



Export Controls

Identifying and supporting export-controlled activities and projects on Grounds at the University of Virginia

Office of Export Controls (“OEC”)

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- International Traffic in Arms Regulations (ITAR)
- Export Administration Regulations (EAR)
- Embargoes & Trade Sanction Regulations (TSR)

Principle Export Control (EC) Regulations

- Animal & Plant Health Inspection Service (USDA)
- Department of Energy
- Drug Enforcement Agency (DOJ)
- Bureau of Alcohol, Tobacco, Firearms and Explosives (DOJ)
- US Fish & Wildlife Service (DOI)
- National Marine Fisheries Service (DOC, NOAA)
- Food & Drug Administration (DHHS)
- Nuclear Regulatory Commission
- More... this is *not* an exhaustive list!

Other Agencies with Export Regulations

- **Export** – transmission or shipment of an item or information out of the U.S. Data or information provided to a foreign national in the U.S. is “deemed” to be an export to the individual’s country of origin or citizenship.
- **U.S. Person** – an individual who is a U.S. Citizen, U.S. Permanent Resident, or has a valid asylum status granted by the U.S. State Department; also includes any entity legally licensed to conduct business in the U.S.
- **Foreign Person** – an individual who is not a U.S. Person; also any entity not legally licensed to conduct business in the U.S.

Note: The EAR and ITAR differ in how they handle individuals who have citizenship and/or residency status in more than one country, so be sure and inform the OEC of all valid citizenship or residency statuses during any export assessment process.

Generalized Definitions

- Authority: Arms Export Control Act (22 USC 2778)
- Executive: Department of State
- Regulatory: Directorate of Defense Trade Controls
- Scope: Defense Articles and Defense Services
 - Items/Technologies on the U.S. Munitions List
 - Defense Articles - military, intelligence or space applications
 - Defense Services – includes assistance and instruction regarding use of Defense Articles... may include assistance using public domain information.

ITAR: Quick Facts

- Covers the temporary import of defense articles, permanent or temporary exports of defense articles, and provision of defense services
- Almost all exports (physical and deemed) require a license
- Very few exceptions to licensing requirements are available
- Institutional and individual liability for violations
 - Up to \$1 million per violation; and
 - Up to 20 years in prison
- Institutional registration is required to request licenses or other authorizations

ITAR: Quick Facts

- Authority (primary):
 - Export Administration Act of 1979, as amended (Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. 2401-2420) – currently in lapse, but extended annually by Presidential executive order
 - International Emergency Economic Powers Act, as amended (Pub. L. 95-223, 91 Stat. 1628, 50 U.S.C. 1701-1706)
- Executive: Department of Commerce
- Regulatory: Bureau of Industry and Security
- Scope: Commercial and Dual-Use Technology
 - Items/Technologies on the Commerce Control List (CCL) including EAR99
 - Each heading entry in the CCL is an Export Control Classification Number (i.e. 1C351)

EAR: Quick Facts

- All commodities in US commerce not exclusively controlled by another agency
- Majority of items/technologies in commerce are subject to the EAR, but are not identified by a specific ECCN (e.g., EAR99) in the CCL, yet they are still regulated
- Majority of exports do not require a license to many locations
- An exception can often overcome a license requirement
- Institutional and individual liability for violations (IEEPA)
 - Up to \$1 million per violation; and
 - Up to 20 years in prison
- Institutional registration is required to request licenses or other authorizations

EAR: Quick Facts

- Authority: Various
 - International Emergency Economic Powers Act, as amended (Pub. L. 95-223, 91 Stat. 1628, 50 U.S.C. 1701-1706)
 - National Emergencies Act (50 USC 1601-1651)
 - Various country or threat specific Acts
 - Presidential Executive Orders
- Executive: Department of the Treasury
- Regulatory: Office of Foreign Assets Control
- Scope: all transactions of value (includes services)

TSR: Quick Facts

- List-based sanctions
- Country-based sanctions
- Each regulation is unique
- Most regulations provide some general licenses and identify when special licenses may be available by application to OFAC
- Institutional and individual liability for violations (varies)
 - Up to \$10 million per violation; and
 - Up to 30 years in prison
- Institutional registration is NOT required to request licenses or other authorizations

TSR: Quick Facts

- Publicly available or published information
- Attending or presenting at open meetings and conferences
 - Open to all qualified individuals
 - Attendees allowed to take notes for personal use
- Educational information
 - Basic scientific and engineering principles and concepts
 - Content of catalog listed courses and associated teaching labs
- Fundamental research data
 - No publication or access restrictions
 - Generally intended to be published
 - Does not include physical items that are developed as a result of or in the course of performing the research project
- Basic use instructions for EAR controlled technology
- Access to and use of EAR controlled items in the US

Exempt from Export Control

(at least typically...)

- Presenting at a meeting or conference hosted by or for the benefit of an embargoed or sanctioned entity may require a license from OFAC.
- Research results that require approval (versus “review and comment”) prior to publication or dissemination. However, once approved for public release they may be treated as fundamental research data at that time.
- Student research projects are generally not eligible for the educational information exemption.
- Equipment used to conduct fundamental research may be export controlled (status does not change based on use)

Exceptions to the rule...

- (Physical) Export of controlled technology or data
 - Includes both temporary and permanent exports
 - Includes prototypes or mock-ups of technology produced in the conduct of fundamental research
 - Proprietary reports, data or files
- Import of controlled technology
 - Identified on the US Munitions Import List
- (Deemed) Export of controlled source code or technical data
 - Excludes EAR99 source code and data
- Certain activities involving sanctioned/embargoed entities
- Providing training or assistance related to Defense Articles to foreign persons in the US or abroad (even if publicly available)
- Access to Defense Articles by foreign persons in the US or abroad

Export Controlled Activities

- Sponsors
 - Foreign entities
 - DoD, NASA, DOE, DHS and Intelligence agencies
 - Industry (especially defense, aerospace or high tech electronics)
- Funding Announcements or Award Documents Containing:
 - Export control language
 - Citizenship restrictions
 - Publications restrictions
 - Research referred to as Phase 2 or higher
- ITAR Controlled Technology
- Proprietary, Confidential or Restricted Data being provided to the researcher for the research project

“High Risk” Proposals

- Military/Defense/Intelligence Capabilities
- Information Security or Encryption
- Aviation or Avionics
- Satellite, Rocket or Missile Technology
- Biologics, Toxins and Chemicals
- Nuclear Technology or Materials
- Radar or Sonar Technology
- Armor Materials or Coatings
- Infrared Technology

“High Risk” Topics/Areas

- Same as for “high risk” proposals and topics/areas PLUS...
- Deliverables other than public presentations and publications
- Collaborators, subawards, and subcontracts on “high risk” projects to
 - Foreign entities
 - Industry (especially defense, aerospace or high tech electronics)
- Data Access or Protection Requirements
 - Protected Critical Infrastructure Information (PCII)
 - Military Critical Technology Data Agreement (DD2345)
 - DFARS 252.204-7000 – Disclosure of Information (publication restriction)
 - DFARS 252.204-7012 (DEC 2015) – Safeguarding Covered Defense Information and Cyber Incident Reporting
 - Contract Security Classification Specification (DD254)

Award “Red Flags”

- Work with the Principal Investigator (“PI”) and/or the Office of Sponsored Programs (“OSP”) to assist in making the case for fundamental research (“FR”), if appropriate
- Work with the Principal Investigator and/or the Office of Sponsored Programs to assess the likelihood of export controls on the research project
- Help the Principal Investigator to understand the implications for accepting restricted or export-controlled research projects, including management responsibilities
- Prepare export controls certification documentation when necessary
- Contact vendors/suppliers for export control classification information in order to help faculty assess their options

OEC Assistance During the Proposal Stage

- Sanctioned Countries Screening
- License Assessment for UVA Technology
 - Limiting what you take
 - Permanent or Temporary Export
 - TMP or ENC license exception use (employees)
 - In-country Control Requirements
- Restricted Party Screening
- Other Requirements (FCPA, Anti-boycott & Fly America)

OEC Support: Travel

- License Assessment
- Destination Import Requirements
 - Utilize in-country colleagues for assistance
 - Foreign Government's website
 - U.S. embassy or consulate
- Anti-Boycott and FCPA Compliance
- Guidance on Filing Requirements
- UVA Contract Vendor for Customs Brokerage: Airschott, Inc.
<http://www.procurement.virginia.edu/pagecontracts&category=Services#Customs Brokerage>

OEC Support: Shipping

- ITAR Controlled Technology or Data – Always Required
- EAR Controlled Technology or Data – It Depends...
 - CCL listed Items/Commodities – Never/Rarely
 - CCL listed Software or “Technology” – Occasionally
 - CCL listed 500 & 600 Series Software or “Technology” - Probably
 - EAR99 Items – Never
- Activities subject to the TSR – Not Required
- In-person or online export controls training is required for anyone who is listed on a Technology Control Plan (“TCP”)

Technology Control Plans

- Export Control Process
 - Export control requirement identified
 - PI works with OEC to develop a project specific TCP
 - PI submits a request to accept the export control restriction for consideration by his/her department chair, dean, and the Vice Provost for Research (or designee)
 - TCP template is on OEC website <http://export.virginia.edu/technology-control-plan>
 - OEC screens all personnel listed on the TCP against the export denial lists
 - OEC conducts in-person training for the TCP-listed personnel or the personnel complete the online training available through CITI (See <http://export.virginia.edu/training>)
 - Note that some projects may have restrictions other than export control requirements

TCP Development

- Check with OEC before adding the following to an export controlled project:
 - Foreign individual or entity (need to ensure screening, training, notification, application for license if necessary and use of appropriate terms)
 - Collaborator
 - Subaward or Subcontract
 - Faculty, staff, trainee, volunteer or student
 - US individual or entity (need to ensure training, notification, and appropriate terms)
 - UVA faculty, staff, trainee or student
 - Collaborator, subaward or subcontract
- The PI is usually the “Responsible Person” for the TCP and should always request a modification of any TCP whenever any of the above-listed events transpire, or when an associated sponsored research award is modified.

Managing Controlled Projects

- Sponsor vs. Hiring/HR (non-discrimination) Requirements
- Export Control Review & Assessment
 - Required by US Customs and Immigration Service for all H-1B, H-1B1 Chile/Singapore, or O-1A Visas applicants
 - One-time certification regarding intent to provide the employee with technical data requiring a license from BIS or DDTC.
 - Review performed by OEC based on the I-129 Export Certification Request (form available on the OEC website)
- Visiting Foreign Scholar Visa Reviews (coming soon)
- Students from some countries have been experiencing more difficulties in getting visas approved or renewed if they are studying “sensitive” topics

Foreign Employees, Students & Visitors

- A web-based tool from eCustoms that is used to screen
 - entities (individuals and organizations) to see if they are “restricted parties”
 - technology to determine export control status
- Virginia has a statewide license for higher education institutions, which allows an unlimited number of users
- Dynamic Screening – notifies if there is ever a change in status of a previously screened entity
- RPS Manager – allows you to access prior searches
- Demonstrations and training for Visual Compliance are available from OEC

Visual Compliance

- **UVA Office of Export Controls (OEC):**
 - Home Page: <http://export.virginia.edu>
 - Forms & Templates: <http://export.virginia.edu> (under the Procedures Tab)
 - Training: <http://export.virginia.edu/training>
- **Collaborative Institutional Training Initiative (CITI)**
 - online export controls training course
 - Log-In/Registration: <http://www.citiprogram.org>
 - Basic Registration Instructions are available on the OEC Training Page (above)
- **Visual Compliance**
 - Log-In for Current Users: <https://www.visualcompliance.com>
 - New User Registration: <https://www.visualcompliance.com/usr/>
- **FAQs**
 - See additional information: <http://export.virginia.edu/faqs>

Useful References

- **Export Administration Regulations (EAR)**
 - Regulations: http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title15/15cfrv2_02.tpl
 - Bureau of Industry & Security (BIS): <http://www.bis.doc.gov/>
- **International Traffic in Arms Regulations (ITAR)**
 - Regulations: https://www.pmddtc.state.gov/regulations_laws/itar.html
 - Directorate of Defense Trade Control (DDTC): <http://www.pmddtc.state.gov>
- **OFAC Embargoes & Trade Sanctions**
 - Regulations: <https://www.gpo.gov/fdsys/pkg/CFR-2010-title31-vol1/content-detail.html> and <https://www.treasury.gov/resource-center/sanctions/Pages/CFR-links.aspx>
 - Office of Foreign Assets Control (OFAC):
<https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>
- **Other Agencies and Regulations** (not exhaustive)
<http://export.virginia.edu/regulations> (scroll halfway down the page)

Regulatory Links
