

Export Controls

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U.S. Export Regulations: *What you need to know!*



PURPOSE & KEY DEFINITIONS



U.S. Export Regulations: Purpose

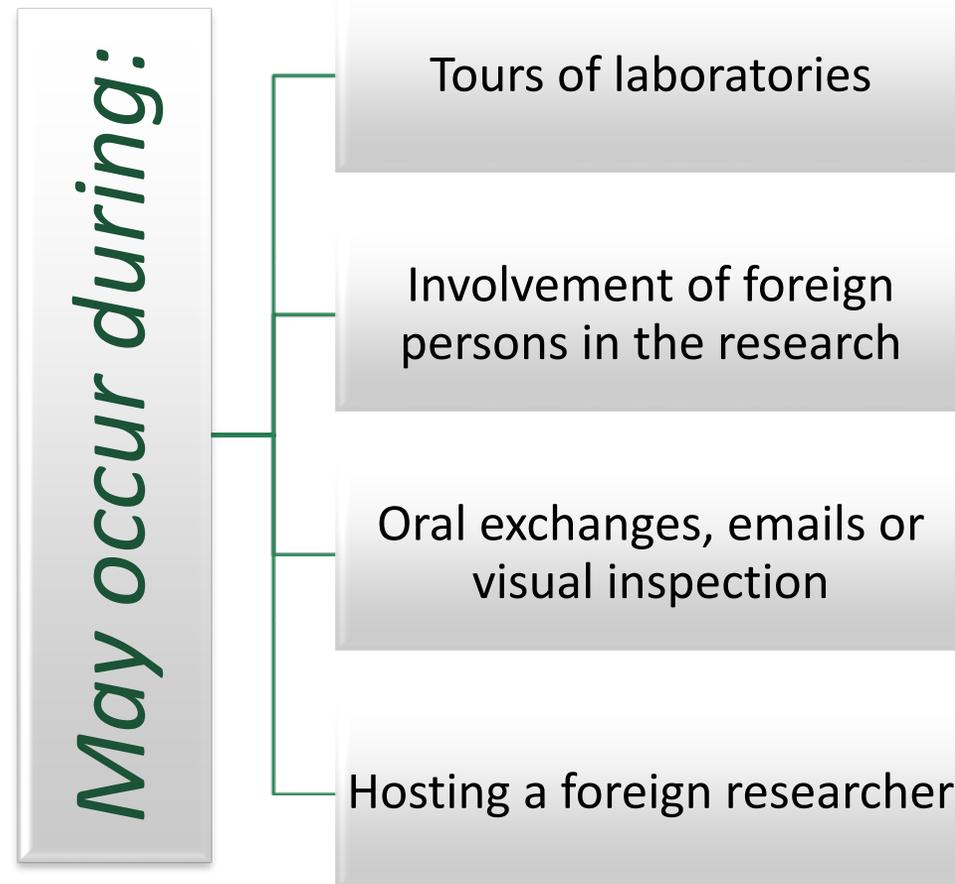
- ❑ US export control regulations govern the transfer of Information, Items, and Technologies to foreign countries and foreign persons
- ❑ Export Regulations are designed to stop the proliferation of weapons of mass destruction, certain types of encryption software, military items, dual use items, or further US economic sanctions

U.S. Export Regulations: What is an Export?

- ❑ Physically sending export controlled items to a foreign country
- ❑ Transmitting export controlled information or software electronically or digitally to a foreign country or foreign person
- ❑ Use of Export controlled technology on behalf or for the benefit of a foreign person or foreign country (Defense Service)
- ❑ Deemed Export

Key Definitions

Deemed Export occurs when there is a “release in the United States of ‘technology’ or source code to a foreign person.” Similarly, “release” is defined in the BIS Rules as “visual or other inspection by a foreign person of items that reveals ‘technology’ or source code subject to the EAR to a foreign person.



Key Definitions

US Person is a US citizen, green card holders, some asylee or refugee designations, or an entity, organization or group incorporated to do business in the United States (corporation, business association, partnership, society, trust) or any governmental entity (federal, state or local).

Foreign Person is any natural person who is not a lawful permanent resident, is not protected by 8 USC 1324b(a)(3), foreign entities not incorporated in or organized to do business in the US, international organizations, foreign governments and any agencies of those governments, and individuals holding a work or student visa (F1, J1, H1B).

Fundamental Research means basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community. (Distinguish proprietary research)

Fundamental Research Exclusion exempts most research at a research university from Export Control Laws – more information is provided on slides 22-23.

Dual Use are items, information, and software that are primarily commercial or civil in nature but also have potential military applications. Dual use items that are identified on the Export Administration Regulation's Commerce Control List (CCL) have an Export Control Commodity Number (ECCN) and are of elevated strategic concern. Dual use items that are subject to regulation but are not identified on the CCL are termed "EAR99."



REGULATORY AUTHORITIES

WHEN DO YOU NEED A LICENSE?



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U.S. Export Regulations: Regulatory Authorities

BIS

Bureau of Industry and
Security
(Dept of Commerce)

Export Administration
Regulations (EAR)

Commerce Control List

- Dual-use commodities,
software and technology

DDTC

Directorate of Defense
Trade Controls
(Dept of State)

International Traffic in
Arms Regulations (ITAR)

U.S. Munitions List
(USML)

OFAC

Office of Foreign Assets
Control
(Dept of Treasury)

SDN List - Specially
Designated Nationals &
Blocked Persons

Sanctions Lists –
embargoed countries

U.S. Department of Energy: The 4th Regulatory Authority

- ❑ Nuclear Regulatory Commission

- ❑ 10 CFR sec 110: Export and Import of Nuclear Equipment and Materials Regulations
 - General Authorization: Furnishing public information , Furnishing assistance/aid in emergency situations or to improve safety, Participation in open meetings sponsored by educational, scientific or technical organizations

- ❑ 10 CFR sec 810: Assistance to Foreign Atomic Energy Activities
 - Specific Authorization: List based controls, covers providing sensitive nuclear technology, providing training or assistance for certain nuclear and reactor related activities, design, construction, fabrication of components, etc.

Export Controls: When do you need a license?

- ❑ If something is on the Commerce Control List (CCL) you may need a license depending on end user/use and if an exception does not apply
- ❑ If something is on the U.S. Munitions List (USML) you must have a license unless there is an exception
- ❑ If Office of Foreign Assets Control (OFAC) regulations apply a license is required unless there is an exception (although it may be a general license)
- ❑ Embargoed Countries
 - Cuba, Iran, North Korea, Syria, or Crimea - Region of Ukraine

COMMON EXEMPTIONS

PUBLICLY AVAILABLE -- EAR

PUBLIC DOMAIN -- ITAR

EDUCATIONAL INFORMATION

FUNDAMENTAL RESEARCH

TOOLS OF THE TRADE



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Publicly Available Information -- EAR

Information/software listed on the CCL that is generally assessable to the public through one of the follow ways:

- ❑ Fundamental Research in Science and Engineering per Part 734.8 (can be conducted / created outside of the United States)
- ❑ Publications in periodicals, books, print, electronic, or any other media available for general distribution either free or at a cost not exceeding the cost of reproduction and distribution (may even have a reasonable profit)
- ❑ Libraries open to the public / university libraries



Publicly Available Information – EAR: *Continued*

- ❑ Subscriptions which are available without restriction either free or at a cost not exceeding the cost of reproduction and distribution (again – reasonable profit is okay)
- ❑ Published patents and open (published) patent applications available at any patent office
- ❑ Unlimited distribution at conferences, meetings, seminars, trade shows or exhibitions in the US or abroad that are generally accessible to the public for a fee reasonably related to the cost, and where attendees may take notes; and / or
- ❑ Websites which are accessible to all members of the public, free of charge and where the institution does not have knowledge or control of who visits the site or downloads the information or software.



Public Domain -- ITAR

Information/software listed on the US Munitions List and is generally accessible and available to the public through or at one of the following:

- Fundamental Research in Science and Engineering per Part 120.11 - performed at an accredited institution of higher learning in the US
- Libraries open to the public
- Sales at newsstands or bookstores and Subscriptions available without restriction
- Published patents available at any patent office
- Unlimited distribution at conferences, meetings, seminars, trade shows or exhibitions in the US that are generally available to the public
- Websites that are accessible to all members of the public, free of charge, and where the university does not have knowledge or control over who visits the site or downloads the information or software



Educational Information Exclusions

- ❑ The ITAR states that Export Control Laws do not apply to information that is “general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities.”
- ❑ The EAR applies the Educational Information Exclusion when the educational information is released by instruction in catalog courses and associated teaching laboratories

Fundamental Research

EAR definition: (Part 734.8)

- “research in science, engineering or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have no accepted restrictions for proprietary or national security reasons.”

ITAR definition: (Part 120.11)

- Public Domain: means information which is published and which is generally accessible or available to the public ...(8) through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community...



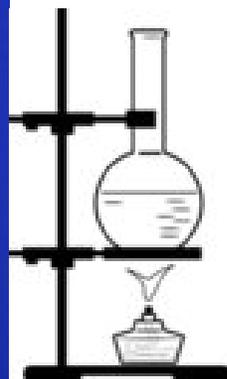
Fundamental Research: *Continued*



What destroys Fundamental Research Exclusion?

- ❑ Limitations on publications of results
 - Beyond a less than 90 day advanced review by sponsor

- ❑ Limitation on hiring of foreign persons



Tools of the Trade

Temporary exports under the “Tools of Trade” license exception apply when the laptop, PDA, cell phone, data storage devices and encrypted software are:

- ❑ Hand carried with you while you travel
- ❑ Carried in **your luggage** or baggage that travels with you
- ❑ Shipped no more than **thirty days prior to your departure**, or may be shipped to you at any time while you are outside the country



Tools of the Trade

Generally, no export license is required so long as you:

- Retain these items under your personal custody and effective control for the duration of your travel;
 - **Effective Control** – means retaining physical possession of an item or maintaining it in a secure environment
- Do not intend to keep these items in these countries for longer than 1 year; and
- You are not traveling to a embargoed countries:
 - Cuba, Iran, North Korea, Syria, or Crimea - Region of Ukraine



RED FLAGS



U.S. Export Controls: Red Flags

- I would like to host a foreign visitor at the University
- I would like to travel outside of the US
- I would like to carry items outside of the US
- I would like to ship items outside of the US
- I would like to have foreign persons participate in research activities
- I would like to participate in an international collaboration
- I would like to accept restrictions on publication, foreign person participation, or involve proprietary information in my activity



U.S. Export Controls: Red Flags

Openness Restrictions are agreements that mark items or information

- Proprietary / not in public domain (NDA's / CDA's)
- Marked as “export controlled”
- Contains publication restrictions
- Restricts hiring of foreign persons



U.S. Export Controls: Red Flags

Controlled Software

- Access to encryption source code

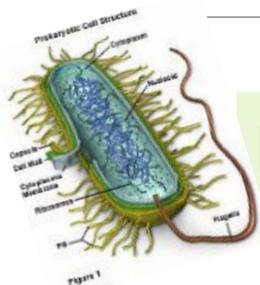
ITAR Controlled Technology

- Anything that could be used to create a weapon of mass destruction

Providing technical assistance on export controlled technology to foreign individuals or entities



U.S. Export Controls: Red Flags



Pathogens and Toxins

Human and Animal Pathogens (ECCN 1C351 & 1C352)

- Dengue fever virus
- Ebola virus
- Foot and mouth disease virus
- Botulinum toxins

Plant Pathogens (ECCN 1C354)

- Puccinia striiformia (Puccinia glumarum)
- Rathayibacter toxicus

Genetic Elements and genetically modified organisms (ECCN 1C353)

- Genetically modified organisms that contain nucleic acid sequences associated with the pathogenicity of microorganism controlled by 1C351.a to .c, 1C352 and 1C354.
- Genetically modified organisms that contain nucleic acid sequences coding for any of the “toxins” controlled by 1C351.d or “sub-units of toxins” thereof.

International Traffic in Arms Regulations (ITAR) Category XIV: Toxicological Agents including Chemical, Biological Agents, and Associated Equipment

- Biological agents and biologically derived substances specifically developed, configured, adapted, or modified for the purpose of increasing their capability to produce casualties in humans or livestock, degrade equipment or damage crops.

Dual Use Research of Concern (DURC)

- ❑ This Policy is to establish regular review of research (regardless of the source of funding) with certain high consequence pathogens and toxins for its potential to be Dual Use Research of Concern (DURC) as defined by the [US Government Policy on Institutional Oversight of Life Sciences Dual Use Research of Concern](#).
- ❑ The DURC review is designed to:
 - **mitigate risks** where appropriate; and
 - **collect information needed to inform the development of an updated policy**, as needed, for the oversight of DURC.
- ❑ **Requires the establishment of an Institutional Review Entity (IRE)**
 - [UO Institutional Biosafety Committee \(IBC\)](#)
- ❑ Dual use items may require an export license depending on the item, the recipient, the recipient's citizenship or country of destination, and the item's application.

TROUBLESHOOTING & RESOURCES



U.S Export Controls: Troubleshooting

What is happening?

- Are you shipping or traveling
- Collaborating with/talking to a Foreign Person

What type of information/technology do you have access to?

- Do you work in a life science lab?
- Are you an instructor teaching a physics course?

Does an “Exemption” apply to what you are doing?

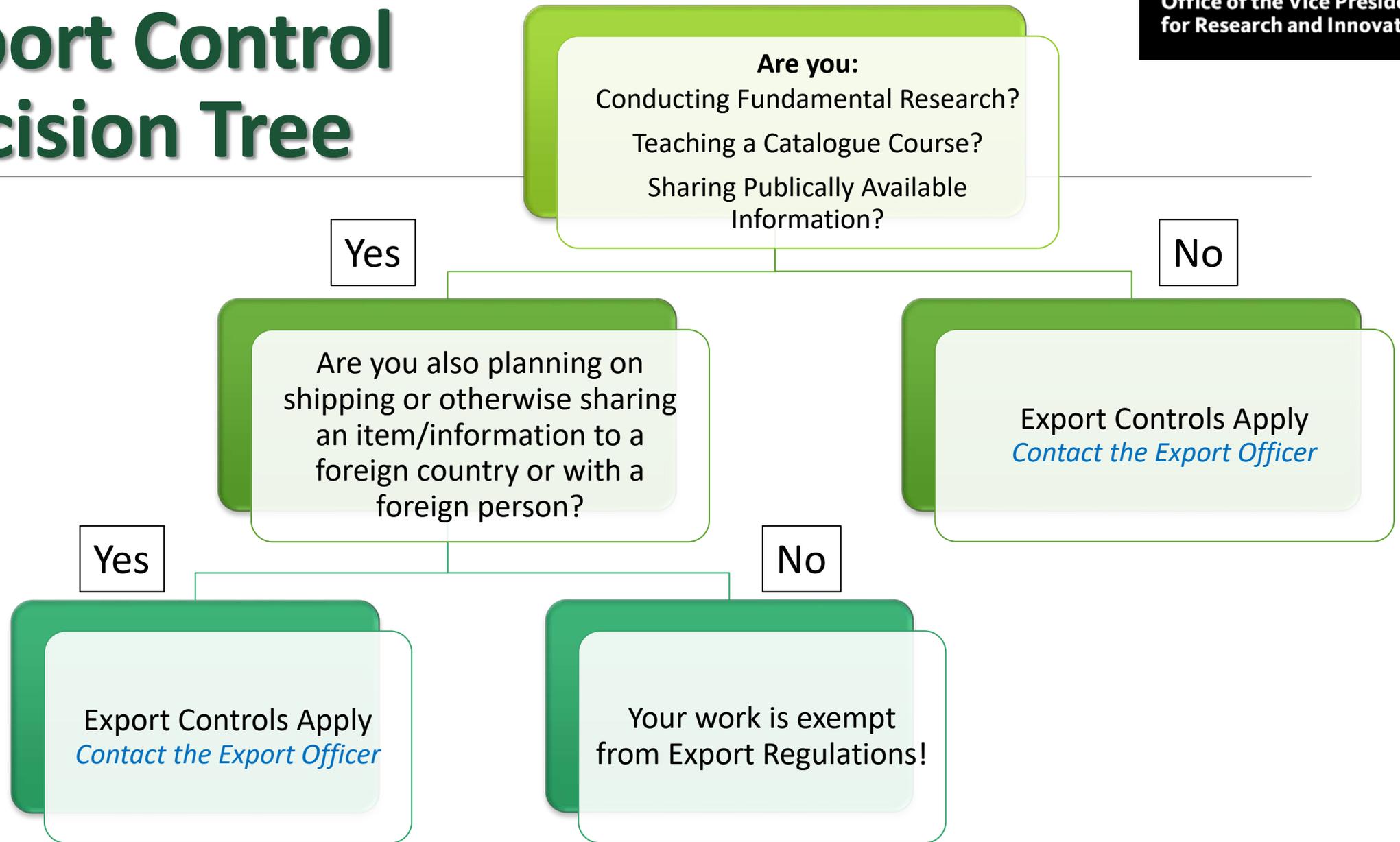
- Fundamental Research Exemption
- Educational Information Exemption

Do you need further guidance?

- Review UO’s Export Policy and read the Export Compliance Webpage
- Contact the Office of Research and Innovation



Export Control Decision Tree



U.S. Export Control Regulations: RECAP

Something is export controlled if:

- It is not protected under an approved exclusion (such as: Fundamental Research)
- It is on the U.S. Munitions List
- It is on the Commerce Control List
- It is a Defense Service as defined by the ITAR
- It is EAR 99

To help make the determination utilize the UO [Export Control Decision Tree](#).

Additional trainings on export controls can be found [here](#)!



Questions...



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Thank you!

