Export Control – What You Need to Know (And When to Call RCI)

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In broad terms, these Federal Laws govern International Shipments, International Travel, and Activities (Research) involving “controlled” items, technology, data or information.
Penalties for Noncompliance

- **ITAR/EAR**
  - Civil penalties of up to $500,000 per violation and criminal penalties of up to $1 million per violation and up to 10 years in prison

- **EAR Violations (FY 2014)**
  - Criminal Penalties: 39 individuals and businesses convicted, $137,808,856 in criminal fines, 568 months of imprisonment
  - Administrative Penalties: 44 administrative cases. $60,488,000 in administrative penalties

- **OFAC**
  - Civil penalties of $250,000 per violation and criminal penalties of up to 20 years in prison

- **Collateral Harm:**
  - Adverse impact on future federal awards
  - Severe reporting obligations
  - Loss of export privileges
  - Settlements and convictions are public information

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EAR data from https://www.bis.doc.gov/index.php/enforcement/oee/penalties
ITAR data from https://www.state.gov/strategictrade/overview/
OFAC data from https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx
Recent Scrutiny of Universities by the Federal Government

• University of Tennessee Professor sentenced to 4 years in prison for violating ITAR: allowing two foreign national students unlicensed “access” to export controlled data and equipment.

• UMass Lowell fined $100,000 for violating EAR: shipping EAR99 items to Pakistan’s Space and Upper Atmosphere Research Commission without a license.

• Chief of Infectious Disease, Texas Tech sentenced to 2 years in prison and $37,000 fine for violating ITAR: exporting select agents to Tanzania without a license.
What is an “Export”?  

- Physical Export: Sending any material to a foreign location (includes hand-carry & electronic exports)

- Deemed Export: disclosing “controlled” technical data either written, orally, or visually in the United States to a foreign person

The Fundamental Research Exclusion (FRE) may (BUT DOES NOT ALWAYS) provide a license exception:

On-campus, University research that covers information and data resulting from “basic and applied research in science and engineering” conducted at an accredited institution of higher education, located in the United States, that is ordinarily published and shared broadly in the scientific community is subject to the Fundamental Research Exclusion and is exempt from Export Control Regulations.
The FRE only applies to research “results.” It does not cover:

- Physical Exports
- Controlled items or equipment

Please Note: Just because an item was purchased in the US and is commercially available, this does not render it un-controlled for the purposes of these regulations, were it to be exported.
Examples of Potentially Export Restricted Items/Equipment:

- Accelerometers
- Optical Fiber Cables
- Optical Detectors
- Infectious *E. coli*
- Graphite
- Magnetic Metals
- Optical Mirrors
- Encryption Software
- Radiographic Equipment
- Infectious viruses
- Machine Tools
- Items with onboard GPS
- Ammonium Nitrate Mixtures (including fertilizers)
- Laptop Computers
It is the responsibility of the PI to identify any items, technology, or activities on a proposal that may be physically removed from the United States and/or shared with a foreign national. For any questions related to such activities, please contact ORI.

* Indicates Required Fields

1. Does the project involve conducting proprietary research with a potential military application?
   - Yes  ☐  No ☐

2. Does the project involve:
   - Yes ☐  No ☐

   a. Sending, transporting, transmitting, or carrying any material or equipment outside the United States (examples include: computers, GPS, biologicals, diagnostic kits, reagents, or data)?

   i. Please provide the following information about the material or equipment: (1) Export Method; (2) Description; (3) Recipient; (4) Intended End Use; and (5) Anticipated Export Date.

   ii. To which countries are you shipping?
   - Afghanistan
   - Albania
   - Algeria
   - American Samoa
   - Andorra

   b. Travel outside the US by any research personnel? If the answer is yes, please attach a list of destination countries at the attachments tab on your proposal.
   - Yes  ☐  No ☐

   c. Importing, exporting, or transmitting any goods, services, technology, or funds to or from (or travelling to) any of the countries from the OFAC list (including, but not limited to Iran, North Korea, Syria, Libya, and Cuba)?
   - Yes  ☐  No ☐
3. Some types of research may have export control implications even if all work is conducted within the U.S.

Do you anticipate that the project work may involve:

- **a.** Non-commercial encryption or information security software?
  - [ ] Yes
  - [ ] No

- **b.** Any equipment, technology, materials or software specifically designed, modified, or adapted (even slightly) for a military purpose or that may involve national security?
  - [ ] Yes
  - [ ] No

- **c.** Any classified materials, equipment, technology or data?
  - [ ] Yes
  - [ ] No
Some Red Flag Activities (AKA When should I call RCI?)

Does the research involve:

- Shipping Internationally? (FRE doesn’t apply)
- Traveling Internationally? (FRE doesn’t apply)
- Sponsors who want publication or citizenship restrictions? (FRE doesn’t apply)
- Purchasing equipment that may be controlled ("ITAR")? (FRE doesn’t apply)
- Allowing a foreign person access to controlled items? (FRE doesn’t apply)
- Collaborating with non-U.S. colleagues in foreign countries? (FRE may not apply)
- Any activities or transactions (including providing or receiving any goods, technology, or services) with persons or entities from an embargoed country (e.g. Iran, North Korea, Sudan, Cuba or Syria)? [This includes attending conferences in these countries.]
- Providing services is not research – the FRE doesn’t apply!
Who to Contact:

Research Compliance and Integrity
Office of Research

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http://research.ucdavis.edu/compliance
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Davis, CA 95691