EXPORT COMPLIANCE

BASIC PRINCIPLES
Export Controls are U.S. laws that regulate the distribution of specific items, technology, money, services, and information. Controls vary by item and country. Export Controls apply to all UAlbany faculty, staff, and students and their activities. Export Controls carry personal liability for the failure to adhere to them. Prior to exporting any item out of the country, review the destinations, end-users, end-uses, and any controls for the item. Prior to releasing information to non-U.S. persons, review end-users, their country of origin, end-uses, and any controls on the information. Prior to making a payment or providing a service, review the recipient and ensure the transaction is not prohibited.
Whom to Contact

- Additional information can be found at [https://www.albany.edu/orrc/exports.php](https://www.albany.edu/orrc/exports.php)
- Questions and concerns may be sent to at: [exportcontrols@albany.edu](mailto:exportcontrols@albany.edu).
Penalties for Violations

- Penalties vary by regulation and violation
  - Range between $85,000 and $1,000,000
  - Violators can be sentenced to up to 20 years in prison
- Penalties are cumulative based on the number of violations
- In the event you are held personally liable, University nor RF Counsel can represent you before the government
What is an “Export”

**Export:** The actual shipment or transmission of an item out of the U.S.;

- releasing “technology” or source code (but not object code) to a foreign national anywhere (including within the U.S.) is deemed an “export” to the country of citizenship or permanent residency of the foreign person; and
- An actual shipment, transfer, or transmission of encryption source code and object code out of the United States or a transfer of such in the United States to an embassy or affiliate of a foreign country.

**Re-Export:** The actual shipment or transmission of a controlled item from one foreign country to another and

- releasing or otherwise transferring “technology” or source code subject to the EAR to a foreign person of a country other than the foreign country where the release or transfer takes place is deemed a “re-export” to the country of the foreign person.
Who are Foreign Persons

A foreign person is an individual who is NOT:

- A U.S. citizen;
- Granted permanent U.S. residence (e.g. Green Card); or
- Granted status as a protected person (e.g. refugees, political asylum holders).

Includes foreign universities, corporations, businesses, associations, foreign governments, international organizations.
Export Control Exemptions/Exclusions

- Information lawfully in the public domain (e.g. published or information intended to be published) which is available to any member of the interested public.
  - Fundamental Research results
  - Information at open conferences
  - General science, math and engineering principals taught in classrooms and labs of courses at a University
  - Patents available from any Patent Office

- General Licenses exist for OFAC regulated transactions. Licenses are limited in scope and are program specific
  - Sanctions cover financial transactions related to certain individuals or countries and criminal actions
Fundamental Research

- Conducted by U.S. Institutions of Higher Education (IHE)
- Basic and applied research in science and engineering
- The resulting information is ordinarily published and shared broadly within the scientific community
- Results are intended to be shared with the research community; this is distinguished from research where the results are restricted for proprietary or specific reasons, such as private for-profit research
- It is *not* proprietary research or industrial development, design, production, or product utilization
Only the results of fundamental research are outside of Export Controls. Any proprietary or controlled information used in the development of the results remains controlled.

Encryption software – which meets standards in the EAR – remains subject to Export Controls, even if developed as part of fundamental research.

Contracts must be reviewed carefully, neither the University nor its researchers may accept specific access and dissemination controls protecting information used in fundamental research.

- may accept restrictions on publication of scientific or technical information resulting from fundamental research.
Know Our Sponsored Program

Are there “red flags”?

- Suspicious circumstances; activities or requests out of the ordinary
- Involves a specific country which is sanctioned or under an embargo

Contact exportcontrols@albany.edu with any questions.

Inquire into the circumstances of the transactions; do not self-blind

Document the inquiry

Only proceed if red flags can be explained or justified