Export Control Regulations and Information

In recent years, the Federal government has become increasingly concerned with protecting both information and technologies for reasons of foreign policy and national security. In this context, an *export* is defined very broadly to include oral or written disclosure of information, visual inspection, or actual shipment of technology outside of the United States, software/code or equipment to a foreign person. The laws regulate the distribution of technical products, services and information to foreign nationals and foreign countries.

The Department of Commerce, the Department of State, and the Treasury Department's Office of Foreign Assets Control are responsible for implementing Export laws. The Department of Commerce and the Department of State control technology and information as it relates to exports; the Treasury Department is concerned mainly with the country and end users involved in a transaction. Export laws also apply to activities at institutions of higher education such as research, international programs, technology transfer, foreign travel, and site visits in the United States by foreign nationals.

Though broad in nature, Export laws have little effect on most academic institutions because the regulations excluded fundamental research. However, the fundamental research exclusion clause can only be applied under certain conditions such as whether or not the resulting research information is ordinarily published and shared broadly in the scholarly community, and whether access or dissemination of information is controlled or limited. When these conditions do not exist and there is a non-disclosure or proprietary agreement, and the technology or information about the technology is on one of the controlled lists governed by Commerce or State Departments, or the project takes place in a sanctioned country the fundamental research exclusionary clause does not apply and all Export Control laws and regulations does apply.

It is imperative that the University community is cognizant of implications of Export laws. Export laws have been gradually directed towards institutions of higher education, even non-research universities like William Paterson University. Noncompliance with the Export regulations can result in criminal and civil fines on individuals and the University.

This document offers an introduction and overview of the Department of Commerce's International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR), the Office of Foreign Assets Control (OFAC) embargoes, faculty/employee responsibilities and, penalties for non-compliance and helpful resources for more information.

Overview of International Traffic in Arms Regulations and Export Administration Regulations

The Department of Commerce's Export Administration Regulations (EAR) and by International Traffic in Arms Regulations (ITAR) regulates Export Control. The EAR and ITAR regulations control the export and re-export of commodities, software, technical data, and information.

Generally, the term *export* refers to the shipment or transmission of items, services, or technical data out of the United States. However, under EAR and ITAR regulations, export can also refer to the release of technology or software technical data to a foreign national in the United States. In this situation, information includes visual inspection by foreign nationals of equipment and facilities that originated in the United States; oral exchanges of information in the United States and abroad; or the application to situations abroad of personal knowledge or experience acquired in the United States.

ITAR regulations are centered around the export of defense articles and defense services. EAR regulations are based on the Commerce Control List maintained by the Bureau of Industry and Security (BIS). ITAR and EAR regulations also apply to items that could have military applications that may not necessarily be intended for such use. For example, ITAR and EAR rules apply to the following commonly used items such as computers, equipment, chemicals, micro-organisms, materials, biological substances or software codes.

An export license may be required if the project involves these and other items in a foreign country and could take 3 to 6 months to acquire. For example, computers cannot be shipped to restricted countries without licenses.

When information for a project exists in public domain; software is not encrypted; funding sources or sponsors of the project have no restrictions on publication; and/or the project is not related to space or missile technologies, military technologies or military applications, the exclusion from ITAR and EAR regulations usually applies.

The Office of Foreign Assets Control (OFAC)

In addition to ITAR and EAR, the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals. OFAC prohibits payments or providing anything of value to sanctioned countries, nationals of some countries and specified entities. OFAC also prohibits travel and other activities with embargoed countries and entities.

In most cases, OFAC rules supersede other restrictions and regulations promulgated by ITAR and EAR on export controls. Licenses will most likely be denied for the following OFAC sanctioned countries:

- Balkans
- Belarus
- Burma
- Cote D'Ivoire (Ivory Coast)
- Cuba
- Democratic Republic of Congo
- Iran
- Iraq
- Liberia
- North Korea
- Sudan
- Syria
- Zimbabwe

The list of sanctioned countries is updated periodically and is available here.

Penalties for noncompliance with ITAR, EAR and OFAC:

In cases of Export Control violations, University employees can be held liable for violating the ITAR, EAR and/or OFAC export controls or embargos.

ITAR violations include:

- Criminal: up to $1 million per violation and up to 10 years in prison
- Civil: seizure and forfeiture of articles, revocation of exporting privileges, fines of up to $500,000 per violation.

EAR violations include:

- Criminal: $50K-$1million or five times the value of export, whichever is greater, per violation, up to 10 years in prison.
- Civil: loss of export privileges, fines $10K-$120K per violation

OFAC violations include:

- Criminal: Up to $1 million and 10 years in jail
- Civil: $12,000-$55,000 per instance

Information and Resources

- International Traffic in Arms Regulations: http://www.pmddtc.state.gov/regulations_laws/itar.html
- Directorates of Defense Trade Control: http://www.pmddtc.state.gov/
- Introduction to Commerce Department Export Controls: http://www.bis.doc.gov/licensing/exportingbasics.htm
- Commerce Control List: http://www.bis.doc.gov/policiesandregulations/index.htm#ear
- EAR Control List: http://www.access.gpo.gov/bis/
- EAR Bureau of Industry and Security: http://www.bis.doc.gov
- EAR Database: www.access.gpo.gov/bis/index.html
- OFAC: http://www.treas.gov/offices/enforcement/ofac
- OFAC Sanction Programs and Country Information: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx
- Code of Federal Regulations (22 CFR Section 121.1): http://www.gpo.gov/fdsys/pkg/CFR-2002-title22-vol1/xml/CFR-2002-title22-vol1-sec121-1.xml
- University of Pennsylvania Export Policy Resources: http://www.upenn.edu/researchservices/exportcontrols.html
- Massachusetts Institute of Technology Export Policy Resources: http://osp.mit.edu/compliance/export-controls
- University of California, Berkley Export Control and Research: http://www.spo.berkeley.edu/policy/exportcontrol.html