful permanent residents of the U.S. (i.e. resident aliens); protected residents as defined by 8 USC 1324(a)(3) which include refugees.; any corporation or other entity incorporated to do business in the United States; and any governmental (federal, state, or local) entity.