

Export Controls

Date: April 20th, 2009
To: Faculty and Research Administrators
From: Ann Arvin ,
Vice Provost and Dean of Research

Subject: Documentation Requirements for Export Controls

Stanford's [Openness in Research Policy](#) expresses our institutional commitment to "the principle of freedom of access by all interested persons to the underlying data, to the processes, and to the final results of research" (reinforced in Section 3 of the [Faculty Policy on Conflict of Commitment and Interest](#)). Export controls, conversely, may impose access, dissemination, and participation restrictions on information and tangible items.

Note: "[exports](#)" can include both

- the shipment or handcarry of materials to another country and/or
- the disclosure of export controlled information to foreign persons at Stanford.

This memo is a reminder about our Openness policy, and the need to document international shipments of tangible items and transfers of data or other technical information that is restricted and identified as export controlled..

Stanford conducts only [fundamental research](#) intended to be shared broadly with the interested public; that is, we perform basic and applied research in science and engineering that is not subject to access, dissemination, or participation restrictions. Federal export controls generally do not apply to the conduct or results of fundamental research. Consequently, the need for recordkeeping related to export controls is usually limited to:

- physical shipments of tangible items including software on media outside the U.S. and
- transactions involving export-controlled information provided to Stanford researchers by sponsors or third parties such as licensors, vendors, or subcontractors.

Stanford must [document](#) its due diligence in having conducted an export control review and to demonstrate its adherence to US export control and trade sanctions laws.

EXPORT LICENSE EXCEPTIONS AND EXEMPTIONS

1. Shipments Abroad

A researcher may occasionally be required to obtain an export license from the relevant federal agency in order to ship tangible items outside the borders of the United States. A vast majority of tangible item shipments are likely to qualify for "No License Required" (NLR/EAR99) treatment under [Export Administration Regulations](#) (EAR) or a license exception or exemption under either the EAR or [International Traffic in Arms Regulations](#) (ITAR). Whether a license is required or not will depend on the the country of ultimate destination, the researcher's description of the item, its intended end-use and its end-user. For example, an electron microscope, for use in fundamental research involving some special microstructure determination, being sent to a collaborator in India who will insert a component and return the microscope to Stanford, is likely to be shipped NLR/EAR99 or under a license exception or exemption.

Export documentation is also stored both locally and centrally on campus. The PI, the Project Manager, or another person to whom this responsibility is delegated must locally maintain copies of the export control form submitted, and any confirming shipping documents (Air Waybill, Purchase Order, Commercial Invoice) with the project files. In addition, a copy of all export documentation must be provided to my office (see *Demonstrating Compliance* below).

2. Disclosures of Export-Controlled Information to Foreign Nationals

Even though the conduct and results of fundamental research may be openly shared with foreign nationals in the United States, it may be necessary for Stanford researchers to accept export-controlled information or materials from a sponsor or third party. For example, a vendor or research partner may have to provide the specifications for heat and vibration tolerances on a piece of hardware. This proprietary data is not "fundamental research" as defined by the applicable regulations, and such a disclosure would therefore carry with it the full panoply of export control requirements. That is, when the information is identified by the disclosing party as export controlled or is identified as export controlled after an internal review by Stanford's Export Control Officer, a license or other formal authorization may be required before certain foreign nationals, either in the U.S. or abroad, may have access, if indeed any further disclosure would be permitted at all. The disclosing party may decide to obtain a license, if required, for the disclosure to a foreign national, or the disclosing party may choose to share the information only with an eligible "U.S. person" PI or researcher under a Non-Disclosure Agreement prohibiting any further disclosure (or "re-export").

To the extent that a sponsor or a third-party's information is substantially remote from the intellectually significant portion of the research, such that:

- a. no other researchers on the same project would be disadvantaged by the lack of access to the information and
- b. the right to publish is not restricted,

a [Non-Disclosure Agreement](#) (NDA) between the disclosing party and the University recipient will not violate Stanford's Openness in Research Policy.

The recipient of this information must be a "U.S. person" (citizen or permanent resident alien) or a

foreign person eligible to receive the information under an export license exception or exemption. As with export control forms associated with tangible item shipments, the discloser must document the use of an available license exception and exemption for sharing export controlled information with eligible foreign persons. The disclosure must be documented through the submission of the relevant export control form and a copy of the form must be kept in departmental project files.

DEMONSTRATING COMPLIANCE

Stanford is subject to periodic audits with regard to all its recordkeeping requirements, and those related to export controls are no exception. In fact, the U.S. Congress has mandated that the Inspectors General of the Departments of Commerce, State, Homeland Security, Treasury, Defense, and Energy undertake rolling audits related to export controls at universities and research facilities over this decade. In 2004, Stanford underwent such an audit by the General Accounting Office and the Commerce Department, and was found to be in compliance with all applicable regulations.

However, in order to enhance our ability to respond efficiently to a "data call" or to further audits, Stanford's Office of the Dean of Research has established an electronic [export control forms](#) submission process linked to a database containing all export control form submissions. Copies of these submissions also need to be kept locally in the research project files of Departments and Schools.

I have designated Steve Eisner to be the Point of Contact for the copies of these records. Starting March 20, 2009, electronic copies of the forms described in the previous sections must be submitted for ALL international shipments and disclosures of export controlled information to eligible foreign persons.

Questions about the applicability of export control regulations to a particular set of facts should continue to be directed to Steve Eisner in the Office of Dean of Research, (650) 724-7072, steve.eisner@stanford.edu.

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