

FLORIDA STATE UNIVERSITY
EXPORT CONTROLS
FREQUENTLY ASKED QUESTIONS & ANSWERS

This document addresses some of the most commonly-raised issues pertaining to export controls. For additional detail on how FSU implements export controls, please see FSU's [Export Controls Compliance Plan](#). See also, [Export Control Definitions and Commonly Used Phrases](#).

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1. Exporting Commodities, Technical Data or Software

Q1. I am planning to export an item, technical data or software. What do I need to do?

Because the export of an item, data, or software may require an export license and, at a minimum, recipients of such exports must be screened against the U.S. Government's restricted party watch-lists, please notify FSU's Export Control Officer, Diana Key, at (850) 644-8648, prior to your intention to export so that compliance requirements can be resolved. Because some export licenses may take up to a year to obtain, the sooner the Export Control Officer is notified, the better.

Q2. Do I need to wait to export my item until I receive an export license or other authorization?

Yes. If a license is necessary, it may take days or months to obtain depending upon the particulars of the export so be sure to allow sufficient lead time! If the Export Control Officer determines that the item requires an export license, you will need to wait until we have the license. Even if no license is required, you will need to wait until the Export Control Officer has completed the watch-list screening. [Note: Screening itself normally only requires approximately 24 hours to process. Absent any screening concerns and license requirements, an export can proceed immediately.]

Q3. Does it matter how I plan to export the item, i.e. ship by freight forwarder or courier, hand-carry, transfer data/software electronically?

No. The method of export has nothing to do with whether a license is required.

Q4. How difficult is it to obtain an export license to ship tangible items, data or software?

Normally and, subject to certain exceptions, it is not difficult to obtain a license. Upon obtaining the necessary details about the export (e.g., nature of the item, purpose/end use, destination, and end user) the Export Control Officer prepares and files the appropriate type of license application (dual use EAR license or defense-related ITAR license). The license

application is filed through one of the on-line U.S. Government agency portals, and the Export Control Officer is able to track the government's approval process. Licenses are normally issued within 30 to 60 days.

Note that where the Government finds the proposed export to have particular national security, biological safety, or nuclear or missile technology implications, the applicable Government agency can deliberate longer over the issuance of the license, referring it for inter-agency review or requesting FSU to provide specific details. Hence, it is critical to allow sufficient time prior to intended export for the license application to be processed.

Where the license application is intended to cover the provision of a defense service under the ITAR, (i.e. the release in any manner of ITAR technical data to a foreign national or training or assistance to a foreign national using ITAR data), this type of ITAR license called a Technical Assistance Agreement or TAA, can take longer to prepare and longer to process.

Q5. Once we have a license authorization, am I done with the compliance requirements?

No. All export licenses and authorizations carry provisos or conditions which are the Government's specific restrictions or limitations on the export activity. For example, the Government may require that the recipient of the export provide a Letter of Assurance that they will not transfer or re-export the item beyond the originally licensed country destination. Limitations on the duration of the license, or on access by foreign nationals from certain countries may also apply. Failure to adhere to these provisos results in an enforceable export violation.

Q6. Do exports to every country require an export license?

Not necessarily. Under the EAR dual-use regulations, license requirements are on an item-by-item, country-by-country basis. As such, your particular item may or may not require a license. Under the ITAR, exports to all countries presumptively require a license and, in some cases, depending on the country, the State Department will not, as a matter of policy, issue a license. For example, China is per se a prohibited country under the ITAR USML regulations; the State Department will not consider issuing a license of a USML item to China. There are approximately 10 other countries that are likewise prohibited under ITAR. Therefore, it is essential that all exports be cleared by the export administrator.

Q7. Do I need an export license to temporarily ship research equipment or a prototype/sample out of the U.S., for example, for purposes of field research or equipment demonstration?

In some cases, yes. The answer depends on the export control jurisdiction of the item, as follows:

Scenario A: EAR dual-use items: If the equipment does not require a license to export it to any country, then no, the temporary export does not require a license. If, on the other hand, the item would normally require a license to export abroad, a specific license exemption such as the "Tool of Trade" exemption must apply to the temporary export or otherwise a license is required. [Note: The Tool of Trade exemption itself has numerous qualifications based on type of export, destination, and duration of export. Hence, it can only be used when all requirements are met.]

Scenario B: ITAR USML items: Yes, a license from the State Department is always required, even if you are only sending or transporting the ITAR equipment to international waters or

airspace (i.e. not landing in any particular country); there is no Tool of Trade exemption under the ITAR.

Q8. How does licensing work if I am intending to ship both EAR and ITAR classified items?

You will likely need to obtain two licenses. The ITAR item will require a license from the State Department, depending on the purpose of the export; the EAR item may require a separate license if controlled under the EAR. EAR items incorporated into ITAR items lose their EAR identity, and the entire item gets classified under ITAR. ITAR items incorporated into EAR-controlled or otherwise non-licensable items (No License Required) render the entire assembly ITAR-controlled by virtue of the “see-through” rule under the ITAR regulations.

Q9. What does it mean to provide a “defense service” under the ITAR regulations?

When you release ITAR-classified technical data to a foreign national (including foreign national students or visitors on campus, off campus, or abroad), this constitutes a defense service, requiring a license prior to such activity. In addition, providing technical assistance or training to a foreign military organization in the U.S. or abroad constitutes a defense service, regardless of whether the data or information being transferred is EAR- or ITAR-governed. In these instances, it is necessary to first obtain a Technical Assistance Agreement from the State Department prior to releasing the data or conducting the activity, unless a particular authorized exemption applies.

Q10. Does that mean teaching our foreign national students about something which happens to be listed on the USML requires a license?

Absolutely not. Where we are teaching or discussing any item in the public domain which happens to be listed on the USML or we have self-invented such information during the course of fundamental research with the intention to publish it, there is no license requirement. The license requirement applies when we are exporting ITAR-controlled data which we have received from a sponsor (government or industry) or research collaborator (government, industry, or research institution) under a restricted agreement (i.e. it is explicitly export controlled, and does not qualify as fundamental research intended for the public domain). [See Section 2 below for further Q&As]

Q11. Is there any easy way to distinguish between what is classified as an EAR vs. ITAR item for export license purposes, such as a laboratory research tool? What if the classification is not clear from the use of the vendor’s specifications?

When in doubt, refer the evaluation to the Export Control Officer. Typically, our research instruments are not categorized under the USML. However, they may be dual-use controlled under the EAR and hence require a license. Where an item is specifically designed or modified for defense purposes as defined under the USML, it is likely ITAR controlled. When an item is procured, this designation may be referenced in the vendors’ website, operation manual or sales documentation, though not always. Research institutions transferring ITAR items during the course of collaborative research do not always identify such items as ITAR controlled, unless the Material Transfer Agreement so requires. Bottom line: you cannot tell whether an item is EAR or ITAR controlled merely by looking at it. If there is any doubt, refer the evaluation to the Export Control Officer who will assist in the classification for license purposes.

Q12. Do I really need to be concerned if the item that I plan to export is commercially available abroad?

Yes. Commercial availability does not remove an article from export jurisdiction and a potential licensing requirement.

Q13. Do I need to be concerned if am importing an item into the U.S., i.e., are there import compliance regulations?

Yes. All imported items are subject to U.S. Customs regulations, and may have Customs duty and reporting requirements. In addition, importing items listed on the USML require an ITAR license, unless certain specific exemptions are met.

2.Foreign National Access to EAR- and ITAR-controlled Items and Data

Q1. Do I need a license to allow foreign national access to laboratory equipment?

The routine "use" of controlled equipment by foreign nationals (e.g., using it in the ordinary way specified in the user manual, in such a manner that does not disclose technical information about the equipment beyond what is publicly available, does not require a license. However, a license may be required if a foreign national is "using" the equipment in such a way as to access technical information beyond what is publicly available (for example, accessing the source code of software or modifying a piece of equipment in such a way as to gain non-publicly available technical information about its design.)

Q2. What is a "deemed export"?

In addition to actual shipment of a commodity out of the country, the export regulations also control the transfer, release, or disclosure to foreign persons in the United States of controlled commodities. The "deemed export" regulation states that a transfer of source code or "technology" (EAR term) or "technical data" (ITAR term) to the foreign person is "deemed" to be an export to the home country of the foreign person. This deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C.1324b(a)(3)). Accordingly, for all controlled commodities, a license or license exception is required prior to the transfer of "technology" or "technical data" about the controlled commodity to foreign persons inside the U.S.

Q3. What about foreign national access to technical data?

The phrases "technology" and "technical data" refer to technical information beyond general and basic marketing materials about a controlled commodity. They do not refer to the controlled equipment/commodity itself, or to the type of information contained in publicly available user manuals. Rather, the terms "technology" and "technical data" mean specific information necessary for the development, production, or use of a commodity, and usually takes the form of blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering specifications, and documentation. The "deemed export" rules apply to

the transfer of such technical information to foreign nationals inside the U.S., and a license is required.

Q4: How does having an ITAR item in my laboratory affect foreign national (student, post doc, H1) access to it?

If you have invented the item and publish the results of the invention, there is no access restriction since it was created under the Fundamental Research/Public Domain exclusion. However, if you have purchased the item or otherwise received it from a third party (i.e. proprietary technology), then access to or use of the item that allows the foreign national insight into how it works (directly or by virtue of controlled technical data) is restricted and subject to license authorization. In this case, while a license application is pending or if no license is applied for or approved, the ITAR item will require a Technology Control Plan to restrict access by foreign nationals.

Q5. But can't my foreign national students access all equipment and data since FSU normally operates under the Fundamental Research/Public Domain Exclusions?

No. See above. The same rule applies to ITAR technical data (not self-invented) that exists in any form (soft or hard copy), conversational release of data, blue prints, manuals, etc.

Q6. What if I am a foreign national PI who wishes to access an ITAR item as part of my fundamental research program? Am I excluded from access as well?

Yes, with one exception that can be utilized with the assistance of FSU's Export Control Officer. ITAR allows a PI access to ITAR technical data where the PI is a bona fide, full time employee of the university and meets other specific citizenship criteria. Assuming the terms of this exception are met, the PI is subject to the same no-transfer restrictions which apply to a U.S. person PI is subject to. Hence, this exception is used for accessing background information only, i.e. necessary to launch or conceptualize contemplated fundamental research. If the research requires the data to be shared with the research team which may include foreign nationals, the exception cannot be invoked, since only the PI may qualify under the exception.

Likewise, this exemption may not be used when the University is not the legal entity providing the ITAR information, for example in a spin-off entity that uses the services of a faculty member. (See Section 6 below, also addressing fabrication and service contracts). PIs wishing to explore using this exception must contact FSU's Export Control Officer prior to accessing any such data.

Q7: Is there any problem with communicating with or assisting a foreign government with respect to our research?

It depends on the situation. If the data involves ITAR technical data and you are training the government representative to use it in a defense context, this would require a "defense service" TAA. This applies even if the data is already in the public domain. Data not yet in the public domain and provided to a foreign defense organization would still constitute a defense service, and require a TAA. (Note: even EAR-classified technical data being provided to a foreign defense

organization for a defense purpose may constitute a defense service).

3. Staying within the Fundamental Research Exclusion (FRE) Outside the Laboratory

Q1: How do I remain within the FRE for purposes of the EAR and ITAR when teaching or lecturing abroad?

When teaching or presenting research results abroad, attending professional conferences etc., as long as what is being presented is the result of fundamental research intended for publication or to be published, there is no export license requirement. However, to the extent you depart from this framework and present, in any form, data which is proprietary to another party, or restricted by the sponsor's contract or funding mechanism, then the FRE education and conference exclusions no longer apply. Note that when presenting at professional conference, the conference has to be one that is normally associated with the academic or professional subject at hand and not closed to certain attendees in a way that is contrary to the premise of published fundamental research.

Notwithstanding the above, The Department of the Treasury (OFAC), Department of Commerce (EAR) and Department of State (ITAR) administer economic and trade sanctions and maintain lists of sanctioned programs, entities and countries that restrict transactions and travel, or require licensing in order to travel to a foreign country, or to conduct business with a foreign entity or individual. Before considering travel to embargoed countries to conduct research or educational activities, check first with FSU's Export Control Officer. A determination will be made as to whether a license and/or permission is required. Some countries can require a specific license that may take several weeks or months to obtain.

Q2. What if I need to export laboratory instrument or tools as part of my work abroad?

See Section 4 below concerning Travel abroad, and Section 5 concerning International Collaborations.

4. Travel abroad

Q1: Can I bring my laptop and other hand held communication devices with me?

Yes, with several exceptions. If, for example, you happen to have export controlled data on your laptop (i.e. proprietary data which is not the result of fundamental research), this would require a license, depending on its EAR or ITAR classification. In addition, the U.S. Government's OFAC restrictions prohibit the export by any means of any article (including laptops or hand held devices) to Cuba, Iran, Syria or Sudan without specific license authorization (See Section F below).

Q2: Can I hand carry samples or other laboratory instruments?

If dual-use controlled, such items may or may not qualify under the Tools of Trade exemption, and therefore require prior classification. If ITAR controlled, a license is likely required. (For

further detail concerning classification and licensing, please refer back to the Section II Overview, as well as Section IV (2 and 3) below, which addresses FSU's classification and licensing procedures.)

5. International Collaborations and Conducting Research Abroad

Q1. Does collaborating internationally with another researcher or foreign institution have export control requirements?

Yes, in several respects. The exchange of scientific information with researchers abroad can trigger control requirements such as end user screening and export licensing for tangible items and software under ITAR and EAR control regimes (see also OFAC section below).

In addition, the ITAR regulations include controls on providing a "defense service." This pertains to providing advice, training assistance, and other release of technical data to a foreign national with respect to an article on the USML or providing same to a foreign national for a military/defense objective with respect to any article, whether or not listed on the USML.

In addition, visiting scholars and researchers who visit the FSU as part of the collaboration will likewise need to be restricted from accessing FSU laboratories wherein ITAR items or data are kept or used.

6. Fabrication and Service Contracts; Spin-off entities

Q1. Do fabrication and service activities outside of fundamental research trigger special export control concerns?

Most definitely yes. Where fabrication or contract service work is being conducted using the University's physical or human resources (i.e. a separate legal entity does not own or house the activity), it is essential that the PI leading or conducting such activity contact the Export Control Officer to understand the export control implications and requirements prior to such activity occurring. Again, certain exemptions such as the ITAR bona fide employee exemption will not apply to this type of non-research/academic activity.

Q2. What if the fabrication and service activities are being conducted through an independently-owned spin-off entity, i.e. FSU does not own the activity nor is it the entity disclosing any data being used?

Where an FSU PI has spun-off or is working for a separately organized company to perform contract services independent of his/her research or teaching position at FSU such activity -- which is outside the scope of the university's fundamental research exclusion -- may trigger export control requirements for which the FSU will not be legally responsible.

In such situations, it is necessary for the separate legal entity to seek separate counsel pertaining to export control compliance obligations. As noted above, the bona fide employee exemption under ITAR allowing a foreign national faculty member access to ITAR data does not apply or carry over to ITAR work or access to controlled instruments or data provided by and conducted through a separate proprietary entity.

7. Country-Specific Requirements (OFAC)

Q1. What Special Rules Apply to Cuba, Iran, Syria and Sudan?

The Office of Foreign Assets Controls (OFAC) regulations pertaining to transactions with these countries vary by country. These regulations address not only export, but a much broader spectrum of activity (e.g., funding, service providing) that OFAC restricts, absent specific license approval.

For example, the Cuba sanctions regulate personal travel to Cuba as well as professional research activity conducted with Cuba institutions here and abroad. That said, the Cuba regulations allow for broad range of research and humanitarian related activity when approved by license from OFAC.

The Iran regulations, on the other hand, do not regulate individual tourist travel to Iran, but remain highly restricted as to any activity, research or otherwise, which OFAC defines as a “service” to Iran. While certain kinds of collaborative research activity are permissible with Iranian institutions, to the extent such research contemplates the exchange of material items with Iran or, providing advice on establishing a laboratory or research facility in Iran, a license may be required. Likewise, peer review or editorial comment that extends beyond the scope of what is normally defined as credential input or scientific journal editorial review may likewise trigger a license requirement.

With respect to Syria and Sudan, because of the geopolitical instability in both countries, transactions with those nations likewise must be evaluated carefully for evolving sanctions and requirements.

Hence, when contemplating any research or transactional activity with one of these OFAC countries or foreign nationals known to reside in these countries, contact FSU’s Export Control Officer for assistance before proceeding.

8. Who Do I Contact for Help?

**Diana Key, Director
Office of Research Compliance Programs
Export Control Officer
(850) 644-8648**

<https://www.research.fsu.edu/research-compliance/export-controls/>