

Guide to

Export Control

at the University of Nebraska–Lincoln



2ND EDITION

This guide to export control outlines the essential elements of export control policy at the University of Nebraska Lincoln (UNL). It is designed to answer the most common questions the Research Compliance Services (RCS) staff typically fields from the UNL research community. Future changes or updates to the policy will be posted at <http://research.unl.edu/orr/exportcontrol.shtml>. If you cannot find the answer to your specific question, please call the export control coordinator at (402) 472-6929 or send an e-mail to exportcontrol@unl.edu.

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Export Control Overview

What are export control regulations?

United States export control regulations restrict the use of, and access to, certain sensitive or controlled technical information, materials and technology for reasons of national security or protection of trade.

These regulations also restrict financial transactions and the provision of services to certain restricted entities.

Why do we have export control regulations?

Export control regulations are designed to prevent terrorism and the proliferation of weapons of mass destruction and to restrict the export of goods and technology that could aid unfriendly nations or hamper U.S. economic vitality.

Export control regulations are not new. In fact, the regulation of the export of goods and technology out of the U.S. began July 5, 1940. These first regulations banned export of aircraft parts, scrap metal and aircraft fuel. Because of heightened concerns about homeland security in recent years, export control regulations have increasingly focused on export of life sciences and biological materials and have been extended to universities.

Why should I as a researcher or staff member care about export control regulations?

Researchers are at the “front line” of export control issues. That is, they have control over the scope of the research project and they are the ones who make decisions regarding equipment or technology which will be implemented and to whom it may be transferred.

Non-compliance can result in negative publicity, fines or imprisonment.

How do I know if export control regulations apply to my research?

If you answer yes to ANY of the following questions, please contact the Research Compliance Services (RCS) at (402) 472.6965 to discuss how export control regulations might apply to your research.

- Will you be partnering or collaborating with a foreign company?
- Will you be shipping to a foreign country?
- Will you be traveling to sanctioned or embargoed countries?
- Does your research agreement, contract or grant restrict publication, presentation of results or foreign national access?
- Is your research subject material specifically for, or could it have application in, military use, use in space or use for weapons of mass destruction?
- Will a defense article be used in the research?
- Is encrypted software involved?
- Is your research subject listed on the Commerce Control List (CCL)?
- Is your research covered in the U.S. Munitions List (USML) found in Part 121 of the ITAR?
- Are you purchasing equipment specifically designed or modified for a military end use?
- Are you purchasing an item where the supplier is imposing restrictions on the operation, installation, maintenance, repair, overhaul and/or refurbishing of the item or the manuals, blueprints, or technology?



Export Control Enforcement

Who enforces export control regulations?

- Department of State [ITAR]
 - Department of Commerce [EAR]
 - Department of Treasury [OFAC]
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What are International Traffic in Arms Regulations (ITAR)?

The Department of State's export controls cover shipping and disclosure to foreign nationals or entities in the United States or abroad of items on the U.S. Munitions List (USML) or information about said items.

What are Export Administration Regulations (EAR)?

These Department of Commerce export controls cover the export of goods and related technology (specific information necessary for the development, production, or use of a product) on the Commerce Control List (CCL).

What is the Office of Foreign Assets Control (OFAC)?

This office is under the jurisdiction of the Department of Treasury. OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security initiatives.

What happens if I don't comply with the regulations?

The penalties for violations can apply to both individuals AND institutions and include:

- Civil and criminal penalties

- Loss of "exporting" privileges
 - Loss of federal funding or industry contract — for the university and for the individual
 - Negative public relations and media exposure
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Penalties by regulating office

Department of State (ITAR)

- Criminal: up to \$1,000,000 per violation AND up to 10 years in prison
- Civil: seizure and forfeiture of articles, revocation of exporting privileges, fines of up to \$500,000 per violation

Department of Commerce (EAR)

- Criminal: \$50,000 to \$1,000,000 or five times the value of the export, whichever is greater, per violation; up to 10 years in prison
- Civil: loss of export privileges, fines \$10,000 to \$120,000 per violation

Department of Treasury (OFAC)

- Criminal: up to \$1,000,000 per violation; up to 10 years imprisonment
 - Civil: fines \$12,000 to \$55,000 (depending on applicable law) per violation.
 - Violation of specific sanctions laws may add additional penalties.
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Export Controls vs. Classified Research

How are export control regulations different than classified research restrictions?

Export control regulations restrict the export of items listed on the CCL and USML as well as their associated technical data, software, components, and materials. These items are predetermined by the Department of Commerce and Department of State. Export control regulations also restrict activities with restricted entities or conducted in sanctioned countries.

“Classified” information is defined as “any information or material that has been determined by the United States government, pursuant to an executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data.” Classified markings are utilized on information that a designated government official has reviewed and marked as such.

For example, information regarding the location U.S. weapons of mass destruction (WMD) may be “classified”. However, research regarding the detection of WMD may be subject to export control regulations.

I am not conducting classified research, therefore no export control restrictions exist, right?

Not necessarily. Please note that export control regulations affect hundreds of items and their associated technical data, software, and materials – most of which has not been marked as “classified”.



What Does It Mean to Export?

What is an export?

- An actual shipment or transport of items outside the United States
 - Transmission (analog or digital) of controlled items or information outside the United States
 - Use or application of controlled technology on behalf of, or for the benefit of, any foreign person or entity either in the U.S. or abroad
 - Release or disclosure (including verbal or visual) of any controlled technology software, or technical data, either in the U.S. (deemed export) or abroad
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granted temporary residency under amnesty or special agricultural worker provisions.

Examples of a foreign person:

- Individual in the U.S. in non-immigrant status (H-1B, F-1, J-1)
 - Individual associated with a branch of a foreign government
 - Individual employed by a foreign corporation or group that is not incorporated or organized to do business in the U.S.
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Deemed export? What is that?

- Disclosure *within* the United States of specific information or specific types of services to foreign nationals
 - May include research projects, conferences, meetings, informal visits, collaboration meetings, and/or technology discussions
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Re-export? What is that?

Exporting from one foreign country to another foreign country any U.S.-origin goods, technical data, goods incorporating U.S. components, or goods manufactured from U.S. technology.

What is NOT export controlled?

- Publicly available technical data (i.e., works published for sale, available in public libraries, or through published patents or patent applications)
 - General scientific, mathematical or engineering principles commonly taught in colleges and universities
 - Information available through unlimited distribution at a conference, meeting, seminar, trade show or exhibition
 - Information that results from fundamental research where there are no restrictions on publication or access to research results
 - Non-technical contracts or business documents
-

Who is a foreign person?

Simply put, a foreign person is anyone who is not a U.S. person.

Who is a U.S. person?

A U.S. person is either a U.S. citizen, lawful permanent resident alien (“green card holder”), refugee, protected political asylee or someone

What Does It Mean to Export? (cntd.)

What is a restricted or prohibited party?

The U.S. government issues various lists of individuals and entities both in the U.S. and abroad that have committed export violations or other serious offenses.

Financial dealings or export transactions with restricted or prohibited parties is prohibited, including:

- Drug traffickers
 - Those guilty of export violations
 - Individuals supporting terrorism and development of weapons of mass destruction
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Does the country matter?

The export restrictions and type of government review depend on the type of technology involved, the activities that will be performed and the country involved. Joint inter-agency review is normally required for most reviews of sensitive technology.

Activities involving T-5 countries (five countries believed to be state sponsors of terrorism) are subject to greater restrictions even if no export controlled (sensitive) technology is involved.

What are the T-5 countries?

- Cuba
 - Iran
 - North Korea
 - Sudan
 - Syria
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Where are the countries listed?

Each government agency uses different terms and a different list of countries—some lists overlap but are not the same:

- Country Groups and Country Chart (BIS)
 - Sensitive Country List (DOE)
 - Proscribed Country List (ITAR)
 - Sanctioned and Embargoed Country List (OFAC)
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Export Control Process

How do I work with the RCS staff?

We encourage you to contact the RCS staff during the proposal writing stage to become aware of the options available to you. The RCS staff is trained to answer your questions related to university policies and procedures and U.S. regulations and to offer assistance.

What are the typical steps for the RCS Staff in assessing projects?

1. Determine if the research project is subject to export control regulations
 - Are there any publication or foreign national restrictions? Does the project have military applications? Will there be international collaborators?
2. Determine the regulating agency
3. Establish a Technology Control Plan outlining security measures being implemented
4. Ascertain whether foreign nationals will be working on the project
5. If foreign nationals will be working on the project, determine if a license exception is available before applying for a license
6. Apply for a license, if necessary
7. Notify the principal investigator that the license has been approved and that research can begin

When should I contact the RCS staff?

Please contact the RCS Staff at (402) 472.6965 prior to:

1. Engaging in research that involves international collaboration
2. Traveling internationally
3. Conducting research that restricts publications or hiring foreign nationals
4. Engaging in research that has potential military applications
5. Attending a "closed conference"
6. Holding discussions regarding research subject to export

control regulations with people outside the UNL community

7. Internationally shipping equipment, viruses, bacteria, agents, software or other materials.

What is a technology control plan?

Technology control plans (TCPs) describe how the information will be kept secure and who will have access to the information. The purpose of a TCP is to protect technical information not specifically identified as fundamental research or educational information.

A TCP outlines security measures taken to ensure that export controlled materials, data, and equipment are not transferred to a foreign person or persons unless approved by a license from the Department of State or Department of Commerce, as applicable.

What is an export license?

An export license is a document issued by the U.S. Department of State or Department of Commerce that permits the export or temporary import (and/or rendering) of defense articles or information controlled under U.S. export laws and regulations.

A separate export license must be obtained for each foreign person and each project (subject to export control regulations) in which the foreign person is involved.



Export Control Process (cntd.)

How can I help in the process?

We recognize the fact that we cannot be the experts in every scientific field. As such, we will work closely with you to classify items and assess whether or not your activities are subject to export control regulations. We ask that you assist in this process and respond to our requests. While some aspects of the licensing process may require significant participation on your part, we will strive to make efficient use of your valuable time.

- Do not accept publication or foreign national restrictions on projects without contacting the RCS staff
 - Please keep the RCS staff informed of any developments related to export controlled projects -this includes changes in personnel, upcoming publications or conferences, changes in scope or developmental break-throughs, etc.
 - Establish a Technology Control Plan prior to beginning your research project (<http://research.unl.edu/orr/exportcontrol.shtml>)
 - Assist the RCS staff in gathering materials necessary to obtain an export license
 - Contact the RCS staff before publishing information or holding any discussions regarding research subject to export control regulations with people outside the University of Nebraska community
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How long does the export licensing process take?

Please note that the licensing process is time-consuming. Researchers are advised that it could take multiple months to obtain a license for each foreign national and that a separate license must be obtained for each project on which each foreign national is working.



Research Considerations

Will I be able to publish the results of my research?

These restrictions will be stipulated in the research agreement/contract.

Am I limited as to which students/post-docs I am able to use in the research?

While you are not limited in hiring students/staff/post-docs, for research projects that are subject to export control regulations, a license must be obtained before the beginning of the research project. The licensing process can take multiple months and must be completed prior to beginning research on the project.

What about my collaborators?

Concerns regarding collaborations are much the same as with students/staff/post-doc employment. Be advised that for research projects that are subject to export control regulations, a license has to be obtained in order to be able to work on the research project. The licensing process can take multiple months and must be completed prior to beginning research on the project.



Travel Considerations



How do export control regulations apply to international travel?

Export control regulations affect:

- Items you take with you on a trip
 - Laptops
 - Encryption items
 - Data and technology
 - Blueprints, drawings, and schematics
 - Chemicals, biological materials, and scientific equipment
 - Supplying certain technologies or data at a “closed” conference or meeting (a meeting that is not open to all technically qualified members of the public and attendees are not permitted to take notes)
 - Restricted information (in print and electronic format or discussed verbally while abroad)
 - Travel to sanctioned or embargoed countries
 - Conducting business with, or providing services to, certain people or entities (including human subjects and collaborative research)
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Are there any exclusions or exceptions?

There are two main exceptions that apply to international travel. Items taken abroad as “tools of the trade” may qualify for the temporary export exception (TMP). Items taken abroad as personal belongings may qualify for the personal baggage exception (BAG).

Both of these exceptions must fulfill certain criteria:

- Items must return to the U.S. in 12 months
 - Items must remain in your personal control at all times or stored in a safe place
 - Items may not be exported under these exceptions to embargoed countries
 - If the item incorporates encryption technology, some restrictions may apply
 - You cannot travel with proprietary or export controlled technical data or export a defense article under these exceptions
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General Considerations

General do's and don'ts

- DO secure license approval or verify license exception through the RCS staff prior to shipment for all controlled items or disclosing controlled information to a foreign national
 - Do NOT ship any item outside the U.S. without first checking the ITAR and EAR lists to determine if the item is controlled
 - Do NOT accept publication or access controls in research agreements
 - Do NOT travel to any embargoed countries for research or educational activities without first contacting the RCS staff
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What are the work environment requirements?

- Laboratory work should be physically shielded from observation by operating in secured laboratory spaces or during secure time blocks when observation by unauthorized persons is preventable.
 - Data, laboratory notebooks, hard copy reports and research materials should be held in locked, fireproof cabinets located in rooms with key-controlled access.
 - Electronic communications and all databases should be managed via a type of virtual private network that limits access to authorized users only and facilitates exchanges between those authorized users while encrypting any data sent.
 - Discussions about the project or work products should be limited to the identified contributing investigators and are held only in areas where unauthorized persons are not present.
 - Discussions with third party subcontractors, such as identified manufacturing sites, should be conducted only under signed confidentiality agreements and fully respecting the non-U.S. citizen limitations for such disclosures.
 - Third party communications should be conducted only under valid confidentiality agreements with prior consent of the government.
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Navigating the Maze of Exclusions, Exemptions and Fundamental Research

What is an exclusion?

Regulations don't apply.

What is an exemption?

Regulation is generally applicable, but may not apply if certain circumstances exist.

What is an exception?

An exemption is available, but may be overcome or lost if other conditions are not met.

Examples of exclusions

Public domain exclusion

The information is in the public domain. It has been published and is generally accessible to the public through unlimited and unrestricted distribution.

Teaching exclusion

Educational information may be disclosed if it is released by instruction in catalog courses or consists of general scientific, mathematical or engineering principles commonly taught in universities without a license.

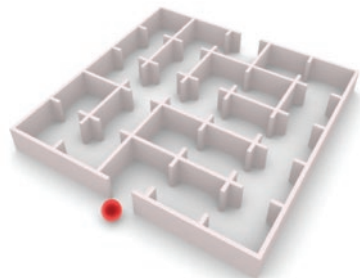
Fundamental Research Exclusion

Fundamental research is basic and applied research in science and engineering where the resulting information is published and shared broadly within the scientific community.

University research will NOT be considered fundamental research if:

- The university or its researchers accept restrictions on publication of scientific and technical information resulting from the project or activity, or
- The research contains specific access restrictions (such as foreign national restrictions)

The bottom line: It isn't fundamental research if there are limits on the freedom to publish and talk about research; restrictions on access of information by foreign nationals; restrictions on visas to foreign visitors and collaborators; or restrictions on publication of research results. Fundamental research is EXCLUDED from the export control regulations.



Export Control Contacts and Resources

Empowered Official

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Research Compliance Services Staff

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Resources

UNL Export Control Web site
<http://research.unl.edu/orr/exportcontrol.shtml>

ITAR Web site
http://www.pmdtc.state.gov/regulations_laws/itar.html

EAR Web site
http://www.access.gpo.gov/bis/ear/ear_data.html

OFAC Web site
<http://www.treas.gov/offices/enforcement/ofac/>



Notes



The University of Nebraska-Lincoln does not discriminate based on gender, age, disability, race, color, religion, marital status, veteran's status, national or ethnic origin, or sexual orientation.