



Cornell University

Trade Compliance: Part 1

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Introduction

- Export Control Laws
 - Restrict the release of commodities, software, technology, and information that may have a military, security, or strategic use
 - Applies to transfers out of country
 - Applies to in-country transfers
 - Applies to U.S. citizens wherever they are located
 - Applies to everyone in the United States





Why?

“America has historically employed controls on the export of advanced technologies developed here at home to ensure they are not misused abroad in ways that would run counter to national security interests, foreign policy priorities, or American values. Pick an innovation: components that could be used to produce nuclear weapons, chemical weapons precursors, precision weapon guidance systems and even fingerprint matching technology. All of these technologies are carefully controlled not to stifle the advancement of other nations, but to defend U.S. interests and democratic values, and to minimize risks to the United States and its allies.”

-Christopher A. Padilla, Vice President, IBM Government and Regulatory Affairs, Assistant Secretary of Commerce for Export Administration from 2006-2007



Regulations:

- **International Traffic in Arms Regulations (ITAR) - State**

 - Regulates exchange and security of defense articles, services and related technical data determined inherently military in character and identified on the U.S. Munitions List.

- **Office of Foreign Assets Control (OFAC) - Treasury**

 - Administers and enforces economic and trade sanctions and embargoes based on U.S. foreign policy.
 - Restrict transfer and exchange of items, money, travel, and services among sanctioned individuals, entities or countries.

- **Export Administration Regulations (EAR) - Commerce**

 - Regulates "dual use" articles, i.e., potentially commercial as well as military or security applications (basically everything)
 - Controlled items and technology are identified on the Commerce Control List



What is subject to the Regulations?

- Items in the United States
 - Nearly all commodities, software and technology in the U.S
- Some items located outside of the United States
 - U.S. origin items wherever located
- Activities of U.S. and foreign persons
 - Everyone in the United States
 - U.S. citizens abroad



What does it mean to “Export”?

- An export can be any oral, written, electronic or visual disclosure, shipment or transfer of commodities, technology, information, technical data or assistance to:
 - anyone outside the U.S. including a U.S. citizen
 - a "foreign national" in the U.S. or abroad
 - a foreign embassy or affiliate located in the U.S. or abroad



Exclusions

Although the regulations cover nearly everything leaving the U.S., there are certain exclusions from the regulations, including for:

- Fundamental Research (EAR & ITAR)
- Educational Information (EAR)
- Publicly Available/Public Domain (EAR/ITAR)



Fundamental Research

- Research results that qualify as Fundamental Research are NOT subject to export controls
- Known as the Fundamental Research Exclusion (FRE)
- In order to qualify as Fundamental Research, the research must be conducted free of any publication or dissemination restrictions and without any national security related access restrictions
- Applies only to the dissemination of research data and information, not to the transmission of material goods provided



Policy 4.22 – Export and Import Control Compliance

<https://policy.cornell.edu/policy-library/export-and-import-control-compliance>

- Governs the activities of all Cornell faculty, staff, and students, including those at Weill Cornell Medical (WCM).
- No University faculty, staff, or student may engage in any activity, or commit the University to engage in any activity that violates U.S. Export or Import Control Laws and Regulations.
- All faculty, staff, and students are responsible for reviewing the materials on the University's export controls website and consulting the ECO when questions arise.



Policy 4.22 – Export and Import Control Compliance

Export Office is empowered to:

- Submit export license applications
- Implement international shipping procedures and methods.
- Develop, conduct, and track appropriate training of University personnel.
- Report incidents of non-compliance to the Office of General Counsel (OGC) and make appropriate disclosures.
- Conduct regular and ad hoc risk assessments and implement corrective actions.
- Authorize shipping carriers and freight forwarders to make export and import control filings, if any, on Cornell's behalf.
- Halt exports or imports that violate (or are reasonably suspected of violating) U.S. Export or Import Control Regulations.

.....and more



Policy 4.22 – Export and Import Control Compliance

Department and Unit Responsibilities:

- **Deans, Department Heads, and Chairs:** Responsible for taking offered training in export and import control regulations and for having knowledge of the information on the University's export controls website, as well as knowledge of the export and import controls relating to the area(s) of research that are under their purview.
- **Departmental Administrators:** Responsible for knowledge of policies and procedures related to export and import control regulations as may pertain to the administrator's area; consults ECO and advises faculty as needed
- **Principal Investigator (PI):** Works with OSP/OSRA and the ECO to determine if the PI's research is in a field that might be subject to export controls; works with sponsors to design a scope of work that remains within the fundamental research exemption. For research projects with potential export control issues, works with the ECO, OGC, and sponsor to resolve all issues.

.....and more



Policy 4.22 – Export and Import Control Compliance

Basic Principles:

- **Fundamental Research:** Cornell University conducts only research that qualifies as Fundamental Research. Research projects that do not permit the free and open publication of results are not accepted at Cornell.... It is the responsibility of all Cornell personnel to ensure that any contract signed adheres to this principle, and that no actions are taken that would circumvent or compromise this foundational research and scholarship tenent.
- **International Shipments:** ...It is the responsibility of all parties involved to ensure that the international shipment complies with regulatory and legal requirements. All shipments being sent from or on behalf of Cornell to an international location must be reviewed by the ECO or cleared through a process established by the ECO.



Policy 4.22 – Export and Import Control Compliance

Basic Principles:

- **Controlled Information:** The use, storage, or receipt of Technology or Technical Data controlled under U.S. Export Control Regulations is prohibited at Cornell University, unless expressly authorized by the ECO
- **International Travel:** Travel to certain sanctioned countries is prohibited without a general or specific license (currently Iran, Syria, North Korea, Cuba, Russia, Belarus, and Ukraine). Travelers should refer to the Export Control Website for up-to-date information at the time of travel. All international travel made on behalf of Cornell must be registered in the Cornell Travel Registry.

.....and more



Policy 4.22 – Export and Import Control Compliance

- **Collection and Retention of Information:**
 - Under U.S. Export Control Regulations, and U.S. Import Regulations, records must be retained for five years after the completion of the activity and made available to the regulating authority upon request.
- **Compliance:**
 - Cornell faculty, staff, and students are expected to inquire and elevate questions surrounding possible export and import control concerns to the ECO prior to the transfer, release, access, or provision of assistance that may compromise export or import control compliance. Researchers must be sufficiently familiar with the scope of export and import control issues to raise questions prior to the incidence of export or import control violations.



Controlled Technical Data

- ITAR 120.17 (a)(4): An “Export” is defined as disclosing or transferring technical data to a foreign person, whether in the U.S. or abroad.
- EAR 734.13(b): Any release in the U.S. of technology or source code to a foreign person is a deemed export to the foreign person’s country of citizenship or permanent residency.



Deemed Export Rule

- The release of controlled technology to a foreign national in the United States is deemed to be an export to the home country of the foreign national.
- Research results that qualify for the fundamental research exclusion are not at risk of being a deemed export.
- Third party information or research done under a non-fundamental research agreement, may be a deemed export risk.



How are Deemed Exports Disclosed?

Exports can be disclosed via the following actions:

- Telephone discussions
- E-mail communications
- Fax
- Computer/network access
- Face-to-face discussions
- Training sessions
- Tours which involve visual inspections
- Hosting of foreign scientists



Proprietary Information

- **Third Party Information**
 - Not protected by the FRE
 - Case Example
 - Proprietary technical information should always be assessed for a deemed export risk.
- **Actions**
 - Work with the Export Control Office and your Grant and Contract Officer to determine if you are receiving controlled information, what the level of control is, and what the appropriate security measures are
 - A technology control plan will be required for any controlled information stored at Cornell
 - Minimize the receipt of proprietary information



Technology Control Plans (TCP)

- If we need to have controlled technology at Cornell, a TCP must be approved by the ECO and signed by all necessary parties.
- TCP Contents:
 - Physical and information security *note that Cornell servers and email are not sufficient*
 - Procedures for receipt of information
 - Screening and vetting procedures
 - Training requirements
 - Adding/removing personnel requirements
 - End of project actions
 - Requires IT, ECO, and Department Chair approval, as well as signatures from all approved users of the controlled technology.



Sanctions

U.S. sanctions include sweeping prohibitions against any sort of engagement with certain countries/areas. Any interaction or engagement with anyone in or normally located in one of the following areas must be reviewed and approved by the ECO, prior to engagement:

- **Iran, North Korea, Cuba, Syria, Ukraine, Russia, Belarus**

Note: The provision of online courses to individuals in these countries is also generally prohibited and must be reviewed and approved by the ECO



Cornell University

Coming Up!

Trade Compliance Part 2:

Shipping Compliance (exports and imports) and Travel

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Questions?

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