

Export Controls Compliance

Policy 217

1 Introduction

1.1 Appalachian State University ("the University") is dedicated to the transmission and advancement of knowledge and understanding. In furtherance of this mission, the University supports faculty efforts to collaborate with international colleagues in the conduct of fundamental research and works to provide opportunities for foreign researchers and students to participate in University research projects.

1.2 The University must pursue its mission in accordance with applicable export laws. The United States Federal government has issued regulations restricting the "export" of specially designated items from the United States without an export license. These regulations include the Export Administration Regulations (EAR) promulgated by the Department of Commerce; the International Traffic in Arms Regulations (ITAR) published by the Department of State; and travel embargo and sanction programs enacted by the United States Treasury Department's Office of Foreign Assets Control (OFAC).

1.3 These regulations define "export" broadly as a transfer of an item, information or software to a foreign person, foreign entity or foreign destination. A deemed export is a transfer or release of technology or source code to a foreign national in the United States. Deemed exports, like exports, are subject to all applicable export control regulations. Examples of exports and deemed exports include: 1) actual shipment of controlled items outside the United States, 2) sharing source code, technical data or technical assistance with a foreign national inside or outside of the U.S. by verbal, written, electronic or visual disclosure, and 3) carrying export controlled items abroad.

1.4 Some types of information and software are not subject to export control regulations. Published information and software that is generally accessible to the interested public is not subject to export controls unless it is used in the provision of a defense service or is associated with encryption software. Similarly, instruction in courses and teaching laboratories listed in a course catalog are also exempt from export control regulations.

1.5 The results of fundamental research are usually excluded from export controls. As defined in National Security Decision Directive 189, the term "fundamental research" means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons. If there are restrictions on publication of the research or restrictions on the participation of foreign persons in the research, the fundamental research exclusion does not apply and the research will probably be subject to export control regulations. The fundamental research exception under export control regulations does not extend to the shipment of articles, materials, supplies or equipment to a foreign country. Furthermore, the disclosure of controlled technology and software to a foreign national during the course of fundamental research is subject to export controls.

1.6 Although exports may be subject to export regulations, most exports do not require export licenses. In order to determine whether an export requires an export license, the technical specifications, destination, end user and end use of the export must be reviewed. The following exports will likely require an export license:

1. The materials, technology or data have real or potential military applications or economic protection issues.
2. There are government concerns about the country of destination or about the host organization or individual(s).
3. There are government concerns about the declared or suspected final use or final user of the export.

1.7 Travel to embargoed countries, as well as shipment, transport, or provision of equipment, goods, services, or information to embargoed countries and individuals, will typically require an OFAC license if permitted at all. In some cases, it may take 4 to 6 months to secure an export license from the federal government.

1.8 Export control laws and regulations can have significant implications for scholarly activities and research, and must be considered when conducting activities involving foreign countries or Foreign Nationals/Persons.

2 Scope

2.1 This policy applies to all persons employed by the University, to all students and to any other person or entity using facilities, staff or funds subject to control or supervision by the University. This document, as amended from time to time, shall be deemed to constitute part of the conditions of employment of every employee, including student employees, and of the conditions of admission, enrollment and attendance of every student of the University.

3 Definitions

3.1 Deemed Export

Transmission of technology, information or source code to an individual other than a U.S. citizen or permanent resident within the United States.

3.2 Defense Article

Any item designated in the United States Munitions List (USML). Examples include specified chemical agents, cameras designated for military purposes, specified lasers, and GPS equipment that exceed certain specifications. It also means any technical data recorded or stored in any physical form, models, mock-ups, or other items that reveal technical data directly relating to the particular item or “defense article” listed in the USML.

3.3 Defense Service

Furnishing assistance (including training) anywhere (inside the United States or abroad) to foreign nationals in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles, and the furnishing of any controlled “technical data” (see definition below) to foreign nationals anywhere.

3.4 Export

An export includes any: (1) actual shipment of any covered goods or items; (2) the electronic or digital transmission of any covered goods, items or related goods or items; or (3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any Foreign National/Person. An export may also include the actual use or application abroad of personal knowledge or technical experience acquired in the United States.

3.5 Export Controls

The set of laws, regulations and policies that govern the export of certain items, software and technology.

3.6 Export License

An authorization from the federal government to export an item, information or software. To determine whether an export license is needed, consider 1) what is being exported, 2) its destination, 3) the recipient of the export and 4) the intended end use of the export.

3.7 Foreign National or Foreign Person

Any foreign 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 and any agency or subdivision of foreign governments (e.g. diplomatic missions), and any natural person who is not a citizen or lawful permanent resident of the United States or who does not qualify as a protected individual.

3.8 Fundamental Research

Fundamental Research includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental Research is distinguished from research that results in information that is restricted for proprietary reasons or pursuant to specific U.S. Government access and dissemination controls. University research will not be deemed to qualify as Fundamental Research if: (1) the University or researcher accepts any restrictions on the publication of the scientific and technical information resulting from the research, other than limited pre-publication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to insure that publication will not compromise patent rights of the sponsor; or (2) the research is funded by the U.S. Government and specific access and dissemination controls regarding the resulting information have been accepted by University or the researcher. A complete definition of Fundamental Research is contained in the EAR (15 CFR § 734.8) and ITAR (22 CFR § 120.11) and should be consulted when determining whether a project meets the definition of Fundamental Research under those regulations.

3.9 Person

A natural person as well as any association or other organization, including government entities.

3.10 U.S. Government Restricted Party Lists

The U.S. Government has established several restricted party lists. These lists include persons who 1) have restricted rights, including, but not limited to, restrictions on their right to export, store and transfer assets, or participate in federal procurement programs, or 2) are wanted by law enforcement agencies. The University of North Carolina system utilizes the Visual Compliance to simultaneously screen parties against the U.S. Government Restricted Party Lists.

3.11 U.S. Person

A natural person who is a lawful permanent resident of the United States. Thus, a U.S. Person is any citizen of the United States, any citizen of a foreign country who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, or who is a protected individual. (A lawful permanent resident is a citizen of the U.S. or is a citizen of a foreign country who has been issued a "green card" by the U.S. government.)

3.12 Technical Data

Scientific or technical information recorded in any form or presented in any manner. Technical data may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, or read-only memories.

3.13 Technology

Specific information necessary for the development, production or use of a product.

4 Policy and Procedure Statements

4.1 University Policy

4.1.1 Appalachian State University will fulfill its mission of teaching, research, and service in a manner that complies with federal export control and embargo regulations, while also striving to maintain a free and open academic environment.

4.1.2 All persons employed by the University, all students and any other person or entity using facilities, staff or funds subject to control or supervision by the University are responsible for complying with this policy and contacting the Office of Research Protections or Office of International Education and Development with any questions about export control regulations.

4.1.3 Failure to comply with federal export control laws and regulations, or failure to comply with the University's export control policy and procedures, will result in disciplinary action. Failure to comply also may result in an employee's loss of institutional legal support.

4.2 Administration

4.2.1. University Empowered Official

1. The Chief Research Officer is the empowered official (as defined in the International Traffic in Arms Regulations, 22 CFR 120.25) for all export control and embargo compliance at Appalachian and is authorized to sign export license applications or other requests for approval on behalf of the University. The Chief Research Officer will seek advice from the General Counsel and when appropriate external legal counsel for export controls issues.
2. Duties of the empowered official include the following:
 1. Authority to sign and process license applications on behalf of the University;
 2. Understand the provisions of EAR and ITAR;
 3. Authority to inquire into any aspect of a proposed export and to verify the legality and accuracy of the information submitted for a transaction;
 4. Authority to refuse to sign any license application without retribution from the University.

4.2.2. The Associate Vice Chancellor for International Programs The Associate Vice Chancellor for International Programs is the official responsible for monitoring travel to Cuba for compliance with the Cuban Assets Control Regulations at 31 CFR Part 515. The Associate Vice Chancellor for International Programs will work with both the Chief Research Officer and the Director of Research Protections to facilitate compliance with all export control regulations.

4.2.3. The Office of Research Protections The Office of Research Protections will maintain records on export control compliance with the exception of records for compliance with the Cuban Assets Control Regulations. Research Protections will maintain a website with information on export control regulations, serve as a resource on compliance with export control regulations and conduct workshops on the applicability of export controls as needed.

4.3 Procedures

4.3.1. Review and Annual Certification of Export Control Compliance University faculty and staff shall review their activities to determine whether any aspect is subject to export control regulations. If any activities are covered by ITAR, EAR or a sanctions program, the employee shall work with the Office of Research Protections to confirm compliance with all applicable export regulations.

4.3.2. Grant and Contract Proposals and Awards

1. Primary responsibility for compliance with export control regulations rests with the Principal Investigator (PI) or Project Director (PD) of any research project. PIs/PDs must inform the Office of Sponsored Programs about the applicability of export controls before beginning or modifying a sponsored project and work with the Office of Research Protections to ensure compliance with export controls. All PIs/PDs whose research is subject to export controls may need to develop a Technology/Data Control Plan outlining procedures for safeguarding export-controlled information and technology.
2. Principal investigators must be aware that any arrangements, agreements, memoranda of understanding, contracts, terms, or clauses negotiated with the sponsor but without the express written approval of the Director of Sponsored Programs, Chief Research Officer, or the Provost are not authorized, and may be export controlled. Appalachian State University will not honor, recognize or be bound by any such "rogue" arrangements, contracts, terms, or clauses.
3. If a research contract or grant falls under the terms of export control regulations, the General Counsel and assigned Office of Research staff will contact the research sponsor and attempt to negotiate removal or modification of the provisions that negate the fundamental research exception under export control regulations. If negotiations are unsuccessful, the Chief Research Officer and the Provost will determine whether the University will apply for an export control license, or conduct the research under export control restrictions, or abandon the research effort entirely.

4.3.3. Foreign Travel Faculty and staff who intend to travel to a U.S. government sanctioned country must contact the Office of Research Protections to ensure compliance with export control regulations.

4.3.4. Screening Persons against U.S. Government Restricted Party Lists

1. The Admissions Office, Graduate School and Office of International Education and Development are responsible for review and clearance of foreign national undergraduate, graduate and international exchange students, respectively, against U.S. Government Restricted Party Lists.
2. Faculty and staff members with knowledge of or access to controlled information/technology and who host a guest and anticipate sharing export controlled information/technology with a person outside of the University are responsible for contacting the Office of Research Protections to ensure that the person is not on a U.S. Government Restricted Party List.
3. The Office of International Education and Development (OIED) is responsible for Appalachian's compliance with federal laws and regulations regarding employment of foreign nationals.

5 Additional References

Office of Research Protections Export Controls website: <http://www.orsp.appstate.edu/protections/export-control>

6 Authority

Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401-2420

International Emergency Economic Powers Act, 50 U.S.C. 1701-1706

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001; Public Law 106-387; 7 U.S.C. 5602

Agricultural Trade Act of 1978, 7 U.S.C. 5602

Export Administration Regulations (EAR), 15 CFR 730-774

Commerce Control List (CCL), 15 CFR 774, Supplement 1

International Traffic in Arms Regulations (ITAR), 22 CFR 120-125

U.S. Munitions List (USML), 22 CFR 121.1

U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) Sanctions Programs, 31 CFR 500

7 Contact Information

Office of Research Protections; 828.262.2130

8 Original Effective Date

September 25, 2013

9 Revision Dates

