



HOPE COLLEGE

Compliance with Export Control Regulations

Examples when export controls may apply to a Hope College employee

- A laptop computer is carried into one of the OFAC/embargoed countries.
- A cellular phone with a GPS system is carried into a restricted country.
- A grant/contract award is accepted from the U.S. government that has proprietary restrictions on the release of data.
- A computer or encrypted software is shipped to a foreign country.
- A Hope College employee collaborates with a foreign national or releases information to a foreign national on a research project for the federal government.

Principal Investigator Checklist

Every principal investigator should ask him/herself the following questions:

- Do you anticipate any foreign travel associated with the project?
- Will you collaborate in any way with a foreign national as a research or commercial partner?
- Will you send your research results or ship items to a foreign country or foreign citizens?
- Will you use a research assistant who is a foreign national?
- Does the research involve anything else with a substantial or dual-use military application?
- Does the research involve any EAR categories?
- Does the research involve any item on the ITAR Munitions List?
- Does the research involve technology or devices designed for use in military, security and intelligence applications?

Hope Employee Procedures

If you answered affirmatively to any of these questions, then there is a possibility that export control does apply to your project and you should carefully read the following federal requirement and consult with your Divisional Dean or the Sponsored Research Office to determine if export controls pertain to your project and if a license is required.

Federal Requirement

Over the past few years the Federal government has become increasingly involved with protecting information and technology from disclosure by universities, the release of

which could hamper U.S. economic vitality or contributes to the military potential of U.S. international adversaries. Export laws and regulations promulgated by the U.S. Department of Commerce, the U.S. Department of State and the Treasury Department's Office of Foreign Assets Control are the bases for restricting use and access to this information and technology. These laws impact research, foreign travel and the transfer of technology and information to certain countries. The laws also impose severe criminal and civil fines for noncompliance. It is important that all persons involved in sponsored research understand the regulations and implementation requirements.

This information sheet provides an overview of the Department of Commerce's ITAR and EAR regulations, the Office of Foreign Assets Control embargoes, principal investigator responsibilities, examples for BSC faculty and staff, penalties for non-compliance and important links for further information.

Overview of ITAR and EAR

Export Control is regulated by the Department of Commerce's Export Administration Regulations (EAR) and by International Traffic in Arms Regulations (ITAR). These regulations control the export of commodities, software, technical data, and information to foreign countries.

Export commonly refers to the shipment or transmission of items, services, or technical data out of the United States however, under EAR and ITAR export can also refer to the release of technology or software technical data to a foreign national in the United States (deemed export). Software or technical data is considered released for export through:

- 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 the experience acquired in the United States.

EAR uses the regulations in the Commerce Control List maintained by the Bureau of Industry (BIS) and Security that includes items, commodities, software, and technology subject to the authority of BIS. ITAR regulations focus on the export of defense articles and defense services and use a list of categories called the U.S. Munitions List.

ITAR and EAR **cover items** of U.S. origin, such as

- equipment
- chemicals
- biological substances
- other materials
- software code
- computers

ITAR AND EAR issues usually **do not pertain** when your research and the information you are working with:

- is in the public domain;
- is not encrypted software;
- does not have sponsor restrictions on publication; and/or
- is not related to space or missile technologies, military technologies or military applications.

An export license may be required before a controlled item or material may be exported. A license could take 3-6 months to acquire. For example, you cannot ship computers to restricted countries without licenses. There are severe penalties for noncompliance.

The Office of Foreign Assets Control

In addition to ITAR and EAR, the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. *OFAC prohibits payments or providing anything of value to sanctioned countries, nationals of some countries and specified entities.*

OFAC also prohibits travel to and other activities with embargoed countries and entities. In general OFAC “trumps” export controls. *The countries where U.S. policy is normally to deny licenses is: Afghanistan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, Vietnam and to countries where U.S. has an arms embargo (Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan, Zaire) and in certain circumstances also Armenia and Azerbaijan.*

Penalties for non-compliance

Faculty members are criminally liable for violating the ITAR/EAR/OFAC export controls or embargos.

ITAR Penalties

- 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 Penalties

- 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 Penalties

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

Important Links for Further Information

ITAR http://www.pmddtc.state.gov/regulations_laws/itar_official.html
 Commerce Control List (EAR) <http://www.access.gpo.gov/bis/>
 US Munitions List <http://www.fas.org/spp/starwars/offdocs/itar/p121.htm>