

Policy 7-007: Export Control Compliance.

Revision #0. Effective date: May 10, 2016

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I. Purpose and Scope

A. Purpose.

To declare the University’s policy regarding compliance with all United States export control statutes and regulations.

B. Scope.

This Policy applies to all University personnel (including faculty, staff, volunteers, visitors and other employees), all students, and all academic and administrative units of the University

II. Definitions

The following definitions apply for the limited purposes of this policy and any associated regulations.

- A. "Exports" which may be subject to the export controls relevant for this Policy are defined in two principal ways, involving export controlled items, technology, or technical data:
1. Shipments of items or data abroad (to a destination outside the jurisdiction of the United States) by any means, including but not limited to: cargo shipments, electronic data transmission (email), spoken communication, hand carried materials, fax, and courier.
 2. By "release" or disclosure occurring within the United States: allowing the occurrence of visual or computer access, to export controlled items, technology or technical data (hard or soft copy), occurring in the U.S by foreign persons validly in the U.S. on temporary student or employment visas, but who are neither U.S. citizens nor Permanent Residents; the export is "deemed" to occur at the moment it is disclosed or accessed by the foreign national within the U.S. The definition of "foreign persons" includes companies not incorporated in the U.S., foreign governments, and international organizations.

The Office of Sponsored Projects (OSP) is a unit of the University, reporting to the Vice President for Research (VPR), to which the University assigns certain responsibilities in managing compliance with this Policy and relevant federal statutes and regulations. The OSP carries out those responsibilities in coordination with the Office of General Counsel (OGC).

III. Policy

- A. It is the policy of the University to ensure that activities of University units and personnel are in full compliance with applicable federal laws and regulations that control and restrict the release of critical technologies, technical data, software code, equipment, chemical and biological materials, and other materials, information, and services to foreign nationals or foreign countries for reasons of foreign policy and national security, while adhering to principles of academic

freedom and openness in academic research to the fullest extent possible consistent with such laws and regulations.

- B. To ensure such legal compliance while serving such openness principles, the University provides for a multi-step process. In general those steps are first, to identify those activities which are reasonably likely to be subject to export restrictions, second, to carefully analyze the applicable laws and regulations and the circumstances for any particular activity and make a determination as to how compliance will best be achieved, and third, to ensure that any specific modification of activities reasonably necessary to ensure compliance is accomplished, without unduly restraining academic freedom and openness of research.
- C. University personnel engaged in activities which may be subject to the relevant federal statutes and regulations should be aware that any failure to adhere to such federal laws can result in severe monetary penalties, revocation of export privileges, debarment from federal funding, and civil or criminal enforcement against the University and/or the individual personnel to whom a violation is attributed.
- D. The types of activities typically engaged in by University personnel which are likely to be subject to export restrictions, and therefore must always be evaluated for export control compliance purposes include:
 - 1. Outbound shipments to foreign destinations.
 - 2. Laboratory access to export controlled equipment, technical data, scientific activities and results that do not fall under the FRE (including ITAR instruments or restricted research or fee-for-service contract work) by foreign nationals, studying, working at or visiting the University of Utah. (FRE refers to the Fundamental Research Exception, described in the U.S. National Security Decision Directive 189. ITAR refers to the International Traffic in Arms Regulations of the U.S. Department of State).

3. International collaborations. Such activities shall not involve parties that are restricted under any export control restricted party list.
 4. Foreign travel. Such activity may trigger compliance requirements depending on whether controlled research items are being transported and/or transferred abroad in connection with the travel or whether a particular destination is OFAC-restricted. (OFAC refers to the Office of Foreign Assets Controls, of the U.S. Department of the Treasury.)
 5. Activities conducted through consulting arrangements or spin-off entities. Where a Principle Investigator (PI) or administrator employed by the University has created a separately chartered company to perform services unrelated to his/her personnel position at the University Utah, the consultancy or spin-off entity cannot use the University of Utah's physical or human resources. Principal Investigators involved in such endeavors must seek separate counsel pertaining to export control compliance obligations.
- E. University personnel who have primary responsibility for any activity which is reasonably likely to be subject to export restrictions, are responsible for making an initial assessment on whether that activity (ordinarily involving technology or data involved in a research program) may be subject to restrictions, and therefore "trigger" export control compliance obligations. University personnel typically having such primary responsibility for such activities include faculty members who are designated as "Principal Investigators" (PI) on federally funded research projects, or University administrators with administrative responsibilities for research activities.

The OSP is a resource available to provide assistance to such personnel in making such initial assessments, with support from OGC as required. Principal Investigators or other responsible personnel should contact the OSP for assistance in evaluating whether a particular activity may trigger export control compliance obligations and, if so, how to proactively comply with applicable University Regulations and federal laws. Requests for assistance may be

directed to the University of Utah's Export Control Officer, in the Office of Sponsored Projects.

- F. Once a particular activity has come to the attention of the OSP, the OSP will make a finding as to whether the activity would reasonably likely be subject to export control restrictions.
 - 1. If OSP finds that the activity is reasonably likely to be subject to export control restrictions, the OSP will issue a set of recommendations on how the involved University personnel should proceed, to ensure full compliance with the applicable federal laws, while adhering to principles of openness to the extent feasible. The recommendations may include that an application be made to obtain a federally-issued "license" to carry out certain activities, and in such cases, the OSP will ordinarily assist in submitting the license application on behalf of the University. vu
 - 2. If any involved University personnel disagree with any aspect of the findings and set of recommendations issued by the OSP—they may appeal to the Office of the Vice President for Research (VPR) for reconsideration of any finding or recommendation. If no such appeal is made, the finding and recommendations of the OSP become the final decision of the University on the matter, and must be complied with by all involved University personnel.
 - 3. If an appeal for reconsideration of the VPR is made, the VPR shall consider any relevant materials submitted by the personnel making the appeal or by the OSP, may discuss the matter with anyone who might have information or insights useful for the matter, including the OGC, and shall then render a final decision—which shall be the final decision of the University on the matter—to be complied with by all involved University personnel.
- G. Costs associated with obtaining outside export control support or licensure expertise will be paid by the department for which the support is requested unless other arrangements are approved by the VPR.

- H. Applying for and obtaining a license from the appropriate agency may take substantial time. It is advised that involved University personnel seek a review from the Export Control Officer at least 90 days prior to the intended transfer or release which might reasonably be likely to be subject to export restrictions.
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Sections IV- VII are for user information and are not subject to the approval of the Academic Senate or the Board of Trustees. The Institutional Policy Committee, the Policy Owner, or the Policy Officer may update these sections at any time.

IV. Policies/ Rules, Procedures, Guidelines, Forms and other Related Resources

- A. Policies/ Rules. [*reserved*]
- B. Procedures, Guidelines, and Forms.
 - 1. Supplemental Explanation of Export Control Regulations
- C. Other Related Resources.
 - 1. Export Administration Regulations – EAR, Bureau of Industry and Security (Department of Commerce)
 - 2. International Traffic in Arms Regulations- ITAR (Department of State)
 - 3. Office of Foreign Assets Control – OFAC (Department of Treasury)
 - 4. National Nuclear Security Administration – NNSA (Department of Energy)

V. References

- A. Federal, State, and Local Laws
 - 1. EAR-The Commerce Department’s Export Administration Regulations govern “dual-use” items. These are items having both civilian and military or defense applications - See 15 CFR, Chapter VII, Subchapter C

2. DOE-The Department of Energy’s regulations likewise govern certain nuclear and nuclear-related technology and materials as well as other “sensitive” items and subjects. - See Title 10 CFR
3. FRE - Fundamental Research - basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research in which the results are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. - See 22 CFR 120.11
4. FRE - Fundamental Research Exception: results and data arising from research that is scoped and negotiated by the parties to be fundamental research in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the USD (AT&L) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008, (available at DFARS PGI 204.4).
5. ITAR - The Department of State’s International Traffic in Arms Regulations govern defense articles and activities, as well as all space launch related items and activities.- See 22 CFR Chapter 1, Subchapter M.
6. NRC – The Nuclear Regulatory Commission governs exports of certain nuclear equipment and materials. See Title 10, CFR.
7. OFAC – The Department of Treasury’s Office of Foreign Assets Controls governs exports and other transactions with economically embargoed countries and parties as well as those designated as sponsoring terrorism. - See 31 CFR 501, et seq.

B. Relevant University Regulations

1. Policy 7-001: Policy for Research Misconduct

VI. Contacts

The designated contact officials for this Regulation are

- A. Policy Owner(s) (primary contact person for questions and advice): Export Control Officer (Office of Sponsored Projects)
- B. Policy Officer(s): Vice President for Research

See Rule 1-001 for information about the roles and authority of policy owners and policy officers.

VII. History

Revision History.

- A. Current version. Revision 0.
 - 1. Approved by -- Academic Senate May 2, 106, and Board of Trustees May 10, 2016, with effective date of May 10, 2016.
 - 2. Editorial Revisions
 - a. Editorially revised July 29, 2022 to move policy to current regulations template.
- B. Renumbering
 - 1. Not applicable