



Export Controls
In a Nutshell
Series
(March 2023)



The *Export Controls In a Nutshell Series* is designed to provide a comprehensive overview of key Export Control information in the form of iterative *Research Matters* articles

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Conducting UAB Research Abroad

Conducting UAB Research Abroad with Export Controls Considerations

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Export of Information Resulting From Fundamental Research - EAR

Refresher: Fundamental Research Under the EAR

The Export Control Administration Regulation (EAR), regulates the transfer of technology and software. Technology or software that arises during or results from fundamental research is generally not subject to the EAR. (15 CFR § 734.8) This does NOT apply to physical objects such as pathogens or equipment.

Export of Information Resulting From Fundamental Research - EAR

Refresher: Fundamental Research Under the EAR

Fundamental Research is described in the EAR as “research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.” The techniques used during the research are normally publicly available or are part of the published information.

Export of Information Resulting From Fundamental Research - EAR

Does it Matter Where the “Fundamental” Research is Performed?

Issue: In determining whether research is ordinarily published and shared broadly and therefore, counts as “fundamental,” does it matter where or in what sort of institution the research is performed?

Response: In principle, no. “Fundamental research” is performed in industry, federal laboratories, or other types of institutions, as well as in universities. It remains the type of research, and particularly the intent and freedom to publish it that identifies “fundamental research,” not the institutional locus.

Export of “Tangible Items” When Conducting Research Abroad - EAR

- Under the EAR, tangible exports of laptops, equipment, and materials are subject to export control regulation, including license requirements.*
- However, the EAR makes a license exception under its dual-use provisions for the Temporary Export and Reexport (TMP) of certain tangible items, technologies, and software, which may normally require a license to professional business use abroad.
- Under this **License Exception TMP**, the tangible items, technologies, and software may be exported for a period of **less than 12 months form the date of the initial shipment or hand-carrying abroad**.

*Note that for any foreign research, it is important for an export control review of items to be shipped overseas, to decide if there is a licensing requirement.

Export of “Tangible Items” When Conducting Research Abroad - EAR

License Exception TMP Export Control Checklist

- ✓ Will the item or software be shipped, or hand carried abroad?
- ✓ Will the item or software remain under the “effective control” of UAB personnel while it is abroad?
- ✓ *Note: “Effective control” is defined as retaining physical possession of an item or maintaining it in a secure environment.*
- ✓ Will the item or software 1) return to the U.S. within 12 months of initial export or 2) be either consumed or destroyed abroad?
- ✓ Will the item or software be shipped, retransferred, or hand carried to any country other than Iran, Syria, North Korea, South Korea, Russia, Ukraine, or North Korea?
- ✓ Will the item or software be used primarily either 1) as a “tool of the trade” to conduct UAB business, or 2) for exhibition or demonstration, or 3) for inspection, testing, calibration, or repair?

Fundamental Research Under the ITAR

- ❑ The **International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130)**. governs the items published on the United States Munitions List (USML). The USML identifies all material controlled under the ITAR. While some of the items on the USML include the caveat “specifically designed, modified, configured or adapted for military purposes” others do not. Therefore, it cannot be assumed that equipment developed during fundamental research are not subject to ITAR control if they meet the USML criteria.
- ❑ Any shipment (including hand carrying on an airplane, for example) of USML material out of the U.S. requires an export license from the U.S. Department of State or use of an **ITAR exemption if available**. For USML technology material that is already in a foreign location (either non-U.S. origin or legally exported from the U.S.), keep in mind that any assistance to the foreign party could be considered a “defense service” which could require a Technical Assistance Agreement (TAA)*.

***Definition: 22CFR § 120.22 Technical assistance agreement.** An agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing knowhow are not conveyed

Is Fundamental Research Controlled Under the ITAR?

Issue: Is fundamental research controlled under the ITAR? (i.e., Is Fundamental Research under the ITAR exempt from licensing requirements under the ITAR?)

Response: Predominately YES

Discussion:

The only part of fundamental research that is not controlled by the ITAR is the published information that meets the definition of public domain.

The research itself is controlled by the ITAR if it involves the provision of a defense service.

The hardware generated is controlled by the ITAR if it is considered a defense article as defined in §121.

Source: Presentation to the Society for International Affairs, Fundamental Research According to the ITAR, by Tony Dearth Chief, Space & Missile Technology Division Department of State/DDTC Licensing

Fundamental Research Under the ITAR

What are the limits of the fundamental research exemption in the ITAR?

Under the ITAR, there is no “fundamental research exclusion,” per se. However, There are two exemptions related to fundamental research (§123.16(b)(10) for hardware and §125.4(d) for defense services) but both have restrictions. Those situations not meeting the exemption requirements are subject to licensing.

Please contact the Director of Export Control & International Compliance related to ITAR regulations at exportcontrol@uab.edu.

Engaging in International Research Activities in Comprehensively Sanctioned Countries and Regions

Under the EAR and ITAR, (and other export regulators) extra care must be taken when engaging in international research activities with Comprehensively Sanctioned Countries and Regions. Please work with the Director of Export Control & International Compliance prior to working in, or with entities located within, any of the following areas:

China

Cuba

Hong
Kong

Iran

Iraq

North
Korea

Russia

Sudan

Syria

Ukraine

Venezuela

UAB Export Control Resources



UAB Export Control Website:

<https://www.uab.edu/exportcontrol/>

For Specific Export Control Questions Contact:



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A vintage globe showing a map of North America. The map is detailed, with various geographical features, rivers, and cities labeled. The colors are muted, with greens for land and blues for water. The globe is positioned in the center of the frame, with a dark background around it.

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**Thank
You!**