

## Export Control Laws- Background Information

While the majority of teaching and research activity at the University are exempt from the export controls as a result of one or more of several possible exclusions, its important for researchers and administrators to understand how the laws and exclusions may apply to their activities.

Three different federal departments enforce the export control laws: the Department of Commerce, through its Export Administration Regulations (“**EAR**”); the Department of State, through its International Traffic in Arms Regulations (“**ITAR**”); and the Department of Treasury, through its Office of Foreign Assets Control (“**OFAC**”).

The **EAR** is intended to limit the export and deemed export of “dual use” items and information. “Dual use” generally means items and information the government has designated as having legitimate commercial purposes, but that also can have potential military applications when received or obtained by particular individuals, or for particular purposes, or within particular countries (e.g., certain computers, software, chemicals and biologics).

The **ITAR** govern items and information that are inherently military in nature, according to the government (e.g. encryption technology).

**OFAC** enforces economic and trade sanctions against countries that are “embargoed” and individuals on SDN “specially designated nationals” lists (generally, individuals and organizations the government has listed as terrorists, international narcotics traffickers, or involved in or supportive of activities advancing the proliferation of weapons of mass destruction).

In general, export control regulations apply to:

- the transfer, or “export” of specified items or information to people or entities outside the United States;
- the disclosure of certain information to certain foreign nationals inside the United States (deemed export);
- the training or offering of services involving controlled equipment or information to foreign nationals; and
- transactions with, or providing services to, certain foreign countries or individuals who are on embargo lists or denied person lists.

If an activity does not qualify for an exception or exclusion, it may be necessary to obtain an export license from the government. Obtaining a license can take anywhere between six weeks to more than twelve months, depending on the particular facts.

Sanctions for noncompliance can include civil and criminal penalties, including fines and/or prison sentences for individuals as well as administrative penalties (loss of research funding).

While the regulations are broad and apply to virtually all fields of teaching and research, sponsored or not, the vast majority of research and teaching activities at the University do not require a license. There are several significant exclusions to the licensing requirements that cover most University activities: 1) the fundamental research exclusion; 2) the public domain exclusion; and, 3) the full-time employee exclusion:

The “fundamental research” exclusion covers the conduct of research at the University, provided that there are no restrictions on access by students or others to, or publication of, the research results; the research is carried out openly; and the results are intended to be, and ordinarily are, published or shared broadly within the scientific community. Consistent with University policy and practice, the Office of Sponsored Programs will not accept sponsored program awards that would exclude the fundamental research exclusion without approval of the appropriate Chair, Dean and Vice Presidents.

The “public domain” exclusion generally allows for the sharing of technical data or information with a foreign national inside the U.S. as part of a class, laboratory, conference or seminar if the same technical data or information have already been published widely, or are available in libraries or through newsstands, bookstores, subscriptions or free web sites, or are disclosed in published patent applications. A license is not needed to share information as part of a course you are teaching or to train most foreign nationals in the use of most otherwise-controlled pieces of scientific equipment as part of that class or lab instruction. The exemption does not apply to non-public domain information and certain information deemed classified or sensitive by the federal government.

In general, **ITAR** regulations exempt information but not technology and materials that are “general scientific, mathematical or engineering principles commonly taught in . . . universities.” The **EAR** similarly exempts “educational information” released by instruction in catalog courses and associated teaching laboratories.

In addition to the above two exemptions and in cases when they would not apply, full-time employees who maintain U.S. residency during their employment are exempt from the **EAR**. And under **ITAR** regulations, the foreign national employee must be informed in writing that the technical data may not be transferred to foreign nationals without written prior approval from the Directorate of Defense Trade Controls.

For additional information please visit <http://www.virginia.edu/sponsoredprograms/exportcontrols.html> or e-mail [export-controls@virginia.edu](mailto:export-controls@virginia.edu).