

**What are export controls?**

U.S. laws that restrict the transfer of militarily useful goods, technology, services, and information, including equipment and technology used in research, for reasons of foreign policy and national security.

Federal export controls are accomplished primarily through:

- (1) The International Traffic in Arms Regulations (ITAR) implemented by the Department of State, Directorate of Defense Trade Controls, for inherently military items.
- (2) The Export Administration Regulations (EAR) administered by the Department of Commerce, Bureau of Industry and Security, for “dual use” of items that have both a commercial and potential military use.
- (3) Regulations of the Treasury Department, Office of Foreign Assets Control (OFAC) relating to the transfer of technology or assistance to sanctioned countries or their citizens.

**What is considered a “foreign” entity for purposes of export controls?**

- Foreign government
- Foreign organization not incorporated or organized to do business in the U.S.
- Individual who is not a U.S. citizen or lawful permanent resident of the U.S. (green card holder)

**What is an export?**

Any oral, written, electronic, or visual disclosure, shipment, transfer, or transmission of goods, technology, services, or information to:

- Anyone outside the U.S. (including a U.S. citizen physically located in a foreign country)
- A non-U.S. entity or individual regardless of location
- A foreign embassy or affiliate

**What is a “deemed” export subject to export controls?**

Disclosure or transfer of export controlled items, including technology and information, to a foreign entity or individual within the U.S. These releases are deemed to be an export to the home country of the foreign national and can occur by such means as:

- Tours of laboratories
- Involvement of foreign researchers or foreign students in the research
- Oral exchanges, emails, or visual inspection
- Hosting a foreign researcher

**What is subject to the International Traffic in Arms Regulations (ITAR)?**

Transfer and export (including deemed exports) of items with military applications listed on the U.S. Munitions List (USML): [http://www.pdtc.state.gov/regulations\\_laws/itar Consolidated.html](http://www.pdtc.state.gov/regulations_laws/itar Consolidated.html)

**What is subject to the Export Administration Regulations (EAR)?**

Transfer and export (included deemed export) of “dual-use” items listed on the Commerce Control List (CCL): [http://www.access.gpo.gov/bis/ear/ear\\_data.html#ccl](http://www.access.gpo.gov/bis/ear/ear_data.html#ccl)

## **What is subject to the Office of Foreign Assets Control (OFAC)?**

Transactions with countries subject to boycotts, trade sanctions and embargoes and with individuals identified on the Specially Designated Nationals and Blocked Persons List (SDN):

<http://www.treas.gov/offices/enforcement/ofac/>

## **What happens if we violate the export control laws?**

The consequences for noncompliance are very serious for both the University and the researcher. Penalties may include fines up to \$1,000,000 and, for individual researchers, imprisonment up to 10 years. These penalties apply to single violations; multiple violations from the same transaction can easily result in enormous penalties. Sanctions on both individuals and institutions may also include termination of export privileges, suspension/debarment from federal government contracting, and loss of federal funding.

## **Are there any exclusions from or exceptions to the export control requirements?**

Yes, there are exclusions from or exceptions. These include:

- (1) Fundamental Research Exclusion – applies to the products, but not the underlying data or documents, of basic and applied research in science and engineering performed by universities as long as the resulting information is ordinarily published and shared broadly within the scientific community.
- (2) Educational Information – information commonly taught for instruction in courses and associated with general scientific, mathematical, or engineering principles
- (3) Publicly Available – information generally accessible to the public, such as information in libraries, bookstores, open seminars, and published patent information. However, the State Department has determined that information contained on internet sites is not necessarily considered to be in the public domain.

## **How can we lose the “fundamental research” exclusion?**

- Accept restrictions on publication or release of information
- Allow sponsor approval rights on publications
- Limit access of foreign nationals to research
- Enter into Non Disclosure Agreements (NDAs) that limit disclosure of information
- PIs accept “side deals” directly with a sponsor

## **How can export controls affect my research?**

“Export” is defined not only as a physical transfer or disclosure of an item outside the U.S., but also as a transfer or disclosure in any form of a controlled item or information within the U.S. to anyone who is a foreign national (not a US citizen or permanent resident). This is called the “deemed export” rule. As a result, unless an exclusion or exception is available, the University is required to obtain prior governmental approval in the form of an export license before allowing the participation of foreign national faculty, staff, or students in affected research.

In addition to affecting who may participate in the research project, export controls may affect research by requiring licenses in the following situations, among others:

- Presentation or discussion of previously unpublished research at conferences and meetings where foreign national scholars may be in attendance
- Research collaborations with foreign nationals and technical exchange programs
- Transfers of research equipment abroad
- Visits to your lab by foreign scholars

## **What kinds of projects raise export control questions?**

Any activity regardless of funding type may be subject to export controls if it involves the actual export or “deemed” export of any item that is either “**dual use**” (commercial in nature with possible military application) or **inherently military**.

Work in the following areas is considered high risk:

- Engineering
- Space sciences
- Computer Science
- Research with encrypted software
- Research with controlled chemicals, biological agents, and toxins

In addition, any of the following raise export control questions for your project regardless of the area of research:

Sponsor restrictions on the participation of foreign nationals in the research

- Sponsor restrictions on the publication or disclosure of the research results
- Indications from the sponsor or others that export-controlled items, including information or technology, will be furnished for use in the research
- The physical export of controlled goods or technology is expected

## **What do I need to do as a Principal Investigator?**

You need to educate yourself about export controls. You don't have to become an expert, but you need to have a fundamental understanding of the subject to be able to know when to raise questions and alert the University to a possible export controls issue.

## **What resources are available to ensure compliance with export control regulations?**

Office of Research will provide periodic trainings and seminars on export control regulations. OSP staff will closely monitor RFPs, proposals, award documents and other agreements to highlight potential export control issues. The University has registered for an online tool called Visual Compliance that will provide updated information on export control regulations and will assist in determining if items are controlled. As necessary, OSP staff will work with PIs to complete Technology Control Plans (TCPs) or License requests.

## **What is a Technology Control Plan (TCP)?**

A project-specific plan that establishes procedures to secure controlled items, including technology and information, from use and observation by unlicensed non-U.S. citizens and is signed by the PI.

## **Does a sponsoring agency have the authority to waive export control requirements?**

No. Waivers of export control requirements are provided for in the regulations as either “exemptions” (ITAR) or “exceptions” (EAR), but they must be authorized by either the Department of State (for ITAR) or the Department of Commerce (for EAR). No other federal agency has the authority to waive the export control regulations on behalf of State or Commerce.

## **May a foreign national use the equipment in my lab if the “fundamental research” exclusion applies to my research?**

Not necessarily. The transfer of controlled technology or source code of a controlled item may require a license even if the normal operation of the equipment does not.

**What do I need to keep in mind if I travel abroad?**

Taking equipment, such as laptops, abroad may require a license for controlled technology loaded on the computer. Financial transactions and information exchanges may be restricted.

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