

Export Control Overview

(Adapted with permission from Montana State University)

Export laws and regulations promulgated by the U.S. Department of Commerce, the U.S. Department of State and the U.S. Treasury Department are the bases for restricting use of and access to controlled information, goods, and technology for reasons of national security or protection of trade. In general, the export control regulations cover four main types of University activities:

- transfers of controlled information, including technical data, to persons and entities outside the United States;
- shipment of controlled physical items, such as scientific equipment, that require export licenses from the United States to a foreign country;
- verbal, written, electronic, or visual disclosures of controlled scientific and technical information related to export controlled items to foreign national (everyone other than a U.S. citizen, a permanent resident alien, and certain 'protected individuals' (refugees and those with asylum), including any company not incorporated in the United States), regardless of where the disclosure take place. Such a transfer is termed a "deemed export" and is regulated because the transfer is "deemed" to be to the country where the person is a resident or a citizen;
- travel to certain sanctioned or embargoed countries for purposes of teaching or performing research.

Most exports do not require government licenses. However, licenses are required for exports that the U.S. government considers "license controlled" under:

- **The Department of Commerce's Export Administration Regulations (EAR)** The EAR is concerned with dual-use items, such as computers or pathogens, which are designed for commercial use but have the potential for military application.
- **The Department of State's International Traffic In Arms Regulations (ITAR)** (also known as the U.S. Munitions List) covers defense-related items and services.
- **The Treasury Department's Office of Foreign Assets Control (OFAC)** administers and enforces economic and trade sanctions that have been imposed against specific countries based on foreign policy, national security, or international agreements. Full descriptions of all countries currently subject to boycott programs are available at www.ustreas.gov/offices/enforcement/ofac/programs.

Fortunately for universities, these regulations exclude publicly available, fundamental research results from the regulatory requirements for approvals or licenses. Both the EAR and ITAR define fundamental research in a similar manner; it is "basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls."

The right to publish and disseminate the results of university research is a keystone principle of the University of Wisconsin - Whitewater. Fortunately, both EAR and ITAR recognize and protect the open, academic environment. Accordingly, as long as research results are freely publishable without required sponsor approvals and there are no restrictions on foreign nationals' access to or participation in the research, the research results are not subject to the EAR or ITAR regulations.

Tangible items, however, do not fall under the fundamental research exemption. In cases where a UWW researcher is fabricating an item (including materials subject to a materials transfer agreement) for shipment outside the U.S., that item must be checked against the EAR, ITAR, and OFAC lists referenced above to see whether a license is required. For help with this process and with obtaining an export license if necessary, please contact the Office of Research and Sponsored Programs.