



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

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**POLICY**

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All university personnel, including faculty, staff, visiting scientists, research associates and fellows, postdoctoral fellows, student employees, students and all other persons retained by or working at the university must 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 exclusion, 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, personnel working in the following areas should become familiar with this policy and the procedures described below: engineering, physical and computer sciences (especially personnel involved in defense-related research); the biological sciences and medicine, including personnel working with select agents and infectious materials; or personnel conducting research or academic collaborations with colleagues in countries that have been designated by the U.S. Department of State as supporting terrorism.

**Purpose of the Policy**

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.

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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 foreign national'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. 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	A university committee that includes members from the Office of Research Compliance, Research Foundation, Office of Legal Affairs, Office of Information Technology, Technology Commercialization Office, and the Office of Environmental Health and Safety. The Export Control Committee 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 (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 (license exception)	An authorization that allows one to export or re-export, under very specific conditions, items that would normally require a license. Export license exceptions are detailed in Export Administration Regulations (EAR) § 740 ( <a href="http://www.access.gpo.gov/bis/ear/pdf/740.pdf">http://www.access.gpo.gov/bis/ear/pdf/740.pdf</a> ).
Foreign National	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): 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> " is <u>not</u> subject to export control under the fundamental research exclusion.
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).

### Policy Details

#### I. Scope

- A. 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:
1. Activities or research in controlled areas (e.g., encryption technology, nuclear technology, chemical/biological weapons, military technologies)
  2. Activities involving the shipping or taking of equipment, technology, or software overseas;
  3. Activities involving teaching and research collaborations with foreign colleagues or the participation or training of **foreign nationals** here or abroad;



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4. Activities involving travel or work outside the U.S.;
5. Conducting tours of foreign nationals through research areas;
6. Conducting research sponsored by any entity restricting publication or participation by foreign nationals; and
7. Activities involving the receipt and/or use of export controlled information or technologies from other parties.

### II. Federal Administration

- A. 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:
  1. 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.
  2. 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.
  3. The Department of the Treasury, through the Office of Foreign Assets Control (OFAC), is responsible for enforcing specific embargoes and/or sanctions.
- B. 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.
- C. 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.

### III. Ohio State's Program

- A. 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.
- B. 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.
  1. 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.
  2. 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 to safeguard the fundamental research exclusion.
  3. 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.
  4. It is also important to note that while 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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- I. Compliance Responsibilities
  - A. 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.
  - B. 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.
  - C. The university will assist university personnel in assessing their export control obligations and will facilitate the acquisition of licenses as required.
- II. Research Involving the Export of Items Out of the U.S.
  - A. 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.
  - B. To make this determination, the researcher must provide the following to the Export Control Committee:
    1. 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.
    2. Where is the item going?
    3. To whom is the item going?
    4. What is the intended end-use?
    5. Is the item published, patented, or in some other manner in the public domain?
  - C. 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.
  - D. 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).
  - E. If a license is required, the Export Control Committee will coordinate the license application process.
    1. Obtaining a license can take three to six months (or more) and there is no guarantee that a license will be issued.
    2. No export (or deemed export) can take place until the required license is obtained.
- III. Deemed Exports: Research Involving Disclosure or Transfers to Foreign Persons in the U.S.
  - A. In some instances, a license may be required before the information can be released.
  - B. 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.
  - C. It is the responsibility of the Export Control Committee to determine the licensing requirements involving deemed exports.
  - D. To make this determination the researcher must provide the following information to the Export Control Committee:
    1. Information to be released including 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;
    2. A list of the home country and citizenship of all persons that will be given access to the information, item, software, or technology;
    3. Whether the information or item, software, or technology result from fundamental research; and
    4. If the item is published, patented, or in some other manner in the public domain.
  - E. 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).



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- F. If a license is required, the Export Control Committee will coordinate the license application process.
  - 1. Obtaining a license can take three to six months (or more) and there is no guarantee that a license will be issued.
  - 2. No release of information or items to foreign nationals can take place until the required license is obtained.
- IV. Travel Outside the U.S. and International Financial Transactions
  - A. When leaving the U.S., it is important to note that traveling with certain items (e.g., laptop computers running encryption software, wireless network hardware/software, some GPS systems) may require a license or **license exception** depending on the travel destination.
  - B. In general, problematic destinations are those countries currently under U.S. embargo, sanction, or other trade restriction.
    - 1. Specific examples include Iran, Cuba, Sudan, Syria, North Korea, China, and Russia
    - 2. U.S. sanction programs may change over time so travelers should check the Treasury Department's list of sanctioned countries ([www.treas.gov/offices/enforcement/ofac/programs/index.shtml](http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml)) and the university's export control web site (<http://www.orc.osu.edu/exportcontrol/>) for the most current information.
  - C. 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.
  - D. 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 (and prior to making payment) to any foreign national, university personnel should check with the Export Control Committee for assistance in identifying potential restrictions on the transaction.
- V. Activities Involving the Receipt and/or Use of Export Controlled Information/Technology
  - A. 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.
  - B. Export controlled information received from other parties cannot be openly shared with certain foreign nationals without a license.
    - 1. If a university activity involves the receipt or use of externally obtained export controlled information, items, technology, or software, the primary recipient, must determine by current citizenship status those university personnel that can legally access the information or item before the information or item is shared.
    - 2. The Export Control Committee can assist the primary recipient in these determinations.
  - C. 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.
    - 1. 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.
    - 2. 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.
- VI. Restrictive Trade Practices and Boycotts
  - A. Participation in certain restrictive trade practices is prohibited under the EAR.



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1. The anti-boycott provisions of the EAR prohibit **U.S. persons** or businesses from participating in any non-U.S. sanctioned foreign government boycott.
  2. 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.
- B. 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.
1. 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.
  2. 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.

VII. Recordkeeping and Retention Requirements

- A. 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.
- B. Original records must be retained for five years from the date of export, **re-export**, or transfer.
- C. The Export Control Committee (in conjunction with the Office of Research Compliance) is responsible for the retention of export records.
- D. It is the responsibility of university personnel to forward all relevant export documentation to the Export Control Committee for archiving.

Responsibilities

Position or Office	Responsibilities
Faculty/Researcher	<ol style="list-style-type: none"> <li>1. Openly publish and make research results available to the academic community to safeguard the fundamental research exclusion.</li> <li>2. Be aware of and comply with all export controls and university policies and procedures.</li> <li>3. Notify the appropriate administrative staff whenever it is believed or known that export controls may apply.</li> <li>4. Provide information to the Export Control Committee to assist in the determination of licensing requirements for research involving exports and deemed exports.</li> <li>5. Prior to traveling outside the U.S., check the Treasury Department’s list of sanctioned countries.</li> <li>6. Check with the Export Control Committee before agreeing to provide and funding any foreign national.</li> <li>7. Obtain a license to openly share with foreign nationals export controlled information received from other parties; determine with the respective human resources personnel the current citizenship status of university personnel who can legally access the information before sharing the information or item.</li> <li>8. Sign the Certification on the Handling of Export Controlled Information if receiving export controlled information or items; develop a Technology Control Plan in collaboration with the Export Control Committee if required.</li> <li>9. Promptly report to the Department of Commerce any request that supports a restrictive trade practice or boycott imposed by another country.</li> <li>10. Forward all relevant export control documentation to the Export Control Committee for retention.</li> </ol>
Sponsored Program Officer/Department Administrator	<ol style="list-style-type: none"> <li>1. Identify and remove from agreements any language that attempts to place restrictions on the university’s ability to publish the research or on the participation or access by foreign nationals.</li> <li>2. Notify the Export Control Committee in the event that such restrictions are accepted.</li> </ol>
Department/College	<ol style="list-style-type: none"> <li>1. Administer and monitor existing Technology Control Plans for their faculty.</li> <li>2. Notify the Export Control Committee of any issues that arise regarding the implementation of, or compliance with, any management plan.</li> </ol>



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Position or Office	Responsibilities
Technology Commercialization Office	<ol style="list-style-type: none"> <li>1. Identify potential Export Control issues arising in conjunction with Material Transfer Agreements, Non-Disclosure Agreements, or other licensing agreements.</li> <li>2. Notify the Export Control Committee of such issues.</li> <li>3. Ensure that the appropriate certification and/or Technology Control Plan is developed and implemented in collaboration with the Export Control Committee.</li> </ol>
Export Control Committee	<ol style="list-style-type: none"> <li>1. Document that an export control review and analysis was performed before any export or release of information takes place.</li> <li>2. Assist any university personnel in assessing their export control obligations; facilitate the acquisition of licenses as required.</li> <li>3. Determine the licensing requirements for research involving the exports and deemed exports, make final licensing determinations in collaboration with the researcher, and coordinate the license application process.</li> <li>4. Assist university personnel in determining whether a license is required relating to travel outside the U.S.</li> <li>5. Assist university personnel in determining the current citizenship status of university personnel who can legally access the information before sharing the information or item.</li> <li>6. Assist university personnel in developing a Technology Control Plan if required.</li> <li>7. Assist university personnel in determining if the anti-boycott provisions of the EAR apply; assist in the reporting of such occurrences.</li> <li>8. In conjunction with the Office of Research Compliance, retain all export control documentation.</li> </ol>
Unit Human Resources Personnel	Assist university personnel in determining the current citizenship status of university personnel who can legally access the information before sharing the information or item.
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	<ol style="list-style-type: none"> <li>1. Monitor and oversee the university's export control program, including the export control officer.</li> <li>2. Retain all export control documentation.</li> </ol>

## Resources

### Forms

Certification on the Handling of Export Controlled Information  
Technology Control Plan

### Websites

The Ohio State University Export Control website, <http://orc.osu.edu/exportcontrol/>

U.S. State Department – International Traffic in Arms Regulations (ITAR),  
[www.fas.org/spp/starwars/offdocs/itar/index.html](http://www.fas.org/spp/starwars/offdocs/itar/index.html)

22 CFR §§120-130

U.S. Commerce Department – Export Administration Regulations (EAR), [www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)  
15 CFR §§730-774

U.S. Bureau of Industry and Security (BIS), [www.bis.doc.gov/](http://www.bis.doc.gov/)

U.S. Treasury Department – Office of Foreign Assets Control (OFAC), [www.treas.gov/offices/enforcement/ofac/](http://www.treas.gov/offices/enforcement/ofac/)  
31 CFR §§500-599

National Security Decision Directive 189 (NSDD 189), [www.fas.org/irp/offdocs/nsdd/nsdd-189.htm](http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm)

### Other

The Ohio State University Export Control Compliance Manual



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### Contacts

Subject	Office	Telephone	E-mail/URL
Policy questions	Office of Research Compliance	(614) 688-1596	<a href="mailto:exportcontrol@osu.edu">exportcontrol@osu.edu</a> <a href="http://orc.osu.edu/regulations-policies/exportcontrol/">orc.osu.edu/regulations-policies/exportcontrol/</a>

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