Export Controls
An Overview

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Export Overview

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What are Export Controls?

US laws that regulate the distribution to foreign nationals and foreign countries of strategically important technology, services and information for reasons of Foreign Policy and National Security.
What is an “Export”?  
(ITAR 22CFR § 120.17; EAR 15 CFR § 734.2(b))

Sending or taking an article out of the U.S. except by mere personal knowledge, or transferring registration, control, or ownership in the U.S.;

Disclosing (including oral or visual disclosure) controlled info to a Non-U.S. Person, in the U.S. (also known as a deemed export) or abroad;

Performing technical assistance, training, or other defense services for, or on behalf of a Non-U.S. Person, whether in the United States (also known as a deemed export) or abroad; and

Re-exporting from foreign countries items or technology of U.S. origin (including some foreign-made items that incorporate U.S.-origin components or technology).
Who Controls Exports?

International Traffic in Arms (ITAR)
Department of State
“Items that are inherently military in character”

Export Administration Regulations (EAR)
Department of Commerce
“Items that are Dual Use – military and civil applications”

Office of Foreign Asset Control (OFAC)
Department of the Treasury
“Financial transactions/travel to embargoed/sanctioned countries”

Others (DoE, NRC, Census, DHS, Customs)
Three Basic Regulations

State Department:

*International Traffic in Arms Regulations (ITAR)*
(22 CFR Parts 120-130)

Commerce Department:

*Export Administration Regulations (EAR)*
(15 CFR Parts 700-799)

Treasury Department:

*Foreign Assets Control Regulations (FACR)*
(31 CFR Parts 500-598)
What type of export is potentially controlled/regulated - ITAR

List of items or information/data about the items listed on the U.S. Munitions List (USML) which is available through the Export website. This list is directly related to technologies with obvious military application and use and is easier to navigate through.

Examples – explosives, rocket systems, military training equipment, spacecraft and satellite equipment (even if not for military use), toxicological agents and equipment, biological agents, radiological equipment including nuclear radiation detection and measurement devices, defense services.
What type of export is potentially controlled/regulated - EAR

List of controlled technologies are found on the Commodity Control List (CCL) which is available on the Export website.

Examples – batteries and fuel cells, cameras and optics equipment, artificial intelligence software, certain computer equipment, items using laser technology, certain chemicals, microorganisms and toxins

The list depends on the type of item, reason for export control and destination country. This list is large and a bit cumbersome to manage. There is an index that helps you navigate to the right place within the CCL by identifying the “ECCN” (export control classification number).
What type of export is potentially controlled/regulated - OFAC

Office of Financial Asset Control (OFAC) within the Department of Treasury enforces economic and trade sanctions against targeted foreign countries and individuals (e.g. terrorists, drug traffickers, weapons dealers).

Regulations prohibit transactions with certain countries and individuals who are viewed to be “our enemy”. Goal is to prevent $$ from getting to people/countries that are embargoed.

The prohibitions here are much broader and include providing any service, no matter how helpful, to people within the targeted countries or the targeted individuals.

OFAC’s List of Sanctioned Countries and Specially Designated Individuals is available through Export website.
“U.S. Person” means –Persons usually (but not always) permitted to access export controlled information without restriction.

- U.S. citizens
- Aliens who are “Lawful Permanent Residents” (Green Card) (8 USC § 1101(a)(20))
- Other “Protected Individuals” under the INA (8 USC §1324b(a)(3))
  - designated an asylee or refugee
  - a temporary resident under amnesty provisions
- Any entity incorporated to do business in the U.S.
Who are Foreign Persons/Foreign Nationals?

Foreign Person” means everyone else. (ITAR 22CFR § 120.16)

- **Foreign Person**”: “Any foreign interest and any US Person effectively owned or controlled by a foreign interest.”
  - Includes foreign businesses not incorporated in the U.S. and persons representing other Foreign Persons
  - Includes: H1B Work Visa, F1 Study Visa, J1 Training Visa, E1 Investors Visa, TN Work Visa, L1 Intra-Company Transfer Visa, K and V Fiancée Visas.

EAR does not use the term Foreign Person, instead refers to “foreign national”.

- **Foreign National”**: “Any person who is not a citizen or national of the United States.” (Note: same as “alien” pursuant to 8 U.S.C. § 1101)
Deemed Export

ITAR: “Export” includes “disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the U.S. or abroad.” and “performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad” (ITAR 22 CFR § 120.17(4)&(5))

EAR: “Any release of technology or source code subject to the EAR to a foreign national. Such release shall be deemed to be an export to the home country or countries of the foreign national.” (EAR 15 CFR § 734.2(b)(ii))
Typical University Exclusions

- Fundamental Research
- Educational Information
- Public Domain/Publicly Available Information
“Fundamental research” means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production and product utilization the results of which ordinarily are restricted for proprietary or national security reasons.

per National Security Decision Directive 189
Educational Information

Applies when the information in question consists of general scientific, mathematical or engineering principles commonly taught in universities or information that is in the public domain.
Public Domain/Publicly Available Information

Applies when the information is already in the public domain and does not have restrictions on who may access.
What Happens if I Accept Export Controlled Research?

Actions required for your Sponsored Project:
• Export Control Training
• Commodity Jurisdiction/Classification
• Technology Control Plan

*Coordinate with RSO*
Examples of Restrictions

- Contract **prohibits foreign nationals** from working on the project.

- Contract requires “**screening**” of personnel to be working on the project **by contract sponsor** (ex. e-verify).

- Research results will be published only at a symposium or conference where there are **attendance restrictions** that could exclude foreign nationals from attending.

- Any language in the research proposal that **labels** it as **export-controlled, classified, proprietary or secret**.

- Don’t forget similar restrictions in **Non-Disclosure/Confidentiality Agreements** and Material Transfer Agreements.
Red Flags

Contracts or grants which require a shipment of item(s) to a foreign country.

Contracts or grants which involve collaboration with foreign nationals.

ANYTHING you’re doing that deals with an OFAC embargoed country.

Any reference in a contract or grant to export-controlled information or technology.

Any term in a contract that restricts publication research results.
Why Does AU Care About Export Controls?

Increasingly more University projects are subject to export controls.

Investigations and enforcement are on the rise.

Recent Voluntary Disclosures by AU

- Violation related to ITAR controlled information released via the internet Department website
Penalties for Export Control Violations

Administrative penalties
  • Loss of US Gov’t funding/debarment
  • Loss of export privileges

Monetary fines
  • Up to $1 Million per violation

Jail time
  • Up to 20 years per violation
Tool to help identify controls

Visual Compliance web based software by e-Customs

• Statewide license for the major universities
• Unlimited seats on campus

https://www.visualcompliance.com/logon.cfm
E-Customs Lists

Entity List

- Blocked Persons
- Specially Designated Nationals
- Unverified
- Denied Persons
National Security Controls
22 CFR § 125.4(a) & 15 CFR § 734.11(a)

**ITAR:** “Transmission of classified information must comply with the requirements of the Department of Defense Industrial Security Manual and the exporter must certify to the transmittal authority that the technical data does not exceed the technical limitation of the authorized export.”

**EAR:** “If research is funded by the U.S. Government, and specific national security controls are agreed on to protect information resulting from the research, §734.3(b)(3) of this part will not apply to any export or reexport of such information in violation of such controls. However, any export or reexport of information resulting from the research that is consistent with the specific controls may nonetheless be made under this provision.”
Federal Experts

Department of State
http://pdddtc.state.gov/DTRADE/index.html

Department of Commerce Bureau of Industry & Security
http://www.bis.doc.gov/

Department of Defense – Technical Information Center - Militarily Critical Technologies List (MCTL)
http://www.dtic.mil/mctl

The Treasury Department, Office of Foreign Assets Control (OFAC)
http://www.treas.gov/offices/enforcement/ofac

The Patent & Trademark Office (PTO)
http://www.uspto.gov
The Regulations are complex and the penalties can be severe.

When in doubt contact RSO.
Research Security Office

Contact: Georgia White
Facility Security/
Export Compliance Officer
3528 Advanced Engineering Research Lab.
gaw0004@auburn.edu
phone: 844-5962
fax: 844-5944

http://www.auburn.edu/research/vpr/export/