

Export Control – Frequently Asked Questions (FAQs)

EXPORT CONTROL IN A UNIVERSITY ENVIRONMENT

What are export controls?

Export controls are federal laws that govern the transmission of controlled items and associated technical data to foreign nationals. There are also federal regulations regarding providing services, traveling to, or working with individuals or entities from sanctioned or embargoed countries. These federal regulations not only affect items that are utilized by UA personnel, but can also affect whom the UA engages with on campus as well as around the world.

There are three primary agencies which govern export control laws and regulations: the U.S. Department of State Directorate of Defense Trade Controls; the U.S. Department of Commerce Bureau of Industry and Security; and the U.S. Department of Treasury Office of Foreign Assets Control.

What activities at the UA are impacted by export control laws and regulations?

Export control laws and regulations affect various University activities including, but not limited to conducting research (sponsored and unsponsored), international travel, publishing research, procurement, hiring non-U.S. persons, sponsoring foreign persons (e.g., visiting scholars), collaborations with non-U.S. individuals or entities, international shipments, non-disclosure agreements, and certain services to embargoed or sanctioned countries.

Can unfunded research be subject to export controls?

Yes, unfunded research may be subject to export controls, particularly international collaborations.

What triggers an export control review?

- ▶ Publication, access, and dissemination restrictions in the sponsored research agreement
- ▶ Foreign party restrictions stated in the sponsored agreement
- ▶ International travel to countries subject to U.S. embargoes and sanctions
- ▶ Sponsor is providing export-controlled technology, technical data, or equipment
- ▶ Non-U.S. students or visiting scholars participating in a restricted project
- ▶ Project is sponsored by the federal government or defense contractor
- ▶ Project is military, space-related, or has other implications to national security
- ▶ Project will be conducted abroad or with a foreign sponsor or collaborator
- ▶ Sponsor /entity/research/collaborator is in Cuba, Iran, North Korea, Sudan, or Syria
- ▶ Any shipment of goods, services, information, or technology abroad

If export controls are applicable, the project could require a TCP (Technology Control Plan) and/or an export license prior to commencement of activity. If you need an export control review please contact us. For sponsored projects, please complete the [EC checklist](#).

KEY TERMS and DEFINITIONS

What is an export?

An export is the transfer of export-controlled data, items, equipment, materials, and software or providing a defense service to a non-U.S. Person or entity. An export can occur in a number of ways, such as; a physical shipment, hand-carrying an item out of the U.S., email transmission of data, presentations, discussions, or visually accessing export-controlled data.

What is a deemed export?

A deemed export is the release or transmission in any form of export-controlled technology or software code within the U.S to anyone who is not a U.S. Person.

Does the use of controlled lab equipment by foreign nationals constitute a deemed export?

It depends on the equipment and its classification; contact export control for further review.

What is not subject to the deemed export rule?

For University research, there are three ways that technical information **may** qualify for an exclusion from the deemed export rule. Information is excluded if it:

- ▶ Is published or disseminated in the Public Domain
- ▶ Arises during, or results from, fundamental research
- ▶ Is educational information released by instruction in catalog courses or associated teaching laboratories of academic institutions.

What is “Technical Data” and “Technology”?

Technical data is a term defined in the International Traffic in Arms Regulations (ITAR) as information, which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles and software directly related to defense articles.

Technology is defined by the Export Administration Regulations (EAR) as specific information necessary for the “development”, “production”, or “use” of a product.

Technical data and technology may take the form of blueprints, drawings, manuals, models, specifications, tables, formulas, plans, instructions, or documentation.

What is a defense article?

Defense articles are all items, data specifically designed, developed, configured, adapted, or modified for a **military application**. Defense articles are listed on the U.S. Munitions List (22 CFR Section 121.1).

What is a defense service?

A defense service is **furnishing of assistance** to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use **of defense articles**; or the **furnishing** to foreign persons of any **technical data** controlled whether in the United States or abroad.

What is a dual use item?

These are items and associated technologies that are commercially available and also have a military or proliferation applications. Items determined to have a dual capability are enumerated in the Commerce Control List.

What is a Technology Control Plan (TCP)?

A TCP is a protocol that outlines the procedures to secure certain export-controlled items (technical data, materials, software, or hardware) from unauthorized use, access, and observation by non-U.S. persons. The **Export Control** staff, with assistance from the Principal Investigator (PI), will develop a TCP that is designed for the specific project. The PI is the ultimate responsible party for adherence to the TCP by project personnel. All project personnel listed on the TCP are required to complete export control training every two years. The TCP remains in effect for as long as UA retains the export- controlled data or item, even if the project is over. Export Control will conduct an annual audit to ensure compliance with the TCP.

Who or what is considered a U.S. Person?

An individual with U.S. citizenship, Permanent resident alien (Green Card holder) or protected individual status such as refugees and asylees. **Corporations or organizations** incorporated in the United States are U.S. Persons for purposes of the ITAR and EAR. It is also any business entity incorporated to do business in the United States.

What is a foreign entity?

A foreign entity is any corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments.

A person (even a U.S. citizen) is considered a foreign person if they work for or represent a foreign entity.

Who qualifies as a “bona fide employee” for ITAR purposes?

Export control regulations exempt disclosures of unclassified technical data in the United States by U.S. universities to foreign nationals where:

- (1) the foreign national is the University’s bona fide full-time regular employee;
- (2) the employee’s permanent abode throughout the period of employment is in the United States;
- (3) the employee is not a national of an embargoed country; and
- (4) the University informs the employee in writing that information disclosed may not be disclosed to other foreign nationals without governmental approval.

EXPORT CONTROL EXCLUSIONS and IMPLICATIONS

What are the exclusions and how do I know when they apply to research?

Research is not subject to export controls if it qualifies for at least one of three exclusions:

- (1) Fundamental research exclusion;
- (2) Public domain exclusion; and
- (3) Education Information Exclusion.

What is the Fundamental Research Exclusion?

The Fundamental research exclusion is a broad-based general legal exclusion to protect technical information (but not tangible items) involved in research from being controlled by export controls. In other words, research qualifying as “fundamental research” is not subject to export controls.

- ▶ The EAR definition of Fundamental Research means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.
- ▶ The ITAR defines Fundamental Research as basic and applied research in science and engineering conducted at accredited U.S. institutions of higher education where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons.
- ▶ University research will not qualify as fundamental research if the university or researcher 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 ensure that publication will not compromise patent rights of the sponsor.

What is the Public Domain Exclusion?

The public domain exclusion applies to information that is published and that is generally accessible or available to the public through:

- ▶ **sales** at newsstands and bookstores;
- ▶ **subscriptions** which are available without restriction to any individual who desires to obtain or purchase the published information;
- ▶ **libraries** open to the public or from which the public can obtain documents;
- ▶ **patents** available at any patent office;
- ▶ **unlimited distribution** at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;
- ▶ **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

What is the Educational Information Exclusion?

The educational information exclusion covers commonly taught in courses listed in catalogues and associated teaching laboratories of academic institutions in the United States.

What controls in government-sponsored research nullify the “fundamental research exclusion?”

If the U.S. Government funds research and specific controls are agreed on to protect information resulting from the research, then information resulting from the project will not be considered fundamental research. Such controls are usually contained in contractual clauses. Examples of “specific controls” include requirements for prepublication “approval” by the Government; restrictions on dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research.

Does a sponsor request to “review” a publication prior to distribution nullify the fundamental research exclusion?

No, this kind of review, even when requested, is considered a courtesy rather than a restriction. If the award required "review and approval" it is considered a restriction as this language implies the potential of denying approval to publish or requiring changes to the report, presentation, or article prior to publication. A publication approval requirement would nullify the fundamental research exclusion.

What if a sponsor begins providing export-controlled information or technology to a project previously determined to be fundamental research?

This action is an indication that the direction of the research or some other factor has changed the project in some way to render the export control regulations applicable to this project and that, more than likely, the researcher’s work will now be export controlled. Contact Export Control before continuing work on the project to re-evaluate for export control protocols.

POLICY AND GUIDANCE

Does the University have an export control policy?

Yes. The University of Arizona, as outlined in its [Export Control Policy](#), is committed to complying with U.S. export controls laws and regulations that apply to its activities, including the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), and the Office of Foreign Assets Control (OFAC) regulations. All individuals affiliated with the University who work with, or have access to, export-controlled technical data, information, materials, and equipment are required to be familiar with and fulfill the requirements of the U.S. export controls laws and regulations by following applicable University policies and procedures.

How does the University of Arizona apply for an export control license?

Export Control applies for all export control licenses on behalf of the University. **NOTE:** Obtaining an export license may take several months and there is no guarantee that the U.S. government will approve a license request.

What is the PI’s responsibility with respect to export control?

Primary Investigators (PIs) are responsible for:

1. Assisting Export Control in the identification of activities that may intersect with export control regulations;
2. Maintaining a current export control training certification;
3. Confirming with Export Control all project personnel have completed training and are cleared to access export-controlled items;
4. Notifying Export Control of potential violations.

RESTRICTED PARTIES

What is a denied entity/person or restricted party?

The U.S. government maintains lists of individuals or entities with whom the University and its employees may be prohibited by law or require a license to export to or engage in certain transactions.

Restricted Party Screening (RPS) is the process of reviewing foreign and U.S. individuals and entities to prevent illegal transactions with parties on the various federal government lists of restricted individuals, companies, and organizations. For additional information see

<https://rgw.arizona.edu/compliance/export-control-program/procedures-for-restricted-party-screenings>.

Who conducts Restricted Party Screenings?

Central administrative units, departments, and colleges will coordinate with Export Control on centralized procedures for Restricted Party Screenings and identifying international collaborations, travel, services, and online study abroad requiring OFAC licenses. All individuals affiliated with the University who work with international persons and entities must confirm via Restricted Party Screening and consultation with Export Control that activities are permitted with collaborators.

INTERNATIONAL ACTIVITIES

How does export control impact travel outside the United States?

Travel outside the United States can trigger the need for a **federally issued** license(s), depending on the proposed destination, what you plan on taking with you, the nature of the project associated with the travel, and with whom you work.

UA faculty, staff, and students traveling internationally on behalf of UA for business, research, or other purposes are required to register well in advance of their departure (travel.arizona.edu). In addition to obtaining UA approval, the traveler may require a license, license exception/exemption, or other guidance to hand-carry items abroad, access data, interact with certain persons, speak at a conference, conduct research, provide training or other services, or engage in other UA related activities.

See the Export Control [resource on international activities](#) for additional guidance.

Can export controlled items be taken abroad?

It depends on the country and the item. The U.S. government has export restrictions on certain items. Consult with Export Control to determine if your equipment, materials, data, or software is subject to these restrictions. Export Control will obtain licenses, exceptions or assist with other requirements to facilitate your travels, if required. Traveling with a “clean” laptop is recommended.

Can export control data be accessed abroad?

It depends on the country. If you are accessing export-controlled data remotely you may need an export license or license exception. Accessing data or emailing information from certain countries is prohibited. Even viewing export-controlled data via the University VPN or email is an export and requires documentation.

What is a sanctioned country?

Sanctioned Countries are designated by the U.S. Government as having limited or comprehensive trade sanctions and embargoes imposed for reasons of anti-terrorism, non-proliferation, narcotics trafficking, or other reasons. Sanctions are prohibitions on transactions (e.g., financial exchanges, providing or receiving services of value) with designated countries, entities, or individuals .

How do OFAC regulations impact the university?

The purpose of the OFAC regulations is to enforce embargoes and economic sanctions. In general, the OFAC regulations prohibit exports to certain sanctioned/embargoed countries such as Iran, Cuba, Sudan, North Korea, and Syria.

OFAC considers providing anything of value or a service to Iran or the government of Iran would require prior government approval. For example, giving a professional presentation, even if it does not contain materials controlled under ITAR or EAR, is deemed under OFAC to be a “service” and “something of value” provided to the recipient audience.

In addition to the points listed above there are other considerations which vary by country:

- Attending a conference in Iran (OFAC considers this to be an “import”) or speaking at a conference in Iran (providing a service or something of value) requires a license. An OFAC license for Iran generally takes six to nine months (or longer) to process once submitted.
- Participating in certain online courses **abroad** requires an OFAC license, if the student is ordinarily a resident of sanctioned country (Cuba, Iran, Syria, or the Crimea Region of the Ukraine).
- Any technical discussions, *formal or informal*, could require a license and would be prohibited *prior to* the receipt of the necessary license(s).
- Travel to Cuba has special considerations. For information on Cuba travel, see <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/cuba.aspx>.
- The University of Arizona will NOT apply for an OFAC License for activities in or with Syria - no University travel to Syria will be approved. Travel to Iran will be approved on a case-by-case basis and only upon receipt of any required OFAC or other government licenses.
- If an employee travels to any sanctioned country on their own time, the individual may not take or send anything university-owned such as equipment, software, technology, or data, or represent the university in any capacity.

Is a license necessary to travel to or conduct activities (even remotely) with sanctioned countries?

Depending on your destination(s), authorization from the U.S. Treasury’s Office of Foreign Assets Control (OFAC) may be required. Travel to an embargoed/sanctioned country (e.g., Cuba, Iran) may require prior authorization in the form of a license. If travel to an embargoed country is for personal reasons, no University equipment may be taken, and no University business should be conducted without prior authorization. Most activities involving Iran (even remotely) will require a license.

How does the University vet foreign partners before traveling abroad?

Prior to travel, to avoid collaborating with a prohibited party, foreign parties should be screened using the Restricted Party Screening tool. Export Control or your Department Administrator can assist with conducting screenings.

How can University personnel safeguard research while traveling abroad?

The research that occurs at the University of Arizona is innovative and often of high value and needs protecting even if it is not subject to export control restrictions. Take steps to protect your information, access to university systems, and report to your department administration any concerns or peculiarities that emerge. Steps to secure your research include:

- ▶ limiting what you take abroad;
- ▶ keeping information in your possession or locked in a secure location;
- ▶ using a “clean” laptop – with minimal information;
- ▶ using the university VPN if you need to access data;
- ▶ encrypting your device; and
- ▶ screening collaborators in advance.

How does export control impact international shipments and purchases?

Yes. See the following link for detailed guidance on [purchases and shipping](#). Depending on the item, export control laws and regulations may require security protocols (such as a TCP) to be in place **before the item arrives on campus** or is released for use. Items intended to be **shipped outside the U.S.** must be evaluated and coordinated by Export Control. If a license to export the item is required, Export Control will apply for such government authorizations. A customs broker may need to be involved in international shipments and purchases.

OTHER CONSIDERATIONS

What impact does export control have on emerging technologies?

The federal government is identifying [emerging technologies](#) essential to US national security and placing new or additional export controls on these technologies. Starting in 2019, the U.S. Commerce Department’s Bureau of Industry and Security (BIS) published export controls on several emerging technologies. Please review this summary of emerging technologies and let the Export Control team (export@arizona.edu) know if you have any research or projects in these areas so we can work with you to ensure compliance.

What is the DOE foreign person access requirement?

A recent regulatory change was made to DOE Order 142.3A (December 13, 2019). The clause may be in DOE agreements awarded after December 2019 as well older DOE agreements that are being amended by DOE to include this revision. The revised 142.3A requires prior approval of Foreign Nationals working on DOE projects (including U.S. Permanent Residents). Contact Export Control for assistance with navigating this process.

PENALTIES

What are the potential penalties for not following export control regulations?

Penalties for export control violations are substantial, including significant fines, debarment from participation in federal contracting, loss of export privileges, and in some cases imprisonment.

In addition to these severe penalties, the potential reputational damage to an institution from violation of these laws could be difficult to repair, possibly resulting in lost opportunities for attracting world-class researchers and/or decreased access to research funding.

TRAINING

Is export control training available?

Yes! University of Arizona faculty, staff and students can take any of the export control training modules available through the EDGE Learning system or the Collaborative Institutional Training Initiative (CITI) Program. For more information on the modules available contact [Export Control](#) or visit our website.

Is export control training required?

University of Arizona employees working on an export-controlled project with a Technology Control Plan (TCP) must complete export control training prior to working on a project and/or accessing export-controlled items or data. Agreements will not be processed by Contracting Services until training is confirmed as current and the TCP is in place.

LIAISON PROGRAM

What is the Export Control Liaison program?

Export Control works closely with various Liaisons across campus. Export Control established a [liaison toolkit](#) (checklists, forms, and procedures to determine if export control concerns exist). Examples of “red flags” include publication restrictions, foreign person restrictions, and projects related to military and space. Liaisons enable the University to be proactive in identifying/resolving issues. If you are interested in becoming a liaison contact [Export Control](#).

CUI OVERVIEW

What is Controlled Unclassified Information (CUI)?

Executive Order 13556 “Controlled Unclassified Information,” (the Order), issued on November 4, 2010, established the CUI program, which standardizes and simplifies the way the Executive branch handles unclassified information that requires safeguarding or dissemination controls, pursuant to and consistent with applicable law, regulations, and government-wide policies. The National Archives and Records Administration (NARA) serves as the Executive Agent to implement this order and oversee agency actions to ensure compliance.

What is the National Institute of Standards and Technology (NIST)?

NIST 800-171 Rev. 2: The National Institute of Standards and Technology **Special Publication 800-171** provides agencies with recommended security requirements for protecting the confidentiality of Controlled Unclassified Information (CUI) when resident in Non-Federal Information Systems and Organizations. *There are over one hundred security requirements in the NIST; this document is summary in nature and not an exhaustive list. See the NIST for complete details.*

What is the DFARS 252.201-7012: Safeguarding Covered Defense Information and Cyber Incident clause? This clause requires the university to implement security measures as outlined in the **NIST 800-171**. In the event of a cybersecurity incident, the university's responsibility under **DFARS 252.204-7012** is to report the incident to the DoD within 72 hours. The university should preserve and protect images of all known affected information systems identified in this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report.

What is the DFARS 252.204-7000 clause? Disclosure of Information restricts the release of information unless the information is already in the public domain, the Prime Contracting Officer has given prior written approval, or the results during the performance of the project involved no covered defense information and has been determined by the Prime Contracting Officer to be fundamental research.

IDENTIFYING CUI

How do we identify CUI?

The University of Arizona's Export Control team works closely with the Contracting Office to identify contracts with NIST requirements or clauses with publication restrictions (**e.g., DFARS 252.204-7012 and 252.204-7000**). Export Control is also alerted when there are similar safeguards/restriction clauses in contracts that are not sponsored by Department of Defense (NASA contracts often have similar clauses). An [export control checklist](#) is used in the evaluation process. The three-part checklist must be completed by the PI, Contracting Office, and Export Control. The checklist highlights DFARS clauses in addition to potential export control red flags.

What if the 252-204.7000 and/or the 252.204.7012 are in the contract but we think our work is fundamental in nature? If both the 7000 and 7012 clauses are in an agreement we can go back to the prime contracting officer and ask if the University of Arizona's portion on the work is fundamental in nature. If we receive confirmation in writing from the prime contracting officer that the university's work is fundamental it nullifies the CUI clauses.

What happens if a project is CUI?

Once a project is determined to be CUI it is managed under a security plan. The University of Arizona Export Control office worked closely with the IT-CUI team to develop "The Plan," a joint Technology Control Plan and System Security Plan. This plan outlines the security measures researchers and staff must follow in order to protect the CUI data.

How is CUI protected and monitored?

[University Information Technology Support \(UITS\)-CUI](#) at the University of Arizona deploys Amazon GovCloud, which can be accessed by the following devices.

Access Type	Laptop/Desktop	Upload/Download Data	Store Data Locally
"Red Machine"	Currently UA-owned/used	NO <i>Data only in AWS /CUI environment</i>	NO
<i>A "red machine" is a UA-owned/issued computer which allows the individual to log into and work in the CUI environment. No information can be uploaded to or downloaded from the CUI environment. No CUI data can be stored locally on this computer.</i>			
"Green Machine"	UA-UITS hardened & provided	YES	YES
<i>A "green machine" is a UA-owned laptop provided by UITS which allows the individual to not only work within the environment, but information can be pushed to or pulled from the environment. The "green machine" is hardened to meet the NIST 800-171r2 standards. CUI information can be stored and processed locally.</i>			

What if CUI needs to be shared one year into the project? Is a contract modification required?

Generally, this would involve a new project phase and a new contract for that scope of work. When this is the case, we review these phases and if there are new requirements work with the researchers to adapt the Technology Control Plan (CP) so that System Security Plan (SSP) requirements are integrated. Project personnel must complete CUI training and new laptops are issued (as needed), and/or access to Amazon GovCloud.

See below links for more information or contact the CUI team at: cui-support@list.arizona.edu

- <https://it.arizona.edu/cui>
- https://rgw.arizona.edu/sites/default/files/cui_faq_01.11.2021.pdf