



OFFICE OF SPONSORED PROGRAMS

Charles R. Drew University of Medicine and Science

FAQ on Export Control

What is an export?

An export is an actual shipment or transmission of items, services, or technical data subject to either the EAR or the ITAR out of the United States, or release of technology, software, or technical data subject to either EAR or ITAR to a foreign national in the United States. Technology, software, or technical data is "released" for export through:

- Visual inspection by foreign national of U.S. origin equipment and facilities,
- Oral exchanges of information in the United States or abroad,
- Transfer or shipment via any means (physical or electronic) to a foreign entity
- Providing a service, or the application to situations abroad of personal knowledge or technical experience acquired in the United States
- Visual inspection by foreign national
- Oral exchanges of information in the United States or abroad,
- Transfer or shipment via any means (physical or electronic) to a foreign

Why should I be concerned about an export?

The university campus is open to students and faculty from many different countries. Access to restrict or export controlled technology, commodities, defense articles and defense services by an unauthorized foreign person could result in severe criminal or civil penalties for the university and the university employee making the export. Prosecution of an export violation may result in fines of up to \$1M and/or a prison sentence of up to 20 years.

What is a "Deemed" Export?

Release of technology or source code subject to the EAR to a foreign national in the United States is "deemed" to be an export to the home country of the foreign national under the EAR. Technology is specific information necessary for the development, production, or use of a Commerce Department product controlled for export. "Use" is defined as operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.

What if I think export controls may apply to a grant/contract?

Do everything you can to make sure that the work research performed at CDU falls within the parameters of the following exclusions:

Fundamental Research Exclusion: Both ITAR and EAR include language that excludes the results of "fundamental research" from export requirements for export licenses or other government approvals. The exclusion applies for basic and applied research in science and engineering performed by universities so long as that research is carried out openly and without restrictions on publication, or foreign national access and dissemination restrictions.

Educational Information: authorizes the disclosure, without a license, of educational information released by instruction in catalog courses and associated teaching laboratories of academic institutions and are general scientific, mathematical, or engineering principles commonly taught in universities.

Publicly Available Information Exclusion: applies if the information is in the public domain, i.e., if it is publicly available technology and software that is generally accessible to the public through unlimited and unrestricted distribution. Special rules apply to encryption software even if "open source" or publicly available software is being developed. See Encryption rules.

If you are unsure if your activity falls under one of these exclusions, contact OSP and we will help you figure it out.

What is ITAR?

ITAR is an acronym that stands for International Traffic in Arms Regulations (22 CFR 120-130) that are administered by the U.S. Department of State through the Directorate of Defense Trade Controls (DDTC) under authority of the Arms Export Control Act (22 U.S.C. 2778). ITAR places strict controls on the export of "defense articles" and "defense services." Any defense article, service, or related technical data found to be on the USML requires an export license to be exported, i.e., given to a non-US-person. Some license exceptions are available under specific circumstances.

What are defense articles?

Defense articles include any item or technical data on the United States Munitions List (USML).

What are defense services?

Defense services include the furnishing of assistance to foreign persons, whether or not in the United States, with respect to defense articles, and the furnishing of any technical data associated with a defense article.

What is the U.S. Munitions List?

The USML is a list of categories of items, defense articles and related technology designated as defense or military related. The USML is found in 22 CFR §121. Items on the USML are divided into 21 categories.

What is the purpose of the Export Administration Regulations (EAR)?

The primary focus of the EAR is to control the export of "dual-use" technologies; i.e., items that are used, or have the potential to be used, for military as well as non-military purposes if such export could adversely affect the national interests of the United States.

What is an ECCN?

An export control classification number, or ECCN, comes from 15 CFR §774, Supplement 1, also known as the Department of Commerce's Commodity Classification List or CCL. An ECCN is a five-character alpha-numeric classification used in the CCL to identify items for export control purposes.

What is a foreign national?

Foreign Nationals are persons who are not U.S. citizens, aliens who are "Lawful Permanent Residents" (Green Card), (8 USC § 1101(a)(20)) or other "Protected Individuals" under the Immigration and Naturalization Act (8 USC §1324b(a)(3)) designated a refugee or a temporary resident under amnesty provisions. A foreign national also means any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do business in the US. Under ITAR, the term "foreign person" is used, but has the same definition as "foreign national" herein.

What is fundamental research?

Fundamental Research is defined as basic and applied research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. The products of fundamental research are not subject to export license requirements or other government approval.

What is a publication/dissemination restrictions?

Publication or Dissemination Restrictions include acceptance in research and development of any prohibition or approval authority over publication or any other dissemination of research results, excepting, sponsor or collaborator may include provisions for review of results, with a short (30-90 day) review period to remove some company/collaborator business proprietary or pre-patentable information.

What is publicly available information?

Publicly Available Information is technology and software that is published and generally accessible to the public through unlimited and unrestricted distribution and is either free or available at a price that does not exceed the cost of reproductions and distribution, is readily available at libraries, available through any patent office, or released at an open conference, seminar, or trade show.

What are restricted parties?

Restricted Parties are individuals and entities with whom the university and its employees may be prohibited by law, or require a license or other government approval, to export to or engage in controlled transactions. These include the Denied Persons List, Entity List, and Unverified List (Department of Commerce), the Debarred Parties Lists (Department of State), and the Specially Designated Nationals and Blocked Persons List (Department of Treasury).

What is restricted research?

Restricted Research is defined as university research, development, or testing subject to publication restrictions, (ii) access and dissemination controls, (iii) federally funded research with contract specific national security restrictions; (iv) accepting third party controlled items or information, or (v) providing access to, or defense services on, a defense article. Restricted research is subject to EAR and ITAR regulations, and a license or other government approval may be required for foreign national participation.

What are sanctioned countries?

Sanctioned Countries are countries designated by OFAC as having limited or comprehensive trade sanctions imposed by the United States for reasons of anti-terrorism, non-proliferation, narcotics trafficking, or other reasons.

Acronyms

1. EAR Export Administration Regulations
2. ITAR The International Traffic in Arms Regulations
3. USML United States Munitions List
4. ECCN Export Control Classification Number (ECCN).
5. CFR Code of Federal Regulations
6. OFAC Office of Foreign Assets Control (OFAC)

Definitions:

1. **Foreign Nationals** are persons who are not U.S. citizens, aliens who are "Lawful Permanent Residents" (Green Card), (8 USC 1101(a)(20)) or other "Protected Individuals" under the Immigration and Naturalization Act (8 USC 1324b(a)(3)) designated a refugee, or a temporary resident under amnesty provisions. A foreign national also means any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do

business in the U.S. Under ITAR, the term "foreign person" is used, but has the same definition as "foreign national" herein.

2. **Fundamental Research** is defined as basic and applied research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. The products of fundamental research are not subject to export license requirements or other government approval.
3. **Publication or Dissemination Restrictions** include acceptance in research and development of any prohibition or approval authority over publication or any other dissemination of research results, excepting, sponsor or collaborator may include provisions for review of results, with a short (30-90 day) review period to remove some company/collaborator business proprietary or pre-patentable information.
4. **Publicly Available Information** is technology and software that is published and generally accessible to the public through unlimited and unrestricted distribution and is either free or available at a price that does not exceed the cost of reproductions and distribution, is readily available at libraries, available through any patent office, or released at an open conference, seminar, or trade show.
5. **Restricted Parties** are individuals and entities with whom the university and its employees may be prohibited by law, or require a license or other government approval, to export to or engage in controlled transactions. These include the Denied Parties List, Unverified List (Department of Commerce), the Debarred Parties Lists (Department of State), and the Specially Designated Nationals and Blocked Persons List (Department of Treasury).
6. **Restricted Research** is defined as university research, development, or testing subject to publication restrictions, (ii) access and dissemination controls, (iii) federally funded research with contract specific national security restrictions, (iv) accepting third party controlled items or information, or (v) providing access to, or defense services on, a defense article. Restricted research is subject to the EAR and ITAR regulations, and a license or other government approval may be required for foreign national participation.
7. **Sanctioned Countries** are countries designated by OFAC as having limited or comprehensive trade sanctions imposed by the U.S. for reasons of anti-terrorism, non-proliferation, narcotics trafficking, or other reasons.

Foreign Travel Guidance

Traveling to foreign countries frequently on behalf of an employee position at CDU. Generally, there are no problems or delays associated with your travel to most countries. However, due to heightened government security and export laws and regulations concerning university research and activities, we must demonstrate awareness at CDU for foreign travel risks when traveling on behalf of CDU.

- 1) If you will be taking your laptop or other common electronic devices to a foreign country, please ensure that there is **no encryption source code or technical know-how** (e.g. designs, schematics, non-public technical data) on your computer, flash drive, blackberry, etc. It is best to take a clean laptop and leave your unpublished research data at home or CDU.

Please Note: Embargoed countries will always require an export review and license prior to travel. The Office of Foreign Assets Control (OFAC) is responsible for administering and enforcing US economic and trade sanctions and embargoes that target specific geographic regions and governments. **Please see the "[Sanctions Programs and Country Information](#)" page found on [OFAC's website](#) for more information on specific programs.**

- 2) Additionally, some countries may have travel warnings issued by the Department of State with special instructions for Americans travelling to those countries. .
- 3) If none of the above apply to your travel, no further action is required.

Foreign Travel: Know Before You Go

1. Know that taking or sending abroad any equipment, samples, prototypes, research technical data, laptops, GPS, etc. is considered an export under U.S. law.
2. Don't travel with CDU items, technology or unpublished technical data to foreign countries without an export review from the ECO.
3. Use export exemptions or exceptions whenever possible. Please Note: Fundamental Research Exemption is not available in foreign countries.
4. If you don't need it, don't take it with you. Consider taking a clean laptop or flash drive or similar with just the information you need instead of taking your laptop that may contain technical or sensitive information, (unpublished research data, personal information, etc.).
5. Do not travel to or through embargoed countries: Iran, Syria, Sudan, North Korea or Cuba without a license.
6. Keep all items and technical data in your effective control at all times when outside of the United States.
7. Be aware of any software or hardware you may carry with you that may contain encryption (laptops, PDAs, GPS, etc.). Know the export encryption related rules and exception criteria.
8. Do not take any data or items with you that you cannot afford to lose or have seized.