

Wake Forest University Guidelines Regarding

Compliance with Export Control Laws

Export controls are federal laws that, for reasons of national security, regulate the shipment of goods or release of technological data to foreign nationals or foreign countries. The primary regulations controlling export activities are the International Traffic in Arms Regulations (ITAR), administered by the Department of State; the Export Administration Regulations (EAR), administered by the Department of Commerce; and the Foreign Asset Control Regulations (OFAC), administered by the Department of the Treasury.

Any institution of higher education and its faculty, staff, and students must comply with these regulations. In case of violations, criminal sanctions, including substantial fines and even prison terms, can be applied.

Export regulations apply to all research activities, including grants, contracts, and cooperative agreements. They also apply to all other aspects of the University setting; for example, in downloading of, and access to, certain software programs.

Most WFU research activities are excluded from export controls by the fundamental research exemption. ***Fundamental research*** is defined as “basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community.” Proprietary research and industrial development, design, production, and product use, the results of which ordinarily are restricted for proprietary or national security reasons, do not fall under the fundamental research exemption.

Contractual restrictions on disseminating research results—for example, those that require sponsor approval before publication or involve the participation of foreign nationals—generally prevent those results from being publicly available, and thus the fundamental research exemption cannot be invoked.

What is considered and controlled as an export?

Under both ITAR and EAR, transferring information (“technical data”), a physical item, or a computer program to a foreign country is exporting. Providing controlled information to a foreign person in the United States is classified as a “**deemed export**.” In addition, the term *export* refers to technology leaving the boundaries of the United States.

If an activity is controlled under the export regulations, then a license or other approval is needed from the relevant agency, unless an exemption applies. This requirement pertains to material items (prototypes or software) as well as to the findings and results of the research. At this time, US policy does not permit licenses for the transfer of these items to several countries which are listed in detail on the department of state website. Also, if an activity is controlled, who can participate in it—for example, foreign researchers and foreign graduate students—will probably be restricted.

Restrictions on Access by Foreign Nationals

Restrictions on the use of foreign nationals by program and contractual requirements impose stringent obligations on the University. They restrict access to laboratories and research data and are not consistent with the University's policies on openness in research and nondiscrimination.

The University may accept research agreements that 1) indicate that technical information generated under the agreement may be subject to export control regulations; and 2) include the requirement that foreign nationals be identified to the sponsor prior to their involvement in the project. If the sponsor imposes further restrictions on the publication of the data or foreign nationals' access to, or participation in, the research that the University deems unreasonable, it may decline or terminate the agreement. Any agreement that goes beyond basic parameters, specifically indicating that the technical data resulting from the project will be subject to export controls and/or reserving sponsor approval in connection with hiring foreign nationals, will be evaluated on a case-by-case basis through established University procedures.

In planning research involving foreign countries or foreign nationals, the principal investigator (PI) should consider that, depending upon the nature of the research and the status of the foreign country, obtaining export licenses can take weeks or months. Therefore, the PI must determine early in the process any potential requirement(s) for export-control authorization and, if necessary, contact the Office of Research and Sponsored Programs (ORSP) for assistance in complying with applicable laws.

POLICY

Although the vast majority of activities pursued by the University and its personnel are not subject to export control restrictions or licensing requirements, each member of the University community must be familiar with them to ensure that the appropriate guidance is sought and actions taken should they apply.

University policy holds that all personnel engaged in funded or non-funded research of any scope or duration are responsible for reviewing the applicable export-control regulations prior to beginning the research, to determine whether they apply and to ensure that if they apply, the research is in compliance. In addition, all personnel currently engaged in any research will review the research periodically, at least annually, to determine whether changes in the terms of sponsorship, the scope of work, or personnel now bring export-control regulations into play. The University will provide assistance in assessing the application of, and compliance with, these regulations, but primary responsibility for ensuring a good faith and diligent determination of the applicability of, and compliance with, export regulations rests with the PI. ORSP provides an Export Controls Decision Tree to determine whether an export license must be obtained and, if so, the contact(s) who can assist. PIs are strongly encouraged to use this resource when determining whether or not an export-control license is required for their projects.

ORSP staff will review all proposals and awards for elements that may involve export regulations. They will work with the Legal Department to determine if the research requires a license or an exception to the law applies. The Associate Provost for Research will serve as the institutional official with authority to secure a license, when needed.

RESOURCES

Individuals are strongly encouraged to contact ORSP for assistance in assessing the application of, and compliance with, export-control regulations. In addition to the resources previously mentioned, go to this link on the ORSP website for additional information to assist in understanding and complying with export law regulations:

<http://www.wfu.edu/RSP/export.html>.