

Export Control Memorandum
Export control laws and regulations and the H-1B Visa application process

From: University of Washington Office of Sponsored Programs
To: Beneficiary Supervisor, Department Chair and Dean's Office

The application for an H-1B Visa application requires a determination as to whether the University of Washington, as petitioner, will need to acquire an export control license in order to transfer certain controlled information, data, technology, services, or software ("controlled information") to the nonimmigrant worker who is the beneficiary of the application. This determination is made by the Office of Sponsored Programs (OSP) based on information you provide within the Deemed Export Compliance Attestation, additional information provided to OSP upon inquiry, and the nature of any other associated agreement, including a sponsored research agreement, affecting the activities of the beneficiary.

Prior to responding, you will need to review the export control regulatory scheme information provided here, along with the University of Washington export control policy: <http://www.washington.edu/research/main.php?page=ecrRegulations>. In addition you may have to review descriptions of controlled information as set out in the International Traffic in Arms Regulations (ITAR) 22 CFR Section 121.1 et seq., accessible at http://www.pmddtc.state.gov/regulations_laws/itar.html and/or the Export Administration Regulations (EAR) 15 CFR Section 774, Supp. 1, (Categories 0-9) accessible at http://www.access.gpo.gov/bis/ear/ear_data.html, and decide if you believe the above-referenced petition involves controlled information that falls within one or more of the categories. For more information about export control laws and regulations, please visit the University of Washington Export Control website at <http://www.washington.edu/research/?page=ecr> or contact exports@uw.edu.

GENERAL EXPORT CONTROL REGULATORY SCHEME:

It is unlawful under export laws and regulations to send or take export controlled information out of the United States *or disclose, orally or visually, or transfer export controlled information to foreign nationals* inside or outside the United States. A transfer of export controlled information to a foreign national is referred to as a "deemed export". "Foreign Person" is a person who is not a U.S. citizen or permanent resident alien of the U.S.

The ITAR regulates items, technologies, data, and information that are inherently military in nature and is referred to as "defense articles" and "technical data". Examples include submersible vehicles, radar and sonar instruments, spacecraft systems, protective equipment, and certain toxicological agents.

The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles is also restricted under the ITAR.

The EAR regulates technologies, commodities, and software that are considered "dual-use". That is, the item and information may have a legitimate scientific or commercial purpose, the misuse of which could cause a threat to national security. Examples of dual-use items and information include certain engineering materials, electronic equipment, biological materials, navigation equipment, encryption software, and chemicals.

These export control regulations require a license or other agency approval prior to the release of controlled information to foreign nationals within or outside the United States. Only the Office of Sponsored Programs can apply for and obtain an export control license or other agency approval on behalf of the University for an anticipated transfer of controlled information.

There are some situations in which a transfer of information is excluded from this licensing requirement. The exclusions include:

1. Fundamental Research Exclusion: information arising from basic and applied research in science and engineering at an accredited institute of higher learning within the U.S., where the resulting information is ordinarily published and shared broadly with the scientific community.

2. Public Domain/Publicly Available:
 - a. ITAR: information which is already published and generally accessible to the public is not subject to ITAR. Information that is available through books, periodicals, patents, open conferences in the United States, websites accessible to the public with no access controls, or other public release authorized by the U.S. government, is considered in the public domain.
 - b. EAR: publicly available technology and non-encryption software, such as information that is the subject of an open patent application, published in a book or periodical, released at an open conference anywhere, available on a website accessible by the public with no access controls or information that will be published is not subject to the EAR. This includes submission of manuscripts to journals for consideration with the understanding that the article will be published if favorably received.

3. Educational Instruction:
 - a. EAR: information that is released by instruction in catalog courses and associated teaching laboratories is not subject to the EAR.
 - b. ITAR: information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities is not controlled by ITAR.

Note that each exclusion does not apply to encryption software exceeding 64-bits. In other words, any transfer of encryption software exceeding 64-bits to a foreign national requires cognizant agency approval or a license.

Researchers may be personally liable for violations of export control laws and regulations. The penalty for unlawful export and disclosure of export controlled information under ITAR is up to two years in prison and/or a fine of \$100,000, and under EAR the greater of \$1,000,000 or five times the value of the export and imprisonment of up to 10 years.

If it is determined that export controlled information will be involved in the activities of the University of Washington, the University requires that a Technology Control Plan (TCP) be put in place. OSP will work with you to implement a TCP to manage the receipt, creation, security and transfer of export controlled information.

Please contact exports@uw.edu or call OSP at (206) 543-4043 if you have questions regarding the export control regulations, your responsibilities, or the questions on the Deemed Export Compliance Attestation.