
Northeastern University

Export Control Compliance Manual

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I. Introduction & Statement by Senior Vice Provost for Research and Graduate Education

Northeastern University is committed to full compliance with the laws and regulations of the United States, including those controlling the export of technologies, services and products. As a center of higher education, committed to use-inspired, solution-focused research that addresses some of the most complex global challenges in health, security and sustainability, many of Northeastern University's activities involve research on cutting-edge technologies. While most of the teaching and research activities at the University likely are exempt from export control regulations and licensing requirements under one or more exclusions, in particular as fundamental research, certain sponsored research may involve controlled technologies or unreasonable restrictions on publication that would trigger the application of U.S. export controls.

Export controls do not only apply to physical shipments or transmissions abroad. Whenever faculty and/or students are engaged in teaching or research related to controlled items, information, or software, the involvement of researchers or students from another country opens the door for potential export control compliance concerns, even here on our campuses. These so-called “deemed exports” can include visual inspections of blueprints, specifications, machinery and labs as well as verbal exchanges, including via conference presentations. Many other University activities, such as those involving information systems technologies or international shipping and travel, fall within the scope of export control regulations.

Export regulators have placed the responsibility on universities to understand and comply with export controls. Faculty, and in particular researchers, are responsible to familiarize themselves with the University’s export control policy and the circumstances under which export control laws and regulations might be triggered. This Manual is designed to assist the University community in understanding and complying with export control laws. It collects in one place the University’s policies and procedures on export controls, summarizes the applicable regulations, describes the resources that are available at Northeastern and the roles and responsibilities of those who can assist with export control questions, and provides links to forms, agency regulations, and helpful tools.

You need to be alert to potential export control requirements when you: travel with electronic devices; plan to ship hardware, software or technology outside the United States; perform research based on technology or data provided by a sponsor; collaborate with a foreign company; or host foreign nationals on our campuses. In any of these circumstances, or anytime there is a question whether export control laws might apply, you should consult with the appropriate University office for guidance.

As we continue to take on the challenges and opportunities for the University to increase its impact, by applying use-inspired research to address critical global issues, it is vital that you take compliance with export controls very seriously and make use of the available resources. We hope this Manual is a useful roadmap.

Arthur Kramer

II. Definitions and Glossary

A. Definitions

Deemed Export:

Releasing or otherwise transferring technical data, technology, or source code controlled under the Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR), to a foreign person in the United States.

See [15 C.F.R. Part 734.13\(a\)\(2\)](#) [EAR] and [22 C.F.R. § 120.17\(a\)\(2\)](#) [ITAR] for comprehensive definitions of “deemed export.”

Dual Use:

Items, information, and software that are primarily commercial in nature, but also have potential military applications.

See [15 C.F.R. Part 772](#) (page 15) for the EAR’s definition of “dual use.”

Educational Information:

Information that is normally released by instruction in catalog courses and associated teaching laboratories of academic institutions.

See [22 C.F.R. § 120.10\(b\)](#) [ITAR] for a comprehensive definition of “educational information.”

Export:

An actual shipment or transmission out of the U.S., including the sending or taking of an item subject to the EAR or ITAR out of the U.S., in any manner.

See [15 C.F.R. Part 734.13](#) [EAR] and [22 C.F.R. § 120.17](#) [ITAR] for comprehensive definitions of “export.”

Export License:

A written authorization granted by the appropriate regulatory agency approving a certain type of export transaction that is otherwise prohibited.

Foreign Person:

Any natural person who is not a lawful permanent resident of the U.S., citizen of the U.S., or any other protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign entity or group not incorporated or organized to do business in the U.S.

See [15 C.F.R. § 772.1](#) [22 C.F.R. § 120.16](#) [ITAR] for comprehensive definitions of “foreign person.”

Fundamental Research:

Basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific or research community, as distinguished from research the results of which are restricted for proprietary reasons or specific national security reasons.

See [National Security Decision Directive 189](#), [15 C.F.R. Part 734.8\(c\)](#) [EAR] and [22 C.F.R. § 120.11\(a\)\(8\)](#) [ITAR] for comprehensive definitions of “fundamental research.”

Re-Export:

An actual shipment or transmission of a controlled tangible item, software, or information subject to the EAR or ITAR from one foreign country to another foreign country, including the sending or taking of a defense article to or from such countries in any manner.

See [15 C.F.R. Part 734.14](#) [EAR] and [22 C.F.R. § 120.19](#) [ITAR] for comprehensive definitions of “re-export.”

B. Glossary

Bureau of Industry and Security (BIS) – A licensing, regulatory, and enforcement agency within the Department of Commerce that administers and enforces the Export Administration Regulations (EAR).

Code of Federal Regulations (CFR) – The collection of the general and permanent rules and regulations published in the Federal Register by the executive agencies of the U.S. Federal Government.

Commerce Control List (CCL) – A comprehensive list of commercial and dual-use items subject to the export controls under the EAR. The CCL is located in Supplement 1 to Part 774 of the EAR.

CCL Categories – The CCL is divided into ten broad categories: (0) Nuclear Materials [and Miscellaneous Items]; (1) Materials, Chemicals, Microorganisms, and Toxins; (2) Materials Processing; (3) Electronics; (4) Computers; (5) Telecommunications and Information Security; (6) Sensors and Lasers; (7) Navigation and Avionics; (8) Marine; and (9) Aerospace and Propulsion.

CCL Product Groups – Each of the ten categories of the CCL is subdivided into five groups: (A) Equipment, assemblies, and components; (B) Test, inspection, and production equipment; (C) Materials; (D) Software; and (E) Technology.

Commerce Country Chart – A chart, organized by all the countries in the world and the reason for control codes, used for determining whether an export license is required. This chart is located in [Supplement 1 of Part 738 of the EAR](#).

Denied Persons List – A list of individuals and entities that have been denied export privileges, maintained by BIS.

Development – All stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, and layouts. See [Part 772 of the EAR](#) (page 14).

Directorate of Defense Trade Controls (DDTC) – A licensing, regulatory, and enforcement agency within the Department of State that administers and enforces the International Traffic in Arms Regulations (ITAR).

EAR99 – The categorical classification given to all commercial items not identified on the CCL, primarily covering common, low-tech consumer goods.

Embargo – An official ban on commerce and trade with a certain country for the purpose of facilitating foreign policy and national security objectives.

Empowered Official – A U.S. person who: 1) is directly employed by the applicant [of an export license] or a subsidiary in a position having authority for policy or management within the applicant organization; and 2) is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and 3) understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability, and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and 4) has the independent authority to: i) inquire into any aspect of a proposed export or temporary import by the applicant; ii) verify the legality of the transaction and the accuracy of the information to be submitted; and iii) refuse to sign any license application or other request for approval without prejudice or other adverse recourse. See [22 C.F.R. § 120.25](#) of the International Traffic in Arms Regulations (ITAR).

End Use – The ultimate use of the exported item by the recipient abroad.

End User – The recipient abroad who receives and ultimately uses the exported items.

Export Administration Regulations (EAR) – The regulations administered by BIS that regulate the export of commercial and dual-use items, technology, and software identified on the CCL. The EAR are located in [15 C.F.R. Parts 730–774](#).

Export Control Classification Number (ECCN) – A five-character alphanumeric designation used in the CCL to classify items subject to the EAR.

Export Control Committee – A Northeastern University committee made up of University professionals from various administrative offices, including Compliance, Research Administration and Finance (ORAF), Procurement, Information Security, Environmental Health and Safety, and the Office of the General Counsel (OGC), as well as representation from the faculty and University research community. The Export Control Committee assists in review and determination of the extent to which export control laws apply and provides guidance as to the steps necessary for compliance.

Export Control Policy – A Northeastern University policy on export controls that applies to all faculty, staff, administrators, and students.

International Traffic in Arms Regulations (ITAR) – The regulations administered by DDTC that regulate the export of articles and services that are inherently military in nature. The ITAR are located in [22 C.F.R. §§ 120–130](#).

No License Required (NLR) – the designation given to commodities and related technology that do not require a license to be exported out of the United States. Most exports from the United States do not require a license, and are therefore exported under the designation NLR. NLR designated exports include those items not listed on the CCL, or those items that are listed on the CCL, but are being exported to countries for which the federal government does not require a license.

Office of Foreign Assets Control (OFAC) – An agency within the Department of the Treasury that administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the U.S.

Reasons for Control – The listed two-letter abbreviations provided in every ECCN description used in conjunction with the Commerce Country Chart to determine whether an export license is required (e.g., “AT” means anti-terrorism).

Release – The export of technology or software through: 1) visual or other inspection by a foreign person of items that reveals “technology” or source code subject to the EAR to a foreign person; or 2) oral or written exchanges with a foreign person of “technology” or source code in the U.S. or abroad. See [Part 734.15](#) of the EAR.

Specially Designated Nationals (SDN) – A list of: 1) individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries; and 2) individuals, groups, and entities (e.g., terrorists and narcotics traffickers) designated under programs that are not country-specific. The [SDN list](#) is published by OFAC.

Technology Control Plan (TCP) – A plan of the procedures that will be used to ensure that any controlled items and information are not disclosed to unauthorized individuals or entities or otherwise exported without the necessary U.S. government authorization.

Technical Data – Under the ITAR, information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions, or documentation. See [22 C.F.R. § 120.10](#) of the ITAR.

Trade Sanction – A penalty that restricts trading activity imposed by one country on another country.

United States Munitions List (USML) – A comprehensive list of military articles, services, and related technical data subject to the export controls under the ITAR. The USML is located in [22 C.F.R. § 121.1](#) of the ITAR.

III. University Policy and Procedures on Export Control

Federal export control laws and regulations regulate the distribution of technology, equipment, services and information to foreign nationals and countries for reasons relating to the protection of the national security, foreign policy, and economic interests of the United States. Where export controls are applicable, noncompliance can result in sanctions, including fines, penalties, debarment, and even criminal prosecution. While the majority of University activity and research is not subject to export control regulations, there are some circumstances where the regulations apply. The University's Policy on Export Control, as discussed in the following subsection, sets forth the University's commitment to compliance with this body of regulation, and is the starting point for understanding when you might be required to conduct an analysis of the applicability of export controls to your undertaking. As explained further in this Manual, the University provides resources and has developed procedures and guidance to assist faculty and staff in understanding when and how export controls apply.

A. Northeastern University's Export Control Policy

It is the responsibility of Northeastern University faculty, staff, administrators, and students to be familiar with the [University's Policy on Export Control](#), to be aware of export control laws and regulations, and to comply with those laws and University policy and procedures. Export control laws are primarily implicated at research institutions when, among other circumstances, a member of the University community collaborates with a foreign scholar, company or university on research here in the U.S. or abroad or uses export controlled technology in a University activity.

Prior to the export, the University requires that members of the University community document his or her analysis of 1) the applicability of export controls, including the applicability of any exclusion or exemption; and 2) the applicability of government lists of sanctioned countries, individuals, and entities.

While the University provides support to any member of the University to assist in compliance with U.S. export control laws and regulations, primary responsibility for compliance rests with the faculty, researcher, or other member of the University community involved in the specific activity. Failure to comply with export control laws and regulations may result in severe criminal and civil penalties for the affected employees and students, as well as administrative sanctions for the University.

B. University Resources and Procedures

As stated in the University's Export Control Policy, it is the responsibility of University faculty, staff, administrators and students to be aware of and comply with export control laws. Whenever there is a question of whether export controls apply, researchers and others should consult with the appropriate University office to determine the necessary actions. To assist in such determinations and to better facilitate due diligence, the University provides multiple resources, including an on-line tutorial, an export control committee, and an export control decision tree.

1. On-line Tutorial

The on-line [Export Control Tutorial](#) is designed to give faculty, researchers and others an overview and understanding of significant terms, requirements and consequences of current U.S. export control rules and regulations. A simple quiz follows. Successful completion of the tutorial is evidenced by a Certificate of Completion.

2. Empowered Official

The University's Empowered Official currently is the Senior Vice Provost for Research and Graduate Education Arthur Kramer, who has been legally empowered in writing by the University to sign export license applications or other requests to the federal government on behalf of the University. The Empowered Official also has the independent authority to inquire into any aspect of a proposed export or temporary import by the University, verify the legality of the transaction and the accuracy of the information and may refuse to sign any license application or other request for approval. In essence, he is the only individual who can sign paperwork and bind the University in proceedings before the government agencies that have export control responsibilities. All communications with U.S. licensing authorities shall be made through the Empowered Official or his/her designee. Submission of license applications to the State Department, Commerce Department, or OFAC shall be coordinated by the Assistant Vice Provost for Research Compliance who will consult with OGC as needed.

3. Export Control Committee

The University has established an Export Control Committee to assist in review and determination of the extent to which export control laws apply in individual situations and to provide guidance as to the steps necessary for compliance. The Export Control Committee comprises University professionals from various administrative offices, including the Empowered Official or designee, and representatives from Compliance, ORAF and OGC, in addition to representatives from the faculty and University research community. The Empowered Official or designee will chair the Committee, convene meetings as needed, and call upon other faculty or staff, including from the offices of Information Security, Environmental Health and Safety and Procurement, for subject matter expertise as appropriate.

The University will assist any member of the University in complying with U.S. export control laws and regulations, including through its Export Control Committee, but primary responsibility for compliance with such laws and regulations rests with the faculty, researcher, or other member of the University community involved in the specific activity.

4. Export Control Decision Tree

This [Decision Tree](#), which is available online at the Compliance Department's website, uses terminology derived from the export regulations of the U.S. Departments of Commerce, State, and the Treasury. This tool consists of nine "Yes" or "No" questions relating to the sharing, shipping, transmitting, or transferring of items, information, or software out of the U.S., leading to a determination of whether or not an export control license may be applicable to a particular situation. Each question is accompanied by supplemental notes to aid in answering it. If you have

any question as to whether export control regulations are implicated in your activity or project you should go through the Decision Tree. A “Yes” answer to any of the nine questions will refer your question to the Export Control Committee. You should print a copy of the results, and maintain a copy for your files. Alternatively, you can email exportcontrol@northeastern.edu with any export control questions.

5. University Procedures

a. Export Compliance involving Research

In accordance with the University Policy on Openness in Research, the University generally will not undertake research projects that have restrictions on openness or academic freedom on its campus. Examples of unacceptable restrictions include required external approval of research results before publication, or exclusion of members of the University community from participation in research. To that end, as a general matter, the University requires that sponsors of research involving export-controlled equipment, items, technology or information provide to the University advance written notice of the sponsor’s intent to provide the University with such export-controlled equipment, items, technology or information. So that the University, faculty and staff can balance the goal of open research with managing export control requirements, the University’s written consent to accept any such restrictions is required.

In accordance with the University Policy on Export Controls, upon receipt of a notice of export controlled equipment, items, technology or information, the Office of Research Administration and Finance (ORAF) will work with the PI to document the analysis of the applicability of export control laws and regulations, including the applicability of any exclusion or exemption prior to the start of any work on the project involving such controlled items.

As a general matter, the following initial determinations must be in the order shown:

1. Is the equipment, item, technology or information listed on the CCL or USML?
2. If any such item is listed on either list, does any regulatory exemption or license exception apply under the circumstances or is a license recommended for the controlled item and particular end-use and end-user.
3. Will the equipment, item, technology or information be exported to an embargoed country or specially designated national?

Through a variety of measures, including its Export Control Committee and the exportcontrol@northeastern.edu mailbox, the University assists members of the University in complying with U.S. export control laws and regulations, but primary responsibility for compliance with such laws and regulations rests with the faculty, researcher or other member of the University community involved in the specific activity, as that individual is both the most informed about, and the one in control of, a potential export.

b. Technology Control Plans

When research and/or non-research related projects or activities at the University involve export controlled equipment, items, technology or information, the PI or, in the case of non-research projects, the responsible party, will complete with the assistance of the Information Technology Services Department (and others) a Technology Control Plan (TCP) to help ensure the research project or activity is conducted in a controlled environment. TCPs are documented using a University standard form of TCP available from ORAF and the Compliance Department. The instructions for completing the TCP are shown on the form. All TCPs will include a physical and information security plan, personnel screening procedures and a process for carrying out the research project or other covered activity in a controlled environment as well as the signatures of the PI and others reviewing and compiling the TCP. As stated on the template form of TCP, completed TCPs related to research projects shall be provided to and maintained by ORAF; completed TCPs related to non-research activities shall be provided to and maintained by the Compliance Department.

c. International Shipping

International shipping of any tangible items (including computers, equipment, software and electronics), is considered an export whether the item will be used in research, ultimately brought back to the U.S., sold or loaned, and must comply with export and import control laws and regulations, including foreign trade regulations. The shipment may require an export license in order to be legally shipped out of the U.S. Accordingly, in advance of preparing any international shipment, you should complete the [Export Control License Inquiry](#) on the Compliance Department website well in advance of when you need to send the shipment. Alternatively, you can get help by sending an inquiry to exportcontrol@northeastern.edu. It is illegal to ship controlled items without a license.

International shipping of research materials such as chemicals and biologicals is also highly regulated, and may require a license or permit depending on the nature of the material, country of origin, country of destination, and final use. Please contact the [Office of Environmental Health and Safety](#) well in advance of your proposed shipment for assistance. For shipping of what is classified as dangerous goods, you may need to engage a shipping agent.

d. International Travel

Any information, technology, software, and/or equipment you take with you may be subject to U.S. export control laws. If your device has encryption software, either commercially available or research-generated, you may need an export license to carry it with you outside the United States. Likewise, if you are traveling to an embargoed country (*see* <http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>), or if your device contains unpublished data relating to items on a technology control list, you may need a license. You would likely need a license if you plan to travel with a device that is designed for or has software for use with satellites, spacecraft or technologies with a military use.

In many cases, if your electronic device contains commercially available encryption software and will only be used abroad for professional purposes or for personal use for not longer than 12 months from initial departure, and will be secured or kept under your control, you may take or ship it overseas (except to an embargoed country) under a U.S. government license exception. Note, however, that many countries, such as Russia and China, regulate the inbound use of encryption software.

Before taking any software or information overseas, you should check whether it can be safely and legally “exported” to the country or countries you intend to visit. Check the [Export Administration Regulations \(EAR\)](#) and [International Traffic and Arms Regulations \(ITAR\)](#) laws concerning any software on your computer that may be non-exportable or that may require a license to take it out of the country. You should also check the [SecureNU](#) website for guidance. If you have any questions about electronic devices or electronically-stored data that you plan to take with you abroad, contact the Office of Information Security.

6. University Guidelines:

- Remove files containing controlled information or information involving restrictions from your laptop or other device. Do not save sensitive personal information such as credit card numbers, passport information, social security numbers or browsing history on your device.
- Keep your device(s) within your sight and control whenever possible. Do not accept thumbdrives from others.
- Where possible, take only the information which you will present or discuss at the conference or other event. Back up your data and leave a copy in a safe and secure location. If possible, encrypt all information (some countries have encryption import restrictions).
- For some travel to identified high-risk countries, you should only take a wiped laptop or remote device that contains only the applications and information necessary for your trip.
- Be aware that your belongings maybe searched multiple times; assume that your electronic media will be copied.
- Where possible, carry memory sticks instead of a laptop. Consider keeping your data only on a university server and accessing it only through a secure VPN connection.
- **Change your password** to one that will be used only during your trip, and change it again when you return.
- Do not travel with any sensitive intellectual property that might have research or commercial value. When you get back, don’t copy sensitive information onto a computer that has been overseas before it has been scanned for malware and “wiped.”

7. Procurement

- The University requires that vendors provide technical specification sheets and the Department of Commerce’s assigned ECCN or the Department of State’s USML classification number to the University’s Procurement Services personnel when we purchase controlled items.
- When items are purchased that are on an export control list they must be tagged, and both technology and information about technology that is controlled, such as operating manuals, technical specifications, etc., must be tagged and stored securely. Procurement Services

staff members shall confirm that vendors are not on the Specially Designated Nationals or other government lists by performing Restricted Party Screening.

8. Hosting International Students, Scholars and Faculty

If you are planning to host international students, scholars or faculty visitors, there may be export control implications, even for a short visit, such as for a training or University facilities or lab tours. If the visitor is from a sanctioned country, you must contact the Compliance Department well in advance of the visit. If the visitor will have access to research technology or controlled items, information or equipment, restricted party screening and/or a license may be required, and you should contact exportcontrol@northeastern.edu.

9. H-1B and O-1 Foreign National Sponsored Employees and the Export Control Questionnaire and Certification Process

The University, as the sponsoring employer, has to certify on the Form I-129 visa petition whether or not a license is required for the release of controlled technology or technical data to foreign persons in the U.S. The Office of the General Counsel (OGC) provides the Export Control Questionnaire and Certification Form to the sponsoring Department/College/Division for completion before the visa petition is filed with the U.S. Department of Homeland Security's U.S. Citizenship and Immigration Services (USCIS). If the sponsored employee is currently working at the University, the employee is also asked to review and sign the form.

- Research Faculty and Staff – If the sponsored employee's supervisor has any questions about whether or not the sponsored employee's work is subject to export controls, s/he should contact the Office of Research Administration and Finance prior to completing the form.
- Non-Research Staff – If the sponsored employee's supervisor has any questions about whether or not the sponsored employee's work is subject to export controls, s/he should contact the Compliance Department prior to completing the form. The Compliance Department also conducts a review of the completed form prior to the visa petition filing.

C. Record Retention

The EAR and the ITAR both include recordkeeping requirements for export-related documents. In addition to the specific export control documents (defined below), Northeastern faculty are required to document and maintain the determination of whether export controls apply to their activities. For export control documents related to research projects, faculty should keep these records for the same retention period as their research project (i.e., **seven years**). For non-research activity, generally BIS requires that all export-related records falling under the EAR be kept on file for **five years** after the shipment or project is finalized or the export license expired, whichever is longer. Similarly, for all documentation of transactions subject to the ITAR, DDTC requires a retention period of **five years** from the expiration of the license.

The EAR defines “export control document” as follows:

- 1) A license;
- 2) Application for license;
- 3) Any and all documents submitted in accordance with the requirements of the EAR in support of, or in relation to, a license application;
- 4) Application for International Import Certificate;
- 5) Delivery Verification Certificate or similar evidence of delivery;
- 6) Electronic Export Information (EEI) on the Automated Export System (AES) presented in connection with shipments to any country;
- 7) A Dock Receipt or bill of lading issued by any carrier in connection with any export subject to the EAR and any and all documents prepared and submitted by exporters and agents pursuant to the export clearance requirements of Part 758 of the EAR;
- 8) A U.S. exporter’s report of request received for information, certification, or other action indicating a restrictive trade practice or boycott imposed by a foreign country against a country friendly to the U.S., submitted to the Department of Commerce in accordance with the provisions of Part 760 of the EAR; Customs Form 7512, Transportation Entry and Manifest of Goods, Subject to Customs Inspection and Permit, when used for Transportation and Exportation (T.& E.) or Immediate Exportation (I.E.); and
- 9) Any other document issued by a U.S. Government agency as evidence of the existence of a license for the purpose of loading onto an exporting carrier or otherwise facilitating or effecting an export from the United States or any re-export of any item requiring a license.

Other types of documents that fall within the scope of record retention and must be maintained for the applicable period include:

- 1) Memoranda;
- 2) Notes;
- 3) Correspondence;
- 4) Contracts;
- 5) Invitations to bid;
- 6) Books of account;
- 7) Financial records;
- 8) Restrictive trade practice or boycott documents and reports; and
- 9) Notification from BIS of:
 - An application being returned without action
 - An application being denied; or
 - The results of a commodity classification or encryption review request conducted by BIS.

The recordkeeping requirement under the EAR is found in [15 C.F.R. Part 762](#).

The recordkeeping requirement under the ITAR is found in [22 C.F.R. § 122.5](#).

IV. Overview of Regulatory Structure

A. Introduction

What are export control laws?

The body of laws and regulations that make up the U.S. export controls system derives from multiple federal agencies, principally the Department of Commerce, the Department of State, and the Department of the Treasury. The Department of Commerce regulates items, information, and software that are commercial in nature, while the Department of State regulates the export of military articles and services. The Department of the Treasury issues economic and trade sanctions against countries and geographical regions (e.g., Iran; the Balkans), as well as on specific subject matters (e.g., rough diamond trading).

What is an export?

The concept of “export” includes both the physical transfer of a controlled item outside of the U.S., along with a distribution in any form of a controlled item, information, or software to a foreign person within the U.S. The reach of export controls is vast, given this broad definition of “export” and the extensive lists of controlled items. Yet for U.S. research universities, the effect of these regulatory regimes is somewhat limited by three significant exclusions: 1) public domain exclusion; 2) educational information exclusion; and 3) fundamental research exclusion.

What is excluded from export controls?

The *public domain exclusion* exempts the transfer of information that is already published and generally available to the public at large. The *educational information exclusion* exempts the sharing of information released in academic catalog courses and associated teaching laboratories, and more generally any information commonly taught in colleges and universities. The *fundamental research exclusion* exempts the disclosure of the results of basic or applied research in science and engineering performed at an accredited institution of higher education in the U.S., provided that the results are ordinarily published and shared *without restrictions* within the scientific community.

The following subsections provide a summary of the three primary governmental agencies and their corresponding laws and regulations, and a review of the potential penalties for committing an export violation.

B. Summary of Three Principal Agencies (Laws & Regulations)

The body of laws and regulations that make up the U.S. export controls system derives from multiple federal agencies, principally the Department of Commerce, the Department of State, and the Department of the Treasury.

Department of Commerce:

Through BIS, the Department of Commerce administers the EAR, which regulate commercial and “dual use” items, software, and technology. “Dual use” means items, information, and software that are primarily commercial in nature, but also have potential military applications (e.g., GPS, computers, and aircraft). The specific items subject to the EAR are located on the CCL, which is divided into the following 10 categories:

- *Category 0* – Nuclear Materials [and Miscellaneous Items]
- *Category 1* – Materials, Chemicals, Microorganisms, and Toxins
- *Category 2* – Materials Processing
- *Category 3* – Electronics
- *Category 4* – Computers
- *Category 5* – Telecommunications and Information Security
- *Category 6* – Sensors and Lasers
- *Category 7* – Navigation and Avionics
- *Category 8* – Marine
- *Category 9* – Aerospace and Propulsion

If a commercial item is not identified on the CCL, it falls into a general category known as EAR99. This primarily comprises common, low-tech consumer goods (e.g., pencils; jewelry). Notably, this categorical classification differs from the designation “No License Required” (“NLR”), which may be used for either EAR99 items or items on the CCL that do not require a license for the export destination. Note that, although EAR99 items generally can be exported without a prior license, one may be required if the EAR99 export is to a sanctioned country, entity, or individual.

The following questions are provided by BIS and can be helpful in guiding a determination of your obligations under the EAR:

1. What is it?
2. Where is it going?
3. Who will receive it?
4. What will they do with it?
5. What else do they do?

Further information and guidance on the EAR is available on the [BIS website](#). The EAR in its entirety is located in 15 C.F.R. Parts 730 to 774 (available online [here](#)). BIS maintains [lists](#) to advise the exporting public of entities and individuals who are restricted or prohibited from engaging in export dealings.

Department of State

Through the DDTC, the Department of State administers the ITAR, which regulate items and information inherently or predominantly military in nature. These items, or “defense articles,” are located on the USML. Additionally, the ITAR regulate the furnishing of “defense services,” or

services directly related to a defense article, such as training. Under the ITAR, exporters generally must obtain prior written authorization from the DDTC before engaging in any export or re-export of defense articles or defense services.

Further information and guidance on the ITAR is available on the [DDTC website](#). The ITAR in its entirety is located in 22 C.F.R. Parts 120 to 130 (available online [here](#)).

Department of the Treasury

Through OFAC, the Department of the Treasury administers and enforces economic and trade sanctions and embargoes against specifically targeted countries for various national security and foreign policy reasons.

In general, these regulations prohibit transactions of value -- which includes provision of services and collaborations, not just exchanges of payments -- with listed countries and individuals without obtaining a license from the government. Obtaining a license for the activity, including for travel, where required, can take some time. Further information and guidance on economic and trade sanctions, as well as the current list of OFAC sanctioned countries and programs, is available on the [OFAC website](#). OFAC has maintained sanctions against: Belarus, Burma, Central African Republic, Cuba, Democratic Republic of the Congo, Iran, Iraq, Ivory Coast, Lebanon, Liberia, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Ukraine, Venezuela, Yemen, and Zimbabwe. *Because the sanctions lists can be frequently or unexpectedly revised to add or relax specific provisions, or to add countries, you must check the website for the most up to date lists and sanctions at the time you are proposing the travel, collaboration, or other activity.*

The OFAC regulatory authority extends to individuals or organizations known to support terrorism, and bars any financial dealings or provision of services or support with or to anyone on OFAC's lists of what are called Specially Designated Nationals. OFAC implements sanctions against designated individuals and entities deemed to be:

1. Agents of a sanctioned country;
2. Terrorism sponsoring organizations;
3. International narcotics traffickers;
4. Weapon proliferators; or
5. Otherwise engaged in activities that threaten national security.

Accordingly, you should be familiar with the persons or entities with whom you are dealing abroad, and if there is any question seek assistance from ORAF or the Compliance Department. The exclusions and exceptions that may pertain under other export control regulations may not apply to sanctioned or embargoed entities under OFAC regulations. You should coordinate with Accounts Payable of the Office of the Treasurer if you are undertaking to make a payment to a foreign individual or organization, so that it will undergo restricted party screening.

C. Penalties

Violations of federal export control laws can result in the levying of significant criminal and civil penalties. Under both the EAR and the ITAR, willful noncompliance is criminal and punishable by imprisonment and/or fines. In the absence of willful intent, a range of administrative penalties are available to the government, including civil fines, denial of export privileges, and seizure or forfeiture of goods. Additionally, the relevant regulatory agency may place individuals or entities on lists that restrict or prohibit the violators' participation in export transactions.

The U.S. government strongly encourages voluntary self-disclosure if someone believes an export violation has occurred. Such self-disclosure may act as a mitigating factor in a determination of which, if any, administrative sanctions should be imposed. Moreover, self-disclosure is typically seen as strong evidence that the noncompliance was not willful.

Two examples of prosecutions within the university context reinforce the need for members of the Northeastern community to be diligent in complying with export controls. In 2009, J. Reece Roth, a former professor of electrical engineering at the University of Tennessee, was convicted and sentenced to four years in prison for transmitting export controlled information to foreign nationals working in his lab and for bringing a laptop with restricted files with him to China. In 2013, the Center for Atmospheric Research at UMass Lowell was charged with export control violations related to sending EAR99-classified items to a sanctioned entity in Pakistan, for which the university was fined \$100,000.

Specific sanctions under each export control regime are as follows:

EAR:

University

Criminal: the greater of \$1 million or five times the value of the exports for each willful violation.

Civil: up to \$10,000 for each violation, or up to \$120,000 for each violation involving items controlled for national security reasons.

Individual

Criminal: up to \$250,000 and/or 10 years imprisonment for each willful violation.

Civil: up to \$10,000 for each violation, or up to \$120,000 for each violation involving items controlled for national security reasons.

ITAR:

University

Criminal: up to \$1 million for each willful violation.

Civil: up to \$500,000 for each violation.

Individual

Criminal: up to \$1 million and/or 10 years imprisonment for each willful violation.

Civil: up to \$500,000 for each violation.

OFAC:

University

Criminal: up to \$1 million for each willful violation.

Civil: up to \$55,000 for each violation.

Individual

Criminal: up to \$1 million and/or 20 years imprisonment for each willful violation.

Civil: up to \$55,000 for each violation.

V. Discussion of Export Control Issues in University Research

A. Deemed Export and Re-exports

Deemed Exports

The definition of export for purposes of U.S. export control laws and regulations includes not only the physical shipment of items abroad, but also the transfer of controlled information or services to foreign nationals, even when such transfer occurs within the U.S. Under the EAR and the ITAR, this release of controlled information to a foreign national within the U.S. is “deemed” to be an export to that person’s home country. Therefore, just as an export license may be required to ship a controlled item outside of the U.S., a license may also be required in order to release technical data about the item necessary for its development, production, or use to a foreign national in the U.S.

The issue of deemed exports is highly relevant in the university environment given the culture of collaborative study, openness in research, academic freedom, and the growing numbers of international faculty, students, and visitors. Whenever faculty and/or students are engaged in teaching or research related to controlled items, information, or software, the involvement of researchers or students from another country opens the door for potential export control compliance concerns.

Deemed exports typically arise in two general contexts:

1. *Visual inspection* (e.g., reading technical specifications, plans, or blueprints; laboratory or plant visits; demonstrations)
2. *Verbal exchange* (e.g., in-person conversations; telephone calls or messages; conference presentations)

Re-exports

U.S. export controls also cover re-exports, which are shipments or transmissions of controlled items, information, or software from one foreign country to another foreign country. For example, a researcher sends an item subject to the EAR or ITAR to Latvia (the export), where it is subsequently sent to Thailand (the re-export). Assuming the researcher is the exporter in both stages of export, the researcher would have to determine whether an export license is required for both Latvia and Thailand individually given the controlled item in question. If a license is required for both, the researcher would then have to acquire two separate licenses. If a different entity were the exporter from Latvia to Thailand, it (not the researcher) would be responsible for obtaining a license for that re-export. Further guidance on re-exports is located online [here](#).

Additionally, a “deemed re-export” may occur when controlled information is released by a foreign national who has been licensed to receive it to a person of another foreign country who has not yet been licensed to receive the information. BIS has interpreted the EAR to mean that deemed re-export licensing requirements are based on a foreign national’s most recent country of citizenship or permanent residency. BIS offers the following guidance on deemed re-exports with respect to when an export license is not required:

In general, an entity outside the U.S. may release technology or source code subject to the EAR to a dual or third country national *without* an additional BIS license issued or the application of an EAR license exception if:

1. The entity is authorized to receive the technology or source code at issue, whether by an individual license, license exception, or through situations where no license is required under the EAR; *and*
2. The dual or third country national is a bona fide regular and permanent employee directly employed by the entity; *and*
3. Such employee is a national exclusively of countries that are member states of NATO or the European Union, Australia, Japan, New Zealand, or Switzerland; *and*
4. The release of technology or source code takes place completely within the physical territory of any such country.

B. Exclusions from Export Control Regulations

The combined scope of export control regulations under the EAR and the ITAR is quite broad, encompassing products, equipment, material, software, and information in both commercial and military contexts. Because Northeastern University is committed to openness in research and the scholarly exchange of ideas, however, the majority of research and teaching undertaken at Northeastern will be exempt from export controls under one or more of the following three exclusions: 1) public domain exclusion; 2) educational information exclusion; and 3) fundamental research exclusion.

Public Domain

The *public domain exclusion* exempts the transfer of information that is already published and generally available to the public at large. The export control regimes express this exclusion somewhat differently, but both generally support the notion that publically available information should not be under the purview of export control regulations.

Under the ITAR, “public domain” means such information that is published and accessible through:

1. sales at newsstands and bookstores;
2. subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;
3. second class mailing privileges granted by the U.S. Government;
4. libraries open to the public;
5. patents available at any patent office;
6. unlimited distribution at a conference, meeting, seminar, trade show, or exhibition generally accessible to the public, in the U.S.;
7. public release in any form after approval by the cognizant U.S. government agency; or
8. fundamental research in the U.S. (see “Fundamental Research Exclusion” below).

Under the EAR, “publicly available technology and software” refers to:

1. publication in periodicals, books, print, electronic, or any other media available for general distribution to the public for free or at cost;
2. readily availability at libraries open to the public or at university libraries;
3. patents and open (i.e., published) patent applications available at any patent office; or
4. released at an open conference, meeting, seminar, trade show, or other open gathering.

Educational Information

The *educational information exclusion* generally exempts the sharing of any information commonly taught in colleges and universities. Most importantly, both the EAR and the ITAR permit such disclosure of educational information even if it relates to items located on the CCL or the USML. Therefore, faculty members have a safe harbor to discuss within their courses information and technology that might otherwise be regulated by export controls.

Under the ITAR, the definition of “technical data,” which sets forth the areas of controlled information, does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities. Therefore, information taught in these areas of education are not covered by export controls.

Under the EAR, “educational information” means such publically available information released by instruction in catalogue courses and associated teaching laboratories of academic institutions.

Fundamental Research

The *fundamental research exclusion* exempts the disclosure of basic or applied research in science and engineering performed at an accredited institution of higher education in the U.S., provided that the results are ordinarily published and shared *without restrictions* within the scientific community. While this exclusion represents the most significant exception to export control regulations for U.S. research universities, there are noteworthy limitations. First, this exclusion only applies to technical information, not tangible materials or technology. Second, research will not fall under this exclusion if the University or the researcher accepts any restrictions on the publication or dissemination of the information resulting from the research. Research sponsors are permitted to engage only in limited prepublication reviews of university research to ensure that any future publication would not inadvertently divulge proprietary information provided to the researcher.

According to the National Security Decision Directive 189, “fundamental research” means “basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.”

Additionally, BIS offers guidance on the application of the fundamental research exclusion by way of the following sample question and answer:

Question: *Do I need authorization for a foreign graduate student to work in my laboratory?*

Answer:

- You do not need a license or authorization for the mere presence of a foreign graduate student in your laboratory. You do need a license if you plan to transfer controlled technology to a foreign national and the export of that technology is restricted to the foreign national’s home country.
- The EAR license requirements apply to the transfer of controlled technology for “development,” “production,” or “use” of certain equipment. See Part 772 [of the EAR] for definitions of all three terms.
- If the graduate student is receiving technology that has already been published, then that technology is not subject to the EAR and no license is required for the release of that technology. See §734.3(b)(3) and §734.7 [of the EAR] (defining published technology). BIS considers user manuals for equipment to be “published” when they are available from the manufacturer, either (1) for purchase at a price that does not exceed the cost of distribution, or (2) as part of

the normal materials that accompany the equipment when sold to the public and without restrictions on further distribution.

- If the graduate student is receiving technology in the context of instruction in a catalog course (or associated teaching laboratories) of an academic institution, then that technology is not subject to the EAR and no license is required for the release of that technology. See §734.3(b)(3)(iii) and §734.9 [of the EAR].
- If the graduate student is receiving technology that arises during, or results from, “fundamental research,” then that technology is not subject to the EAR and no license is required for the release of that technology. See §734.3(b)(3)(ii) and §734.8 [of the EAR].
- But if you plan to release technology that is subject to the EAR and that is, according to the CCL and Commerce Country Chart, restricted for export to the home country of the foreign graduate student, then you will need a deemed export license.

Available online [here](#).

C. Technology Control Plans (TCPs)

A project or activity that will involve export controlled items, information, equipment, or software requires a technology control plan (TCP) to be completed, monitored, and revised as appropriate. A TCP is a written set of the procedures that will be used to protect against the disclosure of any controlled items, information, equipment, or software to unauthorized individuals or entities or otherwise exported without the necessary U.S. government authorization. A TCP includes both physical and informational security measures proper for the specific technology involved. Before an individual may observe or access the controlled technology, he or she must be briefed on the procedures authorized under the TCP and certify as to his or her agreement to comply with all outlined security measures.

To aid in the development of a TCP, the University has developed a basic template for the minimum elements of a TCP. The template inquires about a variety of factors central to the formation of an individualized TCP, such as: 1) technical description of the items, information, equipment, or software to be used; 2) name and department of the individual responsible for the project (e.g., principal investigator); 3) physical location where the project is to be performed with the controlled technology; and 4) description of the structure of the information technology (IT) system at each location where controlled technology is present. The TCP template is available online [here](#). For additional information and guidance on research-related TCPs, please contact ORAF; for guidance on non-research TCPs, please contact the Compliance Department.

D. Export Licenses

An export license is a written authorization granted by the appropriate regulatory agency approving a certain type of export transaction that is otherwise prohibited. Licenses are divided into two types: general and specific. A general license authorizes a particular type of transactions for a class of persons without the need to apply for an individual license for each transaction. A specific license authorizes a particular export transaction by a specific person or entity.

Only Empowered Officials of the University may apply for a license with the federal government. The specifics of the application process will depend on with which government agency the request is being filed (i.e., BIS, DDTC, or OFAC), as described below. If there is a question or concern about whether an export license is required, faculty and staff should use the export control decision tree to initiate an inquiry to the export control committee.

BIS License Applications

All export license applications relating to exports subject to the EAR are filed with BIS. This application system is completely electronic, using an online portal called "[Simplified Network Application Process – Redesign](#)" (SNAP – R). Prior registration with BIS is required, upon which the registrant receives a Company Identification Number (CIN) to be used when applying for a license. The system allows users to self-manage their accounts and retrieve status updates of their applications.

Applications Involving Foreign Nationals:

BIS provides [Guidelines for Preparing Export License Applications Involving Foreign Nationals](#) to assist exporters in submitting such license applications. In the case of foreign students working on controlled projects, an individual license must be acquired for each foreign student.

DDTC License Applications

All export license applications involving exports subject to the ITAR are filed with DDTC. The electronic submission system for these applications is DTrade, which is part of the broader [Defense Trade Application Systems \(DTAS\) Online](#). This system also requires an applicant to first register with DDTC. Self-management and status retrieval are also available here.

OFAC License Applications

All export license applications for exports to sanctioned countries or entities are filed with OFAC. Unlike BIS and DDTC, OFAC does not require prior registration with the agency, nor is there a standard application form to be used. Rather, applicants mail a written document that includes a detailed description of the proposed transaction, including the names and addresses of any individuals or companies involved. The mailing address for OFAC license applications is:

Office of Foreign Assets Control
U.S. Department of the Treasury
Treasury Annex
1500 Pennsylvania Ave, NW
Washington, DC 20220
Attn: Licensing Division

VI. Training and Guidance

A. Restricted Party Screening (RPS)

Restricted Party Screening (RPS) is the process of screening parties to prevent inadvertent noncompliance with U.S. laws and regulations. The University has developed procedures to conduct screening against the Specially Designated Nationals (SDN) list and other government lists in order to comply with federal regulations. Any questions regarding these procedures should be directed to RPS@northeastern.edu.

B. Export Administration Regulations (EAR)

BIS administers the EAR to regulate controlled commercial and dual-use items, software, and technology. The specific items subject to the EAR are located on the CCL. The following section presents the foundational questions for determining your obligations under the EAR, as well as a more detailed explanation of the approach to export classification under the EAR.

BIS's Foundational Questions

Set forth in 15 C.F.R. Part 732.1, the following five questions are designed to provide direction for determining license requirements for a particular export:

1. What is it?
2. Where is it going?
3. Who will receive it?
4. What will they do with it?
5. What else do they do?

What is it? – This is determined by an item's classification (i.e., its ECCN), which is its place on the CCL.

Where is it going? – This is the country of ultimate destination for an export or re-export of an item.

Who will receive it? – This is the ultimate end-user of the item, who cannot be a “bad end-user,” such as an identified terrorist organization.

What will they do with it? – This is the ultimate end-use of the item, which cannot be a “bad end-use,” such as contributing to a missile or nuclear weapons program. These end-uses of particular concern to the U.S. Government may invoke export control restrictions over any item, even if ordinarily the item would not require an export license based on its technical specifications.

What else do they do? – This refers to certain conduct on the recipient’s end, regardless of whether it is related to this specific export, which may prevent you from dealing with that recipient.

Export Classification under the EAR

The CCL is organized by ECCNs, five character alpha-numeric designations used to identify commercial and dual-use items and their corresponding export control requirements. It is simplest to navigate the CCL by way of the alphabetized index (available for download [here](#)); however, it is useful to understand the longer approach to operating the CCL for whenever the index is insufficient. Using **ECCN 4A980 (computers for fingerprint equipment)** as an example, the following breaks down this approach to export classification under the EAR.

Step 1 — Determine the Category

The CCL is divided into 10 broad categories:

- *Category 0* – Nuclear Materials [and Miscellaneous Items]
- *Category 1* – Materials, Chemicals, Microorganisms, and Toxins
- *Category 2* – Materials Processing
- *Category 3* – Electronics
- *Category 4* – Computers
- *Category 5* – Telecommunications and Information Security
- *Category 6* – Sensors and Lasers
- *Category 7* – Navigation and Avionics
- *Category 8* – Marine
- *Category 9* – Aerospace and Propulsion

The first character of an item’s ECCN corresponds to the applicable category. Reviewing the general characteristics of the item will guide you to the appropriate CCL category. Therefore, the ECCN for computers for fingerprint equipment begins with the number “4.”

Step 2 — Determine the Product Group

Each of the ten categories within the CCL is divided into five product groups:

- *A* – End items, equipment, accessories, attachments, parts, components, and systems
- *B* – Test, inspection, and production equipment
- *C* – Materials
- *D* – Software
- *E* – Technology

The second character of an item's ECCN corresponds to the applicable product group. Therefore, the second character of the ECCN for computers for fingerprint equipment is "A."

Step 3 — Determine the Additional Characters

Within each product group are the specific controlled items, technology, and software, which are reflected in the remaining three characters of an ECCN. "980" is the specific numerical representation for computers for fingerprint equipment and therefore appears after "4A."

Step 4 — Determine the Reason for Controls

Each specific ECCN description includes reasons for the export controls, indicated by two-letter abbreviations:

- AT – Anti-Terrorism
- CB – Chemical & Biological Weapons
- CC – Crime Control
- CW – Chemical Weapons Convention
- EI – Encryption Items
- FC – Firearms Convention
- MT – Missile Technology
- NS – National Security
- NP – Nuclear Nonproliferation
- RS – Regional Security
- SI – Significant Items
- SS – Short Supply
- XP – Computers

The reasons for control listed for **ECCN 4A980** are CC Column 1 and AT Column 1. The following image shows how this ECCN appears in the EAR.

a. Rated for continuous operation at temperatures from below 228 K (-45° C) to above 328 K (+55° C); or

b. Designed as ruggedized or 'radiation hardened'.

Note: 'Radiation hardened' means that the "part," "component" or equipment is designed or rated to withstand radiation levels which meet or exceed a total irradiation dose of 5 X 10⁵ rads (Si).

4A102 "Hybrid computers" "specially designed" for modelling, simulation or design integration of "missiles" or their subsystems. (These items are "subject to the ITAR" See 22 CFR parts 120 through 130.)

4A611 Computers, and "parts," "components," "accessories," and "attachments" "specially designed" therefor, "specially designed" for a military application that are not enumerated in any USML category are controlled by ECCN 3A611.

4A980 Computers for fingerprint equipment, n.e.s.

License Requirements

Reason for Control: CC, AT

Control(s) *Country Chart (See Supp. No. 1 to part 738).*

CC applies to entire entry CC Column 1

AT applies to entire entry AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

Note: 4A980 does not control equipment limited to one finger and designed for user authentication or access control.

4A994 Computers, "electronic assemblies", and related equipment not controlled by 4A001 or 4A003, and "specially designed" "parts" and "components" therefor.

License Requirements

Reason for Control: AT

Control(s) *Country Chart (See Supp. No. 1 to part 738).*

AT applies to entire entry AT Column 1

List Based License Exceptions (See Part 740 for a description of all license exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Related Controls: N/A
Related Definitions: N/A
Items:

Step 5 — Consult the Commerce Country Chart

Using the reasons for control provided, cross-referencing the Commerce Country Chart allows you to determine if the specific reason for control applies to any country of destination. This chart is organized by alphabetized countries running down the Y-axis and the reasons for control listed across the X-axis, with most of the latter further divided into multiple columns (e.g., CC Column 1; NS Column 2). An “X” in the appropriate box indicates that a license is required for exporting to that particular country. The Commerce Country Chart is located in Supplement 1 of Part 738 of the EAR, available online [here](#).

For example, a Northeastern faculty member wants to ship three computers used for fingerprinting to three different countries around the world (Afghanistan, Albania, and Algeria) as part of University research. Again, the reasons for control set forth for this controlled item (ECCN 4A980 computers for fingerprint equipment) are CC Column 1 and AT Column 1. Upon consulting the Commerce Country Chart with this information, she will discover that an export license is required for Afghanistan and Algeria, but not for Albania (see image below).

Commerce Control List Overview and the Country Chart Supplement No. 1 to Part 738 page 1

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Afghanistan	X	X	X	X		X	X	X	X	X		X		X		
Albania ^{2,3}	X	X		X		X	X	X	X	X						
Algeria	X	X		X		X	X	X	X	X		X		X		
Andorra	X	X		X		X	X	X	X	X		X		X		
Angola	X	X		X		X	X	X	X	X		X		X		
Antigua & Barbuda	X	X		X		X	X	X	X	X	X	X		X		
Argentina	X					X		X	X	X	X	X		X		
Armenia	X	X	X	X		X	X	X	X	X		X	X			
Aruba	X	X		X		X	X	X	X	X		X		X		
Australia ³	X					X		X	X							
Austria ^{3,4}	X					X		X	X			X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X		X	X			
Bahamas, The	X	X		X		X	X	X	X	X	X	X		X		

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Step 6 — Consult the Prohibitions and Exceptions

General prohibitions are found in Part 736 of the EAR, such as engaging in actions prohibited by a denial order. For example, if the Northeastern faculty member shipping fingerprinting computers had previously had her export privileges revoked due to an export violation, she would not be able to ship any of the computers, even to Albania, despite no export license being required for that particular transaction. Additionally, general license exceptions are located in Part 740 of the EAR.

Manufacturers of Electronic Devices

To simplify the search for ECCNs for electronic devices, it is often helpful to check with the manufacturer of the product, as most list the ECCNs for their devices and software on their websites. The following are links to export compliance sites of many top technology manufacturers:

- *Apple* – <http://www.apple.com/legal/export.html>
- *Microsoft* – <http://www.microsoft.com/exportinG/termsmx.htm>
- *IBM* – <http://www-03.ibm.com/products/exporting/>
- *Dell* – <http://www.dell.com/learn/us/en/uscorp1/regulatory-compliance>
- *BlackBerry* – http://us.blackberry.com/content/dam/blackBerry/pdf/legal/northAmerica/english/ECCN_Statement_032713.pdf
- *Adobe* – <http://www.adobe.com/legal/compliance/export.html>
- *Lenovo* – <http://www.lenovo.com/lenovo/us/en/eccn/>

Additional Training

Further training resources provided by BIS are located online [here](#).

C. International Traffic in Arms Regulations (ITAR)

DDTC administers the ITAR to regulate articles and services inherently or predominantly military in nature. The specific defense articles and services subject to the ITAR are located on the USML. The following section presents an explanation of the approach to export classification under the ITAR.

Export Classification under the ITAR

Found in 22 C.F.R. Part 121, the USML is organized by 21 broad categories, with each category subdivided by lettered paragraphs for the individual defense articles. Reviewing the general characteristics of the defense article in question will guide you to one of the following USML categories:

- *Category I* – Firearms, Close Assault Weapons, and Combat Shotguns
- *Category II* – Guns and Armament
- *Category III* – Ammunition/Ordinance

- *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* – Surface Vessels of War and Special Naval Equipment
- *Category VII* – Ground Vehicles
- *Category VIII* – Aircraft and Related Articles
- *Category IX* – Military Training Equipment and Training
- *Category X* – Personal Protective Equipment
- *Category XI* – Military Electronics
- *Category XII* – Fire Control, Range Finder, Optical and Guidance and Control Equipment
- *Category XIII* – Materials and Miscellaneous Articles
- *Category XIV* – Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- *Category XV* – Spacecraft and Related Articles
- *Category XVI* – Nuclear Weapons Related Articles
- *Category XVII* – Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated
- *Category XVIII* – Directed Energy Weapons
- *Category XIX* – Gas Turbine Engines and Associated Equipment
- *Category XX* – Submersible Vessels and Related Articles
- *Category XXI* – Articles, Technical Data, and Defense Services Not Otherwise Enumerated

Export Licenses and Exemptions under the ITAR

Unlike export controls under the EAR where items on the CCL may not require an export license to be shipped abroad, all items listed on the USML require an export license from DDTC (unless an ITAR exemption applies). There are roughly 60 exemptions set forth in multiple sections of the ITAR (e.g., no export license required for certain exports of defense articles to Canada).

Most significantly, the ITAR includes a specific exemption for a U.S. university to disclose unclassified technical data in the U.S. to a foreign person who is the university's bona fide and full time regular employee (excluding postdoctoral employees). This exemption is available only if:

1. The employee's permanent abode throughout the period of employment is in the U.S.; **and**
2. The employee is not a national of a country to which exports are prohibited pursuant to §126.1 of this subchapter (current list available online [here](#)); **and**
3. The institution informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of DDTC.

Note: There is a similar provision under the EAR for information relating to commercial and dual-use items. See [15 C.F.R. Part 740.13\(f\)](#).

Additional Guidance:

Further information provided by DDTC on the basics of export controls in the area of defense trade is located online [here](#).

D. International Travel

When traveling outside of the U.S., you are an “exporter” of any tangible items and technical information you take with you and/or share abroad. Accordingly, it is important to be aware of the potential triggering of export control regulations. Depending on the items being brought and the countries being visited, an export license may be required prior to departure. Electronic devices, such as laptops and cellphones, as well as the data on such devices and the underlying technology and encryption software, are all subject to export controls. In addition, the fundamental research exception is not applicable to physical exports from the U.S. to a foreign country. Therefore, bringing equipment with you abroad that is related to University research covered by the fundamental research exception still may be subject to certain export controls.

Examples of Travel to Foreign Destinations

1. Hand carry export controlled items (e.g., laptops, GPS, software, and prototypes)
2. Hand carry technical data or encryption items (e.g., unpublished research results)
3. Visiting embargoed countries (e.g., Cuba, Iran, North Korea, Syria, and Sudan)
4. Interactions with restricted persons or entities

Exceptions to Licensing Requirements

Fortunately, the majority of international travel will not require an export license. In addition to the exclusions related to the transfer of information (i.e., public domain exclusion; educational information; the results of fundamental research), there are two exceptions specifically relevant to international travel:

TMP (15 C.F.R. §740.9) – This license exception applies when:

1. The item is a **“tool of trade”** of Northeastern, meaning the usual and reasonable kinds and quantities of commodities, software, and technology for use in a lawful enterprise or undertaking of the traveler; and
2. The export is **“temporary,”** meaning the item is returned within 12 months; and
3. You retain **“effective control”** throughout the trip, meaning you either keep physical possession of the item, or secure the item in such an environment as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility.

BAG (15 C.F.R. §740.14) – This license exception applies when the item is either a:

1. **“Personal effect”** of the traveler, meaning the usual and reasonable kinds and quantities for personal use of wearing apparel, articles of personal adornment,

toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects, and their containers; or

2. **“Tool of trade”** of the traveler, meaning the usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers and also technology for use in the trade, occupation, employment, vocation, or hobby of the traveler or members of the household who are traveling.

Sharing Information While Abroad

Presentations – If you are presenting in a foreign country, you should do so only on information or research data that is already published or is otherwise publicly available. Discussing unpublished information that concerns an export controlled item or technical data may result in an unauthorized export.

Foreign Collaborations – It is permissible to share the results of fundamental research or publicly available information with foreign colleagues, unless such recipients of this information are restricted parties or representatives of the government of a sanctioned country (e.g., North Korea).

Device Inspection

U.S. Customs officials have the authority to search and seize any electronic devices (e.g., laptops; cellphones, digital cameras) *without* probable cause. Therefore, it is highly advisable that you:

1. Only carry information and data you want others to see.
2. Ensure you do not carry the only copy of irreplaceable data.
3. Consider taking a laptop equipped with only minimum software and data.

Tips and Guidance from the government:

- Visit <http://travel.state.gov> for travel advisories for specific countries.
- The government publishes cyber security alerts at: www.onguardonline.gov and www.us-cert.gov/cas/tips/
- You can access tips from the FBI for traveling overseas at: <http://www.fbi.gov/about-us/investigate/counterintelligence/business-brochure> and <http://www.fbi.gov/about-us/investigate/counterintelligence/intellectual-property-protection>

E. Shipping

International shipping of any tangible items (including computers, equipment, software and electronics), is considered an export whether the item will be used in research, ultimately brought back to the U.S., sold or loaned, and must comply with export and import control laws and regulations, including foreign trade regulations. The shipment may require an export license in order to be legally shipped out of the U.S. Shipments of technical information such as unpublished research results, diagrams and manuals, may be controlled under export regulations if

the items are not already in the public domain or may not freely be published. In addition, there are restrictions to certain destinations, foreign entities and individuals that may apply. If your shipment is going to an embargoed country or an entity on one of the government's restricted lists, for example, or if the item appears on the U.S. Munitions or Commerce Control Lists, or if the item is encryption software, you will need further review to determine what steps are necessary for compliance with export controls.

- Accordingly, in advance of preparing any international shipment, you should complete the [Export Control License Inquiry](#) on the Compliance Department website. It can take several weeks to obtain a license, if one is necessary, so you should begin your review well in advance of when you need to send the shipment. It is illegal to ship controlled items without a license.

International shipping of research materials such as chemicals and biologicals is also highly regulated, by at least four different agencies, and may require a license or permit depending on the nature of the material, country of origin, country of destination, and final use. At present, the Office of Environmental Health and Safety has a program to assist with [Research Material Shipping](#). Please contact the Environmental Health and Safety Department well in advance of your proposed shipment. You may need to engage a shipping agent and obtain guidance from the recipient or destination country as to their restrictions and requirements. Fines for violations can be steep, and have been imposed by the Department of Commerce and Federal Aviation Administration for shipments without the correct permit or documentation.

F. Procurement

The University must also comply with Export Control laws and regulations in its purchasing. There are several steps to compliance. First, we require that vendors provide technical specification sheets and the Department of Commerce's assigned ECCN or the Department of State's USML classification number to the University's Procurement Services personnel when we purchase controlled items.

Second, when items are purchased that are on an export control list they must be tagged. This includes computers on which controlled software is installed. Both technology and information about technology that is controlled, such as operating manuals, technical specifications, etc., shall be tagged and stored securely.

In addition, Procurement Services staff shall confirm the vendor is not on the Specially Designated Nationals or other government lists by performing Restricted Party Screening.

If you receive a shipped item that includes an export control notice, you should immediately forward a copy of the notice to both Procurement Services and the Compliance Department. If the notice cites 10 C.F.R. § 110 or 810, or includes language indicating that an item is subject to the Arms Export Control Act, ITAR, or Department of Energy export control regulations, you must secure the subject item from access by foreign nationals and notify ORAF and the Compliance Department, so that they can provide guidance on further compliance steps.

G. Visitors and International Students and Faculty

Northeastern University proudly hosts over thousands of international students and scholars from well over one hundred different nations across the world. Through its Office of Global Services, Global Experience Office (GEO) and other offices, Northeastern is committed to enhancing the international character of the University while providing professional expertise and support to aid in compliance with U.S. laws and regulations.

Whenever you are planning to have a foreign visitor participate in your research, laboratory, course, training or other activity, there are three general questions to take into consideration prior to the visit to guide you in evaluating the export compliance risk involved:

- 1) From what country or institution is the foreign national?
- 2) To what research, technology, and information will the foreign national have access?
- 3) To what locations will the foreign national have access while at Northeastern?

Depending on the answers to these questions, RPS screening and/or an export license may be required before the foreign national may join in the export controlled activity.

Export controls might also be implicated even in instances of short term visits (e.g., inviting foreign national visitors to tour your research lab or University facilities, or to participate in training).

Export Control Certification on Visa Applications:

As of February 2011, immigration regulations require a U.S. employer to certify that export control laws and regulations have been reviewed and met as they pertain to a foreign national employee working in H-1B or O-1 status. Specifically, Part 6 of U.S. Citizenship and Immigration Services' Form I-129 requires certification that either a license will or will not be required from the U.S. Government before the employer releases technology or technical data to a prospective foreign national employee. To assist in this application process, the Office of the General Counsel provides an Export Control Questionnaire & Certification Form (see Appendix A).

H. Distance Education

Export control issues might arise in the context of online courses and distance education because non-U.S. persons are likely to be among the registrants. Export controls can be implicated in a few of different ways, such as when: 1) course content incorporates controlled items, information, or software (e.g., if a course on animal behaviors at night includes use of night vision goggles distributed by the University); 2) although the course description does not suggest any export control issues, the faculty member strays outside of the topic into controlled areas (e.g., a course on microbiology that covers details on extracting and purifying viruses); or 3) the course is "delivered" to students in a sanctioned or embargoed country (e.g., Iran, North Korea, Syria, and Sudan – but check the list for current sanctions and embargoed countries).

I. FAQs

1. What do export controls regulate?

The export control regimes collectively cover items, information, and software considered to be important to U.S. national security and foreign policy. “Items” include products, equipment, devices, organisms, components, materials, etc. Additionally, these regulations also control the equipment, materials, information, and software necessary for producing, developing, and using controlled items. Further, restrictions are also placed on certain entities and individuals as recipients of exports.

2. What *don't* export controls regulate?

The most relevant areas outside the purview of export control regulations are classes and research in economics, history, languages, linguistics, literature, mathematics, music, philosophy and political science. Individuals working in these areas, however, may still be using items that are export controlled (e.g., computers with encryption software).

3. What kinds of activities potentially trigger the need for an export license?

- Shipments outside of the U.S. of research equipment
- Research involving export controlled items or information
- Participation by foreign nationals in Northeastern research in the U.S. or abroad (where no exception applies)
- Presenting unpublished research/data (where no exception applies)
- Traveling to a sanctioned or embargoed country
- Using any USML defense article or related technical data

4. Is any prepublication review by a research sponsor permitted under the fundamental research exemption?

It depends. An award requiring “review and approval” makes the fundamental research exemption inapplicable, since this language contemplates the potential denial of approval to publish. A brief prepublication review (e.g., 30 days), is permissible to confirm that any future publication would not inadvertently divulge proprietary information provided to the researcher.

5. How do I know if a foreign national would be subject to the “deemed export” rule?

Any foreign national is subject to the “deemed export” rule, for example, all persons in the U.S. as tourists, students, businesspeople, scholars, researchers, technical experts, airline personnel, salespeople, military personnel, diplomats, etc. The rule does not apply to a foreign national who 1) is granted permanent resident status (i.e., a “green card” holder); or

2) is granted U.S. citizenship; or 3) is granted status as a “protected person” under U.S. law (i.e., refugees, asylees).

6. How is a foreign national citizen of one country who has obtained permanent resident status in another country or dual citizenship treated for export control purposes?

It depends on which regulations apply to the circumstances. Under BIS guidance, the agency looks only at the latest citizenship or legal permanent residence. The DDTC, however, takes into account all of a person’s citizenships and country of birth and imposes the controls that correspond to the most restrictive citizenship.

7. Does a University professor planning to travel to a foreign country to work in a research laboratory need an export license?

Application abroad of personal knowledge or technical experience acquired in the U.S. constitutes an export of that knowledge and experience that is subject to the EAR. Therefore, in certain technical areas the professor may need to obtain an export license, or otherwise qualify for a license exception, prior to working in the lab.

8. Do export controls apply even if there is no external funding sponsoring the activity?

Yes. Export control regulations apply irrespective of the funding source.

VII. Treasury Sanctions and Embargoes

OFAC administers and enforces economic and trade sanctions against specifically targeted countries to carry out national security and foreign policy goals. OFAC also implements sanctions against individuals and entities identified as threats to U.S. national security, such as terrorists, international narcotics traffickers, and weapon proliferators. Depending on the country of destination, the sanction may be practically all-encompassing, prohibiting nearly all transactions relating to that country (e.g., North Korea), or limited, prohibiting particular transactions or requiring export licenses in certain situations (e.g., Zimbabwe). OFAC maintains or has maintained sanctions to some degree against the following countries:

- Belarus
- Burma
- Central African Republic
- Cuba
- Democratic Republic of the Congo
- Iran
- Iraq
- Ivory Coast
- Lebanon
- Liberia

- North Korea
- Russia
- Somalia
- South Sudan
- Sudan
- Syria
- Ukraine
- Venezuela
- Yemen
- Zimbabwe

Additionally, OFAC administers sanctions against geographical regions (e.g., the Balkans), as well as on specific subject matters (e.g., rough diamond trading). These non-country-specific sanctions include or have included:

- The Balkans
- Counter narcotics trafficking
- Cyber-related
- Sergei Magnitsky-related
- Non-proliferation
- Rough diamond trade controls
- Transnational criminal organizations

Because this list is subject to change at any time, you should reference the updated list of OFAC sanctioned countries and programs [online](#) whenever presented with a new export control issue.

VII. Foreign Corrupt Practices Act & Anti-Boycott Laws

Foreign Corrupt Practices Act

The Foreign Corrupt Practices Act (FCPA) prohibits U.S. persons and entities, as well as certain foreign persons and entities, from bribing foreign officials to obtain or retain business. The term “bribe” purposely covers a wide range of corruptly given benefits, as the FCPA bans the giving of “anything of value” to a foreign official. The determination is not the retail value, but whether the recipient subjectively attaches value to the inducement. This includes not only cash payments but also material gifts, trips, entertainment events, and a job or a promise of a job. There is no de minimis amount listed in the FCPA; however, the more extravagant the gift, the more likely it was conferred with improper intent. The FCPA does not cover family members of foreign officials, but there are certain family relations (e.g., spouse; child) that are so close as to give rise to a presumption that a foreign official derives benefits indirectly when money or other items of value are given to a family member directly.

It is important to be aware that prospective faculty, staff, or students may be foreign officials themselves or otherwise closely related to a foreign official. Proper and diligent screening prior to a foreign national's engagement with the University will help you comply with both the FCPA and export control laws.

Anti-Boycott Laws

U.S. anti-boycott laws prevent U.S. persons and entities from participating in other nation's economic boycotts or embargoes. Enacted in the mid-1970s, these anti-boycott laws are found in the amendments to the Export Administration Act (EAA) and the Ribicoff Amendment to the Tax Reform Act (TRA). While these laws apply to all boycotts imposed by foreign countries that are unsanctioned by the U.S., the one of primary concern today is the Arab League boycott of Israel.

Conduct that may be penalized under these anti-boycott laws includes:

- 1) Agreements to refuse or actual refusal to do business with or in Israel or with blacklisted companies.
- 2) Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality.
- 3) Agreements to furnish or actual furnishing of information about business relationships with or in Israel or with blacklisted companies.
- 4) Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person.

Northeastern is committed to anti-boycott compliance and any questions or concerns regarding potentially improper requests by University members or third parties vendors should be directed to the [Compliance Department](#).

Appendix A

Northeastern University

EXPORT CONTROL QUESTIONNAIRE & CERTIFICATION FORM
(FOR H-1B OR O-1 PETITIONS)

APPLICANT INFORMATION

Table with 2 columns: Beneficiary's Name, Country of Citizenship, Country of Birth, Visa Type Requested, Department.

PROJECT INFORMATION and AUTHORIZATION

Effective February 20, 2011 immigration regulations require the US employer to certify that export compliance regulations have been reviewed and met as they pertain to a foreign national employee working in H-1B or O-1 status.

- Military-related technology (defense article or defense service)* under the International Traffic in Arms Regulations (ITAR - US Department of State).
Dual use items** under the Export Administration Regulations (EAR - US Department of Commerce), which refers to all non-military related items and technology.

Key Definitions:

* Defense Article (22 CFR 120.6) - Any item or technical data designated in 22 CFR 121.1 (U.S. Munitions List) specifically designed, developed, configured, adapted, or modified for a military application.
** Dual Use Items (15 CFR 772.1) - Items that have both commercial and military or proliferation applications.

DESCRIBE THE PROJECT/ JOB DUTIES THAT THE BENEFICIARY WILL BE WORKING ON/ PERFORMING FOR THE LIFE OF THE H-1B PETITION:

Blank lines for describing project/job duties.

LIST THE FUNDING SOURCE(S) FOR THIS PROJECT/ POSITION:

Blank lines for listing funding sources.

CERTIFICATION STATEMENT

Please check one of the boxes below, as appropriate, and sign and submit to the Office of the General Counsel. The Department of Justice has served notice to all U.S. academic institutions that it will deal firmly with U.S. Export Control violations that occur in relation to academic travel and interactions with non-U.S. persons. Please exercise care in completing this form.

Will you have access to or provide access to the Beneficiary Employee to (a) encryption software in source, object or software code; (b) technology; or (c) technical data on the U.S. Munitions or Commerce Control Lists?

- No, therefore a license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign national employee; OR
- Yes. Based on a review of the export regulations an export license is required.

We, _____ acknowledge that we are subject to EAR and ITAR, and that at least 48 hours prior to travelling overseas or shipping regulated items we may have to complete additional certifications.

Name (Supervisor, PI for research positions, or Chair for faculty)

Title

Signature

Date

Signature of Beneficiary Employee (Current Employees Only)

Date

Revised January 25, 2013