

## **What are Export Controls?**

The term “Export Controls” refers collectively to the body of U.S. laws and regulations that govern the transfer of controlled items or information to foreign nationals or foreign entities.

## **What are Export Control Laws?**

Federal regulations that control the conditions under which certain information, technologies, and commodities can be transmitted overseas to anyone, including U.S. citizens, or to a foreign national in U.S. soil.

## **There is no external funding supporting my activities. Do export controls apply?**

Yes, export controls apply to all international activities regardless of funding status or source.

## **I am doing basic research at CU-Boulder in collaboration with a foreign lab. Do export controls apply?**

Yes, export controls apply to all international research activities. In general, basic research conducted at the university is not subject to export controls under the [Fundamental Research Exclusion](#) as long as it is not in an export restricted area and there are no restrictions on publication or access by foreign nationals. However, in cases where UCB research involves collaborations with foreign nationals, the university must perform a review of the research and document that the [Fundamental Research Exclusion](#) or other exclusion does or does not apply.

## **What is an Export?**

An export occurs whenever any item (i.e., any commodity, software, technology, or equipment) or information is sent from the U.S. to a foreign destination or provided to a foreign national here or abroad. The manner in which the transfer or release of the item or information occurs does not matter. Some examples of export activities include: the shipment of items, written or oral communications, hand-carrying items when traveling, providing access to or visual inspection of equipment or facilities, and providing professional services.

## **What is a Deemed Export?**

A deemed export refers to the release or transmission of information or technology to any foreign national in the U.S., including students, post-docs, faculty, visiting scientists, or training fellows. A deemed export is treated as an export to that person’s home country. Deemed exports are a primary area of export control exposure for the university.

## **What is a Foreign National?**

A foreign national is defined as any natural person who is not a U.S. citizen, or is not a lawful permanent resident of the U.S. (i.e., does not have a green card), or who does not have refugee or asylum status.

## **What is a Foreign Entity?**

A foreign entity is any corporation, business, or other entity that is not incorporated to do business in the U.S. This includes international organizations, foreign governments, or any agency of a foreign government.

## **What is a Dual Use Item?**

A dual use item is any item that can potentially have a military application as well as a commercial or civilian purpose (e.g., GPS units).

## **What is the ITAR?**

ITAR stands for the [International Traffic in Arms Regulations](#) (22 CFR §§120-130) and they are administered by the Directorate of Defense Trade Controls under the U.S. Department of State. The ITAR governs all military, weapons, and space related items and services as enumerated on the [U.S. Munitions List](#) (USML).

## **What is the EAR?**

EAR stands for the [Export Administration Regulations](#) (15 CFR §§730-774) and they are administered by the Bureau of Industry and Security (BIS) under the U.S. Department of Commerce. The EAR governs the export of most items in the U.S., especially dual use items as enumerated on the Commerce Control List (CCL).

## **How do I know if my item is subject to the Export Administration Regulations (EAR)?**

The EAR controls all items (commodities, software, or technology) that are 1) of U.S. origin; or 2) are made with U.S. materials, technology, or know-how; or 3) are located in the U.S. AND that are **NOT** under the exclusive jurisdiction of another regulatory body (e.g., ITAR or Nuclear Regulatory Commission) or that are **NOT** shielded from export controls under the [Fundamental Research, Educational Information](#), or [Public Information](#) exclusions.

## **What is OFAC?**

OFAC stands for the Office of Foreign Assets Control (31 CFR §§500-599) and is an office under the U.S. Department of the Treasury. OFAC is responsible for enforcing the foreign policy of the U.S. government, including all trade sanctions, embargoes, and financial interactions with

prohibited or blocked individuals or entities. For more information, see a listing of [OFAC Country Sanction programs](#).

## **What is the Fundamental Research Exclusion (FRE)?**

Fundamental Research is defined by the National Security Decision Directive 189 (NSDD189) as “any basic or applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community...” In order to qualify as Fundamental Research, the research must be conducted free of any publication restrictions and without any access or dissemination restrictions. Research that qualifies as Fundamental Research is **NOT** subject to export controls as provided for under the federal regulations ([15 CFR§734.8](#)). It is critical to note that the Fundamental Research Exclusion will be lost if a researcher agrees to any “side-deals” allowing sponsors the ability to review and approve publications or to control access to the project or project results. Loss of the Fundamental Research Exclusion can quickly put your research in jeopardy of non-compliance with export controls.

## **I am doing basic research that includes field work done overseas. Does my research qualify under the Fundamental Research Exclusion?**

Maybe. To qualify as Fundamental Research, research must be conducted at an accredited institution of higher education located in the United States. If your research includes work done outside the U.S., it may not qualify for the Fundamental Research Exclusion. This does not automatically mean that export licenses will be required, but it does mean that an export control determination needs to be done before the work begins. Contact [exportcontrol@colorado.edu](mailto:exportcontrol@colorado.edu) for help in determining your license requirements.

## **My research is exempt from export controls under the Fundamental Research Exclusion. Can I ship items developed as part of that research overseas?**

Not automatically. While research results developed or generated under the [Fundamental Research Exclusion](#) are exempt from export controls and can be freely shared with foreign nationals both here and abroad, any materials, items, technology, or software generated as a result of the research **ARE NOT** exempt from export controls. Before shipping or taking any item abroad, an export control determination needs to be done to determine if an export license is required to take or transfer the item. Contact [exportcontrol@colorado.edu](mailto:exportcontrol@colorado.edu) for help in determining your license requirements.

## **What is the Educational Information Exclusion?**

Information that is normally taught or released by the university as part of the normal instruction in a catalog course or in an associated teaching laboratory is considered Educational Information and, as provided for under the federal regulations ([15 CFR§734.9](#)), is **NOT** subject to export controls.

## What is the Public Information Exclusion?

Information that is already published or is out in the public domain is considered public information and, as provided for under the federal regulations ([15 CFR§734.7](#) and [15CFR§734.10](#)), is **NOT** subject to export controls. Examples of information in the public domain include:

- Books, newspapers, pamphlets
- Publically available technology and software
- Information presented at conferences, meetings, and seminars open to the public
- Information included in published patents
- Websites freely accessible by the public

## When should I select the Export Control button on the Export Control Review form?

A “yes” answer to any of the following questions indicates that your research might be subject to export controls and should be reviewed by the Export Control Committee:

- Research involves export restricted science and engineering areas including defense articles or services, missiles, chemical & biological weapons, nuclear technology, work with designated select agents, high performance computing, and encryption technology.
- Research involves the use of export controlled information, items, or technology (e.g., export restricted information or technology received from outside the university).
- Research involves the transfer of project information, equipment, materials, or financial support out of the U.S. (e.g., sending project deliverables or providing funding via a subcontract)
- Any part of the research will take place outside the U.S. or will include international travel (e.g., field work outside the U.S., attending an international conference to present results, or providing professional services)
- Research involves foreign national faculty, visiting scientists or collaborator(s), or other foreign entities (e.g., non-U.S. company, university, or other organization).
- Foreign National graduate students, trainees, or other Ohio State University employees will be involved in the research and the research has not yet been determined to be Fundamental Research by the Export Control Administrator.

## What is an ECCN?

“ECCN” stands for Export Control Classification Number and is an alpha-numeric code used to categorize items that are subject to the EAR into one of the ten categories and five product groups within the Commerce Control List (CCL).

## **What does a classification as EAR99 mean?**

EAR99 is the general “catch-all” classification number assigned to any item that is subject to the EAR but that does not have a specific export control classification number listed in the Commerce Control list. By far, the vast majority of U.S. origin goods are classified as EAR99, and under most circumstances, do not require a license for export.

## **What is an Export License?**

An Export License is a written authorization provided by the federal government granting permission for the release or transfer of export controlled information or item under a defined set of conditions.

## **What kinds of activities can trigger the need for an export license?**

The following are examples of the types of university activities that may trigger the need for an export license or deemed export license:

- Research in controlled or restricted areas (e.g., defense items or services, missiles, nuclear technology, satellites, chemical/biological weapons, encryption)
- Research involving the use of export restricted information obtained from external sources
- Research involving collaborations with foreign nationals here at UCB or overseas
- Research involving travel or field work done overseas
- Research involving the transfer or shipment of tangible items or equipment overseas
- Presentations at meetings or conferences of unpublished information not protected under the [Fundamental Research](#) or [Educational Information](#) exclusions
- Research involving the provision of financial support or services outside the U.S.

## **How do I know if I need a license?**

Determining when you need an export license can be very complicated. The Export Control Committee can assist you in determining if a license is required and/or if there is a valid license exception or other exclusion that may apply. Contact the Export Control Committee at [exportcontrol@colorado.edu](mailto:exportcontrol@colorado.edu) for help with export controls.

## **What is an Export License Exception?**

An Export License Exception is a special authorization that allows you to export or re-export, under very specific conditions, items that would otherwise require an export license. Export License Exceptions are detailed in [EAR§740](#)

## **How do I apply for an export license?**

If it is determined that your activity requires an export license, the Export Control Committee will coordinate the license application process. Contact the Export Control Committee at

[exportcontrol@colorado.edu](mailto:exportcontrol@colorado.edu). They will work with you and the Office of Legal Affairs to submit a license request to the appropriate regulatory body on your behalf. It is important to note that obtaining an export license can take 3-6 months and there is no guarantee that a license will be granted.

### **Are commercially-available items free from export control licensing requirements?**

Yes, in most cases, low-end items that are commercially available do not require export licenses. There are some important exceptions including items containing strong encryption technology or software (e.g., laptop computers, web-enabled cell phones), items that have dual use applications (e.g., high end GPS units), or that are restricted under other regulations or sanctions.

### **What is a Technology Control Plan and when do I need one?**

A Technology Control Plan (TCP) is a document drafted by the researcher in collaboration with the Export Control Committee and their department chair specifying procedures that will be taken in order to safeguard and control access to information or items that are export restricted. In general, a TCP will outline what the restricted information/item is, who will have access to it, how access will be monitored and controlled, how the information/item will be physically and electronically stored, what information about it can be shared or presented, and what will be done with the information/item once the project is completed. Contact [exportcontrol@colorado.edu](mailto:exportcontrol@colorado.edu) for more information on TCPs.

### **What happens when I obtain or use export controlled information from an outside entity?**

Research conducted at UCB that includes or uses export controlled or restricted information or items obtained from an outside entity does not qualify under the Fundamental Research Exclusion and would be subject to all export controls. Before export controlled information or item is received by the researcher, the [Incoming Export Controlled Information/Item Questionnaire](#) must be completed and the researcher will also need to complete the [Certification on the Handling of Export-Controlled Information](#). In some cases, a formal Technology Control Plan will need to be created depending on the specific circumstances. Contact [exportcontrol@colorado.edu](mailto:exportcontrol@colorado.edu) for help in determining your requirements.

### **I am working as a consultant overseas. Do export controls apply to me?**

Yes, export controls apply to all U.S. persons, at all times. It is important that you understand and comply with your obligations under export control regulations. If you are consulting in a restricted technology area (e.g., on dual-use technologies or select agent work), then you may need an export license depending on where you are going, what information you are providing, who you are providing it to, and what they intend to do with it. If the destination or end-user is a foreign national of a sanctioned country (especially Iran, Syria, Cuba, Sudan, or North Korea), then in most cases any consulting activities would be prohibited regardless of the subject matter. For more information, see a listing of [OFAC Country Sanction programs](#).

**I am on an editorial board of a scientific journal and I have been asked to review a paper from an Iranian author. Is this allowed under the OFAC sanctions?**

Yes, under the current federal regulations, [Federal Register vol. 72, 50047-50052](#) (see section 560.538), all activities normally incident to publishing are allowed with Iranian citizens as long as the Iranian author is not a governmental official or working on behalf of the government of Iran. Academic and research institutions in Iran and their personnel are not considered governmental employees or representatives for the purposes of the regulations. This would be true for citizens from the other sanctioned countries as well.