Kenyon College

Compliance with Export Control Regulations

While Kenyon College endorses the principles of freedom of inquiry and open exchange of knowledge, the College recognizes its obligation to comply with the U.S. export control regulations. The export of certain technologies, software, and hardware is regulated and controlled by federal law for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction, and for competitive trade reasons. Kenyon College and all of its employees are required to comply with the laws and implementing regulations issued by the Department of State, through its International Traffic in Arms Regulations (ITAR), the Department of Commerce, through its Export Administration Regulations (EAR), and the Department of the Treasury, through its Office of Foreign Asset Controls (OFAC).

Examples when export controls may apply to a Kenyon College employee includes, but is not limited to, the following:
- 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 or 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 Kenyon 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?

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Kenyon Employee Procedures
If you answered affirmatively to <u>any</u> of these questions, then there is a possibility that export control does apply to your project and you should carefully read the following federal requirements and consult with the Provost 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 establish the bases for restriction, 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 non-compliance. 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 State's ITAR, the Department of Commerce's EAR, the Office of Foreign Assets Controls' embargoes, principal investigator responsibilities, examples for Kenyon College 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 the Department of State's 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 outside 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 within the United States (deemed an 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 and Security (BIS) 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, but not limited to:
- equipment;
- chemicals;
- biological substance;
- other materials;
- software code; and,
- 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 Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorist, 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 include, but are not limited to: Afghanistan, Belarus, Cuba, Iran, Libya, North Korea, Syria, Liberia, Rwanda, Somalia, Sudan, Zaire, and in certain circumstances, Armenia and Azerbaijan.

Penalties for non-compliance
Faculty members are criminally liable for violating the ITAR/EAR/OFAC export controls or embargoes.
ITAR Penalties
- Criminal: up to $1 million per violation and up to 20 years in prison.
- Civil: denial of export privileges and/or seizure and forfeiture of goods, fines of up to $500,000 per violation.
EAR Penalties
- Criminal: $50,000 to $1 million fine or five times the value of export, whichever is greater, per violation, up to 10 years in prison.
- Civil: denial of export privileges, fines of $12,000 to $120,000 per violation.

<u>OFAC Penalties</u>
- Criminal: up to $1 million fine and 20 years in prison.
- Civil: a fine of up to $250,000 per violation.

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/
U.S. Munitions List: http://www.fas.org/spp/starwars/offdocs/itar/p121.htm