

POLICY TITLE	Export Control	Policy Number	142
Section	Governance, Organization, and General Information	Approval Date	January 12, 2017
Subsection	Publications, Reports, Research, and Records	Effective Date	January 12, 2017
Responsible Office	Office of General Counsel		

1.0 PURPOSE

1.1 This policy implements US laws and regulations regarding the export or re-export of certain items, technologies, software, and services regulated for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction and for competitive trade. This policy applies to all university community members who are engaging in or contemplating international travel on university business or taking university property on non-university related international travel. This policy outlines university procedure and policy individuals and groups shall follow to ensure compliance with federal export control regulations. .

1.2 Although exemptions to export control laws apply to many of the University's activities, some activities may be restricted. Failure to comply with these laws and this policy exposes both the individuals involved and the University to severe criminal and civil penalties as well as administrative sanctions (loss of research funding and export privileges). Additionally, the University may take administrative actions for violation of these laws or this policy, consistent with applicable university policies, up to and including termination or expulsion of university community members.

2.0 REFERENCES

2.1 *Export Administration Regulations (EAR)*, 15 C.F.R. 730 et seq., *The Arms Export Control Act (AECA)* – ITAR, The Department of Commerce's Bureau of Industry and Security (BIS)

2.2 *International Traffic in Arms Regulations (ITAR)*, 22 C.F.R. 120 et seq., *The Export Administration Act of 1979*, US State Department

2.3 *Office of Foreign Assets Control, Department of the Treasury (OFAC)*, 31 C.F.R. Part 500 et seq.

2.4 *The Arms Export Control Act (AECA)*, 22 U.S.C. § 39



3.0 DEFINITIONS

3.1 Deemed export: Occurs when technology, information, or software source code is released or transmitted to a foreign person within the United States, including through a discussion with a foreign researcher or student.

3.2 Exemption/Exclusion: Export regulations have several exclusions and exemptions that may remove university research from export control restrictions. A “License Exception” is an authorization contained in 15 C.F.R. 740 that allows the export or re-export under stated conditions of items subject to the *EAR* that would otherwise require a license. There are four exclusions that are relevant to academic research: the Fundamental Research Exclusion (FRE), the Educational Instruction Exclusion, the Publicly Available/Public Domain Exclusion, and the Exemption for Disclosures to Bona Fide Full-Time Employees.

3.3 Employee: Any individual who employed part-time or full-time by the University, for salary or wages, including staff, administrators, and faculty.

3.4 Export: Generally, an export means: (1) An actual shipment or transmission of items controlled under the *EAR* or *ITAR* out of the United States; (2) any written, oral, or visual release or disclosure of controlled technology, information or software to a foreign person either in the United States or outside the United States; or (3) any actual use or application of controlled technology on behalf of or for the benefit of any foreign entity or person anywhere.

3.5 Export control laws: US laws (which include *EAR*, *ITAR*, and *OFAC*) that restrict certain types of information, technologies, and commodities that can be transmitted overseas to individuals, including US citizens, or made available to foreign nationals on US soil.

3.6 Export to a foreign person: Shipment, transfer, or transmission within the United States, including but not limited to through a discussion with a foreign researcher or student.

3.7 Export control law exclusions: These exclusions, listed below, specify which activities and items typically do not require special licensing.

3.7.1 Fundamental Research Exclusion (FRE): Fundamental information arising during or resulting from basic or applied research in science or engineering where the results of the research are ordinarily shared with the scientific community, published in the public domain, and made accessible to the public. The information that results from fundamental research (other than certain encryption source code) is excluded from export controls. This FRE applies only to the



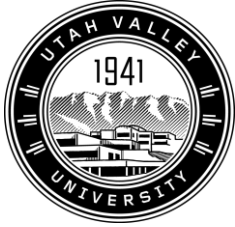
disclosure of software, technology, or technical data to foreign persons at the University in the United States; it does not apply to the shipment or carriage of equipment, materials, or samples outside the United States.

3.7.2 Educational Information Exclusion: General scientific, mathematical, and engineering principles released by instruction in catalog courses and associated teaching laboratories or academic institutions are excluded from export controls under EAR and ITAR. However, under EAR, the exclusion does not cover controlled information conveyed outside the classroom or teaching lab of an academic institution.

3.7.3 Publicly Available/Public Domain Exclusion: Information that is published or generally accessible or available to the public and scientific community and is excluded from export controls. The exclusions apply as long as the federal government has not imposed export controls or restrictions as a condition of funding and provided there is no reason to believe that the exported information will be used for weapons of mass destruction. The “publicly available” exclusion under EAR and the “public domain” exclusion under ITAR only apply to the export or deemed export of controlled information, not to the export of controlled physical items or services listed on the United States Munitions List (USML) or the Commerce Control List (CCL). Information that is published and available to the public at libraries, newsstands and bookstores through subscriptions without restriction, through patents available at any patent office, through unlimited distribution at conferences, meetings, seminars, trade shows and exhibitions held in the United States and generally open to the public are excluded from export controls.

3.7.4 Exemption for Disclosures to Bona Fide Full-time Employees: (ITAR-regulated research only) ITAR regulations exempt disclosures of unclassified technical data in the U.S. by U.S. universities to foreign nationals where 1) the foreign national is the University's bona fide full-time regular employee, 2) the employee's permanent abode throughout the period of employment is in the U.S., 3) the employee is not a national of an embargoed country, and 4) the University informs the employee in writing that information disclosed may not be disclosed to other foreign nationals without governmental approval. (This exemption is likely to be less available than the three exclusions discussed above. In addition, most graduate students are not regular full-time University employees and disclosures to them will not qualify for this exemption.)

3.8 Foreign person: Per the *EAR* and *ITAR*, any person(s), corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments, any agency or subdivision of foreign governments (e.g., diplomatic missions), or anyone who is not a US citizen, a lawful permanent resident of the United States (i.e., a Green Card holder), or who does not have refugee or asylum status in the United States.



3.9 Re-export: Actual shipment or transmission of items subject to export regulations from one foreign country to another foreign country. For the purposes of the *EAR*, the export or re-export of items subject to the *EAR* that will transit through a country or countries to a new country, or are intended for re-export to the new country, are deemed to be exports to the new country.

3.10 Restricted parties: By order of the US government, certain US citizens and companies restricted or prohibited from exporting or providing services of any kind to any party contained in any of the government Restricted Party Screening lists. A consolidated screening list is available at www.export.gov.

3.11 Technology Control Plan (TCP): Contains procedures to control access for all export-controlled items and information.

3.12 University community: For the purposes of this policy, the university community includes but is not limited to employees, students, volunteers, visiting instructors or researchers, and any other individuals, groups, or entities subject to US export control laws.

3.13 University international travel: Any travel outside the borders of the United States by a member of the university community on university business (including educational and intercultural travel programs and travel to international conferences, but excluding internships in which the University is not the employer), the expenses of which are paid, in full or in part, by university funding, including grants, contracts, cooperative agreements, etc.

3.14 University property: Any information or item that was funded, purchased, or developed in whole or part by university-controlled funds, regardless of the source. This includes but is not limited to laptops, cameras, phones, personal digital assistants, technical data, research, creative scholarship, publications, etc.

4.0 POLICY

4.1 The University complies with export control laws that restrict certain types of information, technologies, and commodities that can be transmitted overseas to entities and individuals, including US citizens, or made available to foreign nationals on US soil. This policy applies to university community members who are traveling on university business or who are traveling for personal, non-university related travel and are taking university property with them.

4.2 University community members must understand their obligations under *ITAR (International Traffic in Arms Regulations)*, *EAR (Export Administration Regulations)*, and *OFAC (Office of Foreign Assets Control)* regulations, and must promote compliance with these regulations. Criminal and civil penalties for unlawful export and disclosure of information in violation of US export control laws may be assessed against individuals and institutions. The penalty for unlawful export and disclosure of export-controlled information under the export control laws may be substantial fines and/or imprisonment.



4.3 It is the responsibility of university community members to be aware of and comply with US export control laws, as well as with the University's written instructions and procedures before engaging in any activities that may raise compliance issues under US export control laws and/or this policy. Violation of these laws or this policy may lead to disciplinary action, up to and including termination employment or expulsion from the University, in addition to criminal penalties.

4.4 Before engaging in activities that involve an export, university community members must understand and identify any potential export requirements and limitations. Prior written authorization (i.e., a license) from one or more US government agencies may be required to carry out certain sponsored research or other educational activities involving specified technologies or certain countries, if an exemption or exclusion is not available.

4.5 Many university activities are eligible for one of the *EAR*, *ITAR*, or *OFAC* exclusions, such as the Fundamental Research Exclusion (FRE), meaning that no license will be required. However, when research or an educational activity involves an export, those responsible for export control compliance will assist the University in its documentation of its analysis of export control issues, including the availability of any exclusion or exemption.

4.6 To preserve the FRE, the University does not agree to conduct research with parties that impose proprietary data restrictions unless the other party first agrees that no data subject to export controls will be provided without prior written notice and prior approval of the University.

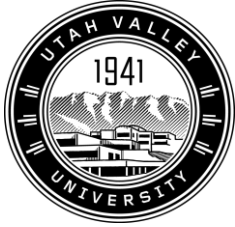
4.7 To qualify for the FRE, the research sponsor must not impose, and the university researcher must not accept, any restrictions on the publication of the scientific or technical results of the research performed at the University.

4.8 US export controls apply to all hardware and software exported from the United States, and an export license may be required even if the hardware or software is being exported to support a FRE project.

4.9 The University may decide not to accept funding for research containing export controls or restrictions, including but not limited to when there is insufficient time to obtain a license or to take appropriate measures to handle properly export-controlled information.

4.10 The export control analysis is to be undertaken with the assistance of the Office of University Compliance, in coordination with the Office of General Counsel. This analysis must be done prior to engaging, or agreeing to engage, in the activity, as the process for obtaining US government approval is lengthy.

4.11 If anyone employed by, acting on behalf of, or associated with the University receives information identified as export controlled, the information may not be disclosed to any foreign



person, until the export control analysis has been completed to determine licensing requirements, if any, for such information. In addition, if an anticipated university research or educational activity involves a country subject to US government sanctions, the university community member will need to consult with the Office of University Compliance before entering into any negotiations or agreements involving, or before traveling to, such countries.

4.12 The University shall assist university community members in complying with export control laws, including pursuing licenses from US government agencies, where appropriate. However, the primary responsibility rests with the university community member.

4.13 The university community must report observed, suspected, or apparent violations of export control laws or sanctions to the University's Compliance Officer.

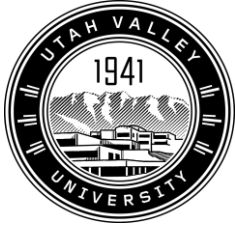
5.0 PROCEDURES

5.1 Before traveling outside of the United States or engaging in export of any item(s), including deemed export, university community members should review the export control resource materials available on the website of the Office of University Compliance. The export control website is intended to promote understanding of export controls regulations and the procedures designed to promote university compliance. It provides detailed explanations of the export control regulations and their legal limitations, and will provide examples of export triggers and export-controlled activities. Information about and assistance with export controls is also available from the Office of University Compliance. The procedures in this section apply to those traveling on university business and to those traveling on personal, non-university related business but taking university property with them.

5.2 University community members anticipating the export of items or travel to a foreign country must complete and submit to the Office of University Compliance a *Checklist for Export Control Issues* and, as appropriate, either a *License Exemption TMP Form* or a *License Exemption BAG Form*, which are available to download on the University Compliance Services website. The University has developed these forms to assist members of the university community in assessing US export control issues in general and whether a particular research project or contemplated activity would qualify for an exemption or require a license.

5.2.1 Those planning to travel are encouraged to complete and submit the required forms one to six months before the contemplated activity to afford sufficient time for export control issues to be addressed. If an export license is required, commencement of the project or activity could be delayed.

5.3 If a project or activity involves data that is export-controlled, but the research results remain eligible for the FRE, the principal researcher will be primarily responsible for implementing and maintaining appropriate access controls so that any restricted individual does not have access to information that he or she is not authorized to receive. The principal researcher will be required



to attest to implementation of such controls by completing and submitting to the Office of University Compliance a *Certification on the Handling of Export-Controlled Information Form*, available for download on the website for the Office of University Compliance.

5.4 University community members who will be exporting to and/or traveling to foreign countries must obtain Export Licenses where deemed required by export control regulations.

5.4.1 If a university community member determines, with the assistance of the University Compliance Officer, that a particular project or activity is subject to export controls and no exemption is available, he or she is responsible for securing the items, software, or technology against disclosure or transfer to any foreign person, within or outside the United States, until a license or other authorization is obtained.

5.4.2 The university community member will be required to complete the *Certification on the Handling of Export-Controlled Information Form*.

5.4.3 When an export license is required, the university community member will notify the Office of University Compliance, and his or her department will be primarily responsible for preparing the required license application and supporting materials to obtain the appropriate license under the *ITAR*, *EAR*, or *OFAC* regulations. All license applications will be submitted through the Office of University Compliance. All requests for licenses will be handled in conjunction with the Office of General Counsel.

5.4.4 Securing the appropriate licensing may take up to six months.

5.5 University community members who plan to bring potentially export-controlled information or items to the University must complete the *Incoming Export Controlled Information/Item Questionnaire* available for download from the website of the Office of University Compliance. The completed questionnaire must be submitted to the Office of University Compliance prior to bringing the controlled information or items to the University.

5.6 University community members who plan to ship export-controlled information or items to a Foreign Entity or Foreign Individual(s), within or outside the United States, must complete the *Outgoing Export Controlled Information/Item Questionnaire*, available for download from the website of the Office of University Compliance. The completed questionnaire must be submitted to the Office of University Compliance prior to shipping the controlled information or items.

POLICY HISTORY		
January 12, 2017	Approved	UVU Board of Trustees