

BACKGROUND OF EXPORT REGULATIONS

1. The International Traffic in Arms
2. Regulations (ITAR) 1
3. The Export Administration Regulations (EAR) 2
4. The Foreign Assets Control Regulations (FACR) 3
5. Bureau of Census Foreign Trade Regulations (FTR) 4

1. THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)

The ITAR controls the export, transfer, and temporary import of “defense”-related articles and services that are listed on the U.S. Munitions List or specially designed for equipment on the list. These 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 the ITAR. Its goal is to safeguard U.S. national security and further 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.

For practical purposes, the ITAR dictate that information and material pertaining to defense and military-related technologies (for items listed on the U.S. Munitions List [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 dynamic and changes over time based on political and technological realities; e.g., after launch-failure analysis assistance was provided by U.S. companies to a non- NATO foreign country, technology pertaining to satellites and launch vehicles became more carefully protected in 1999. After 15 years, this regulation has been reversed. Any Smithsonian research involved with items on the USML may require the SI to obtain an export license. Conference topics related to the design or development of ITAR-controlled instruments or technologies may

1. THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR) (continued)

need to be examined by U.S. Government sponsors or the manufacturer in advance to ensure that no ITAR- controlled technology is publicized in an open forum. The Smithsonian is aware that intangible exports, such as the taking of export-controlled technology on 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.

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 reexports that are not subject to the ITAR, or are neither “publicly available” nor copyrighted material. In essence, EAR have controls over “commercial” or “dual- use” exports. 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. These items, while commercially available, are restricted because their export to certain countries may pose a threat to regional stability, national security, or crime controls, or may be otherwise used to the detriment of a population.

The BIS regulates the export and reexport of most commercial items. There are different requirements to export a product or service lawfully, depending on the “reason for control.” EAR restrictions vary from country to country based on whether the destination is a “cooperating” country and aligns with international export controls. The most restricted destinations are countries under economic embargoes or designated as supporting terrorist activities. Some products have worldwide restrictions prohibiting exports without specific authorization. An item leaving the United States is considered an “export” regardless if it is temporary, not for sale (a gift or loan), or destined for an affiliated location in a foreign country. A foreign-origin item exported from the United States, transmitted or trans-shipped through the United States, or being returned from the United States to its foreign country of origin, is considered an export. How an item is transported outside of the United States does not matter in determining export license requirements. The EAR does not regulate copyrighted material, free software (except excription), certain artwork and fundamental research.

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;

2. THE EXPORT ADMINISTRATION REGULATIONS (EAR) (continued)

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; drones; global positioning systems (GPS); unmanned aerial systems (UAS); avionics systems; encryption; missiles; firearms and ammunition, propulsion technology and equipment.

Items enumerated on the CCL are subject to the export license process, which is the Government's mechanism to review proposed exports and end-user parties for suitability in advance. 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 submitting a license application in advance for the proposed exports 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, and acting contrary to international weapons bans.

3. 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 Cuba, Iran, North Korea, Russia, S. Sudan and Syria, and other countries are subject to partial sanctions.

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

4. BUREAU OF CENSUS FOREIGN TRADE REGULATIONS

Regardless of whether or not an export requires a license or qualifies for an exemption, all exports need to comply with the export clearance requirements, which include 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. These export clearance rules apply to all shipments to certain U.S. possessions.

Before exporting to or collaborating with non-U.S. persons, Smithsonian-affiliated researchers and scholars need to identify instances where the item or related technology will be exported, and follow procedures to comply with export license, export clearance, technology control plan and recordkeeping requirements.

Revised internal procedures ensure that persons receiving awards, arranging collaborations, purchasing and exporting scientific equipment and arranging foreign travel evaluate international activities at several junctures for compliance with export laws and trade sanctions and may contact the Research Compliance Officer at export@si.edu or Export Compliance Officer export@cfa.harvard.edu, if they are unsure of their responsibilities.