

## EXPORT CONTROLS <sup>1</sup>

Basic Information **YOU** Need to Know

### What they are:

Federal laws regulating the transfer of items, technology, and services to non-U.S. persons and entities. Export controls commonly refer to three distinct sets of regulations:

- the International Traffic in Arms Regulations (**ITAR**) administered by the Department of State,
- the Export Administration Regulations (**EAR**) administered by the Department of Commerce, and
- the Office of Foreign Assets Control (**OFAC**) administered by the Department of the Treasury.

Export controls serve several purposes: to restrict exports of goods and technology that could contribute to the military potential of U.S. international adversaries; to prevent proliferation of weapons of mass destruction; and to advance U.S. economic and foreign policy goals.

### Export Controls impact the following activities:

- **Shipping** items from the U.S. to a foreign country
- **Transferring** technology, information, or technical data, to entities or individuals outside of the U.S.
- **Sharing** technology, information, or technical data with foreign persons within the U.S.
- **Providing** services to, or conducting financial transactions with, an embargoed or boycotted country, restricted individual, or entity.

### What is controlled:

**ITAR** controls items that the State Department has “deemed to be inherently military in character.” Those items, organized into categories, include equipment, software, algorithms, and in each category, technical data and services directly related to the items specified. Examples include, but are not limited to, lasers/directed energy devices; submersible vessels; radiation hardened devices, magnetic, pressure and acoustic sensors; inertial navigation equipment; radar systems; sonar

---

<sup>1</sup> The information is used by permission of the North Carolina State University Office of Sponsored Programs and Regulatory Compliance Services.

systems, nuclear weapons; toxicological agents; explosives; ranging and guidance systems; and cryptography systems. Also includes any experimental or developmental equipment specifically designed or modified for military applications or specifically designed or modified for use with a military system. For more information on ITAR, visit

[https://www.pmddtc.state.gov/?id=ddtc\\_kb\\_article\\_page&sys\\_id=24d528fddbfc930044f9ff621f961987](https://www.pmddtc.state.gov/?id=ddtc_kb_article_page&sys_id=24d528fddbfc930044f9ff621f961987)

**EAR** covers hundreds of dual use items designed primarily for commercial purposes which also have military applications, and less sensitive military items. The EAR restricts the export of these commodities from the U.S. as well as the transfer of technology regarding their development, production, or use, to foreign persons, both inside and outside the U.S. It also covers the re-export of foreign commodities that either incorporate or are a direct product of controlled U.S. technology. Items under EAR are categorized on the Commerce Control List (CCL). If an item that falls under U.S. Department of Commerce jurisdiction and is not listed on the CCL, it is designated as EAR99. EAR99 items generally consist of low-technology consumer goods and do not require a license in many situations. However, if you plan to export an EAR99 item to an embargoed country, to an end-user of concern, or in support of a prohibited end-use, you may be required to obtain a license.

Current sanctions against Cuba, Iran, North Korea, Sudan, and Syria pursuant to the EAR are currently in effect. The license requirements, license exceptions, and licensing policy vary depending upon the particular sanctioned destination. Exporters and re-exporters should be aware that other U.S. Government agencies administer regulations that could also impact their export or re-export transactions. OFAC also implements certain sanctions against Cuba, Iran, North Korea, Sudan, and Syria. Exporters and re-exporters are responsible for complying with all applicable regulatory requirements.

In addition to the specific items described above, the EAR prohibits any export (items or technology) or provision of service that may support a prohibited end use such as weapons proliferation or terrorism, and to specifically listed entities known to support these activities. For information of EAR, visit

[https://www.pmddtc.state.gov/?id=ddtc\\_kb\\_article\\_page&sys\\_id=24d528fddbfc930044f9ff621f961987](https://www.pmddtc.state.gov/?id=ddtc_kb_article_page&sys_id=24d528fddbfc930044f9ff621f961987)

**OFAC** administers and enforces programs based on U.S. foreign policy and national security goals that (1) Regulate the transfer of items or services to embargoed nations; (2) Impose trade sanctions and trade and travel embargoes aimed at controlling terrorism, drug trafficking, and other illegal activities; and (3) Restrict payments or providing anything of value to nationals of sanctioned countries and to specific foreign entities and individuals. To find the latest information from OFAC and on sanction, visit <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

**Examples of situations that may be subject to Export Controls include, but are not limited to:**

- Shipping lab equipment, research materials, computers, prototypes, or samples outside the U.S.
- Sharing information disclosed under confidentiality agreements with foreign persons, including students, staff, and faculty
- Traveling abroad with samples, materials, laptop computers, tablets, smart phones, GPS, or other devices in checked or carry-on luggage
- Exchanging unpublished research results or data with foreign persons located overseas or in the US by any means, including e-mail, file transfers, etc.
- Training a foreign person in the design, development, use, or testing of controlled equipment
- Conducting research under a grant or any contractual agreement that restricts the participation of foreign nationals or requires approval to publish results

**Important Considerations:**

**Who is considered a “foreign person”?** (1) Any person who is not a US citizen or lawful permanent resident of the United States (green card holder); (2) Any foreign corporation or other entity or group that is not incorporated or organized to do business in the United States; and 3) Any foreign government.

**Is it a “Deemed Export”?** The transfer of technology or source code by any method to a foreign national in the U.S. or abroad is deemed to be an export to that individual’s country of citizenship. Methods of transfer include fax, telephone discussions, e-mail, computer data disclosure, face-to-face discussions, training sessions, or facility tours which involve visual inspections of controlled technology. In some instances, information or technical data related to export-controlled items may not be released via a deemed export to a foreign national.

**Penalties for Violators Are SEVERE!** The laws provide for criminal sentences for individuals of up to 10 years in prison and up to \$1 Million fines and civil fines of up to \$500,000.

**Good News! Many University activities fall under the Fundamental Research Exclusion.** The Fundamental Research Exclusion (FRE) allows certain research to be excluded from export control regulations. EAR and ITAR regulations include exemptions for (1) Education of information concerning general scientific, mathematical or engineering principles commonly taught to all

students or information that is already in the public domain; and (2) fundamental research which is already published and which is generally accessible or available to the public and fundamental research in science and engineering where the resulting information may be freely published and shared broadly in the scientific community. Exceptions also exist for other activities. For example, university personnel who wish to take their university-owned computing devices out of the country may be able to do so without an export license under an exception for temporary exports, provided the conditions of the exception are met.

**Training.** SUNY subscribes to the Collaborative Institutional Training Initiative (CITI), which offers a course on Export Controls. The course provides a basic overview of export controls affording a better understanding of when and how certain items and activities are subject to the federal regulations. The course is provided complimentary. For more information on registering for CITI access, please contact your campus research compliance office.