**International Traffic in Arms Regulations (ITAR) Compliance Policy and Procedures**

**I. Scope.**

This policy addresses compliance with the International Traffic in Arms Regulations (ITAR) by Marquette University, and the University’s employees, agents, and contractors.  It is the policy of the University to fully comply with applicable requirements under the ITAR and related legislation and regulations.

**II. Background.**

**The Arms Export Control Act (AECA)**

Under the direction of the President of the United States, the U.S. Secretary of State is responsible for the continuous supervision and general direction of sales, leases, financing, cooperative projects, and exports of defense articles and defense services.

Section 38 of the AECA provides the authority to control the commercial export of defense articles and defense services described on the USML.

Executive Order 13637 delegates this authority to the U.S. Secretary of State. This authority has been further delegated to the Deputy Assistant Secretary of State for Defense Trade Controls in the Department’s Bureau of Political-Military Affairs. DDTC is primarily responsible for administering and implementing these authorities through the ITAR.

**The Directorate of Defense Trade Controls (DDTC)**

DDTC ensures commercial, munitions-related defense exports enhance U.S. national security and foreign policy objectives. A key part of DDTC’s mission is to update the ITAR to keep pace with innovation, so that U.S. industry and foreign partners comply with applicable regulations, policies, and requirements; and to ensure that the munitions export process is reliable and predictable.

**Department of State Regulations (ITAR)**

*Regulatory Authority and Scope*

The Arms Export Control Act (AECA), 22 U.S.C. § 2778 grants authority to the President of the United States to designate and control the export and import of defense articles and services. Presidential executive order 11958 delegates this responsibility to the Secretary of State. The Department of State Directorate of Defense Trade Controls (DDTC) administers this authority through implementation of the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130.

**United State Munitions List (USML)**

The ITAR contains the United State Munitions List (USML), which includes defense articles and related technical data that are controlled for export purposes. In addition to the defense article or related technical data, constituent parts and components of the defense article are controlled under the ITAR. For example, military aircraft are on the USML, as are their engines, electronic controls, and inertial navigation systems, even though such components may have other applications. If a commodity contains a part or component that is controlled under the ITAR, such as a controlled inertial navigation system, then that commodity is also controlled under the ITAR, regardless of whether or not that commodity has an inherently military purpose. Thus, an autopilot system used in basic robotics research may be controlled under the ITAR.

Many items designed for military use are also used for research completely unrelated to that military use. It is important to understand that the ITAR designation is unrelated to an institution’s use of a controlled item.

**III. Important ITAR Definitions.**

To understand the requirements of the ITAR, it is important to understand terminology specific to the regulation such as “defense article,” “technical data,” and “defense service.” Additionally, it is important to understand how the ITAR defines “fundamental research” and “public domain” information.

**Defense article**is defined in 22 C.F.R. § 120.31. It means any item or technical data that is specifically designed, developed, configured, adapted, or modified for a controlled use listed on the USML. In addition to the items on the USML, models or other items that reveal technical data related to USML items are also considered to be defense articles. Defense articles do not include basic marketing information on function or purpose or general system descriptions.

**Technical data**is defined in 22 C.F.R. § 120.33. Technical data includes information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles. This information includes blueprints, drawings, photographs, plans, instructions, and documentation. ITAR technical data also includes defense articles and defense services on the USML and 600-series items controlled by the Commerce Control List, information covered by an invention secrecy order, and software directly related to defense articles.

**Defense Service**is defined in 22 C.F.R. § 120.32. The definition includes furnishing of assistance, including training, to a foreign person, 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. It also includes providing any foreign person any technical data as defined above.

While not common for most university-related instruction, it is important to note that defense service also means military training of foreign units and forces, including formal or information instruction of foreign persons in the United States or abroad or by correspondence courses, technical, education, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

The ITAR considers fundamental research in science and engineering at accredited institutions of higher learning in the United States to be in the public domain, and therefore, no export license would be needed to export the resulting information abroad or share it with foreign nationals in the United States.

**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 the 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 publication of scientific and technical information resulting from the project 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. (22 C.F.R. § 120.34(a)(8).)

**Public Domain**is defined in 22 C.F.R. § 120.34. Public domain information is information which

is published and which is generally accessible or available to the public. The ITAR describes means by which public domain information might be available, which in addition to libraries, subscriptions, newsstands, and bookstores, include published patents and public release at conferences, meetings, and trade shows ***in***the United States where those venues are generally accessible to the public.

**The USML Categories**

The USML defines 21 classes of defense articles. The USML is found at 22 C.F.R. § 121. In the interest of brevity, only the main headings of the USML categories are listed here. For detailed descriptions of what is included in each category, the ITAR may be accessed online at International Traffic in Arms Regulations (ITAR). Note that category XXI is reserved for use by DDTC for controlling new technologies under the ITAR.

I Firearms and Related Articles

II Guns and Armament

III Ammunition and Ordnance

IV Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines

V Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents

VI Surface Vessels of War and Special Naval Equipment

VII Ground Vehicles

VIII Aircraft and Related Articles

IX Military Training Equipment and Training

X Personal Protective Equipment

XI Military Electronics

XII Fire Control, Laser, Imaging, and Guidance Equipment

XIII Materials and Miscellaneous Articles

XIV Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

XV Spacecraft and Related Articles

XVI Nuclear Weapons Related Articles

XVII Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated

XVIII Directed Energy Weapons

XIX Gas Turbine Engines and Associated Equipment

XX Submersible Vessels and Related Articles

XXI Articles, Technical Data, and Defense Services Not Otherwise Enumerated

**IV. Compliance Requirements and Procedures**

For any activities that are covered that are governed by ITAR, all participating Marquette employees, agents or contractors must: 1) read, understand and follow this policy, Marquette University’s [Export Control Policy](https://www.marquette.edu/ca/upp/upp-2-02-export-controls.php) and the [Technology Control Plan Process](https://www.marquette.edu/research-sponsored-programs/policies-and-guidance.php); 2) enter into a Technology Control Plan before engaging in any manufacturing, exporting, or brokering of defense articles or services, which will include record maintenance requirements including those pertaining to 22 CFR § 122.5 as applicable; 3) follow Marquette University’s [Export Control Policy](https://www.marquette.edu/ca/upp/upp-2-02-export-controls.php) when traveling internationally, shipping items internationally, securing licenses or working with international partners; and 4) immediately report any breach of this policy, the [Export Control Policy](https://www.marquette.edu/ca/upp/upp-2-02-export-controls.php) or Technology Control Plan to the Executive Director of the Office of Research and Sponsored Projects.

**Exporting under the ITAR**

The ITAR uses three different terms to designate export-controlled items – defense articles, technical data, and defense services.  An export as defined under the ITAR includes sending or taking a defense article out of the United States, disclosing (including oral or visual disclosure) technical data to a foreign person whether in the U.S. or abroad, or performing a defense service on behalf of a foreign person whether in the U.S. or abroad. (See 22 C.F.R. § 120.50 for a complete definition of export under the ITAR.) **This definition is extremely broad. It includes taking controlled technical data out of the United States on a laptop computer or computing device, regardless of whether or not that information is viewed or accessed while abroad. It also includes allowing a foreign person to view or use a defense article in the United States. Most exports of defense articles and defense services must be licensed by DDTC.**

It is the policy of the University to comply with any applicable restrictions on export of defense articles, technical data, and defense services under the ITAR.

**Maintenance of records by the University**

All records pertaining to the manufacture, acquisition and disposition (to include copies of all documentation on exports using exemptions and applications and licenses and their related documentation) of defense articles; of technical data; the provision of defense services; brokering activities; and information on political contributions, fees, or commissions furnished or obtained, as required by federal regulation and any export of export-controlled items shall be retained for a period of five years from date of license expiration, and in accordance with applicable federal regulations including [22 CFR § 122.5](https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-122/section-122.5).

Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. The records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, “legible” and “legibility” mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. “Readable” and “readability” means the quality of a group of letters or numerals being recognized as complete words or numbers.) This information must be stored in such a manner that none of it may be altered once it is initially recorded without recording all changes, who made them, and when they were made. For processes or systems based on the storage of digital images, the process or system must afford accessibility to all digital images in the records being maintained.

**DDTC Registration and Licenses.**

Generally, a U.S. person that manufactures, brokers, or exports defense articles or services must be registered with DDTC. Registration is required prior to applying for a license or taking advantage of some license exemptions. The University maintains a DDTC registration to facilitate research its operations. Registered entities may apply for licenses, or permission, to export defense articles and defense services. DDTC reviews license requests on an individual basis and consults with other agencies, such as the Department of Defense, in consideration of the request. Exports of ITAR-controlled items are prohibited to some countries and individuals. DDTC country policies may be found at: <https://www.pmddtc.state.gov/ddtc_public?id=ddtc_public_portal_country_landing>.

University personnel should contact the Export Control staff within the Research Integrity and Compliance Office for assistance in determining whether a license may be necessary or to explore potentially applicable exemptions, and for assistance in preparing export control plans.

**Commodity Jurisdiction**

The DDTC has the responsibility to determine if an item or technology falls within the scope of the ITAR or if the item/technology is under the jurisdiction of the Department of Commerce for the purposes of export controls. While it is possible to self-classify an item, DDTC should be consulted if there is any doubt as to whether an article or service is subject to the ITAR.

Staff within the Office of Research and Sponsored Programs will assist with the submission of commodity jurisdiction requests as well with the determination of any export licensing requirements, in consultation with the University’s Office of the General Counsel.

**V. Questions; Training**.

Questions regarding this policy should be directed to the Executive Director of the Office of Research and Sponsored Programs, who is responsible for disseminating this policy to campus personnel and providing training to help ensure awareness and compliance.

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