

IV. EXPORT LICENSES: MANAGEMENT AND PLANS

When a tangible good, equipment, technology, or software is ready for export to another country, and the item is identified as being on the Commerce Control List (CCL) with an ECCN, then one method to allow for legal transfer of the item or technology is to obtain a License from the U.S. Agency. Triggers for Export Licenses may include, but not be limited to, these situations:

- Research involving
 - the use of export restricted information obtained from external sources;
 - collaborations with foreign nationals at Mines or abroad;
 - travel or field work done abroad;
 - the transfer or shipment of tangible items or equipment abroad;
 - the provision of financial support or services outside the U.S.

Presentations at meetings or conferences of unpublished information not protected under the Fundamental Research (FRE) or Educational Information exclusions.

Imports or re-exports are also considered for purposes of licensing under these reviews. Not surprisingly other countries may have licensing requirements that differ from those in the U.S. and must be considered when importing or re-exporting.

A. Seek & Obtain a License

If an Export License is required, it is sought by Mines through ORA or Office of Compliance in collaboration with a PI/Mines’ personnel. The Mines’ Empowered Official is the authorized Mines’ official to seek a license. Mines and the employee will work together in order to properly comply with the limitations or provisos required in any approved government license.

B. License Management

Mines is the applicant for (and recipient) of any necessary licenses, limitations, requirements or restrictions. Mines will forward a copy of the approval, including any limitations and provisos to the Principal Investigator for review. ORA will facilitate the Mines license application and management if involving a grant, contract, or agreement to Mines that is managed by ORA.

1. **Required Markings:** All information or data transferred under a ITAR license must be marked with the following statement: “This technical data is controlled by the US ITAR. Exemption [22 CFR 125.4\(b\)\(2\)](#) and insert (TAA number) applicable.”
2. **Shipment:** Data shipped by courier must contain the following statement on the airway bill: “These commodities are authorized by the U.S. Government for export only to (insert country) for use by (insert licensee). They may not be transferred, transshipped on a non-continuous voyage, or otherwise disposed of in any other country, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.”
3. **Recordkeeping:** [ITAR section 123.26](#) requires that Mines maintain records of all technical data transferred under a TAA. The PI must maintain a log of all transfers and retain the records for a period of five (5) years after the last transaction regardless of the jurisdiction (ITAR or EAR).

4. **Notice to ORA (Changes).** The PI shall provide advance notice of any change in the scope of the program, any additional funding, or addition of a new party, so that Mines can file for a license amendment, which requires ODTIC approval. If an item will result from the work under the Technical Assistance Agreement, a **DSP-5** License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data may be required prior to shipping. See Guidelines for Completing Department of State [DSP-5 Form](#).

5. **Foreign Visitors and Compliance.** Foreign visitors to campus should be screened sufficiently in advance of the planned visit and prior to arrival. See §V. [VISITORS & SCHOLARS](#); and see [International.mines.edu](#). A VISA from the State Department is not the same as approval to receive a transfer of certain information or to access certain equipment.

B. Technology Control Plans (TCP) and Guidance Forms

A Technology Control Plan (TCP) is required for work that is export controlled, export issue, or other restrictions. A TCP sets out necessary procedures to manage the access limitations to the information that is considered sensitive and must be prepared and approved prior to the handling of export-controlled information, potentially prior to the start date of a project.

1. **A TCP is generally used** when:

- Projects or activities involve the receipt of confidential or proprietary from an outside party or sponsor, such as through a nondisclosure agreement (NDA/CDA) or sponsored research agreement;
- Projects or activities are not considered Fundamental Research or under an FRE/Public Domain Exclusion; or
- Projects or activities involve technology and software associated with export-controlled equipment.

2. **TCP Preparation and Contents:**

The TCP will document compliance with any required agreement terms and conditions and contains the following elements:

- Sponsored project title;
- PI name and department/unit;
- Research location (lab/building);
- Brief statement of need for plan;
- Description of plan for protection of technology; and
- Principal Investigator(s) signature(s).

3. **Compliance.**

The TCP will be prepared in conjunction with ORA, signed by the PI, ORA, and other units if necessary. The TCP shall include at least the following:

- a. a physical and information security plan;
- b. employees or personnel screening procedures; and
- c. a process for carrying out the research in a controlled environment.

The TCP **requires** ORA approval prior to implementation. Compliance with the TCP is the responsibility of the PI, and Mines ORA and Compliance are here to assist with the process. For more information and assistance with a TCP, please contact ORA.

C. Non-Discrimination in Hiring and Admissions

Mines does not discriminate against any person by reason or basis of age, gender, race, ethnicity, religion, national origin, disability, sexual orientation, or military veteran status is prohibited. No discrimination in admission, application of academic standards, financial aid, scholastic awards, or any terms or conditions of employment shall be permitted. When navigating this difficult area of export control compliance and non-discrimination, the hiring or admission process can be a challenge. Please seek advice and counsel from HR, Admissions, Office of Compliance, or Office of Legal Services when trying to navigate through these areas.

A blanket “citizens only” hiring or recruitment policy would likely constitute citizenship status discrimination because it is overly broad and would impact hiring for positions not subject to the legal restrictions under US law (IRCA). However, the person seeking employment must be employable in the US; either have a Green card or other appropriate VISA status in order to be eligible for employment. As with all hiring or admissions decisions, please contact the appropriate offices to obtain training or clarification regarding interviewing/reviewing applicants and how these laws intersect.

i. **US Agency Guidance.**

In 2016, the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices (the “OSC”) issued a technical assistance letter to help navigate between export controls and non-discrimination requirements. However, there are nuances that may add confusion surrounding these requirements in other areas. The [Deemed Export](#) rule, enforced by BIS, identifies the “release of technical data to a foreign person within the United States” as an Export. Similarly, if a product/item is classified as a Defense Article under ITAR, then usually the entity would need an export license from DDTC to release technical data related to that product/item to an employee who is a Foreign Person. Release to Foreign Persons of technology related to non-defense articles is subject to the Export Administration Regulations (“EAR”) and may need a license from BIS, depending upon the specific product and foreign nationality involved. (OSC Letter March 31, 2016, accessed 10/12/2016 at <https://www.justice.gov/crt/file/837281/download>)

ii. **ITAR Clarification.**

ITAR does not impose requirements on U.S. employers concerning the recruitment, selection, employment, promotion, or retention of foreign persons; rather, ITAR requires that employers obtain export licenses for non-U.S.-person employees if their positions require access to information governed by ITAR. OSC guidance states the “ITAR does not limit the categories of work-authorized non-U.S. citizens an employer may hire.”

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