

## **Governmental Restrictions on Transfer of Information and Materials to Foreign Countries**

### **Purpose**

This document is intended to provide general guidance to investigators and research administrators concerning the restrictions which are in force in connection with the export of technology and the procedures which must be followed to obtain licenses required for export. It should be kept in mind that fines of up to \$250,000.00 could be imposed for failure to comply with the applicable laws.

Numerous provisions of law allow the federal government to limit or prevent the transfer of information and materials to foreign countries when transfer of the information or materials could adversely affect national security. These provisions are important to investigators who may be contemplating the transmittal of technical data or equipment to communist bloc countries, the presentation of papers at international conferences, or publication of articles in scholarly journals circulated in foreign countries, since export controls may apply in any of these situations.

Investigators are encouraged to contact the Research Foundation Office of General Counsel and Secretary whenever they have questions about legal restrictions which might apply to export of technical information. As appropriate, the Office of General Counsel and Secretary will research export license requirements and obtain export licenses.

### **Background**

Exchanges of technical information and hardware, both within and without the United States, may be restricted by classifications of the information or hardware pursuant to Executive Order. The President's authority to classify is limited to government owned or controlled technology, disclosure of which could affect the national security. Both domestic and foreign transfers of technology can also be limited by the Invention Secrecy Act which permits classification of patents when their disclosure could be detrimental to the national security. A third provision of law, the Atomic Energy Act, automatically classifies a wide range of information and hardware relating to nuclear weapons and nuclear power.

All of the preceding laws apply to both international and domestic exchanges of information and hardware. Additional legislation further restricts certain exports. These laws include the Trading With the Enemy Act, the Controlled Substances Import and Export Act, the Endangered Species Act, the Export Administration Act of 1979 and the Arms Export Control Act of 1976. The last two are of greatest significance to researchers.

### **Export Administration Act**

The Export Administration Act and its associated regulations, the Export Administration Regulations, are administered by the Department of Commerce. This statute is concerned with items which have both a civilian and military use and restricts the export of such commodities and/or technical data to countries which are adversaries of the United States. In

order to determine whether the export of certain hardware or data is allowed, the following steps must be taken. First, reference must be made to 15 CFR 379 and 399 to determine whether the hardware or data to be exported is restricted. Restrictions may be based on the nature of the item to be exported, the destination, or both. If export of the item is restricted, a determination must be made as to whether the export may proceed under license issued by the Commerce Department. If a license is available, an appropriate application must be completed and submitted.

There is a complicated process involved in determining whether restrictions apply to export of a particular hardware item or a particular category of technical data. A part of the process involves review of commodity lists issued by the government, and interpretation of regulations concerning associated technical data to determine what licensing requirements apply. To avoid the risk of misinterpretation by the exporter, the Commerce Department will issue a written conclusive opinion concerning the licensing requirements for a particular item of hardware or technical data upon submission of an application for a ruling accompanied by relevant information describing the hardware or technical data in question. Filings and license applications should be coordinated through the Research Foundation Office of General Counsel and Secretary.

### **Arms Export Control Act**

The Arms Export Control Act and its associated regulations, the International Traffic in Arms Regulations, are administered by the State Department. This statute authorizes the President to control the export of defense articles and services which are included on the United States Munitions list. Since publication of the official list would reveal classified defense information, only a modified, declassified list is publicly available. Questions concerning restrictions on particular technologies must be submitted to the State Department for determination. These inquiries should be referred to the Office of General Counsel and Secretary for processing. As is the case with the Export Administration Act, exports of items on the Munitions list is controlled through issuance of licenses.

### **Federally Sponsored Research**

Notwithstanding the foregoing restrictive laws, rules and regulations, the policy of the federal government has been to assure that the products of "fundamental research" remain unrestricted to the maximum extent possible. To this end, it has been the practice of the Defense Department to consider work funded out of budget category 6.1, and work funded out of 6.2 and performed on campus, to be fundamental research not subject to restriction. Other agencies have taken a different approach in defining fundamental research. For instance, NASA considers all work performed under grants awarded to universities to be fundamental.

### **Further Information**

The Association of American Universities publishes an informative set of publications which includes extensive discussion of federal statutes and policies in the area of restrictions on transfer of technology. Further information on these AAU publications may be obtained from the Sponsored Programs administrator for your campus.