

CWRU Compliance Office

Export Control Manual

Who needs to be aware of the contents of this Manual?

CWRU faculty, administrators, employees, and students are responsible for being aware of, and complying with, these university export control instructions and procedures.

Introduction

This Manual promotes awareness and understanding of the United States export control laws among the CWRU learning and research community. It sets forth a description of the primary points of the laws and regulations and provides instructions and guidance on how to approach situations impacted by export controls, such as international research and/or educational collaborations, international travel, and engaging foreign faculty and students.

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Policy Statement

Case Western Reserve University is dedicated to education and the open dissemination of knowledge. The CWRU Export Management Program is based upon maintaining an open, fundamental educational and research environment while ensuring institutional compliance with U.S. export control laws.

Federal export control laws restrict transmissions of certain information, technologies, materials, and equipment to non-U.S. persons, either abroad or in the U.S. CWRU faculty, administrators, employees, and students are responsible for being aware of, and complying with, these export control laws and CWRU's written export control instructions and procedures.

The CWRU Export Management Program shall provide centralized resources and oversight for all export control-related activities.

Applicable Laws and Regulations

"Export controls" describes the federal licensing requirements and restrictions that apply to certain items in U.S. trade, including specific items, technology, and information. The regulations exist to strengthen national security, advance foreign policy goals, and protect our national economic assets, including intellectual property.

Because CWRU engages in activities that are affected by the export control rules, such as faculty and student research projects, international faculty and student exchange programs, and shipping items abroad, it is necessary to have internal procedures to identify those specific exchanges that would require CWRU to obtain an [export license](#) or other official authorization.

Three primary federal agencies that create and enforce federal export control regulations:

- The Export Administration Regulations ("EAR") govern the export of items or technologies that are commercial or "dual-use" in nature and are administered by the U.S. Department of Commerce, Bureau of Industry and Security ("BIS").
- The International Traffic in Arms Regulations ("ITAR") govern the export of the most highly restricted defense articles and related technical data (*i.e.*, items or technology that are "inherently military"), plus most space-related items. These regulations are created and administered by the U.S. Department of State, Directorate of Defense Trade Controls ("DDTC").
- The Office of Foreign Assets Control within the Department of Treasury ("OFAC") prohibits all exports to certain prohibited persons or destinations. This office administers and enforces economic and trade sanctions based on foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.

Definitions Several terms are important when understanding export compliance in a university setting.

Deemed Export

A deemed export is the release of export-controlled technology or source code to a non-U.S. person in the U.S. Such release is “deemed” to be an export to the home country of the person. Situations that can involve release of U.S. technology or software include foreign students or professors conducting research on our campus during which they have access to export-controlled technology, laboratory tours given to non-U.S. persons, in which export-controlled technology can be visually inspected, hosting of foreign scientists, and email or oral exchanges involving export-controlled information.

Export

Any item (such as equipment, software, or information) that is sent from the U.S. to a foreign destination is considered an export. Exports can include physical shipment of goods, but also can include the transfer of written documents, information, or data through email, Internet communications, and telephone conversations.

Export License

A written authorization from a federal government agency providing the specific conditions under which an export of controlled items may be made.

“Fundamental Research Exclusion” (FRE)

If a project is “fundamental research” according to the export regulations, then generally the resulting information can be shared without an export license. To be considered “fundamental research,” the project must be (1) basic or applied research (2) in science or engineering, (3) conducted at an accredited U.S. institution, and (4) the results of which ordinarily are published and shared broadly within the scientific community. Most research conducted by faculty and students at a university is considered fundamental research. Research is not considered “fundamental” if the university or its researchers accept publication restrictions on the research results. The FRE applies to information only, i.e., if a tangible device or item is developed from the research, the FRE does not eliminate the need for an export license if the item will be shipped abroad.

Technology Control Plan (TCP)

A Technology Control Plan (TCP) is a formal document that describes the procedures and protections to secure export-controlled technology, such as specific technical information, data, materials, software, or hardware, from use and observation by non-U.S. persons so that a deemed export may be avoided. Technology Control Plans may be developed through the collaborative efforts of the University Compliance Office and the researcher. A TCP is primarily an internal document consisting of standard operating procedures to ensure a project’s compliance with federal export control regulations.

U.S. Person

A “U.S. person” is any U.S. citizen, permanent U.S. resident (Green Card holder), or protected individuals. A non-U.S. person or nondomestic person is not a U.S. person. Regarding organizations, firms that have been incorporated or organized to do business in one of the U.S. states are U.S. persons; their foreign branches also are U.S. persons.

Roles and Responsibilities

<i>University Chief Compliance Officer and Privacy Officer</i>	CWRU has designated the University Chief Compliance Officer and Privacy Officer as the “Empowered Official” (EO) for all export control issues. Housed within the University Compliance Office/ Office of General Counsel (OGC), the EO is responsible for implementing CWRU’s export control policies and procedures.
<i>Associate University Compliance and Privacy Officer</i>	The Associate University Compliance and Privacy Officer (AUCPO) is responsible for assisting the EO in maintaining the organization’s system-wide export control compliance plans. This individual maintains oversight of all ongoing activities related to the development, implementation, maintenance of, and adherence to, policies and procedures covering export control laws, and access to export-controlled technology and information.
<i>Office of General Counsel</i>	The Office of General Counsel (OGC) acts as a legal consultant to the EO.
<i>Office of Research and Technology Administration</i>	The Office of Research and Technology Management Administration (ORTM) performs restricted party screening on non-U.S. parties with which the university intends to enter into research-related University agreements, including but not limited to Non-Disclosure Agreements (NDAs), Material Transfer Agreements (MTAs), and license agreements. It reviews and negotiates the agreement language to reflect CWRU’s export control policies, using the AUCPO or the Office of General Counsel when necessary.
<i>School of Medicine Office of Grants and Contracts (SOM OG&C)</i>	The School of Medicine Office of Grants and Contracts (SOM OG&C) performs restricted party screening on non-US parties with which the university intends to enter into a medical school-based sponsored research agreement or sponsored service agreement. The SOM OG&C reviews and negotiates the contract language in research agreements to reflect CWRU’s export compliance policies, using the AUECO as a resource when necessary.
<i>Technology Transfer Office</i>	The Technology Transfer Office (TTO) performs restricted party screening on parties with which the university intends to enter into a Nondisclosure Agreement or Material Transfer Agreement. The TTO reviews and negotiates the agreement language to reflect CWRU’s export compliance policies, using the AUCPO as a resource when necessary.
VISA Office	The VISA Office performs restricted party screening on non-U.S. persons in the U.S. on a visa and whom the university intends to hire.

<i>Procurement & Distribution Services</i>	Procurement Services performs restricted party screening on all new vendors of the university. The Procurement Office reviews and negotiates the contract language to reflect CWRU's export compliance policies, using the AUECO as a resource when necessary.
<i>Travel</i>	The Travel office obtains international travel reports from CWRU travel agencies and provides them to the University Chief Compliance Officer. It helps enforce the University international travel policies.
<i>University Technology, [U] Tech</i>	The [U] Tech assists in technology-related aspects of export compliance when the University may need to implement a technology plan. A Technology Control Plan (TCP) is set up to ensure compliance with export control laws by outlining specific steps and safeguards to control access to, and dissemination of, export-controlled items, information/ technology, software, etc. A TCP also documents each project personnel's obligations and the University's commitment to export compliance.
<i>Office of the Treasurer</i>	The Office of the Treasurer performs restricted party screening on overseas payees of wire transfers made by the university.
<i>Office of International Affairs</i>	The Office of International Affairs maintains a pre-travel registration system (e.g., International Travel Reporting Form) for faculty, staff, and students, and it alerts the University Chief Compliance Officer if university individuals register and whether they plan to travel to a destination that is highly restricted under the export regulations.

Procedures

I. International shipments and transporting items abroad

Federal export control regulations can apply when export-controlled items are sent or taken abroad. Before shipping or transporting a device, materials, or other items abroad, a CWRU employee trained in export compliance must determine whether an [export license](#), or any other form of federal authorization, is needed.

For example, if an employee plans to carry in her luggage—or in her purse, her pockets, in her arms—a piece of scientific equipment, chemical samples, or any other object that may be subject to the export regulations, she should first contact the CWRU Environmental Health and Safety Office for an export classification and licensing determination.

For researchers wishing to export an item in which CWRU has intellectual property interests, the researcher should first contact the CWRU Technology Transfer Office to get a Material Transfer Agreement ("MTA") between CWRU and the overseas individual or organization that will receive the items or materials.

II. International travel

Export control laws can affect trips overseas. Before each such trip, the traveling CWRU individual should consider the following:

What are you taking with you?

If you plan to take anything beyond your personal travel necessities (i.e., clothing, toiletries), let the Compliance Office or the Environmental Health and Safety Office know, so that it can determine whether there are export restrictions on those items. For example, research equipment and supplies should be evaluated for export restrictions.

Regarding traveling with computer devices, the recommended best practice for foreign travel is to “Travel Clean.” Only take the data with you that you need for the trip and ensure that the device does not include any export-restricted hardware, software, data, or information.

Where are you going?

OFAC sanctions may block assets or trade with certain countries. Because sanctions change frequently, you should check the [OFAC website](#) (Office of Foreign Assets Control) for links to detailed information on individual countries.

Who will you be working with while you are there?

Call the University Compliance Office for help in running a Restricted Party Screening on individuals and groups you may be working with while you are in the destination country. Email exportcontrol@case.edu.

Before each trip abroad, best practice provides that the traveling CWRU employee should notify the CWRU Office of International Affairs by emailing the location and dates of travel to global@case.edu.

Before travel, read **Best Practices for Academics Traveling Overseas**

(<https://travel.state.gov/content/travel/en/international-travel/before-you-go/travelers-with-special-considerations/students.html>) and consult **FBI Safety and Security Guidance for Traveling Abroad** (<https://www.fbi.gov/file-repository/counterintelligence/business-travel-brochure.pdf/view>).

III. Business relationships with restricted parties

The export control laws prohibit entering contracts with, conducting business with, making payments to, or otherwise participating directly or indirectly in any financial activities with any person or group included on any U.S. government-issued restricted, blocked, or denied party list.

These lists include, but are not limited to, the following:

- Department of Commerce’s *Denied Persons list*:
<https://www.bis.doc.gov/index.php/recent-changes-to-the-denied-persons-list>.
- Department of Commerce’s *Entity list*:
<https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list>
- Department of State’s *Arms Export Control Act Debarred Parties list*:

https://www.pmddtc.state.gov/ddtc_public/ddtc_public?id=ddtc_kb_article_page&sys_id=c22d1833dbb8d300d0a370131f9619f0.

- Department of Treasury’s *Specially Designated Nationals and Blocked Persons list*:
<https://ofac.treasury.gov/faqs/topic/1631>.

To support compliance by preventing prohibited payments to persons and entities included on any restricted list, CWRU performs appropriate and timely restricted party screenings.

These may include screenings of individuals, organizations, universities, companies, and all other for-profit and non-profit groups with which the university wishes to interact during its research, education, and service operations.

In consideration of its institutional policies and goals, CWRU conducts restricted party screening to the extent necessary to meaningfully address risk areas and takes appropriate actions to prevent prohibited transactions based on screening results. Such screenings can also be conducted, as appropriate, upon request by contacting the Compliance Office.

IV. Managing [deemed export](#) risks

Conveying export-controlled information or technology to non-[U.S. persons](#) (including visiting faculty and students) may be a “[deemed export](#),” meaning it could be considered an export to the person’s home country. In some cases, a federal [export license](#) may be required before the information can be shared with the individual in any way, such as giving the person access to the project’s computer files, allowing them to visually inspect the lab where the project is taking place, or even including them in discussions involving the project.

Most research projects at CWRU meet the federal definition of [Fundamental Research](#) and, consequently, may not be subject to all export control provisions. For the definition of [Fundamental Research](#), refer to the “Definitions” section of this Manual. If a project is considered Fundamental Research, then the researchers typically may share their research results with anyone, whether they are [U.S. persons](#) or not.

However, if a project is not [Fundamental Research](#) (for example, if the funding research sponsor specifies in the research contract that non-[U.S. persons](#) may not participate in the research), then the principal investigator must work with the University Compliance Office to put a [Technology Control Plan](#) in place for the project to avoid having a [deemed export](#) of the export-controlled technology.

The University Compliance Office, in collaboration with the principal investigator, determines whether release of the information or item requires an [export license](#). If a license is required, the University Compliance Office will coordinate the application process.

V. Training faculty and staff

Any operational unit of CWRU may receive live, in-person export compliance awareness training and refresher training for their employees by contacting the University Compliance Office. Also, they may receive tailored recommendations for additional educational sources for the unit’s particular area of concern (e.g., conducting research abroad). The University Compliance Office also may recommend or require specific training for

specific situations, such as those that require a [Technology Control Plan](#). The University Compliance Office provides export control information on its website, <http://www.case.edu/compliance/exportcontrol/>.

Federal Resources

- Bureau of Industry and Security
<https://www.bis.gov/>
- Bureau of Industry and Security Online Training Room <https://www.bis.doc.gov/index.php/compliance-a-training>
- Export Administration Regulations (EAR)
<https://www.bis.gov/regulations/ear>
- International Traffic in Arms Regulations (ITAR)
https://www.pmddtc.state.gov/ddtc_public/ddtc_public?id=ddtc_public_portal_itar_landing
- Office of Foreign Assets Control (OFAC)
<https://ofac.treasury.gov/>

Frequently Asked Questions

I have never heard of export control laws. Are they new?

No, they are not new laws. They have existed since the 1940s. However, after the terrorist attacks of September 11, 2001, and the adoption of the U.S. Patriot Act, the laws were considerably strengthened and have received more attention and enforcement.

Why do export control laws exist?

Export control regulations, which prohibit the unlicensed export of specific technologies, exist to strengthen national security, advance foreign policy goals, and protect the United States' economic assets (trade protection).

What types of items and technologies require a license to export?

A surprisingly wide range of items and technologies require an [export license](#), including certain computers, electronics, sensors, lasers, chemicals, and toxins. Also, restricted exports may include space-related items and technologies, military-related items, and defense services.

Depending on the country of destination, certain items that may be commercial or medical in origin, but which may have value to a foreign country, may also be restricted. Because of the complexity of the export regulations, the detail of each proposed export is necessary to make a licensing determination. You should contact the University Compliance Office with questions.

I will be traveling abroad with a group of CWRU students. Do I have to be aware of export controls? Yes.

Because the export control regulations may impact international travel and international exchanges, our university faculty, staff, and students are responsible for being aware of how export control laws may affect their travel. Please contact the CWRU Center for International Affairs to see whether your destination country is affected.

Does the destination country matter at all? Yes.

It does matter if the Item or Information is being exported to an embargoed country or sanctioned end-user on one of the Bureau of Industry and Security Lists of Parties of Concern:

<https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>.

As a researcher, do I need to be aware of the export control laws? Yes.

Export control regulations prohibit the unlicensed export of certain technologies, materials, and data. If a research project involves such items, CWRU may be required to obtain prior approval from the departments of State, Commerce, or Treasury.

Does this mean that I cannot discuss my research results with my CWRU colleagues who are not U.S. persons?

Not necessarily. If information results from [Fundamental Research](#) (see [Definitions section](#)), then the export laws do not require a [export license](#) for you to share it with a non-U.S. person. Most research projects at CWRU meet the federal definition of [Fundamental Research](#). This means it is research in science and engineering conducted at an accredited institution of higher learning in the United States, and the resulting information is ordinarily shared broadly in the scientific community. [Fundamental Research](#) is different from the research resulting in information that is restricted for proprietary or national security reasons, or it is based on governmental access and dissemination controls.

I am a faculty member who will travel overseas for a conference.

While abroad, I plan to visit the lab of my CWRU colleague, where a CWRU research project is taking place. She asked me to bring with me a small piece of equipment she needs for her research. How should I proceed?

Contact the University Compliance Office as early as possible before the trip. The staff will ask for details of your proposed transaction to make a licensing decision. They also will perform a restricted party screening on non-CWRU individuals and groups you will interact with while in the foreign country.

I want to ship virus samples to my former student overseas, because she is continuing her research at her current university. Is this all right?

Possibly, but before going ahead you should confirm that this is the case. You should contact the CWRU Office of Environmental Health and Safety before making your first shipment. CWRU must ask you for the proposed transaction details to make a licensing determination. They also will perform a restricted party screening on the recipient institution or individual. Also, if you have intellectual property interests in the samples, you should contact the CWRU Technology Transfer Office to discuss whether you need to get a Material Transfer Agreement ("MTA") in place between CWRU and your former student's institution which will receive the samples.

Do the parties traveling (individuals or institutions) appear on a "Restricted" or "Denied" parties list?

To find that out, CWRU uses a screening tool called "Visual Compliance" to ensure the parties are not on the US restricted parties list.

What kind of training is available to me and my department colleagues?

The CWRU Compliance Office can give a live educational session to your group on what the export control regulations are, how they affect CWRU's activities, and what we can do to maintain compliance. The sessions can be tailored to address the specific risk areas of the group and are meant to encourage free-flow discussion, so that the listeners can have their specific points of concern addressed.

How can I request training?

Go to the CWRU Compliance Office's website for email addresses and phone numbers to contact the University Chief Compliance and Privacy Officer or the Associate University Compliance and Privacy Officer: <http://www.case.edu/compliance/contact-us/>.

History of Manual:

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How Can You Determine Whether Your Proposed Activities

May be Subject to the Export Control Regulations?

If you answer “YES” to ANY of the questions below, there **could** be an issue that needs to be resolved **before** you begin your activity. If you have questions about any activities that you think could require resolution, please contact the CWRU Compliance Office at exportcontrol@case.edu.

Does your planned activity/project or contract/agreement:		YES	NO
1.	Allow the sponsor the right to approve publications resulting from the research or review them for over 90 days .	<input type="checkbox"/>	<input type="checkbox"/>
2.	Limit/prohibit participation (faculty/staff/student) based on country of origin or citizenship?	<input type="checkbox"/>	<input type="checkbox"/>
3.	Involve shared technical information that is NOT in the public domain. (e.g., industry-sponsored data)?	<input type="checkbox"/>	<input type="checkbox"/>
4.	Involve sharing technical data or research information with a non-US person outside of a university catalog course or associated lab? (Check websites below for regulated technology, information, and commodities) State Department: http://www.fas.org/spp/starwars/offdocs/itar/p121.htm Commerce Department, Export Administration Regulations (EAR): https://www.bis.gov/ear	<input type="checkbox"/>	<input type="checkbox"/>
5.	Involve research or teaching activities to be conducted outside the United States?	<input type="checkbox"/>	<input type="checkbox"/>
6.	Involve traveling to a sanctioned country? (Check website below for sanctioned/embargoed countries) Office of Foreign Assets Control: https://ofac.treasury.gov/	<input type="checkbox"/>	<input type="checkbox"/>
7.	Involve you to provide training to individuals or entities in a sanctioned country or to non-US persons/ entities from a sanctioned country? (Check website below for sanctioned/embargoed countries) Office of Foreign Assets Control: https://ofac.treasury.gov/	<input type="checkbox"/>	<input type="checkbox"/>
8.	Involve shipping equipment, materials, or data to a foreign country, non-US person or entity? (Check the website below for programs involving sanctions/embargoes) Office of Foreign Assets Control: https://ofac.treasury.gov/	<input type="checkbox"/>	<input type="checkbox"/>
9.	Involve payments or sending anything of value to sanctioned countries or non-US persons / entities from any sanctioned country? (e.g., training, humanitarian aid, fees). (Check the listed website for sanctioned/embargoed countries) Office of Foreign Assets Control: https://ofac.treasury.gov/	<input type="checkbox"/>	<input type="checkbox"/>
10.	Involve in any agreements or collaborations with embargoed countries or nationals from those countries (including peer review of journal articles)? (Check the website below for sanctioned/embargoed countries) Office of Foreign Assets Control: https://ofac.treasury.gov/	<input type="checkbox"/>	<input type="checkbox"/>
11.	Involves the sharing, shipping, transmitting, or transferring of encryption software* in source code or object code OR involves the use of licensed software by a non-US person? ITAR, United States Munitions List (USML): https://www.federalregister.gov/documents/2020/01/23/2020-00574/international-traffic-in-arms-regulations-us-munitions-list-categories-i-ii-and-iii ; EAR Commerce Control List: https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl	<input type="checkbox"/>	<input type="checkbox"/>

12.	<p>Involves the external sponsor, vendor, collaborator or other third party, under a Non-disclosure or Confidentiality agreement, providing an item, information, or software from the list below to be shared, shipped, transmitted, or transferred?http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf; http://www.fas.org/spp/starwars/ofdocs/itar/p121.htm</p> <p style="text-align: center;"><u>Check all that apply:</u></p> <ul style="list-style-type: none"> <input type="checkbox"/> Nuclear materials, facilities <input type="checkbox"/> Material, Chemical, Micro-Organisms, or Toxins <input type="checkbox"/> Materials Processing <input type="checkbox"/> Telecommunications and Information Security <input type="checkbox"/> Marine <input type="checkbox"/> Propulsions Systems, Space Vehicles, or related items <input type="checkbox"/> Equipment, Assemblies, and Components <input type="checkbox"/> Test, Inspection, or Production Equipment <input type="checkbox"/> Lasers and Sensors <input type="checkbox"/> Navigation and Avionics <input type="checkbox"/> Software <input type="checkbox"/> Technology 	<input type="checkbox"/>	<input type="checkbox"/>
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