

Policy Number: 1119
Policy Title: Export Controls

Date of Current Revision: June 2022

Primary Responsible Officer: Vice President for Research, Economic Development and Innovation

1. PURPOSE

Export control laws restrict certain types of information, technologies and commodities that can be transmitted overseas to entities and individuals, including US citizens, or made available to foreign nationals on US soil. This policy defines export control and related terms, establishes responsibility for export control compliance and determines the ways in which JMU will comply with US export control laws and regulations. It is the responsibility of faculty, staff and students to be aware of and comply with US export control laws as well as with the university's written instructions and procedures before engaging in any activities that may raise compliance issues under US export control laws or this policy.

2. AUTHORITY

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia section § 23.1-1600; § 23.1-1301. The Board has delegated the authority to manage the university to the President.

Arms Export Control Act (AECA) - Title 22 U.S.C. § 2778

Export Administration Regulations - Title 15 C.F.R. § 730-774

International Traffic in Arms (ITAR) Regulations - Title 22 C.F.R. § 120-130

Office of Foreign Assets and Control (OFAC) Regulations - Title 31 C.F.R. § 501

3. DEFINITIONS

Commerce Control List

A list of dual use items, materials, software and technology, subject to export regulations maintained by the Department of Commerce, that can be used both in military and other strategic uses (e.g., nuclear) and commercial applications. In general, the term dual use serves to distinguish Export Administration Regulation controlled items that can be used both in military and other strategic uses and in civil applications from those that are weapons and military related use or design and subject to the controls of the Department of State, or subject to the nuclear related controls of the Department of Energy or the Nuclear Regulatory Commission.

Controlled Unclassified Information

Unclassified information designated by the US Government executive branch that requires safeguarding or dissemination controls, pursuant to and consistent with applicable US laws, statutes, regulations, Executive Orders and US government-wide policies.

Controlled Technical Information

Controlled technical information is technical data, computer software and any other Statements on Technical Documents and Department of Defense Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure.

Deemed Export

Used to describe the transfer of technology or technical data to foreign persons usually while inside of the US. It is a concept that applies to both the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR). Deemed export can include controlled tangible items, software/software code or information.

In terms of EAR, deemed export refers to the release of technology or source code to a foreign national while on US soil. An export is “deemed” to have taken place when controlled technology is transferred through visual inspection, oral exchange, or by practice or application. [15 CFR § 734.2(b)(2)(ii)].

In terms of ITAR, deemed export refers to closing or transferring (including oral or visual disclosure) technical data to a foreign person or performing a defense service on behalf of or for the benefit of a foreign person whether in the United States or abroad. [22 CFR § 120.17].

Defense Article

Any item or technical data (e.g., military and commercial, navigational, research satellite and related items, equipment, vehicles, instrumentation, software, and materials) designated by the Department of State in the International Traffic in Arms Regulations. This term includes technical data recorded or stored in any electronic or physical form, models, mockups or other items that reveal technical data directly relating to items on the United States Munitions List. It does not include basic marketing information on function or purpose or general system descriptions.

Defense Service

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, etc. of defense articles. Also, the furnishing to foreign persons of any controlled technical data.

Empowered Official

A US person who is legally empowered in writing by the University to sign International Traffic in Arms Regulations export license applications or other requests for approval on behalf of James Madison University; who understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability, and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations.

The Empowered Official has the independent authority to: (i) Enquire into any aspect of a proposed export or temporary import by the applicant, (ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and (iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

Export

Any oral, written, electronic or visual disclosure, shipment, transfer or transmission of commodities, technology, information, technical data, assistance or software codes to:

- Anyone outside of the US
- A “foreign national” wherever they are (deemed export)
- A foreign embassy or affiliate

Export Administration Regulations (EAR)

Regulations promulgated and implemented by the Department of Commerce (Bureau of Industry and Security) to regulate the export of dual use goods, software and related technology. This includes items identified on the Commerce Control List (CCL), as well as restrictions on exports to specified persons, entities, countries and end-users.

Export Controls

Federal laws that govern the transmission of controlled items and associated technical data to foreign nationals. The two primary regulations are International Traffic in Arms (ITAR– see 22 CFR §§ 120-130) and the Export Administration Regulations (EAR, see 15 CFR §§700-799).

Foreign National

Any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions). Under ITAR, the term *foreign person* is used, but has the same definition as foreign national within this policy.

Fundamental Research Exclusion

Under the EAR and the ITAR, fundamental research means basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons (EAR) or pursuant to specific US government access and dissemination controls (ITAR).

Fundamental research exclusion does not apply to:

- Most physical goods
- Software
- Encryption
- Certain non-publishable research
- Research conducted outside of the US
- Research with publication restrictions on results (Exemptions under 15 CFR § 734.11)
- Federally funded research with certain access and dissemination controls on project results

International Traffic in Arms Regulations (ITAR)

US State Department regulations that govern the AECA (Title 22 USC § 2778) and control the export of defense-related articles and services located on the US Munitions List (USML). ITAR regulations require registration with Directorate of Defense Trade Controls (DDTC) to export or broker items located on the USML. Criminal violations enforced by HSI while civil and administrative violations are enforced by State Department DDTC.

Office of Foreign Assets Control (OFAC)

The office under the US Department of the Treasury. OFAC is responsible for enforcing the foreign policy of the US government, including all trade sanctions, embargoes and financial interactions with prohibited or blocked individuals or entities.

Restricted Parties

Individuals or entities with whom the university and its employees may be prohibited by law to export or engage in controlled transactions. May also include those who require a license or other government approval. These include, but are not limited to, the Department of Commerce Denied Persons List, Entity List and Unverified List; the Department of State Debarred Parties List and Designated Terrorist List; and the Department of Treasury Specially Designated Nationals and Blocked Persons List.

Restricted Research

University research, development or testing subject to export controls, sanctions, controlled unclassified restrictions and/or security controls. Research becomes restricted when the university accepts (i) publication restrictions, (ii) federally funded agreements with access and dissemination controls on the results, (iii) federally funded research agreements with contract specific national security restrictions; (iv) third party controlled items or information or (v) access to or defense services on a defense article. Restricted research may be subject to EAR and ITAR regulations, and a license or other government approval may be required for foreign national participation.

Technical Data

Required for the development of defense articles, including information in the form of blueprints, drawings, photographs, plans, instructions, and documentation. Also includes classified information relating to defense articles and defense services, information covered by an invention secrecy order and certain software directly related to defense articles. [ITAR § 120.10]

Sanctioned Countries

Countries designated under the Foreign Access Control Regulations or through Executive Orders as having limited or comprehensive trade sanctions imposed by the United States for reasons of anti-terrorism, non-proliferation, narcotics trafficking, or other reasons.

United States Munitions List

Articles, services and related technical data designed by the Department of State as defense articles pursuant to the Arms Export Control Act.

4. APPLICABILITY

This policy applies to all JMU employees and students and governs university educational programming, research and scholarly endeavors sponsored in whole or in part by outside entities including government and industry that may result in an export or sanctioned transaction with a foreign national, entity, or country.

5. POLICY

James Madison University (JMU) encourages and supports an open research environment for conducting fundamental research, but acknowledges that the United States has enacted export control laws that restrict the shipment, transfer or transmission of certain items, services, technology and software to foreign countries, as well as the release of controlled technology and software to foreign persons within the United States. Export control regulations exist for purposes of national security, foreign policy, competitive trade and prevention of the proliferation of weapons of mass destruction. It is the policy of the university to comply with US export control laws.

Although most research conducted at JMU is excluded from export control regulations, JMU engages in activities, research and the development of new technologies that are subject to export restrictions. JMU and its employees are required to comply with US export control regulations, including the International Traffic in Arms Regulations (ITAR) through the Department of State; the Export Administration Regulations (EAR) through the Department of Commerce; and the Office of Foreign Assets Controls (OFAC) through the Department of Treasury. Failure to comply with US export control regulations subjects the university and individual employees to civil, criminal, and administrative penalties.

It is the responsibility of all JMU employees to be aware of and comply with United States export control laws, as well as any JMU procedures contained on [JMU's Export Control website](#).

6. PROCEDURES

6.1 Overview

The office of the Empowered Official will assist in assessing export control obligations and will facilitate the acquisition of licenses as required. It is the responsibility of all university personnel to be aware of and comply with all export controls as well as applicable university policies and procedures.

6.2 Research Involving the Export of Items out of the US

Research, Economic Development and Innovation (REDI) will determine the licensing requirements for shipping any item, software, technology or information from the university to destinations outside of the US. The final determination of whether an item requires a license, qualifies for a license exemption or can be exported as "no license required" will be made by REDI in collaboration with the researcher(s).

If a license is required, REDI will coordinate the license application process. No export (or deemed export) can take place until the required license is obtained.

6.3 Research Involving Disclosure or Transfers to Foreign Persons in US

Licenses may be required before any information can be released. Final determination of whether the release of the information requires a license will be made by REDI in collaboration with the researcher(s). No information or items can be released until the required license is obtained.

Examples include: detailed description of information, software or technology; technical specifications; origin of the item and/or any contractual non-disclosure or use restrictions; a list of the home country and citizenship of all persons with access to the information, item, software or technology; whether the information, item, software or technology was the result of fundamental research; or if the item is published, patented or is in the public domain.

6.4 Travel Outside the US

When leaving the US, traveling with certain items may require a license or license exemption depending on the travel destination. University personnel traveling to locations currently under US embargo, sanction or other trade restriction can receive assistance from REDI to determine whether a license is required.

6.5 International Financial Transactions

Before agreeing to provide funding to any foreign national, university personnel should check with REDI for assistance in identifying any potential restrictions on the transaction. Each

individual and the university can be held liable for improperly transferring controlled technology. In some cases, technology otherwise controlled under ITAR and EAR may be excluded from the requirement to have a license or there may be a license exemption.

6.6 Activities Involving the Receipt and/or Use of Export Controlled Information/Technology

The fundamental research exclusion does not apply to export-controlled information, technology, software or items that the university receives from other parties, nor does it apply to research conducted using such export-controlled information or items. Export controlled information received from other parties cannot be openly shared with certain foreign nationals without a license. If a university activity involves the receipt or use of externally obtained export-controlled information, items or technology or software, the primary recipient must determine by current citizenship status those university personnel that can legally access the information or item is shared.

6.7 Accepting Export-Controlled Information, Items, Technology, or Software

Before accepting any information, item, technology or software, university personnel should contact REDI in determining potential compliance requirements.

6.8 Restrictive Trade Practices and Boycotts

Participation in certain restrictive trade practices is prohibited under the EAR. US persons or businesses are prohibited from participating in any non-US sanctioned foreign government boycott.

6.9 Recordkeeping

The university is required to retain a complete record of all export control documentation including but not limited to the university's analysis of license requirements, any issued licenses, shipping documents and any correspondence related to each export transaction. Original records must be retained for five years from the date of export, re-export or transfer.

The office of the Empowered Official is responsible for the retention of export control records.

7. RESPONSIBILITIES

It is the responsibility of all university personnel to be aware of and comply with all export controls as well as applicable university policies and procedures.

It is the responsibility of REDI to determine the licensing requirements for shipping any item, software, technology, or information from the university to destinations outside of the US. If a license is required, REDI will coordinate the license application process. No export (or deemed export) can take place until the required license is obtained.

It is the responsibility of the Empowered Official to assist in assessing export control obligations.

All departments, offices and employees that generate, receive or maintain public records under the terms of this policy are also responsible for compliance with Policy [1109](#) - Records Management.

8. SANCTIONS

Violations of university policy by employees or students will be addressed in accordance with appropriate university policies and procedures, which may include disciplinary action up to and including, but not limited to, termination from employment, dismissal from the university and/or legal action.

Failure to comply with US export control regulations subjects the university and individual employees to civil, criminal, and administrative penalties.

9. EXCLUSIONS

9.1 Some materials are not considered subject to export control regulations:

- **Published Information and Software:** Information that is published and is generally accessible to the interested public through publication in books or periodicals available in a public library, bookstores, or information that is presented at a conference, meeting, seminar, trade show or other open gathering. Software is considered published when it is available for general distribution either for free or for a price that does not exceed the cost of reproduction and distribution.
- **Published Educational Information:** Course material taught in US universities that is published in the course catalog and open to the public and falls within educational information exemption.

9.2 Employees applying for external funding for purely private projects that do not in any way involve James Madison University or any of its resources need not follow these procedures. For further clarification, review JMU Policy 1106 Conflict of Interests.

10. INTERPRETATION

The authority to interpret this policy rests with the president and is generally delegated to the Vice President for Research, Economic Development and Innovation.

Approved by the President: June 2022