

Export Control Regulations and Research

What are Export Controls?

Export Controls are U.S. laws that regulate how certain information, technologies and materials are distributed overseas to anyone (U.S. Citizen or foreign national) or to a foreign national on U.S. soil. Export controls usually arise for one or more of the following reasons:

- The nature of the export has actual or potential military applications or economic protection issues
- Government concerns about the destination country, organization or individual
- Government concerns about the declared or suspected end use or the end user of the export

What is an Export?

An export is any oral, written, electronic or visual disclosure, shipment, transfer or transmission to anyone of any commodity, technology (information, technical data, or assistance) or software/codes. Such exports include transfers of such items or information to foreign embassies, overseas corporate affiliates and contractors.

An export can take place in many ways. Export controls will apply if a foreign national uses or has access to a controlled item. Situations that can involve the release of U.S. technology or software include:

- Tours of laboratories
- Foreign national employees involved in certain research, development, and manufacturing activities
- Foreign students or scholars conducting research
- Hosting a foreign student

The list of items that may be subject to some form of regulation is extensive and includes everything from software, computers, cameras, centrifuges, etc. to a wide range of chemicals and biological agents. Each item has detailed specifications. Only technologies that are not publicly available are subject to export controls although there are special rules for publicly available encryption software. Export rules also vary depending on the country.

What Agencies Are Responsible for Export Control Oversight?

The **Department of State** (www.state.gov) is responsible for the control of the permanent and temporary export and temporary import of defense articles and services. The Department of State regulates these exchanges through the International Traffic in Arms Regulations (ITAR) (http://pmdtc.state.gov/regulations_laws/itar_official.html)

The **Department of Commerce's** (www.commerce.gov) Bureau of Industry and Security is responsible for the development, implementation and interpretation of U.S. export control policy for dual-use

commodities, software and technology. Dual-use items are those with predominantly commercial uses, but which also have potential military applications. Categories of commercial dual-use items include navigation devices, computers, sensors and lasers, etc. The Export Administrations Regulations (EAR) regulate the export of dual-use items (<http://www.bis.doc.gov/policiesandregulations/index.htm>)

The **Department of Treasury** (www.ustreas.gov) administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals through its Office Foreign Assets Control (OFAC). These regulations are directed at the “end user” and are not specific to the technologies. Lists of sanctioned countries and individuals can be found at <http://www.ustreas.gov/offices/enforcement/ofac/> .

Who is a Foreign National?

A foreign national is an individual who is not a U.S. citizen, a permanent resident alien of the U.S., a lawfully-admitted temporary resident alien or refugee, or other protected individual as defined by 8 U.S.C. 1324b(a)3). For purposes of Export Controls, individuals on a student visa or H1 visa (including foreign visiting faculty) are considered foreign nationals.

When Are Export Control Regulations Applicable?

Export control regulations apply whether the recipient is unfunded or funded by a grant, contract, or other agreement; and whether or not the EAR or ITAR are cited in any documents related to the project or project funding. If a researcher accepts export-controlled technology or information, that researcher is subject to ITAR or EAR. If a researcher is unsure about whether he or she is receiving or generating export controlled information or technology they should contact the Office of Sponsored Programs and Research (OSPR) for assistance in making that determination.

What are the Exclusions To Export Control Regulations?

Even if an item appears on a list of controlled exports, there are some exclusions which may apply to work occurring in a university setting.

Public Domain Information – Under ITAR and EAR regulations some information is excluded from Export Controls. Primarily this is information and software that is publicly accessible through:

- Books, periodicals and generally distributed media
- Unrestricted subscriptions and free websites
- Libraries
- Patents or published patent applications
- Release at open conferences, seminars and trade shows

Fundamental Research – Basic or applied research in science and/or engineering at an accredited institution of higher learning in the U.S. where the resulting information is ordinarily

published/shared broadly or has been or is about to be published is generally excluded from Export Controls. Research may *not* qualify as *fundamental research* if the university or researcher accepts any restrictions on access, dissemination, or publication of the research results, other than the prepublication reviews by sponsors required to prevent divulging sponsor's proprietary information or to protect patent rights. Additionally, the fundamental research exemption does not protect the export of equipment or certain types of software.

Educational Information Exclusion – Generally EAR and ITAR regulations exclude Export Controls for instructional content of curricula for all students, including foreign nationals, that exists in general science, math and engineering principles taught through courses and labs. These courses/labs must be listed in the college or university's course catalogue.

Conclusion

It is important that faculty, researchers, and other staff at Clark University understand their obligations under these regulations and comply as completely as possible. The consequences of violation can be severe including loss of research funding, fines, and/or prison. Please refer to the resources below for further information and do not hesitate to contact OSPR for assistance.

Internal Resources

Export Control Decision Chart: <http://www.clarku.edu/offices/research/pdfs/decisionchart.pdf>

Export Controls Compliance Review Checklist:
<http://www.clarku.edu/offices/research/pdfs/checklist.pdf>

Other Resources

Introduction to Commerce Department Export Controls:
www.bis.doc.gov/licensing/exportingbasics.htm

Countries subject to sanctions or embargoes: www.treasury.gov/resource-center/sanctions/programs/pages/programs.aspx

Council on Governmental Relations – *Export Controls and Universities: Information and Case Studies*
<http://www.cogr.edu/viewDoc.cfm?DocID=151612>

National Council of University Research Administrators (NCURA): *Export Compliance Workshop for University Folks: The Basics (2008)* power point presentation: <http://bit.ly/fxmZyr>