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About this Quick Guide

This Quick Guide has been developed as a summary of the laws, regulations and issues to be considered with regards to export controls and research in the University setting.

What are Export Controls?

U.S. export control laws and regulations are intended to serve various government objectives, among them to protect national security, advance U.S. foreign policy and economic goals and prevent the proliferation of weapons of mass destruction. Since September 11, 2001, export controls have been used as anti-terrorism tools. This has resulted in an increase in concern about enforcement and a greater focus on life sciences and biological materials.

What are the Applicable Regulations?

- Department of State – International Traffic in Arms Regulations (ITAR)
  - regulates military or defense-related articles, technologies and services.
  - [http://www.pmddtc.state.gov/reference.htm](http://www.pmddtc.state.gov/reference.htm)

- Department of Commerce – Bureau of Industry and Security (BIS)
  - Export Administration Regulations (EAR) – regulates commercial and “dual use” products and technologies.
  - [http://www.bis.doc.gov/licensing/exportingbasics.htm](http://www.bis.doc.gov/licensing/exportingbasics.htm)

- Department of the Treasury – Office of Foreign Assets Control (OFAC)
  - sanctions the conduct of research and the transfer of assets (defined very broadly as “something of value”) in those countries where the U.S. has imposed trade or economic sanctions or embargoes. OFAC regulations may also govern purchases from or the transfer of assets to certain individuals or organizations.
  - [http://www.ustreas.gov/offices/enforcement/ofac/regulations/](http://www.ustreas.gov/offices/enforcement/ofac/regulations/)

What is an Export?

Under the above noted regulations, the export of certain items of equipment, software, and technologies that have military or defense applications (under ITAR), or certain equipment, software, or technologies that may have dual commercial and military use (under EAR), are considered “controlled articles” and may require a license.

“Export” means to send or take controlled articles out of the United States, to transfer ownership or control of a controlled article to a foreign person, or to disclose certain defined information about a controlled article to a foreign government or foreign person. The article being sent or taken out of the United States is also referred to as an “export.” Although the export can take place when the article is carried out of the United States in luggage or sent by mail or courier, an export can also occur when performing services for the benefit of a foreign person or entity, sending a wire transfer, e-mail, or fax, or in a conversation.

“Deemed Export” is the transfer, release, or disclosure of technical data about controlled articles to foreign persons in the United States.

“Technical Data” is technical information that goes beyond general and basic marketing materials about a controlled article. The term does not refer to the controlled equipment or the article itself, or to the type of information contained in publicly available user manuals. It means specific information necessary for the development, production, or use of the article. This information usually takes the form of blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, source code, engineering specifications, and documentation.

What can I do to Stay Out of Trouble?

The University strives to maintain an open research environment where the right to publish and disseminate results of research are key. This is critical since information resulting
from basic and applied research conducted in an open environment with no publication restrictions is excluded from Export Control Regulations under the Fundamental Research Exclusion described more fully below. Staying within the boundaries of this exclusion allows the University to avoid issues associated with “deemed exports” of technical data.

It is important to realize however, that equipment, software or other technologies acquired or developed under any research may still fall under Export Control Regulations. Therefore, a license may be required if any of these items are to be exported from the U.S. to another country.

The University will also acquire licenses as needed to conduct research or transfer assets to countries, organizations or individuals on the OFAC list.

Finally, the University does not normally accept Export Controlled information under a duty not to disclose it from outside organizations. In unusual situations, an exception may be made on a case-by-case basis. Please contact your Contracts and Grants or Industry Contracts Officer for further information. Faculty and others in the research community are reminded that they should not enter into any personal or private agreements to accept Export Controlled information outside the agreements negotiated by the Regents.

What is the Fundamental Research Exclusion?

The Fundamental Research Exclusion under both EAR and ITAR applies to information resulting from or arising during basic and applied research in science and engineering conducted at an accredited institution of higher education located in the U.S. For this exclusion to apply, the information must be published and shared broadly in the scientific community. The information may not be subject to proprietary or U.S. government publication or access dissemination controls.

This exclusion applies to information only, not to items or materials. Once created, the information may be transferred abroad without restriction. The fundamental research exclusion permits U.S. universities to allow foreign students, faculty, and visitors to participate in research projects involving export-controlled technical information on campuses in the U.S. without a deemed export license. Do note however that under ITAR certain disclosures of unclassified technical data may be made to bona fide full time regular University employees only if: (i) The employee’s permanent abode throughout the period of employment is in the United States; (ii) The employee is not a national of a country to which exports are prohibited; and (iii) The institution informs the individual in writing that the technical data may not be transferred to other foreign persons without prior written approval.

Are there any other Exclusions?

Under EAR, publicly available information is excluded from control. Under ITAR, public domain information is excluded from control. These exclusions involve information that is already published through specified means and found in libraries open to the public or unrestricted subscriptions available for a cost not exceeding reproduction and distribution costs. They also apply to published patent information and to information available on websites accessible to the public for free. Information distributed at conferences held in the U.S. (ITAR) or anywhere (EAR) which are generally accessible to the public for a reasonable fee and where attendees may take notes, is also excluded from control. There is also an exclusion for educational information which covers general science, math and engineering commonly taught at schools and universities (ITAR) and information conveyed in courses listed in course catalogues and in their associated teaching labs of any academic institution (EAR). There is also a license exemption for unclassified technical data provided to bona fide full time regular employees of U.S. institutions of higher learning with permanent abodes in the U.S. throughout their employment. Please note that in this case, students are not considered employees. For further information on exclusions see http://www.access.gpo.gov/bis/ear/pdf/734.pdf and http://www.access.gpo.gov/nara/cfr/waisidx_05/22cfr120_05.html
Great, I’m Home Free! Right?

Not exactly. If the University accepts restrictions on publication or dissemination of research results, the fundamental research/publicly available/public domain exclusions are destroyed. Investigators must also refrain from making side deals with sponsors to restrict publication or dissemination, as these will also destroy the fundamental research exclusion. A short (30-90 day) pre-publication review period for patent protection or to permit a sponsor to remove inadvertently included sponsor-proprietary information does not destroy the exclusion.

Note that the University can still agree to protect a sponsor’s proprietary information that is not export controlled. What we cannot agree to do is to keep University research results confidential.

I want to collaborate with a Foreign University and Ship Items out of the U.S. What do I need to know?

Information created under the Fundamental Research Exclusion may be freely transferred outside the U.S. provided that the country, entity or individual to which the information is being transferred is not on an OFAC list. Licenses are required for all transactions under OFAC. In general, collaboration with foreign universities is allowed. However, if any materials are to be shipped abroad or if the research involves proprietary information, the exchange of researchers or faculty, or work in or transfer of funds to sanctioned nations, licenses may be required.

What about Materials Leaving the Campus? Material Transfers? Shipping?

Shipments of tangible items out of the U.S. may require a license. Even an item resulting from fundamental research may require a license if it is to be shipped outside of the U.S.

Shipments of items controlled under ITAR out of the U.S. always require a license. In all cases, if the shipment is to a sanctioned nation, entity, or individual, an OFAC license is required. Shipping items controlled under EAR may also require an export license. It is critical to secure license approval or verify a license exception before shipping any controlled items. Contact the Coordinator, Research Policy & Compliance at x4-2642 or email: cmodlin@resadmin.ucla.edu for guidance on verifying license exceptions and submission of any license applications. Please see http://www.ucop.edu/research/policies/shipping.htm for further assistance with shipping decisions. Also see http://www.research.ucla.edu/mta/ for information about material transfer agreements.

What are Select Agents?

On June 12, 2002, President Bush signed the “Public Health Security and Bioterrorism Preparedness and Responsibility Act of 2002”. The purpose of this law is to prevent, prepare and respond to bioterrorism and other public health emergencies. The law requires that all persons possessing select biological agents and toxins deemed a threat to public health, animal or plant health register with the appropriate federal agency. Although this program is distinct from the export control program, it is important for campus to be aware of the regulations when conducting research or transferring materials. The select agent list contains organisms, viruses and toxins that could be used as biological weapons and can be found at http://www.cdc.gov/od/sap/docs/salist.pdf. The agents themselves, nucleic acid or genetic elements from any of the agents, and agent vaccines approved by USDA or FDA are restricted. There are criminal
and civil penalties for failure to disclose possession or transfer of agents without registration. Please see http://wwwbiosafety.ucla.edu/ for further information.

What about Inventions?

If you make an invention, please contact the UCLA Office of Intellectual Property Administration (OIPA) and file an invention report. Your Technology Transfer Officer will help you determine if the invention described in your invention report is of the type which may be subject to export control regulations. If the technology is export controlled, it should be published or patented as soon as possible to stay within the Fundamental Research Exclusion. This does not mean that preliminary results must be published. It means that publication must take place in a timely manner as dictated by the standards of each discipline. Secrecy agreements with potential licensees must also be carefully structured to preserve the Fundamental Research Exclusion.

I Want to Travel Abroad for Research Purposes. Are there Restrictions on Where I may go?

Do not travel to conduct research or educational activities to embargoed/sanctioned countries without first checking with the Office of Research Administration to secure a license from the Department of Treasury, Office of Foreign Assets Control as needed. Contact the Assistant Vice Chancellor - Research at x4-0387 or email: apollack@resadmin.ucla.edu. For a current list of embargoed countries please see http://www.ustreas.gov/offices/enforcement/ofac/for information on restricted nations, entities and individuals as well as procedures for obtaining licenses to transact business with embargoed nations.

What About Money?

OFAC monitors the transmission of cash through wire transfers made from U.S. banks. Payments to sanctioned nations or individuals of these nations are also prohibited without a license. Bringing cash into sanctioned nations and paying individuals there directly is also prohibited. Please see http://www.ustreas.gov/offices/enforcement/ofac/ for information on restricted nations, entities and individuals as well as procedures for obtaining licenses to transact business with embargoed nations.

What will happen if I fail to comply with Export Control Regulations?

Failure to comply with U.S. export control rules can result in severe penalties, criminal and civil as well as institutional and individual.

- **ITAR:** (Individual and Entity)
  - Criminal Fines of up to $1 million and up to 10 years in prison.
  - Civil Fines of up to $500,000.
EAR:
(Entities – criminal)
The greater of fines of up to $1 million or 5X the value of the export.

(Individual – criminal)
Fines of up to $250,000 and/or up to 10 years in prison.

(Civil)
Fines $10,000-$100,000.

OFAC:
(Individual and Entity)
Criminal Fines of up to $1 million and up to 10 years in prison.

Civil Fines of $12,000-$55,000.

Violators may also face loss of reputation and export privileges.

Do’s and Don’ts:
Do not ship any item outside of the U.S. without first determining if the item is controlled under ITAR and EAR. This applies to outgoing materials under MTA’s, software and other deliverables.

Publish early and often to ensure all technical data about export-controlled commodities qualifies as “publicly available”.

Do not accept publication restrictions or access/dissemination restrictions.

Do not accept prior approval requests for use of foreign nationals.

Do not enter into secrecy agreements or otherwise agree to withhold results in research projects conducted at the University or that involve University facilities, students, or staff.

Do not accept proprietary information that is marked “Export Controlled”.

Return to the manufacturer any materials they provide to you about export-controlled equipment that are marked “Confidential” unless they are covered by a specific non-disclosure agreement. Confidentiality/Non-Disclosure Agreements must be reviewed by Office of Contracts and Grants (OCGA) or Industry Contracts (OIPA) to insure that UC and you are not assuming the burden of restricting dissemination based on citizenship status or securing licenses. Please contact the Assistant Manager, OCGA at x4-2644 or e-mail: vanders@resadmin.ucla.edu or your Industry Contract Officer in OIPA or e-mail: jdepass@resadmin.ucla.edu.

Do not provide citizenship, nationality, or visa status information for project staff to parties outside the University or include such information in proposals. It is contrary to University policy to discriminate on this basis or to select research project staff on any basis other than merit. (See http://www.ucop.edu/raohome/cgmemos/04-02.html). It is also a violation of INS regulations, of the federal Privacy Act, and the California Information Practices Act to provide this information.

Do not agree to background checks or other arrangements where the external sponsor screens, clears, or otherwise approves project staff. University policy allows for background screening conducted by the University when appropriate to the position.

Do not attend meetings where foreign nationals are prohibited from attending.

Do not sign the DD2345, Militarily Critical Technical Data Agreement, as a condition of attending a conference or receiving materials from the government.

If you encounter an RFP from a sponsor (either government or private) that mentions export controls, prior approval of publications or restrictions on citizenship, please discuss this with your OCGA officer as soon as possible.

Contact the Assistant Vice Chancellor - Research at x4-0387 or email: apollack@resadmin.ucla.edu, to ascertain whether a license from the Department of Treasury, Office of Foreign Assets Control, is required to conduct research or education activities in an embargoed country or before traveling to an embargoed country to conduct research or educational activities.