

Export Controls Procedure

Intent:

The University of Wisconsin Whitewater seeks to ensure that all products, technologies, and services are transferred, transported, and/or utilized in compliance with United States regulations regarding export controls.

Scope:

This procedure applies to employees associated with the following departments/units:

* Chairs, Faculty and Researchers;
* the Office of Research and Sponsored Programs (ORSP);
* Office of Human Resources and Diversity (Immigration Specialist);
* Academic Departments;
* Undergraduate Admissions;
* Office of International Students and Scholar Services (Senior International Student and Scholar Services Coordinator and includes student recruitment and program partnership development);
* the Office of Office of Global Experiences (OGE) (study abroad, travel study).

Definitions and Clarifications:

**Deemed Export**. Disclosure of certain types of information or technology to foreign nationals inside the US in nonimmigrants statuses. USCIS form I-129, used by employers to sponsor foreign nationals in certain nonimmigrant statuses such as H-1B status, include an export controls attestation that must be signed by the employer, attesting to whether an export license is required.

**Exclusions.**  Restrictions relevant to U.S. export control laws can be satisfied through reliance on certain exclusions, such as fundamental research exclusions (FRE), educational information, and information that is publicly available, i.e., in the public domain.

**Export Controls**. U.S. laws and regulations that, for reasons of foreign policy and national security, regulate collaboration with foreign countries, the release of critical technologies, the physical export of goods or materials, and services related to foreign nationals, whether the foreign national resides within or outside of the United States.

**Fundamental Research Exclusion (FRE)**. Basic or applied research in science and engineering, resulting in findings that are typically published within the scientific community and also and shared broadly. Note: If there are restrictions related to the publications, related to results of the research, or related to personnel access of the research, the fundamental research exclusion may be invalidated. FRE is never an exclusion in relation to the physical export of materials or goods.

**Government Agencies that Regulate Export Controls**:

* **Department of Commerce, Bureau of Industry and Security (BIS).** The Department of Commerce regulates export controls through the Export Administration Regulations (EAR). EAR applies to the transfer of certain physical items or information to persons and entities *outside* the U.S. (exports) as well as the disclosure of certain information to foreign nationals *inside* the U.S. (deemed exports). The Commerce Department also administers the [Commerce Control List (CCL) located in EAR](https://www.bis.doc.gov/index.php/policy-guidance/encryption).
* **State Department, Directorate of Defense Trade Controls.** The State Department regulates through its International Traffic in Arms Regulations (ITAR) and through the Arms Export Control Act (AECA). ITAR also applies to the transfer of certain physical items or information to persons and entities *outside* the U.S. (exports) as well as the disclosure of certain information to foreign nationals *inside* the U.S. (deemed exports). The State Department also administers the [U.S. Munitions List (USML) located in ITAR](https://www.state.gov/bureaus-offices/under-secretary-for-arms-control-and-international-security-affairs/bureau-of-political-military-affairs/directorate-of-defense-trade-controls-pm-ddtc/).
* **Treasury Department.** The Treasury [Department regulates export controls and trade sanctions through the Office of Foreign Asset Control (OFAC)](http://www.treas.gov/ofac). OFAC may [prohibit payment, travel, and item transfer to sanctioned entities or nations](https://sanctionssearch.ofac.treas.gov/)..
* **The Centers for Disease Control and Prevention and the Department of Agriculture**. The Centers for Disease Control and Prevention and the Department of Agriculture regulate agents and toxins, the release of which typically requires an export license.

The [regulations](https://www.cdc.gov/cpr/ipp/regulations.htm)  (42 CFR § 71.54) require that anyone wishing to import infectious biological agents, infectious substances, or vectors must [first obtain a permit issued by CDC](https://www.cdc.gov/cpr/ipp/index.htm).

**Public Domain.** Information that arises through fundamental research where the information is ordinarily published is considered. [22 C.F.R. § 120.11(8)](https://www.govinfo.gov/content/pkg/CFR-2016-title22-vol1/pdf/CFR-2016-title22-vol1-sec120-11.pdf); [15 C.F.R. § 734.8](https://www.ecfr.gov/cgi-bin/text-idx?node=se15.2.734_18&rgn=div8). Information contained in a patent or published patent application. [22 C.F.R. § 120.11(5)](https://www.govinfo.gov/content/pkg/CFR-2004-title22-vol1/pdf/CFR-2004-title22-vol1-sec120-10.pdf); [15 C.F.R. § 734.10](https://www.govinfo.gov/content/pkg/CFR-2010-title15-vol2/pdf/CFR-2010-title15-vol2-sec734-10.pdf). Information that is published and available to the public [22 C.F.R. § 120.11](https://www.govinfo.gov/content/pkg/CFR-2004-title22-vol1/pdf/CFR-2004-title22-vol1-sec120-10.pdf); [15 C.F.R. § 734.7](https://www.ecfr.gov/cgi-bin/text-idx?node=se15.2.734_17&rgn=div8).

**Restricted Party Screening**. The Restricted Party Screening or “[Consolidated Screening List (CSL)](https://2016.export.gov/ecr/eg_main_023148.asp)” is a “list of parties for which the United States Government maintains restrictions on certain exports, re-exports or transfers of items.”

**Technology Control Plan (TCP).** A university plan that identifies authorized personnel and sets out specific obligations for parties based on export control laws and regulations. The TCP is a physical and IT security plan to protect controlled research information from access by unauthorized persons. Plans are especially required when ITAR, CCL or other controlled items or data are located at the university. International Traffic in Arms Regulations (ITAR) 22CFR §126.13 (c) encourages a Technology Control Plan (TCP): “In cases when foreign nationals are employed at or assigned to security cleared facilities, provision by the applicant of a Technology Control Plan (available from the Defense Investigative Service) will facilitate processing.”

Table of Contents:

1. [Procedure](#Procedure:)
2. [Responsibilities & Training](#Responsibilities)
3. [How to Obtain an Export Control License](#Obtain)
4. [Penalties for Noncompliance](#Penalities)
5. [Resources](#Resources)
6. [Administration](#_Administration:_1)

Procedure:

Export Controls refers to the release of critical technologies, the physical export of goods or materials, and services related to foreign nationals, whether the foreign national resides within or outside of the United States. This procedure outlines several key, complex regulations related to export controls. Visit the [UW-Whitewater Training video webpage](https://www.uww.edu/adminaffairs/vyond--training-videos#export-controls-regulations) to access three (3) introductory training videos for review. Topics include a general overview of Export Controls, where to find Export Controls, and License Requirements.

Responsibilities & Training:

**Employee Responsibilities**

In coordination with UW-Whitewater’s Office of Research and Sponsored Programs (ORSP), Academic Department Chairs, Faculty members, and Researchers are responsible for:

* Understanding whether research is subject to export control regulations because of dissemination restrictions, publication restrictions, or personnel access restrictions.
* Understanding export compliance in regard to any proprietary information received under confidentiality obligations.
* Developing a security plan, in collaboration with the Office of Human Resources and Diversity (Immigration Specialist) and the Undergraduate Admissions Office/ International Students and Scholar Services in relation to foreign national sponsored for nonimmigrant statutes, invited in the J-1 exchange visitor category, and supervision requirements.
* Being familiar with export control requirements as they relate to physical shipments
* Understanding whether specific software, technology, equipment, chemicals, and materials in their possession or that they plan to procure are subject to export control regulations. It appears that this bullet was duplicated.

**Subject-Matter Expert (SME) Responsibilities**

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| **SME Title/Department** | **Role** |
| Quality Assurance Improvement Manager | In coordination with the Development and Training Coordinator, coordinate training and maintain training records. |
| Office of Research and Sponsored Programs (ORSP) | Communicate with investigators about regulatory changes and collaborate with Office of Human Resources and Diversity (Immigration Specialist), Academic Departments, and Undergraduate Admissions/Office of International Students and Scholars in monitoring compliance with regulations.  Maintain export controls records involved in research.  In conjunction with UW-System Office of General Counsel, support license applications.  Maintain sponsored research agreements and research services agreements. |
| Office of Human Resources and Diversity (Immigration Specialist) | Maintain records regarding the sponsorship of international faculty in H-1B status. |

**Export Control Training**

Training modules are available to promote greater awareness, understanding, and compliance as it relates to export controls, research, and other responsibilities. Access these training resources by visiting the [Training and Development website](https://www.uww.edu/adminaffairs/hr/development-training).

How to Obtain an Export Control License

**Export Control License Application for Foreign Nationals (Pursuant to the deemed export rule)**

[Guidance for filling out license applications is set forth in Part 748 of the EAR](https://www.bis.doc.gov/index.php/documents/deemed-exports/709-guidelines-for-foreign-national-license-applications/file), which details expectations concerning basic information, letters of explanation, resume, and application checklist requirements. Licenses are typically required in the following situations if an exemption or exclusion does not apply:

* If the export could relate to economic protection issues concerning military applications
* If the export could result in government concerns regarding the country of destination, a specific organization, end use, end user, or individual.

Examples of controlled activities requiring a license:

* Research involving military, defense, weapon or space technologies
* Attending a conference in which non-US citizens are not permitted to attend
* Transfer of technical data regarding a controlled technology to a foreign national (while the foreign national is in nonimmigrant status in the US, or outside the US)

Refer to the table below for additional Export Control highlights:

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| **Foreign Travel and International Agreements** | In general, one should travel with a “clean” computer or device, meaning any proprietary, patentable, or sensitive information has been removed from the device and/or secured elsewhere as deemed appropriate.   * Foreign travel can require an export control license in certain circumstances such a travelling with a computer or other electronic device to an embargoed country, including Crimea-Region of Ukraine, Cuba, Iran, North Korea, Sudan, and Syria. * If the computer has non-retail-grade encryption software installed or includes EAR- or ITAR-controlled sensitive data, one should not travel with the device, especially internationally. * Although not an export controls issue, the U.S. Department of Homeland Security personnel are permitted to inspect laptops upon return to the US; they are also permitted to take possession of items. * Countries that restrict the import of encrypted devices, do not recognize a “personal use exemption”, and require an import license include Belarus, Burma, China, Hungary, Iran, Kazakhstan, Moldova, Morocco, Russia, Saudi Arabia, Tunisia, and Ukraine. Note that this list is always subject to change. Contact the compliance officer in the office of Research and Sponsored Programs for any related inquiries. |
| **Attendance at Conferences Abroad:**   * Open conferences, i.e., open to the public to those technically qualified to attend should not pose a problem because they are in the public domain. * Sidebar discussions should be limited to information in the public domain. * Attending a conference in an embargoed country typically requires an export control license. |
| **Presentations Abroad:**   * Should be limited to topics not related to controlled commodities, software, or technology unless the information being discussed is in the public domain or already published. * For issues such as giving presentations abroad, one should use a memory stick or cloud-based server. * Regarding email: use a clean computer without restricted software. * Presenting research in sidebar conversations does not pose an export control issue if it is not related to technologies on the [U.S Munitions List](https://www.ecfr.gov/cgi-bin/text-idx?SID=86008bdffd1fb2e79cc5df41a180750a&node=22:1.0.1.13.58&rgn=div50a&node=22:1.0.1.13.58&rgn=div5) or the [Commerce Control List](https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl). |
| **Research and Collaboration Abroad with Colleagues or International Entities**   * Prior to the Collaboration, all names of international entities involved in the collaboration must be reviewed under restricted party screening. * As with collaboration, a restricted party screening should be processed on names of foreign entities collaborating in the research. * Results of research performed abroad may, in some instances, become subject to U.S. export controls when transferred back to the U.S. |
| **Teaching or Providing Other Services Abroad; Creating International MOUs and Agreements**   * Ensure that all content of courses being taught abroad is not subject to export control. * Names of foreign collaborators, teachers, staff, students as well as their institutions should be reviewed under restricted party screening prior to signing agreements. |
| **Immigration Sponsorship of International Faculty** | On Nov. 23, 2010, U.S. Citizenship, and Immigration Services (USCIS) released a new, revised Form I-129, Petition for a Non-immigrant Worker. This form is used to sponsor H-1B and O-1 immigration work status for international employees. The new Form I-129 and subsequent editions have each included Part 6, Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States.   * + Part 6 of Form I-129 includes certification/attestation regarding the release of controlled technology or technical data to foreign persons in the United States and requires petitioners (the universities) to affirm that they have reviewed export control regulations. In addition, it requests petitioners to indicate whether a license is required from either the Department of Commerce (DOC) or the Department of State (DOS) to release technology or technical data to the beneficiary of the petition. If a license is required, the petitioner must certify that the beneficiary will not access such technology or data until the license has been obtained. * The UW-Whitewater Immigration Specialist must sign off on this export control attestation. To ensure it is completed correctly, all UW-Whitewater departments sponsoring international faculty must complete an export controls worksheet provided by the Immigration Specialist. * In addition, each incoming international faculty member requiring visa sponsorship must be reviewed through restricted party screening. Visit the [USCIS website for more information.](file:///C:\Users\gmsin\Downloads\•%09https:\www.uscis.gov\working-united-states\temporary-workers\frequently-asked-questions-about-part-6-form-i-129-petition-nonimmigrant-worker) |
| **Campus Communications** | The shared responsibilities are determined to be:   * Coordination of Trainings, including bringing in outside experts, and maintaining records of trainings: Development and Training Coordinator * Communication of Regulatory Changes: Office of Research and Sponsored Programs (ORSP), Office of Human Resources and Diversity (Immigration Specialist), Academic Departments and Undergraduate Admissions/Office of International Students and Scholars; * Maintaining Records: Office of Human Resources and Diversity (Immigration Specialist) will maintain records regarding the sponsorship of international faculty in H-1B status. Office of Research and Sponsored Programs (ORSP) in conjunction with academic departments will maintain records regarding research. * Support for license applications: Office of Research and Sponsored Programs (ORSP) in conjunction with UW-System Office of General Counsel * Sponsored Research Agreements and Research Services Agreements: Office of Research and Sponsored Programs (ORSP) |

**Approvals**

The BIS policy is to approve “deemed export” license applications provided:

* + The EAR licensing policy applicable to the technology or software allows approval of the application to the home country of the foreign national;
  + there is no unacceptable risk that the items in question will be diverted to unauthorized uses or users; and
  + the applicant agrees to comply with the applicable conditions related to the licenses.

Penalties for Non-Compliance

See below for potential penalties for noncompliance, imposed by Export Administration Regulation (EAR), International Traffic in Arms Regulation (ITAR) and Office of Foreign Assets Control (OFAC). Note that the export control regulations provide that both the institution and the individual may be held liable.

* **EAR**: Criminal violations can include penalties up to $1 million for each willful violation. For individuals, penalties can reach up to $1 million- or 20-years imprisonment, or both, per violation. Civil penalties for both the university and individuals can reach up to $250,000 per violation, or two times the value of the export, whichever is greater. Violations can result in a denial of export privileges as well as other potential collateral penalties.
* **ITAR**: Criminal penalties: up to $1 million per violation and 10 years imprisonment for individual willful violations. Civil penalties: up to $500,000 per violation. A university found to be in violation of ITAR regulations can be debarred from contracting with the government and could lose its export privilege.
* **OFAC**: Penalties range depending upon the sanction regime in question. Criminal violations: up to $1 million, criminal penalties for individuals can reach $1 million or 20 years in prison, or both. Civil penalties: up to $250,000 per violation, or two times the transaction in question, or both.

Resources

[Export Control Practice Directive](https://www.uww.edu/adminaffairs/compliance/practice-directives-and-procedures)

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### Administration:

Approval Details

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| Approval Authority: | Bureau of Industry and Security: [Part 760 - Restrictive Trade Practices or Boycotts](https://www.bis.doc.gov/index.php/forms-documents/regulations-docs/428-part-760-restrictive-trade-practices-or-boycotts), [Entity List](https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list), [Commerce Control List](https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear)  Treasury Department’s Office of Foreign Assets Control: [Sanctions Programs and Information](https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information)  Department of State’s International Traffic in Arms Regulations: [The U.S. Munitions List](https://www.pmddtc.state.gov/regulations_laws/documents/official_itar/2013/ITAR_Part_121.pdf#maincontent) UW System: [SYS 235 Attachment 7: Requirements for Payments to Nonresident Aliens](https://www.wisconsin.edu/uw-policies/235-attachment-7-requirements-for-payments-to-nonresident-aliens/), [UW System Administrative Policy 237: Utilization of Borrowed Employees/Employee Interchange Agreements](https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/utilization-of-borrowed-employees-employee-interchange-agreements/), [UW System Administrative Policy 405: Travel and Expense- General Travel and Expense Policy](https://www.wisconsin.edu/uw-policies/uw-system-administrative-policies/travel-and-expense-general-travel-expense-policy/) Wisconsin State Statutes: [WI § 36.11(56)](https://docs.legis.wisconsin.gov/statutes/statutes/36/11/56), [WI § 230.047](https://docs.legis.wisconsin.gov/statutes/statutes/230/I/047) |
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Revision History

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| --- | --- | --- | --- |
| Version | Revision date | Description of changes | Author |
| V 1.0 | 06/01/2021 | Procedure established | Quality Assurance Improvement Manager |

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| Contact Person/Unit: | Director of the Office of Research and Sponsored Programs / Carl Fox / (262) 472-5289 / foxc@uww.edu |

Keywords

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| Keywords: | Export Controls, release of technology, deemed export, export controls license, exclusions, fundamental research, license, embargoed countries |