

Guidance for the Control of Sensitive Technologies
for Academic Institutions
(Revised version)

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Trade Control Department
Ministry of Economy, Trade and Industry

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< Main Compliance Tasks in this Guidance >

1. Basic Recognitions

- ◆ To prevent unexpected technology outflow or law violation before it happens, each researcher who has controlled technologies must understand the regulations of the Foreign Exchange and Foreign Trade Act and comply with such regulations.
- ◆ If intending to provide technologies to a foreign nation, it is necessary to check out whether or not a license is required in accordance with the Foreign Exchange and Foreign Trade Act.

2. Main Points related with Joint R&D with Foreign Researchers or Research Instructions to International Students

- ◆ Researchers must carefully check out end-uses or end-users, such as whether or not the technology they provide might be used for developing Weapons of Mass Destruction (WMD), or if or not they are providing technologies to foreign trainees or international students from a nation or organization that might develop WMD.
- ◆ If a foreign academic institution or non-resident asks you to provide technology, you should concretely identify what they want and conduct the classification in advance.
- ◆ If you engage in providing technology as a member staff in charge in the department or laboratory, you should review necessary information in accordance with applicable procedures and ask the responsible person for a final decision.
- ◆ International students and foreign trainees staying in Japan for shorter than 6 months are “non-residents” in accordance with the Foreign Exchange and Foreign Trade Act. If you intend to provide non-residents with unpublicized technical data, independently-developed and modified programs (including source codes) subject to regulation, you must obtain a license.
- ◆ If you know that international students or foreign trainees that become “residents” by staying in Japan for 6 months will or might provide the technology again in a foreign nation after they go back their home nation (e.g., their temporary return to their home nation by taking a leave of absence from school), you need to check out whether or not you will provide controlled technologies when you take out technical materials (including those recorded on USB memory) overseas or provide technologies through skill training programs.
- ◆ If you work on a joint research project with a foreign academic institution or a private enterprise in order to apply technologies to a certain product, you need to check out whether or not controlled technology is included in the technologies provided.

- ◆ If you take out free samples or research equipment overseas, such samples or research equipment might be regulated, depending on the materials used or equipment specifications. In this case, even if you surely bring it to Japan, you should obtain a license.
- ◆ A technology might be controlled under several categories. When you check out the technology, you should pay the closest attention and avoid making an oversight.
- ◆ Even if you plan to provide technology that will be publicized in the future, you should be careful because you need to obtain a license in some cases.
- ◆ In transaction screening to check out the feasibility of a service transaction, you should make clear whether or not the service transaction may yield a problem for national security purposes by confirming whether or not the end-user has clear whereabouts, if or not the end-user clearly suggests the stated end-use of the technology, or whether or not the end-user might divert the technology for other purposes.
- ◆ If classification or transaction screening has revealed the necessity to obtain a license, the final transaction decision maker designated by an academic institution should, as an academic institution, make a decision if or not the service transaction is appropriate.
- ◆ You should provide services within your license.
- ◆ You should keep documents or electronic records related with the service transaction.

3. Main Points related with Establishing Effective Self Export Control Framework

- ◆ Your organization should nominate the responsible person or section in charge of export control.
- ◆ Taking into consideration their actual conditions, academic institutions should make efforts to set up a specific self export control framework by clearly laying down a responsibility structure, role sharing and applicable rules in the organization.
- ◆ Collect the up-to-date information on applicable laws, get them across to related sections and provide necessary instructions.
- ◆ Set down audit programs/procedures in a systematic manner and conduct audits at regular intervals.
- ◆ If you come to know that you have provided or might have provided any controlled technology without a license, you should immediately report a such fact to the export control section, take appropriate actions and report it to the Minister of Economy,

Trade and Industry as well.

4. Useful Reference Information

- ⊙ Examples of Service Transaction or Export Opportunities frequently seen at Academic Institutions
- ⊙ Outline of Compliance Requirements for Exporters and Information for compliance

I. Purposes of this Guidance

Major nations in the world, including Japan, have set up an export control framework internationally in order to prevent terrorists or states of concern from obtaining weapons or goods/technologies that might be diverted to military use. By doing so, the international community strictly controls them in a coordinated manner.

Under the common recognition that effective export control is also necessary for academic institutions engaging in state-of-the-art R&D efforts, METI works with MEXT and other organizations to hold briefing sessions and raise the awareness of these issues and concerns. Due to the increasingly active nature of international human interactions the increasing numbers of joint research projects with overseas researchers and growth of other frequent technological outflow cases, academic institutions should take voluntary and effective export control actions more than ever. In this context, by compiling the information on what academic institutions should do to control their service transaction in accordance with the Foreign Exchange and Foreign Trade Act (Act #228 in 1949), METI developed this guidance in January 2008 in cooperation with MEXT, aiming to encourage the establishment of an effective compliance framework and enhancement of control over sensitive technology information.

After that, lawmakers partially amended the Foreign Exchange and Foreign Trade Act in April 2009. The amendment includes enhanced controls/penalties over sensitive service transactions as well as the establishment of new requirements that exporters of goods and technologies should continuously comply with (compliance requirements for exporters as set forth in Paragraph 1, Article 55-10 of the Foreign Exchange and Foreign Trade Act). With the introduction of the more stringent compliance requirements, academic institutions should check out their existing control programs on the control of sensitive technologies in accordance with the new compliance requirements. This time, METI has revised this guidance in order to help academic institutions to make sure they can effectively supervise their control of sensitive technologies in line with the recent legal amendment. We have reorganized the information on how you should set up and operate your self export control program in order to take actions in accordance with applicable laws, so we would be grateful if you could use this guidance as your reference for compliance purposes. We have reorganized the information on what you should do when you intend to apply for license or set up your organizational structure.

II. Service Transaction regulated in accordance with the Foreign Exchange and Foreign Trade Act

II-1. Technological and Academic Fields requiring Export Control

The Foreign Exchange and Foreign Trade Act requires you to take control over goods. In addition, this guidance describes technological fields as listed in Appended Table 1 of the Foreign Exchange Order (Cabinet Order #260 in 1980). You should pay particular attention to technologies related to the development, production and use of goods as listed in list-controlled goods or goods that are likely to be used for developing weapons of mass destruction. Researchers engaging in these technologies should recognize that their research activities are closely connected to the national security of Japan and the security of the international community.

Main technological fields that have close connection with the regulation of the Foreign Exchange and Foreign Trade Act are as follows. However, other technology might be subject to regulation. Furthermore, technologies other than state-of-the-art technologies might also be subject to export control, so use the following list for examples of frequently seen technological fields.

- ⊙ Nuclear technologies (nucleus reactions, neutronics, etc.)
- ⊙ Precision equipment technologies, precision processing technologies and precision measurement technologies
- ⊙ Automatic control technologies and robot technologies
- ⊙ Chemistry and biochemistry
(in particular, chemicals harmful to human body or detoxicants)
- ⊙ Biology including biotechnologies and medical sciences
(in particular infectious diseases and vaccines)
- ⊙ High-performance and high-function material technologies
(heat-resistant materials, corrosion resistant materials, etc.)
- ⊙ Aerospace technologies and high-performance engine technologies
- ⊙ Navigation technologies
- Marine technologies
- Information-Communications technologies, electronics technologies and optical technologies
- ⊙ Program development technologies for development, production and use of controlled goods
- Simulation program technologies

You need to pay particular attention to the technologies marked with “⊙” because they are closely related to weapons of mass destruction.

In addition to the academic fields such as nuclear, machine engineering and biotechnology related with these technological fields, natural sciences including science and agricultural science might be generally usable for purposes of concern.

II-2. Examples of Controlled Technologies owned by Academic Institutions

For example, academic institutions would have the following technical information. So, you should carefully control over these technologies.

- Programs for the development, production or use of controlled goods, such as reactor, propulsion systems, electronics equipment and precision measuring equipment (including unpublicized source codes developed independently or modified from commercially available programs)
- Records of know-how on synthesis or separation and refinement of controlled goods, such as toxic chemicals, biotoxins or high-performance materials (data or records not disclosed as a research paper or patent)
- Unpublicized performance evaluation methodology or experimental data on controlled goods
- Document, data that describes operation techniques or maintenance technologies on controlled research equipment necessary for research activities related with controlled goods, etc.

< Past records of academic institutions that applied for a license >

Academic institutions have actually applied for a license and the appropriate authority has issued licenses in accordance with applicable procedures. For example, they applied for a license when they intended to provide Australia with technology for development, production or use of carbon fiber-based preforms and molded products using such preforms. In addition, as an example of goods, they applied for a license when they intended to export avian flu virus bound for Vietnam.

II-3. Types of Service Transaction

According to the Foreign Exchange and Foreign Trade Act, the term “technology” is defined as certain information necessary for development, production or use of goods (*“Service Transactions or Activities requiring License in accordance with Paragraph 1, Article 25 of the Foreign Exchange and Foreign Trade Act and Paragraph 2, Article 17 of Foreign Exchange Order”*). Such information is provided in the form of technical data or technical assistance.

(1) Technical data

Technical data means data or programs that are recorded in media or on equipment such as documents, discs, tapes or ROMs and take the form of blueprints, design diagrams, diagrammatic drawings, models, mathematical formulae, design specifications, manuals or written directives.

< Items falling under technical data (examples) >

The following technical information is regarded as technical data, regardless of how it is provided via paper media or on electronic file.

- Technical reports, presentation/prepublication manuscripts, and research records
- Design drawings, circuit diagrams, manufacturing method documents, test method documents, and evaluation method documents
- Technical specifications on experimental equipment
- Experimental data
- Computer programs, etc.

(2) Technical assistance

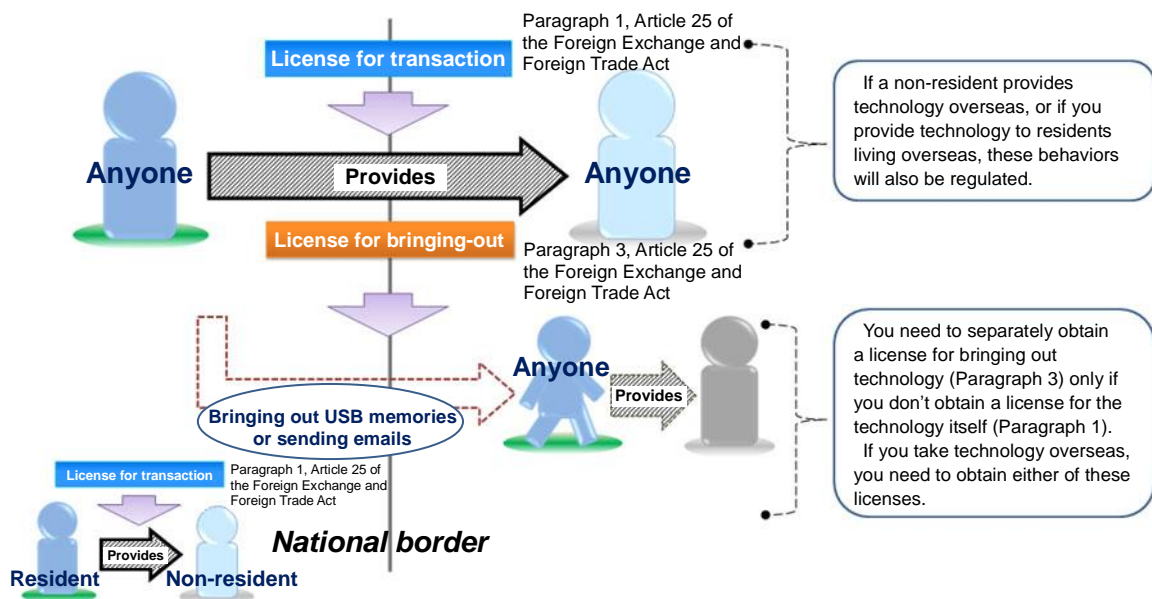
Technical assistance means services that take the form of technical instruction, technical training, consulting services, etc.

< Services falling under technical assistance (examples) >

- Presentation or explanations with presentation software
- Oral research presentations, instructions, etc.

II-4. Examples of Service Transaction Opportunities

The Foreign Exchange and Foreign Trade Act widely regulates transactions (foreign transactions) that aim at providing sensitive technologies overseas. Based on both geographical factors (if or not it is service transaction to foreign nation) and human factors (whether or not it is a service transaction to non-residents), it is decided whether or not the transaction falls under the category of being a foreign transaction. If the transaction falls under the category of a foreign transaction based on either or both of these two factors, such a transaction will be a controlled foreign transaction (Paragraph 1, Article 25, the Foreign Exchange and Foreign Trade Act). In addition, if you export technologies in relation with these controlled transactions, your behavior will be complementarily regulated (Paragraph 3 of the said article).



Resident or Non-resident?

Resident	Non-resident
<p><u>In the case of a Japanese citizen</u></p> <ol style="list-style-type: none">1) He/she lives in Japan2) He/she works for a Japanese diplomatic mission abroad	<p><u>In the case of a Japanese citizen</u></p> <ol style="list-style-type: none">1) He/she has left Japan to work for an office in a foreign nation and stays in a foreign nation2) He/she has left Japan to stay in a foreign nation for 2 years or longer and stays in a foreign nation3) He/she stays in a foreign nation for 2 years or longer since leaving Japan4) He/she falls under the aforementioned 1) to 3), temporarily returns to Japan and stays in Japan for less than 6 months
<p><u>In the case of an alien</u></p> <ol style="list-style-type: none">1) He/she works for an office in Japan2) He/she stays in Japan for more than 6 months after entry into Japan	<p><u>In the case of an alien</u></p> <ol style="list-style-type: none">1) He/she lives in a foreign nation2) He/she serves for official tasks of a foreign government or an international organization3) He/she is a diplomat, consular, or attaché or servant of a diplomat or consular (However, he/she needs to be appointed or hired in a foreign nation)
<p><u>In the case of a corporation</u></p> <ol style="list-style-type: none">1) It is a Japanese firm located in Japan2) It is a foreign firm's branch office, local office or other office located in Japan3) It is a Japanese diplomatic mission abroad	<p><u>In the case of a corporation</u></p> <ol style="list-style-type: none">1) It is a foreign firm located in a foreign nation2) It is a Japanese firm's branch office, local office or other office located in a foreign nation3) It is a foreign diplomatic missions located in Japan
	<p><u>In addition, U.S. armed forces and armed forces of the United Nations</u></p>

You may have an opportunity to provide technology at home and abroad in the following cases. Before providing technology, you should make sure whether or not your behavior is regulated.

(1) Technology is provided along with goods

- Technology transfer along with export of the goods
- Transfer of programs incorporated into the goods, etc.

(*) If you send samples and provide their test methods/data at the same time, you should be careful because these fall under the classification of service transactions.

(2) Technology is provided as tangible technical data separated from goods

- Sending documents
- Sending media (USB memory, CD-ROM, etc.) etc.

(3) Technology is provided as intangible technical data

- Providing information via telephone or email
- Providing files over the web
- Posting information on a shared database, etc.

(4) Technology is provided through persons

- Providing and making presentations on technologies at closed domestic/international conferences, trade shows, site visits, symposiums, workshops, etc.
- Preliminary discussions with non-residents
- Joint research efforts and joint R&D projects
- Education/training programs, etc.

II-5. License Exceptions of Export Control

Applicable ordinance (*Article 9 of Ministerial Ordinance on Trade Relation Invisible Transactions*) set forth service transactions that do not require a license because they will not pose problems from an export control perspective. Typical examples are as follows.

- Transactions that provide publicly known technologies, or provide technology to make it publicly known, and falls under any of the following (Item 9, Paragraph 2):
 - Transactions that provide technology already disclosed to the general public through newspapers, books, magazines, catalogues or files on a communications network
 - Transactions that provide technology made available to the general public through academic journals, public patent information, public symposium minutes, etc.
 - Transactions that provide technology made available or listenable to the general public on plant tours, lectures, trade shows, etc.
 - Transactions that provide programs with publicized source codes
 - Transactions to make technology available or listenable to the general public, such as sending manuscripts for academic conference presentations or documents for trade shows, or posting articles in magazines
- Transactions that provide technology in research activities on basic science fields (Item 10 of the said paragraph)

“Research activities on basic science fields” in this context means “research activities that mainly aim at identifying principles of phenomena in natural science fields through theories or experiments and do not aim to develop or produce certain products”.

Some academic-industrial joint research projects aim at applying technologies to certain products. In this case, you should be careful because these projects do not fall under the exceptions.
- Transactions that provide a level of minimum necessary technology for application or registering industry property (Item 11 of the said paragraph)
- Transactions that provide goods buyers, consignees or customers with a minimum necessary technology related to the use of the goods and is provided along with the export of such goods (Item 12 of the said paragraph)

- Transactions of technology that are related with the use of a program, that are provided along with providing such a program and that represent the minimum necessary for the installation or repair of the program (Item 13 of the said paragraph)

However, repair technology that would provide better program capabilities or characteristics than the original program is excluded.

- Transactions of commercially available programs related with the development, production or use of computers or communications-related goods (Item 14 of the said paragraph)
- Foreign transactions between users and the persons who have obtained technology from other person that obtains a license in accordance with Paragraph 1, Article 25 of the Foreign Exchange and Foreign Trade Act after identifying the user (Item 4 of the said paragraph)
- Transferring technology along with the aforementioned transactions (as specified in Items of Paragraph 2, Article 9 of Non-trade Ministerial Ordinance) (Item 1, Paragraph 1)
- Transferring technology along with foreign transaction from the person that obtains a license in accordance with Paragraph 1, Article 25 of the Foreign Exchange and Foreign Trade Act to the person that obtains technology (Item 2 of the said paragraph)

etc.

III. Procedures of Sensitive Technology Control

This guidance makes explanations in accordance with the following categories.

Requirements in accordance with applicable laws or requirements to address for compliance with the regulations

The compliance requirements are included in this category. The compliance requirements are applicable to persons that provide/export the goods/technologies controlled in accordance with the Foreign Exchange and Foreign Trade Act as their business operations. The requirements are applied to corporations as well as to academic institutions or individuals that provide technologies.

If you repeatedly provide technologies, such as providing technologies in accordance with your research theme, or repeatedly providing technologies to foreign research institutions, the compliance requirements will be applicable.

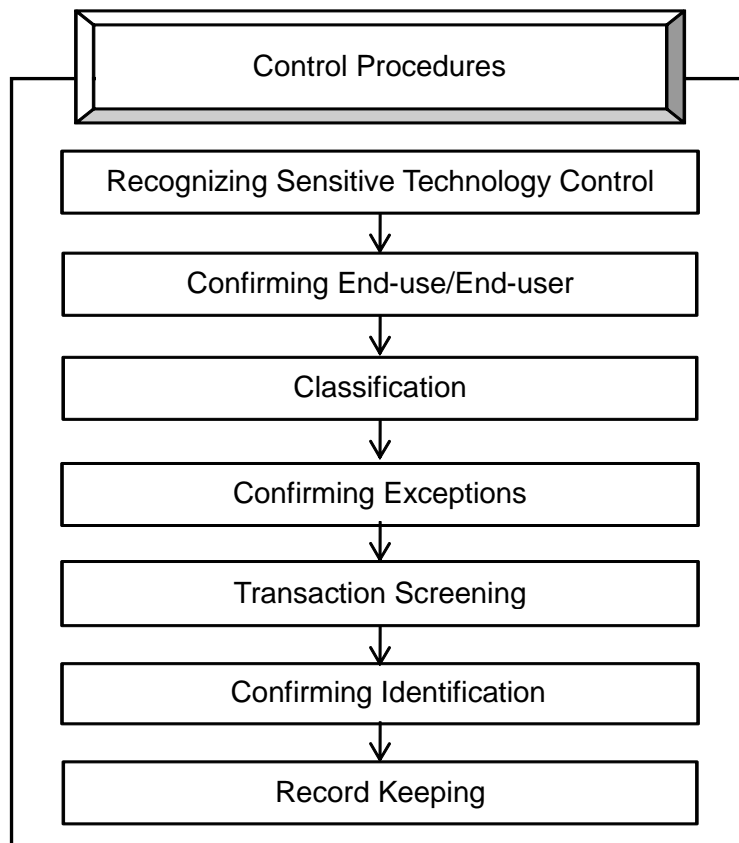
Required

Actions that would yield desirable outcomes for compliance with the regulations

If you don't take these actions, you will not be regarded as in non-compliance. This mark represents a favorable voluntary action for preventing non-compliance.

Recommended

Based on the aforementioned categories, this section explains each process, citing corresponding examples of confirmation procedures that academic institutions would embark on. METI has sorted out useful information on what type of procedures would be appropriate for academic institutions to avoid making an oversight for compliance with the regulations and effectively take procedures in accordance with applicable laws in the case of providing their technologies. METI would be grateful if you could use the information for your reference.



III-1. Recognizing Sensitive Technology Control

Required

To prevent unexpected technology outflow or non-compliance before it happens, every researcher that owns controlled technologies absolutely needs to understand the regulations of the Foreign Exchange and Foreign Trade Act and make compliance efforts.

Sensitive technology control does not aim at preventing the development or international expansion of academic research activities. Rather, it aims to prevent someone from exploiting these technologies for wrongful purposes, such as developing WMD. Major nations in the world, including Japan, have set up an international framework mainly consisting of developed nations. By doing so, the international community strictly controls them in a coordinated manner.

Required

If you intend to provide technology overseas, you need to confirm whether or not you should obtain a license in accordance with the Foreign Exchange and Foreign Trade Act.

Recommended

The owner of the technology or his/her organization should grasp where they have sensitive technologies.

Recommended

To grasp where they have sensitive technologies, it is an idea to ask instructors and researchers to fill out a questionnaire.

You may conduct a questionnaire survey by asking specific questions, for example: (1) whether or not they handle list-controlled goods/technologies; (2) whether or not they have the items listed on the sensitive item list related with the WMD catch all controls (i.e., the 40 items; “Examples of Goods probably usable for Development of WMD”) or technologies for development, production or use of these items; and (3) whether or not they have accepted international students or foreign trainees from any organization listed on the foreign end-user list.

Recommended

You should in advance check out whether or not the technology provided is subject to regulation in accordance with the Foreign Exchange and Foreign Trade Act. If so, place an appropriate mark that clearly identifies the controlled technology.

III-2. Procedures in the Foreign Exchange and Foreign Trade Act (1) (Confirming End-use and End-users)

If you intend to make effective confirmation for the purposes of sensitive technology control, you should first check out the end-use and the end-user of the technology provided. You need to check out these factors in “WMD Catch All Controls” or “Conventional Weapons Supplementary Export Controls,” which require a license from the Minister of Economy, Trade and Industry if you provide technologies usable for developing WMD or conventional weapons.

Required

You should carefully check out the end-use or the end-user of the technology provided, such as if or not it might be used for developing WMD, or if or not it is provided to foreign trainees or international students from a nation or organization that might develop WMD.

If you handle list-controlled goods/technologies in accordance with the compliance requirements, you should lay down the procedures for checking out the end-use or the end-user of the technologies provided and make confirmations in accordance with such procedures. Confirm whether or not the technology might be used for developing WMD or if or not the end-user develops or might have developed WMD, by checking out the contract with the end-user, available brochures or the end-user’s website for any information that could lead to these factors. In addition, if the end-user provides dubious information in the process of business talks, the end-user “may potentially develop” WMD.

Required

Before entering into a research cooperation agreement with an academic institution listed on the foreign end-user list, you must carefully check out whether or not the technology might be used for developing WMD.

If an end-user of your technology is listed on the foreign end-user list, you need to obtain a license from the Minister of Economy, Trade and Industry unless it is clear the technology is not used for developing WMD from end-use or transaction types/conditions. This does not prohibit entering into a contract or providing technologies. Rather, it calls for carefully examining the fields, end-use and end-user of the technologies provided.

Required

If the foreign end-user list is revised, foreign trainees or international students you have accepted might be from an organization listed on the list. You need to review your past evaluation results at a regular interval.

III-3. Procedures in the Foreign Exchange and Foreign Trade Act (2)
(Classification)

The procedure to check out whether or not the goods exported or technology provided would fall under a list-controlled item/technology (classification) and determine the necessity of obtaining license is the most important process for export control.

Required

If a foreign academic institution or non-resident asks you to provide technology, you need to conduct the classification by making the academic institution or non-resident clearly describe what it really wants before providing the technology.

Required

The person that would provide the technology, such as a member of staff in charge in the department or laboratory, should make necessary decisions in accordance with the procedures and ask the responsible person for a final decision.

<Research activities at a university and classification>

If providing publicly known technology or other technologies in research activities in a basic science field, you don't need a license from the Minister of Economy, Trade and Industry as an exception (see the section "II-5. License Exceptions of Trade Control"). For this reason, if you provide publicly known technologies, such as giving research instructions with commercially available books or publicly available research papers at a university, you don't need a license. If your academic institution sets down necessary procedures in line with its needs, such as carefully checking out possible license exceptions under the supervision of the person responsible for classification, and making detailed decisions by filling out the classification slip in the case that exceptions are not applicable, such procedures would work effectively.

- * If you use research equipment in your research instruction in addition to publicly available research papers, you need to check out possible license exceptions and conduct a classification on the technology for using such research equipment.

Required

Even if providing technologies to a "resident," you need to obtain a license as long as the transaction is intended to provide controlled technologies in a foreign nation.

All foreign transactions of sensitive technologies are subject to regulation. There is no exception to this rule, even if you provide technologies to residents, including Japanese citizens living overseas (Paragraph 1, Article 25, Foreign Exchange and

Foreign Trade Act).

Required

If you go abroad and plan to provide controlled technology in a foreign nation, you must at least obtain a license before bringing out the technology from Japan.

Here are examples of frequently seen service transactions or export opportunities at academic institutions.

< Examples of frequently seen service transactions or export opportunities at academic institutions >		
Opportunity of providing technologies	Examples	Main points to keep in mind
Accepting international students or foreign trainees	<ul style="list-style-type: none"> ○ Lending experimental equipment ○ Providing technical information via FAX or USB memory ○ Providing technology over the phone or via email ○ Lectures, conference or meetings ○ Research instructions or skill training, etc. 	<ul style="list-style-type: none"> ○ Residence ○ Publicly known technology ○ Basic science fields ○ Possibility of re-providing the technology ○ Bringing out the technology at the time of returning to home nation ○ Foreign end-user lists
Joint research with another university or company	<ul style="list-style-type: none"> ○ Lending experimental equipment ○ Providing technical information via FAX or USB memory ○ Providing technology over the phone or via email ○ Conferences or meetings, etc. 	<ul style="list-style-type: none"> ○ Residence ○ Publicly known technology ○ Basic science fields ○ Intention to develop products ○ Foreign end-user lists
Bringing out research samples	<ul style="list-style-type: none"> ○ Bringing out samples ○ Carrying hand-made research equipment, etc. 	<ul style="list-style-type: none"> ○ “Goods” in the context of the Foreign Exchange and Foreign Trade Act ○ “Exports” in the context of the Foreign Exchange and Foreign Trade Act
Facility tour	<ul style="list-style-type: none"> ○ Research institution tour ○ Explaining production process, distributing materials, etc. 	<ul style="list-style-type: none"> ○ Publicly known technology ○ Possibility of re-providing the technology
Private lectures or exhibitions	<ul style="list-style-type: none"> ○ Orally providing technical information ○ Displaying technical information on exhibition panels, etc. 	<ul style="list-style-type: none"> ○ Publicly known technology

Required

International students and foreign trainees staying in Japan for a period shorter than 6 months are “non-residents” in accordance with the Foreign Exchange and Foreign Trade Act. If you intend to provide non-residents with unpublicized technical data, independently-developed and improved programs (including source codes) subject to regulation, you must obtain a license.

Required

If you know that international students or foreign trainees that become “residents” by staying in Japan for 6 months will or might provide the technology again in a foreign nation after they go back their home nation (e.g., their temporary return to the home nation by taking a leave of absence from school), you need to check out whether or not you will provide controlled technologies when you export technical materials (including those recorded on USB memory) overseas or provide technologies through skill training programs.

Required

If you work on a joint research project with a foreign academic institution or private enterprise in order to apply technologies to a certain product, you need to check out whether or not controlled technology is included in the technologies provided.

Required

If you export free samples or research equipment overseas, such samples or research equipment might be regulated, depending on its materials used or equipment specifications. In this case, even if you surely bring it to Japan, you should obtain a license.

Sending goods from Japan to a foreign nation is interpreted as “export” in accordance with the Foreign Exchange and Foreign Trade Act. The term “goods” in this context include containers, machine tools as well as hand-made portable goods, items commercially available in Japan and old-fashion or free materials/equipment. If it falls under the controlled goods, you need to obtain an export license.

Required

A tour of a plant or research facility sometimes falls under the category of a service transaction because it involves explanations of production processes. For this reason, if you designate a special tour course exclusively for specific visitors without making it available to the general public, you need to sufficiently examine whether or not it involves any controlled technology.

Required

Some seminars, lecture sessions or trade shows do not fall under “activities that make the technology publicly known” if they have special limitations on participants. In this case, you need to sufficiently examine whether or not it involves any controlled technology.

Recommended

To prevent unauthorized provision of controlled technologies before it happens, it is an idea that you set up a tour course accessible to external visitors or prepare explanatory materials or free samples based on publicly known technical materials or other mail templates and Q&A documents.

Required

A technology might be controlled under several categories. When you check out the technology, you should pay the closest attention and avoid making an oversight.

For example, some satellite broadcasting-use IC chip wafers are controlled under both of, Appended Table 7(1) of Foreign Exchange Order (Integrated Circuits, Appended Table 1-7(1) of Export Trade Control Order) and, Appended Table 9(1) of the said order (Encryption equipment and its parts, Appended Table 1-9(7) of Export Trade Control Order). As technical specifications are set forth in applicable laws (*Ordinance of the Ministry Specifying Goods and Technologies Pursuant to Provisions of the Appended Table 1 of the Export Trade Control Order and the Appended Table of the Foreign Exchange Order*), you should pay careful attention when checking it out. If you provide a technology that falls under multiple categories, make sure to fill out the corresponding paragraph number on a single application form.

In addition, goods generally called “GPS” is described as “Equipment that receives radio waves from satellite navigation system (c) of Item 19, Article 3” in Ordinance of the Ministry Specifying Goods and Technologies. As this ordinance does not employ generally-accepted terminologies in some cases, you should pay careful attention to avoid making an oversight.

Recommended

It is desirable that staffs sufficiently knowledgeable about the provided technology are responsible for classification. To ensure the objectivity of the classification, different staff should make a double check.

Recommended

If you have any question or you are uncertain, you should ask the consultation desk in your academic institution or METI for advice.

METI provides a consultation service that can help you check out whether your goods or technology are regulated before a transaction to export the goods or provide the technology. Academic institutions should first conduct the classification. However, if you are unable to make a decision, you should use the consultation desk before you provide the technology without a license or give up providing the technology.

III-4. Procedures in the Foreign Exchange and Foreign Trade Act (3) (Confirming License Exceptions)

The Foreign Exchange and Foreign Trade Act sets forth exceptions for service transactions that would pose no problem in maintaining the peace and security of Japan and the international community. If the exceptions are applicable, you don't need a license even if the technology you intend to provide is a list-controlled technology. For this reason, when you provide technologies, you can quickly check out if or not you need to apply for a license by confirming possible exceptions before conducting the classification.

Required

Even if you plan to provide technology that will be publicized in the future, you should be careful because you need to obtain a license in some cases.

Recommended

When engaging in R&D efforts, including publishing research papers, making academic conference presentations or applications for patents, it is important to pay attention to the executive branch's needs regarding export control, applicable laws as well as to social aspects and scientists' ethics perspectives.

III-5. Procedures in the Foreign Exchange and Foreign Trade Act (4) (Transaction Screening)

Required

In transaction screening to check the feasibility of service transactions, you should make clear whether or not the service transaction would not yield a problem for national security purposes by confirming whether or not the end-user has clear whereabouts, if or not the end-user clearly suggests the intended use of the technology, or whether or not the end-user might divert the technology for other purposes.

METI licenses in accordance with the screening criteria as follows (Service Transaction Circular):

- (1) Whether or not the technology will surely reach the stated end-user;
- (2) Whether or not the stated end-user will really use the technology;
- (3) Whether or not the applied technology as well as goods manufactured with such technology will not be used for the purpose of obstructing maintenance of international peace and security;
- (4) Whether or not the technology will be surely controlled appropriately by the end-user.

If questions arise in accordance with these screening criteria, METI will not license for your application in some cases. For this reason, when you examine service transactions, you should carefully check out their feasibility, such as whether or not you will surely provide the technology to the stated end-user, or whether or not the end-user makes false statements to ask you to provide the technology. By doing so, you need to make sure there would be no problem in accordance with all of these screening criteria.

Recommended

The end-user of the technology or joint research partner may not, in principle, re-transfer particularly sensitive technologies to a third party, such as WMD-related technologies. You should pay careful attention in checking this out. If necessary, you should enter into a contract or obtain a certificate to prohibit re-transfer a third party with controlled knowhow or unpublicized research outcomes.

Recommended

If such a contract is not complied with, you should take appropriate actions to avoid non-compliance, such as examining the suspension of future transactions on account of non-performance of the contract.

Recommended

When entering into joint research contract with a foreign academic institution or private corporation, it is an idea to insert a government approval provision, saying "If a license from the government is necessary for technical information, it shall be provided only after the government licensed."

Required

If classification or transaction screening has revealed the necessity to obtain a license, the final transaction decision maker designated by the academic institution should, as an academic institution, make a decision if or not the service transaction is appropriate.

III-6. Procedures in the Foreign Exchange and Foreign Trade Act (5)
(Confirming Identification)

Required

You should provide technologies within your license.

III-7. Procedures in the Foreign Exchange and Foreign Trade Act (6)
(Record Keeping)

Required

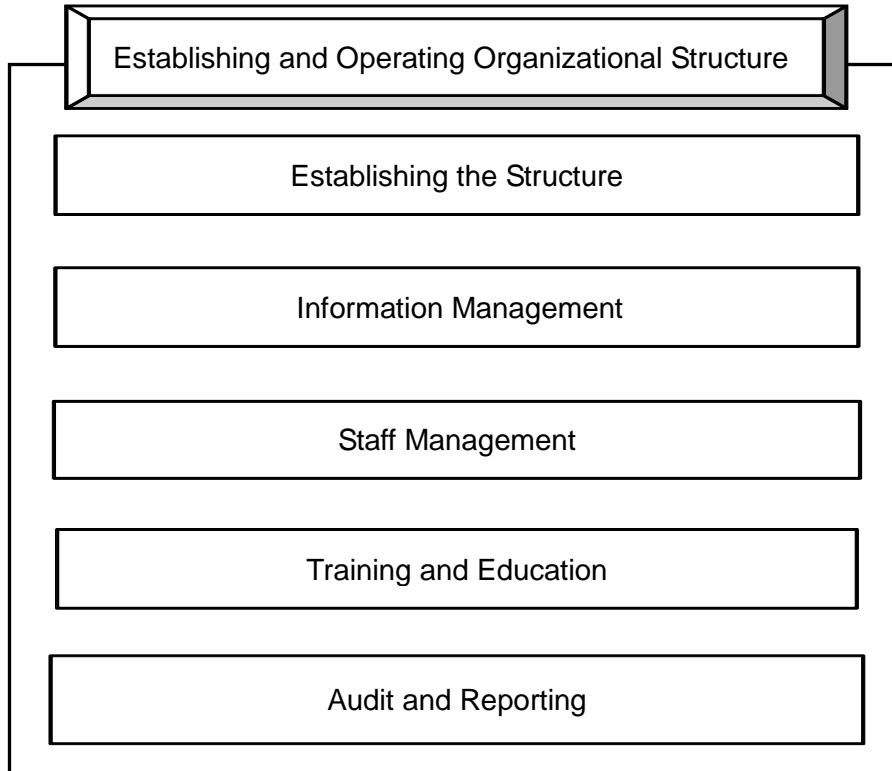
You should keep documents or electronic records related to the service transaction.

You would record and keep the following documents.

- Screening records (screening slips or classification slips that describe the date of service transaction, end-user, country name, the technology provided, corresponding category number(s) and the amount of money)
- License of the Minister of Economy, Trade and Industry
- Written contract(s), purchase document(s), order form(s), letter(s), invoice(s), etc.

You should keep your past records by submitting the information on such technologies to the export control section along with related documents.

IV. Establishing/Operating Organizational Structure in Sensitive Technology Control



IV-1. Establishing the Structure

Required

Your organization should nominate the responsible person or section in charge of export control.

Recommended

To support self export control practices compatible with the compliance requirements, METI has been encouraging technological suppliers and exporters to develop their Internal Compliance Program ("ICP") and take control over their goods and service transaction in accordance with the ICP.

Recommended

If METI finds that you have set down your ICP compatible with the Foreign Exchange and Foreign Trade Act and other applicable laws and take appropriate control actions when providing list-controlled goods/technologies, you can apply for "Bulk License System," which grants a comprehensive license for certain goods/technologies.

In accordance with the Foreign Exchange and Foreign Trade Act, METI usually examines your application from security perspectives and grants licenses on a case-by-case basis for each contract or project. However, if you are able to assume these screening capabilities under your self export control program, you may obtain a bulk license. This will save you time and energy compared to applying for a license on a case-by-case basis.

To obtain a bulk license, you need to set up and submit your ICP, surely implement the ICP and attend export control briefing sessions held by METI.

Recommended

Based on the up-to-date law and audit, you should make assurance doubly sure in your control practices by examining possible improvements in your organizational structure, ICP and detailed rules.

Required

Taking into consideration their actual conditions, academic institutions should make efforts to set up specific self export control frameworks by clearly laying down the responsibility structure, role-sharing and applicable rules in the organization.

IV-2. Information Management

Recommended

You should manage access control particularly to information on the list-controlled technologies.

Information management practices on a routine basis would effectively prevent unexpected outflow of controlled technologies, such as theft or unauthorized access.

IV-3. Staff Management

Recommended

When hiring faculty members for R&D on sensitive technologies from a foreign nation, you should check out organizations they currently belong or belonged to in the past and their research programs so far, and make sure to prevent their R&D outcomes from being potentially diverted to development of WMD after they are employed.

Recommended

When faculty members retire or leaves their positions, you should remind them of their responsibilities of not providing controlled technologies to a foreign nation without authorization.

The Foreign Exchange and Foreign Trade Act does not regulate movement of researchers in itself, but it does regulate foreign transactions of security-sensitive technologies and other related actions that bring out technologies to foreign nations. Even if intellectual property rights belong to a faculty member, rather than to an academic institution, you should remind him/her of taking appropriate procedures in accordance with applicable laws.

IV-4. Training and Education

Required

You should collect the up-to-date information on applicable laws, get them across to related sections and provide necessary instructions.

Recommended

Staff in charge of service transaction control tasks and related decision-making at an academic institution should attend training sessions to access and understand control-related new information.

Recommended

In addition to staff in charge of service transaction control tasks and related decision making, it is also important to provide training and education for all staff to raise awareness of service transaction control for the entire academic institution and increase the awareness of export control on an organization-wide scale.

Recommended

You should also raise awareness of controlled technologies and provide training and education for overseas offices or remote campuses.

IV-5. Audit and Reporting

Required

You should set down your audit programs/procedures in a systematic manner and conduct audits at regular intervals.

Required

If you come to know that you have provided or might have provided any controlled technology without a license, you should immediately report such fact to the export control section, take appropriate actions and report it to the Minister of Economy, Trade and Industry as well.