

GETTYSBURG COLLEGE EXPORT CONTROL POLICY

INTRODUCTION

The Federal government remains highly concerned with protecting sensitive technologies and information for reasons of national security. The primary focus of these concerns is set forth in the U.S. Export Control laws which represent a comprehensive set of federal regulations that control and restrict the export of critical technologies, technical data, software code, information and services to foreign nationals and foreign countries. For purposes of these laws, an "export" is defined very broadly, and includes not only physical shipments, but also oral and written communications to persons abroad (including over computer networks and the internet) and to disclosures of information to foreign nationals when in this country.

The principal agencies responsible for the implementation of these laws are the Department of Commerce through its Export Administration Regulations (EAR), the Department of State through its International Traffic in Arms Regulations (ITAR) and the Treasury Department through its Office of Foreign Assets Control (OFAC). These laws and resulting regulations are very complicated and apply to a wide range of activities at academic institutions, including research, international programs, technology transfers, foreign travel, and visits to our facilities in the United States by foreign nationals.

GETTYSBURG COLLEGE'S POLICY

It is Gettysburg College's policy to comply fully and completely with all applicable U.S. Export Control laws and regulations, and to obtain any necessary licenses or waivers. While we will assist faculty and staff in complying with Export Control laws, it is critically important that you identify and bring to our attention activities where export controls may apply. Unlike situations in which the College might have sole liability, in this case, the College's options are limited. In addition to the College's potential liability, individual faculty and staff members are civilly and criminally liable for personally violating export controls and embargoes.

FURTHER ASSISTANCE

As indicated above, the first screen for the possible application of U.S. Export Controls necessarily lies with our faculty and staff. However, we are committed to assist with compliance. In the event that you identify any concerns or have questions about U.S. Export Controls and their applicability to a particular export or research activity, please immediately contact the President's Office. Please contact the IT Helpdesk at x7000 for loaner technology for your international travels.

OVERVIEW OF EXPORT CONTROL LAWS

International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR).

The EAR and the ITAR control the export and re-export of commodities, software, technical data and information. As mentioned above, an export is more than the shipment or transmission of items or technical data out of the United States. It also refers to a release of technology or technical data to a foreign national in the United States (a "deemed" export). This could take the form of visual inspections by foreign nationals of equipment and facilities in the United States, oral exchanges of information to foreign nationals in the United States, or the dissemination of personal knowledge or experience to a foreign national which was acquired in the United States.

The Department of Commerce, through its Bureau of Industry and Security (BIS) bases its export regulations on what is known as the Commerce Control List. Through a process of identifying the category of item to be exported and the reason for its control, one can cross-reference the item against the Commerce Control List and determine whether a license is required for a particular country. (See references below to Department of Commerce websites.)

ITAR regulations focus on the export of defense articles and defense services. The list of items controlled by the ITAR, known as the Munitions List, is shorter but much more vague than the categories of items applicable to the Commerce Control List. It is often difficult to determine whether an item falls within either of these lists or, indeed, which agency has primary jurisdiction over the item. It is sometimes necessary to pursue a Commodity Jurisdiction Request when the issue is in doubt. (See references below to State Department websites.)

The Research Exclusion to the EAR and the ITAR.

As a practical matter, most of the College's activities are excluded from export controls through the Fundamental Research Exclusion. This is research which is ordinarily published and shared broadly within a research community. This can include the following:

- Publicly available technologies and software;
- Research that has already published or will be published in a journal or presented at an open conference;
- Technology and software arising from the fundamental research (which is defined as basic and applied research that can be distinguished from proprietary research or industrial research); and
- Educational information, which is defined as information released in the course of instruction at an academic institution.

Note, however, that this Fundamental Research Exclusion is lost if the College accepts any contract clause that forbids the participation of foreign persons, gives the sponsor a right to approve publications resulting from the research, or otherwise operates to restrict participation and/or access to and disclosure of research results. Any of the

foregoing would make the research proprietary and thus not within the definition of fundamental research. Importantly, the Fundamental Research Exclusion applies only to the dissemination of research data and information. It does not apply to the shipment of material goods.

The Office of Foreign Assets Control (OFAC).

OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security concerns and involves more than simply exports. OFAC prohibits payments or providing anything of value to embargoed or sanctioned countries or foreign nationals. It also prohibits travel to, and other activities with, embargoed or sanctioned countries and foreign nationals. Where OFAC has jurisdiction, its rules generally override restrictions and regulations promulgated under the ITAR and the EAR. The list of sanctioned countries, persons and entities changes based on U.S. policies and Presidential executive orders. (See references below to OFAC website.)

Website Links for Further Information

EAR (Export Administration Regulations)/Commerce Department

- EAR Regulations: <https://www.bis.doc.gov/index.php/regulations/export-administratioin-regulators-ear>
- Commerce Control List:
<http://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>
- U.S. Department of Commerce, Bureau of Industry and Security:
<http://www.bis.doc.gov>

ITAR (International Traffic in Arms Regulations)

- ITAR, Directorate of Defense Trade Controls: <https://pmdtdc.state.gov/ddtc-public>

OFAC (Office of Foreign Assets Controls)/Treasury Department

- OFAC, Sanction Programs and Country Information:
<https://www.treasury.gov/resource-center/sanctions/programs/pages/programs.aspx>