Export Controls
In a Nutshell
Series

(December 2022)

The *Export Controls In a Nutshell Series* is designed to provide a comprehensive overview of key Export Control information in the form of iterative *Research Matters* articles

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- Export Control Exemptions for Universities
- Deemed Export Rule
- University Export Controls and Undue Foreign Influence
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Universities and affiliated research institutions are regulated differently than industry under export control regulations

There are certain exemptions and exclusions that are generally only available to us as a University.

Excluded Technology (EAR) and Technical Data (ITAR)

Educational Information Exemption

Information released by instruction in a catalog course or associated teaching laboratory of an academic institution

No license required to transfer educational information to students, including foreign nationals regarding general scientific, mathematical, or engineering principles routinely taught in colleges and universities

Public Domain Exemption

Information available to the public without restrictions upon its further dissemination, does not require an export license.

Includes patents available at any patent office

Fundamental Research Exclusion

Basic and applied research in science and engineering, **the results of which** ordinarily are published and shared broadly within the scientific community…

Only applies to what we generate – not to what we receive.

Note: These only apply to technology and technical data. They do not apply to the transfer of physical items to another country.

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Controlled Technology

Receipt of Confidential or Proprietary Information

Information with restrictions on its further dissemination

Typically covered by the "controls" of a Confidential Disclosure Agreement (CDA) or the "controls" of the Confidentiality section of a sponsored research agreement

Research Results Subject to Access or Dissemination Controls

UAB research results that a sponsor holds as their proprietary information

Proprietary research (even if self-imposed)

Requirements for research results to be approved prior to publication

Restrictions on research staff based on citizenship

Related Cautions in Sponsored Research

🔒 If UAB accepts <u>confidential or proprietary</u> data, information or software source code from a sponsor during the conduct of a research project, that confidential or proprietary item is subject to Export Controls.

🖼️ If the terms and conditions of sponsored project allow the sponsor the right to <u>prior review and approval</u> of publications describing the results from research, those research results are subject to Export Controls.
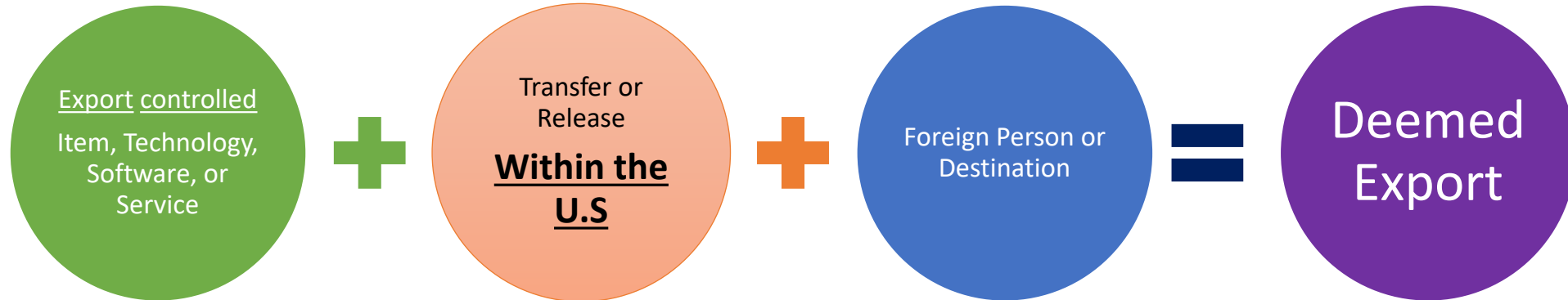
🤝 *If* a researcher agrees with a sponsor, in an *informal side arrangement* (whether in writing or otherwise), a)that the results from a study will not be published without prior sponsor approval, *<u>or</u>* b) that certain information is confidential or proprietary, *<u>then</u>* these results/information are subject to Export Controls.

⚠️ Note: Acceptance of such restrictions will negate any application of the Fundamental Research Exclusion (FRE) and requires specific approval.

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What is a Deemed Export?

Releases of controlled technology to foreign persons <u>in the U.S.</u> are "deemed" to be an export to the person's country or countries of nationality. "Deemed" exports are described in 734.13(b) of the EAR. Typical organizations using "deemed" export licenses include universities, high technology research and development institutions, bio-chemical firms, as well as the medical and computer sectors. Note that those organizations having persons with permanent residence status, U.S. citizenship, and persons granted status as "protected individuals" are exempt from the "deemed" export rule. <u>Source: BIS.gov</u>

<u>Export controlled</u>

Item, Technology, Software, or Service

+

Transfer or Release

<u>Within the U.S</u>

+

Foreign Person or Destination

=

Deemed Export

Examples of Deemed Export

Foreign Collaborators <u>located at UAB</u> working on **controlled technology**

Phone calls related to **controlled technology** with Foreign Collaborators working at another <u>U.S.</u> university

Guiding Foreign Visitors on a <u>tour of a UAB laboratory</u> where they can <u>view/observe design</u> details of **controlled technology**.

Discussions regarding **controlled technology** with Foreign Persons at a <u>conference within the U.S.</u>

University Export Controls and Undue Foreign Influence

Undue Foreign Influence

Inappropriately sharing federal research with foreign entities and governments

Export Controls

Inappropriately sharing **controlled items or technology** with foreign entities and persons

Over recent years, Congress and several federal agencies, including the National Institutes of Health, the National Science Foundation, the U.S. Department of Defense and the U.S. Department of Energy, have expressed growing concerns about foreign influence on academic research.

Since UAB's inception as an independent university, international research collaboration has been and will continue to be an important part of our research mission.

Click here to visit our ***Transparency in Research*** website for more detailed information.

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Technology Control Plan (TCP): Preventing Unauthorized Access to Controlled Items

A Technology Control Plan (TCP) is a customized management plan developed to outline the processes in place to prevent unauthorized export of protected items, products, data or technology deemed to be sensitive to national security or economic interests. Principal Investigators collaborate with the Office of Sponsored Programs and Director of Export Control & International Compliance (within the Office of the Research Regulatory Oversight) to prepare an individual project TCP when needed. There are basic elements to consider when a TCP is necessary for an export-controlled project.

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Elements of an Effective Technology Control Plan

Personnel

Each person must be identified on the plan. This includes PIs, co-PIs, students, staff, or any other project team member who could potentially work with controlled information. Personnel also must be properly authorized, trained and briefed on the specifics of the security surrounding the plan.

Information Technology Security
A TCP must outline the location and access parameters related to the export-controlled project. Investigators will be required to describe the location and the precautionary measures taken to secure any export-controlled data or technology.

Publications/Presentations

Projects that are export-controlled typically require a sponsor's approval prior to open publication or presentation. The TCP will document the investigator's plans to publish and reiterate specific sponsor approval procedures to be followed prior to open publication or generation of a student thesis.

Physical Security

A TCP must outline the location and access parameters related to the export-controlled project. Investigators will be required to describe the location and the precautionary measures taken to secure any export-controlled data or technology.

Equipment
If the project involves items, such as test articles, that must remain confidential to people outside the research team, the TCP will require documentation of the location and operating procedures to ensure compliance.

UAB Technology Control Plan Template Access it here.

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In Our Next Issue

- 2022 - Export Control Year in Review
- Export Control and International Shipping
- Export Control and International Travel

UAB Export Control Resources

UAB Export Control Website:

https://www.uab.edu/exportcontrol/

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Thank You!