



Board of Trustees Policy

BOT Policy No.: BOTP-2014-01		BOT Policy Name: Export Control Policy	
Initial Adoption Date: September 11, 2014		Revision Date(s): September 11, 2014, June 2, 2022, July 25, 2024 (Technical Amendment)	
Responsible Unit: Research		Responsible Executive: Director, Animal Welfare and Research Integrity	
Authority	International Traffic in Arms Regulations (ITAR) 22 CFR Parts 123 – 130; Export Administration Regulations (EAR) 15 CFR Parts 730 through 774; the Atomic Energy Act of 1954 (AEA) (Public Law 83-703); the Nuclear Regulatory Commission (NRC) 10 CFR Part 110; the Department of Energy Regulations, 10 CFR Part 810 4-209; Export Control 4 (“DEAR”), and U.S. Department of Treasury, Office of Foreign Assets Control (OFAC) sanction and embargo regulations, and other applicable federal agency export control regulations.		
Applicability	This Policy is applicable to all members of the Florida A&M University community including employees, faculty, students, researchers, contractors, and collaborators engaged in University research, education, and services.		

I. Purpose and Policy Statement

A. Background and Purpose

In order to enhance U.S. national security, trade, economic competitiveness, and anti-terrorism efforts, the federal government requires individual, state and private entities that engage in international transactions to comply with U.S. export control laws and guidelines which restrict the export of certain items, commodities, and materials and requires the issuance of export licenses. U.S. export control laws govern the release of technology, technical data, software, and information to foreign nationals within or outside of U.S.; the furnishing or shipment of defense services or articles to foreign individuals in the U.S. or abroad; and the ability to export or transact with certain individuals, entities or countries.

Universities and colleges are not exempt from these laws and regulations and, as a result, federal regulations may require the University to obtain permission from the U.S. Department of State, the U.S. Department of Commerce, or the U.S. Department of Treasury, Office of Foreign Assets Control before allowing foreign nationals to participate in research involving specific technologies or before sharing research information with persons who are not citizens of the United States or permanent resident aliens (e.g. foreign national employees, professors, students, researchers, or other foreign national collaborators).

B. Policy Statement

As a public institution of higher education, Florida A&M University (“FAMU” or “University”) networks, employs and collaborates with international partners on research, education and services through the establishment of international exchange programs, education of international students, attendance at conferences abroad, payments to foreign entities/individual, and the co-authorship of many international business ventures. It is the policy of FAMU that, absent extraordinary circumstance, teaching, research, and service will be accomplished openly and without prohibitions or restrictions on the publication and dissemination of the results of academic and research activities while complying with U.S. export law and regulations and pursuing applicable exemptions.

FAMU is committed to the highest level of compliance with the provisions as to export control established by the U.S. Department of Commerce through its Export Administration Regulations (“EAR”), the U.S. Department of State Controls through its International Traffic in Arms Regulations (“ITAR”), the Arms Export Control Act (“AECA”), and the Department of the Treasury Office of Foreign Assets Control (“OFAC”). The University is also dedicated to educating its employees, professors, students, researchers, contractors, and collaborators about the applicability of U.S. export control laws and regulations in the University setting and will resolve to conduct research in harmony with U.S. export control laws and regulations.

C. Administration and Compliance Roles

FAMU’s export control compliance program is administered under the authority of the Vice President for Research and such authority is delegated to the Director of Research Compliance within the Division of Research. The daily management of export compliance at FAMU is carried out by an export control specialist/Director within the Division of Research. All export control license applications on behalf of FAMU are processed by and through the Office of Technology Transfer and Export Control.

However, it is the responsibility of University faculty, officers, staff, students, administration and collaborators to be aware of the export control requirements under the regulations and the compliance program administered by the Office of Technology Transfer and Export Control. For example:

1. For sponsored projects, it is the responsibility of the principal investigator to ensure that the sponsored project is consistent with the export control regulations, this Policy and applicable University procedures.
2. If the export activity is not a sponsored project, it is the responsibility of the exporter to ensure the export is consistent with the export control regulations, this Policy and applicable University procedures.

Additional University Departments/Offices may be involved in review processes and approvals, as appropriate.

II. General Information

The EAR concerns dual-use technologies, materials, items, software, and technology. The ITAR relates primarily to defense articles and services and related technical data. The OFAC regulates travel and business activities with sanctioned and embargoed countries as well as certain individuals designated on the Specially Designated Nationals (SDN) list - available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

Most of the activities conducted on campus will not involve licensing requirements and will be eligible for exclusions under fundamental research exclusion, the publicly available or public domain information exclusion, or the educational exclusion. For those activities that do not fall within the exclusions, each employee is personally responsible and liable for safeguarding export-controlled data/information, i.e. controlled technology, technical data, or unclassified information as required by the federal government or determination by FAMU that an export license exception or exemption is required before a foreign person or foreign national may be given access to items or technology technical information controlled by either the U.S. Department of Commerce or the U.S. Department of State. No release of classified information

(i.e. confidential, secret, top-secret) is permitted unless the receiving entity has the proper security level clearance and a documented need to know for that specific information.

For a comprehensive list of the items and activities that are designated as falling under the EAR, refer to Title 15 Part 774 of the Export Administration Regulations, accessible at <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-774>. For details on how to comply with the federal regulations on export, such as the process for licensing the items, visit the U.S. Bureau of Industry and Security website at <http://www.bis.doc.gov/licensing/exportingbasics.htm>.

III. Penalties

Individuals who violate U.S. export control laws and regulations are subject to civil and criminal sanctions and the University is subject to administrative sanctions, monetary fines, and loss of research funding and export privileges.

Pursuant to 22 U.S.C.S., sections 2278 through 2780, the federal government has established penalties for failure to comply with U.S. export control regulations. Such criminal and civil penalties for unlawful export and disclosure of information may include the following:

- A. ITAR: Criminal penalties can reach up to \$1 million per violation and 20 years imprisonment for individual willful violations. Civil penalties imposed upon departments, agencies, and officials can reach up to \$500,000 per violation. A university found to be in violation of ITAR regulations can be debarred from contracting with the government and could lose its export privilege.
- B. EAR: Criminal violations by the University can incur penalties up to \$1 million for each willful violation. For individuals, criminal penalties can reach up to \$1 million or 20 years imprisonment, or both, per violation. Administrative penalties for both the university and individuals can reach up to \$300,000 per violation, or two times the value of the transaction, whichever is greater. Penalty maximums may be adjusted annually for inflation. These violations can also result in a denial of export privileges as well as other potential collateral penalties.
- C. OFAC: Penalties will range depending upon the sanction regime in question. Criminal violations by the University can reach up to \$1 million, and criminal penalties for individuals can reach \$1 million or 20 years in prison, or both. Civil penalties can be imposed up to \$250,000 per violation, or two times the transaction in question, or both.

In addition, failure to adhere to the policies and guidelines developed may be grounds for disciplinary action under applicable University regulations and collective bargaining agreements.

IV. Definitions

Additional and comprehensive definitions are found in the federal laws, regulations referenced herein.

- A. **Actual Export**. Technology or information leaving the shores of the United States.
- B. **Deemed Export**. An export of technology or source code (except encryption source code) is "deemed" to take place when it is released to a foreign national within the United States. This release of technology can be orally through conversation or training, or visually by reading training specifications, plans or blueprints.

- C. **Dual-use item.** Items that can be used both in military and other strategic uses and in civil applications.
- D. **EAR.** Export Administration Regulations (Department of Commerce), which are available at [15 C.F.R. Parts 730-774](#).
- E. **ITAR.** International Traffic in Arms Regulations, available at [22 C.F.R. Parts 120-130](#).
- F. **Export.** Any item that is sent from the United States to a foreign destination is an export. "Items" include commodities, software or technology, such as clothing, building materials, circuit boards, automotive parts, blue prints, design plans, retail software packages and technical information. How an item is transported outside of the United States does not matter in determining export license requirements. Regardless of the method used for the transfer, the transaction is considered an export. An item is also considered an export even if it is leaving the United States temporarily, if it is leaving the United States but is not for sale (e.g., a gift), or if it is going to a wholly-owned U.S. subsidiary in a foreign country. Even a foreign-origin item exported from the United States, transmitted or transshipped through the United States, or being returned from the United States to its foreign country of origin is considered an export. Finally, release of technology or source code subject to the EAR to a foreign national in the United States is "deemed" to be an export to the home country of the foreign national under the EAR. (See <http://www.bis.doc.gov/licensing/exportingbasics.htm>). The official definition of export under the EAR and ITAR should be consulted when determining whether a specific act constitutes an export.
- G. **Foreign National.** Any person who is not a U.S. Citizen or national; U.S. Lawful Permanent Resident; Person granted asylum; Person granted refugee status; or Temporary resident (does not include persons who hold status such as F-1, J-1, H-1, L-1 etc., or those in or outside the U.S. without status). It also means 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).
- H. **Fundamental Research.** Basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and share broadly in the scientific community. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons pursuant to specific U.S. government access and dissemination controls. However, University research is not considered fundamental research if:
1. The University accepts any restrictions on publication of the research results, other than limited prepublication reviews by research sponsors to prevent inadvertent disclosure of the sponsor's proprietary information or to ensure that publication will not compromise patent rights of the sponsor;
 2. The research is federally funded and specific controls over the access to and or dissemination of the research results have been contractually accepted by the University; or
 3. Forbids participation of foreign persons.

- I. **Fundamental Research Exclusion (FRE).** FRE provides that technology or software that arises during, or results from, fundamental research and is intended to be published is excluded from the export control regulations.
- J. **Hardware.** Any article, material, or supply except technology and software.
- K. **License.** A document bearing the word “license” issued by the Directorate of Defense Trade Controls or its authorized designee which permits the export or temporary import of a specific defense article or defense service.
- L. **Publicly Available.** Information that falls within any one of the following categories: Information or software that is or will be “published”; Information that arises during or results from fundamental research; Educational information; or Information in certain patent applications such as a patent application being sent to a foreign country to obtain the signature of an inventor who is a co-inventor with a person residing in the United States.
- M. **Reexport.** An actual shipment or transmission of items subject to export regulations from one foreign country to another foreign country. For the purposes of the EAR, the export or reexport of items subject to the EAR that will transit through a country or countries to a new country, or are intended for reexport to the new country, are deemed to be exports to the new country.
- N. **Software.** A collection on one or more programs or microprograms fixed in any tangible medium of expression.
- O. **Technical Data or Technology.**
1. **As defined in EAR, 15 C.F.R. § 772** – information necessary for the ‘development,’ ‘production,’ ‘use,’ operation, installation, maintenance, repair, overhaul, or refurbishing ...of an item.” This includes the following, which can be in tangible or intangible form: written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information revealed through visual inspection.”
 2. **As defined in the ITAR, 22 C.F.R. § 120.10** – information required for design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles. This includes:
 - a. information in the form of blueprints, drawings, photographs, plans, instructions or documentation;
 - b. classified information relating to defense articles and defense services . . . ;
 - c. information covered by an invention secrecy order; or
 - d. software . . . directly related to defense articles.
 3. This definition *does not* include the following:
 - a. Information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities,
 - b. Information in the public domain, or
 - c. Basic marketing information on function or purpose or general system descriptions of defense articles.

P. OFAC. U.S. Department of Treasury, Office of Foreign Assets Control Sanctions Program and Country, available at <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>.

V. Procedures, Approvals/Responsibilities

The President or President’s designee (Vice President for Research) shall create procedures in furtherance of this Policy to govern sponsored research activities.

Attachment(s) NA

Related Resource(s)