

Export Control Licenses and Exclusions

Licenses

"Exports" are defined not only as a physical transfer/disclosure of an item outside the US, but also as a transfer/disclosure in any form of a controlled item or information within the U.S. to anyone who is a foreign national (not a U.S. citizen or permanent resident). This is called the "deemed export" rule. As a result, unless an exclusion or exemption is available, the university may be required to obtain prior governmental approval (in the form of an export license) before allowing the participation of foreign national faculty, staff, or students in affected research. In some cases, a license may not be available at all based on the country involved.

In addition to determining who may participate in the research project, the following are examples of situations where a license may be required:

- Presentation/discussion of previously unpublished research at conferences and meetings where foreign national scholars may be in attendance
- Research collaborations with foreign nationals and technical exchange programs
- Transfers of research equipment abroad
- Visits to your lab by foreign scholars

EAR License Requirements (Dual Use/Commercial Technologies)

- "Terrorist Supporting Countries" such as Cuba, Iran, Libya, North Korea, Sudan and Syria
- "Countries of Concern" such as the former Soviet Republics, China and Vietnam
- "Friendly Countries" such as all others (Europe, Central/South America, etc.)

ITAR Licensing Policy (Military/Space Technologies)

Policy of Denial

- State Sponsors of Terrorism (Cuba, Iran, Libya, North Korea, Sudan and Syria)
- Arms Embargo (Burma, PR China, Haiti, Liberia, Somalia and Sudan)
- Others (Belarus, Iraq, Vietnam)

Policy of Denial Based on Item/End-User

- Afghanistan
- Congo
- Iraq
- Rwanda

An export license may be required before a controlled item or material may be exported. There is usually a lengthy processing time period (currently 2 or 3+ months) and some applications may be denied. Researchers must curtail or modify activities pending license issuance and approval may contain restrictive conditions.

Exclusions

A license is **NOT** required to disseminate information if one of these exclusions applies:

- Fundamental Research Exclusion (ITAR, EAR)
- "Published" Information Exclusion
- Education Exclusion (ITAR, EAR)
- Employment Exclusion (ITAR only)

Additionally, anything in the public domain is not controlled under the export regulations.

Fundamental Research Exclusion (FRE)

The term ***Fundamental Research*** means basic and applied research in science and engineering, ***the results of which ordinarily are published and shared broadly within the scientific community***, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

The Fundamental Research Exclusion *applies only to the dissemination of research data and information*, not to the transmission of material goods.

The Fundamental Research Exclusion is **DESTROYED IF** the university accepts any contract clause that:

- Forbids the participation of foreign persons
- Gives the sponsor a right to approve publications resulting from the research; or
- Otherwise operates to restrict participation in research and/or access to and disclosure of research results.

"Side deals" between a PI and Sponsor to comply with such requirements even though not stated in the research contract may destroy the fundamental research exclusion and expose both the PI and the Institute to penalties for export control violations and may also violate university policies on openness in research.

"Published" Information Exclusion

Information is "published" (and therefore not subject to export controls) when it becomes generally accessible to the interested public in any form, including:

- Publication in periodicals, books, print, electronic, or other media available for general distribution (including websites that provide free uncontrolled access) or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution;
- Readily available at libraries open to the public or at university libraries;
- Patents and published patent applications available at any patent office; and
- Release at an open conference, meeting, seminar, trade show, or other open gathering held in the U.S. (ITAR) or anywhere (EAR).

Note, a conference or gathering is "open" if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record of the proceedings and presentations. A conference is considered open notwithstanding a registration fee reasonably related to cost, and there may be a limit on actual attendance as long as the selection is either 'first come' or selection based on relevant scientific or technical competence.

The Education Exclusion

Whether in the U.S. or abroad, the educational exclusions in EAR and ITAR cover instruction in science, math, and engineering taught in courses listed in catalogues and associated teaching laboratories of academic institutions, even if the information concerns controlled commodities or items. Dissertation research must meet the standards for "fundamental research" to qualify as "publicly available."

The Employment Exclusion (ITAR only)

An ITAR license not required for colleges and universities to share information in the U.S. with a foreign person if that person:

- Is a bona fide employee of the university – full time with benefits
- Is not a national from an ITAR embargoed country (Belarus, Cuba, Iran, Libya, North Korea, Syria, Vietnam, Burma, China, Haiti, Liberia, Somalia, Sudan, Iraq, Afghanistan, Rwanda, and D.R. Congo)
- Resides at a permanent address in the U.S. while employed
- And, is advised **in writing** not to share covered technical data with any other foreign nationals without government approval.