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ORSP Newsletter



OFFICE OF RESEARCH AND SPONSORED PROGRAMS

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An introduction to export controls



Export control laws (ECLs) represent a comprehensive set of federal regulations that control and restrict the release of critical technologies, technical data, software code,

equipment, chemical and biological materials, and other materials, information, and services to foreign nationals or foreign countries for reasons of foreign policy and national security. Export controls apply to all activities — not just sponsored research projects.

ECLs involve a number of different regulations. The three major regulatory schemes in place governing ECLs are the Export Administration Regulations (EAR) administered by the United States Department of Commerce; the International Traffic in Arms Regulations (ITAR) administered by the United States Department of State; and the Office of Foreign Asset Control (OFAC) administered by the United States Department of Treasury.

Although these regulations do contain exclusion criteria for fundamental research, universities are not exempt from these laws since the exclusion clause applies only under certain conditions. In all cases, contact the UMass Boston Office of Research and Sponsored Programs to determine if exclusion criteria apply.

Definitions

DUAL USE means goods and technology that are not inherently military in nature, and are primarily and inherently commercial or potentially commercial in nature, but that the government has decided may have a dual use for a military purpose, when received or obtained by particular individuals, or for particular purposes, or within particular countries. Dual use is a concept underlying the government's rationale for what items and information, and what individuals and what uses, may require a license. In addition, there are some "purely commercial" items and information that require a license under the EAR.

EXPORT, as used in the regulations, does not have the common dictionary definition, and has an expansive meaning. Instead, export generally means; (1) actual shipment of covered goods or information outside the United States; (2) the electronic or

digital transmission of covered goods or information outside the United States; and (3) release or disclosure, including verbal disclosures or visual inspections, of any covered technology, software, or technical data to any foreign national, whether in the United States or abroad. This is a summary of a complex definition, which is set forth at 15 CFR 734.2, available at <http://w3.access.gpo.gov/bis/ear/pdf/734.pdf>.

EXPORT-CONTROLLED INFORMATION means activities, items, and information related to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, modification, demilitarization, destruction, processing, or use of items with a capacity for military application. It does not matter if the actual intended use of export-controlled information is military or civil in nature.

Export-controlled information does not include basic marketing information on function or purpose; general system descriptions; or information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities or information in the public domain.

FUNDAMENTAL RESEARCH means information, including non-encrypted software code, resulting from basic and applied research in science and engineering conducted at the University of Massachusetts Boston that is ordinarily published and shared broadly within the scientific community and that is not restricted for proprietary reasons or specific national security reasons. The complete definition is available at <http://w3.access.gpo.gov/bis/ear/pdf/734.pdf>.

TECHNICAL DATA means information of any kind that can be used, or adapted for use, in the design, production, manufacture, utilization, or reconstruction of articles or materials. These data may take a tangible form, such as a model, prototype, blueprint, or an operating manual; or these data may take an intangible form such as technical services. The complete definition of technical data is available at <http://w3.access.gpo.gov/bis/ear/pdf/772.pdf>.

For important additional definitions and information, visit the ORSP website at <http://www.umb.edu/research/orsp/index.html>, select Research Compliance, and then select Export Controls. You may also contact the UMass Boston Export Controls Officer Deborah Elek by telephone at 617.287.5478 or by e-mail at deborah.elek@umb.edu.

