

THE UNIVERSITY OF ALABAMA IN HUNTSVILLE

EXPORT CONTROL INFORMATION

<u>Number</u>	07.04.04
<u>Division</u>	Vice President for Research and Economic Development - Office of Research Security (ORS)
<u>Date</u>	April 16, 2014; Reviewed/Revised November 13, 2023
<u>Purpose</u>	To provide guidance when The University of Alabama in Huntsville (“UAH” or “University”) faculty, staff, and students are involved with research pertaining to Export Control (ITAR and/or EAR) information.
<u>Policy</u>	<p>It is UAH’s policy that all personnel, including employees, visiting scientists, postdoctoral fellows, students, and other persons retained by or working at or for UAH conduct their affairs in accordance with U.S. laws and regulations, including compliance with U.S. export control laws and regulations applicable to its operations. Violations of ITAR and EAR regulations are subject to criminal sanctions, including monetary fines or imprisonment of individuals.</p> <p>The laws and regulations governing exports are detailed and complex. Employees with responsibility for UAH’s export-control compliance program or whose duties include a significant amount of work with foreign nationals will be offered formal training sessions on the U.S. export-control laws and regulations and their applicability to their jobs. All UAH employees with managerial or supervisory authority over foreign nationals or projects involving materials or technology subject to export controls should view export-control compliance as an important part of their day-to-day responsibilities. It is particularly important in an institution like UAH that frequently works in tandem with researchers and collaborators from abroad to determine early in the process of any international collaboration if there is a potential requirement for export-control authorization.</p> <p>UAH researchers engage in a broad range of innovative and important research, both in the United States and overseas. These activities include the sharing and development of products, goods, hardware, software, or materials (collectively, “items”), as well as research involving technology that may be subject to U.S. export control laws and regulations. The purpose of this document is to restate for the UAH community the essential aspects of the laws and regulations concerning exports, confirm our policy for compliance, and explain how the University will provide all researchers with the assistance they may need to ensure compliance with these complicated laws.</p> <p>In some instances, educational institutions are exempt from most of the regulations in situations involving fundamental research. In order for a sponsored</p>

program award to be considered fundamental research, certain conditions must be met.

The Office of Sponsored Programs' Contract Administrators are required to search for Export Control Regulations in their pre-acceptance review of new contract/grant awards.

If, after negotiation, the funding agency's choice of terms and conditions makes the fundamental research exemption unavailable, the Principal Investigator will be required to review the ITAR and EAR lists of controlled technologies to determine if the subject matter of their research is included on either of those lists. If so, the Vice President for Research will decide if UAH will accept the award and the restrictions on research imposed by the export control laws. All Principal Investigators will complete the Export Control Training Certification prior to submitting a proposal. Once the initial certification is completed, there will be a requirement to complete an annual Export Control refresher training.

Information, definitions, and links to the ITAR and EAR lists can be found at <http://www.uah.edu/ors> under Export Control.

Definitions

Overview of Export Controls - The Departments of Commerce, State, and Treasury administer the primary controls on exports of goods or commodities. The Department of Commerce regulates the export of items and information that have civil applications, the Department of State regulates the export of items that have military applications or that relate to space, and the Department of the Treasury enforces country-specific embargoes. In certain circumstances, these agencies may require the University to secure a license before the item or information is exported to another country or shared with a foreign national.

Department of Commerce - The Bureau of Industry and Security ("BIS") of the U.S. Department of Commerce implements and enforces U.S. export control regulations relating to the export of "dual-use" goods and technologies (having both civil and military applications) as well as exclusively civil items. Items subject to the jurisdiction of BIS are listed on the Commerce Control List ("CCL") found in the Export Administration Regulations. Whether a license is required to export or re-export an item on the CCL is determined by examining the precise classification of the item, the destination of the item, and the end-user. BIS also maintains the Denied Persons List and the Entities List, which identify specific persons and entities to which exports are not permitted without the prior approval of BIS.

Department of State - The Directorate of Defense Trade Controls ("DDTC") of the U.S. Department of State regulates the export of defense goods, technical data, and defense services. DDTC administers the International Traffic in Arms Regulations ("ITAR").

The CCL covers such things as materials, chemicals, microorganisms, and toxins; materials processing; electronics; computers; telecommunications and information security; lasers and sensors; navigation and avionics materials; marine-related materials; and propulsion systems, certain space vehicles, and related equipment. (The index to the CCL is located at http://www.gpo.gov/bis/ear/ear_data.html.)

Generally, a defense article is an item developed for a military application that does not have a predominant civilian application; unless an exemption applies; a license must be obtained before any defense article is exported to a foreign country or foreign national. Authorization by DDTC is also required for any agreement under which a U.S. person will furnish assistance to foreign persons in the development, design, production or use of a defense article or under which a U.S. person will license to a foreign party the right to manufacture U.S.-origin defense articles abroad. DDTC maintains a list of “debarred” persons and entities whose exporting privileges have been revoked as a consequence of violations of the ITAR.

Department of Treasury - The Office of Foreign Assets Control (“OFAC”) of the U.S. Department of Treasury administers and enforces certain country-specific controls that take the form of economic embargoes against countries. The scope of these economic and trade embargoes varies from country to country. OFAC has adopted regulations that detail the scope of the embargo against each country.

OFAC also maintains lists of Specially Designated Terrorists and Specially Designated Nationals and Blocked Persons, with whom U.S. persons are prohibited from engaging in any transactions due to U.S. foreign policy and national security concerns. Transfers of items and information to individuals or entities on these lists are prohibited without the prior approval of OFAC.

Deemed Exports - In addition to regulating the export of actual goods or commodities, U.S. export controls cover the export or release of “technical data” or technology (which includes information, whether printed, inscribed on media, or communicated orally). The release of such information is called a “deemed export.” Under the deemed export rule, the transfer or release of technical data or information subject to U.S. export controls to a “foreign national,” whether it occurs in the United States or abroad, is “deemed” an export from the United States to the home country of the foreign national. At universities, this issue arises most frequently in connection with the participation of international researchers or collaborators in projects involving controlled technology.

Foreign Person - Any individual who is not a U.S. Person (see definition of U.S. Person below).

Fundamental Research - Any basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community, and for which the Researchers have not

accepted restrictions for proprietary or national security reasons. Information that results from Fundamental Research is not subject to export control regulation pursuant to the Fundamental Research Exclusion of the EAR and ITAR. Research pursuant to an agreement (whether written or verbal) that contains publication restrictions or that contains access or dissemination restrictions do not qualify as Fundamental Research.

Penalties for Violations - In the event of a violation of U.S. export control law, both the University and the individuals involved in the violation may be liable. The exporter and the individual employees involved may be subject to severe administrative and civil sanctions as well as criminal penalties. For example, “knowing” violations of the EAR are punishable by a fine of up to five times the value of the exports involved, or \$50,000, whichever is greater. “Willful” violations can result in penalties of up to \$1 million per violation. Exports are subject to a strict liability standard, so even negligent exports can trigger fines of \$10,000 to \$120,000 per violation. In addition to fines, individuals may be imprisoned for intentional violations. Penalties can also include the denial of export privileges and debarment from contracting with the federal government. Almost all enforcement actions are public.

Technology Control Plan (TCP) - University document coordinated by the Office of Research Security that outlines the physical, information, and personnel security measures required to safeguard Controlled Technology.

Researcher - University faculty, staff, student employees, research associates and fellows, post-doctoral fellows, students, visitors, volunteers, and all other persons studying or working at the University (including international visiting scholars and scientists), or with whom the University has contracted to teach, conduct research, or provide or receive service activities at, for, or on behalf of UAH.

U.S. Person - Anyone who is a U.S. citizen or a lawful permanent resident of the U.S.

Review

The Director of Office of Research Security will be responsible for the review of this policy every five years (or whenever circumstances require).