

Policies & Procedures

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UC IRVINE ADMINISTRATIVE POLICIES AND PROCEDURES

Office of Research

Sec. 480-20: Guidelines for Compliance with Export Control Regulations

Responsible Administrator: Vice Chancellor - Office of Research

Revised: June 2014

References / Resources

- U.S. Department of State
 - [International Traffic in Arms Regulations \(ITAR\)](#)
 - [U.S. Munitions List \(USML\)](#)
 - [Debarred Parties List](#)
- U.S. Department of Commerce, Bureau of Industry and Security (BIS)
 - [Export Administration Regulations \(EAR\)](#)
 - [Commerce Control List \(CCL\)](#)
 - [BIS Denied Persons List](#)
 - [BIS Entity List](#)
 - [BIS Unverified List](#)
- U.S. Department of the Treasury
 - [Office of Foreign Assets Control \(OFAC\)](#)
 - [The Embargoed Countries List](#)
 - [OFAC Specially Designated Nationals List](#)
- University of California
 - Office of Ethics, Compliance and Audit Services
 - [Export controls](#)
- UCI Export Control Decision Tree

Contact: Office of Research, Export Control Officer at (949) 824-0445 or exportcontrol@research.uci.edu

A. Purpose

The purpose of these Guidelines is to implement, within the campus research community, the University of California's Export Control Management System; to provide information on available campus resources; and to communicate UC Irvine's commitment to ensuring compliance with export control regulations while recognizing and protecting academic freedom. Questions and concerns regarding any aspect of export control related to research should be shared with the [Export Control Officer](#) in the Office of Research.

B. Background

Changes in the application and interpretation of a number of export control laws may conflict with the University's tradition of academic freedom and openness. All members of the University of California, Irvine research

community need to understand that the law is applicable to individuals, and the responsibility to comply rests with the individual. It is critical for both compliance reasons and for the University's continued ability to educate and conduct research that University faculty, staff and students make research results publicly available and be aware of items and information subject to export control regulations. Compliance with University procedures will ensure that no item or information is exported in violation of export control laws and regulations.

C. Applicability

Federal and State laws, statutes and other regulations apply to all activities at the University, however, these Guidelines apply specifically to UC Irvine research activities.

D. UC Export Control Management

1. Export control regulations are federal laws that prohibit the export of specific commodities and information for reasons of national security or trade protection. In general, the export control regulations cover:
 - a. The transfer of controlled information, including technical data, to persons and entities outside the United States.
 - b. Physical items such as scientific equipment that are controlled and require export licenses when shipped from the United States to a foreign country.
 - c. Verbal, written, electronic, or visual disclosures of controlled scientific and technical information related to the export of controlled items to foreign nationals ("deemed exports"), even when such disclosures occur within the United States.
 - d. Travel to certain sanctioned or embargoed countries for purposes of teaching or performing research.
2. Policies and procedures covering these activities constitute the University of California's Export Management System. The System requires the review of materials shipped abroad, screening for restricted individuals and entities, and protection of the exemptions provided in the export control regulations for intangible information.

E. Responsibilities

1. Office of Research

The **Vice Chancellor for Research (VCR)** is the institutional official responsible for compliance by researchers with federal statutes and regulations, and university policies and procedures pertaining to export control. This includes providing adequate resources for the administration of UC Irvine's compliance program. The VCR is also responsible for designating personnel to:

- Report compliance concerns to appropriate government agencies.
 - Review proposals and awards for publication controls or access/dissemination restrictions (such as approval requirements for use of foreign nationals).
 - Lead the campus Export Control Advisory group.
- a. The **Export Control Officer (ECO)** leads the campus Export Control Advisory Group and serves as the primary export control resource for the campus research community by providing interpretation and application of export control regulations and consultation on individual export control issues. The ECO will:
 - Determine whether certain technologies are export controlled and, if so, will determine the correct classification and reason(s) for control.
 - Check for license exceptions or exclusions and when an export license is required submit the application.
 - Conduct screening for restricted individuals and entities.

- Upon request train members of the Export Control Advisory Group and other individuals working with potential export control items or information. The Export Advisory Group will include staff from Environmental Health & Safety, Office of Technology Alliances, Office of Global Engagement, Purchasing, and other affected faculty and representative staff.
 - Document and communicate export control decisions; act as point of contact for research related export control inquiries from government agencies.
- b. **Sponsored Projects Administration** will review proposals and awards for publication controls or access/dissemination restrictions (such as approval requirements for use of foreign nationals) and other potential export control issues such as foreign travel and collaboration. They will review an award's scope of work for potential receipt of export controlled information during the project (such as integration of the research results into a defense article), and review non-disclosure agreements for potential receipt of export controlled information by the principal investigator.
- c. **Technology Alliances** will inform the ECO of potential export control issues identified during their regular work activity and, for materiel transfer agreements (MTAs), provide detailed information on proposed transfers or shipments to a foreign country, including the screening for restricted individuals and entities. Technology Alliances will also review contracts, MTAs and other agreements for potential publication controls or access/dissemination restrictions (such as approval requirements for use of foreign nationals). They will review non-disclosure agreements for potential receipt of export controlled information by the principal investigator. The licensing unit, in particular, must be aware of export controls affecting product licensing.
2. **Purchasing** will screen for restricted individuals and entities. For items requisitioned for purchase and identified for export out of the U.S., Purchasing will complete an export control review documented on a checklist that will include screening for restricted parties and entities, reviewing the items for controls, applying OFAC sanctions, and evaluating end use. The ECO should be notified if an item requires further screening.
3. **Environmental Health and Safety** will inform the ECO of potential export control issues identified during their regular work activity and will provide detailed information on the chemical, radioactive or biological item, substance or instrument a researcher plans to take or ship to a foreign country.
4. **Principal Investigators, Researchers and Staff** will:
- Prior to commencing any research, shipping, or exchange of materials that may be subject to federal regulatory export licensing controls, consult with the ECO to determine whether and how their research may be impacted by such controls.
 - Re-evaluate any decision made regarding the applicability of export controls whenever the scope of the project.
 - Consult early with the ECO and other appropriate University personnel so adequate time is allowed for review and evaluation of the proposed research and for acquisition of necessary licenses or authorizations.
 - Refrain from entering into any agreements that relate to University employment or research that would restrict publication or dissemination of research results and thereby defeat the fundamental research exemption (e.g., non-disclosure agreements and confidentiality agreements related to University research).
 - Contact the ECO before bringing export controlled 'technical data' or information onto campus property or into a UC research setting (e.g., proprietary and controlled software obtained through an outside consulting job).
 - Contact the ECO before traveling to, exporting to, or otherwise conducting University business related to University research programs with a country on the Office of Foreign Assets Control (OFAC) list of countries subject to U.S. embargo.
 - Inform the ECO whenever there is a high probability that equipment, materials, software or information will be used directly or indirectly in research activities related to missiles, satellites and chemical/biological weapons.

- Know which activities are not covered by the fundamental research exclusion.

F. Regulatory Terms and Explanations

Deemed export - Any release of technology or source code subject to the EAR to a foreign national. Such release is deemed to be an export to the home country or countries of the foreign national. Under the law, "release of technology or software" includes any visual inspection by foreign nationals of U.S. origin equipment and facilities, oral exchanges of information and the application to situations abroad of personal knowledge or technical experience acquired in the U.S. (EAR 734.2(b)) (ITAR 120.17).

Defense service - The furnishing of assistance (including training) to foreign nationals and foreign militaries, whether in the United States or abroad, in the design, development, engineering, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles or the furnishing to foreign persons of any technical data that is controlled by the ITAR.

Educational information - 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," as defined below (EAR 734.9 and 734, Supplement 1, Questions C(1) through C(6)).

Export - The actual shipment or transmission of items out of the United States, or release of technology or software to a foreign national in the United States (EAR 734.2(b)).

Export control - The federal government's use of regulations and licensing requirements to manage exportation of commodities and information to countries outside the U.S.; to manage the sharing of commodities and information with foreign nationals who are residing in the U.S.; and to regulate transactions with sanctioned countries, individuals and entities.

Foreign national - is a foreign citizen who IS NOT:

- A U.S. citizen
- A lawful permanent U.S. Resident Alien (i.e., a foreign national with a Green Card a.k.a. a Permanent Resident Card)
- A Protected Individual under the Immigration and Naturalization Act (8 USC 1324b(a)(3)) (EAR 734.2(b)(ii)).

Fundamental Research Exclusion (FRE) - The exemption from export control licensing that is provided to technical information (but not controlled items) resulting from "fundamental research." 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 published and shared broadly within the scientific community. Such research is 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. Research conducted by scientists, engineers, or students at a U.S. university will usually be considered fundamental research (EAR 734.8). The FRE allows foreign students, faculty and staff to participate in U.S. campus research projects that qualify for the FRE without a "deemed export" license.

Publicly Available - Technology and software (except specific encryption software) that:

- are already published or will be published,
- arise during or result from, fundamental research or
- are educational information (EAR 734.3(b)(3)(iii)).

Prepublication review - A research sponsor may request review of research results prior to publication to ensure that patent rights are not compromised and proprietary information is not disclosed. This does not change the status of the research. It will still be considered "fundamental research" as long as the review causes only a temporary delay. However, if, as part of the prepublication review, the sponsor is given the right to hold research results as trade secrets, require editorial changes or delay publication/dissemination beyond 90 days, then the research would not qualify as "fundamental." As used in the export regulations, the actual and intended openness of research results is what primarily determines whether the research counts as "fundamental" and not subject to the export regulations. University-based research is not considered "fundamental" if the university or its researchers accept (at the request, for example, of an industrial sponsor) restrictions on publication of scientific and technical information resulting from the project (EAR 734.8 (b)).

Published information - 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 (EAR 734.7).

Technology or technical data - These terms refer to technical information 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, these terms encompass specific information necessary for the development, production, or use of a commodity, and usually take the form of blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering specifications, and documentation. The "deemed export" rules apply to the transfer of such technical information to foreign nationals inside the U.S.

"Use" technologies - The routine use of controlled equipment by foreign nationals does not require a license (e.g., using it in the ordinary way specified in the user manual, in such a manner that does not disclose technical information about the equipment beyond what is publicly available). However, a license may be required if a foreign national is using the equipment in such a way as to access technical information beyond what is publicly available (e.g., accessing the source code of software or modifying a piece of equipment in such a way as to gain non-publicly available technical information about its design.)

G. Export Licensing

1. To determine whether an item, project, or activity is controlled and whether or not an export license is required principal investigators, researchers and staff should complete the following steps and are encouraged to contact the ECO at (949) 824-0445 or exportcontrol@research.uci.edu to have the steps below completed for them. The ECO has access to tools that can make completing this process faster and easier and will provide documentation for record keeping. Principal investigators, researchers and staff are advised to begin this process early since it takes two to three months to obtain an export license if one is needed.

- a. Review the following regulations while considering 1) what the item is, 2) where it is going, 3) who will receive it, and 4) what it will be used for:

- The U.S. Munitions List (USML) for items subject to International Traffic In Arms Regulations. Any item, technical data or service designed primarily for military use is usually subject to ITAR and will most likely require an export license and consultation with the ECO.
- The Commerce Control List (CCL) to determine whether the item is controlled under the EAR, in which case the ECO should be contacted.
- Section 744 of the EAR, specifically 744.2 referring to nuclear end-uses, 744.3 referring to rocket system end-uses and 744.4 referring to chemical and biological weapon end-uses.
- The following lists of individuals and organizations are considered restricted parties and are prohibited from receiving U.S. exports. Before conducting business with a listed person or organization, the ECO should be contacted.
 - BIS Denied Persons List
 - BIS Unverified List
 - BIS Entity List
 - Dept of State Debarred Parties List
 - OFAC Specially Designated Nationals List

2. When a particular project or activity is subject to export controls and no exemption is available, the individual responsible for the project or activity must secure the items, software or technology against disclosure or transfer to any foreign national within or outside the United States until a license or other authorization is obtained.

3. Keep records related to export control for five years. Section 762 of the EAR addresses recordkeeping.

H. Sanctioned Countries and Foreign Boycotts

1. The Office of Foreign Assets Control lists sanctioned countries. Before transacting with a country subject to OFAC sanctions, contact the ECO.
2. Antiboycott laws require U.S. institutions to refuse to participate in foreign boycotts that are not endorsed by the U.S. government (examples of boycott requests). Additional information on antiboycott regulations and reporting requirements is available from the BIS website on Antiboycott Compliance.

I. Penalties for Non-Compliance

Export control violations can result in civil and criminal penalties against the University of California, and/or assessment of fines or imprisonment of an individual. Penalties apply to each individual violation, which means that if a violation relates to more than one controlled material or item, or occurs on more than one occasion, each item or incident may trigger a penalty.

Appropriate voluntary self-disclosures may mitigate the seriousness of a penalty. The ECO is available to advise on how to address circumstances that may trigger export control concerns. Contact the ECO for assistance if a previous action may have been in violation of export controls.

J. Notification in the Event of Regulatory Noncompliance

In the event of a potential regulatory violation, or any of the scenarios listed below, the Director of Sponsored Projects Administration and the ECO should be notified immediately.

- Any non-routine contact with a University employee by phone, letter or in person, by a United States Government official or agency concerning exports, including a request to review or discuss an export license or past export shipment.
- A shipment from or to the University is detained by U.S. Customs.

- A subpoena or other criminal procedure notification related to U.S. export laws is received by a University employee.

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