



THE OHIO STATE UNIVERSITY

Export Control Basics

Office of Research Training, Education, &
Communication



Export Control Basics

The goals of this presentation are to:

- I. Provide a broad general overview of Export Control Regulations
- II. Discuss the relationship between Export Controls and University Research and provide examples of the types of activities that may be impacted
- III. Outline what you can do to help ensure the University's compliance with export control regulations
- IV. Identify where to go for help



Overview of Export Control

The U.S. Government actively regulates, and in some cases, restricts the export of certain information, items and technologies deemed to be critical to the interests of national security, economy and/or foreign policy.

In general, restrictions apply to information, items, technologies or services that include:

- Military or “dual use” items
- Chemical/biologics weapons
- Encryption technology & related software
- Funding, information, services or items provided to embargoed countries



Overview of Export Control

In addition to activities involving military items or weapons it is **critical** to note that many normal, everyday University activities are subject to Export Controls, including:

- Traveling overseas on University business (e.g., conferences, conducting field work, international symposia)
- Research collaborations with foreign nationals (here or abroad)
- Visits or tours of research facilities by foreign nationals
- Sponsoring research (e.g., via a subcontract) to an embargoed or sanctioned country
- Providing professional services (e.g., consulting) internationally or to problematic end-users

Export Controls do not only apply to military work, they touch research in a variety of ways.



Why Export Control is important to you

Following the events of 9/11 there has been a heightened level of awareness and scrutiny of all export activities with an concomitant emphasis on **enforcement**.

- Federal agencies are increasingly focused on universities and their compliance with export regulations.
- Non-compliance with export regulations can lead to substantial and severe criminal and monetary penalties imposed on both individual researchers and institutions.
- Non-compliance with export regulations can lead to denial of export privileges and the loss of federal funding.



What Are Export Controls?

The term “Export Controls” refers collectively to those U.S. laws and regulations that govern the transfer of controlled information or technologies to foreign nationals and/or foreign countries.

- Export Controls apply to all international university activities, not just sponsored research projects involving controlled information or technology.
- Export Controls apply regardless of the funding source and federal funding can be the most problematic..
- Export Controls are not intuitive.



How Export Controls impact you

Export controls can impact your ability to:

- Ship items out of the U.S. (including project deliverables)
- Collaborate with foreign colleagues
- Allow the participation of foreign students or foreign researchers in research activities
- Provide services (including training) to foreign persons both here and abroad
- Conduct research freely without having to implement restrictive and inconvenient security access controls



Export Control Regulations

There are 3 primary federal agencies that oversee and enforce Export Controls:

- **State Dept.** – International Traffic in Arms Regulations (ITAR) – Governs military, weapons and space related technologies
- **Commerce Dept.** – Export Administration Regulations (EAR) – Governs technologies with dual uses (those with both military and commercial applications or strictly commercial applications)
- **Treasury Dept.** – Office of Foreign Assets Control (OFAC) – Governs transactions with countries subject to embargo, boycott, or trade sanctions



What constitutes an Export?

An export occurs whenever an item, commodity, technology, or software is sent out of the U.S. to a foreign destination.

- If the item being released or exported is a “controlled item” then an Export License may be required **before** the transfer can legally occur.
- An export can take any form – not just physical shipments – and the manner in which the transfer or release of the item takes place is not relevant to export control regulations.



Types of Export Activities

Examples of activities that are considered exports and would be subject to Export Controls include:

- Shipment of items out of the U.S.
- Written or oral communications
- Electronic or digital transmissions
- Hand Carrying items out of the country
- Providing visual inspections or tours of facilities
- The use or application of a controlled service or technology on behalf of or for the benefit of a foreign person or entity



Deemed Exports

In addition to the physical transfer of items out of the country, the U.S. Government also actively regulates the release or transmission of controlled technology or information to Foreign Nationals within the U.S (e.g., a foreign national graduate student at OSU). This is referred to as a **“Deemed Export.”**

- Deemed Exports are regulated by the same Export Controls as the actual transfer of items out of the U.S.
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Foreign Nationals/Entities

Foreign Persons are persons who:

- Are not U.S. Citizens
- Are not permanent resident aliens of the U.S. (i.e., they do not have a Green Card)
- Are not in the U.S. as a refugee or with asylum status

Foreign Entities are those businesses, organizations, and governments that are not incorporated or organized to do business in the U.S.



Export Controls & University Research



Export Controls & University Research

The good news: the vast majority of research conducted at U.S. universities is exempt from export controls under 3 exclusions provided for under the current regulations.

They are:

- The Fundamental Research Exclusion
- The Educational Information Exclusion
- The Public Information Exclusion

Although research may be exempt from Export Controls under these exclusions, the University must demonstrate that the appropriate export control reviews were performed.



Fundamental Research Exclusion

The Fundamental Research Exclusion applies to any basic or applied research in science or engineering where the resulting information is ordinarily published and broadly shared in the scientific community.

Research performed as Fundamental Research is not subject to Export Controls and no licenses are required to release or transfer information to a foreign national in the U.S. or abroad.

It is important to note that the fundamental research exclusion only covers the **“results”** of research. It does not cover actual materials, items or technologies involved in or resulting from the research. Export Controls may still apply to these items.



Fundamental Research Exclusion

For research to qualify as Fundamental Research all of the following must be true:

- There can be no restrictions on publication
- There can be no access or dissemination restrictions
- The research must take place at an accredited institution in the U.S.

Delays in finalizing sponsored research agreements can be encountered when sponsors try to insert publication or access restrictions in agreements which would nullify the Fundamental Research Exclusion.

In general OSU does not accept such restrictions.



Educational Information Exclusion

The Educational Information Exclusion covers information commonly taught in universities via instruction in catalog courses and/or through the associated teaching laboratories.

Information that qualifies as Educational Information is **not** subject to Export Controls and no export license is required to share information with foreign persons in the U.S. or abroad.



Public Information Exclusion

The Public Information Exclusion covers any information that is already published or out in the public domain. Information in the public domain is not subject to Export Controls. Examples include:

- Books, newspapers, pamphlets
- Publically available technology and software
- Information presented at conferences, meetings or seminars open to the public
- Information included in published U.S. patents
- Websites freely accessible to the public.

Information in the public domain is **not** subject to Export Controls and no export license is required to share information with foreign persons in the U.S. or abroad.



Export Control Regulations



Educational Information • Fundamental Research • Public Information

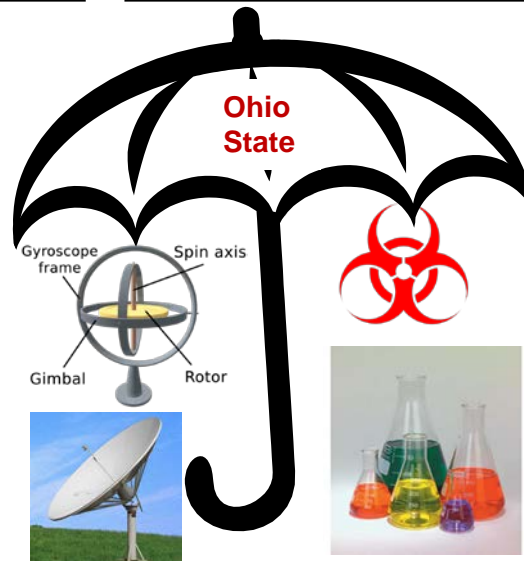
*Research with 3rd party
Controlled technology



*Interactions with blocked
or sanctioned entities



*Research subject to
contract restrictions on
publication or access
by foreigners



*Research in controlled areas
(e.g., encryption technology)



*Research in chemical/biological
weapons



*Research in nuclear technology
or Weapons of Mass Destruction



*Research conducted outside
the U.S.



***These activities are not protected and are subject to Export Controls**



How Do You Know?



Determining when Export Controls may apply to your research

The following list of questions is designed to help you determine if Export Controls may apply to your research:

1. Does the research involve military, weapons, defense, chemical or biological weapons, encryption technology & software, space or other dual-use items or export restricted technologies?
2. Does the research involve collaboration with foreign colleagues (including graduate students) either here at OSU or abroad?
3. Does the research involve the transfer or shipment of equipment, materials or funding out of the U.S.?
4. Does any part of the research take place outside of the U.S. (e.g. field work)?



Determining when Export Controls may apply to your research (cont)

5. Does any part of the research involve the receipt or use of Export Controlled information or items provided by a 3rd party?
6. Are there any contractual restrictions on publication or access to or dissemination of the research results?
7. Does the research involve the shipment or transfer of materials, money or any other type of collaboration with foreign nationals from a sanctioned or embargoed country (i.e. Cuba, Iran, North Korea, Sudan, or Syria)?
8. Do you have any reason to believe that the end-user or the intended end-use of the item or information violates any existing export controls?



Determining when Export Controls may apply to your research (cont)

If you answered yes to any of the proceeding questions then the research may be subject to Export Controls an an assessment will need to b e done. Contact the Office of Research Compliance – Export Compliance (ORCEC) at exportcontrol@osu.edu for more information.

ORCEC will help determine if an Export License is required and will prepare and submit all export license applications as needed.



Export Licenses

An Export License is a document issued by the U.S. government granting you the right to export a specific product, technology, or software to a specific country under a set of defined conditions.

Whether your research will require a license is driven by:

- The sensitive nature of the information or item
- Where the information or item is going
- To whom the information or item is going
- The purpose it will be utilized by the end-user



What Can You Do?



How do I help ensure the University is compliant with Export Controls?

- Review your research for potential export control issues and if you think that your work may be subject to Export Controls, contact the Office of Research Compliance – Export Compliance (ORCEC) at exportcontrol@osu.edu as early as possible (obtaining a license can take 3 to 6 months).
- If you are planning to receive or use Export Controlled information or technology from outside the University contact the Technology Commercialization Office to notify them of the incoming export controlled information.
- If you are planning to hire a foreign national or will be working with foreign collaborators on export controlled research, you must determine if an Export License is required. If required, the License must be obtained **before** work can proceed. Contact ORCEC for assistance in obtaining the appropriate licenses.



How do I help ensure the University is compliant with Export Controls?

If you research involved Export Controlled items/information:

- Check the “Export Control” box when submitting the “Authorization to Seek Off Campus Funding” (PA-005). This will notify the Office of Research Compliance – Export Compliance (ORCEC) of the potential issue.
- Contact your Sponsored Program Officer to ensure that all publication and access restrictions are negotiated appropriately to preserve the Fundamental Research Exclusion.
- Before hiring or involving a foreign national in research involving export controlled items, you may be required to develop a plan for securing the information and controlling access by foreign nationals.



How do I help ensure the University is compliant with Export Controls?

If you research involved Export Controlled items/information:

- Determine if an Export License is required or if there is a valid License Exception available. Work with the Office of Research Compliance – Export Compliance (ORCEC) to obtain any necessary licenses.
- When shipping export controlled items, include the appropriate licensing information (e.g., license number, License Exception submol or No License Required) on all export documents.
- Maintain original records of all Export Documents for five (5) years.
- Continue to follow any access or control provisions throughout the life of the project and beyond (as required).



The Cost of Noncompliance

As noted earlier, the U.S. government aggressively regulates and monitors the transfer of Export Controlled information and items out of the U.S. or to foreign nationals in the U.S.

Failure to comply with Export Controls can result in severe criminal and monetary fines to both the individual researcher and the University. Fines of up to \$1 Million dollars per violation and prison sentences of up to 10-20 years per violation are possible.

Non-compliance can lead to loss of export privileges, loss of federal funding, and significant harm to the integrity and reputation of the University.



Getting Help

Determining when an Export License is required can be quite challenging. The University's Office of Research Compliance – Export Compliance (ORCEC) are here to help you navigate the regulations to ensure compliance with these laws.

Please contact ORCEC at exportcontrol@osu.edu or visit the OSU Export Control website at <http://orc.osu.edu/exportcontrol/> for additional information, training materials, and other helpful links.



Summary

Export Controls apply to **all** international University activities not just to shipping equipment overseas.

If your research includes international activities an export control assessment will need to be done to determine if an export license(s) are needed.

Assistance is readily available to help you determine your export control compliance requirements. Contact the Office of Research Compliance – Export Compliance (ORCEC) at exportcontrol@osu.edu.