

# Export Control: Who Should Care and Why

## What Are Export Control Laws?

U.S. laws that regulate the distribution to foreign nationals and foreign countries of strategically important technology, services and information for reasons of foreign policy and national security.

Export control laws apply to all activities – not just sponsored research projects.

Federal export controls are accomplished primarily through the Export Administration Regulations (the "EAR," implemented by the Department of Commerce for items that have both a commercial and potential military use) and the International Traffic in Arms Regulations ("ITAR," implemented by the Department of State for military items and defense services). The Treasury Department's Office of Foreign Assets Control ("OFAC") administers and enforces economic and trade sanctions to protect foreign policy and national security goals.

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## Is Anything Excluded from Export Control Laws?

**Yes.** There are several exclusions, and two that are particularly relevant to academic research: the fundamental research exclusion and the public domain exclusion. These exclusions can be lost, however, if researchers sign side agreements (including material transfer and non-disclosure agreements) that contain publication restrictions or restrictions on who can participate in the research. *It is crucial that you not sign any such agreements--or any agreements that mention export controls--on your own.*

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## What happens if we violate the export control laws?

The consequences for noncompliance are very serious for both the university and the researcher:

### **ITAR:**

- Criminal: up to \$1M per violation and up to 10 years in prison
- Civil: seizure and forfeiture of articles, revocation of exporting privileges, fines of up to \$500K per violation.

### **EAR**

- Criminal: \$50K - \$1M or five times value of export, whichever is greater, per violation, up to 10 years in prison.
- Civil: loss of export privileges, fines \$10K - \$120K per violation

#### **OFAC:**

- Criminal penalties can include fines ranging from \$50,000 to \$10,000,000 and imprisonment ranging from 10 to 30 years for willful violations.
  - Civil penalties range from \$11,000 to \$1,000,000 for each violation.
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#### **How can export controls affect my research?**

“Export” is defined not only as a physical transfer/disclosure of an item outside the US, but also as a transfer/disclosure in any form of a controlled item or information within the US to anyone who is a foreign national (not a US citizen or permanent resident). This is called the “deemed export” rule. As a result, unless an exclusion or exemption is available, the university may be required to obtain prior governmental approval (in the form of an export license) before allowing the participation of foreign national faculty, staff, or students in affected research. In some cases, a license may not be available at all based on the country involved.

In addition to affecting who may participate in the research project on campus, the following are examples of situations in which a license may be required:

- Presentation/discussion of previously unpublished research at conferences and meetings where foreign national scholars may be in attendance
  - Research collaborations with foreign nationals and technical exchange programs
  - Transfers of research equipment abroad
  - Visits to your lab by foreign scholars
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#### **What kinds of projects raise export control questions?**

Basically, any research activity may be subject to export controls if it involves the actual export or “deemed” export of any goods, technology, or related technical data that is either 1) “dual use” (commercial in nature with possible military application) or 2) inherently military in nature.

Work in the following areas is considered high risk:

- Engineering
- Space sciences
- Computer Science

- Biomedical research with lasers
- Research with encrypted software
- Research with controlled chemicals, biological agents, and toxins

In addition, any of the following raise export control questions for your project:

- Sponsor restrictions on the participation of foreign nationals in the research
- Sponsor restrictions on the publication or disclosure of the research results
- Indications from the sponsor or others that export-controlled information or technology will be furnished for use in the research
- The physical export of controlled goods or technology is expected

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### **As a principal investigator, what do I need to do?**

The PI has the best understanding of his or her research and therefore the best information as to whether the particular technology, data, or information involved in that research is or may be covered by export control regulations. The PI is responsible for doing the following:

- The PI should carefully review the information on export controls provided on this web site. Additional training on export controls is provided by the Office of Research/Sponsored Programs and is available to PIs, their departments, and their departmental administrators.
- Before beginning any research, the PI should determine whether any export control issues may be presented (see "[What kinds of projects raise export controls questions](#)" on [Who Should Care and Why?](#)").
- If any such issues are identified, or if any question exists, the PI should contact Robin Witherspoon, Export Control Specialist at (865-974-0232) or [rwithers@ln.utk.edu](mailto:rwithers@ln.utk.edu) in the Office of Sponsored Programs for help with determining whether any export control restrictions may apply to the research.
- After work on the project has begun, the PI should notify the Office of Sponsored Programs prior to implementing any changes that may give rise to the application of export controls, such as a change in the scope of work or the addition of new staff to the project.
- If any export control issues are identified at the contract or grant proposal stage by the staff in Sponsored Programs, the PI should cooperate fully with OSP to determine the application of export control regulations to the research.

- If it is determined that export controls apply to the project, the PI must adhere strictly to any applicable restrictions and cooperate fully with the university's efforts to monitor compliance.
  - If you are unsure of what to do next to become compliant, use our "[Roadmap to Export Control Compliance](#)" tool. This will allow us to gather the appropriate information regarding your research to advise you as to the steps you will need to take to become Export Control compliant (i.e. resolve potential problems, assigning the proper forms, giving the proper notification to federal agencies).
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### **Where can I get help?**

Any time you have a question about the application of export controls to any stage of a specific research project, contact Robin Witherspoon in Office of Research/Sponsored Programs (OSP) (865-974-0232) or [rwithers@ln.utk.edu](mailto:rwithers@ln.utk.edu).