

**Export Control Regulations:**

- Restrict the use of, and access to, certain sensitive or controlled technical information, materials and technology for reasons of national security or protection of trade.
- Designed to ensure sensitive information, technology, software, biological and chemical agents, equipment, and know-how are not employed for purposes other than intended use.
- Restrict financial transactions and services to certain restricted entities (individuals, companies, government, etc.)
- Restrictions are to foreign persons dependent on subject in question and relevant regulations.

**Who do Export Controls apply to?**

- FIT and all faculty, staff, students, visitors, and volunteers must comply with export control.
- Export controls apply to all research activities, including grants, contracts and cooperative agreements. They could apply to all other aspects of the university.
- FIT has an Export Control Policy that governs conduct: [http://assets.fit.edu/scripts/policy\\_view.php?id=6689](http://assets.fit.edu/scripts/policy_view.php?id=6689)

**What could be an Export Control Violation?**

- **A deemed export:** Disclosure within the U.S. of a controlled technology, “know-how”, or services provided to restricted foreign nationals. This may include participation in research projects, presenting controlled data at conferences, attending meetings, hosting informal visits, international collaborations and/or technical discussions.
- **Actual shipment or transport** of items outside the U.S.
- **Transmission (analog or digital)** of controlled technology or technical information outside the U.S.
- **Use or application of controlled technology** on behalf of, or for the benefit of, any foreign person or entity either in the U.S. or abroad.
- **Release or disclosure** (including verbal or visual) of any controlled technology, software, or technical data, either in the U.S. (deemed export) or abroad.

**Examples of a foreign person:**

- Individual in the U.S. in non-immigrant status (H-1B, F-1, J-1, B-Type or other foreign persons).
- Individual associated with a branch of a foreign government.
- Individual employed by a foreign corporation or group that is not incorporated or organized to do business in the U.S.

**What are the penalties for non-compliance?**

Civil and criminal sanctions can be applied to both the individual and the University.

Department of State (ITAR)

- Criminal: up to \$1,000,000/violation AND up to 10 years in prison.
- Civil: seizure and forfeiture of articles, revocation of exporting privileges, fines of up to \$500,000/violation.

Department of Commerce (EAR)

- Criminal: \$50,000 to \$1,000,000 or five times the value of the export, whichever is greater, per violation; up to 10 years in prison.
- Civil: loss of export privileges, fines \$10,000 to \$120,000 per violation.

Department of Treasury (OFAC)

- Criminal: up to \$1,000,000/violation; up to 10 years in prison.
- Civil: fines \$12,000 to \$55,000 (depending on applicable law) per violation.

**What University activities are excluded from export controls?**

- Public domain exclusion: The information is in the public domain. It has been published and is generally accessible to the public through unlimited and unrestricted distribution.
- Education exclusion: Educational information may be disclosed if it is released by instruction in catalog courses or consists of general

scientific, mathematical or engineering principles commonly taught in universities without a license.

- Fundamental Research Exclusion: Fundamental research basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community.

**Research will not be considered fundamental research if:**

- The university or its researchers accept restrictions on publication of scientific and technical information resulting from the project or activity, or
- The research contains specific access restrictions (such as foreign national restrictions).

**The bottom line:** It isn't fundamental research if there are:

- Limits on the freedom to publish and talk about research.
- Restrictions on access of information to foreign nationals.
- Restrictions on visas to foreign visitors and collaborators.
- Restrictions on publication of research results.

**Fundamental research is EXCLUDED from the export control regulations.****What research is exempt from export controls?**

- Research activities meeting the legal criteria of “fundamental research”.
- Fundamental research only excludes the results of research, not the conduct of research; therefore, certain equipment cannot be used by foreign persons.

**What research is not exempt from export controls?**

- Proprietary research and industrial development, design, production and product use, the results of which ordinarily are restricted for proprietary or national security reasons.
- Activities with contractual restrictions on disseminating research results – for example, those that require sponsor approval before publication or generally prevent results from being publicly available.
- Research and activities that prohibit participation of foreign nationals.

**Examples of university activities that may be subject to export controls:**

- Agreements, contracts or grants that restrict publication, presentation of results or foreign national access or participation.
- Activities specifically for military, space, intelligence, or energy applications.
- Provision of a defense article or other military equipment used to perform the research.
- Encrypted software.
- Research with a restriction listed on the Commerce Control List (CCL).
- Research involving anything on the U.S. Munitions List (USML).
- Procuring equipment specifically designed or could be modified for a military end use.
- Operating equipment or using an item identified on the CCL in a manner that provides know-how related to each of the following: **maintenance, repair, operation, installation, overhaul, and refurbishment.** Such information is found in manuals and blueprints and commonly referred to as technical data/information.

**Examples of things that are not subject to export controls:**

- Publicly available technical data (i.e., works published for sale, available in public libraries, or through published patents or patent applications).
- General scientific, mathematical or engineering principles commonly taught in colleges and universities.
- Information available through unlimited distribution at a conference, meeting, seminar, trade show or exhibition.

- Information that results from fundamental research where there are no restrictions on publication or access to research results.
- Non-technical contracts or business documents.

### FIT Export Control Assessment Process:

- 1) The Office of Research will conduct a preliminary assessment of your proposals and awards to determine if the activity may be subject to export control regulations.
- 2) If suspect, the activity will be forwarded to the Director of Research Compliance for comprehensive assessment.
- 3) If export controls apply, you will be formally notified by the Director of Research Compliance; and a Technology Control Plan, outlining security measures, will be implemented for the activity.
- 4) You must assist the Director and Sponsored Programs staff, in particular by letting them know if foreign nationals will be working on the project.
- 5) If foreign nationals will be working on the project, the Director of Research Compliance will determine if a license exception is available or if a federal license or other government approval is required.
- 6) Licensing may take between three to six months.
- 7) The activity may commence before a license is obtained. However, foreign persons will not be able to participate in the activity until a license or other government approval is issued.

### Contact the Director of Research Compliance in the Office of Research if you encounter any questionable activities prior to:

- 1) Engaging in research that involves international collaboration.
- 2) Traveling internationally.
- 3) Conducting research that restricts publications or hiring foreign nationals.
- 4) Engaging in research that has potential military applications.
- 5) Attending a “closed conference”.
- 6) Holding discussions regarding research subject to export control regulations with people outside the FIT community.
- 7) Internationally shipping equipment, viruses, bacteria, agents, software or other materials.

### General do's and don'ts:

- DO obtain federally issued licenses or other official government approvals through the Director of Research Compliance prior to:
  - Shipping anything internationally.
  - Disclosing controlled information to a foreign person, wherever located.
  - Allowing a foreign person to participate in any restricted program.
- DO NOT accept publication or access controls in research agreements or your research may be export controlled.
- DO NOT travel to any embargoed countries for research or educational activities without first contacting the Director of Research Compliance.

### Work environment requirements for most Technology Control Plans (TCP's)

- Laboratory work should be physically shielded from observation by operating in secured laboratory spaces or during secure time blocks when observation by unauthorized persons is preventable.
- Data, laboratory notebooks, hard copy reports and research materials should be held in locked, fireproof cabinets located in rooms with key-controlled access.
- Electronic communications and all databases should be managed via a type of virtual private network that limits access to authorized users only and facilitates exchanges between those authorized users while encrypting any data sent.
- Discussions about the project or work products should be limited to the identified contributing investigators and are held only in areas where unauthorized persons are not present.
- Discussions with third party subcontractors, such as identified manufacturing sites, should be conducted only under signed

confidentiality agreements and fully respecting the non-U.S. citizen limitations for such disclosures.

- Third party communications should be conducted only under valid confidentiality agreements with prior consent of the government.

### Research Considerations

#### Will I be able to publish the results of my research?

- These restrictions will be stipulated in the research agreement/contract.

#### Am I limited as to which students/post-docs I am able to use in the research?

- Certain programs may prohibit licensing of foreign persons. Check with the Director of Research Compliance.

#### What about my collaborators?

- Concerns regarding collaborations are much the same as with students/staff/post-doc employment. Be advised that for research projects that are subject to export control regulations, a license has to be obtained in order to be able to work on the research project. The licensing process can take multiple months and must be completed prior to beginning research on the project.

### Travel Considerations:

- Export control regulations may affect your trip. This includes items you bring with you, activities you take part in and the location you visit.
- **Items** that may be of issue for travel:
  - Laptops
  - Encryption items
  - Data and technology
  - Blueprints, drawings, and schematics
  - Chemicals, biological materials, and scientific equipment
- **Activities** that may be of issue for travel:
  - Supplying certain technologies or data at a “closed” conference or meeting (a meeting that is not open to all technically qualified members of the public and attendees are not permitted to take notes).
  - Accessing, discussing or using restricted information (in print and electronic format or discussed verbally while abroad).
- **Locations** that may be of issue for travel:
  - Travel to sanctioned or embargoed countries.
  - Conducting business with, or providing services to, certain people or entities.
- **Travel exclusions/exceptions:**

There are two main exceptions that apply to international travel.

  - Items taken abroad as “tools of the trade” may qualify for the temporary export exception (TMP). Discuss with the Office of Research prior to claiming this exemption.
  - Items taken abroad as personal belongings may qualify for the personal baggage exception (BAG). Discuss with the Office of Research prior to claiming this exemption.
- **Exception criteria:**
  - Items must return to the U.S. within 12 months.
  - Items must remain in your personal control at all times or stored in a securable place.
  - Items may not be exported under these exceptions to embargoed countries.
  - If the item incorporates encryption technology, some restrictions may apply.
  - No travel with proprietary or export controlled technical data or export a defense article under these exceptions.

### CONTACT INFORMATION:

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