1. What is an export?

The export regulations define an export as:

- Any oral, written, electronic or visual disclosure, shipment, transfer or transmission outside of the United States to anyone, including a U.S. citizen, of any commodity, technology (information, technical data, or assistance) or software/codes
- Any oral, written, electronic or visual disclosure, transfer or transmission to any person or entity of a controlled commodity, technology or software/codes with an intent to transfer it to a non-U.S. entity or individual, wherever located (even to a foreign student or colleague at The Florida State University).
- Any transfer of these items or information to a foreign embassy or affiliate.

It is important to emphasize that only exports for which the U.S. government requires a license are those that are listed on the export controlled lists. The vast majority of exports do not require the prior approval of the U.S. government.

2. Who controls exports?

There are three government agencies that control exports:

ITAR - International Traffic in Arms Regulations
EAR - Export Administration Regulations
OFAC- Office of Foreign Assets Control

- The United States Department of Treasury's Office of Foreign Assets Control (OFAC) through the foreign asset control regulations, 31 CFR 500, administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries, terrorists, and those engaged in activities related to the proliferation of weapons of mass destruction.
- The United States Department of Commerce through its Export Administration Regulations (EAR), Title 15, sections 730-774 of the Code of Federal Regulations. For a list of controlled technologies, see 15 CFR 774, Supplement I.
- The United States Department of State (which controls the export of "defense articles and defense services") under the International Traffic in Arms Regulations (ITAR), 22 CFR 120-130. For a list of controlled technologies, see 22 CFR 121.1.

- A complete on-line version of the EAR, ITAR, and OFAC (including the critical technology list) is available on-line at:
http://www.access.gpo.gov/nara/cfr (EAR)

http://www.fas.org/spp/starwars/offdocs/itar/p121.htm (ITAR)
http://www.treas.gov/offices/enforcement/ofac/ (OFAC)

3. How can export controls affect my research?

"Export" is defined not only as a physical transfer/disclosure of an item outside the US, but also as a transfer/disclosure in any form of a controlled item or information within the US to anyone who is a foreign national (not a US citizen or permanent resident). This is called the "deemed export" rule. As a result, unless an exclusion or exemption is available, the University may be required to obtain prior governmental approval (in the form of an export license) before allowing the participation of foreign national faculty, staff, or students in affected research. In some cases, a license may not be available at all based on the country involved.

In addition to affecting who may participate in the research project on campus, the following are examples of situations in which a license may be required:

- Presentation/discussion of previously unpublished research at conferences and meetings where foreign national scholars may be in attendance
- Research collaborations with foreign nationals and technical exchange programs
- Transfers of research equipment abroad

- Visits to your lab by foreign scholars

4. What kinds of projects raise export control questions?

Basically, any research activity may be subject to export controls if it involves the actual export or "deemed" export of any goods, technology, or related technical data that is either 1) "dual use" (commercial in nature with possible military application) or 2) inherently military in nature.

Work in the following areas is considered high risk:

- Engineering
- Space sciences
- Computer Science
- Biomedical research with lasers
- Research with encrypted software
- Research with controlled chemicals, biological agents, and toxins

In addition, any of the following raise export control questions for your project:

- Sponsor restrictions on the participation of foreign nationals in the research
- Sponsor restrictions on the publication or disclosure of the research results
- Indications from the sponsor or others that export-controlled information or technology will be furnished for use in the research
- The physical export of controlled goods or technology is expected

5. What is fundamental research?

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, in some cases, is ordinarily published and shared broadly in the scientific community and, in other cases, where the resulting information has been or is about to be published. Fundamental research is distinguished from research that results in information that 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:

- The university or research institution accepts any restrictions on the publication of 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 the sponsor; or
- The research is federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the university or the researcher.

6. What is considered published information as used in Question 5?

The EAR and ITAR approach the issue of publication differently. For the EAR, the requirement is that the information has been, is about to be, or is ordinarily published. The ITAR requirement is that the information has been published.

Information becomes “published” or considered as “ordinarily published” when it is generally accessible to the interested public through a variety of ways. Publication in periodicals, books, print, electronic or any other media available for general distribution to any member of the public or to those that would be interested in the in a scientific or engineering discipline. Published or ordinarily published material also includes the following:

- Readily available at libraries open to the public;
- Issued patents; and,
- Releases at an open conference, meeting, seminar, trade show, or other open gathering.

A conference is considered "open" if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (but not necessarily a recording) of the proceedings and presentations. In all cases, access to the information must be free or for a fee that does not exceed the cost to produce and distribute the material or hold the conference (including a reasonable profit).

7. What is public domain and why is it important?

Public domain is the term used for "information that is published and generally accessible or available to the public" through a variety of mechanism. Publicly available software or technology is that which already is, or will be, published. To fall under this exclusion, there are a number of conditions which demonstrate public availability which are enumerated in the EAR.

8. If a license is needed, what is the process?

The Florida State University has designated the Vice President for Research as the Responsible University Official for export control regulations. He will arrange appropriate support within the Office for Research and, where necessary, outside the University to address export control and license issues. Unless there is an urgent need for expedited review and approval, it normally takes six months or longer to secure a license to export controlled materials from the U.S. or to transmit them to a non U.S. citizen or permanent resident within the U.S.

Definitions

Export control decisions depend on a correct understanding of the following terms. The official regulatory definition should be consulted in specific applications.

A. ***The term export,*** *as used in export control regulations has an expansive meaning. Generally, an export includes any: (1) actual shipment of any covered goods or items;*

(2) the electronic or digital transmission of any covered goods, items, or related goods or items; (3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any foreign national wherever located; or (4) actual use or application of covered technology on behalf of or for the benefit of any foreign entity or person anywhere. The official definition of export under the EAR and ITAR should be consulted when determining whether a specific act constitutes an export. As is evident in many instances, export is defined so as to preclude the participation of foreign graduate students in research that involves covered technology without first obtaining license from the appropriate government agency.

B. ***The Export Administration Regulations (EAR),*** *Title 15, sections 730-774 of the Code of Federal Regulations (CFR) are promulgated and implemented by the Department of Commerce. The EAR regulate the export of goods and services identified on the Commodity Control List (CCL), Title 15 CFR 774, Supp. 1. The complete text of the EAR and CCL are available online at http://www.access.gpo.gov/nara/cfr. Printed versions of the EAR and CCL are available for review at the OR .*

C. ***The International Traffic in Arms Regulations (ITAR),*** *22 CFR §§ 120-130 are promulgated and implemented by the Department of State and regulate defense articles and services and related technical data that are identified on the Munitions Control List (MCL), 22 CFR § 121. Complete, on-line versions of ITAR and MCL are available online at http://www.access.gpo.gov/nara/cfr (Gov't Printing Office site) and at http://www.fas.org/spp/starwars/offdocs/itar (Website for the Federation of American Scientists). Print versions of ITAR and MCL are available for review at OR.*

D. ***Commodity Jurisdiction Ruling:*** *Where an article is arguably covered by both the EAR and ITAR, a request can be made to the State Department to determine which agency will have jurisdiction over the export of the article.*

E. ***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 institution 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.*

F. ***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.