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Policy Statement

It is the policy of the University that all personnel, including faculty, students, postdoctoral fellows, laboratory staff and all other persons retained by or working at or for Lehigh, including University visitors (“**personnel**”), conduct their university business in compliance with U.S. laws and regulations, including the U.S. export control laws and regulations applicable to Lehigh’s operations and research activities. **All Lehigh personnel are responsible for complying with this Export Control Policy (“the Policy”) and with all export control requirements related to their activities.** In addition to this Policy, Lehigh has established procedures and administrative support to aid its personnel in complying with these laws and regulations.

Lehigh engages in a broad range of innovative and important research, academic, scholarly, and administrative activity both in the U.S. and abroad. Lehigh’s goal is to allow researchers and scholars to explore their research topics and interests and disseminate their research results. Lehigh also seeks to allow researchers to freely collaborate with their international colleagues in the course of fundamental research and to allow foreign researchers and students to participate in Lehigh research projects and scholarly activity. Lehigh has adopted this Policy to ensure that these goals are pursued in harmony with the applicable export control laws.

This Policy is solely for the use of, and is binding upon, Lehigh’s personnel. Willful or grossly negligent failure of personnel to follow this Policy and such additional procedures as shall be issued to implement this Policy, may be grounds for discipline, up to and including termination, and may in certain circumstances expose personnel to individual criminal prosecution, fine, and/or imprisonment.


Regulatory Framework

Export control laws are a complex set of U.S. federal regulations and international regulations and treaties that control the conditions under which certain information, technologies, and commodities can be transmitted overseas to anyone, including U.S. citizens, or to a foreign national on U.S. soil. The laws are implemented by the Department of Commerce through its Export Administration Regulations (“EAR”), the Department of State through its International Traffic in Arms Regulations (“ITAR”), and the Department of the Treasury through its Office of Foreign Assets Control regulations (“OFAC”). These laws, regulations, and treaties are designed to protect U.S. national security, prevent the proliferation of weapons of mass destruction, further U.S. foreign policy (including the support of international agreements, human rights and regional stability), and to maintain U.S. economic competitiveness.

The export control laws apply to all “exports.” The term “export” has a broad definition and includes (1) the actual shipment of any covered goods or items leaving U.S. borders, including to U.S. citizens abroad; (2) the electronic or digital transmission of any covered goods, items or related goods or items leaving U.S. borders, including to U.S. citizens abroad; (3) any release or disclosure, including verbal disclosures or visual inspections, of any Technology, software or Technical Data to any foreign national; or (4) the actual use or application of covered technology on behalf of or for the benefit of a foreign entity or person anywhere.

The term “export” also covers transmitting the Technology, software or Technical Data to a foreign national **within** the U.S. (a “deemed export”). Even a discussion with a foreign researcher or student in a campus laboratory could be considered a “deemed export.” Export controls preclude the participation of all foreign nationals in research that involves covered technology without first obtaining a license from the appropriate government agency.

Three principal U.S. regulatory regimes govern the export of items and technology from the U.S., the re-export or retransfer of the items outside the U.S., and transfers of controlled technology to foreign persons in the U.S.

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Export Administration Regulations (EAR)

The EAR is a set of regulations administered by the U.S. Department of Commerce through the Bureau of Industry and Security. These regulations control “dual use” items and the technology related to these items. Dual use items are items that could have both civilian and military uses, such as computers, toxins, and chemicals. A listing of the items controlled by the EAR is called the Commerce Control List (“CCL”), located at 15 CFR Part 774. A copy of the updated set of regulations is available at:

<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>.

Unless an exclusion or exemption applies, a license generally will be required for the export of goods and technology listed on the CCL. An export license is a written authorization provided by the federal government granting permission for the release or transfer of export controlled information or items under a defined set of conditions. Those items not explicitly included on the CCL are included in the broad category known as “EAR99.” Though a license generally will not be required for the export of EAR99 designated items, a license will be required if the item will be shipped or otherwise transferred to an embargoed country.

International Traffic in Arms Regulations (ITAR)

The ITAR is implemented by the State Department’s [Directorate of Defense Trade Controls \(“DDTC”\)](#). These regulations apply to articles, services, and related technical data that are inherently military in nature, as determined by the State Department. Controlled “defense articles”, “defense services”, and related “technical data” are listed on the U.S. Munitions List (“USML”). Some articles and technologies that are not readily identifiable as inherently military in nature—for example, research satellites or small, research submersibles—are included on the USML. A copy of the updated regulations is available at:

<https://www.ecfr.gov/cgi-bin/text-idx?node=pt22.1.121>.

A license is almost always required to export goods and technology listed on the USML.

Office of Foreign Assets Control (OFAC)


The Office of Foreign Assets Control of the U.S. Department of Treasury administers and enforces certain country-specific controls that take the form of economic embargoes against specified countries. The scope of these economic and trade embargoes varies from country to country. Embargoes may be comprehensive and apply generally to all assets being exported to those countries or to an individual within those countries. Or sanctions may be more targeted, such applying only to certain policies. OFAC has adopted regulations that detail the scope of the embargoes/sanctions against each country. A listing of these sanctions programs and the accompanying regulations is available at:

<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

OFAC also maintains a list of Specially Designated Nationals and Blocked Persons (“SDN”) with whom U.S. persons are prohibited from engaging in any transactions due to U.S. foreign policy and national security concerns. Transfers of items and information to individuals or entities on these lists are prohibited without the prior approval of OFAC. This list is subject to change frequently. The most recent list is available at:

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

Exemptions/Exclusions

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Several common exclusions and/or exemptions may remove [Lehigh activities](#) from the application of export control restrictions. Research and educational activities at Lehigh will generally fall under the fundamental research exclusion, the publicly available/public domain exclusion, the education exclusion or a combination of the three. An explanation of each of these exclusions is below.

The Fundamental Research Exclusion

Fundamental research is defined as basic and applied research in science and engineering conducted at an accredited U.S. institution of higher education where the resulting information is ordinarily published and shared broadly within the scientific community. Research conducted at a university normally will be considered fundamental research. The fundamental research exemption permits U.S. universities to allow foreign members of their communities (e.g., students, faculty, and visitors) to participate in research projects on campus in the U.S. without a deemed export license. Further, technical information resulting from fundamental research may be shared with foreign colleagues abroad and shipped out of the U.S. without securing a license.

Research will **not** qualify as “fundamental research” if:

- Lehigh or its researchers accept restrictions on the publication of scientific and technical information resulting from the research, other than a limited pre-publication review by research sponsors to ensure that proprietary information is not inadvertently disclosed in publication or to ensure that the publication will not compromise the patent rights of the sponsor. Any agreement between a researcher and a sponsoring agency to restrict the publication of research results (even if the agreement is not stated in the actual research contract or grant) could destroy the fundamental research exclusion.
- The research is federally funded and Lehigh or its researchers have accepted specific access and dissemination controls regarding the resulting information, such as a restriction on prepublication dissemination of information to foreign nationals or other categories of persons, a restriction on participation in the research by foreign nationals or other categories of persons, etc.


For additional information related to the fundamental research exemption, please see Section V. below.

Public Domain and Publicly Available Exclusion

Information that is published and generally available to the public, as well as publicly available technology and software, is outside the scope of the export control regulations. This exclusion does not apply to encrypted software, to information which may be used in the production of weapons of mass destruction, or where the U.S. government has imposed access or dissemination controls as a condition of funding.

Information is “published” when it becomes accessible to the public by any method, including:

- publication in periodicals, books, print, electronic, or other media available for general distribution;

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- availability at public libraries or at university libraries;
- in the case of patents and patent applications, when they are available at any patent office;
- release at an open conference, meeting, seminar, trade show, or other open gathering held in the U.S. or anywhere except a country that is itself a sanctioned or embargoed country.

Educational Instruction Exclusion

Export control regulations do not apply to information released in academic catalog-listed courses or in teaching labs associated with those courses. This exclusion is based on the recognition in the ITAR that “information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain” should not be subject to export control restrictions.

Employee Exemption

To the extent there will be a deemed export of information listed on the USML, the ITAR provides for an “Employee Exemption” that allows foreign persons who are “bona fide and full-time regular employees” of Lehigh, and who meet certain qualifying criteria, to receive USML-listed information without an export license. These criteria are:


- the employee’s permanent abode throughout the period of employment is in the U.S., and
- the employee is not a national of a country to which the ITAR prohibits exports of defense articles and services.

At present, the employee exemption is **not** available for nationals of Afghanistan, Belarus, Burma, Central African Republic, China, Cuba, Cyprus, the Democratic Republic of the Congo, Eritrea, Haiti, Iran, Iraq, Lebanon, Libya, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Venezuela, and Zimbabwe. However, this list is subject to change.

Export Controls at Lehigh

Most of Lehigh’s activities are exempt from export control laws because Lehigh supports the free publication of research results and generally does not accept restrictions on excluding foreign citizens from participating in Lehigh’s research and scholarly activity. As such, Lehigh generally qualifies for the fundamental research exclusion (“FRE”) to export control regulations. (see Section II. D. 1. above). However, Lehigh’s activity can become subject to export controls in several ways, such as by any breach of the FRE. Examples of potential ways that Lehigh could become subject to export controls include, but are not limited to:

- Accepting certain contractual clauses, such as publication restrictions or limitations, including clauses that require approval before publication.

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- Accepting restrictions on allowing foreign nationals to participate in the research, partnering with a foreign company, or sharing research results in any manner (including by publication or presentation at conferences) with persons who are not U.S. citizens or permanent resident aliens.
- Accepting or purchasing export controlled technology, equipment, materials, or information from a government agency or industry.
- Shipping or hand-carrying export controlled technology, equipment, materials, or information to a foreign country.

In order to ensure compliance with export regulations, members of the Lehigh community must consider the implications of export controls before undertaking any of the following activities:

- initiating new research, whether funded or unfunded, under a grant or contract;
- travelling internationally for any purpose;
- taking either personal or Lehigh-owned laptop computers, mobile devices including phones and tablets, GPS systems or their associated software to another country;
- exporting, releasing, or transmitting equipment, materials, source code, or research data, including through shipping or hand-carrying;
- allowing foreign nationals access to equipment, materials, source code, or research data, including within and outside U.S. borders;
- participating in, providing, or conducting research or training activities abroad;
- engaging in financial transactions with U.S.-sanctioned countries, entities, or individuals as determined by U.S. law;
- allowing foreign nationals to participate in research activities in the U.S.; and/or
- taking receipt of export-controlled materials from a third party, including through purchasing or through material or data transfers.

The final determination of whether the release of information or items requires an export license or is subject to license exclusions will be made by the Office of Research Integrity in collaboration with the researcher. If a license is required, the Office of Research Integrity will coordinate the license application process. No export can take place until the required license is obtained.

Failure to comply with the export control laws exposes both the researcher and Lehigh itself to severe criminal and civil penalties, as well as to administrative sanctions, such as the loss of export privileges and research funding. Thus, it is important that faculty, staff and other researchers understand their obligations under the regulations and take the requisite steps to comply.

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Recordkeeping Requirements

Lehigh is required to retain a complete record of all export control documentation including, but not limited to, analyses of license requirements, issued licenses, travel certifications, shipping documents and correspondence related to export transactions. Records required to be maintained by export control laws and regulations will be kept for the longer of:

- The record retention period required by applicable export control regulations (see 15 C.F.R. Part 762 (EAR); 22 C.F.R. §§ 122.5, 123.22, and 123.26 (ITAR); and 31 C.F.R. § 501.601(OFAC)); or
- The record retention period required by Lehigh policy.

Compliance

Lehigh personnel may not transfer items, information, technology or software in violation of the U.S. export control laws or this Policy. The penalties for violating the export control laws are detailed below.

Lehigh-Imposed Penalties for Non-Compliance

Failure to comply with this Policy can result in disciplinary action, up to and including termination.

Criminal and Civil Penalties

Government-imposed penalties for violations of the export control laws can be both criminal and civil and can be imposed against either individuals, entities (such as Lehigh) or both. Penalties include prison terms of up to 10 years, maximum fines of \$1 million per violation and the loss of all federal funding and export privileges.

Administrative Penalties

If either Lehigh or individuals are found in violation of the export control regulations, they could be subject to a number of administrative penalties, including termination of export privileges and debarment or suspension from government contracting.

Related Policies

- Export Control Compliance Manual
- Travel & Business Expense Policy and Procedures
- Purchasing Manual
- Proposal Submission Policy
- Building Access Policy and Procedures
- Information Security Policy
- Cloud Computing Policy