



Overview of Export Laws and Regulations

The United States export laws and regulations operate to restrict the use of and access to controlled information, goods, and technology for reasons of national security or protection of trade. The export control regulations are not new. Federal regulations restricting the export of goods and technology out of the country have been around since the 1940's. However, in recent years, attention to export control compliance has increased because of heightened concerns about homeland security, the proliferation of weapons of mass destruction, terrorism, drug trafficking, and leaks of U.S. technology to foreign competitors.

In general, the export control regulations cover four main types of University activities:

- transfers of controlled information, including technical data, to persons and entities outside the United States;
- shipment of controlled physical items, such as scientific equipment, from the United States to a foreign country;
- verbal, written, electronic, or visual disclosures of controlled scientific and technical information related to export-controlled items to foreign nationals in the United States. Such a transfer is termed a "deemed export" and is regulated because the transfer is "deemed" to be to the country where the person is a resident or a citizen;
- travel to certain sanctioned or embargoed countries for purposes of teaching or performing research.

Under the export control regulations, the export of certain goods and technology may be prohibited or a government license may be required to proceed with the export. While most exports do not require government licenses, licenses are required for exports that the U.S. government considers "controlled" under:

- [The Department of Commerce's Export Administration Regulations \(EAR\)](#) (also known as the Commerce Control List). The EAR is concerned with dual-use items, such as computers or pathogens, that are designed for commercial use, but have the potential for military application.
- [The Department of State's International Traffic In Arms Regulations \(ITAR\)](#) (also known as the U.S. Munitions List) which covers defense-related items and services.
- [The Treasury Department's Office of Foreign Assets Control \(OFAC\)](#) Regulations OFAC administers and enforces economic and trade sanctions that have been imposed against specific countries based on reasons of foreign policy, national security, or international agreements. A list of all countries currently subject to boycott programs is available at the [OFAC website](#).

Because the University embraces the concepts of academic freedom and open publication and dissemination of research findings and results, the export control regulations present unique challenges. Fortunately, both the EAR and the ITAR exclude fundamental research from the requirements of the regulations. Fundamental research is defined as "basic and applied research in science and engineering conducted at an institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls." Information which is publicly available also is excluded from the purview of the export control regulations. To guarantee the application of these exclusions, researchers should publish their findings to the fullest extent possible and should not agree to confidentiality clauses or other terms that restrict the dissemination of research materials and results.

The fundamental research and public domain exclusions do not apply to tangible items that are being taken or shipped outside of the U.S. In such cases, those items must be analyzed to determine whether they are subject to export controls. For assistance with this process and with obtaining an export license if necessary, please contact the New Mexico Tech Office of Research at 575-835-5646 or Troylyn Zimmerly, Export Control Officer at Troylyn.Zimmerly@nmt.edu. The process of obtaining an export license from the government can be lengthy, so please plan accordingly.