

# Export Control Management System

---



Export Controls are federal regulations and laws that restrict the export of certain controlled technologies in order to restrict access to goods and technology that have both commercial and military or proliferation applications.

This document has been developed to provide you with an understanding of the regulations governing export control to ensure compliance by all people involved in research. After review of this information should you still have questions please contact Lindsay Pardue, Director of Research Integrity, 423-425-4443 or [lindsay-pardue@utc.edu](mailto:lindsay-pardue@utc.edu).

## **Policy**

The University of Tennessee at Chattanooga is committed to the highest level of compliance with all applicable export control laws and regulations that pertain to the conduct and dissemination of our research and the export of tangible items.

### **Responsible Officials**

Dr. Joanne Romagni  
Vice Chancellor of Research  
107 Race Hall  
615 McCallie Avenue  
Phone: (423) 425-1752  
Fax: (423) 425-4052

Lindsay Pardue  
Director  
Office of Research Integrity  
109 Race Hall  
615 McCallie Avenue  
Chattanooga, TN 37403  
Phone: (423) 425-4443  
Fax: (423) 425-4052  
Email: [Lindsay-pardue@utc.edu](mailto:Lindsay-pardue@utc.edu)

### **Export Control Information**

The purpose of this document is to explain the essential elements of the laws and regulations governing export control and discuss our policy for compliance.

Export control regulations involve many federal government departments but the three major set of regulations include:

- **Export Administration Regulations (EAR)** which is administered by the U.S. Department of Commerce. EAR regulates the export of commercial and

dual-use technologies (military or commercial) as defined in a list called the Commerce Control List (CCL) which contains commodities, technology, and software. Each item is assigned an export classification control number (ECCN). The Commerce Control List can be found at [http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html).

If a license is required, the Office of Research Integrity will work with you to secure the appropriate license from the Bureau of Industry and Security.

- **International Trade in Arms Regulations (ITAR)** is administered by the U.S. Department of State. ITAR regulates the export of military technology defined on the United States Munitions List as defined in 22 CFR 120-130. The U.S. Munitions List is a list of articles, services, and related technology designated as defense and space related by the United States Federal government. Licenses are provided by the U.S. Department of State. The ITAR can be found here:  
[https://www.pmddtc.state.gov/?id=ddtc\\_kb\\_article\\_page&sys\\_id=24d528fd9bfc930044f9ff621f961987](https://www.pmddtc.state.gov/?id=ddtc_kb_article_page&sys_id=24d528fd9bfc930044f9ff621f961987)

- **Difference Between ITAR/EAR**

1. ITAR has stricter proprietary review concerns.
2. ITAR has license exemptions for foreign nationals who are full-time regular employees of a university.
3. ITAR will deny a license for the export/sales of a defense service or article to certain countries.
4. EAR regulates items designed for commercial purposes but they can have military applications (civilian aircraft, computers, etc.).
5. EAR covers dual use items as found on the Commerce Control List as well as goods, test equipment, materials, software and technology.

- **The Office of Foreign Assets Control Regulations (OFAC)** regulates economic trade with foreign countries as defined in 31 C.F.R. 500-597. OFAC applies to all persons who are subject to U.S. jurisdiction. This includes American citizens and permanent resident aliens. OFAC regulates economic trade with foreign countries and administers the statutory economic trade sanctions imposed against several foreign countries. The sanctions range from partial to full trade embargoes. The regulations define prohibited transactions with foreign countries and set sanctions for engaging in such conduct. Information regarding the sanctions in effect can be found at: <http://www.treas.gov/offices/enforcement/ofac>.

## Important Definitions

Here are some important definitions that you will need to be familiar regarding export control.

**Code of Federal Regulations (CFR)** – The United States Code of Federal Regulations (CFR) is the codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the Federal Government.

**Commerce Control List** – A list of items controlled under the export control jurisdiction of the U.S. Department of Commerce, Bureau of Industry and Security.

**Commerce Control List Categories** – There are ten control categories: (1) nuclear materials, facilities and equipment; (2) miscellaneous materials, chemicals, microorganisms and toxins; (3) material processing, (4) electronics design, development, and production; (5) computers; (6) telecommunications; (7) sensors; (8) navigation and avionics; (9) marine; (10) propulsion systems, space vehicles, and related equipment.

**Commerce Control List Groups** – In addition to the ten control categories, each category is divided into five subgroups that include: (A) equipment, assemblies,

and components; (2) test, inspection and production equipment; (C) materials; (D) software; and (E) technology.

**Controlled Country** – The following countries are controlled for national security purposes (as of 11/09/2018): Afghanistan, Belarus, Burma (Myanmar), Central African Republic, China, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Haiti, Iran, Iraq, Lebanon, Libya, North Korea, Somalia, South Sudan, Sudan, Syria, Venezuela, Zimbabwe

Check the ITAR for updated countries as they are subject to frequent change.

**Deemed Export** – The disclosure or transfer of export controlled software, technologies or technical data to a foreign entity or individual inside the United States is “deemed” to be an export to the home country of the foreign entity or individual. This includes information that is published and generally available to the public through sales at bookstores, subscriptions, libraries, patents, distribution at conferences, trade shows, etc.

**Defense Article** – Any item designated in the United States Munitions List. Examples include specified chemical agents, cameras designated for military purposes, and lasers. It also includes any technical data recorded or stored in any physical form, models, or mock-ups, or any other item that reveals technical data.

**Defense Service** – The furnishing of assistance (including training) anywhere inside or outside of the United States 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 to a foreign national.

**Denied Persons List** – A list of specific persons that have been denied export control privileges, in whole or in part.

**Dual Use** – Items that have both military AND commercial or proliferation applications.

**End Use** – A detailed description of how the ultimate consignee intends to use the commodities being exported.

**End User** – The person that receives and uses the exported or re-exported items.

**Export** – Shipment of any covered goods or items; the electronic or digital transmission of any covered goods or items; any release of software or technical data to a foreign national; the use or application of covered technology on behalf of or the benefit of any foreign entity or person anywhere. This includes oral or visual disclosure or transferring technical data to a foreign person whether you are in the United States or abroad.

**Export Control** – The set of laws, policies, and regulations that govern the export of sensitive items for a country or company.

**Export Control Classification Number (ECCN)** – Identifies items on the Commerce Control List that are subject to the export licensing authority of the Bureau of Industry and Security.

**Export License** – The approval documentation issued by an export agency authority authorizing the recipient to proceed with the export, re-export, or other regulated activity.

**Foreign Entity** – Any company not incorporated in the United States.

**Foreign National** – Any person who is not a citizen or permanent resident alien of the United States.

**Fundamental Research** - 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.

**Fundamental Research Exclusion** – An exclusion from export control laws if the research is defined as Fundamental Research. Most research at the University of Tennessee at Chattanooga meets this criteria.

**Munitions List** – Articles, services and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act.

**Re-export** – A shipment or transmission of items from one foreign country to another foreign country.

**Technical data** – Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blue prints, 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.

**Technology** – Any information tangible or intangible that is required for the development, production, or use of a good, but not the good itself.

### **Export Control Concerns for Faculty, Staff, and Students**

Any oral, written, electronic, or visual disclosure, shipment, transfer of transmission of commodities, technology, information, technical data, assistances or software code is considered to be an export when provided to a non-U.S.-Person whether in the United States or abroad. Please contact the Office of Research Integrity for assistance with shipping and travel requirements.

**Shipping** of equipment, software, raw materials, hazardous material, as well as other similar items abroad may require licensing from the Office of Foreign Assets Control. Please make sure that all of your international shipments meet the proper classifications, labeling, packaging and documentation and/or licensing. Items that are mailed and shipped (including your luggage) are screened for export controlled items.

Shipments going to embargoed countries also require internal university approval. Obtaining a license can take up to two months so allow plenty of time prior for processing.

### **Embargoed/Sanctioned Countries**

This policy applies to countries that the United States has denied licenses for exports and imports of defense articles and defense services destined for or originating in certain countries; countries to which the United States has an arms embargo, and to those countries which the Secretary of State has determined to be providing continued support of acts of international terrorism. The countries that are subject to U.S. sanctions or embargoes include (as of 11/09/18):

Afghanistan, Belarus, Burma (Myanmar), Central African Republic, China, Cuba, Cyprus, Crimea Region of Ukraine, Democratic Republic of Congo, Eritrea, Haiti, Iran, Iraq, Kyrgyzstan, Lebanon, Liberia, Libya, North Korea, Russian Industry Sector Sanctions, Somalia, South Sudan, Sudan, Syria, Venezuela, Zimbabwe

**Equipment and Software** are key issues that you should be concerned about. If you use controlled equipment by a foreign national you may be required to obtain a license even if the fundamental research exclusion is applicable. If you transfer controlled technology or a source code of a controlled item to a foreign national a license may be required.

Proprietary software of controlled technology could require a license. Software that is available to the public for free typically does not require a license. Encryption technology may also require a license or be prohibited for transfer to certain foreign nationals and countries.

**Traveling** to most countries does not present a problem with regard to export control compliance. However, if you are on university travel and your work will require the use of a laptop computer, data technology, encryption products; you are presenting information at a closed conference where notes cannot be taken; or you are traveling to a sanctioned or embargoed country, then a license may be required. UTC will only seek licenses for travel to countries where licensing is required for full-time employees, not part-time or in Emeritus status. If you have questions regarding international travel, please contact the Director of Research Integrity for assistance.

### **Export Control Exclusions**



**Fundamental Research** is basic or applied research in science and engineering performed or conducted at an accredited institution of higher education in the United States where the resulting information is ordinarily published or shared broadly in the scientific community. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons, national security reasons (EAR), or pursuant to specific U.S. government access and dissemination controls (ITAR).

ITAR states that university research will not be deemed to qualify as fundamental research if: (1) the university or its researcher accept any restrictions on publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher. **No license is required for fundamental research.**

**Special Note: If you accept restrictions your research is no longer considered to be fundamental research. The fundamental research exclusion can also be lost if conferences have potential restrictions of participants, if there is a transfer of defense services, or if the Principal Investigator makes a side deal via a non-disclosure agreement or acceptance of export controlled information.**

**Public Domain** is information that is published and that is generally accessible or available to the public through sales at bookstores or newsstands; through non-restricted subscriptions; at libraries open to the public or from which the public can obtain documents; through second class mailings privileges allowed by the U.S. Government; through unlimited distributions at conferences, seminars, meetings or other functions that are generally accessible to the public; and through fundamental research. **No license is required for export or transfer of information and research results that are public domain.**

**Education Exclusion** is the transfer of information to students, including students who are foreign nationals, concerning general, scientific, mathematical or engineering principles that are commonly taught in school, colleges, or universities. **No license is required for excluded education information.**

**Employment Exclusion** is provided when information that is subject to export controls laws that is shared with a foreign national if the foreign nation is a full-time employee of the university, is not a national of any of the embargoed/sanctioned countries, has a permanent U.S. residence, and has been informed in writing not to transfer the information to other foreign nationals. **No license is required for employment exclusion.**

### Export Control Guidance Table

Most exports from the United States do not require an export license. However, if you are uncertain please contact the Office of Research Integrity for assistance. The table below is provided to give you additional guidance.

Does My Research Fall Under Export Control Status?		
<p>Project is Public Domain and involves no equipment, no controlled chemicals, bio-agents or toxins, no encrypted software, or other restricted technologies <b>and</b> information is already published <b>and</b> there is no contractual restriction on export.</p> <p><b>or</b></p> <p>Your project is considered to be fundamental research.</p> <p><b>YOUR PROJECT FALLS UNDER EXPORT CONTROL EXEMPTIONS AND NOTHING ELSE IS REQUIRED</b></p>	<p>The technology to be used is not under public domain;</p> <p><b>or</b></p> <p>the technology may be exposed to foreign nations;</p> <p><b>or</b></p> <p>encrypted software or equipment is involved;</p> <p><b>or</b></p> <p>the equipment or software to be used is on the CCL list;</p> <p><b>or</b></p> <p>foreign nationals to be involved in the project are from an embargoed country or you plan to travel to an embargoed country;</p> <p><b>or</b></p>	<p>Equipment, software, bio-agents, toxins, or technology is on the US Munitions List or the CCL list;</p> <p><b>or</b></p> <p>equipment, software, technology, bio-agents or chemicals have been designed or modified for military use;</p> <p><b>or</b></p> <p>if sponsored research and the contract contains a restriction on export or access by foreign nationals.</p> <p><b>YES.</b> <b>A LICENSE WILL BE REQUIRED</b></p>

	if sponsored research and the contract has publication restrictions.  <b>THEN FURTHER REVIEW IS NEEDED AND A LICENSE MAY BE REQUIRED</b>	
--	--	--

## **Export Control Compliance Structure and Responsibilities**

The University of Tennessee at Chattanooga's export compliance efforts will be coordinated through the Office of Research Integrity with the assistance of General Counsel and the UT system. However, much of the responsibility for export compliance lies with the university personnel who are working on projects that involve export control.

### **Responsibilities and Compliance Roles**

It is the responsibility of University officers, faculty, staff, and administration to be aware of the export control requirements under the regulations.

### **The Role of the Principal Investigator (Sponsored and Non-Sponsored Research):**

1. Participate in Export Control training.
2. In conjunction with the Office of Research Integrity, determine whether planned export activity falls under an exemption category and if not, what type of licensing will be required.
3. Provide all non-disclosure or confidentiality agreements pertaining to sponsored research to the Office of Research and Sponsored Programs for review and approval. A copy will be provided to the Office of Research Integrity.
4. Ensure that the Department Head, Dean, or other appropriate administrators are aware of any research project that involves export controlled information or technology.

5. Contact the Office of Research Integrity if a violation of export control regulations may have occurred.
6. Document and retain all export control license determinations for any exported item, information, technology, technical data or software for a period of five years.

### **The Role of the Office of Research Integrity:**

1. Conduct export control training through one-on-one meetings, workshops, and/or online training modules.
2. Review and respond to any export control compliance questions or determination requests.
3. Interpret and provide information as appropriate to administration, faculty and staff on federal laws and regulations regarding export controls.
4. Oversee the process of obtaining export control licenses on behalf of the University of Tennessee at Chattanooga.
5. Serve as the authorized office for certification of compliance with export control laws and regulations.
6. Work with the Office of Research and Sponsored Programs to negotiate and approve language for non-disclosure agreements and confidentiality agreements pertaining to sponsored research.
7. Work with P/I's to develop technology control plans when required for sponsored research.
8. Report any violations.

### **Record Keeping**

The university is subject to several regulatory recordkeeping requirements related to its export activities. The ITAR and the EAR require that records be kept reflecting the export and temporary import of defense articles, defense services, dual-use commodities and related technologies. This procedure outlines requirements for complying with the recordkeeping regulations. Types of records to be maintained will depend on the university's activities and how items are

controlled for export. The retention period is five years from the date of export, re-export, or any other termination of the transaction.

### **Transactions Subject to Recordkeeping Requirements**

The following types of transactions are subject to recordkeeping requirements:

- Exports of controlled commodities, software or technical data from the United States or by U.S. persons;
- Re-exports or transshipments of controlled products or technical data originally exported from the United States or by U.S. persons;
- Any other transaction subject to export control, whether the export or re-export actually occurs;
- Exports, where it appears that a person in another foreign country has an interest in the transaction or that the commodity or technical data will be exported, transshipped, or diverted; and
- Negotiations in connection with an export.

**It is the university's policy that the following export documents and related supporting materials be retained by the University:**

- Any paperwork detailing internal export control assessments, including documentation regarding the applicability of any licensing exemptions (such as public domain or fundamental research). All records pertaining to the records of compliance program, implementation efforts, and any documents pertaining to the discovery and rectification of inadequacies.
- The Export Control Management Plan
- Classification decisions issued by the appropriate government agencies;
- License applications, and all supporting documents;
- Issued licenses with limitations or provisos, if any;
- Delivery Verification or similar evidence of delivery;
- Shipper's Export Declarations ("SED");
- Receipts, bills of lading and other documents related to export clearance;
- Reports of boycott requests and all documents relating to the requests;
- Any other document issued by the U.S. Government that demonstrates that an export occurred;
- Applications for registration;

- Purchase orders;
- Foreign import certificates;
- Airway bills;
- Non-transfer and use certificates;
- Memoranda, notes, correspondence, contracts, invitations to bid, books of account, financial records, and any other written matter pertaining to an export;
- In the case of records of or pertaining to transactions involving restrictive trade practices or boycotts, the date the regulated person receives the boycott-related request.

Records will be kept in a manner that facilitates the ability to retrieve the records for any purpose and to review the records during internal of U.S. Government audits.

### **Period of Retention**

Export documents must be retained for a minimum period of five (5) years, calculated from one of the following points in time:

1. Export records under the EAR (*See* §762.6) must be retained for five (5) years from the *latest* of the following times:
  - The date the export from the U.S. occurs;
  - The date of any known re-export, transshipment, or diversion of such item;
  - The date of any termination of the transaction, whether contractual, legal, formally in writing or by any other means, or;
  - In the case of records of or pertaining to transactions involving restrictive trade practices or boycotts, the date the regulated person receives the boycott-related request.
2. Records relating to exports under the ITAR must be maintained for five (5) years from:
  - The expiration of the license or other approval to which the documentation relates;

- The date the license or other authorization is exhausted or used completely; or
- The date the license or other authorization is suspended, revoked, or no longer valid.

## **Accessibility**

Records must be kept in a manner which facilitates the ability to retrieve the records for any purpose and to review the records during internal or U.S. Government audits.

**University Personnel may not, under any circumstances, interfere with or impede any federal law enforcement officer performing his/her official duties. A request for documents under the Tennessee Sunshine Law needs to be in writing on the letterhead of the requesting entity.**

## **Faculty and Staff Awareness**

It is critical that faculty and appropriate staff are made aware of export control rules and issues. Violations of export control laws carry severe penalties, including huge monetary fines and possible prison time. One of the many components of compliance with federal export control laws is the establishment of an effective and ongoing education and awareness program.

The Office of Research Integrity webpage contains an export control section which provides an overview of export control, how to determine if your research is subject to export control, frequently asked questions, and training that is available through the Collaborative Institutional Training Incentive (CITI). All faculty and staff that will be working on projects that involve export control are required to take the CITI training.