

Export Control Regulations

What Investigators Need to Know

What are Export Controls?

- The U.S. government limits or prohibits the transfer of some technology, technical data, software, and equipment to certain countries and/or foreign nationals
 - The purpose is to protect national and economic security interests
 - These regulations can apply to university activities
- Overseen by several federal departments, the regulations and control lists are complicated, changeable, and may conflict with each other
- Violations of the federal export control regulations can result in severe sanctions to institutions and individuals

Control Type by Department

Department	Regulations	Control List	Comment
State	International Traffic in Arms Regulations (ITAR)	Munitions List	More difficult to get license to export
Commerce	Export Administration Regulations (EAR)	Commerce Control List	More flexible to work with
Treasury	Office of Foreign Assets Control (OFAC)	Specially Designated Nationals; Embargoed Countries	Sanctions/ embargoes against countries or entities

Deemed Exports

- The most important concept for universities is that exports can occur on U.S. soil (“deemed exports”)
 - Occurs when a controlled item is transferred—orally, visually, physically, or in writing—to a foreign national when this “export” is prohibited
- Deemed exports can also occur in a foreign country that is not prohibited, but where a U.S. citizen “exports” the item to a foreign national or entity that is on a control list

Relationship to University Activities

- Most activities that are defined as “fundamental research” or “fundamental education” are excluded from the regulations
 - There are exceptions to this generalization
- Export controls can be relevant to research activities, international travel, purchasing, equipment, et al.

Exclusion for Fundamental Research

- Basic and applied research in science and engineering, the results of which **ordinarily** are **published** and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

(National Security Decision Directive 189)

Fundamental Research Exclusion...

- **Does NOT apply** to research for which:
 - There are publication restrictions by the sponsor
 - Beyond a reasonable period necessary for sponsor to protect proprietary information or intellectual property
 - The sponsor has imposed restrictions on participation by foreign nationals
- **Does NOT apply** in situations where a U.S. citizen doing the research is providing a “defense service” to a foreign national
 - e.g. providing technical data covered by item on the U.S. Munitions list

Get a License to Export?

- In some cases, an export controlled item can be transferred to a foreign national if a license to do so is obtained from the federal department that controls the item
 - Institution must be registered with the Department
 - Empowered Official must be identified
 - License applications have fees and take time
 - Can be denied

Penalties for Violations

- Individual as well as institution can be sanctioned for violations
 - Prison for individuals
 - Fines/prison
 - ITAR - \$1,000,000 per violation and up to 10 yrs.
 - EAR - \$50,000 per violation and up to 20 yrs.

Has a University Professor Ever Been Sanctioned?

“Retired UT professor gets 4 years for sharing military data”

KNOXVILLE (WATE*) -- Retired University of Tennessee Professor Dr. John Reece Roth was sentenced Wednesday to 48 months in prison for passing secrets from a U.S. Air Force contract to two foreign research assistants.

- Roth, a plasma physics expert, was **convicted in September 2008 of 18 counts of conspiracy, fraud and violating the Arms Export Control Act.**
- The sentence is lower than the recommended sentencing guidelines of between 63 and 78 months in prison.

**Posted: Jul 01, 2009 Updated: Aug 01, 2009; By [ANN KEIL](#)
WATE.com*

What Can Investigators Do?

- Keep activities within the “fundamental research” and “fundamental education” exclusion areas
- Use information in the public domain
- Avoid contract restrictions on
 - Publication of results
 - Participation of foreign nationals
 - Use of sensitive data or military items
- Do not make “side-deals” with the sponsor
- Avoid ITAR-controlled items (military): EAR is easier to work with (commercial or dual-use)
- Take precautions with laptop security and conversations with foreign nationals when traveling internationally

Help is Available

- Plan ahead to discuss proposed research with The Office of Sponsored Programs
(<https://wwwp.oakland.edu/research/administration/>)
- Individuals or groups can request presentations or other educational materials from the Office of Sponsored Programs or the VP for Research
- Take CITI modules on export controls
(<https://about.citiprogram.org/en/homepage/>)
- Questions are welcome!