The U.S. Government regulates/restricts the export of certain information, items, and technologies deemed critical to national security, economic welfare, or foreign policy. These items include:

- military or “dual use” items
- funding, information, services or items provided to embargoed countries
- encryption technology & related software
- chemical/biological weapons

The term “Export Controls” refers collectively to U.S. laws and regulations that govern the transfer of controlled information or technologies to foreign entities or foreign nationals. Foreign Entities are governments, organizations, or businesses that are not incorporated or organized to do business in the U.S. Foreign nationals are not U.S. citizens, not permanent resident aliens, or not in the U.S. with asylum or refugee status.

Federal agencies are increasingly focused on Universities and their compliance with export regulations. Non-compliance with export regulations can lead to substantial and severe criminal and monetary penalties imposed on individual researchers and institutions, loss of export privileges, and loss of federal funding.

Export controls may limit researchers’ abilities to ship items and project deliverables outside the U.S., conduct research without implementing security access controls, allow participation of foreign nationals in research projects, and provide services (including training) to foreign nationals both abroad and in the U.S. In addition to research activities, many everyday University activities are subject to Export Controls including:

- Providing professional services (e.g., consulting or training) internationally or to foreign nationals in the U.S.
- Subcontracting research to an embargoed or sanctioned country
- Conducting tours of research facilities for foreign nationals
- Collaborating on research projects with foreign nationals in the U.S. or abroad
- Traveling overseas on University business (e.g., conferences, research projects, or field work)

There are three primary federal agencies that oversee and enforce Export Controls:

- State Department – International Traffic in Arms Regulations (ITAR) governing military, weapons and space related technologies
- Commerce Department – Export Administration Regulations (EAR) governing dual use technologies (those with both military and commercial applications or strictly commercial applications)
• Treasury Department – Office of Foreign Assets Control (OFAC) governing transactions with countries subject to embargo, boycott, or trade sanctions

An “export” occurs whenever an item, commodity, technology, or software is sent out of the U.S. to a foreign national or entity. An export can take any form – not just shipments of physical devices – and the manner of transfer is not relevant. An Export License may be required before an institution or researcher can export a “controlled item” including:

• Shipment of items out of the U.S.
• Written or oral communications
• Electronic or digital transmissions
• Hand carrying items out of the country
• Providing visual inspections or tours of facilities
• The use or application of a controlled service or technology on behalf of or for the benefit of foreign person or entity

In addition to the physical transfer of items out of the country, the U.S. Government also actively regulates the release or transmission of controlled technology or information to foreign nationals within the boundaries of the U.S., including foreign graduate students or visiting scholars. Such transfer is referred to as a “deemed export” and fall under the same rules as if the information or technology were actually shipped outside the U.S.

The majority of research conducted at U.S. universities is exempt from export controls under one or more of three exclusions provided under current regulations:

• The Fundamental Research Exclusion
• The Educational Information Exclusion
• The Public Information Exclusion

The Fundamental Research Exclusion applies to any basic or applied research in science or engineering where results are published and broadly shared in the scientific community. The actual materials, items, technologies, or methods used to produce the results may still be subject to Export Controls. These conditions must all be true to qualify for a Fundamental Research Exclusion:

• There can be no restrictions on publication
• There can be no access or dissemination restrictions
• The research must take place at an accredited institution in the U.S.

The Educational Information Exclusion covers information that is commonly taught in universities via instruction in University courses or in University laboratories.

The Public Information Exclusion covers any information that is already published or out in the public domain such as:

• Books, newspapers, pamphlets, or Web sites freely accessible by the public
• Publicly available technology and software
• Information presented at conferences, meetings or seminars open to the public
• Information included in published U.S. patents

The following activities are not protected by Export Control exclusions and are always subject to export controls:

• Research with third party controlled technology
• Interactions with blocked or sanctioned entities
• Research subject to contract restrictions on publication or access by foreigners
• Research in controlled areas (e.g. encryption technology)
• Research in chemical or biological weapons
• Research in nuclear technology or weapons of mass destruction
• Research conducted outside the U.S.

Research or academic initiatives resulting in Fundamental Research, Educational Information, or Public Information is not subject to Export Controls and no Export License is required to release or transfer information to foreign nationals either abroad or in the U.S. Please note that Lawrence Tech will generally not accept research projects for which restrictions are imposed on publication or dissemination of research results.

Even if an activity may be exempt from Export Controls under an exclusion, the University must demonstrate that an appropriate Export Control Review was performed. These questions will help an investigator determine if Export Controls may apply to a research project:

1. Does the research involve military, weapons, defense, chemical or biological weapons, encryption technology and software, space or other dual-use items, or export restricted technologies?
2. Does the research involve the transfer or shipment of equipment, materials or funding out of the U.S.?
3. Does the research involve collaboration with foreign colleagues and/or employment of foreign graduate students either on campus or abroad?
4. Does any part of the research take place outside of the U.S. (e.g. field work)?
5. Does any part of the research involve the receipt or use of Export Controlled information or items provided by a 3rd party?
6. Are there any contractual restrictions on publication or access to or dissemination of the research results?
7. Does the research involve the shipment or transfer of materials, money or any other type of collaboration with foreign nationals from a sanctioned or embargoed country (i.e., Iran, Cuba, Syria, Sudan, or North Korea)?
8. Do you have any reason to believe that the end-user or the intended end-use of the item or information violates any existing export controls?

If any of these questions can be answered “yes” for a research project, then the research may be subject to Export Controls and an assessment will need to be performed. Contact the Research Support Services Committee for guidance on this process, and include information about potential Export Controls in your Proposal Transmittal Form.
In some cases the University will need to apply for an Export License for the project. Export Licenses must be approved and in place before any project work is undertaken. All documentation related to an Export License must be retained for at least five years, and specific documentation is required for any materials or information sent outside the U.S. under an Export License.