

## **Elon University Compliance with Export Control Regulations**

### **Policy**

Elon University (Elon) is committed to the principle of freedom of access by all interested persons to the underlying data, processes, and final results of research. Elon also has a commitment to comply with all applicable export controls, as established by federal regulations and in its policy on Export Controls. "Exports" are both the shipment of materials to another country and/or the disclosure of controlled information to foreign nationals (deemed exports) who are in the United States.

Exports are regulated by several federal agencies. While the conduct, products, and results of fundamental research are generally excluded from federal export or "deemed export" controls, there may be some activities that would not be excluded and would require an export license. 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 noncompliance. It is important that all persons involved in sponsored research/grants at Elon understand the regulations and implementation requirements.

"Fundamental research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons." (AAU)

### **Procedures and Background**

This provides an overview of the Department of Commerce's Export Administration Regulations (EAR) and by International Traffic in Arms Regulations (ITAR), the Office of Foreign Assets Control embargoes, principal investigator responsibilities, examples for Elon 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 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 out 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 in the United States (deemed 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

- equipment
- chemicals
- biological substances
- other materials
- software code
- 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 the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, 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 are: Afghanistan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, Vietnam and to countries where U.S. has an arms embargo (Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan, Zaire) and in certain circumstances also Armenia and Azerbaijan.

### **Principal Investigator Responsibilities**

Every principal investigator should ask themselves the following questions:

- 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?
- Does the research involve anything else with a substantial or dual-use military application?
- Will you collaborate in any way with a foreign national as a research or commercial partner?
- Will you use a research assistant who is a foreign national?

- Will you send your research results to a foreign country or foreign citizens?
- Do you anticipate any foreign travel associated with the project?

You may also wish to consult the Stanford University “Export Controls Decision Tree” at <http://export.stanford.edu/tree/index.html> for further questions.

If you answer affirmatively to any of these questions, then there is a possibility that export control does apply to your project. You must consult with the Grants Office to determine if export controls pertain to your project and if a license is required.

### **Examples when export controls may apply to Elon employees**

- An Elon employee carries a laptop computer into one of the OFAC/embargoed countries.
- An Elon employee carries a cellular phone that has a GPS system into a restricted country.
- An Elon employee receives an award from the U.S. government that has propriety restrictions on the release of data.
- An Elon employee ships computers or encrypted software to a foreign country.
- An Elon employee collaborates with a foreign national or releases information to a foreign national on a research project for the federal government.

### **Penalties for non-compliance**

Faculty members are criminally liable for 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-\$1million 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

### **Important Links for Further Information**

ITAR: [http://www.pmddtc.state.gov/regulations\\_laws/itar.html](http://www.pmddtc.state.gov/regulations_laws/itar.html)

Commerce Control List (EAR):

<http://www.bis.doc.gov/policiesandregulations/ear/index.htm>

US Munitions List: [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title22/22cfr126\\_main\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title22/22cfr126_main_02.tpl)

OFAC: [www.treas.gov/offices/enforcement/ofac/](http://www.treas.gov/offices/enforcement/ofac/)

Sanctioned Country List: [www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx](http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx)