



COMPLIANCE POLICIES

CERTIFICATION PROGRAM

RESEARCH SECURITY OFFICE (SPAN)

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Export Overview

- What are Export Controls?
- ITAR/EAR/OFAC
- U.S. Persons vs. Foreign Persons
- What is “Export”?
- Exclusions for University
- Indicators
- What to do?
- Compliance
- Useful Tools



What are Export Controls?

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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**.



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Who Controls Exports?

State Department:

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

Items that are inherently military in character

Commerce Department:

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

Items that are “Dual Use” – military and civilian applications

Treasury Department, Office of Foreign Assets Control (OFAC)

Foreign Assets Control Regulations (FACR)
(31 CFR Parts 500-598)

Financial transactions/travel to embargoed/ sanctioned countries

ITAR

- State Department
- Aimed at preserving military superiority of US
- Items that are inherently military in character

The [U.S. Munitions List \(USML\)](#) includes all items (and related information/data) with obvious military application.

Examples – explosives, rocket systems, military training equipment, spacecraft and satellite equipment, toxicological agents and equipment, biological agents, radiological equipment including nuclear radiation detection and measurement devices, defense services.



EAR



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The EAR contains the **Commodity Control List (CCL)**, which lists all items under EAR control, and they are classified by Export Control Classification Number (ECCN).

Before any item is added to the CCL, consideration is given to:

1. The type of item
2. Reason for export, and
3. Country of destination

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

OFAC

OFAC = Office of Foreign Assets Control (Treasury Dept.)

The prohibitions here are much broader because they are based on the country of destination; as opposed to the type of export.

Enforces economic and trade sanctions against targeted foreign countries and individuals.





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US PERSON vs. FOREIGN PERSON

- (ITAR § 120.15; EAR §§734.2(b)(2) & 772, define the term “US Person” as a person or group of people incorporated to do business in the US. It also refers to government entities.
- The term “US Person” includes:
 - 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



US PERSON vs. FOREIGN PERSON

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

- “Any foreign interest and any US Person effectively owned, influenced, 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)



What is an “Export”?

(ITAR 22CFR § 120.17; EAR 15 CFR § 734.2(b))

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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 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.



Typical University Exclusions

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1. **Fundamental Research** = basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community.
2. **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.



Typical University Exclusions

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3. Public Domain/Publicly Available Information

Applies when the information is already in the public domain and does not have restrictions on who may access.



Potential Export Indicators

1. **Restrictions** within the Statement of Work (SOW), attachments, or addendums in the contract.
 - 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
2. **Red Flags** within the wording of a contract that may refer to:
 - Contracts or grants which require a shipment of item(s) to a foreign country.
 - Contracts or grants which involve collaboration with foreign nationals.



Potential Export Indicators

(cont'd)

- 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.



What to do???

If an awarded contract has any of the aforementioned indicators, at minimum the following 3 things MUST happen:

- **Export Control Training**
 - In person, or online (<http://www.citiprogram.org>)
 - Keep accurate records of training and attendance
 - Periodic refresher training throughout the life of the contract
- **Commodity Jurisdiction/Classification**
 - To determine which US regulation applies
 - To implement risk mitigation measures
- **Technology Control Plan (*RSO provided*)**
 - All involved must read, and acknowledge in writing
 - It must remain readily available to all

Compliance



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- Increasingly more Auburn University projects are subject to export controls.
- US Government scrutiny, as well as inspections and investigations are becoming more regular and meticulous.
- Administrative penalties
 - Loss of US and/or State funding
 - Loss of export privileges
 - Loss of current and future research contracts
- Monetary fines
 - Averaging \$1 Million per violation
- Prison term for involved personnel
 - Up to 20 years per violation



Useful Tools

- Research Security Office (RSO)
 - Primary Source of Information
- US Government Websites
 - State Department
 - Department of Commerce
 - Treasury Department
- Visual Compliance - web based software by e-Customs
 - Statewide license for the major universities
 - Unlimited seats on campus

<https://www.visualcompliance.com/logon.cfm>

Classified Research



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- Contract Clause
 - FAR 52.204-2
- DD Form 254
 - Most Important Document
- U.S. Citizens Only

Auburn University Experts



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Research Security Office

Contact: Georgia White
Facility Security Officer
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Security Program Coordinator
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<http://www.auburn.edu/research/vpr/export/>

Conclusion



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- There are numerous Policies and Regulations which are necessary but tedious to follow.
- They are created to protect:
 1. You
 2. Auburn University
 3. The United States of America



Questions

- If at any time you are unsure on what you can or cannot do please check with the Research Security Office.

