



Export Control Office of Research

Applies to: All university personnel including faculty, staff, research associates and fellows, post-doctoral fellows, student employees, students, and volunteers in all units of the university.

POLICY

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It is the policy of The Ohio State University that all personnel, including faculty, staff, visiting scientists, postdoctoral fellows, students and all other persons retained by or working at the university, comply with all U.S. laws and regulations while teaching, conducting research or providing service activities at or on behalf of the university. As such, all personnel are required to comply with the U.S. laws that regulate the transfer of items, information, technology, software and funds to destinations and persons outside of the U.S., as well as in some cases, to non-U.S. citizens at the university.

These current federal regulations are collectively referred to as the “Export Control laws” and have been in existence since the 1940’s to regulate the transfer or release from the U.S. of information, commodities, technology, or software that has been deemed strategically important to the U.S. for reasons of national security, foreign policy, or the protection of the economy and commerce. Many of the research, teaching or service activities conducted by university faculty and staff are shielded, however, from these complex regulations by a long-standing “fundamental research” exemption, which is discussed in more detail below.

Failure to comply with the Export Control laws may result in severe penalties to the institution, as well as criminal sanctions to individual faculty, staff and students. As a result, faculty and staff members working in the following areas should become familiar with this policy and the procedures described below: engineering, physical and computer sciences (especially faculty, staff and students involved in defense-related research); the biological sciences and medicine, including faculty, staff and students working with select agents and infectious materials; or faculty conducting research or academic collaborations with colleagues in countries that have been designated by the U.S. Department of State as supporting terrorism. Details concerning the application of this policy along with flow charts, decision trees, and other information can be found at the Export Control web site (www.orc.osu.edu/exportcontrol/).

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Definitions

Term	Definition
Deemed Export	Release or transmission of information or technology subject to export control to any foreign national in the U.S., including graduate students and training fellows. Such a release of information is considered to be an export to the person's home country.
Educational Information	Information that is normally released by instruction in catalog courses and associated teaching laboratories of academic institutions is considered "Educational Information" and is <u>not</u> subject to Export Controls.
Export	Any item (i.e., commodity, software, technology, equipment, or information) sent from the U.S. to a foreign destination is considered an export. Examples of exports include the actual shipment of goods as well as the transfer of written documents or information via email, phone, fax, internet, and verbal conversations.
Export Control Committee	The Export Control Committee (ECC) is a university committee that includes members from the Office of Research Compliance, Research Foundation, Office of Legal Affairs, Office of Information Technology, Office of Technology Licensing & Commercialization, and the Office of Environmental Health and Safety. The ECC is responsible for performing all export control assessments, determining license requirements, assisting with the submission and processing of license applications, and helping university personnel with all export control matters.
Export License	A written authorization provided by the appropriate governing regulatory authority detailing the specific terms and conditions under which export or re-export of Export Controlled items is allowed.
Export License Exception	An Export License Exception is an authorization that allows you to export or re-export, under very specific conditions, items that would normally require a license. Export License Exceptions are detailed in EAR § 740 (http://www.access.gpo.gov/bis/ear/pdf/740.pdf).
Foreign National	A Foreign National is defined as anyone who is not a U.S. citizen, or who is not a lawful permanent resident of the U.S., or who does not have refugee or asylum status in the U.S. Any foreign corporation, business association, partnership, trust, society or any other foreign entity or group as well as international organizations and foreign governments are considered "Foreign National(s)."
Fundamental Research	As defined by National Security Decision Directive 189 (NSDD 189), Fundamental Research is any " <i>basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community...</i> " Information that results from Fundamental Research is <u>not</u> subject to Export Control.
Re-Export	A re-export occurs whenever any item (i.e., commodity, software, technology, equipment or information) is sent from one foreign country to another foreign country.
U.S. Person	A U.S. person is any U.S. citizen, permanent U.S. resident alien, or protected individual, wherever that person is located. U.S. incorporated or organized firms and their foreign branches are also considered "U.S. Person(s)."

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Policy Details

The purpose of this policy is to outline the key features of Export Controls, examine the relationship of these regulations to activities conducted at the university, and explain how the university will assist university personnel to ensure compliance with Export Controls. This policy applies to all university personnel (including but not limited to all faculty, staff, students, trainees, and visiting scientists) whose academic work involves, but is not limited to, the following:

- Activities or research in controlled areas (e.g., encryption technology, nuclear technology, chemical/biological weapons, military technologies)
- Activities involving the shipping or taking of equipment, technology, or software overseas
- Activities involving teaching and research collaborations with foreign colleagues or the participation or training of foreign nationals here or abroad
- Activities involving travel or work outside the U.S.
- Conducting tours of foreign nationals through research areas
- Conducting research sponsored by any entity restricting publication or participation by foreign nationals
- Activities involving the receipt and/or use of export controlled information or technologies from other parties

The Departments of State, Commerce, and Treasury are the principal administrative branches of the U.S. Government involved in the oversight and enforcement of Export Controls as follows:

- A. The Department of State, through the Directorate of Defense Trade Controls (DDTC), administers the International Traffic in Arms Regulation (ITAR). ITAR controls the export of items that have primarily military or space applications.
- B. The Department of Commerce, through the Bureau of Industry and Security (BIS), administers the Export Administration Regulations (EAR). EAR controls the export of “dual-use” items (i.e., those items having both commercial and military applications) as well as strictly commercial items.
- C. The Department of the Treasury, through the Office of Foreign Assets Control (OFAC), is responsible for enforcing specific embargoes and/or sanctions.

While Export Controls have been in place for many years, the level of awareness and scrutiny of export activities has been heightened, necessitating comprehensive policies and procedures to ensure compliance. Failure to comply with Export Controls may result in substantial civil and criminal penalties to the university and the specific individual(s) involved, as well as administrative sanctions resulting in potential loss of federal funding and export privileges.

The Ohio State University is conducting leading edge research in many areas, including science and engineering. It is a general practice of the university to foster a research environment conducive to the expansion of general knowledge and the open release of knowledge acquired for the public good. The Federal regulations provide a broad exemption from Export Controls for basic or applied academic research that is normally published and shared with the research community. This broad exemption is commonly referred to as the “**Fundamental Research Exclusion.**” To qualify as “Fundamental Research,” and thus be exempt from export controls, research must be conducted free of any publication restrictions or access or dissemination controls. Thus it is critical that the university continues to ensure that all research results are widely and openly published and made available to the academic community in order to safeguard the Fundamental Research Exclusion. It is important to note that even with the Fundamental Research Exclusion, if a university activity involves an export or deemed export, the university must document that an Export Control review and analysis was performed **before** the export or release of information takes place. It is also important to note that while



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the **results** of Fundamental Research are exempt from Export Controls, the actual item, technology, or software under study is not automatically exempt and may have Export License requirements.

PROCEDURE

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It is the responsibility of all university personnel to be aware of and comply with all Export Controls as well as applicable university policies and procedures. With regard to specific research projects, it is important to note that the primary compliance responsibility resides with the researcher, however the appropriate administrative staff (e.g., Sponsored Program Officer, Export Control Committee, etc.) should be notified by the researcher whenever it is believed or known that Export Controls may apply. The university will assist any member of the university community in assessing their Export Control obligations and will facilitate the acquisition of Export Licenses as required.

I. Research Involving the Export of Items Out of the U.S.

It is the responsibility of the Export Control Committee to determine the licensing requirements for shipping any item, software, technology, or information from the university to destinations outside the U.S. To make this determination, the researcher needs to provide answers to the following questions to the Export Control Committee:

- A. What is the item? This includes a detailed description of the item, software, or technology, technical specifications, the origin of the item, and any contractual non-disclosure or use restrictions that may exist.
- B. Where is the item going?
- C. To whom is the item going?
- D. What is the intended end-use?
- E. Is the item published, patented, or in some other manner in the public domain?

Determining the license requirements of an item can be a complex and complicated process requiring the proper classification of the item and verification and clearance of the target destination, end use, and end users. The final determination of whether an item requires a License, qualifies for a License Exemption, or can be exported as No License Required will be made by the Export Control Committee in collaboration with the researcher(s). If a License is required, the Export Control Committee will coordinate the License application process. Obtaining a License can take three to six months (or more) and there is no guarantee that a License will be issued. No export (or deemed export) can take place until the required License is obtained.

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II. Research Involving Disclosures or Transfers to Foreign Persons in the U.S. (Deemed Exports)

The release or transmission of information or technology subject to Export Control to any foreign national in the U.S. including graduate students and training fellows is a “Deemed Export” and is considered an export to that person’s home country. In some instances, a License may be required before the information can be released. Examples of “releases” to foreign nationals include providing access to controlled software, technology, or equipment by visual inspection or use, providing access via tours of facilities, providing access to technical specifications, and verbal exchanges of information. It is the responsibility of the Export Control Committee to determine the licensing requirements involving deemed exports. To make this determination the researcher needs to provide the following information to the Export Control Committee:

- A. Information to be released – This includes a detailed description of the information, item, software, or technology; technical specifications, origin of the item and/or any contractual non-disclosure or use restrictions that may exist.
- B. A list of the home country and citizenship of all persons that will be given access to the information, item, software, or technology.
- C. Did the information or item, software, or technology result from Fundamental Research?
- D. Is the item published, patented, or in some other manner in the public domain?

The final determination of whether release of the information or item(s) requires a License will be made by the Export Control Committee in collaboration with the researcher(s). If a License is required, the Export Control Committee will coordinate the License application process. Obtaining a License can take three to six months (or more) and there is no guarantee that a License will be issued. No release of information or items to foreign nationals can take place until the required License is obtained.

III. Travel Outside the U.S. and International Financial Transactions

When leaving the U.S., it is important to note that traveling with certain items (e.g., personal laptop computers running encryption software, wireless network hardware/software, some GPS systems) may require a License or License Exception depending on the travel destination. In general, problematic destinations are those countries currently under U.S. embargo, sanction, or other trade restriction. Specific examples include Iran, Cuba, Sudan, Syria, and North Korea. U.S. sanction programs may change over time so you should check the Treasury Department’s list of Sanctioned Countries (<http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>) and the Export Control web site (<http://www.orc.osu.edu/exportcontrol/>) for the most current information.

The application of personal knowledge or technical experience to situations in other countries (e.g., during consulting activities) may also invoke export licensing requirements. University personnel can receive assistance from the Export Control Committee in determining whether a License is required.

In addition to potential travel restrictions, it is also important to note that certain financial transactions with restricted individuals or entities from sanctioned or embargoed countries may be prohibited (e.g., fellowship payments made to a researcher in another country). Before agreeing to provide funding to any foreign national, University personnel should check with the Export Control Committee for assistance in identifying potential restrictions on the transaction.



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IV. Activities Involving the Receipt and/or Use of Export Controlled Information/Technology

While the vast majority of work done at the university falls under the Fundamental Research Exclusion and is shielded from Export Controls, the Fundamental Research Exclusion does not apply to Export Controlled information, technology, software, or items that the university receives from other parties nor does it apply to research conducted using such export controlled information or items. Export Controlled information received from other parties cannot be openly shared with certain foreign nationals without a License. If a university activity involves the receipt or use of externally obtained Export Controlled information, items, technology, or software, the primary recipient (e.g., the Principal Investigator), with help from their respective Office of Human Resources, must determine by current citizenship status those university personnel that can legally access the information or item before the information or item is shared. The Export Control Committee can assist the primary recipient in these determinations.

All university personnel receiving Export Controlled information or items will be asked to sign the “Certification on the Handling of Export Controlled Information” acknowledging their receipt of Export Controlled information or items and their understanding of their responsibilities and obligations regarding the safe handling and use of the information or items. In some cases, the primary recipient may be required to develop a Technology Control Plan, in collaboration with the Export Control Committee, outlining the specific procedures and safeguards that will be implemented by the researcher to ensure compliance with Export Controls. Before accepting any Export Controlled information, item, technology, or software, university personnel should contact the Export Control Committee for help in determining potential compliance requirements.

V. Restrictive Trade Practices and Boycotts

Participation in certain restrictive trade practices is prohibited under the EAR. The “anti-boycott” provisions of the EAR prohibit U.S. persons or businesses from participating in any non-U.S. sanctioned foreign government boycott. Participation in this context includes refusing to engage in business transactions with the boycotted country, agreeing to not use “blacklisted” suppliers from the boycotted country or providing information related to business relationships with the boycotted country.

While anti-boycott provisions of the EAR apply to any foreign country’s boycott, in practice the primary anti-boycott focus involves the Arab League’s boycott of Israel. Any U.S. person who receives a request that supports a restrictive trade practice or boycott imposed by another country must promptly report the request to the Department of Commerce. The Export Control Committee can assist university personnel in determining if the anti-boycott provisions of the EAR apply and in reporting such occurrences to the appropriate authorities.

VI. Recordkeeping and Retention Requirements

The university is required to retain a complete record of all Export Control documentation including but not limited to the university’s analysis of license requirements, any issued licenses, shipping documents, and any correspondence related to each export transaction. Original records must be retained for five years from the date of export, re-export, or transfer. The Export Control Committee (in conjunction with the Office of Research Compliance) is responsible for the retention of export records. It is the responsibility of university personnel to forward all relevant export documentation to the Export Control Committee for archiving.



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Responsibilities

Position, or Office	List of Responsibilities
Faculty/Researcher	Researcher has the primary responsibility for: <ul style="list-style-type: none"> • Identifying research activities where there might be Export Control issues • Notifying the appropriate university officials of the issues • Working with the Export Control Committee to accurately classify items and apply for licenses • Ensuring the appropriate protection of all controlled information and technology in their possession • Providing all export documentation to Export Control Committee for archiving
Sponsored Program Officer/Department Administrator	Sponsored Program Officers (SPOs), Department Administrators and/or any other person negotiating contracts or sponsored research agreements have primary responsibility for: <ul style="list-style-type: none"> • Identifying and removing from agreements any language that attempts to place restrictions on the university's ability to publish the research or to place restrictions on the participation or access by foreign nationals • Notifying the Export Control Committee in the event that such restrictions are accepted
Department/College	Chairs, Directors, and Deans are responsible for: <ul style="list-style-type: none"> • The administration and monitoring of existing Technology Control Plans of their faculty • Notifying the Export Control Committee of any issues that arise regarding the implementation of, or compliance with, any management plan
Office of Technology, Licensing and Commercialization (TLC)	The Office of Technology, Licensing and Commercialization (TLC) is responsible for: <ul style="list-style-type: none"> • Identifying potential Export Control issues arising in conjunction with Material Transfer Agreements, Non-Disclosure Agreements, or other licensing agreements • Notifying the Export Control Committee of such issues • Ensuring that the appropriate certification and/or Technology Control Plan is developed and implemented in collaboration with the Export Control Committee
Export Control Committee (ECC)	The Export Control Committee is responsible for: <ul style="list-style-type: none"> • Assisting researchers in determining Export License requirements (in collaboration with the appropriate regulatory bodies) • Facilitating the development of Technology Control Plans (TCP) • Coordinating verification checks on foreign nationals visiting the university.
Office of Legal Affairs	The Office of Legal Affairs serves in an advisory role to the Export Control Committee assisting in the preparation of Export License applications and providing legal oversight.
Office of Research Compliance	The Office of Research Compliance is responsible for: <ul style="list-style-type: none"> • Monitoring and oversight of the university's Export Control Program • Providing assistance to the Export Control Committee in all export related matters • Serving as the primary site of export records retention.



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Resources

- The Ohio State University Export Control Compliance Manual
- The Ohio State University Export Control website (<http://orc.osu.edu/exportcontrol/>)
- U.S. State Department – International Traffic in Arms Regulations (ITAR) (<http://www.fas.org/spp/starwars/offdocs/itar/index.html>) – 22 CFR §§120-130
- U.S. Commerce Department – Export Administration Regulations (EAR) (http://www.access.gpo.gov/bis/ear/ear_data.html) - 15 CFR §§730-774
- U.S. Bureau of Industry and Security (BIS) (<http://www.bis.doc.gov/>)
- U.S. Treasury Department – Office of Foreign Assets Control (OFAC) (<http://www.treas.gov/offices/enforcement/ofac/>) - 31 CFR §§500-599
- National Security Decision Directive 189 (NSDD 189) (<http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm>)

Contacts

Individual or Office	Office	Telephone	E-mail/URL
Export Control Administrator	Office of Research Compliance	(614) 247-8831	jennifer.yucel@orc.osu.edu
Export Control Committee			exportcontrol@osu.edu
Export Control Web site			http://orc.osu.edu/exportcontrol/

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