

# EXPORT CONTROLS

An Overview from the Office for Academic & Research Integrity

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## What are Export Controls?

Export Controls are the multi-faceted laws and regulations governing the export of sensitive items, often used in research — including equipment, technology and information — which can affect HMS researchers in many different and often unanticipated ways.

Export control violations carry heavy penalties, both civil and criminal. It is important that everyone within the HMS research community is able to recognize export control issues when they arise and contacts the Office for Academic & Research Integrity (ARI) for assistance.

## What do Universities Export?

Mostly knowledge. Under the export regulations, the transfer of technology or technical data is considered an export even when it occurs inside the U.S. Because freedom of access and dissemination of information and research results is encouraged at Harvard, for the advancement of scientific discovery, there are many avenues for export. Much of the information in a university environment is considered within the public domain and is therefore not of concern.

Activities that might necessitate an export control license include:

- ⇒ International research collaborations;
- ⇒ International shipments of certain viruses, equipment, software, or technology;
- ⇒ Overseas travel, including presenting at conferences and/or bringing a laptop abroad;
- ⇒ Provision of financial assistance to an embargoed country or person or entity that is considered a blocked or sanctioned party; or
- ⇒ Provision of professional services to a person or entity that is a blocked or sanctioned party or individual from an embargoed country.

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# An Overview of Export Control Regulations

U.S. Department & Regulatory Agency	Regulations	Items Controlled
<b>Department of Treasury</b>  Office of Foreign Assets Controls (OFAC)	Foreign Assets Control Regulations (FACR)	<ul style="list-style-type: none"> <li>• Travel Abroad</li> <li>• Transactions with foreign individuals and entities</li> <li>• Transactions in specific foreign countries</li> <li>• Export and import of items</li> </ul>
<b>Department of Commerce</b>  Bureau of Industry and Security (BIS)	Export Administration Regulations (EAR)  includes the Commerce Control List (CCL)	<ul style="list-style-type: none"> <li>• Dual-use goods, software, and technology predominantly civilian in nature but may include military applications</li> <li>• Anti-boycott provisions</li> </ul>
<b>Department of State</b>  Directorate of Defense Trade Controls (DDTC)	International Traffic in Arms Regulations (ITAR)  includes the U.S. Munitions List	<ul style="list-style-type: none"> <li>• Defense articles and technical data</li> <li>• Goods, software, or information specifically designed, developed, or modified for military or intelligence application</li> <li>• Defense services</li> </ul>

## Deemed Exports

In addition to regulating the export of actual goods abroad, U.S. export control laws govern the export or release of technical data or technology to a foreign national, whether it occurs in the U.S. or abroad. Technology, know how, and non-encryption source code that is released to a foreign national within the U.S. (or abroad) is “deemed” to be an export to the country where the person is a resident or citizen and could be subject to licensing requirements.

### Exclusions to the Deemed Export Rule

HMS takes advantage of a number of exclusions in the regulations and thereby can sometimes avoid the necessity to secure a deemed export license. If one of the exclusions applies, no deemed export license would be required.

The most common exclusions are for “fundamental research” and “educational information.” In general, if a visa applicant will be conducting basic or applied research in science and engineering at HMS and the resulting information is ordinarily published and shared broadly in the scientific community, the research will fall under the fundamental research exclusion. In general, the release of information by instruction in catalog courses and associated teaching laboratories is eligible for the educational information exclusion.

### Why are there both departments and regulatory agencies overseeing export controls?

The departments tend to formulate policy, while the regulatory agencies execute the management and enforcement of the policies.



## Frequently Asked Questions

### Our department doesn't do any exporting. Why do I need to be concerned about export controls?

Any item that is sent from the U.S. to a foreign destination is an export. "Items" include commodities, software, technology, and information. How an item is transported outside of the U.S. does not matter. Some examples include:

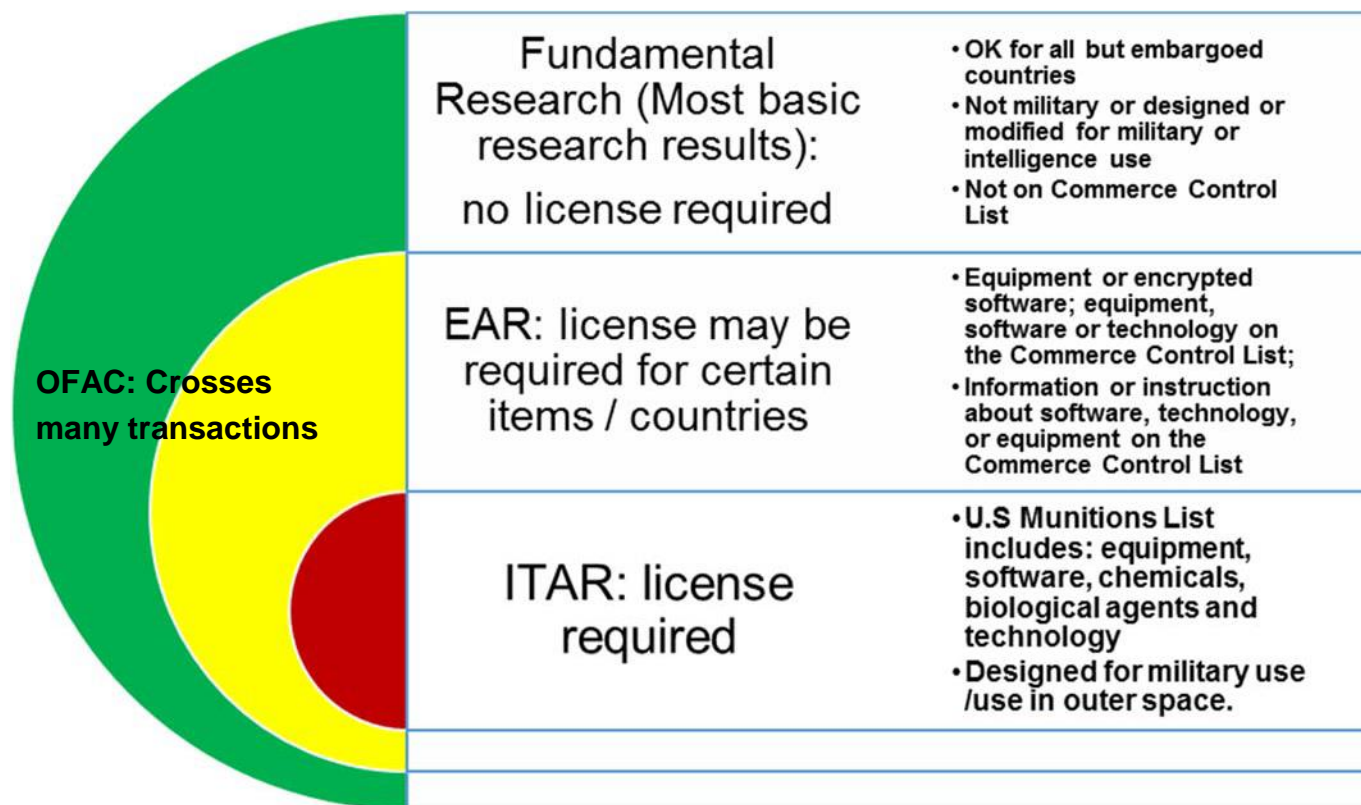
- ◆ Items sent by regular mail;
- ◆ Carried on an airplane, like a laptop;
- ◆ Software uploads or downloads; or
- ◆ Technology transmitted via e-mail or during a telephone conversation.

### How do I determine if an export license is needed?

Work with ARI to make this determination. Determining whether an export is subject to a licensing requirement is a complicated process. Whether something is controlled for export is not intuitive. License requirements are dependent upon an item's technical characteristics, the destination, the end use, and the end user.

### How do I apply for an export license?

If it is determined that your activity requires an export license, ARI will work with you to submit a license request to the appropriate regulatory body on your behalf. Obtaining an export license from the Commerce Department usually takes 30 days; a license from the State Department can take several months; and a license from the Treasury Department can take 3-6 months. Although there is no guarantee that a license will be granted, all three regulatory agencies have granted licenses to Harvard for the conduct of research.



## Traveling with your Laptop

Taking a laptop abroad, or permitting a foreign national access to the laptop either abroad or in the U.S. may have potential export control implications.

### **Before taking your laptop abroad:**

Review the software and data on your laptop to ensure that you are not taking any controlled software or technical information out of the country. This also applies to global positioning systems (GPS). ARI can assist you with this review.

### **Why does bringing my laptop abroad potentially raise export control issues?**

Laptops and GPS devices, and their underlying software, are covered by the EAR and, in some cases, by the ITAR. Export regulations vary based on the destination and the purpose for which he or she intends to use the laptop or GPS.

### **Does this mean I can't take my laptop abroad?**

A licensing exception may apply to the export of a laptop or GPS, which may enable you to take a laptop abroad without violating the EAR or ITAR. Excluding embargoed countries, faculty who wish to take their laptops out of the country to use in a research project that qualifies as fundamental research may be able to do so under the one of two license exceptions. **You must contact ARI before using either of these license exceptions, as they are subject to record-keeping requirements.** The Baggage (BAG) license exception covers personal items owned by the researcher and intended only for their personal use.

**The Temporary Export (TMP) License Exception** may be applied in situations when those items (and related technology and software) are: (i) being used for professional purposes (i.e.—tool of the trade); (ii) returned within 12 months; (iii) kept under effective control of the exporter while abroad (i.e., kept in a hotel safe or other secured space or facility); and (iv) other security precautions are tak-

## University Resources

Office of the Vice Provost: <http://vpr.harvard.edu/pages/export-controls-policies-and-procedures>

Harvard Medical School: <http://ari.hms.harvard.edu>

T.H. Chan School of Public Health: <http://www.hsph.harvard.edu/export-controls/>

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