

Export Control: Rules of Thumb



Office of Research & Economic Development

Overview

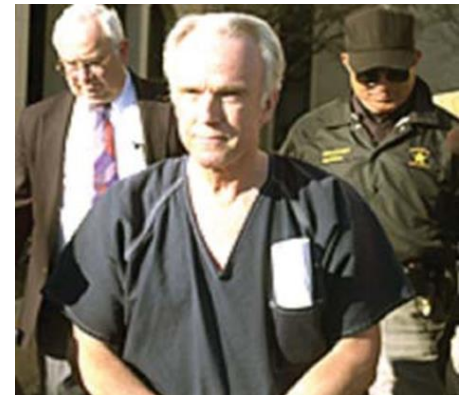
Export Control: regulation of the shipment or transfer of controlled items, software, technology, or services out of and within the United States.

Goal: provide you with enough information to know when to ask for help.

Why?: You (not the university) are responsible for export control. ORS is here to help.



Prof. John Roth (Univ. Tennessee – Knoxville): convicted of 15 counts of exporting “defense articles and services” without a license under an Air Force contract to develop plasma actuators for drone aircraft. He allowed two foreign national students to access export controlled data and equipment, and exported some of the data from the contract on a trip to China. **ITAR**



Prof. Thomas Butler (Texas Tech): convicted of exporting thirty vials of *Yersinia pestis* (the causative agent of human plague) to Tanzania. **EAR**

What?

EAR (Export Administration Regulations)

Department of Commerce – Bureau of Industry and Security

→ Commerce Control List (CCL)

<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

ITAR (International Traffic in Arms Regulations)

Department of State – Directorate of Defense Trade Controls

→ United States Munitions List (USML)

https://www.pmddtc.state.gov/regulations_laws/itar.html

OFAC (Office of Foreign Assets Control)

Department of Treasury

→ Specially Designated Nationals and Blocked Persons List

<http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

How and Who?

Export and Deemed Export

→ release of technology, source code, data, service, training

- EAR-CCL: <http://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>
- ITAR-UMSL: https://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf

→ to a foreign person (http://www.pmddtc.state.gov/embargoed_countries/)

- EAR (15 CFR 744, Supp. 4): China, India, Israel, Pakistan, Russia, Syria, and the UAE
- ITAR (22 CFR 126.1): Afghanistan, Belarus, Cuba, Iran, Iraq, Libya, N. Korea, Syria, Vietnam, Burma (Myanmar), China, Haiti, Liberia, Rwanda, Somalia, Sudan, Zaire (Democratic Republic of the Congo), any UN Security Council arms embargoed country (e.g., Rwanda)
- OFAC: Balkans, Cuba, Iran, Iraq, Libya, N. Korea, Burma (Myanmar), Liberia, Sudan, Syria, Zimbabwe, and Palestinian Territories

→ in the form of

- information (manuscripts, reports, raw data, or presentations via phone, email, fax)
- hardware (laptops, gps modules, lasers, communication modules, sensors, etc.)
- microorganisms, toxins, chemicals, nuclear materials
- production equipment (electronics, materials, nuclear)

Examples

USML (https://www.pmdtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf)

- Rockets, bombs, grenades, torpedoes, depth charges, land and naval mines.....
→ OK, no problem
- Iron nanoparticles, boron nanoparticles, carboranes?
→ Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents

EAR (<http://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>)

- Laptop with Microsoft Office (Word, Powerpoint,) to Cuba for a vacation or Syria for research?
→ No go
- 100+ Examples of EAR Violations
https://www.bis.doc.gov/index.php/forms-documents/doc_view/152-don-t-let-this-happen-to-you

Next Steps

If you are concerned that your research (information, hardware, materials) and/or research group may require export control compliance review, or have general questions, please first turn to:

ors@umkc.edu

https://research.missouri.edu/compliance/export_controls/decision_tree

<http://orc.osu.edu/regulations-policies/exportcontrol/faqs/#13>

<http://dsp.research.uiowa.edu/export-controls-who-should-care-and-why>

-- Extra Slides --

US Person vs. Foreign Person

U.S. Person (EAR Part 772 and ITAR 120.15)

Pursuant to the EAR and the ITAR, a U.S. Person includes :

- any individual who is granted U.S. citizenship; or
- any individual who is granted U.S. permanent residence ("Green Card" holder); or
- any individual who is granted status as a "protected person" under 8 U.S.C. 1324b(a)(3);
- any corporation/business/organization/group incorporated in the United States under U.S. law;
- any part of U.S. government.

Foreign Person

The regulations define a foreign person as anyone who is not a U.S. person. Therefore, this includes :

- any individual who is not a U.S. citizen; or
- any individual who is not a US permanent resident alien ("green card" holder); or
- any individual who is not a protected individual (e.g., refugees, or have political asylum);
- any foreign corporation/business/organization/group not incorporated or organized under U.S. law;
- foreign government and any agency or subdivision of foreign governments (e.g. diplomatic missions).

If the individual is not a U.S person, when applying the "deemed export" rules the EAR looks at the person's most recent citizenship or permanent residence whereas the ITAR looks at the person's country of origin (i.e., country of birth) and all current citizenships.