Center for Research Services Continuing Education Series

Exporting: What Researchers Need to Know

Kelly Hochstetler

Sr. Research Compliance Officer

Office of Research Integrity

Phone: 474-7832 Fax: 474-5638 Email: fycomp@uaf.edu

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 – Buck Sharpton
  - Institutional/Empowered Official

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
- International Traffic in Arms Regulations (ITAR)
  - Reference: 22 CFR Parts 120-130
  - Agency: Directorate of Defense Trade Controls (State)
  - Scope: Primarily Military Items, Technology & Services
- Economic & Trade Sanctions
  - Agency: Office of Foreign Assets Control (Treasury)
  - Scope: Transfer of Assets and Travel

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.

EAR Categories

- 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) &
- Category 5 (Part 2) - 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

Useful Exemptions or Exclusions

- Public Domain or Publicly Available/Accessible
- Information resulting from Fundamental Research - basic and applied research in science and engineering ITAR 120.11(a)(8) and EAR 734.8
- Education Exclusion (EAR 734.9)
- Importance of contract/award document review prior to acceptance (ITAR 120.11 and EAR 734.3)

Public Domain or Publicly Accessible

- ITAR 120.11: information "which <u>is published</u> 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

- publicly available information or information "which is <u>ordinarily publishable</u> and shared broadly within the scientific community"

Fundamental Research Exclusion

- Basic and applied research in science and engineering
  - ITAR 120.11(a)(8) - *part of the definition of public domain*
  - EAR 734.8 - *includes publicly available information or information "which is ordinarily publishable and shared broadly within the scientific community"*
- Covers only to <u>resulting</u> <u>information</u>, not necessarily the technology, prototypes, software, code, etc. developed from the research
- Only applies to research conducted <u>at</u> accredited universities <u>in</u> 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

- What about the release of "use technology" for export controlled equipment?

Award Conditions & Their Impact

- Prepublication REVIEW is acceptable, if the delay is temporary and is solely to ensure that publication will not
    - inadvertently divulge proprietary information; or
    - compromise patent rights
- Pre-publication APPROVAL disallows use of the "fundamental research" exception (until approval is granted).
- Restrictions on personnel may cause research delays while license requests are reviewed.
- Graduate students may NOT use research involving publication restrictions in support of a thesis 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*

UAF Export Procedures

- Submit an *Export Determination Request Form,* available at

  http://www.uaf.edu/ori/export-management/export-procedures/Export_Determination.pdf

- 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!

Potential Penalties
(*per violation*)

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

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

References

- Bureau of Industry & Security (EAR):
  http://www.bis.doc.gov/

- Directorate of Defense Trade Controls (ITAR):
  http://www.pmddtc.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/

ANY QUESTIONS?