

Export Control – What You Need to Know

What are export control regulations? US Export control regulations restrict the use of, and access to, certain sensitive or controlled technical information, materials and technology for reasons of national security or trade protection.

Why do we have export control regulations? They are designed to protect terrorism and the proliferation of weapons of mass destruction and to restrict the export of goods and technology that could aid unfriendly nations or hamper US economic vitality. Due to homeland security concerns, regulations have recently focused on export of life sciences and biological materials and have been extended to universities.

Why should universities care about export control? Researchers are at the front line of export control issues because they have control over the scope of the research project and make decisions regarding equipment or technology which will be implemented and to whom it can be transferred. Noncompliance can result in negative publicity, civil or criminal fines, loss of exporting privileges, loss of federal funding or industry contract, and even imprisonment.

How can university researchers know if export control regulations apply to their research? If you answer yes to any of the following questions, please contact University Compliance Services (UCS): 1) Are you partnering or collaborating with a foreign company? 2) Will you be shipping to a foreign country? 3) Will you be traveling to sanctioned or embargoed countries? 4) Does your research agreement or grant restrict publication, presentation of results or foreign national access? 5) Is your research subject material specifically for, or could it have application in, military use, use in space or use for weapons of mass destruction? 6) Will a defense article be used in the research? 7) Is encrypted software involved? 8) Is your research subject listed on the Commerce Control List (CCL)? 9) Is your research covered in the US Munitions List (USML) found in Part 121 of the ITAR? 10) Are you purchasing equipment specifically designed or modified for a military end use? 11) Are you purchasing an item where the supplier is imposing restrictions on the operation, installation, maintenance, repair, overhaul and/or refurbishing of the item or the manuals, blueprints, or technology?

These activities are not export controlled: 1) Publicly available technical data (works published for sale, available in public libraries, or through published patents or patent applications); 2) General scientific, mathematical or engineering principles commonly taught in universities; 3) Information available through unlimited distribution at a meeting conference, seminar, trade show or exhibition; 4) Fundamental research information with no restrictions on publication or access to research results; 5) Non-technical contracts or business documents.

Export control process: Contact UCS during the proposal writing stage to become aware of possible export control issues and options available to you. UCS will help you with: 1) determining if the research project is subject to export control regulations (are there any publication or foreign national restrictions, does the project have any military applications, will there be any international collaborators); 2) determining the regulatory agency; 3) establishing a Technology Control Plan (TCP) outlining security measures being implemented; 4) ascertaining whether foreign nationals will be working on this project; 5) If foreign nationals will be working on the project, determine if a license exception is available before applying for a license; 6) applying for a license, if necessary; 7) notifying the principal investigator that the license has been approved and that research can begin.

When should University Compliance Services be notified? Prior to: 1) engaging in research that involves international collaboration; 2) traveling internationally; 3) conducting research that restricts publications or hiring foreign nationals; 4) engaging in research that has potential military application; 5) attending a “closed” conference; 6) holding discussions regarding research subject to export control regulations with people outside UVU; 7) internationally shipping equipment, viruses, bacteria, agents, software or other materials.

How can I help in the process? 1) do not accept publication or foreign national restrictions on projects without contacting UCS; 2) keep UCS informed of any developments related to export controlled projects (changes in personnel, upcoming publications or conferences, change in research scope; 3) establish a TCP prior to beginning your research project; 4) assist UCS in gathering materials necessary to obtain an export license; 5) contact UCS before publishing information or holding any discussions regarding research subject to export control regulations with those outside UVU.

How long does the export licensing process take? Up to four months to obtain a license for each foreign national and a separate license must be obtained for each project on which each foreign national is working. The licensing process must be completed prior to beginning research on the project.

Other research considerations: Whether or not you can publish the results of your research will be stipulated in the research agreement. While you are not limited in hiring students, staff, or collaborators for research projects subject to export control regulations, a license must be obtained before the beginning of the research project.

Travel considerations: Export control regulations affect: 1) items you take with you on a trip, including laptops, encryption items, data and technology, blueprints, drawings and schematics, chemicals, , biological materials, and scientific equipment; 2) supplying certain technologies or data at a “closed” conference or meeting (one not open to all technically qualified members of

the public and attendees are not permitted to take notes); 3) restricted information (in print and electronic format or discussed verbally while abroad); 4) travel to sanctioned or embargoed countries; 5) conducting business with, or providing services to, certain people or entities (including human subjects and collaborative research). Exceptions to the above may apply if the items taken abroad qualify as “tools of the trade,” or as personal belongings. To qualify, the items must: 1) return to the US within 12 months; 2) remain in your personal control at all times or stored in a safe place; 3) not be exported under these exceptions to embargoed countries. If the item incorporates encryption technology, some restrictions apply. You cannot travel with proprietary or export controlled technical data or export a defense article under these exceptions.

General do’s and don’ts: DO secure license approval or verify license exception through UCS prior to shipment for all controlled items or disclosing controlled information to a foreign national; DON’T ship any item outside the US without first checking the ITAR and EAR lists to determine if the item is controlled; DON’T accept publication or access controls in research agreements; DON’T travel to any embargoed countries for research or educational activities without first contacting UCS.

Work environment requirements: 1) Lab work should be physically shielded from observation; 2) Data should be secured in locked, fireproof areas with key control access; 3) Electronic information should be secured and managed to limit access to authorized users; 4) Project discussions should be limited to authorized persons; 5) Third party communications should be conducted only under valid confidentiality agreements with prior consent of the government.

Exclusions, Exemptions, and Fundamental Research: If your research is subject to **exclusion**, export control regulations do not apply. If subject to an **exemption**, export control regulations are generally applicable, but may not apply under certain circumstances. An **exception** means an exemption is available, but may be overcome or lost under certain circumstances. Exclusion examples include public domain (published and generally accessible to the public), teaching (educational material may be disclosed if released via course catalog or consists of general scientific, mathematical or engineering principles commonly taught without a license.

Fundamental research is excluded from export control regulations. Fundamental research is basic and applied research in science and engineering where the resulting information is published and shared broadly in the scientific community. University research will not be considered fundamental research if the university or its researchers accept restrictions on publication of scientific and technical information resulting from the project or activity, or, if the research contains specific access restrictions. Thus, if there are any limits on the freedom to publish, discuss, or access research information.

Who enforces export control regulations? Department of State [International Trade in Arms Regulations (ITAR)], Department of Commerce [Export Administration Regulations (EAR)], Department of Treasury [Office of Foreign Assets Control (OFAC)].

Export Controls vs. Classified Research: Export control regulations restrict the export of items listed on the CCL and USML as well as their associated technical data, software, components, and materials. These items are predetermined by the Departments of Commerce and State. Export control regulations also restrict activities with restricted entities or conducted in sanctioned countries. Classified information is “any information...determined by the US government...to require protection against unauthorized disclosure for reasons of national security and any restricted data.” Even if not conducting classified research, export control regulations could still affect hundreds of items and their associated technical data, software, and materials – most of which may not have been marked as “classified.” For example, information regarding the location of US weapons of mass destruction may be classified, but research regarding the detection of WMD may be subject to export control regulations.

What is an export? It includes 1) an actual shipment or transport of items outside the US; 2) transmission (analog or digital) of controlled items or information outside the US; 3) use or application of controlled technology on behalf of, or for the benefit of, an foreign person or entity either in the US or abroad; 4) release or disclosure (including visual or verbal) of any controlled technology software or technical data, either in the US (deemed export) or abroad.

Other important definitions: Deemed export: Disclosure within the US of specific information or specific types of services to foreign nationals, and may include research projects, meetings, conferences, informal visits, collaborations, and/or technology discussions. **Re-export:**

Exporting from one foreign country to another foreign country any US origin goods, technical data, goods incorporating US components, or goods manufactured from US technology.

Foreign person: anyone not a US person, including those in US in non-immigration status (H-1B, F-1, J-1), those associated with a branch of foreign government, and those employed by a foreign corporation or group not incorporated or organized to do business with the US. **US**

person: a US citizen, lawful permanent resident alien (green card holder), refugee, protected political asylee or someone granted temporary residency under amnesty or special agricultural worker provisions. **Restricted or prohibited party:** financial dealings or export transactions with the following is prohibited: drug traffickers, those guilty of export violations, and those supporting terrorism and development of WMD. **T-5 countries:** Activities with the following T-

5 countries (believed to be state sponsors of terrorism) are subject to greater restrictions even if no export controlled technology is involved: Cuba, Iran, North Korea, Sudan, and Syria.

Export license: a document issued by the US Department of State or Commerce that permits the export of temporary import (and/or rendering) of defense articles or information controlled

under US export laws and regulations. A separate export license must be obtained for each foreign person and each project (subject to export control regulations) in which the foreign person is involved. **Technology Control Plan:** describes how the information subject to export control regulations will be kept secure and who will have access to the information. The purpose of the TCP is to protect technical information not specifically identified as fundamental research or educational information. A TCP outlines security measures taken to ensure that export controlled materials, data and equipment are not transferred to a foreign person unless approved by a license from the Department of State or Commerce.