

**Frequently Asked Questions (FAQ):
Who is a “Foreign National” for Purposes of Complying with the Export Control Regulations?**

Background

UCAR employs and hosts a number of individuals on site and at other institutions who are provided access to UCAR research tools and data results. Because some of these tools and results may be export controlled (i.e. access restricted) to foreign nationals, this FAQ is designed to clarify who is a “foreign national” under the regulations. For additional clarification on precisely which research tools or data are restricted and/or how, if necessary, to obtain an export license to allow foreign national access, please contact the ECC designated for your laboratory or program or Dave Sundvall, Export Compliance Manager at extension Ext. 8898 or sundvall@ucar.edu.

1. Export Administration Regulations (EAR) – dual use items/technical data

Q1: What is the Department of Commerce’s definition of a foreign national for purposes of access to “dual use” tools and data?

A1: A “foreign national” is anyone who is not a “U.S. person.” A “U.S. person” is any one of the following: U.S. citizen; Lawful permanent resident (green card holder); and “Protected Person” i.e. political asylum holder. Hence, any individual who is present in the U.S. on a temporary immigration visa, e.g., B, H, O, J, L visa, is a foreign national under the EAR.

Q2: So if UCAR employs a U.S. Permanent Resident (green card holder), here or abroad, that person is a U.S. person and no export control access restrictions apply?

A2: Correct. However, please note that exporting an export controlled item or proprietary data to that person, or to a U.S. citizen, if located abroad, might require a license based on the country where the person is located.

Q3: What if a person is in the process of obtaining Permanent Residency status and is only weeks away from such status?

A3: That person is still a temporary immigrant until such time as Permanent Residency is officially granted.

Q4: What is the status of individuals who are permanent residents or citizens of a country other than the United States, or more than one country other than the U.S., and present in the U.S. on a temporary immigration visa?

A4: The last country of permanent resident status or citizenship is applicable. For example, if a person is a national of Russia (i.e. born in Russia) and is a permanent resident of France, France is considered the applicable country for U.S. export control licensing purposes.

Q5: What if the person is a dual citizen of the U.S. and another country?

A5: That person is considered a U.S. person: no access restrictions apply.

2. International Traffic in Arms Regulations (ITAR) – defense articles/technical data

Q6: What is the Department of State's definition of a foreign national?

A6: A "foreign national" is anyone who is not a "U.S. person." A "U.S. person" is any one of the following: U.S. citizen; Lawful permanent resident (green card holder); and "Protected Person" i.e. political asylum holder. Hence, any individual who is present in the U.S. on a temporary immigration visa, e.g., B, H, O, J, L visa, is a foreign national under ITAR.

Q7: How does the Department of State define a dual national?

A7: Anyone who holds citizenship or permanent residency in more than one country other than the U.S. Such individuals may also be referred to as "third country nationals" when their citizenship does not match the country of the transaction in question.

Q8: What then, is the difference, between how the EAR and ITAR define foreign nationals for access purposes?

A8: The key difference is that ITAR generally requires licensing for each country of citizenship. ITAR takes into account a person's country of origin in addition to current residency/citizenship in determining citizenship status. For example, a German citizen born in Germany and present at UCAR will be considered German for ITAR purposes; access restrictions will then follow from how ITAR restricts Germany. However, a Canadian Permanent Resident born in France should be considered both Canadian and French for ITAR licensing purposes. In such cases, unless the country of birth is proscribed under 22 CFR 126.1¹, this normally does not present a problem.

When the country of birth is proscribed under 22 CFR 126.1, State might require

¹ Section 126.1 countries currently include the following: Belarus, Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela, as well as arms-embargoed countries such as Burma, China, Liberia, and Sudan; restrictive guidance also applies to Cyprus, Fiji, Guinea, Indonesia, Niger, Palestinian Authority, Yemen, and Zimbabwe.

additional information in order to determine how to proceed. For example, in the case of a U.S. Permanent Resident born in China, State would secure additional information to confirm that there were no significant ties to the country of birth.

However, a Canadian Permanent Resident born in China would be considered Chinese; DOS will not issue an access license to any individual born in a 126.1 restricted country, if they are not already a U.S. Permanent Resident or Citizen.

Q9: So if I wish to grant ITAR access to a French foreign national located in a research institution in Spain, what countries must my license apply for?

A9: France and Spain. The license would set forth the circumstances of both the foreign person's nationality (France) as well where (in which country) the foreign national will be accessing UCAR data (Spain).

Q10: What if the person is a Chinese foreign national working at UCAR and in the process of obtaining Permanent Residency in the U.S.?

A10: For ITAR purposes, this person will still be considered a Chinese foreign national from whom ITAR articles and data would still have to be restricted.

3. Office of Foreign Assets Controls (OFAC) Regulations – Embargoed/ Sanctioned Countries

Q11: Are foreign nationals who are citizens of Cuba, Iran, Syria, North Korea, and Sudan subject to any special OFAC definitions concerning foreign nationality?

A11: No. For these foreign nationals, the EAR and ITAR definitions cited above apply. However, the particular types of transactions and access for which these foreign nationals can be involved are, in some cases, specially determined by the EAR and ITAR regulations. For example, Cuba, Iran, Syria North Korea and Sudan are all 126.1 prohibited countries. Therefore, access to ITAR equipment or data here or abroad is prohibited and a license would not be granted.