

Center for Research Services Continuing Education Series

***Exporting: What Researchers
Need to Know***

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U.S. Export Regulations

- Export Administration Regulations (EAR)
 - Reference: 15 CFR Chapter 7 Parts 730-774
 - Agency: Bureau of Industry & Security (Commerce)
 - Scope: Commercial & Dual-use Technology – Itemized in the Commerce Control List (CCL) and identified by specific Export Control Classification Numbers (ECCN)
- International Traffic in Arms Regulations (ITAR)
 - Reference: 22 CFR Parts 120-130
 - Agency: Directorate of Defense Trade Controls (State)
 - Scope: Military Use Items & Technology – Itemized in the US Munitions List (USML)
- Economic & Trade Sanctions
 - Agency: Office of Foreign Assets Control (Treasury)
 - Scope: Transfer of Assets
- OTHERS



Scope of the EAR

- ❑ Category 0 - Nuclear Materials, Facilities & Equipment (and Misc. Items)
- ❑ Category 1 - Materials, Chemicals, Microorganisms & Toxins
- ❑ Category 2 - Materials Processing
- ❑ Category 3 – Electronics
- ❑ Category 4 – Computers
- ❑ Category 5 – Telecommunications (Part 1) & Information Security (Part 2)
- ❑ Category 6 - Sensors and Lasers
- ❑ Category 7 - Navigation and Avionics
- ❑ Category 8 – Marine
- ❑ Category 9 - Propulsion Systems, Space Vehicles & Related Equipment



Scope of the ITAR (USML)

- Category I – Firearms
- Category II – Artillery Projectors
- Category III – Ammunition
- Category IV – Launch Vehicles, Guided Missiles, Ballistic Missiles, **Rockets**, Torpedoes, Bombs & Mines
- Category V – Explosives, Propellants, Incendiary Agents, and Their Constituents
- Category VI – Vessels of War and Special Navy Equipment
- Category VII – Tanks and **Military Vehicles**
- Category VIII – Aircraft and Associated Equipment
- Category IX – Military Training Equipment
- Category X – Protective Personnel Equipment
- Category XI – **Military Electronics**
- Category XII – Fire Control, Range Finder, Optical and Guidance and Control Equipment
- Category XIII – Auxiliary Military Equipment
- Category XIV – Toxicological Agents and Equipment and Radiological Equipment
- Category XV – **Space Systems** and **Associated Equipment**
- Category XVI – Nuclear Weapons Design and Test Equipment
- Category XVII – Classified Articles, Technical Data and Defense Services not Otherwise Enumerated
- Category XVIII – Reserved
- Category XIX – Reserved
- Category XX – Submersible Vehicles, **Oceanographic** and **Associated Equipment**
- Category XXI – Miscellaneous Articles



Current OFAC Sanction Programs

- List Based (Specially Designated Nationals List)
 - Non-proliferation
 - Anti-terrorism
 - Counter Narcotics Trafficking
 - Diamond Trading
 - Persons Undermining the Sovereignty of Lebanon or its Democratic Processes and Institutions
- Country Based
 - Cuba
 - Balkans
 - Iran
 - Belarus
 - Cote D'Ivoire
 - Democratic Republic of the Congo
 - North Korea
 - Burma
 - Syria
 - Former Liberian Regime of Charles Taylor
 - Zimbabwe



Some Important Definitions...

- **Export** – an actual shipment or transmission of items subject to export controls out of the US.
- **Deemed Export** – release of materials, technology or software subject to export controls to a foreign national in the US.
- **Re-export** – transfer of controlled items, technology or software from one foreign country to another (physical or deemed).
- **US Person** – US citizens, lawful permanent residents, and protected individuals.
- **Foreign Person** – anyone who is not a US person.



Useful Exemptions or Exclusions

- Public Domain or Publicly Available
- Fundamental Research
- Education Exclusion



Public Domain or Publicly Accessible

- ITAR 120.11: information “which is published and which is generally accessible or available to the public”
 - Does **NOT** cover information, whether or not in the public domain, that is provided as part of a defense service.
- EAR 734.7: published information

Fundamental Research Exclusion

- Basic and applied research in science and engineering
 - ITAR 120.11(a)(8) - *part of the definition of public domain, unless*
 - The University or its researchers may not accept other restrictions on publication of scientific or technical information resulting from the project or activity; or
 - The research is funded by the US Government and specific access and dissemination controls protecting information resulting from the research are applicable.
 - EAR 734.8 - *includes publicly available information or information “which is ordinarily publishable and shared broadly within the scientific community”*
- Covers only to resulting information, not necessarily the technology, prototypes, software, code, etc. developed from the research
- Only applies to research conducted at accredited universities in the U.S.



Education Exclusion

- EAR 734.9
- Information released by instruction in catalog courses and associated teaching laboratories of academic institutions
- Does not include graduate student research or other types of independent study
- Release of “use technology” for export controlled equipment



Award Conditions & Their Impact

- Pre-publication **REVIEW** or **APPROVAL**
 - EAR 734.8(b)(2) – prepublication review is acceptable provided the delay is temporary and is solely to ensure that publication will not inadvertently divulge proprietary information or compromise patent rights.
 - ITAR 120.11(a)(8) – University research is **not** considered fundamental if:
 - The University or its researchers accept other restrictions on publication of scientific or technical information resulting from the project or activity; or
 - The research is funded by the US Government and specific access and dissemination controls protecting information resulting from the research are applicable.
- Involvement of non-US person on export controlled projects may substantially impact the timeline if licenses or other permissions must be obtained.
- Citizenship restrictions signal potential export control concerns.



Award Conditions & Their Impact

- Information covered under a non-disclosure agreement, or similar document is export controlled, by definition.
 - It is the responsibility of the disclosing party to determine licensing requirements.
 - The disclosing party needs to know each receiving party's country of citizenship to determine licensing requirements.
 - If you receive or produce export controlled information and want to share it with non-US persons, you become the disclosing party.
- Graduate students may **NOT** use research involving publication restrictions in support of a thesis or dissertation at UAF without prior authorization.



Determining your Export Obligations

- Is it subject to export controls? - - - - - *Jurisdiction*
- Facts you need to know about your item or activity
 - What is it? - - - - - *Classification*
 - Where is it going? - - - - - *Destination*
 - Who will receive it? - - - - - *End-user*
 - What will they do with it? - - - - - *End-use*
 - What else do they do? - - - - - *Conduct*



Other things to consider...

- ❑ Transit Route
- ❑ Shipper's Export Declaration (AES Direct)
- ❑ Harmonized Tariff Code or Harmonized Schedule B Number
- ❑ Recipient country's Import/Customs Regulations - this is especially important for temperature sensitive or time critical items.
- ❑ Shipping and transport guidelines and regulations (e.g. IATA Regulations for air transport)
- ❑ Tracking and delivery confirmation
- ❑ Anti-boycott Regulations



Potential Penalties

(per violation)

□ EAR

- Criminal: Greater of \$50 K - \$1 M or up to 5x the value of the export; up to 10 years in prison
- Civil: \$1 K - \$120 K; denial of export privileges

□ ITAR

- Criminal: Up to \$1 M; up to ten years imprisonment
- Civil: up to \$500 K; seizure/forfeiture of items; debarment

□ OFAC

- Criminal: Greater of \$50 K - \$1 M or up to 5x the value of the export; up to 10 years in prison
- Civil: \$1 K - \$120 K; denial of export privileges



UAF Export Procedures

- Submit an *Export Determination Request Form*, available at http://www.uaf.edu/ori/Export/Ex_Det_EForm.htm.
- ORI will assist you in determining:
 - if the technology and transfer is subject to export controls
 - if controlled, the correct classification and reason(s) for control
 - if a License Exception is available
 - if any involved has been denied export privileges; and
 - if a license is required to the intended destination and/or recipient, ORI will help you applying for a license
- Do **NOT** proceed with the export until a final determination has been made!



Responsibilities

- Principal Investigator and Unit Administration
 - Awareness of export regulations
 - Record keeping
 - Supervision and training of students and employees
- Office of Research Integrity
 - Advise principal investigators and unit administrators
 - Licensing assistance
 - Restricted Party Screening
 - Perform compliance assessments
- Vice Chancellor for Research
 - Institutional/Empowered Official



References

- Bureau of Industry & Security (EAR):
<http://www.bis.doc.gov/>
- Directorate of Defense Trade Controls (ITAR):
<http://www.pmdtcc.state.gov/>
- Office of Foreign Assets Control (Economic and Trade Sanctions):
<http://www.ustreas.gov/offices/enforcement/ofac/>
- Office of Research Integrity (Export Management):
http://www.uaf.edu/ori/Export_Management.htm

ANY QUESTIONS?

