Albert Einstein College of Medicine

Export Control Policy and Program

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I. Purpose

The purpose of this Policy is to set forth Albert Einstein College of Medicine's ("College" or "Einstein") commitment to comply with U.S. export control laws and regulations, identify export control responsibilities of College personnel, and set up the College's export control compliance program. The procedures outlined serve as Einstein's program of internal controls, safeguards and educational measures designed to minimize risk of potential violations of all applicable export control laws and regulations.

II. Scope

This Policy applies to all Einstein faculty, visiting scientists, postdoctoral fellows, staff, students, volunteers, contractors, third parties, and any affiliated parties conducting research in Einstein facilities or with Einstein resources (collectively, "Covered Individuals"). It is the responsibility of Covered Individuals to read and comply with this Policy and prevent any transactions contrary to this Policy. Violations of Export Control Laws could subject Einstein and/or individuals responsible for the violation to loss of research contracts, severe criminal and/or civil penalties, including monetary fines and possible imprisonment.

III. Policy

All Covered Individuals are required to comply with certain U.S. laws and regulations that relate to:

1. Transferring or sharing proprietary, confidential or otherwise controlled information, material, source code, or technology with foreign nationals located in the U.S. or abroad;
2. Sending or taking tangible items or controlled technology or source code to another country;
3. Collaborations with foreign entities;
4. Interactions with embargoed or sanctioned countries, organizations, or individuals.

These laws and regulations are collectively referred to as the "Export Control Laws."

The relevant Export Control Laws are as follows:

1. the Export Administration Regulations (EAR), administered by the U.S. Department of Commerce, Bureau of Industry and Security (BIS) (15 CFR parts 730-744)
2. the International Traffic in Arms Regulations (ITAR), administered by the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) (22 CFR parts 120-130)
3. the Office of Foreign Asset Control (OFAC), administered by the U.S. Department of the Treasury (22 CFR parts 500 – 599)

Additional details and export control resources can be found in the following Appendices:

Appendix 1 – Overview of Export Control Laws and Related Terms

Appendix 2 – Exclusions, Exemptions, and Exceptions from Export Controls

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IV.A. Key Roles

Export control requires the College's full institutional commitment to be successful. Senior College officials have a responsibility to ensure that adequate resources and management support exist to enable the institution to fully comply with export control rules and regulations, as well as resolution of any issues. A "Roles and Responsibilities" guide is included as an attachment to this Policy as Appendix 3.

IV.B. Export Control Activities

The following College activities will require an export control analysis to determine if an export control license is required or an exemption applies.

1. International Shipments of Research Materials and Scientific Equipment
2. Foreign Nationals on Campus
3. Research & Collaborations with Foreign Entities or Persons (whether in person or remote, in the U.S. or Abroad)
4. Travel Outside the United States
5. Travel with Research Equipment, Including Laptops
6. Travel to Comprehensively Embargoed Countries
7. Travel to Countries with No or Limited Sanctions Programs
8. Presenting at Conferences
9. Teaching Courses Outside the United States or Online
10. Publishing

IV.B.1. International Shipments of Research Materials and Scientific Equipment

While "export" includes more than shipments of tangible items, international shipments of research materials and scientific equipment is a high-risk area for export controls compliance in higher education. Before sending any equipment and materials (other than publicly available publications) outside the U.S., the College must determine if they are subject to Export Control Laws. This determination process proceeds as follows:

- The PI or other person responsible for the equipment or materials must contact the Office of General Counsel, which will conduct a restricted party screening on the foreign person or entity (see Restricted Party Screenings in Appendix 1); if the foreign person or entity is identified as a restricted party, the College will not make the export.

- In consultation with the PI, the Office of General Counsel will determine whether the material or equipment is listed on the United States Munitions List ("USML") or the Commerce Control List ("CCL") and whether the material or equipment is being sent to a sanctioned country.

- If the Office of General Counsel determines that a license is required to ship the material or equipment to its intended destination, the matter is referred to the appropriate dean or his/her designees, regarding whether the College will apply for a license or will not make the proposed shipment.

- If the College decides to apply for a license, the Office of General Counsel will prepare the appropriate documents for the license. The equipment or materials may not be shipped unless and until the license is received.

- Once a license is received, the Office of General Counsel will work with the PI and other appropriate offices to ship the equipment or materials safely and in compliance with all other requirements.

- MTAShare: A Material Transfer Agreement (”MTA”) is required for an exchange of materials to and from academic and industry collaborators. For academic collaborators, PIs are required to enter into an MTA via the Einstein MTAShare portal where the above-described export control review will be completed. MTAShare is an automatic online platform designed to streamline and expedite the MTA process.

- For the exchange of materials to and from industry, PIs should submit a request via MTA@einsteinmed.edu.

IV.B.2. Foreign Nationals on Campus and Deemed Exports

While exports are commonly associated with tangible items being shipped or taken abroad, exports can occur within the U.S. in the form of the transfer of controlled information or technology (including through training) to foreign nationals. When such a transfer occurs, the export is “deemed” to be an export to the foreign national’s country of citizenship. Consideration of potential deemed exports is particularly important in university research settings with students and scholars from around the globe and the free exchange of information and training.

A license may be required to release certain information or technical data to a foreign national in the U.S. Examples of releases to a foreign national (known as a “deemed export”) include providing access to controlled technology, enabling visual inspection or use of a controlled equipment, providing access to a controlled technology via tours of facilities, and verbal or written exchanges (e.g., via email or video teleconference) of controlled technical data, technology or information that grants access to controlled technology or technical data.

The Office of International Services will facilitate the deemed export certification, which is part of the H1B/O1 visa application process, as well as the Foreign Scholar and Visitor Screening certification and process for J1 and B visa applicants. Through this process, the College will ensure that foreign persons are appropriately screened and the laboratories in which they may be working/conducting research have the relevant controls in place, as needed, to enable them to join.

IV.B.3. Research & Collaborations with Foreign Entities or Persons (whether in person or remote, in the U.S. and Abroad)

Although export controls issues can arise in many distinct types of academic research, certain academic fields are at higher risk. Research in the following fields is more likely to trigger export licensing requirements: engineering, physics, computer science, space sciences, and research involving encrypted software, chemicals, and lasers. Another high-risk area that is sometimes overlooked is research involving human, plant, or animal bacteria, viruses, fungi, and toxins.

Furthermore, certain research will be higher risk not only because of the subject matter of the research, but also because (1) the institution has accepted publication or access restrictions (which will eliminate the Fundamental Research Exclusion), (2) the research involves export-controlled items or information received from a third party, (3) the identity of the research funder (e.g., Department of Defense), or (4) some of the research is conducted outside the United States or with foreign collaborators, among other reasons.

Collaborations between Covered Individuals and collaborators/scholars at foreign institutions or organizations typically do not require an export license or specific approvals by the Office of General Counsel unless they involve export-controlled or otherwise restricted research or involve scholars in sanctioned countries. Before engaging in an international collaboration, Einstein will verify that the foreign individual or organization is not a blocked or sanctioned entity (a "restricted party").

IV.B.4. Travel Outside the United States

Any travel outside the United States raises potential export control concerns because all items the travelers take with them are being "exported." Fortunately, most of these items will fall within an applicable license exception and the risk is primarily with computers, other electronic personal devices, and unpublished or proprietary information or data both on the computer or electronic devices or in hard copy. In addition, any travel to an embargoed country is high-risk (both from a sanctions and safety perspective) and should be reviewed in advance by the Office of General Counsel.

Before traveling, please ensure that your information is publicly available, in the public domain, is educational information, or qualifies for the fundamental research exclusion. Information that is controlled or proprietary or subject to a non-disclosure or confidentiality agreement must be removed from your devices. Further, such controlled information should not be redownloaded from the cloud onto your device while abroad. Please ensure that your College issued devices are free of proprietary information, special software, or encryption not put on a laptop by its manufacturer that may require a license for export.

IV.B.5. Travel with Research Equipment, Including Laptops

Traveling outside the U.S. with certain items or equipment, including scientific equipment, laptops, encryption software, cell phones, tablets, flash drives, cameras, and certain navigation systems, or thermal imaging cameras, may require a license or use of a license exception/exemption depending on the travel destination. When taking these items abroad, Covered Individuals need to ensure that the equipment or software does not require a license. The Office of General Counsel can assist in determining license requirements. Below is some general guidance:

EAR99: most items with an EAR99 classification can be exported without a license. Do not export EAR99 items to Cuba, Iran, North Korea, Syria, Russia, Belarus or the following territories of Ukraine: (i) Crimea; (ii) the so-called Donetsk People's Republic; and (iii) Luhansk People's Republic (the "Restricted Countries") without prior consultation with the Office of General Counsel.

Laptops, tablets & cell phones: most laptops, tablets and cell phones have an ECCN of either 5A992 or 4A994. This classification means that the equipment can be exported without a license to most countries.

However, if Covered Individuals plan to travel to embargoed or sanctioned countries with these types of devices, they must contact Office of General Counsel prior to travel. In some instances, a license may be needed, which can take several months. It is important that the traveler not only consider the ECCN of the device itself but ensure that there is no data/information on the device that is export controlled or sensitive (or if it is, that Office of General Counsel is informed to assess export license requirements).

Research equipment: if Covered Individuals are planning to travel abroad with items not normally carried as baggage by international travelers, such as UAVs/drones, microscopes, thermal or infrared cameras, advanced GPS devices, special software or any other equipment, they must contact Office of General Counsel well in advance of travel for equipment classification and license determination.

Software: most commercially available basic software (such as Microsoft Office) is considered "Mass Market" and can be exported on your device without a license other than to the Restricted Countries. Proprietary software, software that includes encryption, and/or other complex software (unless developed during the course of a Fundamental Research project at Einstein) may require an export license and must be reviewed by Office of General Counsel.

IV.B.6. Travel to Restricted Countries

The following are Restricted Countries, which are comprehensively embargoed countries/regions as well as countries subject to such substantial export restrictions that they are virtually equivalent to comprehensively embargoed countries/regions

- Cuba
- Iran
- North Korea
- Syria
- Russia
- Belarus
- Crimea, the so-called Donetsk People's Republic, and the so-called Luhansk People's Republic regions of Ukraine

When planning to travel to a Restricted Country for research, academic collaborations, and/or to present at a conference, Covered Individuals must coordinate with the Office of General Counsel as well in advance of the trip as possible. The Office of General Counsel will determine whether a general license would apply to the proposed activities or begin the OFAC license application process. If the proposed activity takes advantage of a general license, there must be formal, internal documentation that includes a description of the proposed activity and the general license that is being applied. Travel under a general license to certain destinations may require additional paperwork and certifications from the College. The Office of General Counsel will provide any required paperwork and will also provide the traveler with a list of generally allowable/ prohibited activities. The documentation must be signed by the Office of General Counsel and any College personnel traveling to the embargoed country.

IV.B.7. Travel to Countries with Limited Sanctions Programs

Travel to certain destinations will require coordination with the Office of General Counsel, especially if equipment or special software is being taken abroad. Some destinations may have list-based sanctions in place or are included in the proscribed countries list. Covered Individuals should contact the Office of General Counsel in advance of traveling to the following countries/regions:

- Africa: Burundi, Central African Republic, Democratic Republic of the Congo, Ethiopia Libya, Mali, Somalia, South Sudan, Sudan, Zimbabwe
- Middle East: Iraq, Lebanon, Yemen
- Europe: Balkans
- South America: Nicaragua, Venezuela
- Asia: Myanmar (Burma), China (including Hong Kong and Macau)

IV.B.8. Presenting at Conferences

Participation in conferences, both domestic and foreign, raises additional concerns beyond the travel considerations detailed above. Information that would otherwise be EAR-controlled presented at a conference will generally not require a license if: (i) the conference, meeting, seminar, trade show, or exhibition is generally accessible to the interested public; and (ii) the information presented is released in an unlimited distribution format. However, if the information is ITAR-controlled and not already published and accessible or available to the public through the mediums specified in the regulations, it cannot be shared at a foreign conference without a license or a domestic conference if there will be foreign nationals in attendance. In addition, not all conferences will fall within the scope of the EAR publicly available exception.

Covered Individuals must consult with Office of General Counsel if their conference presentations will include unpublished information in advance of the conference.

IV.B.9. Teaching Courses Outside the United States or Online

While an export control license may not usually be required for an academic institution to teach courses to foreign persons due to the educational information license exclusion explained above, an OFAC license may be needed if the course is taking place in an embargoed country, or if nationals of an embargoed country are participating in an online course. The license requirements vary depending on the embargoed country.

IV.B.10. Publishing

Technical data regarding controlled technologies may not be disclosed to foreign nationals without an export license. Disclosure may occur in many ways, including through presentations or publications.

"Technical Data" is "Information…required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles" (22 CFR 120.10). Note that "defense articles" includes essentially all space-based research. Technical Data is limited to military, defense, and space-related (i.e. beyond Earth) research funded and does NOT include information concerning general scientific, mathematical or engineering principles, information already in the public domain, such as that available through unrestricted publications, unlimited distribution at conferences, or libraries (22 CFR 120.11), or fundamental research "where the resulting information is ordinarily published and shared broadly in the scientific community." (22 CFR 120.11).

Covered Individuals must consult with the Office of General Counsel if they believe their publications may include Technical Data.

IV.C. Training and Education

Training and education are the foundation of a successful export control compliance program. Having well-informed Covered Individuals minimizes the likelihood that a violation of Export Control Laws will occur, which is protective of both the individual and the College. Covered Individuals who are full-time or part-time Einstein employees and all Einstein faculty employed full-time or part-time by Einstein or Montefiore are required to complete export control training. Newly hired Einstein faculty and employees will be required to complete export control training as part of the onboarding process.

CITI Program Export Control Training. Export control training is available through the Collaborative Institutional Training Initiative's (CITI) Export Control modules. Covered Individuals subject to training requirements as described above must self-register at https://about.citiprogram.org. The Office of General Counsel will also provide periodic export control workshops and trainings to Covered Individuals.

The following chart lists the CITI Program Export Control modules available. All full-time or part-time Einstein employees and Einstein faculty members are required to complete the Introduction to Export Compliance module. All principal investigators on grants and IRB protocols are also required to complete the Export Compliance for Researchers module. All Covered Individuals are encouraged to take modules that are relevant to their roles.

IV.C.1. CITI Program Modules

CITI program modules are as follows:

1. Introduction to Export Compliance (ID 16800)
2. Export Compliance and Distance Education (ID 16811)
3. Export Compliance When Using Technology in Research (ID 16804)
4. Export Compliance for Researchers (ID 16801)
5. Export Compliance for Research Administrators (ID 16803)
6. Export Compliance and Biosafety (ID 16805)
7. Export Compliance for International Shipping (ID 16807)
8. Export Compliance and Purchasing (ID 16808)
9. Export Compliance and Collaborations (ID 16810)

IV.C.2. Export Controls Webpage

Einstein's export control compliance webpage is a resource available to all College personnel and to any external sponsors/collaborators that wish to learn more about the College's approach to export control compliance. College personnel should use the website for up-to-date information about Einstein's program and educational offerings, and for self-guided education regarding Export Control Laws.

IV.D. Monitoring and Auditing

Einstein's export control compliance program is subject to audit in accordance with its audit and evaluation schedule. Results of internal audits are provided to senior leadership for deficiencies to be promptly rectified and best practices and recommendations for improvement operationalized.

IV.E. Detecting and Reporting Violations

Covered Individuals that observe, notice, or suspect an export control violation have an obligation to report it to the Office of General Counsel. Reports can also be made via the College's confidential and anonymous third-party hosted by Ethics Point. All reports of violations or suspected violations of export controls will be reviewed and investigated if warranted. If it is determined that College personnel violated Export Control Laws and regulations and/or College policy, the individual may be subject to disciplinary action by the College.

IV.F. Disciplinary Actions for Noncompliance

If, upon review and investigation, it is determined that a Covered Individual violated Export Control Laws, the Covered Individual may be subject to disciplinary actions in accordance with standard College policies and procedures. Factors that will be considered in evaluating and implementing disciplinary action may include:

- Whether the Covered Individual knowingly violated Export Control Laws;
- Whether the Covered Individual repeatedly violated Export Control Laws;
- The severity of the violation; and
- Whether the Covered Individual cooperated during the investigation and has complied or has agreed to comply various corrective actions.

At a minimum, the Covered Individual who was found to be non-compliant will receive mandatory export control training. Other possible disciplinary actions may include notification of the Covered Individual's supervisor, prohibition from engaging in certain export-related activities; prohibition from receiving and using certain materials or technology in research.

IV.G. Employee Protection/Non-Retaliation

Einstein's Non-Retaliation policy prohibits taking any retaliatory action for reporting or inquiring about alleged improper or wrongful activity, including non-compliance with export controls. Any retaliatory action covered under Einstein's Non-Retaliation policy may be subject to disciplinary action, up to, and including, termination. The College will review complaints of retaliation in accordance with the Non-Retaliation policy.

IV.H. Penalties for Export Control Violations

Export control violations can result in criminal and administrative penalties for both the Covered Individual and the College. For violations of the EAR, criminal penalties can go as high as 20 years of imprisonment and $1 million in fines per violation. Administrative penalties can be up to $377,700 per violation or twice the value of the transaction at issue, whichever is greater. There could also be collateral consequences such as losing export privileges, and the items could be seized by the government. The penalties are similarly severe for ITAR and OFAC violations. The penalties can be lower if an institution voluntarily discloses the export control violation and cooperates with the relevant agency. Importantly, some export control violations are required to be notified to the Government of the United States. There are other mitigating factors that agencies consider when accessing penalties such as the strength of the institution's compliance program before and after the violation took place.

IV.I. Record Retention

Covered Individuals are responsible for maintaining either hard or electronic copies of all import and export documentation, including determinations that export rules do not apply or that a license exception is available to the project or situation, and entry documents and such other documents to support the tariff classification, customs valuation, country of origin, marking/labeling, quantity, and other information provided on entry documents for a period of not less than five (5) years and consistent with Einstein's record retention and disposal policy after termination of the export controlled activity.

IV.J. Export Control Contacts

Questions about this Policy or Export Control Laws are to be directed to Office of General Counsel. The Office of General Counsel will assist Covered Individuals in determining the applicability of Export Control Laws regarding research, travel, or other potentially controlled activities. The Office of General Counsel maintains and updates the College's export control website with further information and guidance regarding export control requirements.

V. Effective Date

Effective as of: 2025-12-05

History:
2025-12-05: Initial publication.

VI. Policy Management and Responsibilities

Einstein's Office of General Counsel is the Responsible Office under this Policy. Einstein's general counsel is the responsible officer for the management of this Policy. Einstein's executive dean is the responsible executive for this Policy.

VII. Approved (or Revised)

Signed by:
Marla Keller
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Responsible Executive

12/09/2025

Date

Appendix 1: Overview of Export Control Laws

1. Export Control Agencies

There are three federal agencies that oversee the main export control and sanctions regulatory regimes: the Department of Commerce's Bureau of Industry and Security, the Department of State's Directorate of Defense Trade Controls, and the Treasury Department's Office of Foreign Assets Control. Several factors will determine which agency has jurisdiction and what restrictions will apply including what is being exported, where the export is going, who is receiving the export, and the export's intended use. If prior governmental authorization is required from one of the relevant agencies to export tangible or intangible items, approval will come in the form of a license of the use of an exception (EAR) or exemption (ITAR).

a. Department of Commerce and the Export Administration Regulations (EAR)

The Bureau of Industry and Security ("BIS") within the U.S. Department of Commerce is responsible for promulgating and enforcing one of the main export control legal regimes: the Export Administration Regulations ("EAR").

EAR governs "dual use" technology, services, and commodities that have both military and civilian uses. Technology and commodities controlled under the EAR are listed on the Commerce Control List ("CCL") and are divided into ten categories: (0) nuclear materials, facilities, and equipment; (1) materials, chemicals, microorganisms, and toxins; (2) materials processing; (3) electronics; (4) computers; (5) telecommunications and information security; (6) sensors and lasers; (7) navigation and avionics; (8) marine; and (9) propulsion systems, space vehicles and related equipment. Within these categories, each item is given an Export Control Classification Number ("ECCN") and reasons for control. <u>Determining whether an item is restricted for export to a particular country or foreign national involves looking at the EAR's country chart, which lists the reasons for control that apply to each country and cross-referencing the reason(s) for control for the item in question.</u>

Other items that are EAR-regulated, but are of lower risk, are not given a unique number but rather are classified as EAR99, which is the catchall category. If an item is classified as EAR99, generally a license to export is not required unless it will be exported to an embargoed or otherwise restricted country, to concerning end-users, or in support of a prohibited end-use.

b. Department of State and the International Traffic in Arms Regulations (ITAR)

The Department of State's Directorate of Defense Trade Controls ("DDTC") is responsible for administering the International Traffic in Arms Regulations ("ITAR"), which controls defense articles (including technical data), defense services, and brokering. The defense articles and services subject to the jurisdiction of ITAR have been determined to provide a critical military or intelligence advantage. Most items covered by ITAR are enumerated in the United States Munitions List ("USML").

A license is more likely to be required for ITAR-controlled commodities and services than for EAR-controlled commodities and services, as exporting ITAR-controlled commodities and services poses more of a threat to national security. Colleges and university activities are more likely to be subject to the EAR than the ITAR unless they have research grants and contracts from and with the Department of Defense.

c. Treasury Department Office of Foreign Assets Controls (OFAC) and Economic Sanctions and Embargoes

The Treasury Department's Office of Foreign Assets Controls ("OFAC") is the primary agency responsible for administrating embargoes and targeted sanctions against certain countries, individuals, and organizations.

As part of its enforcement actions, OFAC publishes a list of individuals and companies owned, controlled by, or acting on behalf of targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country specific. These individuals and companies are collectively known as "Specially Designated Nationals" (SDNs). Assets of SDNs are blocked and U.S. persons are generally prohibited from dealing with them.

Country-specific sanction programs should be reviewed prior to conducting activities with an OFAC sanctioned entity or person, or in an OFAC-sanctioned country. Individual sanctions describe what is exempt from embargo (e.g., personal communications, exchange of informational materials) and generally will include activities which are permissible under an applicable license. If activities are allowed under a general license, then specific permission to engage in the activity is not required. However, it is advised to carefully review the conditions of

the general license and use of the general license documented. Activities that do not qualify for a general license may be permissible under a specific OFAC license. Specific license requests must be submitted and approved by OFAC before engaging in the sanctioned activity.

The U.S. Government currently maintains comprehensive territorial sanctions and export restrictions against Cuba, Iran, North Korea, Syria, and certain territories of Ukraine (e.g., Crimea and the so-called Donetsk People's Republic and Luhansk People's Republic), as well as more limited sanctions against individuals, entities, or economic sectors in certain countries, including Venezuela, China (including Hong Kong and Macau), Sudan, Russia, Belarus, Myanmar, and other countries.

A current list of OFAC sanctions programs is available at https://www.treasury.gov/resource-center/sanctions/programs/pages/programs.aspx. This list may change at any time.

Covered Individuals should not conduct any transactions involving sanctioned or embargoed countries or travel to such countries for business without consulting the Office of General Counsel.

2. Restricted Party Screenings

Restricted party screening is an essential piece of export control compliance. Restricted party lists are the various lists maintained by the U.S. and other governments of individuals and entities that are subject to economic sanctions or other trade restrictions. Transactions with restricted parties are prohibited or substantially restricted. These lists include but are not limited to the following:

- Entity List ("BIS")
- Debarred List ("DDTC")
- Denied Persons List ("BIS")
- Foreign Sanctions Evaders List ("OFAC")
- Non-Proliferation Sanctions ("State Department")

- Sectoral Sanctions Identifications List ("OFAC")
- Specially Designated Nationals List ("OFAC")
- Unverified List ("BIS")

The restricted party lists are also subject to change at any time. Any activities involving a Restricted Party must be immediately raised with the Office of General Counsel.

Einstein uses Kchecks, a web-based software tool, to conduct restricted party screening of entities and individuals. The tool screens parties and entities against all government denied and restricted party lists as well financial services, law enforcement, and international lists. The tool also maintains an audit trail of restricted party screening activities and is dynamic in that the software rescreens previously screened parties on a nightly basis.

Definitions - Export Control Terms

Bureau of Industry and Security ("BIS") – The bureau at the U.S. Department of Commerce responsible for enforcing the Export Administration Regulations (EAR). [15 CFR 730-774]

Code of Federal Regulations ("CFR") – The codification of the general and permanent rules and regulations published in the *Federal Register* by the executive departments and agencies of the U.S. Government.

Commerce Control List ("CCL") – A list of Items under the export control jurisdiction of the BIS. The CCL is at 15 CFR 774, Supplement 1.

Deemed Export – The release of any information, data, technology, or source code subject to export controls to any foreign national in the United States. Deemed exports may occur through such means as a demonstration, email, computer access, oral exchanges, or visual inspection of equipment and facilities, as well as the electronic transmission of controlled information or technology. This exchange is "deemed" to be an export to the country of the Foreign National. [15 CFR 734.13(a)(2)]

Deemed Reexport – The release of any information, data, technology, or source code subject to export controls to a Foreign National who is a citizen or permanent resident of a country other than the foreign country where the release takes place. [15 CFR 734.14(a)(2)]

Defense Article – Any commodity Technical Data designated in the United States Munitions List (USML). Includes Technical Data recorded or stored in any physical form, models, and mock-ups, or other Items that reveal Technical Data directly relating to the Defense Article described on the USML. Defense articles also include forgings, castings, and other unfinished products that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles. Basic marketing information on function, purpose, or general system description does not constitute a Defense Article [22 CFR 120.31].

Defense Service – Means: (i) the furnishing of assistance (including training), whether in the United States or abroad, to a foreign person in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of Defense Articles; (ii) the furnishing of any controlled Technical Data to a foreign national anywhere; or (iii) military training of foreign units and forces in the U.S. or abroad. [22 CFR 120.32]

Directorate of Defense Trade Controls (DDTC) – The directorate at the Department of State responsible for the administration and enforcement of the International Traffic in Arms Regulations (“ITAR”). [22 CFR 120-130]

Dual Use Item – A term used for EAR-controlled Items that can be used both in commercial applications and in military and other strategic uses. [15 CFR 772.1]

Export Administration Regulations (EAR) – Department of Commerce Bureau of Industry and Security (“BIS”) regulations [15 CFR 730-774] implementing the Export Administration Act of 1979 (“EAA”), as amended, and the International Emergency Economic Powers Act (“IEEPA”), as amended, and the Export Control Reform Act (“ECRA”) of 2018.

Export Control Classification Number (ECCN) – A five-character alphanumeric classification [15 CFR 738.2(d)] used to identify Items on the Commerce Control List that are subject to the export licensing authority of the Bureau of Industry and Security. [15 CFR 738.2]

Export – Any release of export-controlled Items, information, or services outside the U.S. to anyone (including a U.S. citizen). “*Release*” includes shipment as well as oral, written, electronic (fax, e-mail, Internet, etc.), or visual disclosure [15 CFR 734.15; 22 CFR 120.56] as well as the export of encryption source code or object code software. Any release of export-controlled Items, information, or services to a Foreign National or Foreign Person in the U.S. is a Deemed Export.

Export controlled – Any Item, information, assistance, Technology, Technical Data, or service which can be considered an export or reexport under the export control regulations such as EAR, ITAR, and OFAC.

Export License – A written authorization provided by the appropriate governing regulatory authority (such as BIS, OFAC or DDTC) detailing the specific terms and conditions under which the export, deemed export, reexport, deemed reexport, retransfer, brokering, of export-controlled items, information, technology, services, or other regulated activities are allowed. [15 CFR 772.1; 22 CFR 120.57 and 123]

Foreign National – Any person who is not: a U.S. citizen (native or national); an alien who is a “lawful permanent resident” (Green Card) as defined by 8 U.S.C. 1101(a)(20); or a “protected individual” as defined by 8 U.S.C. 1324b(a)(3) designated as an asylee, refugee, or a temporary resident under amnesty provisions. Any foreign corporation, business association, partnership, trust, society, or any other foreign entity or group, as well as any international organization or foreign government, is considered to be a foreign national under the EAR. [15 CFR 772.1]

Foreign Person – Any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). 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 U.S., as well as international organizations, foreign governments and any agency or subdivision of foreign governments. [22 CFR 120.63]

Fundamental Research –Under the EAR, Fundamental Research is defined as research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons. [15 CFR 734.8]. Under the ITAR, Fundamental Research is similarly defined, with the added requirement that it be conducted at accredited institutions of higher learning in the U.S. in order to be exempt from the controls. [22 CFR 120.34]

International Traffic in Arms Regulation (ITAR) – Department of State Directorate of Defense Trade Controls ("DDTC") regulations [22 CFR 120-130] implementing the Arms Export Control Act [22 USC 2778] and Executive Order 11958, as amended.

Item – A commodity, software or Technology. [15 CFR 772.1]

Office of Foreign Assets Control (OFAC) – The office at the Department of the Treasury responsible for blocking assets of foreign countries subject to economic sanctions; controlling participation by U.S. persons, including foreign subsidiaries, in transactions with specific countries or nationals of such countries; and administering embargoes on certain countries or areas of countries. [31 CFR 500 -599]

Public Domain – ITAR defines public domain as information which is published and which is generally accessible or available to the public. [22 CFR 120.34]

Published – Information that is generally accessible to the public without restrictions and, therefore, not subject to the EAR. [15 CFR 734.7(a)]

Reexport – A shipment or transmission of export-controlled items, information, and services from one foreign country to another foreign country. ITAR [22 CFR 120.51] and EAR [15 CFR 734.14] impose restrictions on shipments and transfers to a third country of goods or technology originally exported from the United States, without proper authorization.

Technical Data – For purpose of ITAR control, this means information regarded as required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles. Technical Data includes information in the form of blueprints, drawings, photographs, plans, instructions, or documentation. It further includes classified information, information covered by an invention secrecy order and software directly related to defense articles [22 CFR 120.33].

Technology –Information necessary for the "development," "production," "use," operation, installation, maintenance, repair, overhaul, or refurbishing of an Item. Technology may be in any tangible or intangible form, such as 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. [15 CFR 772.1]

U.S. Export Control Laws - Comprised of the EAR, ITAR, and OFAC regulations. Control the release of certain items, technology, information, services, and software both in the U.S. and abroad. Also include sanctions and embargoes against specific entities, individuals and countries, as well as anti-boycott laws.

U.S. Person – Any individual who is a citizen or national of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) (aka green card holder), or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3) (e.g., a refugee under 8 U.S.C. 1157 or asylee under 8 U.S.C. 1158). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. [22 CFR 120.62].

United States Munitions List (USML) – A list of articles, services, and related Technical Data designated as Defense Articles and Defense Services pursuant to sections 38 and 47(7) of the Arms Export Control Act, 22 U.S.C. 2778. [22 CFR 121.1(a)]

Additional EAR and ITAR definitions are available at 15 CFR 772.1 and 22 CFR 120, respectively.

Appendix 2: Exclusions, Exemptions, and Exceptions from Export Controls

Many exports and deemed exports associated with academic research do not require government export licenses, even if they involve controlled technologies or equipment listed on the EAR or the ITAR, because they are subject to one of the following exclusions/exceptions/exemptions: (1) the "fundamental research" exclusion; (2) the "publicly available" or "public domain" exclusion; (3) the "educational information" exclusion; (4) the bona fide and full time regular employee exemption/exception; and (5) the temporary export exception. While "exclusions" can be applicable for both the EAR and the ITAR, "exclusions" is the term used for activities subject to the EAR while "exemptions" is the term to use for activities subject to the ITAR.

Please consult with the Office of General Counsel if you have any questions about these export control exclusions/exceptions/exemptions.

Fundamental Research Exclusion

The main exemption is the Fundamental Research Exclusion ("FRE"). The FRE allows institutions to include foreign persons in certain research without needing to apply for a license.

Fundamental Research is defined differently in the EAR and ITAR, though generally, Fundamental Research is basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, and for which researchers have not accepted restrictions for proprietary or national security reasons.

Put differently, research will no longer be considered fundamental, and an export license may be required, if the institution agrees to restrict access to the research or restrict the dissemination of the research results. Such restrictions could include prior approval of any publication resulting from the research or an agreement to prohibit foreign persons from participating in the research.

Certain types of prepublication review will not eliminate the FRE. For example, an institution can agree to prepublication review by a research sponsor if the purpose of the prepublication review is to ensure that publication does not include proprietary information that could compromise patent rights.

Furthermore, the FRE only applies to the results of the research, and not tangible items. Physical items such as biological or chemical materials will always remain subject to Export Control Laws and a license may be required to physically export them.

Publicly Available/Public Domain Exclusion

Under both the EAR and the ITAR, information that is publicly accessible is not subject to licensing requirements. However, the two regimes use different terms and have different standards of how the information needs to be made public to be excluded for the jurisdiction of the regulations.

Under the EAR, information that is "published" is not subject to the EAR's requirements. To be "published," the information must be made available to the public without restrictions regarding further dissemination, such as by including the information in a public library or a journal that anyone can subscribe to. Information is also “published” if it is openly distributed at a conference or similar meeting generally accessible to the interested public.

In contrast, ITAR uses the term “public domain,” which covers information that is published and generally accessible or available to the public through one of the methods listed in the regulation or with explicit approval from cognizant federal agency. Further, the ITAR’s public domain exclusion only applies in the context of a conference if the conference is located in the United States.

Educational Information Exclusion

Under both the ITAR and the EAR, there is an exclusion for information shared in an academic course. The EAR explicitly excludes from regulation information released in a class that is listed in the institution’s course catalogue or in an associated teaching laboratory. Under ITAR, information concerning general scientific, mathematical, or engineering principles commonly taught at schools and higher education institutions is excluded from the definition of technical information (i.e., it is not controlled).

Bona Fide and Full Time Regular Employee & Temporary Export Exception/Exemptions

Under certain conditions, U.S. universities can release controlled technology/technical data to their bona fide full-time regular employees that are not U.S. persons. To qualify for this EAR/ITAR license exception/exemption, the employee’s residence needs to be in the United States throughout their employment, and the employee cannot be a national of certain restricted countries. In addition, the institution must inform the individual in writing that they must not transfer the technical data/technology/software code to another foreign person without prior written approval from BIS or DDTC. There are additional recordkeeping obligations associated with this exception/exemption.

In addition, there is an EAR license exception for temporary exports that College travelers often rely upon (perhaps without realizing it) when they carry controlled items with them when traveling outside the United States. For example, the “Tools of Trade” license exception allow travelers to bring certain College-owned equipment and software on foreign travels without needing a license as long as the items remain in their custody. Similarly, the EAR’s baggage license exception allows travelers to bring certain personally owned items including computers without a license.

Appendix 3: Export Control Roles and Responsibilities at Einstein

Position or Office	Responsibilities
Faculty/Staff	• Be aware of and in compliance with export controls and College institutional policies and procedures. • Complete mandatory export control training. • Identify the purchase/use of biological agents (pathogens) or other regulated chemicals that have export control implications; notify EHS and the Office of General Counsel of any purchases of export-controlled items. • Identify research that have export control implications. • Consult with the Office of General Counsel about foreign travel, speaking at conferences, or publishing. Ensure appropriate licenses, if applicable, have been obtained prior to sharing EC controlled information.
Office of General Counsel	• Manage College's export control program, including restricted party screenings, export control classifications, license determinations, and submission of license requests. • Educate and advise the campus constituents on export control compliance requirements. • Assist PIs and others when research involves export-controlled equipment or information. • Maintain appropriate documentation and record-keeping related to export control activities. • Act as institutional office of record when communicating with federal agencies. • Maintain export control website and training. • Track and maintain awareness of developments in export control and sanctions regulations that apply to the College's activities. • Work with IT to ensure the appropriate controls on the electronic storage of export-control information are in place. • Implement technology control plans for programs or individuals, when necessary. • Point of contact for outside counsel on export-control related support.
Office of Research Finance and Office of Grant Support (OGS)	• OGS will review Export Control section of the Sponsored Projects record in Cayuse. • OGS will review terms and conditions of awards for applications to new sponsors and communicate updated contract language for existing sponsors. • OGS will review terms and conditions of sponsored projects award documentation escalated by Research Finance; identify restrictions on publication and dissemination of research results; negotiate out restrictive language and clause that restrict the institution's ability to publish the research or participation/access by foreign nationals. • Ensure export control language is included in agreements if applicable. • OGS will conduct or request export control and sanctions screenings for individuals or vendors listed in budgets. • OGS will communicate potential export control issues to Office of General Counsel and the PI.

Environmental Health and Safety	• Maintain inventories of chemicals and other regulated substances, including tracking-controlled biologicals on campuses. • Maintain listing of labs for the campus and other details. • Provide guidance about shipping chemicals and other controlled substances, and movement of labs; this includes having oversight and administration of the online Biological Shipping course. • Manages the institutional Biosafety program. The Institutional Biosafety Committee (IBC) ensures researchers working with certain materials have appropriate approvals. This includes Dual Use Research of Concern (DURC), which may have export control implications. • Consult with PIs and departments on questions related to the safe shipment and handling of biological agents and pathogens.
Human Resources	• Perform I-9 verification of employment eligibility for all new hires including monthly reporting to monitor I-9 forms. • Work with International office to track the status of College sponsored international employees. • Perform restricted party screenings at the time of hire of faculty, employees, students, postdoctoral fellows, volunteers, visiting scientists and visiting trainees.
Office of Information Technology **Office of Security and Transportation**	• Provide technical assistance on laptops and international travel. Assistance to consider may include providing "sanitized laptops" for international travel and providing information on how to handle emails and other forms of communication of information subject to export control regulations when outside the United States. • Provide technical assistance on creating access controlled electronic storage systems to ensure only U.S. persons and authorized foreign nationals / foreign persons are able to access export-controlled information. • Implement IP blocking to ensure: (i) Einstein networks cannot be accessed from embargoed countries generally; and (ii) export-controlled information stored electronically cannot be downloaded from outside of the United States. • With at least 24-hour advance notice from department host, will perform restricted party screening of any foreign national attempting to visit campus. • Will notify the Office of General Counsel of any foreign national requesting access to enter any building on our campus. • Will work with labs to ensure the appropriate controls on the physical storage of export-controlled hardware and technology are in place (e.g., access control to rooms with export-controlled hardware or technology).
Office of International Services	• Update intake process for foreign visa applications to include restricted party screenings and deemed export reviews. • Work with Office of General Counsel to implement individual technology control plans for Foreign Nationals, when necessary.

Procurement and Business Services	• Maintains oversight of all suppliers providing goods and services to the College to ensure compliance with institutional, federal, and sponsor requirements. • Performs restricted party screenings of all foreign persons, entities, and organizations involved in procurement activities to prevent engagement with parties listed on U.S. government watch lists. • Continuously monitors the College's active supplier list using K-Checks and other compliance tools to identify any potential export control or debarment concerns. • Maintains and administers the E-Ship Global platform to ensure that all international shipments are processed in accordance with export control, customs, and hazardous material regulations. • Reports any findings or potential compliance violations to the Office of General Counsel for review and further action, as appropriate.
Office of Human Research Affairs	• Run initial restricted party screening for any proposed human subjects research collaborations (including sending/receiving data/specimens) with foreign counterparts. • Coordinate with the Office of General Counsel, Office of Grant Support, Office of Research Finance, and Procurement if any concerns of monitored entities arise from such screen. • Review disclosures of foreign activities submitted by faculty and investigators as part of the Conflict of Interest disclosure process, running initial restricted party screening and informing Office of General Counsel and Office of Grant Support, as appropriate.
Office of Biotechnology and Business Development	• Run initial restricted party screening for any proposed transactions (i.e., collaborations or material transfer agreements) with foreign counterparts. • Coordinate with the Office of General Counsel and Procurement if any concerns of monitored entities arise from such screen.

Appendix 4: Sample Export Control Language for Research Grants and Contracts

College is subject to United States laws and regulations controlling the export of goods, technology, software and services, including the International Traffic in Arms Regulations, the Export Administration Regulations, and the sanctions regulations administered by the Office of Foreign Asset Controls of the U.S. Department of Treasury. College's obligations hereunder are subject to compliance with these laws. Sponsor agrees to notify the College before Sponsor sends the College any export-controlled material or information. Such notification will include an identification of any material or information that is export controlled, the classification of such export-controlled material or information, and an identification of any restrictions on the disclosure or use of such export-controlled material or information. College reserves the right to decline the receipt of any material or information that is export controlled and to terminate this Agreement in the event that the research specified therein cannot be performed without the export-controlled material or information. If Sponsor fails to notify College of Sponsor export-controlled material or information in accordance with this Section and an agency of the U.S. Government imposes a fine or penalty upon College because College has disclosed or used such material or information in violation of applicable law, Sponsor will defend and indemnify College from such fine or penalty. Further, Sponsor will hold harmless College for any unauthorized release of export-controlled information that Sponsor provided to College.