

University of Colorado at Boulder
Office of the Vice Chancellor for Research
and Dean of the Graduate School

June 14, 2004

To Deans, Chairs, Directors

Federal laws restricting exports of goods and technology have implications for research activities that are not always recognized or understood by University researchers. Civil and criminal sanctions (including fines and/or prison sentences for individuals) for violations of these regulations are substantial, and may apply to individual researchers as well as the university as an institution. It is important that faculty and administrators understand their obligations under these regulations. If this is relevant to your department, please make sure all research and tenure-track faculty are aware of these regulations.

Export control regulations are implemented both by the US Department of Commerce through its Export Administration Regulations (EAR—trade protection) and the US Department of State through its International Traffic in Arms Regulations (ITAR—national security). EAR regulations pertain to “dual use” technologies, whereas the ITAR affect technologies that are more specifically military in nature (including most research involving satellites). These regulations apply to:

- The physical transfer of controlled items and related technical information, including software, to persons and entities outside the U.S.
- The disclosure of technical data or information on controlled items to foreign persons while in the US. These so-called “deemed exports” may include formal presentations, informal conversations, or even observations during site tours.
- The training and offering of services involving controlled equipment to foreign persons.

The purpose of export control laws and regulations is to restrict exports of goods, technology and related technical information that could hamper US economic vitality or contribute to the military potential of US international adversaries. These purposes may conflict with our tradition of academic freedom and openness in research and as a result, export controls present unique challenges to universities and colleges. These challenges are arising with greater frequency due to heightened concerns about homeland security.

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While export controls apply to virtually all fields of science and engineering research, sponsored or not, there are several significant exclusions or exemptions for US institutions of higher learning:

- The so-called *fundamental research exclusion* exempts from coverage basic and applied research in science and engineering provided the research is carried out openly and without restrictions on publication or access to or dissemination of the research results. This fundamental research exemption applies primarily to “deemed exports” (transfers of information to foreign persons inside the US). It enables the conduct of fundamental research (collaborations, seminars, conferences, and informal scientific exchanges) to proceed largely unfettered by the restrictions that might govern other exchanges of scientific information.
- The *education exclusion* exempts from export controls the sharing of general scientific mathematical or engineering information commonly taught in colleges and universities as well as exempting information in the public domain. This exclusion does not apply to training foreign persons how to use controlled pieces of scientific equipment **unless the instruction is part of a class.**
- The *employment exclusion* allows US universities to disclose technical data to foreign persons in the US provided those persons are full-time, bona fide employees of the universities, have a permanent home in the US during their employment, are not nationals of certain countries the State Department has designated as terrorist countries, and universities inform the persons, in writing, that they may not disclose technical data to other foreign nationals without the prior authorization of the State Department.

Another agency that is involved in export controls is the Treasury Department’s Office of Foreign Assets Control (OFAC). That office administers and enforces economic and trade sanctions against foreign countries, individuals, and organizations identified as terrorists or international narcotics traffickers or involved in or supportive of activities related to the proliferation of weapons of mass destruction. These countries currently include Cuba, Iran, Iraq, Libya, Liberia, Sudan and North Korea, as well as certain entities in the Balkans, Burma and Zimbabwe. Individuals may not provide technologies or services to embargoed entities without first obtaining licenses from OFAC and the State or Commerce Department.

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Additional information about export control and research can be found at <http://www.colorado.edu/GraduateSchool/Export>. You can also contact Ralph Brown in the Office of Contracts and Grants (303-492-2692); Ralph.Brown@Colorado.edu), Joe Rosse in the Office of Research Integrity (303-735-5809), Joseph.Rosse@colorado.edu), or Kristin Diamond in the Office of University Counsel (303-735-4474); Kristin.Diamond@cu.edu).

Sincerely,

Carol B. Lynch
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CC: Joe Rosse, Office of Research Integrity
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