

The University of Akron Statement on Export Control

It is the policy of The University of Akron, (“University”), with reference to all creative endeavors of its faculty, staff members and students conducted on University time or with its facilities, to recognize the interests of the university, the faculty member, the staff member, student, sponsor, and other cooperating or participating agencies. However, the University reserves the right to administer such interests consistent with the public interest as determined by its board of trustees (“board”) from time to time.

Research in a university setting generally is, and normally can be conducted openly and without restrictions, the University recognizes that there are certain conditions under which the export of information or technology is either prohibited by law, or requires a license from the U.S. Government. Thus, it is also the policy of the University to comply with all United States Export Control laws and regulations.

The Office of Research Services and Sponsored Programs manages University compliance with Export Control regulations and must be consulted whenever there is a question about whether the research or activities being conducted fall under federal Export Control regulations.

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**. Export Control laws include those implemented by the Department of Commerce (DoC) through its Export Administration Regulations (EAR), by the Department of State (DoS) through its International Traffic in Arms Regulations (ITAR), and embargo regulations imposed by the U.S. Treasury Department through its Office of Foreign Assets Control (OFAC).

These regulations apply to both Exports and Deemed Exports (see definitions below).

What is an Export?

Any item that is sent from the United States to a foreign destination is an export. "Items" include commodities, software or technology, such as clothing, building materials, circuit boards, automotive parts, blue prints, design plans, retail software packages and technical information.

How an item is transported outside of the United States does not matter in determining export license requirements. For example, an item can be sent by regular mail or hand-carried on an airplane. A set of schematics can be sent via facsimile to a foreign destination, software can be uploaded to or downloaded from an Internet site, or technology can be transmitted via e-mail or during a telephone conversation. Regardless of the method used for the transfer, the transaction is considered an export for Export Control purposes. An item is also considered an export even if it is leaving the United States temporarily, if it is leaving the United States but is not for sale (e.g., a gift), or if it is going to a wholly-owned U.S. subsidiary in a foreign country. Even a foreign-origin item exported from the United States, transmitted or transhipped through the

United States, or being returned from the United States to its foreign country of origin is considered an export.

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 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 do University of Akron personnel need to do to comply with Export Control Regulations?

Principal Investigators must identify when their activities or the activities of staff under their direction may trigger Export Controls and notify the Office of Research Services and Sponsored Programs. When Export Controls apply, the University must take the appropriate steps to review the activities, obtain any required governmental licenses, monitor and control access to restricted information and safeguard all controlled materials.

Principal Investigators have the primary responsibility to:

1. prior to commencing research that may trigger Export Control issues, work with the Office of Research Services and Sponsored Programs to determine whether any technical information or technology involved in their research is subject to Export Control laws and/or regulations;
2. to re-evaluate that determination before changing the scope or adding new staff to the project to determine if such changes alter the initial determination;
3. to work with the Office of Research Services and Sponsored Programs in order to make determinations far enough in advance to obtain an export license from the appropriate agency, if required and available; and,

4. to ensure that foreign nationals are excluded from access to restricted data or technology until the availability of an exclusion has been determined, or an export license has been obtained.

What kinds of activities might trigger Export Control issues?

Research in “export restricted” science and engineering areas trigger Export Control issues. A non exhaustive list of “export restricted” activities include:

- Military or Defense Articles and Services
- High Performance Computing
- Dual Use Technologies (technologies with both a military and commercial application)
- Encryption Technology
- Missiles & Missile Technology
- Chemical/Biological weapons
- Nuclear Technology
- Select Agents & Toxins (see [Select Agent/Toxin list](#))
- Space Technology & Satellites
- Medical Lasers

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. Contact the Office of Research Services and Sponsored Programs for more information on these exclusions.

Penalties for Non-Compliance with Export Controls

Fines for non-compliance with Export Controls are severe and can be levied at both the individual and the University. Fines under the EAR can bring civil penalties of \$10,000 to \$120,000 per violation and criminal penalties of \$50,000 to \$1 million per violation along with up to 10 years in prison.

In addition to monetary fines and prison sentences, the loss of all federal funding and loss of export privileges can occur. **University personnel may not transfer any items, information, technology or software contrary to U.S. Export Control laws or the university’s policy on Export Control.**

The University of Akron Export Control Procedures

References:

Introduction to the Commerce Department's Export Controls

http://www.bis.doc.gov/licensing/bis_exports2.pdf

Export Administration Regulations Database:

http://www.access.gpo.gov/bis/ear/ear_data.html

www.exportcontrol.org (best practices and references)