

SMITHSONIAN DIRECTIVE 611,
APPENDIX A,
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BACKGROUND OF EXPORT REGULATIONS

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1. THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)

The International Traffic in Arms Regulations (ITAR) control the export, transfer, and temporary import of “defense”-related articles and services that are listed on the U.S. Munitions List (USML) or specially designed for equipment on the list. These items, for the Smithsonian Institution (SI), are usually not “defense” items, but are space instruments, satellites, historic artifacts that are rockets, drones, historic firearms and high-level infrared items. The regulations implement the provisions of the [Arms Export Control Act](#), and are described in *Code of Federal Regulations* (CFR) Title 22 (Foreign Relations), Part 120–130. The Department of State [Directorate of Defense Trade Controls](#) (DDTC) interprets and administers these exports with the goal of safeguarding U.S. national security and furthering U.S. foreign policy objectives. The Department of Defense is also involved in the review and approval process.

Physical enforcement of import and export laws at border crossings is performed by [Customs and Border Protection](#), an agency of the [Department of Homeland Security](#).

The ITAR dictate that information and software (technical data) pertaining to defense and military-related technologies on the USML may only be shared with U.S. persons unless authorization from the Department of State is received or a special exemption is used. U.S. persons (including organizations) can face heavy fines if they have, without authorization or the use of an exemption, provided non-U.S. persons with access to ITAR-controlled defense articles, services, or technical data.

The USML is updated regularly, based on political and technological availability of military technology by our adversaries. The 22 categories of the USML are written with technical detail and the thresholds are reviewed to match the progress in technical capabilities and add emerging technologies. Space components, optics and remote sensing are areas of the ITAR that most affect SI.

This is important because if SI is a contractor on research involving items on the USML with foreign persons, this collaboration may require SI to obtain an export license. Topics related to the design or development of ITAR-controlled instruments or technologies that will be discussed with non-U.S. persons in attendance at conferences need to be approved by U.S. Government sponsors or the manufacturer in advance. This is to ensure that no ITAR- controlled technology is publicized in an open forum or, alternatively, may only be presented at restricted conference. Intangible exports, such as the taking of export-controlled technology on unencrypted mobile devices out of the country or hiring of non-U.S. persons to perform work on export-controlled technology, known as a “deemed export,” may be prohibited without Government authorization. Disk drives on SI-issued laptops are encrypted and so mere travel with such laptops complies with ITAR rules.

2. THE EXPORT ADMINISTRATION REGULATIONS (EAR)

The U.S. Department of Commerce’s [Bureau of Industry and Security](#) (BIS) is responsible for implementing and enforcing CFR Title 15 Parts 730–774, also known as the Export Administration Regulations (EAR), in the United States.

The EAR have control over all exports and some re-exports with the exception of those that are subject to another agency or are neither “publicly available” nor copyrighted material. In essence, EAR have controls over “commercial” or “dual-use” exports, which include lower-level items controlled for national security, chemical and biological weapons, crime control, firearms, nuclear technology. The requirements include the need to obtain an export license or qualify for a license exception when exporting sensitive items of a “dual-use” nature.

The BIS regulates the export and re-export of most commercial items. The EAR enumerate specific items, production equipment, materials, software or technology and the reason for control on the Commerce Control List (CCL). Relevant to Smithsonian research are items such as: focal plane arrays; infrared detectors; deformable mirrors; space-qualified adaptive optics; radiation-hardened electronics; digital signal processors; rockets; missiles; thrusters; underwater acoustics or communication equipment; telecommunications equipment; atomic clocks; radar; submersible vehicles and their systems; underwater camera equipment; protective laboratory equipment; chemicals; zoonotic, plant and human pathogens; vaccines; genetic elements; immunotoxins; diagnostics and food test kits; medical products; biologicals; radiation-detection equipment; mass spectrometers; global positioning systems (GPS); unmanned aerial systems (UAS) (aka drones); avionics systems; encryption; firearms and ammunition; and propulsion technology and equipment.

Items enumerated on the CCL are subject to the export license process, which is the Government’s mechanism to review in advance proposed exports and end-user parties for suitability. As a part of the licensing process, the exporter and the Department of Commerce screen the parties against various prohibited end-user lists to ensure that the export is truly for

commercial and peaceful end use and is being shipped to a permitted end-user. The Smithsonian is responsible for receiving approval on a license or license exception in advance for the proposed export of any controlled items, technology, or technical data that the Smithsonian wishes to share with non-U.S. persons either in the United States or abroad.

In addition to licensing requirements, the Smithsonian is responsible for complying with other general prohibitions promulgated by the U.S. export control regime. These prohibitions address the unsanctioned boycott of Israel, exports to embargoed countries, dealing with parties that are denied export privileges for violating U.S. export laws or those parties who act contrary to international weapons bans.

3. THE FOREIGN TRADE REGULATIONS (FTR)

Regardless of whether or not an export requires a license or qualifies for an exemption, all tangible exports need to comply with the export clearance requirements. This involves filing export information in the Automated Export System (AES) for exports that are subject to an export license or a shipment valued at more than \$2,500, all space items, shipments to embargoed countries plus China, Russia, and Venezuela for any value. These export clearance rules also apply to all shipments to certain U.S. possessions as indicated in 758.1 of the EAR or 15 CFR Part 30.4. Some exceptions, like non-export controlled shipments to Canada, temporarily exist.

Before exporting to or collaborating with non-U.S. persons, Smithsonian-affiliated researchers and scholars need to identify instances where items will be exported and follow procedures to comply with export license, export clearance, and recordkeeping requirements. Failure to do so can result in fines of \$10,000 or more for failure to submit the export clearance.

Persons receiving awards, arranging collaborations, purchasing and exporting scientific equipment, and arranging foreign travel need to follow internal procedures. These ensure that international activities are flagged at several junctures for compliance with export laws and trade sanctions. SI employees may contact the Research Compliance Officer at export@si.edu or Export Compliance Officer export@cfa.harvard.edu, or Office of International Relations per Global Activities Process Framework, if they are unsure of their responsibilities.

4. THE FOREIGN ASSETS CONTROL REGULATIONS (FACR)

The [Department of the Treasury's](#) FACR require U.S. persons and organizations to abide by U.S.-imposed sanctions on countries. These sanctions are intended to place pressure on governments that violate human rights, commit acts of aggression or terrorism, or act contrary to U.S. policies. Comprehensive trade sanctions, administered for more than 10–50 years, are currently imposed on Burma, Cuba, Iran, North Korea, Russia/Ukraine, S. Sudan, Syria, and Venezuela, and other countries are subject to partial sanctions.

Smithsonian units must ensure that their activities, such as honoraria or financial transactions meet the limited scope permitted under a general or specific license when operating in these countries or when dealing with persons who are nationals of such countries.