

3344-18-01 Export Control Policy.

(A) Purpose

Cleveland state university is dedicated to full compliance with all applicable U.S. laws and regulations pertaining to the export of certain items, services and technologies by or on behalf of the University. The U.S. export control laws are designed to restrict certain types of information, technologies, and commodities that can be transmitted overseas to individuals, including U.S. citizens, or alternatively, made available to foreign nationals within U.S. territory.

(B) Applicability

This policy applies to all individuals at Cleveland state university (including faculty, students, staff and visiting scholars) who may or are: (1) shipping tangible items overseas; (2) sharing proprietary, confidential or restricted information or software code with foreign nationals at Cleveland state or abroad; (3) interacting with embargoed or sanctioned countries, organizations, or individuals; or (4) traveling with restricted dual-use technology.

(C) Definitions

- (1) Deemed Export – is a term used by the Commerce Department to describe the situation where a foreign national on U.S. soil may be exposed to, or have access in any manner to, an export-controlled item or export-controlled software or information.
- (2) EAR – Export Administration Regulations, Department of Commerce.
- (3) Export – Generally, (1) An actual shipment or transmission of items controlled under the EAR or ITAR out of the United States; (2) Any written, oral or visual release or disclosure of controlled technology, information or software to a foreign person either in the United States or outside the United States; or (3) Any actual use or application of controlled technology on behalf of or for the benefit of any foreign entity or person anywhere.
- (4) Foreign Persons – Anyone who is not a U.S. person, defined in the regulations as a U.S. citizen, permanent resident alien, person admitted on an asylum status, or a legal entity under U.S. law. Examples of foreign persons are students, post-doctoral scholars,

or research staff in F-1 or J-1 status, and Cleveland state university foreign national employees in H1-B status. A foreign person also means any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do business in the U.S. Foreign persons may include international organizations, foreign governments, and any agency or subdivision of foreign governments such as consulates.

- (5) Fundamental Research Exclusion – Information arising during or resulting from basic or applied research in science or engineering where the results of the research are ordinarily shared with the scientific community, published in the public domain and made accessible to the public.
- (6) ITAR – International Traffic in Arms Regulations, Department of State.
- (7) OFAC – Office of Foreign Assets Control, Department of Treasury.
- (8) Reexport – An actual shipment or transmission of items subject to export regulations from one foreign country to another foreign country. For the purposes of the U.S. EAR, the export or reexport of items subject to the EAR that will be transmitted through a country or countries to a new country, or are intended for reexport to the new country, are deemed to be exports to the new country.

(D) Export Control Regulations

- (1) The Export Administration Regulations (EAR). Administered by the Commerce Department through the Bureau of Industry and Security (BIS), these regulations control “dual use” items and the technology related to these items that often have both civilian and military uses, such as computers, toxins, lasers, and chemicals. The Commerce Control List (CCL) provides all the items controlled by the EAR, divided into ten categories. For goods or technologies listed on the CCL, a license will be required for export, unless an exclusion or exemption applies.

Where embargoes countries under OFAC are involved, a license generally will be denied by the government.

- (2) The International Traffic in Arms Regulations (ITAR). Administered through the State Department and its office of directorate of defense trade controls (DDTC), these regulations are designed for munitions and for defense articles and services as well as for certain space-related items. The U.S. Munitions List (USML), provides 21 categories of military and other items controlled by DDTC. Any service, article, or technical data specifically designed, developed, configured, adapted, or modified for a military or intelligence application, or for use in space, is generally subject to ITAR. Items controlled by ITAR do not have primarily civilian applications and do not have performance equivalents of articles used in civil applications.
- (3) The Office of Foreign Asset Controls. Within the Treasury Department, OFAC is responsible for the oversight of regulations associated with embargoed and sanctioned countries and to individual persons and entities who are from these countries or who have violated other laws. Specifically, OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and other national security concerns. The exclusions and exceptions provided for under the ITAR and EAR do not necessarily apply to OFAC designated entities.
- (4) Other Miscellaneous Laws and Regulations. Apart from the regulations promulgated under ITAR, EAR, and OFAC, additional regulations may also apply from other federal agencies including but not limited to the Department of Energy (DOE), the Environmental Protection Agency (EPA), or the Nuclear Regulatory Commission (NRC).

(E) Procedures and Responsibilities

- (1) All members of the University community who may have access to controlled information must understand their obligations under the EAR, ITAR, and OFAC regulations and this policy. Before engaging in activities that involve an export activity, including a deemed export, an understanding and identification of any potential export limitations should be conducted.

- (2) Among some of the factors that may warrant export control review include: (1) where foreign persons or foreign companies will participate in the research; (2) where certain equipment will be used for experiments and/or research abroad and thus be exported, including but not limited to, laptops, GPS equipment, email exchanges of controlled data, handheld mobile devices or any devices that contain encrypted software; and (3) where Cleveland state university hosts foreign visiting scholars or students for research purposes that involve specified technologies subject to export controls.
- (3) While the majority of research undertaken at Cleveland state university is eligible for one or more exclusions under the export control regulations and thus does not require a license, the university must still documents its analysis of export control issues, including the availability of any exclusion or exemption.
- (4) The export control analysis should be undertaken with the assistance of the Office of University Compliance which is the responsible for general oversight and dissemination of this policy or with members of other offices who are knowledgeable about export control issues and can offer assistance to the University community such as the Office of Research, Office of General Counsel, Purchasing Office, Sponsored Programs and Research Services, Technology Transfer Office, Accounts Payable, and Office of International Services and Programs. A sufficient amount of time before engaging in the exporting activity should be planned as the time required for review and obtaining government approval (if a license is required) can take a fair amount of time to complete.
- (5) Further, any information identified as “export controlled” may not be disclosed to a foreign person or entity until the export control analysis has been completed to determine whether an export license is required. In addition, for research that may involve a sanctioned country, the faculty member or University researcher will need to consult with CSU’s Office of Research and/or Office of University Compliance before entering into any agreements, or before traveling to the sanctioned country.

(F) Exclusions and Exceptions

- (1) Under most circumstances, the fundamental research exclusion will apply to on-campus University activities. This exception applies to all information already in the public domain and to all information ordinarily published and shared broadly in the scientific community resulting from basic and applied research in science and engineering performed at an accredited institution of higher education. Where research results are restricted due to confidentiality or proprietary reasons or where specific U.S. Government access or distribution controls exist, the exclusion will not apply.
- (2) The university is committed to ensuring that sponsored research agreements are free of access or publication restrictions, however, researchers must take care to avoid additional verbal agreements or other arrangements that may limit access and dissemination of research results, as this will void the fundamental research exclusion and subject the research program to coverage under the export control regulations. Further, the exclusion will not apply to private consulting activities undertaken by university researchers solely on behalf of an external company or organization, or to activities that are not conducted on campus.

(G) Penalties

Penalties for violating the Federal export control regulations can be severe. Under the ITAR, criminal penalties can reach up to \$1 million per violation and 10 years imprisonment for individual willful violations. Civil penalties imposed upon departments, agencies, and officials can reach up to \$500,000 per violation. A university found to be in violation of ITAR can also be debarred or suspended from contracting with the government and could lose its export privileges. Under the EAR, each willful violation carries a penalty of \$1 million or five times the value of the exports. Criminal penalties for individual violations can reach up to \$250,000 or 10 years imprisonment, or both. Civil penalties can reach up to \$50,000 per violation. Under OFAC, there are a range of penalties but generally speaking, corporate criminal penalties can reach up to \$1 million, and individual criminal penalties are up to \$100,000 or 10 years imprisonment, or both, per violation. Civil penalties can reach up to \$55,000 per violation. In addition to sanctions imposed by law, the university may also take action when the violation

occurs while working within the scope of employment or in fulfillment of university obligations.

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