

Harvard Export Control Compliance Policy Statement

Harvard University investigators engage in a broad range of innovative and important research both in the United States and overseas. These activities include the sharing and development of products, goods, hardware, software, or materials (collectively, “items”), as well as research involving technology that may be subject to U.S. export control laws and regulations. The purpose of this document is to restate for the Harvard community the essential aspects of the laws and regulations concerning exports, confirm our policy for compliance, and explain how the University will provide our researchers with the assistance they may need to ensure compliance with these complicated laws.

Overview of Export Controls

The Departments of Commerce, State, and Treasury administer the primary controls on exports of goods or commodities. The Department of Commerce regulates the export of items and information that have civil applications, the Department of State regulates the export of items that have military applications or that relate to space, and the Department of the Treasury enforces country-specific embargoes. In certain circumstances, these agencies may require the University to secure a license before the item or information is exported to another country or shared with a foreign national.

Department of Commerce Controls

The Bureau of Industry and Security (“BIS”) of the U.S. Department of Commerce implements and enforces U.S. export control regulations relating to the export of “dual-use” goods and technologies (having both civil and military applications) as well as exclusively civil items. Items subject to the jurisdiction of BIS are listed on the Commerce Control List (“CCL”) found in the Export Administration Regulations.¹ Whether a license is required to export or reexport an item on the CCL is determined by examining the precise classification of the item, the destination of the item, and the end-user. BIS also maintains the Denied Persons List and the Entities List, which identify specific persons and entities to which exports are not permitted without the prior approval of BIS.

Department of State Controls

The Directorate of Defense Trade Controls (“DDTC”) of the U.S. Department of State regulates the export of defense goods, technical data, and defense services. DDTC administers the International Traffic in Arms Regulations (“ITAR”).

¹ The CCL covers such things as materials, chemicals, microorganisms, and toxins; materials processing; electronics; computers; telecommunications and information security; lasers and sensors; navigation and avionics materials; marine-related materials; and propulsion systems, certain space vehicles, and related equipment. (The index to the CCL is located at http://www.gpo.gov/bis/ear/ear_data.html.)

Generally, a defense article is an item developed for a military application that does not have a predominant civilian application.² Unless an exemption applies, a license must be obtained before any defense article is exported to a foreign country or foreign national. Authorization by DDTC is also required for any agreement under which a U.S. person will furnish assistance to foreign persons in the development, design, production or use of a defense article or under which a U.S. person will license to a foreign party the right to manufacture U.S.-origin defense articles abroad. DDTC maintains a list of “debarred” persons and entities whose exporting privileges have been revoked as a consequence of violations of the ITAR.

Department of Treasury Controls

The Office of Foreign Assets Control (“OFAC”) of the U.S. Department of Treasury administers and enforces certain country-specific controls that take the form of economic embargoes against countries, currently including Burma (Myanmar), Cuba, Iran, Iraq, Libya, North Korea, Liberia, Sudan, Syria, and Zimbabwe. The scope of these economic and trade embargoes varies from country to country. OFAC has adopted regulations that detail the scope of the embargo against each country. New sanctions were recently imposed against Syria, and restrictions on trade with Iraq and Libya have been significantly reduced.

OFAC also maintains lists of Specially Designated Terrorists and Specially Designated Nationals and Blocked Persons, with whom U.S. persons are prohibited from engaging in any transactions due to U.S. foreign policy and national security concerns. Transfers of items and information to individuals or entities on these lists are prohibited without the prior approval of OFAC.

Deemed Exports

In addition to regulating the export of actual goods or commodities, U.S. export controls cover the export or release of “technical data” or technology (which includes information, whether printed, inscribed on media, or communicated orally). The release of such information is called a “deemed export.” Under the deemed export rule, the transfer or release of technical data or information subject to U.S. export controls to a “foreign national,” whether it occurs in the United States or abroad, is “deemed” an export from the United States to the home country of the foreign national. At universities, this issue arises most frequently in connection with the participation of international researchers or collaborators in projects involving controlled technology.

Much of the controlled technology that our international students and scholars have access to on campus at Harvard will not require licensing because of the exceptions contained in

² The ITAR cover such things as guns and armaments, ammunition, launch vehicles and missiles, explosives and other incendiary agents, vessels of war, tanks and military vehicles, aircraft, military training equipment, protective personnel equipment, fire control equipment, auxiliary military equipment (including cameras and cryptographic devices, software, and components), toxicological agents, spacecraft systems, nuclear weapons, and classified articles as well as technical data and services that relate to the enumerated categories. (The index to the Munitions List can be found at <http://www.fas.org/spp/starwars/offdocs/itar/p121.htm#ITAR>.)

the regulations for “fundamental research” or “educational information” under the relevant regulations. If the on-campus teaching of “basic and applied research” is free from restrictions on publication and involves information that is not subject to any access or dissemination controls, it generally qualifies for the “fundamental research” exemption. The information is deemed to be in the public domain, and no license is necessary for access to this information by foreign nationals.

Similarly, there is an exception for educational information that is released by instruction in catalog courses and associated teaching laboratories of U.S. academic institutions. Thus, we do not need to secure a license from the government to share information with our international community on campus if the information is provided through instruction in the classroom or in our laboratories on campus in the United States. Some distance learning courses may also fall within this exception.

Although the fundamental research exemption (coupled with the educational information exemption) may be broad, it generally does not authorize the transfer of physical items outside of the U.S. In addition, the fundamental research exemption does not generally apply to work conducted abroad by Harvard researchers, even if such research and informational exchanges are being conducted at an institution that is affiliated with Harvard. To be eligible for the fundamental research exemption, the research must take place at an accredited institution in the United States.

Penalties for Violations

In the event of a violation of U.S. export control law, both the university and the individuals involved in the violation may be liable. The exporter and the individual employees involved may be subject to severe administrative and civil sanctions as well as criminal penalties. For example, “knowing” violations of the EAR are punishable by a fine of up to five times the value of the exports involved, or \$50,000, whichever is greater. “Willful” violations can result in penalties of up to \$1 million per violation. Exports are subject to a strict liability standard, so even negligent exports can trigger fines of \$10,000 to \$120,000 per violation. In addition to fines, individuals may be imprisoned for intentional violations. Penalties can also include the denial of export privileges and debarment from contracting with the federal government. Almost all enforcement actions are public.

Harvard’s Policy

It is Harvard’s policy that all personnel, including employees, visiting scientists, postdoctoral fellows, students, and other persons retained by or working at or for Harvard conduct their affairs in accordance with U.S. laws and regulations, including compliance with U.S. export control laws and regulations applicable to its operations. The laws and regulations governing exports are detailed and complex. Employees with responsibility for Harvard’s export-control compliance program or whose duties include a significant amount of work with foreign nationals will be offered formal training sessions on the U.S. export-control laws and regulations and their applicability to their jobs. All Harvard employees with managerial or supervisory authority over foreign nationals or projects involving materials or technology subject to export controls should view export-control compliance as an important part of their day-to-day

responsibilities. It is particularly important in an institution like Harvard that frequently works in tandem with researchers and collaborators from abroad to determine early in the process of any international collaboration the potential requirement for export-control authorization.

To ensure compliance with these regulations, Harvard has developed a manual, *Harvard University Export Control Policies and Procedures*, a copy of which is available on the Harvard University intranet at www.provost.harvard.edu. No Harvard personnel may transfer any items or technology contrary to U.S. export control laws and regulations or *Harvard University Export Control Policies and Procedures*. The policies and procedures include a number of screening steps required prior to exporting. In addition, the policies and procedures identify people to contact to answer questions about whether specific research activities raise any export issues. Failure to comply with these laws and regulations, or failure to comply with the *Harvard University Export Control Policies and Procedures*, may result in disciplinary action.

Contact Information

Harvard is establishing an “Export Council” to assist with ensuring compliance with export-control obligations. If you are planning to export materials abroad, to engage in international collaborations that will involve the transfer of materials or equipment, or have any questions about the application of export controls to activities in which you are involved, please contact the Vice Provost for Research or a member of the Export Council.

