

EXPORT CONTROLS

What exactly are export controls?

Export controls are federal regulations designed to prohibit the exporting of specific technology or information without a license from the federal government to do so. The primary regulations are the Export Administration Regulations (EAR) promulgated by the Department of Commerce and the International Trafficking in Arms Regulations (ITAR) promulgated by the Department of State. The EAR covers ten different types of technology: (1) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (2) Materials, Chemicals, "Microorganisms", and Toxins; (3) Materials Processing; (4) Electronics Design, Development and Production; (5) Computers; (6) Telecommunications and Information Security; (7) Sensors; (8) Navigation and Avionics; (9) Marine; and (10) Propulsion Systems, Space Vehicles, and Related Equipment.

The complete list of regulated items (The Commodity Control List) can be accessed online at <http://www.gpoaccess.gov/cfr/index.html> or a hard copy can be obtained through the Office of Research and Technology Transfer. ITAR primarily covers technology, information and products that serve a military purpose.

The complete list of regulated items (The Munitions Control List) can be accessed online at <http://www.gpoaccess.gov/cfr/index.html> or a hard copy can be obtained at the ORTT office.

Another area where these regulations apply is foreign travel. For example, laptops often will fall under the regulations and are often taken when traveling (especially to a conference or meeting). Special precautions need to be taken to ensure compliance with the export control regulations in these instances.

What do these regulations prohibit?

They prohibit the exporting of any of the controlled items. However, export is given a very broad meaning. Any oral, written, electronic or visual disclosure, shipment, transfer or transmission of a controlled item outside of the United States, even if to a U.S. citizen living outside of the United States. It is also considered an export if the item is transferred to a non-U.S. entity or individual who is within the United States. This prohibits transfer of items to foreign graduate students or post docs for example. Finally these items also cannot be transferred to a foreign embassy or affiliate.

Are there any applicable exceptions to these regulations?

Many universities qualify for the Fundamental Research Exception which would exempt them from these export controls. However, the research will not qualify as fundamental research if (1) the university accepts any restrictions on the publication of the information resulting from the research (other than limited pre-publication review by the research sponsor to ensure that the publication will not compromise their patent rights); or (2) the research is federally funded and specific access or dissemination controls regarding the resulting information have been accepted

by the university or the researcher (for example, the funding agency requires that foreign nationals do not work on the project).

There is also a public domain exception, which states that any information or technology which is accessible or available to the public will not be subject to export controls. This generally means that the information has been published. Information posted on a university web site often qualifies as a public publication. There are specific requirements that must be met (under EAR), however, to qualify for this exception.

If the export control regulations apply to my research, what do I do then?

First, make sure that regulated items are not being transferred and that foreign nationals are not receiving information or technology. Next, if it is necessary to transfer a regulated item, a license must be granted by the federal government. Contact the ORTT and we will help you with the process.

What will happen if I violate the export control regulations?

The repercussions for failing to comply can be quite severe including monetary fines and incarceration. Therefore, it is to everyone's benefit to identify these issues early in the process to facilitate compliance.

Is this all I need to know?

Absolutely not! This is a very complex set of regulations with many nuances based on the item being considered and the country to which it is being exported. If you believe that you may have an export control issue, please contact the ORTT office so that we can help you identify the proper steps to take.