

EXPORT CONTROL CONCERNS FOR FACULTY/STAFF/STUDENTS: RESEARCH, FOREIGN TRAVEL, AND SHIPPING

The United States is committed to encourage technology exchanges that are consistent with U.S. national security and nuclear nonproliferation objectives. Although most of the research and technology development OSU conducts is exempt from U.S. export control regulations, we must still comply with the regulations.

An export can occur through a variety of means, including:

- shipping;
- oral communications;
- written documentation (including e-mails); and
- visual inspections of any technology, software or technical data to any non-U.S. citizen, whether here in the U.S. or abroad.

How do these regulations affect you as a faculty or staff member at OSU? Export controls affect three main areas at OSU: research, travel outside the U.S., and shipping.

RESEARCH

If you are doing fundamental research and the results of the research will be in the public domain (see definitions below), you probably will not have any export control issues unless you have a foreign national working with **controlled** (found on the Commerce Control List or the U.S. Munitions List) proprietary technology in conjunction with your research project.

You may also be working on a project that has controlled proprietary technology or the government has placed access controls on the technology, but you do not have foreign nationals involved in your research. In this situation you must have a Technology Control Plan in place that limits access to only U.S. persons (see definition under “General Information”).

Fundamental Research, as used in the export control regulations, includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research which results in information which is restricted for proprietary reasons or pursuant to specific U.S. Government access and dissemination controls. University research will not be deemed to qualify as Fundamental Research if: (1) the University or research accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by sponsor or to insure that publication will not compromise patent rights of the sponsor; or (2) the research is federally funded and specific access and dissemination controls regarding the resulting information have been accepted by University or the researcher. The citation for the official definition of Fundamental Research under the EAR is 15 CFR § 734.8. The ITAR citation is 22 CFR § 120.11.

Public Domain (22 CFR 120.11) means information that is published and that is generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information; (3) through second class mailing privileges granted by the U.S. Government; (4) at libraries

open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States; (7) through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency; and (8) through *fundamental research*.

FOREIGN TRAVEL

Travel to most countries does not usually constitute an export control problem. However, you need to be aware that information and/or technology you plan to take with you could be subject to export control regulations.

When planning a trip abroad, OSU travelers should familiarize themselves with export control regulations and embargoes. You must ensure that any information that you will discuss or any items that you will take with you are either not controlled, or if controlled, proper licenses are in place. In many cases, the item(s) are classified as exempt or an exception to the license requirements is available. However, regulations **require** that the exemption/exception needs **to be documented** and records must be kept for **five years**. Because you, as an individual, and OSU can be held liable for improperly transferring controlled technology, it is important that you review the federal requirements. Any technology or information taken with you should fall into at least one of the following categories: research which qualifies for the fundamental research exclusion; published information; publicly available software; educational information; patent applications. Presentations and discussions must be limited to topics that are not related to controlled items or technologies unless that information is already published or otherwise already in the public domain.

Regardless of whether a technology or information falls into one of the above categories, travel to certain sanctioned countries would require a license from the Office of Foreign Asset Control (OFAC), or could, in fact, be denied. OFAC also has regulations regarding money transactions and the exchange of goods and services in certain sanctioned countries.

You need to be aware that an export license or other governmental approval may be required for your laptop computer, software, or other equipment depending on your destination. There are exceptions for “tools of the trade” but these exceptions depend on the equipment and the country of your destination. Encryption software, in particular, is subject to special regulations and more stringent license requirements. Also, the “tools of the trade” exception **does not apply** to controlled technology.

A license is required if you are taking an item found on the Department of State’s U.S. Munitions List (USML). A license is required if you are providing a defense service (includes training) to a foreign person whether here in the U.S. or abroad. A license is required if you are supplying controlled (on the CCL) technology to a foreign person during a closed presentation or conference.

The Department of State, OFAC, and BIS have various lists of persons and entities that we are prohibited from doing business with. In other words, we should not be providing them with a defense service (includes training), giving money to these people or organizations, or providing them with controlled (on the CCL) proprietary technology. We can be fined by the government agencies if we do business with any person or entity found on these lists. Links to the Department of State, BIS, OFAC, denied entities/persons lists, and the “Countries of Concern” can be found at the following URL: (<http://www.research.okstate.edu/NEWLINK>).

SHIPPING

Shipping items outside the U.S. may require a license from OFAC, the Department of State, or the BIS. Check with University Mailing Services and/or Jada Bruner Gailey to determine if a license is needed. An OFAC license takes six months to receive, a license from the Department of State takes two months, and a license from the BIS takes approximately two weeks, so allow plenty of time before you need to ship. **Do not** ship an item without going through University Mailing Services because if U.S. Immigration and Customs Enforcement audit your shipment and a license was required and not in place, you and OSU would be fined.

If for some reason University Mailing Services cannot assist you in mailing your package, use a verified and experienced freight forwarder. **Ask questions.** Be sure they have sent freight to your intended country of destination. Feel confident in their ability. Do not risk losing your equipment on the way there and back. Not all countries do business the way it is done in the U.S.

CONTACT INFORMATION

Please contact Jada Bruner Gailey, Director, University Research Programs, if you have any questions regarding foreign nationals working on research projects, foreign travel, and shipping items outside the U.S., at 405-744-9995, via e-mail at jada.gailey@okstate.edu, or stop by 212 Cordell North. More information regarding export controls can be found at <http://www.research.okstate.edu>.