

Export Control Policy

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100.00 Introduction

In accordance with the Montana State University Mission Statement, it is the intent of the University that teaching, research, and service will be accomplished openly and without unnecessary prohibitions or restrictions on the ability of University Personnel to collaborate, publish, and otherwise disseminate results of academic and research activities. It is equally the intent of the University that such activities comply with all applicable laws, regulations, and policies. Certain U.S. Federal laws and regulations govern and may restrict the transfer of materials and information to Foreign Persons, and still others govern and may prohibit direct interactions with particular Foreign Persons. These laws and regulations apply whether a transfer to, or an interaction with, a Foreign Person occurs within the U.S. or abroad. Collectively, these laws and regulations comprise Export Controls enacted to further U.S. national security interests and to promote foreign policy objectives.

It is the purpose of this policy to heighten awareness and understanding of Export Controls as they apply to the operations of Montana State University, and to describe compliance responsibilities and institutional resources available for all University Personnel. Failure to comply with Export Controls can result in significant sanctions and penalties for the University, and/or may result in direct criminal and civil liability for University Personnel involved in an Export Controls violation. It is therefore incumbent upon University Personnel to become familiar with this policy and the University's procedures for operationalizing the policy.

200.00 Definitions

The following definitions apply in this policy:

Deemed Export: Under the Export Administration Regulations (EAR), a Deemed Export means releasing or otherwise transferring "technology" or source code (but not object code) to a Foreign Person in the United States ([EAR 15 CFR § 734.13 \(2\)](#)). Under the International Traffic in Arms Regulation (ITAR), a Deemed Export means releasing or otherwise transferring Technical Data to a Foreign Person in the United States ([ITAR 22 CFR § 120.17 \(2\)](#)). Under both the EAR and the ITAR, such an Export is deemed to be an Export to all countries in which the Foreign Person has held or holds citizenship or permanent residency.

EAR99: EAR99 is a designation for items that fall under U.S. Department of Commerce jurisdiction and are subject to the EAR, but are not listed on the Commerce Control List (CCL).

Export: For purposes of this policy and under both the EAR and the ITAR, an Export means:

An actual shipment or transmission of, including sending or taking, a controlled tangible item, Technology, or Technical Data out of the United States in any manner;

A Deemed Export as defined above;

Transfer to a Foreign Person by a U.S. Person the registration, control, or ownership of a controlled spacecraft, satellite, aircraft, vessel, or similar such controlled vehicle.

The ITAR further defines the provision of a defense service ([22 CFR § 120.32](#)) on behalf, or for the benefit, of a Foreign Person as an Export.

Export Administration Regulations (EAR): The EAR ([15 CFR §§ 730–774](#)) are a set of rules and regulations related to U.S. Export Control law that govern the Export, re-export, or transfer of items, technology, and software from the U.S. to a foreign country, foreign entity, or to a Foreign person. The EAR are administered by the Bureau of Industry and Security (BIS) at the Department of Commerce.

Export Controls: Refers collectively to the body of U.S. laws and regulations that govern the transfer of certain materials, devices, and technical information related to such materials and devices to Foreign Persons, as well as prohibitions on certain types of transactions and engagements with individuals and entities designated as a Restricted Party by a Federal agency. These include but are not limited to the International Traffic in Arms Regulations (ITAR - [22 CFR §§ 120-130](#)), the Export Administration Regulations (EAR - [15 CFR §§ 730–774](#)), and the Office of Foreign Assets Control’s Sanctions Regulations (OFAC - [31 CFR §§ 500-599](#)).

Foreign Person: See “US Person” definition below

Fundamental Research: Basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research of which the results are restricted for proprietary reasons or specific U.S. Government access and dissemination controls.

Fundamental Research Exclusion (FRE): The FRE provides that Technology, Technical Data, or software that arises during, or results from, Fundamental Research and is intended to be published is excluded from the Export Control regulations. ([ITAR 22 CFR §120.11\(8\)](#) and [EAR 15 CFR §734.8](#))

International Traffic in Arms Regulations (ITAR): The ITAR ([22 CFR §§120-130](#)) is a set of the U.S. government regulations that control the Export of defense-related articles and services that are listed on the U.S. Munitions List (USML). The ITAR are administered by the Directorate of Defense Trade Controls at the U.S Department of State.

Restricted Party: A Restricted Party is an individual, company, organization, or vessel with which U.S. person/entities (including their subsidiaries and agents in other countries) may not engage without a specific license issued by any applicable Federal agency. Restricted Party includes, but is not limited to, restricted foreign universities as designated on the Department of Commerce Entity List and Specially Designated Nationals as identified by the Department of Treasury Office of Foreign Asset Controls.

Technical Data (ITAR):

Technical Data means the following for purposes of ITAR regulations:

Information, other than software as defined in 22 CFR § 120.10(a)(4), which is 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.

Classified information relating to defense articles and defense services on the U.S. Munitions List and 600-series items controlled by the Commerce Control List;

Information covered by an invention secrecy order; or

Software (see 22 CFR § 120.45(f)) directly related to defense articles.

The definition in paragraph (a) does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain as defined in 22 CFR § 120.11 or telemetry data as defined in note 3 to Category XV(f) of 22 CFR Part 121. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles. ([ITAR 22 CFR §120.10](#))

Technology (EAR): Information necessary for the “development,” “production,” “use,” operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in ECCNs on the CCL that control “technology”) of an item. ([EAR 15 CFR § 772.1](#)).

Technology Control Plan (TCP): A plan that formalizes processes and procedures for University Personnel using controlled products or technology. A TCP is implemented to ensure that controlled products and technology are not shared with or accessed by unauthorized personnel or otherwise Exported without the necessary U.S. government authorization.

University Personnel: Montana State University faculty, staff, visiting scientists, postdoctoral fellows, students, and anybody else who is paid by or otherwise engaged by Montana State University to conduct research, teach, or provide services at or on behalf of Montana State University.

U.S. Person: Pursuant to the EAR and the ITAR, a U.S. Person includes:

Any individual who is granted U.S. Citizenship;

Any individual who is granted U.S. permanent residence (a “Green Card” holder);
Any individual who is granted status as a “protected person” under 8 U.S.C. § 1324b(a)(3);
Any corporation/business/organization/group incorporated in the U.S. under U.S. law; or
Any part of the U.S. government. (ITAR 22 CFR § 120.16 and EAR 15 CFR § 772.1).

By contrast, any natural person or entity which is not one of the defined categories above is designated a “**Foreign Person**” for the purposes of this Export Control Policy.

300.00 Exclusions

As an accredited U.S. institution of higher education that adheres to these principles, the University routinely relies on the following Export Control exclusions: the FRE for research activities performed in the U.S., the Educational Information Exclusion, and the Public Information Exclusion.

310.00 Fundamental Research Exclusion (FRE)

The University relies on the FRE to enable all University Personnel to participate in research activities and openly share and discuss research results. As an institution that conducts Fundamental Research, the following principles apply:

The University as an entity and all University Personnel must ensure, wherever possible, that research results can be openly published and made available to the public.

University Personnel are permitted to use proprietary information from a research partner under an obligation of confidentiality, provided such information is adequately protected, is not shared without applicable authorizations, and to the extent possible, is not central to the conduct of research such as to prevent publication.

The University may accept sponsor requests to reasonably delay publication or other public disclosure of research results in order to allow a sponsor the opportunity to review for proprietary or confidential information, and/or to allow time to file a patent application.

For the purposes of the FRE, a “sponsor” is any individual or entity providing financial or other material support in furtherance of research activity at the University, and to whom the University owes contractual or other obligations in return for said support, e.g. a federal agency awards a grant, a private company provides funding under a sponsored research agreement, etc.

It is very important to note that the FRE applies only to Technology, Technical Data, or software - it does NOT apply to tangible items, and so while information resulting from research activity may be excluded from Export Controls, the physical equipment and materials employed to generate those results may still be under restrictions prohibiting access by Foreign Persons.

320.00 Educational Information Exclusion

As an institute of higher education as defined in [20 U.S.C. § 1001](#), the University takes advantage of the Educational Information Exclusion. This exclusion shields general educational information that is typically taught in schools and universities from Export Controls. The Educational Information Exclusion allows for disclosure of information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities [[ITAR 22 CFR §120.10\(b\)](#)] or disclosure of information released by instructions in catalog courses and associated teaching laboratories of academic institutions [[EAR 15 CFR §734.3\(b\)\(3\)\(iii\)](#)].

330.00 Public Information Exclusion

Information and data that have been lawfully published and are accessible or available to the public are subject to the Public Information Exclusion and therefore not subject to Export Controls. The terms “Published” or in the “Public Domain” are applied as they are defined in the ITAR and the EAR.

400.00 Policy Procedures

The Export Control Officer (ECO), is MSU’s “Empowered Official”, and is responsible for providing oversight and guidance for all U.S. Export Control regulations, including, but not limited to, the ITAR, the EAR, and the Office of Foreign Assets Control’s (OFAC) Sanctions |Regulations|.

University Personnel are permitted to use controlled items and Technology in the conduct of research, provided such items and

Technology are not Exported without appropriate authorizations. The use of ITAR-controlled items (“defense articles”) and Technical Data requires approval from MSU’s ECO, and an approved TCP.

Unless approved in advance of purchase or receipt, the University does not permit the purchase or receipt of items or Technical Data that are listed on the U.S Munitions List (USML) and subject to the ITAR. It is the responsibility of University Personnel to contact the ECO if proposing (*e.g.*, in a grant application) or requesting to purchase or receive items or Technical Data that are controlled under the ITAR to facilitate ECO and Vice President for Research and Economic Development review of the proposed purchase or receipt and gain approval. If the use of ITAR-controlled items or Technical Data is approved, such items or Technical Data will be subject to a TCP. See section 500.

Shipping or hand-carrying any item or Technology, including items and Technology listed on the [Commerce Control List \(CCL\)](#) or classified as EAR99, to a comprehensively embargoed or sanctioned country or to a restricted end-user is prohibited, unless written authorization is received from the ECO. University Personnel must contact the ECO as early as possible when proposing to conduct activities, research, travel or collaborations involving [comprehensively embargoed countries/regions](#).

Financial transactions with individuals or entities from comprehensively embargoed countries or regions are prohibited unless approved in writing by the ECO and, if necessary, authorized by the U.S. government. Financial transactions with Restricted Parties or Specially Designated Nationals require review and approval by the ECO and may be prohibited. Before initiating financial transactions with a Foreign Person, you must ensure that the financial transaction is not with a Restricted Party, a Specially Designated National, or an individual in a comprehensively embargoed country.

The anti-boycott provisions of the EAR prohibit U.S. Persons or businesses from participating in any non-U.S. sanctioned foreign government boycott. University Personnel who receive a request or agreement/contract that supports a restrictive trade practice or boycott imposed by another country, must promptly report the request to the ECO who, in turn, is obligated to report it to the Department of Commerce.

In addition to this policy, all University Personnel must adhere to all applicable ITAR, EAR, and OFAC regulations as well as all terms outlined in the [MSU Export Control Manual](#). If any University Personnel encounter questions or concerns relating to their obligations under this Export Control Policy, they may request assistance from the ECO who will endeavor to provide timely guidance and support.

As appropriate, training covering individual and institutional Export Control compliance shall be required for all relevant University Personnel conducting research which is subject to Export Controls. Given the scope and complexity of the rules, University Personnel are encouraged to contact the ECO for guidance before engaging in any projects with a Foreign Person.

500.00 Activities Requiring Disclosure and Review

510.00 Conducting research involving Export-Controlled items, Technology, or Technical Data

While most research conducted at Montana State University falls under the FRE, the FRE does not apply to Export-Controlled items, nor does it apply to Technology, or Technical Data that the University receives from other parties. Certain Foreign Persons may not be able to participate in research involving Export-Controlled items, Technology, or Technical Data without a license granted by a Federal regulatory agency.

University Personnel must contact the ECO if proposing to conduct research involving Export-Controlled items, Technology, or Technical Data that is:

- Controlled under the ITAR and listed on the USML; or
- Listed on the CCL and controlled under the “600 series” (*i.e.*, carrying Export Control Classification Numbers (ECCNs) in the “xY6zz” format); or
- Listed on the CCL and controlled under the “500 series” (*i.e.*, carrying ECCNs in the “9x515” format).

The ECO will assist in determining license or other requirements and facilitate the acquisition of licenses. University Personnel must comply with any stipulations in an export license and any other related measures implemented by the ECO.

520.00 Developing new technology using Export-Controlled Technology or Technical Data

University Personnel who design, develop, or build new items that use Export-Controlled inputs, including Technology or Technical Data, or refurbish or disassemble items that are Export-Controlled may need export licenses to share such items, Technology, or Technical Data with a Foreign Person outside or within the U.S.

University Personnel who plan to design, develop, or build new technology or military application must contact the ECO, who will determine if export licenses are required.

530.00 Deemed Exports

A license may be required to release certain information, Technology, or Technical Data to a Foreign Person in the United States. Examples of releases to Foreign Persons (known as “Deemed Exports”) include providing access to Export-Controlled items, Technology, or Technical Data by visual inspection or use, providing access via tours of facilities, or verbally exchanging information.

University Personnel who have controlled items, Technology, or Technical Data are responsible for preventing Deemed Exports without an appropriate license. University Personnel must contact the ECO if they want to release Export-Controlled items, Technology, or Technical Data to a Foreign Person in the U.S. The ECO will determine licensing requirements.

University Personnel intending to host visiting scholars or scientists from comprehensively embargoed countries must contact the ECO well in advance of any proposed visit to allow the ECO to assist in evaluating potential Deemed Export risks. University Personnel must comply with any requests of the ECO to assess and mitigate any identified risks.

540.00 Collaborating with or hosting visiting scholars from a university designated as a Restricted Party

University Personnel who are collaborating with or exchanging items and information with any university designated as a Restricted Party, or hosting visiting scholars or scientists who are employed by, representatives of, or affiliated with any university designated as a Restricted Party, must contact the ECO to assist in evaluating potential export and Deemed Export risks and comply with any requests of the ECO to assess and mitigate any identified risks. The ECO will also assist in any initial screening to determine if a potential non-U.S. Person collaborator or visiting scholar has been designated as a Restricted Party.

550.00 Shipping Export-Controlled Technology abroad

Shipping Export-Controlled items to a destination outside the U.S. may require an export license. University Personnel who wish to ship items, including materials and software, abroad must ensure that the items do not require an export license. University Personnel can independently ascertain or verify an item’s Export Control Classification Number (ECCN) with the item’s vendor or manufacturer. University Personnel must contact the ECO if the ECCN is anything other than “EAR99,” or if they have difficulty obtaining the ECCN. University Personnel must verify that the recipient is not a Restricted Party and/or that the destination country is not a restricted destination. The ECO can assist in making this determination.

When shipping biological, chemical, or other hazardous materials or when shipping items that are encapsulated in or shipped in biological, chemical, or hazardous materials, University Personnel must also follow shipping and handling policies and procedures as directed by any applicable University Safety & Risk Management or Office of Research Compliance requirements.

560.00 Travel or research outside the U.S.

Traveling outside the U.S. with certain items or equipment may require an export license depending on both the item and the travel destination. In some instances, license exceptions may be available. Use of such exceptions must be documented by the ECO. The sharing of personal knowledge or technical expertise in other countries (*e.g.*, as a keynote speaker, visiting lecturer, etc.) may also require a license. University Personnel who travel outside the U.S. with items, materials, and encrypted devices, or who share technical expertise in other countries, assume responsibility for ensuring that the items, materials, devices, or expertise do not require an export license. This responsibility is in addition to those responsibilities identified in the University [International Travel Policy](#).

The ECO can assist with determining whether a license for transport of such items, materials, and devices, and/or provision of such services is required.

600.00 Record Retention

The University must retain certain documentation related to Export Controls in accordance with time periods set forth under applicable U.S. laws and regulations. The ECO has primary responsibility for retaining copies of Export-related documentation, including, but not limited to, analyses of license requirements and related correspondence, notes, and memoranda, for a minimum of five years from the date of Export, re-export and transfer. Departments, programs, and University Personnel are also responsible for retaining Export-related records and documentation, such as licenses and shipping documentation, for a minimum of five years from the date of Export, re-export, or transfer. Records may be kept as electronic files or hard copies.

