



INTRODUCTION TO EXPORT CONTROL COMPLIANCE

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DISCLAIMER

- This introduction is limited in scope and depth. It is intended to serve as an introduction to export control. It is not intended to be your sole resource for export control expertise. The export control CITI modules will serve as your formal training.
- Export Control Compliance is often complicated and requires the judgment of the Export Control Manager. Individual cases should be addressed with The Export Control Office.
- For more information visit <https://research.temple.edu/research-compliance/export-control> or contact exportcontrol@temple.edu or Temple's Export Control Manager Dwayne King (dwayne.king@temple.edu).

WHAT IS EXPORT CONTROL?

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EXPORT CONTROL LAWS- a set of Federal laws and regulations that govern how physical items, technology, information and data may be exported from the United States or shared with foreign persons within the United States.

Export controls are designed to protect U.S. national security interests, to further U.S. foreign policy goals, and to maintain U.S. economic competitiveness.

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PURPOSE OF THE REGULATION

Implement foreign policy goals and objectives;

Prevent terrorism;

Restrict exports of goods and technology that could contribute to U.S. adversaries military potential;

Restrict exports of goods and technology that could damage the vitality and critical interests of the U.S. economy;

Prevent proliferation of weapons of mass destruction (chemical, biological, nuclear).

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FOUR ELEMENTS OF US EXPORT CONTROLS

Technology Classification- What is being exported? Item, software, or technical data? Military or dual use?

Destination- Where is it going? Sanctioned or embargoed country?

End-User- Who will receive it? Restricted party? Military end user? WMD proliferator?

End-Use- What will they do with it? Prohibited end uses e.g. Biological, Chemical, nuclear weapons proliferation

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APPLICABLE FEDERAL LAWS AND REGULATIONS

- **Export Administration Regulations (EAR)** are implemented by the Bureau of Industry and Security (BIS) within the Department of Commerce.
- The **International Traffic in Arms Regulations (ITAR)** are implemented by the Department of State's Directorate of Defense Trade Controls (DDTC).
- The Treasury Department's **Office of Foreign Assets Control (OFAC)** implements the economic and trade sanctions and, based on U.S. foreign policy and national security goals, targets foreign countries, terrorists, drug traffickers, etc

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BUT IM JUST DOING RESEARCH- WHAT COULD GO WRONG?

EAR-Criminal- up to 20 years of imprisonment and up to \$1 million in fines per violation, or both. Civil- up to \$300,000 per violation or twice the value of the transaction, whichever is greater.

ITAR- Criminal- Up to \$1 million and/or up to 10 years in prison; Civil- up to \$500,000 per violation

OFAC- Criminal- Up to \$1 million per violation and or up to 10 years in prison; Civil- up to \$55,000 per violation

EXAMPLE



Bureau of Industry and Security
U.S. Department of Commerce
Where Industry and Security Intersect

FOR IMMEDIATE RELEASE
February 2, 2021
www.bis.doc.gov

BUREAU OF INDUSTRY AND SECURITY
Office of Congressional and Public Affairs
(202) 482-1069

PRINCETON UNIVERSITY RESOLVES ALLEGATIONS OF EXPORT LAW VIOLATIONS WITH ADMINISTRATIVE SETTLEMENT

Today, Kevin J. Kurland, performing the non-exclusive functions and duties of the Assistant Secretary for Export Enforcement, Bureau of Industry and Security (BIS) of the U.S. Department of Commerce, announced an administrative settlement of \$54,000 with Princeton University, located in Princeton, NJ. Princeton University voluntarily self-disclosed potential violations of the Export Administration Regulations (EAR) to BIS, and cooperated with the investigation that was conducted by the New York Field Office of BIS's Office of Export Enforcement (OEE). Princeton University also agreed to complete one external audit and one internal audit of its export compliance program.

"The Bureau of Industry and Security strongly encourages research institutions to maintain robust export compliance programs to prevent violations of the EAR," said Mr. Kurland. "If violations do occur, voluntarily self-disclosing the violations to BIS will help mitigate penalties imposed to protect U.S. national security."

This settlement resolves BIS's allegations that on 37 occasions between November of 2013 and March of 2018, Princeton University engaged in conduct prohibited by the EAR when it exported various strains and recombinants of animal pathogens from the United States to various overseas research institutions without the required export licenses. The items were controlled for Chemical and Biological Weapons reasons, and valued in total at approximately \$27,000.

EXAMPLE



Former University of Tennessee Professor John Reece Roth Begins Serving Four-Year Prison Sentence on Convictions of Illegally Exporting Military Research Data

U.S. Attorney's Office
February 01, 2012

Eastern District of Tennessee
(865) 545-4167

KNOXVILLE, TN—On January 18, 2012, John Reece Roth, a former professor of electrical engineering at the University of Tennessee (UT) in Knoxville, began serving a four-year prison sentence for his September 2008 convictions. Roth had been on bond pending his appeals, all of which were unsuccessful. He self-surrendered to the federal correctional facility in Ashland, Kentucky.

Roth was convicted after a jury trial in U.S. District Court in Knoxville, of conspiracy, wire fraud, and 15 counts of exporting “defense articles and services” without a license. As a UT professor, Roth obtained an U.S. Air Force (USAF) contract to develop plasma actuators to control the flight of small, subsonic, unmanned, military drone aircraft. During the course of that contract, he allowed two foreign national students to access export controlled data and equipment, and export some of the data from the contract on a trip to China. The Arms Export Control Act prohibits the export of defense-related materials, including the technical data, to a foreign national or a foreign nation. This case was a first-of-its-kind prosecution of a university professor for the transfer of controlled defense technology to foreign national graduate students.

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Best Practices

CONTACT THE EXPORT CONTROL OFFICE WHEN:

- Grants or contracts contain sponsor restrictions on publication or participation.
- Shipping or carrying technology overseas.
- Hosting foreign visitors other than students, postdocs, H-1Bs.
- Interacting with and travel to sanctioned countries (e.g. Iran, Cuba, Syria, Sudan, North Korea).
- When purchasing export controlled equipment.

EXPORT CONTROL TERMINOLOGY

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EXPORT

To send or take controlled tangible items, software, or information out of the United States in any manner (including hand-carried), to transfer ownership or control of controlled tangible items, software, or information to a foreign person, or to disclose information about controlled items, software, or information to a foreign government or foreign person. The controlled tangible item, software or information being sent or taken out of the United States is also referred to as an "export."

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DEEMED EXPORT

A release of export controlled technology to a Foreign Person in the US. A regulated export is thereby "deemed" to take place to the Foreign Person's home country or last country of citizenship. Export controlled technology is "released" for export either a) when it is made available to Foreign Persons for visual inspection (such as reading technical specifications, plans, blueprints, etc.); b) when technology is exchanged orally; and/or c) when technology is made available by practice or application under the guidance of persons with knowledge of the technology.

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DEEMED EXPORTS (con't)

Applies to research assistants, students, visiting foreign researchers, U.S. citizens visiting a foreign country;

Does **not** apply to U.S. citizens or permanent residents (green card)

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FUNDAMENTAL RESEARCH EXCLUSION (FRE)

Fundamental research is defined as basic and applied research in science and engineering conducted at accredited institutions of higher learning in the United States, the results of which are ordinarily published and shared broadly within scientific community and are distinguished from research results which are restricted for proprietary reasons or is subject to government access or dissemination controls.

Under the FRE, no license is required to disclose to foreign nationals that meet the fundamental research definition

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FUNDAMENTAL RESEARCH EXCLUSION (FRE) cont.

The FRE destroyed if the University accepts any contract/grant that:

- Forbids the participation of foreign nationals;
- Gives the sponsor a right to approve publications resulting from the research; or
- Otherwise operates to forbid participation in research and/or access to and disclosure of research results

Temple's policy is to stay under the safe harbor of FRE

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FOREIGN PERSON

Anyone who is not a "US Person" (see US Person next slide). Examples of foreign persons are students, post-doctoral scholars, or research staff in F-1 or J-1 status, and Temple 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 US. Foreign persons may include international organizations, foreign governments and any agency or subdivision of foreign governments, such as consulates.

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US PERSON

A citizen of United States, a lawful permanent resident alien of the US, (a Green Card holder), a refugee or someone here as a protected political asylee or under amnesty. US persons also include organizations and entities, such as universities, incorporated in the US. The general rule is that only US persons are eligible to receive controlled items, software or information without first obtaining an export license from the appropriate agency unless a license exception or exclusion is available.

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DUAL USE

Items, information, and software that are primarily commercial or civil in nature but also have potential military applications. Dual use items that are identified on the Export Administration Regulation's Commerce Control List (CCL) have an Export Control Commodity Number (ECCN) and are of elevated strategic concern.

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TECHNOLOGY CONTROL PLAN

A customized management plan which outlines the procedures in place to prevent access to export-controlled items, technologies, data, or information by unauthorized individuals.

- includes a description of the export-controlled information, a physical and informational security plan, and personnel screening and briefing procedures.

COMMERCE CONTROL LIST

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A key in determining whether an export license is needed from the Department of Commerce is knowing whether the item you intend to export has a specific Export Control Classification Number (ECCN). The ECCN is an alpha-numeric code, (e.g., 3A001), that describes the item and indicates licensing requirements. All ECCNs are listed in the Commerce Control List (CCL). The CCL is divided into ten broad categories, and each category is further subdivided into five product groups.



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CATEGORIES

- **0.** Nuclear Materials, Facilities, 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

PRODUCT GROUPS

- **A.** Equipment, Assemblies, and Components
- **B.** Test, Inspection, and Production Equipment
- **C.** Materials
- **D.** Software
- **E.** Technology



EAR 99

If your item falls under U.S. Department of Commerce jurisdiction and is not listed on the CCL, it is designated as **EAR99**. EAR99 items generally consists of low-technology consumer goods and do not require a license in many situations. However, if you plan to export an EAR99 item to an embargoed country, to an end-user of concern, or in support of a prohibited end-use, you may be required to obtain a license.

Office of Foreign Assets Control



OFFICE OF FOREIGN ASSETS CONTROL

The Treasury Department's Office of Foreign Assets Control (OFAC) administers and enforces economic sanctions imposed by the United States against foreign countries. Depending on the country, OFAC programs may freeze assets of embargoed countries, prohibit payment of funds to individuals and countries on the embargo list, or prohibit provision of services to countries subject to US sanctions.

Active Sanctions include: **Cuba, Iran, North Korea, Russia, Syria** etc.

Export Control at Temple University



EXPORT CONTROL AT TEMPLE

The Export Control Office, under the Office of the Vice President for Research (OVPR), is responsible for Temple University's adherence to Export Control regulations. The Export Control Office coordinates with stakeholders from around the university to ensure the university community has the resources, training and regulatory guidance necessary for export control compliance. These resources include:



EXPORT CONTROL AT TEMPLE (con't)

- Restricted Party Screening (RPS): The Export Control Office conducts RPS to determine if an organization, individual or country is restricted from receiving export-controlled items in addition to other restrictions that require review prior to engaging in a transaction. The Export Control Office uses a software system that scans against U.S. government restricted party lists and other databases to identify such restrictions. All potential transactions with foreign persons and entities should be submitted for RPS using exportcontrol@temple.edu.



EXPORT CONTROL AT TEMPLE (cont.)

Export Control Training: OVPR offers training using the CITI Program.

CITI training offers general export control training and tailored content for key functions of the university.

- Training requirements based on your role at Temple, access to OVPR's CITI training program and login instructions are all available on the Temple University's Export Control website at <https://research.temple.edu/research-compliance/export-control> and plan for approximately one hour per module.



QUESTIONS TO ASK BEFORE YOU BEGIN YOUR RESEARCH

1. Has the subject of export controls, publication restrictions, or foreign national restrictions come up in any form?
2. Will the project involve collaboration with a foreign entity or foreign national?
3. Will the project involve any shipment of materials, data or equipment outside of the USA?
4. Will the project involve any use of proprietary or confidential information from the sponsor or any third party?

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FURTHER QUESTIONS?

Contact **exportcontrol@temple.edu** OR

Temple's Export Control Manager Dwayne King (**dwayne.king@temple.edu**).