

INTRODUCTION to EXPORT CONTROLS

"Exports" can include both the shipment of materials to another country and/or the disclosure of controlled information to foreign persons who are in the United States.

Federal export control regulations may be promulgated by:

- US State Department <http://pmdtc.org/reference.htm>
International Traffic in Arms Regulation (ITAR) governing "defense articles and services" (predominately military items and information, including satellites and spacecraft)
- US Commerce Department http://www.access.gpo.gov/bis/ear/ear_data.html
Export Administration Regulations (EAR) governing commodities, goods, and commercial information (primarily civilian)
- US Treasury Department <http://www.treas.gov/offices/enforcement/ofac/>
Office of Foreign Assets Control (OFAC) administers and enforces trade embargos and sanctions. See Lists of Sanctioned Countries and Specially Designated Individuals: <http://www.treas.gov/offices/enforcement/lists/>

Penalties for Failure to Comply

Liability is personal and institutional and may take the form of administrative penalties, monetary fines and/or jail time. Administrative penalties can include termination of export privileges (EAR and ITAR) and/or suspension and/or debarment from government contracting (EAR and ITAR). The fines and jail time can be steep and can include both criminal (willful) and civil violations.

- **ITAR Violations**

Criminal:

- Up to \$1 million for a university or company
- Up to \$1 million per violation for individuals and/or up to 10 years in prison

Civil:

- Up to \$500K per violation for individuals, a university or company

- **EAR Violations**

Criminal:

- Up to \$1 million for a university or company
- Up to \$250K per violation for individuals and/or up to 10 years in prison

Civil:

- Up to \$12K per violation for individuals, a university or company

- **OFAC Violations**

Criminal:

- Maximum fine of \$100K for individuals (including corporate officers) and/or 10 years in prison
- Maximum fine of \$1 million for a university or company

Civil:

- Up to \$ 55K per violation

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Exclusions, Exceptions and Exemptions

There are exclusions, exceptions and exemptions that may apply. In particular, the conduct, products and results of fundamental research are generally excluded from disclosure of information to foreign persons in the U.S. (see National Security Decision Directive 189, <http://www.aau.edu/research/ITAR-NSDD189.html>). In addition, employment or education exclusions may be applicable.

Recordkeeping is important if you are involved in research efforts where it may be necessary to:

- ship research articles outside the U.S. or
- share export-controlled information provided by third parties, such as vendors, subcontractors, or government collaborators

It is imperative that proper documentation be maintained in order to justify the use of exclusions, exceptions and exemptions from licensing requirements. (It is equally important to ensure the fundamental research exclusion is not voided by contract language that forbids the participation of foreign persons; gives the sponsor a right to approve publications resulting from the research; or otherwise operates to restrict participation in research and/or access to and disclosure of research results.)

Definitions

Education Exclusion: No license is required to share controlled technical information with a foreign person who is a full-time, bona fide employee with a permanent address in the U.S. while employed provided that person is not a national of an OFAC listed country and is advised in writing not to share controlled information with other foreign persons.

Employment Exclusion: No license is required to share "information concerning general scientific, mathematical or engineering principles commonly taught in universities or information in the public domain" with foreign persons. Foreign students using controlled equipment to conduct research should be registered for a research credit class to apply this exclusion.

Export: Transfer of controlled technology, information, equipment, software or services to a foreign person in the US or abroad by any means, e.g., actual shipment outside the U.S., visual inspection in or outside the U.S., written or oral disclosure.

Foreign Person: Any person who is not a lawful permanent resident of the U.S., any foreign corporation or other entity or group that is not incorporated or organized to do business in the U.S., any foreign government.

Fundamental Research: 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.

More information

Additional information and guidance documents, including a DRI compliance plan will be developed in the coming months.