

Frequently Asked Questions

- **What is the difference between EAR99 and NLR?**

"EAR99" is a classification of an item, software, and/or technology that is not otherwise listed under an export classification number (ECCN), while "NLR" stands for "No License Required". The "EAR99" classification is the least controlled classification with an "NLR" designation for most instances. The "NLR" designation indicates that you are not required to obtain a license to export the item, commodity, or technology as long as it does not involve an embargoed country and the end user and end use is not prohibited.

- **What is a foreign national or a foreign person?**

A foreign person is any person who is not a citizen or a national of the United States, or a U.S. person effectively controlled by a foreign interest (which can be any government, agency, or representative of a foreign government including internal organizations and consulates). For example, this means that a U.S. person may be considered a foreign person if they are representing a foreign entity.

- **Who is a U.S. person?**

A U.S. person is a citizen, a lawful permanent resident (Green Card holder), a refugee, or a protected political asylee of the United States. A U.S. person also includes organizations and entities incorporated in the U.S.

- **What is a restricted party and how do I know if one is involved in my research or collaboration?**

Restricted parties are individuals or entities with whom the university and its faculty, staff, or students may be prohibited by law, or require a license, in order to conduct business with. Such individuals may or may not be foreign persons that could be listed on a U.S. government export denial, debarment, or blocked persons lists.

In order to know if someone is on a restricted party list, a restricted party screening (RPS) must be conducted. The RPS is conducted by designated individuals across campus including the Export Controls Office. If you are unsure if the person you are working with has been screened, please contact the Export Controls Office.

- **What is the "deemed export" rule?**

When a source code or technology is released to a foreign national within the U.S, it is a "deemed export".

- **What is not subject to the "deemed export" rule?**

Fundamental research that is basic and applied research where the resulting information is published or already in the "Public Domain" and is shared broadly, is not subject to the deemed export rule and exempt from license requirements.

- **What constitutes the "use" of a controlled commodity?**

If the use of the equipment meets all 6 of the following requirements, then it is considered "use" of a controlled commodity and may require a license:

- 1) Operation
- 2) Installation (including on-site installation)
- 3) Maintenance (checking)
- 4) Repair
- 5) Overhaul
- 6) Refurbishing

As defined in the EAR, the routine "use" of controlled equipment by foreign persons who are using it in the way specified in the user manual that does not disclose technical information about the equipment beyond what is publicly available does not require a license as it is not considered "use" per the definition.

- **Does the "use" of controlled lab equipment by foreign nationals constitute a "deemed export"**

Only if a foreign national is "using" the equipment in such a way as to access technical information beyond what is publicly available (for example, the source code of software or modifying equipment to gain non-publicly available technical information about its design). If so, then a license may be required. If you are unsure, contact the Export Controls Office.

- **What are contractual restrictions?**

There may be Terms & Conditions or FAR/DFAR clauses that restrict the publication of research results, access to the project, or require specific controls to be in place prior to the commencement of the project.

- **If a license is required, how do I apply for a license?**

Applications are completed online and what you are exporting determines which license you will need, if another authorization does not apply. Contact the Export Controls Office and they will work with you to determine what type of authorization is required (e.g. a license, exception, or exemption). They will submit a license to the appropriate government agency for you.

Please note, a license approval may take a considerable amount of time depending upon which office the license is submitted to so please contact the Export Controls Office as soon as possible.

- **What are the federal policies relating to ITAR restrictions in fundamental research?**

ITAR regulations focus on the export of defense articles and defense services. These regulations apply to items that have a critical military or intelligence advantage, even when not explicitly planned.

The following two federal policies should be used during negotiation to remove problematic clauses to ensure there are no participation or publication restrictions. These policies do not override the EAR or ITAR nor is the use of defense articles and associated technical data in research permitted by the policies.

- **National Security Decision Directive 189**: White House policy regarding the transfer of scientific, technical, and engineering information qualifying as fundamental research at universities and laboratories that stipulates fundamental research remains unrestricted to the maximum extent possible.
 - **Policy Memo Protecting Exemptions for Fundamental Research at Universities** specifies that contracts and grants should be structured to allow research to qualify as "fundamental research" and should not be subject to Export Controls, except on a limited basis. Thus, fundamental research should not involve ITAR/USML defense articles or associated technical data.
- **What should I do if a sponsor begins providing export controlled information or technology to an award previously determined to be fundamental research?**

Notify your Principle Investigator (PI) immediately and the PI will notify the Export Controls Office. This could mean that the research has changed and may fall under ITAR or EAR controls. The PI and the Export Controls Office will work together to determine the required security measures, if required.

- **When is a license from the Commissioner for patents under 35 U.S.C. 184 required?**

A license is required before filing any application for patent including:

- modifications, amendments, or supplements thereto or divisions thereof or;
- for the registration of a utility model, industrial design, or model in a foreign patent office or any foreign patent agency or any international agency other than the United States Receiving Office, if the invention was made in the U.S. and an application for the invention has been on file in the U.S. less than 6 months prior to the date on which the application is to be filed, or no application has been filed in the U.S.

Please contact the Export Controls Office or the office for Entrepreneurial Affairs and Technology Commercialization for further details.

- **What can you do if you believe there has been a violation?**

Contact the Export Controls Office, Office of General Counsel, or call the toll-free anonymous compliance hotline: (800) 889-1547.