Compliance with Export Control Regulations
Guidelines and Information

Introduction
While laws controlling exports have existed for decades, over the past few years the Federal government has become increasingly concerned about 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 outside the US of technology, software/code or equipment to a foreign person. The laws basically regulate the distribution of technical products, services and information to foreign nationals and foreign countries and apply to all activities.

The responsible agencies in the government charged with implementing these laws include the Department of Commerce, Department of State, and the Treasury Department’s Office of Foreign Assets Control. The Commerce and State Departments mainly scrutinize technology and information; the Treasury Department is concerned mainly with the country and end users involved in a transaction. These laws, although complicated, apply to a wide range of activities at academic institutions, including research, international programs, technology transfer, foreign travel, and site visits in US by foreign nationals.

Even though the laws apply broadly, most academic institutions are not affected because the regulations contain exclusions for fundamental research. However, the exclusion clause applies only under certain conditions so we must be attentive to review of whether the basic two exclusions apply, i.e., whether or not the resulting 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—that is, 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 full weight of the Export Control laws and regulations apply.

Because the laws have been increasingly directed to the academic community, including public institutions like Stockton College with little or no involvement in foreign research, the college community should become aware of the implications of Export laws. Noncompliance with the regulations can result in severe criminal and civil fines on individuals and institutions.

This information sheet provides an 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, examples of activities affected by the laws, penalties for non-compliance and important links for further information.
Overview

International Traffic in Arms Regulations (ITAR) and
Export Administration Regulations (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 and re-export of commodities, software, technical data, and information.

Export commonly 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 the following:

- 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.

EAR bases its regulations on the Commerce Control List maintained by the Bureau of Industry and Security (BIS). (See Important Link.)

ITAR regulations focus on the export of defense articles and defense services. These regulations also apply to items that could have military applications, even when those are not explicitly planned. For example, ITAR and EAR rules apply to the following commonly used items, including: 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 3-6 months to acquire. For example, computers cannot be shipped to restricted countries without licenses. (See Important Links below.)

The exclusion from ITAR and EAR regulations usually applies when the project can be described in the following ways:

- the information exists in the public domain;
- software is not encrypted;
- funding source 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 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.

Generally, OFAC rules override other restrictions and regulations promulgated by ITAR and EAR on export controls. Although the list of sanctioned countries changes, US policy is to normally deny licenses for Afghanistan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, Vietnam and to countries where U.S. has an arms embargo. (See Important Links for current list of sanctioned countries.)

Decision Tree/Red Flags

To determine if any of these rules and regulations applies to a project, think broadly about what the activities will be, who will be involved and what equipment and/or supplies will be used. Then screen all projects in foreign countries or with foreign nationals by asking the following general questions. Does the project involve…

- Shipping equipment or computers to a foreign country?
- Technologies or devices which might have a substantial or dual-use application to military, security or intelligence?
- Collaborating with a foreign colleague as a research or commercial partner even if the PI and the project activities remain in the US?
- Training foreign nationals to use software or equipment or involving foreign nationals as research assistants in the US or abroad?
- Using proprietary information?
- Sending research results or information to a foreign country or to foreign citizens?
- Travel to a foreign country?
- Restrictions by sponsor on publication of results or approval rights?

Put differently, consider whether a Stockton employee will:
- carry a laptop computer into one of the OFAC/embargoed countries.
- carry a cell phone with a GPS system into a restricted country.
- accepts a grant or contract funding with propriety restrictions on the release of data.
- ships computers or encrypted software to a foreign country.
- collaborates with a foreign national or releases information to a foreign national

If the answer is a possible YES to any of these questions, export control rules may apply. Individuals should consult with the Grants Office to determine if export controls pertain and if a license is required. Such matters will be reviewed by the College’s legal counsel in Business Services who will determine the appropriate next steps. Work on the project should wait until this final determination.
Penalties for non-compliance

**Important Note:** Unlike situations in which the College might accept liability and protect its employees, in this case individuals are criminally liable for personally 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-$1 million 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

**Links for Further Information**

**EAR (Export Administration Regulations)/Commerce Department**
- Introduction to Export Controls: [www.bis.doc.gov/licensing/exportingbasics.htm](http://www.bis.doc.gov/licensing/exportingbasics.htm)
- EAR Control List: [http://www.access.gpo.gov/bis/](http://www.access.gpo.gov/bis/)
- EAR Database: [www.access.gpo.gov/bis/index.html](http://www.access.gpo.gov/bis/index.html)

**ITAR (International Traffic in Arms Regulations)/Commerce and State Departments**
- ITAR, Directorate of Defense Trade Controls: [http://pimdtc.state.gov/itar_index.htm](http://pimdtc.state.gov/itar_index.htm)

**OFAC (Office of Foreign Assets Controls) / Treasury Department**
- OFAC, Sanction Programs: [http://www.treas.gov/offices/enforcement/ofac](http://www.treas.gov/offices/enforcement/ofac)

**Quick Information and Useful Sites for Resources**
- Massachusetts Institute of Technology, Office of Sponsored Programs, has resources, lists of countries, advice and so on. [http://web.mit.edu/osp/www/Export_Controls/](http://web.mit.edu/osp/www/Export_Controls/)
- University of Pennsylvania has website of FAQs, tutorials and lists of countries and materials subject to sanctions. [http://www.upenn.edu/researchservices/exportcontrols.html](http://www.upenn.edu/researchservices/exportcontrols.html)

--Beth Olsen
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Export Controls

Decision Tree and Quick Checklist

IDEAS/INFORMATION

Research exemption usually applies when resulting information is ordinarily published and shared broadly in the scholarly community, and when access or dissemination of information is NOT controlled or limited. That is,

- the information exists in the public domain;
- software is not encrypted;
- funding source 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.

ITEMS

Does project involve sending any of the following items to a foreign country:
- computers, equipment, chemicals, micro-organisms, materials, biological substances or software codes.

Does the project involve…
- Shipping equipment or computers to a foreign country?
- Technologies or devices which might have a substantial or dual-use application to military, security or intelligence?
- Collaborating with a foreign colleague as a research or commercial partner even if the PI and the project activities remain in the US?
- Training foreign nationals to use software or equipment or involving foreign nationals as research assistants in the US or abroad?
- Using proprietary information?
- Sending research results or information to a foreign country or to foreign citizens?
- Travel to a foreign country?
- Restrictions by sponsor on publication of results or approval rights?

Put differently, consider whether a Stockton employee will:
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- carry a cell phone with a GPS system into a restricted country.
- accepts a grant or contract funding with propriety restrictions on the release of data.
- ships computers or encrypted software to a foreign country.
- collaborates with a foreign national or releases information to a foreign national

- Travel to foreign country, check for list of sanctioned countries on http://www.treas.gov/offices/enforcement/ofac

Afghanistan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, Vietnam and Ivory Coast.
IS YOUR RESEARCH PROPOSAL SUBJECT TO EXPORT CONTROL LAWS

**MOST LIKELY SUBJECT TO EXPORT CONTROL**

- Equipment, software, chemical, bio-agent or technology is on the US Munitions List (ITAR)
  - Yes
  - No
- Equipment, software, chemical, bio-agent or technology is designed or modified for military use, use in outer space or there is reason to know it will be used for or in weapons of mass destruction
  - Yes
  - No
- Equipment, software, chemical, bio-agent or technology is on the Commodity Control List (EAR)
  - Yes
  - No
- Contract contains a restriction on export or access by foreign nationals
  - Yes
  - No
- Equipment or encrypted software is involved
  - Yes
  - No
- Technology is not in the public Domain
  - Yes
  - No
- Contract or grant restrict publication or presentation of research results
  - Yes
  - No
- Contract or grant prohibit results or deliverables from being disclosed or delivered to any country or persons
  - Yes
  - No

**MOST LIKELY NOT SUBJECT TO EXPORT CONTROL**

- Technology may be exposed to foreign nationals (even on campus) or foreign travel is involved
  - Yes
  - No
- Equipment, software, and technology (or information or instruction of same) is on the Commodity Control List
  - Yes
  - No
- Foreign nationals are from or travel is to an embargoed country
  - Yes
  - No

**Yes**

**No**