University of the Pacific
Export Controls Policy

Federal export control regulations prohibit the export to foreign countries of certain goods, technology, and technical data without an export license issued by the U.S. government. These regulations were implemented many years ago for reasons relating to national security, economic and trade protection, and the advancement of foreign policy goals. The terrorist actions of 9/11/2001 in particular have resulted in stricter interpretation and enforcement of these regulations by the federal agencies that administer them.

Researchers at the University of the Pacific (Pacific) need to be aware of export control regulations and their possible impact on research. In summary, the term “export” as used in these regulations includes not only the actual export or shipping of goods to foreign countries, but also so-called “deemed exports”: the transfer/disclosure in any form (verbal, written, electronic, visual) within the US of export-controlled items or information to a “foreign national” (anyone who is not a US citizen or permanent resident). As a result, where export control regulations apply and where no regulatory exemption is available, an export license will be required before export-controlled items or information can be shared, abroad and even on campus, with foreign nationals participating or collaborating in affected research projects. These activities, among others, may be restricted:

- The ability of foreign scholars and students to participate in export-controlled research at Pacific;
- The ability of Pacific researchers to disclose or discuss previously unpublished research at conferences and meetings where foreign nationals are in attendance;
- The ability of Pacific researchers to engage in collaborations with foreign researchers, including restrictions on teaching foreign collaborators how to use export-controlled items in research (regulated as providing a “defense service”); and
- The ability to transfer research equipment abroad.

Such restrictions are directly at odds with university traditions of open access and dissemination of research results. Fortunately, the vast majority of university research is not subject to export controls, either because the research does not involve export-controlled items or data, or because research involving such items or data qualifies for an exemption from the regulations. However, where export control regulations apply, the penalties for non-compliance are severe (up to $1,000,000 per violation and imprisonment up to 10 years) and may be imposed against individual researchers as well as their institutions.

Research conducted by the faculty, staff, and students at Pacific is public domain fundamental research as that term is defined in National Security Decision Directive 189. As such, most Pacific research will be exempt from export controls. However, where export controls are applicable to our research activities, the University will require full compliance with the law.
Related Federal Regulations

Export Administration Regulations (EAR)
The Export Administration Regulations (EAR), 15 CFR §§730-774, are administered by the U.S. Department of Commerce. They regulate the export of so-called “dual use” items -- i.e., goods and related technology that are designed for commercial purposes but could have military applications, such as computers, aircraft, and pathogens. The list of EAR-controlled items (the “Commerce Control List” or “CCL”) is published at 15 CFR §774, Supplement 1. An alphabetical list of CCL items is available.

The CCL categorizes covered items into the following ten categories (which each have subdivisions):

1) Nuclear materials, Facilities and Equipment, and Miscellaneous
2) Materials, Chemicals, Microorganisms, and Toxins
3) Materials Processing
4) Electronics
5) Computers
6) Telecommunications and Information Security
7) Lasers and Sensors
8) Navigation and Avionics
9) Marine
10) Propulsion Systems, Space Vehicles, and Related Equipment

For goods and technology listed on the CCL, a license will be required for export, unless an exclusion or exemption applies. Where embargoed countries are involved (presently Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria), a license will be denied.

There is an additional “catch-all” category in the regulations, the “EAR 99,” which covers any good or technology that is “subject to the EAR” as defined in 15 CFR §734.3(a) but is not on the CCL. Items in the EAR 99 category may or may not require a license, depending on the country involved and individual(s) to whom the export will be made.

The International Traffic in Arms Regulations (ITAR)
The International Traffic in Arms Regulations (ITAR) (22 CFR, Subchapter M, §§120-130) are administered by the US Department of State. They regulate the export of defense articles, defense services, and related technical data (“defense” meaning that the government has determined the article, service, or data to be inherently military in nature). The list of ITAR-controlled items is published at 22 CFR §121 (the “US Munitions List” or “USML”). The USML covers 21 categories (including chemical and biological agents in addition to various weapons, vehicles, missiles, equipment, and electronics) and is less specific than the EAR CCL. Again, the items on the list have been determined by the Department of State to be inherently military in nature (basically, items designed to kill or defend against death in a military context). Also, although they may not meet this definition, all satellites and related technology are controlled
by ITAR as a result of the 1999 Congressional expansion of ITAR jurisdiction. Unless a specific exclusion or exemption applies, licenses are required for the export of an USML-listed item.

**OFAC Boycott Program**
In addition to the EAR and ITAR, the Department of Treasury’s Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions based on US 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. The scope of the boycott program depends on the country involved and is subject to change.

Of particular note is the fact that the OFAC boycott program may prohibit conducting surveys of persons in boycotted countries. The complete and updated list of countries included in the boycott program may be viewed at [here](#).

**Process and Roles for University of the Pacific Export Controls Compliance**
Pacific has developed a process to ensure that University research is conducted in compliance with export control regulations. This process involves:

- Conducting a thorough review of projects and contract provisions to determine whether and how a particular research project is affected by export control regulations; and
- Managing export-controlled research to ensure that it is conducted in full compliance with the law

This process involves a cooperative effort between the Principal Investigator, the Office of Research & Graduate Studies, and the Office of Risk Management. The role of each is described below.

**Principal Investigators**
The PI has the best understanding of his or her research and therefore the best information as to whether the particular technology, data, or information involved in that research is or may be covered by export control regulations. The PI is responsible for the following:

- Carefully review the information on export controls provided by the Office of Research & Graduate Studies.
- Before beginning any research, the PI should determine whether any export control issues may be presented (see “Projects that Raise Export Controls Questions”, page 4).
- If any such issues are identified, or if any question exists, the PI should contact the Office of Research & Graduate Studies (research@pacific.edu) for help with determining whether any export control restrictions may apply to the research.
- After work on the project has begun, the PI should notify the Office of Research & Graduate Studies prior to implementing any changes that may give rise to the application of export controls, such as a change in the scope of work or the addition of new staff to the project.
• If any export control issues are identified at the contract or grant proposal stage by the staff in the Office of Research & Graduate Studies, the PI should work with that Office to determine the application of export control regulations to the research.
• If it is determined that export controls apply to the project, the PI must adhere strictly to any applicable restrictions and cooperate fully with the University’s efforts to monitor compliance.

Office of Research & Graduate Studies
Pacific has designated the Director of the Office of Research & Graduate Studies, as the senior-level administrator responsible for oversight of its export control compliance activities. On behalf of the institution, the Director will also sign documentation relating to export-controlled materials, serve as the custodian of any required records, and serve as the point of contact for communications with regulatory agencies.

In addition, the Office of Research & Graduate Studies is responsible for the following with respect to export controls:

• Work with PIs at the proposal stage to identify any export control issues presented by the proposed research and will assist the PI in determining whether export control regulations apply to the project.
• Review research agreements, including incoming CDAs and MTAs, for export control language and for terms or provisions that restrict access to or prohibit publication of research results, limit the participation of foreign nationals in the research, or otherwise render the fundamental research exclusion inapplicable.
• If such provisions cannot be eliminated through negotiation, and if it appears that no exclusions or exemptions from the export control regulations are applicable, DSP will consult with the PI to determine whether the technology or other material to be used in the research is included on the Commerce Control List or the US Munitions List.
• Determine whether export control regulations apply to the project and provide written notice of that determination to the PI, the department chair, the dean, the Associate Provost for Research, and the Office of Risk Management. This notice will also outline any recommendations for compliance measures to be implemented in the research.
• Provide, in conjunction with the Office of Risk Management, information and training on export control regulations to the University research community.

Projects that Raise Export Controls Questions
Basically, any research activity may be subject to export controls if it involves the actual export or “deemed” export of any goods, technology, or related technical data that is either 1) “dual use” (commercial in nature with possible military application) or 2) inherently military in nature.
Work in the following areas is considered high risk:

- Engineering
- Space sciences
- Computer Science
- Biomedical research with lasers
- Research with encrypted software
- Research with controlled chemicals, biological agents, and toxins

In addition, any of the following raise export control questions for research projects:

- Sponsor restrictions on the participation of foreign nationals in the research
- Sponsor restrictions on the publication or disclosure of the research results
- Indications from the sponsor or others that export-controlled information or technology will be furnished for use in the research
- The physical export of controlled goods or technology is expected

**Exclusions/Exemptions from Export Control Regulations**

There are several common exclusions and an exemption that may remove University research from the application of export control restrictions. These exclusions can be lost, however, if researchers sign side agreements (including material transfer and non-disclosure agreements) that contain publication restrictions or restrictions on who can participate in the research. It is crucial that you not sign any such agreements—or any agreements that mention export controls—on your own.

**Fundamental Research Exclusion**

Fundamental research (basic or applied research in science and/or engineering at an accredited institution of higher learning in the US that results in information that is ordinarily published and shared broadly within the scientific community) is excluded from export control regulations. This means that where University research meets this definition, information (but not materials or technology) resulting from that research may be disclosed to foreign nationals and that disclosure is not subject to export control restrictions.

University research will not qualify for this exclusion if: (1) the University or researcher accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication review by research sponsors to ensure that proprietary information is not inadvertently disclosed in publication or to ensure that publication will not compromise the patent rights of the sponsor; or (2) the research is federally funded and specific access and dissemination controls regarding the resulting information have been accepted by the University or researcher.
It is important to remember two things about the fundamental research exclusion: 1) it applies only to information and 2) it does not apply to a sponsor’s existing proprietary information when some or all of that information is required to be held confidential.

This exclusion may not apply to information relating to export-controlled equipment used in research projects and classes. Universities have assumed that they could share such information with foreign nationals without a license, since the information is being used while conducting fundamental research. However, recent interpretations by the federal government would seem to require that an export control license be obtained in a fundamental research project before information about the use of controlled technology can be shared with foreign nationals working on the project. This is a currently developing issue and we will update these materials as the issue evolves.

**Educational Instruction Exclusion**
Export control regulations do not apply to information released in academic catalog-listed courses or in teaching labs associated with those courses. This means that a faculty member teaching a University course may discuss what might otherwise be export-controlled technology in the classroom or lab without an export control license even if foreign nationals are enrolled in the course. This exclusion is based on the recognition in ITAR that “information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain” should not be subject to export control restrictions. 22 CFR §120.10.

**Public Domain/Publicly Available Exclusion**
Information that is published and generally available to the public, as well as publicly available technology and software is outside the scope of the export control regulations. This exclusion does not apply to encrypted software, to information if there is reason to believe it may be used for weapons of mass destruction, or where the US government has imposed access or dissemination controls as a condition of funding.

**Exemption for Disclosures to Bona Fide Full-time Employees**
Export control regulations exempt disclosures of unclassified technical data in the US by US universities to foreign nationals where 1) the foreign national is the University’s bona fide full-time regular employee, 2) the employee’s permanent abode throughout the period of employment is in the US, 3) the employee is not a national of an embargoed country, and 4) the University informs the employee in writing that information disclosed may not be disclosed to other foreign nationals without governmental approval.

This exemption is likely to be less available than the three exclusions discussed above. In addition, most graduate students are not regular full-time University employees and disclosures to them will not qualify for this exemption.

**Related University of the Pacific Policies**
- [Travel Policy](#)
- [Policy on Responsible Conduct of Research](#)
**Applicable Definitions**

Export control decisions depend on a clear understanding of the following terms. When making specific application determinations, however, the official regulatory definition should be consulted.

**Export:** This term is defined very expansively in the export control regulations. Generally, an export includes any: (1) actual shipment of any covered goods or items; (2) the electronic or digital transmission of any covered goods, items or related goods or items; (3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software, or technical data to any foreign national; or (4) actual use or application of covered technology on behalf of or for the benefit of any foreign entity or person anywhere. Reference should be made to the official definition of export under the EAR and ITAR when determining whether a specific act constitutes an export. As “export” is currently defined, it precludes a foreign national (either faculty or student) from participating in research that involves covered technology without first obtaining a license from the appropriate government agency.

**Deemed Export:** An export of technology or source code (except encryption source code) is "deemed" to take place when it is released to a foreign national within the United States. See 15 CFR §734.2(b)(2)(ii) (EAR).

**Defense Service (ITAR at 22 CFR §120.9):** The furnishing of assistance, including training, to foreign persons, whether in the US or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles (those listed on the USML).

Furnishing any technical data controlled by ITAR to a foreign person in the US or abroad also constitutes a defense service under the regulations.

**Foreign Persons:** A foreign person is any natural person who is not a lawful permanent resident as defined in 8 U.S.C. §1101(a)(20). It also includes any foreign corporation, business association, partnership, trust, society, or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments, and any agency or subdivision of foreign governments (e.g., diplomatic missions).

**Fundamental Research:** Includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research which results in information that is restricted for proprietary reasons or pursuant to specific U.S. Government access and dissemination controls. “Fundamental research” is defined in the EAR at 15 CFR §734.8 and in ITAR at 22 CFR §120.11.

**Public Domain:** Information that is published and generally accessible to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions available without restriction to anyone who may want to purchase the published information; (3) through second class mailing
privileges granted by the U.S. Government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition that is generally accessible to the public and is in the United States; (7) through public release (i.e., unlimited distribution) in any form (not necessarily published) after approval by the cognizant U.S. government department or agency; and (8) through fundamental research. 22 CFR §120.11.

Technical data (ITAR at 22 CFR §120.10):

(1) Information, other than software as defined in 22 CFR §120.10(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation.

(2) Classified information relating to defense articles and defense services;

(3) Information covered by an invention secrecy order;

(4) Software as defined in 22 CFR §121.8(f) directly related to defense articles;

Excluded from this definition is information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in 22 CFR §120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.