Export Controls Policy and Procedure

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PURPOSE

San Francisco State University complies with federal laws and regulations governing exports and ensures that compliance is consistent with the University's open academic environment.

The federal government has instituted laws to protect national security and to promote U.S. foreign policy. Federal export controls are implemented through the regulations promulgated under these laws. The two sets of regulations most prominent to University activities are the Export Administration Regulations (EAR), administered by the Department of Commerce, and the International Traffic in Arms Regulations (ITAR), administered by the Department of State. In addition, economic and trade embargoes and sanctions administered by the Office of Foreign Assets Control (OFAC) include restrictions that may affect University activities.

DEFINITIONS

Export control regulations require a license or other agency approval prior to the release of controlled technology, data, software, and information to foreign nationals within or outside the United States ("deemed export"). The regulations also control the shipment or other transmission of regulated items outside the United States.

The **ITAR** regulates technologies, products, and information that are inherently military in nature. The products and information controlled are referred to as "defense articles", "defense services" and "technical data". Examples include submersible vehicles, radar and sonar instruments, spacecraft systems, protective equipment, and certain toxicological agents. Regulated defense articles and associated controlled data are listed on the U.S. Munitions List.

The **EAR** regulates technologies, commodities, and software that are considered "dual-use". That is, the item and information may have a legitimate scientific or commercial purpose, the misuse of which could cause a threat to national security. Examples of dual-use items include certain engineering materials, electronic equipment, biological materials, navigation equipment, encryption software, and chemicals. The Commerce Control List contains the official list of controlled technology, commodities, and software.

OFAC restricts transactions with foreign countries that have sanctions in place and restricts transactions with certain entities or individuals. These restrictions are found on the OFAC website.

EXCLUSIONS

The following four exclusions act as a safe harbor for most University information-sharing:

1. **Fundamental Research Exclusion:** Information arising from basic and applied research in science and engineering at an accredited institution of higher learning within the U.S., where the resulting information is ordinarily published and shared broadly with the scientific community, is excluded from the scope of the ITAR and EAR.

2. **Public Domain/Publicly Available**:
   a. **ITAR**: information which is already published and generally accessible to the public is not subject to ITAR. Information that is available through books, periodicals, patents, open conferences in the United States, websites accessible to the public with no access controls, or other public release authorized by the U.S. government, is considered in the public domain.
   b. **EAR**: publicly available technology and non-encryption software, such as information that is the subject of an open patent application, published in a book or periodical, released at an open conference anywhere, available on a website accessible by the public with no access controls or information that will be published is not subject to the EAR. This includes submission of manuscripts to journals for consideration with the understanding that the article will be published if favorably received.

3. **Educational Instruction:**
   a. **EAR**: information that is released by instruction in catalog courses and associated teaching laboratories is not subject to the EAR.
   b. **ITAR**: information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities is not controlled by ITAR.

4. **Bona fide/full time employee:** Disclosure of technical data (as defined by ITAR) in the United States to a University bona fide and full-time regular employee, whose permanent abode is in the U.S., the employee is not a national of an embargoed country, and the University informs the employee in writing that the technical data may not be transferred to other foreign nationals without approval, is excluded from ITAR.

If unsure, check with Alison Sanders, ORSP Director, to determine if any exclusion applies to information, software, or technical data you intend to share with a foreign national or send abroad.

The following activities require a review for export compliance:
- ✓ Export of tangible items outside the United States
- ✓ Working with proprietary, restricted or classified information
- ✓ Projects performed abroad by SFSU personnel
- ✓ Furnishing defense services to a foreign person within the United States
- ✓ Transacting with embargoed or sanctioned countries or parties
- ✓ Creating, receiving or working with encryption software
- ✓ Providing use technology regarding controlled equipment to a foreign national

APPLICABILITY AND ADMINISTRATION

1. **Applicability:** Export control regulations apply to all activities undertaken by San Francisco State University faculty, staff, students, and other persons at the University acting on behalf of the University. If your project involves any of these activities, please contact ORSP:
   o Exporting tangible items outside the United States
   o Sharing of information, technical data, technology or software with a foreign national within the United States or abroad in which the export involves proprietary, restricted, or classified information or the information, technical data, technology or software does not otherwise fall under an exclusion
   o Furnishing of defense services to a foreign person within the United States or abroad
   o Transactions with embargoed, sanctioned or restricted parties, including travel, financial transactions, imports and exports.

2. **Administration.** The University's export control compliance program is administered under the authority of the Associate Vice President for Research and Sponsored Programs. The daily management of export compliance at SFSU is carried out by the Compliance Unit within ORSP.

ROLES AND RESPONSIBILITIES

1. If a sponsored project, it is the responsibility of the Principal Investigator to ensure that the project is consistent with export control regulations. The PI is specifically required to:
   o Be aware of and understand the SFSU Export Control Policy and Procedure.
   o Determine license requirements for all planned export activity subject to this policy and request license determination assistance from the Office of Research and Sponsored Programs well in advance of planned export.
   o Provide all non-disclosure or confidentiality agreements pertaining to sponsored research to ORSP for review and approval.
   o If export-controlled information or technology is received from an outside party or may be generated under a classified, restricted, proprietary project or project that is otherwise not considered fundamental research, contact Alison Sanders, Director - ORSP to develop a Technology Control Plan.
   o Contact Alison Sanders, ORSP Director, regarding any changes in scope or staffing that could alter the initial export control determination for a research project or to report any violation of export control regulations.
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, and this policy.
3. It is the responsibility of other University administrators and staff to be aware of this export control policy. Units and offices on campus with such responsibility include the Travel Office, Accounts Payable, Shipping and Receiving, and Human Resources.
4. Role of the Office of Research and Sponsored Programs:
   o Notify Principal Investigators of the SFSU Export Control Policy
   o Assist in drafting Technology Control Plans
   o Respond to export compliance questions, determination requests, and interpret federal laws and regulations regarding export controls
   o Apply for all export control licenses on behalf of the University and be the designated authorized office for certification of compliance with export control laws and regulations
   o Negotiate and approve language in non-disclosure agreements and confidentiality agreements pertaining to sponsored research, sponsored research agreements, grants, contracts and other binding documents regarding export control responsibilities of the University
   o Document and retain all export control license determinations that are relied on for exporting items, information, technology, technical data or software
   o Report any violations

RESOURCES

Commerce Control List (contains the official list of controlled technology, commodities, and software):
http://www.access.gpo.gov/bis/ear/ear_data.html

U.S. Munitions List (Lists regulated defense articles and associated controlled data):
http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf

Office of Foreign Assets Control (OFAC restricts transactions with foreign countries that have sanctions in place as well as the ability to transact with certain entities or individuals):
http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets- Control.aspx