

Export Control Regulations

A Quick Guide for Faculty & Staff



About the Quick Guide

This Quick Guide has been developed by the University of Rhode Island (URI), Division of Research and Economic Development, Office of Research Integrity (ORI) as a summary of the laws, regulations and issues to be considered with regards to export controls and research in the university setting.

Overview

The U.S. Export Control Regulations are intended to serve various government objectives, among them to protect national security, advance U.S. foreign policy and economic goals and prevent the proliferation of weapons of mass destruction. These controls generally restrict the export of products and services based on the type of product and the destination of the export.

U.S. policymakers recognize that foreign students and researchers make substantial contributions to U.S. research efforts, but the potential transfer of controlled defense or dual-use technologies to their home countries could have significant consequences to U.S. national interests. Therefore, export controls require balancing concerns about national security and U.S. economic vitality with the traditional open research environment where the right to publish and disseminate results of research are key. This is critical as information resulting from basic and applied research conducted in an open environment with no publication restrictions is excluded from Export Control Regulations under the Fundamental Research Exclusion (see pg. 2). Staying within the boundaries of this exclusion allows the university to avoid issues associated with “deemed exports” of technical data.

It is important to realize however, that equipment, software or other technologies (acquired or developed) may still fall under Export Control Regulations. Therefore, a license may be required if any of these items are to be exported from the U.S. to another country.

Applicable Regulations

● Department of State – International Traffic in Arms Regulations (ITAR)

https://www.pmdotc.state.gov/regulations_laws?id=ddtc_kb_article_page&sys_id=%2024d528fd9bfc930044f9ff621f961987

- Regulates military or defense- related articles, technologies and services.

● Department of Commerce – Bureau of Industry and Security (EAR)

<http://www.bis.doc.gov/>

Export Administration Regulations (EAR) – regulates commercial and “dual use” products and technologies.

Applicable Regulations, cont.

● Department of the Treasury – Office of Foreign Assets Control (OFAC)

<http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>

Sanctions the conduct of research and the transfer of assets (defined very broadly as “something of value”) in those countries where the U.S. has imposed trade or economic sanctions or embargoes. OFAC regulations may also govern purchases from or the transfer of assets to certain individuals or organizations.

Key Definitions

Under the U.S. Export Control Regulations, the export of certain items of equipment, software, and technologies that have military or defense applications (under ITAR), or certain equipment, software, or technologies that may have dual commercial and military use (under EAR), are considered “controlled articles” and may require a license.

“**Export**” means to send or take controlled articles out of the U.S., to transfer ownership or control of a controlled article to a foreign person, or to disclose certain defined information about a controlled article to a foreign government or foreign person. The article being sent or taken out of the U.S. is also referred to as an “export.” Although the export can take place when the article is carried out of the U.S. in luggage or sent by mail or courier, an export can also occur when performing services for the benefit of a foreign person or entity, sending a wire transfer, e-mail, or fax, or in a conversation.

“**Deemed Export**” is the transfer, release, or disclosure of equipment or technical data about controlled articles to foreign persons in the U.S. including commodity(ies), goods, equipment, technology, technical data, source code or software. Unlicensed “deemed exports” under U.S. export laws are equivalent to actual shipments to non-U.S. destinations. Deemed Exports may take place during: classes, lectures, conferences, meetings, informal visits, collaboration meetings, or technology discussions.

“**Technical Data**” is technical information that goes beyond general and basic marketing materials about a controlled article. The term does not refer to the controlled equipment or the article itself, or to the type of information contained in publicly available user manuals. It means specific information necessary for the development, production, or use of the article.

Fundamental Research Exclusion

The export control regulatory schemes acknowledge the importance of open, fundamental research at universities. Basic and applied research in science and engineering conducted on campus resulting in information that is ordinarily published and shared broadly within the scientific community is generally considered to be “fundamental research” and is excluded from export license requirements. Generally speaking, the results of fundamental research are in the “public domain” under ITAR and are not subject to the EAR under the provisions related to “publicly available technology”, “published information and software”, “information resulting from fundamental research”, and “educational information.”

In order to be considered “fundamental research”, the researcher cannot be subject to restrictions on the publication of the information resulting from the research and cannot exclude participation of foreign nationals. If the university or the researcher accepts broader restrictions on the publication results—whether formally (such as in a sponsored research agreement) or informally (such as a “handshake” agreement) - or has agreed to accept specific national security controls, then the fundamental research exclusion will not apply.

By qualifying under the fundamental research exclusions of EAR and ITAR, the university generally can avoid problems associated with “deemed exports” of technical data. In this manner, a university can maintain its open research and education environment while also complying with the export regulations.

***Note:** that the fundamental research exclusion for universities does not apply to faculty or students who are performing research at companies, including companies that license university technology. The fundamental research exclusion applies only on campus.



Educational Information Exclusion

A “teaching” exclusion allows for the disclosure of educational information that is released by instruction in courses identified in the university catalog and associated teaching laboratories of academic institutions (EAR 15 CFR § 734.9), or information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities [ITAR 120.10(a)(5)].

Public Domain Exclusion

A “public domain” exclusion applies if the information is in the public domain and is generally accessible to the public through unrestricted distribution. [15 CFR 734.3(b)(3) under the EAR; 22 CFR § 120.11 under the ITAR.] Public domain information (ITAR) and publicly available information and software (EAR) is published and generally accessible or available to the public through:

- Publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public;
- Subscriptions that are available without restriction to any individual who desires to obtain or purchase the published information;
- Websites available to the public free of charge or at a cost that does not exceed the cost of reproduction or distribution;
- Libraries open to the public, including most university libraries;
- Patents and open (published) patent applications;
- Release at an “open” conference, meeting, seminar, trade show, or other open gathering in the U.S. (ITAR) or anywhere (EAR), which is generally accessible by the public for a fee reasonably related to the cost and where attendees may take notes and leave with notes;
- Fundamental research, or educational information.

KEY ISSUES TO CONSIDER

SHIPPING



PAYMENT



PUBLICATION



COLLABORATION



TRAVEL



Materials Leaving Campus, Material Transfers, and Shipping

International shipments of controlled items under ITAR or EAR may require a license. Even an item resulting from fundamental research may require a license if it is to be shipped outside of the U.S.

In all cases, if the shipment is to a sanctioned nation, entity, or individual, an OFAC license is required. It is critical to secure license approval or verify a license exception before shipping any controlled items. Contact the ORI Director for guidance on verifying license exceptions and submission of any license applications. See last page for contact details.

See [URI Export Controls: Shipments](#) for further assistance.

Payments and Wire Transfers

OFAC monitors the transmission of cash through wire transfers made from U.S. banks. Payments to sanctioned nations or individuals of these nations are prohibited without a license (e.g., payment for speaker fee to a foreign person). Bringing cash into sanctioned nations and paying individuals there directly is also prohibited.

See <http://www.ustreas.gov/offices/enforcement/ofac> for information on restricted nations, entities and individuals as well as procedures for obtaining licenses to transact business with embargoed nations.

Publication Restrictions

If the university accepts restrictions on publication or dissemination of research results, the fundamental research/publicly available/public domain exclusions are no longer applicable. Investigators must refrain from making side deals with sponsors to restrict publication or dissemination, as these will also invalidate the fundamental research exclusion. A short (30-60 day) pre-publication review period for patent protection or to permit a sponsor to request removal of inadvertently included sponsor-proprietary information does not invalidate the exclusion. Note that the university can still agree to protect a sponsor's proprietary information that is not export controlled. What the university cannot agree to do is to keep university research results confidential.

Collaboration with Foreign Universities

In general, collaboration with foreign universities is allowed. Information created under the Fundamental Research Exclusion may be freely transferred outside the U.S. provided that the country, entity or individual to which the information is being transferred is not on one of the government's "prohibited lists." For more information about the prohibited lists, contact the ORI Director. If the collaboration involves shipping materials abroad, proprietary information, the exchange of researchers or faculty, or work in or transfer of funds to sanctioned nations, licenses may be required.

International Travel

Travel to conduct research or educational activities to embargoed/sanctioned countries should be reviewed by the ORI to determine if a license from the U.S. Department of Treasury, Office of Foreign Assets Control is needed. For a current list of embargoed countries, see: <http://www.ustreas.gov/offices/enforcement/ofac>.

Additionally, ORI will check government "prohibited lists" to ensure the university is not doing business with people or entities who have been debarred or denied export privileges.

You may bring the usual and reasonable kinds and quantities of items that will be used by you or your employees in a lawful enterprise. These are known as "tools of trade". These items must remain under your effective control. This means that they must either be in your physical possession, locked in the hotel safe or guarded. Encryption commodities and software may be pre-loaded on laptops, handheld devices or other computer equipment. Tools of trade may accompany an individual departing the U.S. or may be shipped unaccompanied within one month before the individual's departure, or at any time after departure. These items, if not consumed or destroyed, must be returned to the U.S. as soon as practicable, but in no event later than one year after the date of export. No tools of the trade may be taken to Cuba or Sudan.

See 15CFR Part 740.9(a)(1) for the "Tools of Trade" License Exception: <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

Best Practices for Export Control

- ✈ Determine if an item is controlled under ITAR and EAR prior to shipping outside of the U.S. This applies to outgoing materials under MTA's, scientific equipment, software and other deliverables.
- ✈ Do not enter into secrecy agreements or otherwise agree to withhold results in research projects conducted at the university or that involve university facilities, students, or staff.
- ✈ Only attend meetings where foreign nationals are allowed to attend.
- ✈ If you encounter an RFP from a sponsor (either government or private) that mentions export controls, prior approval of publications or restrictions on citizenship, please discuss this with the ORI and the Office of Sponsored Projects (OSP) as soon as possible.
- ✈ Return to the manufacturer any materials they provide to you about export-controlled equipment that are marked "Confidential" unless they are covered by a specific non-disclosure agreement. Confidentiality/Non-Disclosure Agreements must be reviewed by OSP to insure that the university and you are not assuming the burden of restricting dissemination based on citizenship status or securing licenses.
- ✈ Do not accept publication restrictions or access/dissemination restrictions.
- ✈ Do not accept prior approval requests for use of foreign nationals.
- ✈ Do not accept proprietary information that is marked "Export Controlled."
- ✈ Keep information such as citizenship, nationality, or visa status for project staff protected and secure.
- ✈ Do not agree to background checks or other arrangements where the external sponsor screens, clears, or otherwise approves project staff. University policy allows for background screening conducted by the University when appropriate to the position.
- ✈ Do not sign the DD2345, Militarily Critical Technical Data Agreement, as a condition of attending a conference or receiving materials from the government.
- ✈ Contact the ORI Director to ascertain whether a license from the U.S. Department of Treasury, Office of Foreign Assets Control, is required to conduct research or education activities in an embargoed country, before traveling to an embargoed country to conduct research or educational activities, or entering into collaborations with foreign institutions.

Failure to Comply with Export Control Regulations

Failure to comply with U.S. export control rules can result in severe penalties, criminal and civil as well as institutional and individual.

ITAR: (Individual and Entity)

Criminal Fines of up to \$1 million and up to 10 years in prison. Civil Fines of up to \$500,000.

OFAC:

(Individual and Entity) - Criminal Fines of up to \$1 million and up to 10 years in prison.
(Civil) - Fines of \$12,000-\$55,000.

EAR:

(Entities –criminal) - The greater of fines of up to \$1 million or 5X the value of the export.
(Individual – criminal) - Fines of up to \$250,000 and/or up to 10 years in prison.
(Civil) - Fines \$10,000-\$100,000.