

University Policy: Policy on Export Controls

Policy Category: Academic/Research Policies; Ethics, Integrity and Legal Compliance Policies

Subject: Governing distribution and sharing of information, technology and commodities both internationally and domestically

Responsible Executive: Provost

Office Responsible for Review of this Policy: Provost's Office/Office of Finance & Treasurer

Procedures: Export Control Regulations—Procedures and Questionnaires; H1B visa application information

Related University Policies: International Travel Policy

I. SCOPE

The purpose of the American University Export Control Policy is to provide awareness of the Federal export control laws and regulations, AU's policy for complying with those laws, and each individual community member's responsibility and obligation under these laws and regulations and University policy.

Following the events of 9-11, export control regulations became prominent, and federal scrutiny concerning the level of compliance with these regulations heightened. This policy and related procedures apply to all individuals at AU -- students, faculty, visitors, employees, and representatives of the University -- who may be responsible for the export of goods and/or services, including deemed exports transferred within this country. Members of the AU community are responsible for determining the activities and items that are covered under this policy and for complying with all Federal export control laws and University policy.

II. POLICY STATEMENT

Export control laws, implemented both by the Department of Commerce through its Export Administration Regulations (EAR) and the Department of State through its International Traffic in Arms Regulations (ITAR), have been in existence for many years. In addition, the U.S. Treasury Department through the Office of Foreign Assets Control (OFAC), prohibits or restricts certain activities with embargoed countries, sanctioned entities, and sanctioned individuals. Together they

comprise the body of laws and regulations referred to in this policy as export controls. (See Appendix A)

Institutions of higher education are required to comply with these laws and regulations. Criminal sanctions, including fines, penalties and/or prison sentences for individuals; as well as fines, penalties, and desist orders for future institutional activities or authorizations, can apply in cases of violation. It is the responsibility of all faculty members, staff and students to safeguard data, equipment, and/or technology covered by these federal laws.

III. DEFINITIONS

- **Deemed Export** – items or information provided to a foreign individual in this country who is not a “U.S. Person” as defined below. Such a communication is deemed to be an export to the home country or countries of the foreign national.
- **Educational Information** – information released by instruction in catalogue courses and associated teaching laboratories of accredited academic institutions is not subject to the export control regulations.
- **Encryption/Encryption Item** – the process of converting data or information into code. The phrase encryption item includes all encryption commodities, software, and technology that contain encryption features subject to export controls.
- **Export** – taking or sending out of the United States in any manner articles controlled under the export regulations. The term includes video and audio disclosures as well as transfers and disclosures of controlled items and technology in this country (“deemed exports”) to a foreign person.
- **Foreign Individual** – any person or entity that does not meet the definition of a “U.S. Person” (individual who is a citizen of the United States, a permanent resident alien of the United States, certain other individuals with a protected status as defined by federal law and organizations such as corporations or similar entities).
- **Fundamental Research** -- basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Most fundamental research is exempted from export control laws.
- **License** -- permit issued by the United States Department of Commerce, Bureau of Industry and Security, authorizing a transaction subject to the export control regulations. A small percentage of exports subject to the export control regulations require a license. Most transactions either do not require a license or are covered by one or more of the license exceptions found in the regulations.
- **Technical Data** – information, other than software, that takes the form of blueprints, plans, diagrams, models, formulae, tables, engineering designs, specifications, manuals, and instructions written or recorded on other media or devices such as disk, and read-only memories that is

necessary for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled items.

IV. POLICY

It is the policy of American University to promote an environment conducive to the free exchange of ideas while fully complying with applicable U.S. export control laws. It is the responsibility of all students, faculty, staff, and administrators to be aware of and comply with these laws and the University's policies and procedures. Violation of this policy may have severe criminal, civil, and administrative sanctions, including possible disciplinary action.

1. General Provisions:

- A. All University students, faculty, visitors, employees, agents, and representatives shall comply at all times with applicable U.S. export control laws as well as the University's policies and procedures, including the International Travel Policy.
- B. All University faculty, staff, administrators, agents, and students shall remain aware of export control laws and University policies and procedures. Ignorance of applicable export control laws, policies, or procedures may be an insufficient defense to any subsequent administrative, disciplinary, civil, or criminal actions.
- C. All University faculty, staff, administrators, agents, and students shall exercise reasonable judgment and prudence about any undertaking with potential export control implications. Such individuals shall consult with the Office of the Provost: Graduate Studies and Research, export control reviewer in the Office of Risk Management or with the Office of General Counsel if they have questions about whether an initiative has export control implications.
- D. If a proposed initiative has export control implications, the responsible individual shall comply with the University's export control procedures.
- E. If a proposed initiative involves completing a visa application for an H1B nonimmigrant employee, AU is required to complete a "deemed export attestation." Find applicable visa application information at Export Control Questionnaire for Visa Applications.
- F. All University students, faculty, visitors, employees, agents, and representatives have a duty of candor, cooperation, and honesty, and a continuing duty to supplement responses. This means such individuals shall be responsible for updating and/or correcting information provided in relation to any export control matter.

V. EFFECTIVE DATE AND REVISIONS:

This Policy is effective as of 04/01/2011. Reviewed 2013. Last reviewed August 2015, no updates. Revised May 17, 2022.

Policy on Export Controls Appendix A

There are three primary sets of Federal regulations currently governing export controls with additional miscellaneous restrictions as follows:

- A. The Export Administration Regulations (EAR).** The EAR is a set of regulations administered by the Commerce Department through the Bureau of Industry and Security. 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, and chemicals. A listing of the items controlled by the EAR is called the Commerce Control List (CCL). The CCL includes essentially all civilian science, technology, and engineering dual use items. For goods and technology listed on the CCL, a license will be required for export, unless an exclusion or exemption applies.

Those items not explicitly included on the CCL are included in the broad category known as “EAR99.” Though a license may not generally be required for EAR99 designated items, a license will be required if the item will be shipped or otherwise transferred to a comprehensively embargoed country (See Section C. of this document).

To determine whether the EAR applies to the export of a particular item, the CCL must be searched to determine the appropriate Export Control Classification Number (ECCN) by an individual knowledgeable about the item’s performance specifications, characteristics and capabilities and the destination, use, and user of the exported item. The CCL can be found at Part 774 of the EAR available at the following url: http://www.gpo.gov/bis/ear/ear_data.html.

The CCL is divided into ten general categories designated by the first digit of the Export Control Classification Number (ECCN)(0) Nuclear Materials, Facilities and Equipment and Miscellaneous; (1) Materials, Chemicals, Microorganisms, and Toxins; (2) Materials Processing; (3) Electronics; (4) Computers; (5) Telecommunications and Information Security; (6) Lasers and Sensors; (7) Navigation and Avionics; (8) Marine; (9) Propulsion Systems, Space Vehicles and Related Equipment. The second character of the ECCN is from one of the five letter groups: (A) Equipment, Assemblies and Components; (B) Test, Inspection and Production Equipment; (C) Materials; (D) Software; and (E) Technology.

For example, ECCN **8A001** is a Marine item dealing with ocean-going submersible vehicles. Marine is designated by the category “**8**” in the ECCN. The second character, “**A**” further defines the item as being specifically equipment, assemblies or components of that specific Marine item. The additional characters identify the specific entries within a given category.

Once an ECCN has been identified, the next step is to identify the reasons for control that are indicated in the specific ECCN description. For example, “**AT**” is the designation used for anti-terrorism and “**NP**” is used for nuclear nonproliferation. The EAR country chart (Supplement 1 or part 738) is then consulted to determine if the specific reason for

control applies to the country of destination. This is noted by an “X” in the appropriate box of the column listed on the country chart.

After determining that the item is listed on the CCL and at least one of the reasons for control exist for the destination of the item, determination of whether a license is needed is accomplished by consulting the prohibitions (Section 736) and exceptions (Section 740) contained in the regulations. Just because an item is listed on the CCL it does not necessarily mean that a license is required. A person may still undertake these activities without a license unless the regulations affirmatively state otherwise. To make the final determination, the prohibitions and list of exceptions are then consulted for a final license determination.

Supplement 1 of Section 732 also includes a decision tree that may be referred to in completing this determination.

B. The International Traffic in Arms Regulations (ITAR). ITAR is a set of regulations administered through the State Department and its office of Directorate of Defense Trade Controls (DDTC). These regulations are designated for munitions and for defense articles and services as well as for certain space-related items. Military and other items controlled by DDTC are listed on the U.S. Munitions List. 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. Designated ITAR controlled items are listed on the U.S. Munitions List.

Unlike items appearing on the CCL, the intended use of an item listed on the U.S. Munitions List after it has been exported (i.e., whether it is for civilian or military purposes) is not relevant in determining the control of the item. The ITAR regulations and the ITAR-controlled items (Section 121.1) are available at the following url: http://www.pmddtc.state.gov/regulations_laws/itar_official.html.

There are 21 categories of ITAR-controlled items – one category (XIX) is blank, reserved for future use. The ITAR categories of controlled items are listed below:

- Category I—Firearms, close assault weapons and combat shotguns
- Category II—Guns and armament
- Category III—Ammunition/ordnance
- Category IV—Launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs and mines
- Category V—Explosives and energetic materials, propellants, incendiary agents and their constituents
- Category VI—Vessels of war and special naval equipment
- Category VII—Tanks and military vehicles
- Category VIII—Aircraft and associated equipment
- Category IX—Military training equipment and training
- Category X—Protective personnel equipment and shelters

- Category XI—Military electronics
- Category XII—Fire control, range finder, optical and guidance and control equipment
- Category XIII—Auxiliary military equipment
- Category XIV—Toxicological agents, including chemical agents, biological agents, and associated equipment
- Category XV—Spacecraft systems and associated equipment
- Category XVI—Nuclear weapons, design and testing related items
- Category XVII—Classified articles, technical data and defense services not otherwise enumerated
- Category XIX—[Reserved]
- Category XX—Submersible vessels, oceanographic and associated equipment
- Category XXI—Miscellaneous articles

C. The Office of Foreign Asset Control (OFAC). OFAC, within the Treasury Department, is responsible for the oversight of regulations pertaining to 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 goals.

A listing of OFAC countries and “Specially Designated Nationals” along with related crime enforcement advisories is available at the following url:
<http://www.treas.gov/offices/enforcement/ofac/>.

The current list of countries (November 2010) under U.S. sanctions or embargoes is as follows: The Balkans, Belarus, Burma, Ivory Coast, Cuba, Congo, Iran, Iraq, Lebanon, North Korea, Somalia, Sudan, Syria, and Zimbabwe. Because this list may change frequently, individuals should consult the most recent list at:
<http://www.ustreas.gov/offices/enforcement/ofac/programs/>.

Exclusions and exceptions available under the other export control regulations (ITAR and EAR) do not necessarily apply to OFAC designated entities. In addition to the lists for embargoed countries and Specially Designated Nationals (SDN) maintained by OFAC, a number of other Federal agencies (e.g., FBI, ATF, GSA, FDA, etc.) also maintain lists of sanctioned or wanted individuals and entities that U.S. citizens are expected to consult when conducting business abroad.

Please review Export Control Regulations—Procedures and Questionnaires