
I. DO I NEED TO BE CONCERNED ABOUT EXPORT CONTROLS?

A. NO, IF...

1. **PUBLIC DOMAIN:** (i) **Equipment/Encrypted Software/Listed-Controlled Chemicals, Bio-Agent/Toxin** is not involved, AND (ii) there is no reason to believe that **Information** or non-encrypted **Software** being released, whether in the U.S. or abroad, will be used in/for a weapon of mass destruction, AND (iii) any U.S. government funding does not impose export controls, AND (iv) the **Information/Software** is already published, not just ordinarily published, through/at one or more of the following-

- Libraries open to the public or unrestricted subscriptions, news-stands, book stores for a cost not exceeding reproduction/distribution cost (including a reasonable profit),
- Published patents,
- Conferences, meetings or seminars in the U.S. which are generally accessible to the public for a fee reasonably related to the cost, and where attendees may take notes,
- Websites which are accessible to all members of the public, free of charge, and where WSU does not have knowledge or control of who visits the site or downloads the software/information, and/or
- General science, math or engineering commonly taught at, and offered in course catalogues of, a university.

Transfer to foreign students/visitors in the U.S. ("deemed export") or communication/transfer to researchers abroad ("export") is permitted as long as I.A.1 above applies. For prudence, if involving OFAC sanctioned or ITAR or EAR restricted countries (see II. B. and III.A), always contact ORA (Office of Research Assurances) first. Restrictions and licenses may apply to travel to embargoed countries or to dealing with specified persons (e.g., terrorists, drug kingpins).

OR

2. **FUNDAMENTAL RESEARCH:** (i) **Equipment/Encrypted Software/Listed-Controlled Chemical, Bio-Agent/Toxin** is not involved, AND (ii) there is no reason to know that **Information** or non-encrypted **Software** will be used in/for a weapon of mass destruction, AND (iii) the **Information/Non-Encrypted Software** is being released to foreign nationals in the U.S. only (deemed export), AND (iv) it is the result of scientific or engineering research at an accredited university in the U.S. to which no publication restrictions apply (other than a short period in which to seek patent protection or remove sponsor proprietary data (under Commerce Control List (CCL) and, probably U.S. Munitions List (USML)—see I. B), AND (v) it is not proprietary and is ordinarily published and broadly shared in the scientific community-no side deals. **If information/software is on the USML, it must actually be published (See I.A.1 above).**

Transfer/communication to any foreign national in the US only at an accredited university (deemed export) is permitted.

B. MAYBE, IF...

1. (i) Equipment or encrypted Software is involved, OR (ii) I.A above doesn't apply, AND exposure to foreign nationals (even on campus) or transfer or travel outside of the U.S. is involved AND--

a. the Equipment, Software, Technology is on the Commerce Control List (CCL) under the Export Administration Regulations (EAR) <http://www.bis.doc.gov/> (note, EAR 99 on the CCL is a "catch-all" category and virtually all technology not otherwise captured falls in this category, although licenses are not required, except to specified destinations/users),

b. you are providing information or instruction concerning equipment or software referred to in a, or

c. the foreign nationals are from, or the destination is to, any OFAC sanctioned country (Balkans, Belarus, Burma Cote d'Ivoire (Ivory Coast), ,Cuba ,Democratic Republic of the Congo, Iran, Iraq, Liberia, N. Korea, Sudan, Syria, Zimbabwe).

If a, b, or c apply, you must contact ORA for an analysis of whether an export license is required before any foreign national is involved or transfer out of the US occurs. Please contact ORA as early as possible. Licensing can take months to obtain and in some instances will be denied.

C. YES IF... the **Equipment, Software, Chemical-Bio, or Technology** is on/controlled under the USML under the International Traffic in Arms Regulations (ITAR)

Yes IF...the **Equipment, Software, Chemical-Bio, or Technology** is designed or modified for (i) a military use, (ii) use in outer space (unless limited exception in 22 CFR 123.16(b)(10) or 125.4(d) applies), or (iii) there is reason to know it will be used for/in weapons of mass destruction.

D. YES IF...**Chemicals, Bio-Agents/Toxins** on CCL are involved. EAR license required (i) for all countries if listed for chemical-bio weapons control (CB); (ii) for Ricin and Saxitoxin for all countries; (iii) for chemical weapons convention compliance-listed chemicals for all countries not a Chemical Weapons Convention (CWC) party.

-License mostly considered on case-by-case basis if listed for CB or AT purposes—will be denied if listed for CW purposes and export is to non-CWC countries.

-License will be denied to Syria and sanctioned countries and end users, and, for Ricin D and E and CW chemicals/toxins for countries not a party to the CWC.

II. DO I NEED A LICENSE IF INFORMATION, SOFTWARE, EQUIPMENT, CHEMICAL-BIO IS NOT ON THE USML AND IS ON THE CCL AS EAR 99 ONLY?

A. NO, IF – Equipment, encrypted Software, Chemical-Bio is not involved, and information or non-encrypted software is *not subject to EAR in the first place because:*

1. I. A above applies or it is "publicly available" --

- at a conference, meeting, or seminar, whether in the US or abroad, where the fee is reasonably related to the cost, attendance is unrestricted or is on a first to register or technical qualification basis, and all attendees may take notes.

OR

2. It is "educational information" --

- released through instruction in a course offered by an academic institution, wherever located, in its course catalogue or in associated teaching laboratories.

EAR export controls don't apply even if OFAC sanctioned countries are involved.

B. MAYBE, IF EQUIPMENT, LISTED CHEMICALS, BIO-AGENTS/TOXINS, or ENCRYPTED SOFTWARE ARE INVOLVED OR II.A ABOVE DOES NOT APPLY AND...

1. The destination is China, India, Israel, Pakistan, Russia (countries with restricted entities on the EAR "entity chart" at 15 CFR 744, Supp. 4), or
2. The end user is on the EAR "[denied person list](#)" or
3. The destination is in/ national is of an OFAC embargoed country (Balkans, Belarus, Burma Cote d'Ivoire (Ivory Coast), ,Cuba ,Democratic Republic of the Congo, Iran, Iraq, Liberia, N. Korea, Sudan, Syria, Zimbabwe) or on OFAC prohibited list, or
4. The destination is in/ national of another US-embargoed country (Rwanda, and the OFAC sanctions list).

III. IF ITEM, CHEMICALS, BIO-AGENTS/TOXINS, OR SOFTWARE IS ON USML/CONTROLLED UNDER ITAR, AND I.A. ABOVE DOES NOT APPLY, ITAR LICENSE REQUIRED. WILL I GET A LICENSE?

A. NO, IF the destination is, or foreign national (even at WSU) exposed is a national of, Belarus, Cuba, Iran, Iraq, Libya, N. Korea, Syria, Vietnam, Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan, or Zaire (Democratic Republic of Congo), or any UN Security Council arms embargoed country (Unita (Angola))

B. MAYBE OTHERWISE.

If you have any questions, please call ORA. Export control laws are complex and these thresholds do not cover all circumstances.

Regardless of any other provision, the knowing transfer of any item, software, commodity or technology to certain countries (and any related instruction or information transfer in the U.S. or abroad), for a nuclear, missile, or chemical/biological weapon end use is prohibited. Please contact ORA if such end use may be involved before any transfer begins.

We would like to acknowledge MIT for the use of this material.