

# The Potential Impact of Export, Travel and Transaction Restrictions on Disaster Reduction Research

by the International Working Group of the Subcommittee on Disaster Reduction (SDR)

## Export Controls and Control Regimes

Export, travel, and transaction restrictions may affect international disaster reduction research. Because these restrictions are implemented by law and breaking the rules can mean a fine or even jail, it is critical that researchers become familiar with the various regimes and the ways in which licenses are granted. Moreover, rules may be waived depending on the situation and the rationale. Examining all related rules is crucial and, when in doubt, it is important to consult an expert within the relevant Departments.

Four basic control regimes are of interest to those involved in disaster reduction research:

1. Foreign policy controls on travel, financial transactions, and the export of certain commodities are managed by the [Office of Foreign Assets Control](#) of the Department of the Treasury with guidance from the Department of State;
2. Dual-use commodities are managed by the [Bureau of Industry and Security](#) of the Department of Commerce ([Export Administration Regulations](#), EAR);
3. Arms commodity and technology controls are managed by the Department of State ([International Traffic in Arms Regulations](#), ITAR); and
4. Nuclear related commodities generally are managed by the [Department of Energy](#).

Controls fall into two categories, restrictions on nations and restrictions on commodities. The reasons for controls vary widely, from human rights concerns to national security to the need to politically limit an adversary. It is worth noting that travel to a country may be permitted, but the export (even if temporary) of a restricted commodity might not be. Finally, U.S. laws may apply not only to U.S. citizens (at home and abroad), but also to permanent residents or aliens who live or operate in the United States.

## Fundamental Research

In 1985, National Security Decision Directive (NSDD 189) defined fundamental research as “basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community...” and stated that fundamental research was not subject to the license requirements of the export control regulations. Fundamental research is distinguished from research for which the results are restricted for proprietary reasons or pursuant to specific U.S. government access and dissemination controls. From a practical point of view, the only way to restrict such work is through classification or intellectual property rules, but the rules can change.

University research is considered fundamental research unless one of the following is true:

- (1) The university or research institution accepts any restrictions on the publication of the information resulting from the research. Limited pre-publication reviews are permitted by

- research sponsors to prevent inadvertent divulging of proprietary information or to ensure that publication will not compromise patent rights of the sponsor; or
- (2) The research is Federally-funded and specific access and dissemination controls regarding the resulting information have been accepted by the university or the researcher.

## **Intellectual Property**

Intellectual Property is any product of human intellect that is unique and un-obvious and has value in the marketplace. Intellectual property laws cover ideas, inventions, literary creations, unique names, business models, industrial processes, computer program code, and more. Due to the complexity of intellectual property law, it is important to review the intellectual property requirements before exporting science and technology to avoid any potential violation of export controls. The [United States Patent and Trademark Office](#) of the Department of Commerce disseminates patent and trademark information to promote an understanding of intellectual property protection and facilitates the development and sharing of new technologies worldwide.

The international organization for intellectual property is the [World Intellectual Property organization](#) (WIPO). WIPO is an international organization dedicated to promoting the use and protection of works of the human spirit.

## **Securing Exemptions and Consequences**

Securing an exemption to allow a controlled activity must address the following areas, among others: (1) identify the item(s) transferred; (2) outline the individuals involved and what they will do; (3) clarify the list of individuals benefiting; and, (4) articulate all risks and list the actions to be taken to mitigate against diversion. In more sensitive situations, a background check will be required before a license is issued. Be aware that unless the request relates to an emergency, securing a license to engage in a controlled activity may take months or even years. The consequences of violating export controls can be severe, especially if the violation was intentional or if it was reasonable to expect the violator had reason to know that the law was being violated. As a result, examining the rules is crucial and, when in doubt, it is important to consult an expert within the relevant Departments.

## **Links**

### **Policy, Regulations and Other Useful Links**

- [International Traffic in Arms Regulations \(ITAR\)](#)
- [Export Administration Regulations \(EAR\)](#)
- [Federal Register Notices Affecting the EAR](#)
- [Militarily Critical Technologies List \(MTCL\)](#)
- [Missile Technology Control Regime \(MTCR\)](#)
- [The Harmonized Tariff Schedule of the United States \(HTS\)](#)

### **Denied Parties, Specially Designated Nationals and Entities of Concern**

- [Entities of Concern](#) *(Adobe PDF format)*
- [Denied Parties](#)
- [Debarred Parties](#)
- [Unverified Persons in Foreign Countries](#)
- [Specially Designated Nationals and Blocked Persons](#) *(Adobe PDF format)*