

## Export Control Guidelines

### Background Information

The University of Notre Dame expects that all personnel, including faculty, staff, visiting scientists, postdoctoral fellows, students, and all other persons retained by or working at the University, comply with all U.S. laws and regulations while teaching, conducting research, or engaging in service activities at or on behalf of the University. As such, all personnel are required to comply with certain U.S. laws and regulations that regulate the transfer of items, information, technology, software, and funds to destinations and persons outside of the U.S., as well as to non-U.S. citizens at the University. These current laws and regulations are collectively referred to as the “Export Control Laws.” Many of the research, teaching, or service activities conducted by University faculty and staff are shielded from the Export Control Laws by a long-standing “fundamental research” exemption, which is discussed below. However, it is still important for University personnel to understand these Laws and the University’s procedures for ensuring compliance with them.

The Departments of State, Commerce, and Treasury are the principal administrative branches of the U.S. Government involved in the oversight and enforcement of Export Controls as follows:

- The Department of State, through the Directorate of Defense Trade Controls (DDTC), administers the International Traffic in Arms Regulation (ITAR). ITAR controls the export of items that have primarily military or space applications.
- The Department of Commerce, through the Bureau of Industry and Security (BIS), administers the Export Administration Regulations (EAR). EAR controls the export of “dual-use” items (i.e., those items having both commercial and military applications) as well as strictly commercial items.
- The Department of the Treasury, through the Office of Foreign Assets Control (OFAC), is responsible for enforcing specific embargoes and/or sanctions.

Failure to comply with the Export Control Laws may have serious impact on the University, including the possibility of substantial civil and criminal penalties to the University or the specific individual(s) involved, as well as administrative sanctions resulting in potential loss of federal funding and export privileges.

Faculty, staff, and students working in all disciplines should be familiar with these guidelines and the procedures described below – including, but not limited to, engineering, physical and computer sciences (especially faculty, staff, and students involved in defense-related research), the biological sciences (including faculty, staff, and students working with select agents and infectious materials), or faculty conducting research or academic collaborations with colleagues in countries that have been designated by the U.S. Department of State as supporting terrorism.

### **Relevant Definitions**

Deemed Export: Release or transmission of information or technology subject to export control to any foreign national in the U.S., including but not limited to graduate students and training fellows. Such a release of information is considered to be an export to the person’s home country.

Educational Information: Information that is normally released by instruction in catalog courses and associated teaching laboratories of academic institutions is considered “Educational Information” and is not subject to Export Controls.

Export: Any item (i.e., commodity, software, technology, equipment, or information) sent from the U.S. to a foreign destination is considered an export. Examples of exports include the actual shipment of goods as well as the transfer of written documents or information via email, phone, fax, Internet, and verbal conversations.

Export Control Officer: Responsible for directing and monitoring the University’s export control compliance program and implementing procedures and/or guidelines to comply with federal export control laws and regulations. This individual is located within Notre Dame Research Administration (NDRA), and can be reached at 574-631-7432 or [rca@nd.edu](mailto:rca@nd.edu).

Export License: A written authorization provided by the appropriate governing regulatory authority detailing the specific terms and conditions under which export or re-export of Export Controlled items is allowed.

Export License Exception: An Export License Exception is an authorization that allows the export under very specific conditions, of items that would normally require a license. Export License Exceptions are detailed in EAR § 740 (<http://www.access.gpo.gov/bis/ear/pdf/740.pdf>).

Foreign National: A Foreign National is defined as anyone who is not a U.S. citizen, or who is not a lawful permanent resident of the U.S., or who does not have refugee or asylum status in the U.S. Any foreign corporation, business association, partnership, trust, society, or any other foreign entity or group as well as international organizations and foreign governments are considered “Foreign National(s).”

Fundamental Research: As defined by National Security Decision Directive 189 (NSDD 189), Fundamental Research is any “basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community.” Information that results from Fundamental Research is not subject to Export Control.

### **Scope of the Guidelines & Procedures**

The purpose of these guidelines is to outline the key features of Export Control Laws, examine the relationship of these regulations to activities conducted at the University, and explain how the University will assist University personnel to ensure compliance with Export Control Laws. These guidelines and procedures apply to all University personnel (including faculty, staff, visiting scientists, postdoctoral fellows, students, and all other persons retained by or working on behalf of the University) whose activities include (but are not limited to) the following:

- Activities or research in controlled areas (e.g., encryption technology, nuclear technology, chemical/biological technology that could have military use, etc.);
- Activities involving the shipping or taking of equipment, technology, or software overseas;
- Activities involving teaching and research collaborations with foreign colleagues or governments or the participation or training of foreign nationals in the U.S. or abroad;
- Activities involving travel or work outside the U.S.;
- Conducting tours of foreign nationals through research areas;
- Conducting research sponsored by any entity restricting publication or participation by foreign nationals; and
- Activities involving the receipt and/or use of export controlled information or technologies from other parties.

## **I. Research Involving the Export of Items Outside the United States**

It is the responsibility of the Export Control Officer to determine the licensing requirements for shipping any item, software, technology, or information from the University to destinations outside the U.S. To make this determination, University personnel are expected to cooperate with the Export Control Officer in gathering relevant information, including but not limited to:

- What is the item? This includes a detailed description of the item, software, or technology, technical specifications, the origin of the item, and any contractual non-disclosure or use restrictions that may exist.
- Where is the item going?
- To whom is the item going?
- What is the intended end-use?
- Is the item published, patented, or in some other manner in the public domain?

The final determination of whether an item requires a License, is exempt from licensing (for instance, through the fundamental research exemption), or can be exported as No License Required will be made by the Export Control Officer, with support of the Office of General Counsel as required. If a License is required, the Export Control Officer will coordinate the License application process. Obtaining a License can take three to six months (or more) and there is no guarantee that a License will be issued. No export (or deemed export) requiring a License can take place until such License is obtained.

### **A. Deemed Exports**

The release or transmission of information or technology subject to Export Control to any foreign national in the U.S., including graduate students and postdoctoral scholars, may be a “Deemed Export” and could be considered an export to that person’s home country. In some instances, a License may be required before the information can be released. Examples of “releases” to foreign nationals include providing access to controlled software, technology, or equipment by visual inspection or use, providing access via tours of facilities, providing access to technical specifications, and verbal exchanges of information. It is the responsibility of the Export Control Officer to determine the licensing requirements involving deemed exports. To make this determination, University personnel are expected to provide necessary information to the Export Control Officer, such as:

- The information to be released, which includes a detailed description of the information, item, software, or technology; technical specifications, origin of the item, and/or any contractual non-disclosure or use restrictions that may exist.
- A list of the home country and citizenship of all persons that will be given access to the information, item, software, or technology.
- Did the information or item, software, or technology result from Fundamental Research?
- Is the item published, patented, or in some other manner in the public domain?

The final determination of whether release of the information or item(s) requires a License will be made by the Export Control Officer, with support of the Office of General Counsel as required. If a License is required, the Export Control Officer will coordinate the License application process. Obtaining a License can take three to six months (or more) and there is no guarantee that a License will be issued. No release of information or items requiring a License to foreign nationals can take place until the required License is obtained.

## **II. Travel Outside the United States and International Financial Transactions**

When leaving the U.S., it is important to note that traveling with certain items (e.g., personal laptop computers running encryption software, wireless network hardware/software, some GPS systems) may require a License or License Exception depending on the travel destination. In general, problematic destinations are those countries currently under U.S. embargo, sanction, or other trade restriction. Specific examples include Iran, Sudan, Syria, and North Korea. U.S. sanction programs may change over time so you should check the Treasury Department's list of Sanctioned Countries (<http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>) for the most current information.

For additional information regarding international travel with laptops, phones, and other mobile devices, please see the University's IT Security Recommendations for International Travel: <http://oithelp.nd.edu/information-security/stay-secure/traveling-securely/>.

In addition to potential travel restrictions, it is also important to note that certain financial transactions with restricted individuals or entities from sanctioned or embargoed countries may be prohibited (e.g., fellowship payments made to a researcher in another country). Before agreeing to provide funding to any foreign national, University personnel should check with the Export Control Officer for assistance in identifying potential restrictions on the transaction.

### **III. Activities Involving the Receipt and/or Use of Export Controlled Information/Technology**

While the vast majority of work done at the University falls under the Fundamental Research exemption and is shielded from Export Control Laws, this exemption does not apply to Export Controlled information, technology, software, or items that the University receives from other parties nor does it apply to research conducted using such Export Controlled information or items. Export Controlled information received from other parties may not be openly shared with certain foreign nationals without a License. If a University activity involves the receipt or use of externally obtained Export Controlled information, items, technology, or software, the primary recipient (e.g., the Principal Investigator), in conjunction with the Export Control Officer, must determine by current citizenship status those University personnel that can legally access the information or item before the information or item is shared.

### **IV. Responsibilities of University Personnel**

All University personnel receiving Export Controlled information or items will be asked to sign an acknowledgment of their receipt of Export Controlled information or items and their understanding of their responsibilities and obligations regarding the safe handling and use of the information or items. In some cases, the primary recipient may be required to develop a Technology Control Plan, in collaboration with the Export Control Officer, outlining the specific procedures and safeguards that will be implemented by the researcher to ensure compliance with Export Control Laws. Before accepting any Export Controlled information, item, technology, or software, University personnel should contact the Export Control Officer for help in determining potential compliance requirements.