



UNIVERSITY *of*
ALASKA ANCHORAGE

Export Control Policy and Program Procedures

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TABLE OF CONTENTS

I. Policy Statement	1
II. Overview.....	1
III. Regulatory Framework	3
A. Export Administration Regulations (EAR)	3
B. International Traffic in Arms Regulations (ITAR).....	4
C. Office of Foreign Assets Control (OFAC)	4
D. Exemptions/Exclusions.....	4
1. The Fundamental Research Exclusion.....	5
2. Public Domain and Publicly Available Exclusion.....	5
3. Educational Instruction Exclusion.....	6
4. Employee Exemption.....	6
IV. Export Controls at UAA	6
A. Exporting Items Outside the U.S.	7
B. Research Involving Disclosures or Transfers to Foreign Persons in the U.S. (Deemed Exports).....	8
C. Travelling Outside the U.S.	9
1. Export License Exception TMP (Temporary Exports).....	9
2. Export License Exception BAG (Baggage).....	9
V. Accepting a Third Party's Controlled Data or Items	10
VI. Restrictive Trade Practices and Boycotts	10
VII. Recordkeeping Requirements	10
VIII. Compliance	11
A. UAA-Imposed Penalties for Non-Compliance	11
B. Criminal and Civil Penalties	11
C. Administrative Penalties.....	11

University of Alaska Anchorage Export Control Policy

I. Policy Statement

It is the policy of the University of Alaska Anchorage (“UAA”) that all personnel, including faculty, students, postdoctoral fellows, laboratory staff and all other persons retained by or working at or for UAA (“personnel”), conduct their university business in compliance with U.S. laws and regulations, including the U.S. export control laws and regulations applicable to UAA’s operations and research activities. It is the responsibility of all UAA personnel to comply with this Export Control Policy and Program Procedures (“the Policy”) and with all export control requirements related to their activities. In addition to this Policy, UAA has established procedures and administrative support to aid its personnel in complying with these laws and regulations.

This Policy is solely for the use of, and is binding upon, UAA’s personnel. Willful or grossly negligent failure of personnel to follow this Policy and such additional procedures as shall be issued to implement this Policy, may be grounds for discipline, up to and including termination, and may in certain circumstances expose personnel to criminal prosecution, fine, and/or imprisonment.

II. Overview

UAA researchers engage in a broad range of innovative and important research both in the U.S. and abroad. It is the goal of UAA to allow researchers to explore their research topics and interests and disseminate their research results. It is also a goal of UAA to allow researchers to freely collaborate with their international colleagues in the course of fundamental research and to allow foreign researchers and students to participate in UAA research projects. UAA has adopted this Policy to ensure that these goals are pursued in harmony with the applicable export control laws.

Export control laws are a complex set of federal regulations that control the conditions under which certain information, technologies, and commodities can be transmitted overseas to anyone, including U.S. citizens, or to a foreign national on U.S. soil. The laws are implemented by both the Department of Commerce through its Export Administration Regulations (“EAR”) and the Department of State through its International Traffic in Arms Regulations (“ITAR”). These laws are designed to protect U.S. national security, prevent the proliferation of weapons of mass destruction, further U.S. foreign policy (including the support of international agreements, human rights and regional stability), and to maintain U.S. economic competitiveness.

Export control laws have the potential to substantially impact UAA research and researchers in most fields of science and engineering. If research involves technologies that are subject to the export control laws, the EAR and/or ITAR may require the principal investigator to obtain federal approval **before** allowing foreign nationals to participate in the research, partnering with a foreign company, or sharing research results in any manner (including by publication or presentation at conferences) with persons who are not U.S. citizens or permanent resident aliens.

Export regulations apply whether or not the research project is funded by a grant, contract, or other agreement, and apply whether or not the EAR or ITAR are mentioned in the award document. If a researcher accepts export-controlled technology or information from a government agency or from industry, the researcher is subject to ITAR or EAR regulations.

Although most of UAA's research activities are exempt from export control laws because of a general exception for "fundamental research" (see Section III. D. 1. below), some activities may be restricted. Additionally, certain contractual clauses □□ such as publication restrictions or limitations, including clauses that require approval before publication □□ can exclude the underlying research from the "fundamental research" category, thereby destroying the exemption. By not accepting any restrictions on publication or the use of foreign nationals in the project, UAA researchers preserve the fundamental research exemption.

It is important to note that even if the fundamental research exclusion applies, if a UAA activity involves an export or deemed export, UAA 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 the results of fundamental research are exempt from export controls, the actual item, technology, or software under study or being used in the research is not automatically exempt and may have export license requirements.

In some situations, researchers will need to ship certain tangible items, software or information outside the U.S. When such occasion arises, UAA has the responsibility to either: 1) obtain an export license; 2) document an express determination that an exception or exemption to the export control laws applies; or 3) document an express determination that no license is needed.

Failure to comply with the export control laws exposes both the researcher and UAA itself to severe criminal and civil penalties, as well as to administrative sanctions, such as the loss of export privileges and research funding. Thus, it is important that faculty, staff and other researchers understand their obligations under the regulations and take the requisite steps to comply.

In order to ensure compliance with export regulations, members of the UAA community must consider the implications of export controls before undertaking any of the following activities:

- initiating new research, whether funded or unfunded, under a grant or contract;
- travelling for any purpose to a U.S.-sanctioned country, as determined by U.S. law;
- taking either personal or UAA-owned laptop computers, GPS systems or their associated software to another country;

- exporting, releasing, transmitting or allowing foreign nationals access to current research results;
- participating in research or training activities abroad;
- allowing foreign nationals to participate in research activities in the U.S.; and/or
- taking receipt of export-controlled materials from a third party.

III. Regulatory Framework

The export control laws apply to all “exports.” The term “export” has a broad definition and includes (1) the actual shipment of any covered goods or items; (2) the electronic or digital transmission of any covered goods, items or related goods or items; (3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any foreign national; or (4) the actual use or application of covered technology on behalf of or for the benefit of a foreign entity or person anywhere.

The term “export” covers not only technology leaving the borders of the U.S. (including transfer to a U.S. citizen abroad whether or not it is pursuant to a research agreement with the U.S. government), but also transmitting the technology to a foreign national **within** the U.S. (a “deemed export”). Even a discussion with a foreign researcher or student in a campus laboratory could be considered a “deemed export.” Export controls preclude the participation of all foreign nationals in research that involves covered technology without first obtaining a license from the appropriate government agency.

Three principal U.S. regulatory regimes govern the export of items and technology from the U.S., the re-export or retransfer of the items outside the U.S., and transfers of controlled technology to foreign persons in the U.S.

A. Export Administration Regulations (EAR)

The EAR is a set of regulations administered by the U.S. Department of Commerce through the Bureau of Industry and Security. These regulations control “dual use” items and the technology related to these items. Dual use items are items, such as computers, toxins, and chemicals, that could have both civilian and military uses. A listing of the items controlled by the EAR is called the Commerce Control List (“CCL”), located at 15 CFR Part 774. A copy of the updated set of regulations is available at: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=076c3ef2e764e98de34fab9afe1f9697&rgn=div5&view=text&node=15:2.1.3.4.45&idno=15>.

Unless an exclusion or exemption applies, a license generally will be required for the export of goods and technology listed on the CCL. An export license is a written authorization provided by the federal government granting permission for the release or

transfer of export controlled information or items under a defined set of conditions. Those items not explicitly included on the CCL are included in the broad category known as “EAR99.” Though a license generally will not be required for the export of EAR99 designated items, a license will be required if the item will be shipped or otherwise transferred to an embargoed country.

B. International Traffic in Arms Regulations (ITAR)

The ITAR is implemented by the State Department’s Directorate of Defense Trade Controls (“DDTC”). These regulations apply to articles, services, and related technical data that are inherently military in nature, as determined by the State Department. Controlled “defense articles”, “defense services”, and related “technical data” are listed on the U.S. Munitions List (“USML”). Some articles and technologies that are not readily identifiable as inherently military in nature—for example, research satellites or small, research submersibles—are included on the USML. A copy of the updated regulations is available at:

http://www.pmddtc.state.gov/regulations_laws/itar_consolidated.html.

C. Office of Foreign Assets Control (OFAC)

The Office of Foreign Assets Control of the U.S. Department of Treasury administers and enforces certain country-specific controls that take the form of economic embargoes against specified countries. These countries currently include, but are not limited, to Burma (Myanmar), Cuba, Iran, Iraq, Libya, North Korea, Somalia and Zimbabwe. The scope of these economic and trade embargoes varies from country to country. Embargoes may be comprehensive, such as those against Cuba and Iran which apply generally to all assets being exported to those countries or to an individual within those countries. Or sanctions may be more targeted, such as the sanctions program against the former Liberian regime of Charles Taylor. OFAC has adopted regulations that detail the scope of the embargoes/sanctions against each country. A listing of these sanctions programs and the accompanying regulations is available at:

<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

OFAC also maintains a list of Specially Designated Nationals and Blocked Persons (“SDN”) with whom U.S. persons are prohibited from engaging in any transactions due to U.S. foreign policy and national security concerns. Transfers of items and information to individuals or entities on these lists are prohibited without the prior approval of OFAC. This list is subject to change frequently. The most recent list is available at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

D. Exemptions/Exclusions

Several common exclusions and/or exemptions may remove UAA activities from the application of export control restrictions. Research and educational activities at UAA will generally fall under the fundamental research exclusion, the publicly available/public

domain exclusion, the education exclusion or a combination of the three. An explanation of each of these exclusions is below.

1. The Fundamental Research Exclusion

Fundamental research is defined as basic and applied research in science and engineering conducted at an accredited U.S. institution of higher education where the resulting information is ordinarily published and shared broadly within the scientific community. Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research. The fundamental research exemption permits U.S. universities to allow foreign members of their communities (e.g., students, faculty, and visitors) to participate in research projects on campus in the U.S. without a deemed export license. Further, technical information resulting from fundamental research may be shared with foreign colleagues abroad and shipped out of the U.S. without securing a license.

Research will **not** qualify as “fundamental research” if:

- UAA or its researchers accept restrictions on the publication of scientific and technical information resulting from the research, other than a limited pre-publication review by research sponsors to ensure that proprietary information is not inadvertently disclosed in publication or to ensure that the publication will not compromise the patent rights of the sponsor. Any agreement between a researcher and a sponsoring agency to restrict the publication of research results (even if the agreement is not stated in the actual research contract or grant) could destroy the fundamental research exclusion. Such deals also could expose both the researcher and UAA to penalties for export control violations.
- The research is federally funded and UAA or its researchers have accepted specific access and dissemination controls regarding the resulting information. Such access and dissemination controls could include a restriction on prepublication dissemination of information to foreign nationals or other categories of persons or a restriction on participation in the research by foreign nationals or other categories of persons.

For additional information related to the fundamental research exemption, please see Section V. below.

2. Public Domain and Publicly Available Exclusion

Information that is published and generally available to the public, as well as publicly available technology and software, is outside the scope of the export control regulations. This exclusion does not apply to encrypted software, to information which may be used in the production of weapons of mass destruction, or where the U.S. government has imposed access or dissemination controls as a condition of funding.

Information is “published” when it becomes accessible to the public by any method, including:

- publication in periodicals, books, print, electronic, or other media available for general distribution;
- availability at public libraries or at university libraries;
- in the case of patents and patent applications, when they are available at any patent office;
- release at an open conference, meeting, seminar, trade show, or other open gathering held in the U.S. or anywhere except a country that is itself a sanctioned or embargoed country.

3. Educational Instruction Exclusion

Export control regulations do not apply to information released in academic catalog-listed courses or in teaching labs associated with those courses. This exclusion is based on the recognition in the ITAR that “information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain” should not be subject to export control restrictions.

4. Employee Exemption

To the extent there will be a deemed export of information listed on the USML, the ITAR provides for an “Employee Exemption” that allows foreign persons who are “bona fide and full-time regular employees” of UAA, and who meet certain qualifying criteria, to receive USML-listed information without an export license. These criteria are:

- the employee’s permanent abode throughout the period of employment is in the U.S., and
- the employee is not a national of a country to which the ITAR prohibits exports of defense articles and services.

At present, the employee exemption is **not** available for nationals of Belarus, Cuba, Iran, Iraq, Libya, Sri Lanka, North Korea, Syria, Vietnam, Burma, China, Haiti, Liberia, Somalia, Sudan, Iraq, Afghanistan, Rwanda, Venezuela, Lebanon, Ivory Coast and the Democratic Republic of the Congo. However, this list is subject to change.

IV. Export Controls at UAA

In general, the export control regulations cover three main categories of UAA activities:

- the shipment of controlled physical items, such as certain scientific equipment, from the U.S. to a foreign country;
- travel to certain sanctioned or embargoed countries for purposes of teaching or performing research; and
- verbal, written, electronic, or visual disclosure of export controlled scientific and technical information or export controlled information or technology to a foreign national, whether such information is shared with a foreign national located either in the U.S. (where the release is considered a “deemed export”) or in another country.

Each of these categories of activities is discussed in greater detail below.

A. Exporting Items Outside the U.S.

In the case of shipments of tangible items or transfers or transmissions of software code or information outside U.S. borders, export control regulations may require that UAA first obtain an export license from the federal government. In order to determine whether it is necessary to apply for an export license, the person preparing the shipment or transfer needs to consider the following:

- What is the item being transferred? This includes a detailed understanding of the technical specifications and characteristics of the item, software or information.
- Where is the item going?
- For whom is the item intended?
- What is the intended end-use?
- If the shipment is information, is it published, patented, or in some other manner in the public domain?

All tangible items, source code and technical information that are not listed on the CCL and/or the USML may be shipped or transmitted to any country, individual or entity that is not sanctioned, embargoed, or otherwise restricted for export, without an export license. Such items, source code and technical information may be exported under the “No License Required” (NLR) designation.

For tangible items, source code and technical information that are listed on the CCL or the USML, a license will be required for export, unless an exclusion or exemption applies. Determining the license requirements of an item can be a complex and complicated process requiring classification of the item in light of the target destination, end use and end user(s). The final determination of whether an item requires a license for export, qualifies for a license exemption or can be exported as NLR, will be made by the Vice Provost for Research in coordination with the person seeking the

export. If a license is required, the Vice Provost for Research will coordinate the license application process. No export may take place until the required license is obtained.

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

The release or transmission of information or technology to any foreign national in the U.S. is a “deemed export”, i.e. the release is deemed to be an export to that person’s home country. This includes the release of information or technology to foreign graduate students, training fellows, lab technicians or other UAA personnel. Examples of “releases” to foreign nationals/persons 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 exchange of information. The mere presence of a foreign national/person in a laboratory will not require a license or authorization.

In determining the licensing requirements for deemed exports, the researcher needs to consider the following:

- What is the technical information or technology that will be released to the foreign national? Generally, technologies subject to the EAR are those which are in the U.S. or of U.S. origin, in whole or in part. Most are proprietary. Technologies which tend to require licensing for transfer to foreign nationals are also dual-use (i.e., have both civil and military applications) and are subject to one or more control regimes, such as National Security, Nuclear Proliferation, Missile Technology, or Chemical and Biological Warfare.
- Who is the technology being released to? Some items are controlled for export to certain countries but not to others. Therefore, UAA researchers must know the citizenship of any foreign national participating in a research project.

Despite the deemed export rules, much of the controlled technology and data that foreign nationals and students will access will not require an export license. As discussed above in section III. D., the EAR and the ITAR are crafted in such a manner that publicly available information and the results of fundamental research are excluded from the regulatory requirements for approvals or license. However, the final determination of whether an item requires a license for export, qualifies for a license exemption or can be exported as NLR, will be made by the Vice Provost for Research in association with the researcher. If a license is required, the Vice Provost for Research will coordinate the license application process. No export can take place until the required license is obtained.

C. Travelling Outside the U.S.

Travelling outside the U.S. can present export control issues for UAA employees, largely due to the items the employees likely will be taking with them on their travels. The export of tangible items (such as blueprints and schematics) and commercial software and encryption code commonly found on laptops, tablets and smartphones is subject to export control regulations. However, the EAR provides two exceptions to license requirements when the tangible export of items and software containing encryption code is necessary for travel or relocation:

1. Export License Exception TMP (Temporary Exports)

Export License Exception TMP (Temporary Exports) allows those leaving the U.S. on university business to take with them as “tools of trade” UAA-owned or controlled software, technology and retail level encryption items such as laptops, tablets and smartphones, to all countries other than Iran, Syria, Cuba, North Korea or Sudan, so long as the items and software:

- will remain under the employees’ “effective control” while they are abroad; and
- will be returned to the U.S. within 12 months, or consumed or destroyed abroad within a one year period.

This exception does not apply to the export of: (a) controlled satellite or space-related equipment, components or software; (b) technology associated with high-level encryption products; and (c) items, technology, data or software regulated by the ITAR.

Before taking any items or software abroad using this exception, travelers will need to file a certification to document this license exception. Personnel must contact the Vice Provost for Research to complete this certification.

2. Export License Exception BAG (Baggage)

Export License Exception BAG (Baggage) allows those leaving the U.S. either temporarily (i.e., travelling) or longer-term (i.e., moving) to take with them as personal baggage family-owned software and retail level encryption items including laptops, tablets and smartphones, so long as the items and software are for their personal or professional use. Individuals leaving the U.S. temporarily must bring back the items and software they exported under this license exception unless the items are consumed or destroyed abroad.

Before taking any items or software abroad using this exception, travelers will need to file a certification to document this license exception. Personnel must contact the Vice Provost for Research to complete this certification.

V. Accepting a Third Party's Controlled Data or Items

Fundamental research may proceed openly and the results may be shared freely with foreign nationals in the U.S. without concern for the licensing requirements of the deemed export restrictions. However, there may be instances where export-controlled items, software code or information provided by a third party during the course of fundamental research cannot be shared openly with certain foreign nationals/persons, even though those individuals may be important contributors or participants in the performance of the fundamental research. For example, a commercial vendor or corporate sponsor may have to disclose proprietary information about a piece of export-controlled hardware being provided for use in fundamental research. Proprietary or restricted information that is required for the development, production or use of export-controlled equipment is itself export-controlled. It carries with it export control requirements that must be honored by the researcher who agrees to be a recipient of such information.

Before a researcher accepts restrictions on the information that he/she receives, he/she should contact the Vice Provost for Research to ensure that the receipt of the restricted information is in compliance with UAA policy. The researcher and the Vice Provost for Research will then work together to ensure that the export control laws will allow the information to be freely shared with any foreign nationals involved in the research. The Vice Provost for Research will document the available license exclusion or exception that applies to the release of the information, if applicable.

VI. Restrictive Trade Practices and Boycotts

The EAR also prohibits U.S. participation in certain restrictive trade practices and foreign boycotts. The anti-boycott provisions of the EAR prohibit any U.S. person or business from participating in any non-U.S. sanctioned foreign boycott. Examples of the types of restrictive trade practices that are considered "participation" in a boycott include refusing to engage in a business transaction with the boycotted country, agreeing not to use certain "black-listed" suppliers, or refusing to employ or otherwise discriminating against any U.S. person on the basis of nationality or origin.

The anti-boycott regulations apply to all foreign boycotts. However, in practice, the current primary target of these regulations is the Arab League's on-going boycott of Israel. Should any researcher receive a request that supports a restrictive trade practice or boycott, he or she should immediately contact the Vice Provost for Research.

VII. Recordkeeping Requirements

UAA is required to retain a complete record of all export control documentation including, but not limited to, analyses of license requirements, issued licenses, travel certifications, shipping documents and correspondence related to export transactions. It is the responsibility of UAA personnel to forward all relevant export documentation to the Vice Provost for Research for archiving.

VIII. Compliance

UAA personnel may not transfer items, information, technology or software in violation of the U.S. export control laws or this Policy. The penalties for violating the export control laws are detailed below.

A. UAA-Imposed Penalties for Non-Compliance

The final determination of whether the release of information or items requires an export license or is subject to license exclusions will be made by the Vice Provost for Research in collaboration with the researcher. If a license is required, the Vice Provost for Research will coordinate the license application process. No export can take place until the required license is obtained. Failure to comply with this Policy can result in disciplinary action, up to and including termination.

B. Criminal and Civil Penalties

Government-imposed penalties for violations of the export control laws can be both criminal and civil and can be imposed against either individuals, entities (such as UAA) or both. Penalties include prison terms of up to 10 years, maximum fines of \$1 million per violation and the loss of all federal funding and export privileges.

C. Administrative Penalties

If either UAA or individuals are found in violation of the export control regulations, they could be subject to a number of administrative penalties, including termination of export privileges and debarment or suspension from government contracting.

Approved By:

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Helena Wisniewski, Vice Provost for Research

11 Jan 2013
Date:

10/01/2013
Date:

1/9/13
Date:

Glossary

Deemed Export	Transfers of controlled technology to foreign persons, usually in the U.S., where the transfer is regulated because the transfer is “deemed” to be to the country where the person is a resident or citizen. For example, the transfer of infrared camera technology to a Chinese national in the U.S. will be treated as if the transfer of the technology was made to the Chinese national in China. The transfer is thus “deemed” to be to China even though all activities take place in the U.S.
Encryption items	The process of converting data or information into code is encryption. The phrase “encryption item” includes all encryption commodities, software, and technology that contain encryption features subject to export controls. Though most of these items are controlled through the EAR, items having a specific military function may be controlled through the ITAR.
Export	An export is the transfer of a physical item, computer software or technical information to a foreign country.
Export Administration Regulations (“EAR”)	<p>The EAR is composed of published regulations and guidelines concerning the Department of Commerce review of regulated exports. The EAR generally applies to items that have a “dual use,” i.e., both military and commercial applications. Goods, services, software, equipment and technology that are regulated by the EAR are listed on the Commerce Control List (“CCL”).</p> <p>Under the EAR, items and technologies are assigned an ECCN or Export Control Classification Number. This number is a 5 digit alpha-numeric code that identifies the item and technology. Export controls depend on the item classification and the export destination (or home country in the event of a deemed export to a foreign national). In the case of a controlled export, it may be necessary to apply to the Department of Commerce, Bureau of Industry and Security, for an export license.</p>
Foreign Person/Foreign National	A Foreign Person/National is anyone who is not a U.S. Person, as defined below. A Foreign Person/National also means any other natural person, corporation, business association, partnership, society or other entity that is not incorporated to do business in the U.S. Foreign Persons/Nationals include government entities as well.

Fundamental Research	<p>“Fundamental research” is basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community. It is distinguished from proprietary research and from industrial development, design, production, and product utilizations, the results of which ordinarily are restricted for proprietary and/or specific national security reasons. Normally, the results of “fundamental research” are published in scientific literature, thus making it publicly available. Research which is intended for publication, whether it is ever accepted by scientific journals or not, is considered to be “fundamental research.” A large segment of academic research is considered “fundamental research.” Because any information, technological or otherwise, that is publicly available is not subject to the EAR (except for encryption object code and source code in electronic form or media) and thus does not require a license, “fundamental research” is not subject to the export control laws and does not require a license.</p> <p>Because export regulations expressly recognize that fundamental research is excluded from deemed export controls, no export license or other authorization is needed to involve foreign nationals in fundamental research activity at the University. However, such research may give rise to export issues if the primary research is to be conducted outside of the U.S. or if it requires exposure of foreign nationals to proprietary or confidential export controlled information provided by third parties such as corporations, commercial vendors or government collaborators.</p>
International Traffic in Arms Regulations (“ITAR”)	<p>The ITAR is a set of regulations administered through the State Department and its office of Directorate of Defense Trade Controls (“DDTC”). The ITAR applies to items and information inherently military in design, purpose or use, including any technical data associated with such defense articles and services. A list of regulated defense articles is contained in the ITAR and is commonly referred to as the U.S. Munitions List (“USML”).</p>
Office of Foreign Assets Control (“OFAC”) Regulations	<p>The OFAC regulations are issued by the U.S. Department of the Treasury, which administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.</p>

Public Domain	Information that is in the public domain is information that is published and that is generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information; (3) through second class mailing privileges granted by the U.S. Government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition that is generally open to the public in the U.S.; (7) through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency; and (8) through fundamental research.
Reexport	A reexport is an actual shipment or transmission of controlled tangible items, software or information from one foreign country to another foreign country. The export or reexport of controlled tangible items, software or information that will transit through a country or countries, or will be unloaded in a country or countries for reloading and shipment to a new country, or are intended for reexport to the new country, are deemed to be exports to the new country.
Technology or technical data	<p>These phrases refer to technical information that goes beyond general and basic marketing materials about a controlled commodity. They do not refer to the controlled equipment/commodity itself, or to the type of information contained in publicly available user manuals. Rather, the terms “technology” and “technical data” refer to specific information necessary for the “development,” “production, or “use” of a product.</p> <p>The EAR definitions distinguish between software and technology. Software is one of the groups within each of the categories of items listed on the CCL. Software which is delineated on the CCL is controlled. Note that the deemed export rules apply to the transfer of such technical information to foreign nationals inside and outside the U.S.</p>
U.S. Person	A U.S. person is a citizen of the U.S., a lawful permanent resident alien of the U.S., (a “Green Card” holder), or a refugee or an otherwise protected individual (asylee). U.S. persons also include organizations and entities incorporated in the U.S. As a general rule, only U.S. persons are eligible to receive controlled items, software or information without first obtaining an export license from the appropriate agency unless a license exception or exclusion is available.

Frequently Asked Questions

What are “export controls”?	“Export controls” generally refer to the federal regulations governing the export of materials, data, technical information, services, and financial transactions to foreign countries based on U.S. security interests. These regulations include the ITAR, the EAR, and OFAC regulations.
Is unfunded research subject to export controls?	Yes, however, most unfunded research will qualify for an exclusion so long as the research is published, or is intended to be published.
What is the ITAR?	“ITAR” is an acronym for the International Traffic in Arms Regulations which are implemented by the Department of State. These regulations are designed to cover materials and technologies whose primary purpose is military in nature. Materials covered under the ITAR are enumerated in the United States Munitions List (USML). Export of defense services, defense articles, and related technical data on the USML requires licensing from the Directorate of Defense Trade Controls (DDTC).
What is the EAR?	“EAR” is an acronym for the Export Administration Regulations which are implemented by the Bureau of Industry and Security in the U.S. Department of Commerce (BIS). These regulations apply to “dual use” technologies, i.e. items that could have both a civilian use and a military use, or which may be controlled for shipment because of national security concerns. A listing of the items controlled by the EAR is called the Commerce Control List (“CCL”).
How does the EAR work?	Under the EAR, items and technologies are assigned an Export Control Classification Number (ECCN). This number is a 5 digit alpha-numeric code that identifies the item and the technology. Export controls depend on the item classification and the export destination (or home country in the event of a deemed export to a foreign national). In the case of a controlled export, it may be necessary to apply to BIS for an export license.
What is the “deemed export” rule?	An export of technology or source code (except encryption source code) is “deemed” to take place when it is released to a foreign national within the U.S.

<p>Are colleges and universities exempt from the export control regulations?</p>	<p>Both the ITAR and the EAR have clauses providing exemption from the licensing requirements for fundamental university research. Information resulting from basic and applied research in science and engineering conducted at an accredited institution of higher education in the U.S. that is ordinarily published and broadly shared within the scientific community falls under this fundamental research exemption. However, research will not be considered fundamental if UAA or its researchers accept restrictions on the publication of scientific and technical information resulting from the project or activity, or if the research is funded by the U.S. government and specific access and dissemination controls protecting information resulting from the research are applicable. Furthermore, participation of foreign nationals should not be restricted if the exemption is to apply.</p>
<p>What types of controls in a government-sponsored research project would compromise the fundamental research exemption?</p>	<p>If the U.S. Government funds research and specific controls are agreed on to protect information resulting from the research, then information resulting from the project will not be considered fundamental research. Examples of “specific controls” include requirements for prepublication review by the Government, with right to withhold permission for publication; restrictions on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research.</p>
<p>Does the ITAR apply to fundamental research conducted at UAA?</p>	<p>The availability of an exemption for fundamental research relating to defense articles and defense services controlled under the ITAR is highly limited. Therefore, any work being conducted in the areas covered by the USML must be restricted so that foreign nationals do not have access either to the work being conducted or to the resulting data, unless:</p> <ul style="list-style-type: none"> • an export license has been obtained; • governmental approval to proceed without an export license has been obtained; or • UAA has determined that the ITAR does not impose restrictions under the facts of the particular situation.

<p>I will be attending a conference overseas and will be presenting a paper that will be published. Am I permitted to speak to anyone about the project, including plans for the future of the project?</p>	<p>What you can speak about will depend on whether the research is controlled under the EAR or the ITAR. If you are dealing with information that is only controlled under the EAR, and you plan to share results that are ordinarily published broadly within the scientific community and are not proprietary, you may speak to people about the project while you are overseas. If you are presenting technical information that may be controlled on the USML, only technical information that has already been published can be freely shared.</p>
<p>Is a “deemed export” license required for the use of export controlled equipment in research projects, classes, and labs on campus?</p>	<p>No, actual use of equipment by a foreign national in the U.S. is not controlled by the export regulations. Indeed, inside the U.S., any person (including foreign nationals) may purchase and use export-controlled commodities. The “deemed export” rule only applies to technical information about the controlled commodity. However, it is important to note that while the use of equipment inside the U.S. is not controlled, the transfer of technical information relating to the use (i.e., operation, installation, maintenance, repair, overhaul and refurbishing) of equipment may be controlled in certain circumstances. For example, if the manufacturer of the equipment provided UAA some confidential, proprietary information about the design or manufacture of the equipment, then a “deemed export” license may be required to provide such information to a foreign national, if the information is controlled for purposes of the foreign national’s home country.</p>
<p>What kinds of activities may trigger the need for an export license?</p>	<p>The following are examples of types of UAA activity that may trigger the need for an export license:</p> <ul style="list-style-type: none"> • Shipments or transmissions to international destinations of equipment or data. • Involving foreign nationals/persons in research projects that do not qualify for any exclusions. • Travel/field work in an embargoed/sanctioned country. • Use of defense articles or associated technical data that are controlled by the ITAR. • Research involving export controlled items or information. • Contractual agreements with research sponsor where information resulting from the research is protected