

Export Control Overview (Prepared by Robin Witherspoon/UTK)

Export control laws are federal regulations that govern how certain information, technologies, and commodities can be transmitted overseas or to a foreign national on U.S. soil. The scope of the regulations is broad: they cover exports in virtually all fields of science, engineering, and technology and apply to research activities regardless of the source of funding. Failure to comply with these laws can have serious consequences, both for the institution and for the individual researcher. Potential penalties include fines and possibly imprisonment. It is thus critical for University of Tennessee researchers to understand their obligations under these regulations and to work with the Office for Sponsored Programs to ensure that the university is in compliance.

The federal Export Administration Regulations ("EAR") and International Traffic In Arms Regulations ("ITAR") control the export of certain commodities, software, technical data and certain other information to foreign countries. The EAR and the ITAR can restrict the furnishing of information, technical data and software to foreign persons, whether this takes place abroad or in the United States. In the university context, these regulations can prohibit foreign persons from participating in research projects or having access to information resulting from research under some circumstances unless an export license has been obtained in advance. While most university activities are not governed by the EAR or the ITAR, where these rules do apply they must be followed. Punishment for violations can be severe.

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.

Deemed Export - Providing, transferring or disclosing technology, information, etc. to a foreign national within the United States Methods of disclosure include:

- FAX
- Telephone conversations
- E-mail communications
- Face-to-face discussions
- Tours of labs
- Training sessions
- Computer data

Defense service ([ITAR at 22 CFR §120.9](#)) - The furnishing of assistance, including training, to foreign persons, whether in the US or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles (those listed on the USML).

Export - Transfer to a foreign person in the U.S. or abroad of:

- Controlled technology
- Information
- Equipment
- Software
- Services

Transfer can be by:

- Actual shipment outside the U.S.
- Electronic or digital transmission
- Visual inspection in or outside the U.S.
- Written or oral disclosure
- Actual use or application on behalf or for benefit of foreign person or entity

Export Administration Regulation (EAR) - The Department of Commerce implements the EAR, which bars the export of items, technology, and technical information found on the Commerce Control List to foreign countries without appropriate export license. EAR covers the transfer of dual-use commercial goods. **Dual-use** technologies are those that have both a legitimate civilian and military use.

Foreign National -

- Any person who is not a lawful permanent resident of the U.S.
- Any foreign corporation or other entity or group that is not incorporated or organized to do business in the U.S.
- Any foreign government

Fundamental Research - 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.

International Traffic in Arms Regulation (ITAR) - The Department of State implements the ITAR, which regulates the export of items on the Munitions Control List and technical information about them.

Office of Foreign Assets Control ("OFAC") - The U.S. Department of the Treasury administers and enforces economic and trade sanctions against targeted foreign countries, terrorism-sponsoring organizations and international narcotics traffickers based on U.S. foreign policy and national security goals. They regulate economic trade with foreign countries and administer the statutory economic trade sanctions imposed against several foreign countries. The sanctions range from partial to full trade embargoes and are imposed *in addition* to other U. S. export control law penalties. Information regarding sanctions in effect can be found at the OFAC web site (<http://www.ustreas.gov/offices/eotffc/ofac/>).

Public Domain means information that is published and generally accessible or available to the public:

- through sales at newsstands and bookstores;
- through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;
- through second class mailing privileges granted by the U.S. Government;
- at libraries open to the public or from which the public can obtain documents;
- through patents available at any patent office;
- through unlimited distribution at a conference, meeting, seminar, trade show or exhibition;
- through publication in any form or media after approval by the cognizant U.S. government department or agency;
- through fundamental research.

Restricted or Embargoed Countries - ITAR regulations at Section 126.1 specifies countries to which exports and sales are prohibited. Currently, it is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services to: Afghanistan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, and Vietnam; countries which the U.S. maintains an arms embargo (e.g. Burma, China, Haiti, Liberia, Rwanda, Somalia, Sudan and Democratic Republic of the Congo (formerly Zaire); United National Security Council exports and sales embargoes (Angola); countries determined by the Secretary of State to have repeatedly provided support for acts of internal terrorism (Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria). Please use the ITAR [Embargo Reference Chart](#) for specific reference to Defense Trade Controls.

Technical data ([ITAR at 22 CFR §120.10](#)) -

- Information, other than software as defined in [22 CFR §120.10\(4\)](#), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation.
- Information covered by an invention secrecy order
- Software as defined in [22 CFR §121.8\(f\)](#) directly related to defense articles.