

EXPORT CONTROLS MANAGEMENT PLAN

East Tennessee State University

I. Introduction

The purpose of this management plan is to identify specific roles, responsibilities and procedures for export control screening at East Tennessee State University (ETSU). "Export control" is a phrase used to refer to a set of laws and regulations implemented by three federal agencies: the Department of Commerce (Export Administration Regulations); the Department of State (International Traffic in Arms Regulations); and the Department of Treasury (through the Office of Foreign Assets Control).

The export control regulations must be considered when entering into grants, agreements, contracts and subcontracts. Additionally, the regulations may apply to activities other than sponsored research, such as international travel opportunities, sharing technical data with foreign nationals, or shipping equipment outside the U.S.

Maintaining compliance with these regulations is critical yet problematic, as the regulations conflict with university philosophies of sharing information and academic freedom. The regulations are lengthy, difficult to interpret, and frequently subject to change; however, they are to be taken seriously. Penalties for violations may include significant fines and jail time, which are assessed against the individual committing the violation. Members of the campus community are urged to review available resources detailed in this plan and the ETSU Export Control website <http://www.etsu.edu/research/ExportControl> to prevent inadvertent violations.

II. Regulatory Overview

A. Export Administration Regulations (EAR) – 15 CFR Parts 730-774

The Export Administration Regulations, or EAR, are promulgated and implemented by the U.S. Department of Commerce under the Bureau of Industry and Security. The EAR regulate the export of civil and "dual use" commodities, technologies and software (see definitions in section III below). A license may be needed to export items regulated by the EAR depending upon the item and the country to which the item will be exported. Items regulated by the EAR are listed on the Commerce Control List (CCL) (http://www.bis.doc.gov/policiesandregulations/ccl_index.pdf).

B. International Traffic in Arms Regulations (ITAR) – 22 CFR Parts 120-130

The International Traffic in Arms Regulations, or ITAR, are promulgated and implemented by the U.S. Department of State. ITAR controls export of items that are inherently military in nature. These items are listed on the Munitions Control List

(http://www.pmdtdc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf).

- C. **Office of Foreign Assets Control Regulations (OFAC) – 31 CFR Parts 500-597**
 The Office of Foreign Assets Control, or OFAC, is housed in the U.S. Department of Treasury and regulates trade with foreign countries. Certain foreign countries are subject to U.S. trade sanctions or full embargoes (<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>).

III. Important Definitions

Deemed Export	The release of technology to a foreign national in the United States through such means as demonstration or oral briefing. This exchange is “deemed” to be an export to the country of the foreign national.
Dual Use Items	A term used for EAR-controlled items that can be used both in military and other strategic uses and in commercial applications.
Educational Information	Information that is released by instruction in catalog courses and associated with teaching laboratories of academic institutions.
Effective Control	To retain physical possession of an item or secure the item in such an environment as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility.
Export	An actual shipment or transmission of items out of the United States.
Foreign National	Any person who is not a native or national of the United States unless lawfully admitted for permanent residence in the United States (holder of a permanent resident alien visa or “green card”)
Fundamental Research	Basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community.
Item	A commodity, software or technology.
License	Authority issued by the Bureau of Industry and Security authorizing an export, re-export, or other regulated activity.
Open Conference or Gathering	A conference or gathering where all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (not necessarily a recording) of the proceedings and presentations, and any registration fee is reasonably related to cost.

Published Information	Information that is generally accessible to the interested public in any form, including: publication in periodicals, books, print, electronic or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or for a price that does not exceed the cost of reproduction and distribution; readily available at libraries open to the public or at university libraries; patents and open (published) patent applications available at any patent office; release at an open conference, meeting, seminar, trade show, or other open gathering.
Re-export	An actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country; or release of technology or software subject to the EAR to a foreign national outside the United States.
Technical Data	Data in the form of 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, read-only memories.

IV. ETSU Export Control Compliance Policy

The ETSU Export Control Compliance Policy (Appendix A) affirms ETSU's commitment to export control compliance. This policy assigns responsibilities, establishes recordkeeping requirements, and states that ETSU will maintain a free and open academic environment.

V. Principal Responsible Parties

A. Empowered Official

In accordance with ETSU policy, the Chief Research Officer (Vice Provost for Research and Sponsored Programs) shall serve as the Empowered Official (EO) for all aspects of export control. The EO shall maintain current knowledge of export control issues and regulations and is responsible for implementing the foregoing plan.

B. Regulatory Compliance Officer

The ETSU Export Control Compliance Policy charges the Office of the Vice Provost for Research and Sponsored Programs (ORSP) with monitoring and directing compliance with export control regulations. The Regulatory Compliance Officer (RCO) will assume

responsibility for educating the campus community on export control issues, serving as a consultant when export control issues arise, assisting with license application, and coordinating the activities of the ETSU Export Control Advisory Committee.

The RCO is the primary contact for anyone with export control questions or needs. The RCO convenes the Export Control Advisory Committee as deemed necessary to resolve export control issues that arise. In addition, the RCO performs the following tasks:

1. Compliance Review of Sponsored Projects

The RCO reviews all sponsored program files to identify any export control issues on sponsored projects.

2. Visual Compliance Screening

The RCO enters names of visiting foreign researchers and foreign vendors on Visual Compliance and documents results. The RCO receives and reviews Visual Compliance updates by email.

3. Website Management

The RCO is responsible for maintaining the ETSU Export Control website (<http://www.etsu.edu/research/ExportControl/>). The RCO will post relevant materials on the website to support the training and education of the campus community.

4. Education and Training

The RCO will develop and conduct informational workshops for faculty and staff. Workshops will include an overview of export control regulations, examples of activities that may trigger export control applicability, explanations of exclusions and exemptions and a question and answer period. The RCO will also maintain relevant educational materials on the ETSU export control website (<http://www.etsu.edu/research/ExportControl/>).

C. Export Control Advisory Committee

The Export Control Advisory Committee will provide oversight and will make recommendations to the Empowered Official or his delegate to implement procedures and encourage compliance with export control regulations. The Committee will work with ORSP, Procurement, Shipping and Receiving, Travel, International Programs and Services and others to establish appropriate guidelines.

Accepted:

William R. Duncan

Dr. William R. Duncan
Vice Provost for Research and Sponsored Programs

11/14/11

Date

Bert Bach

Dr. Bert Bach
Provost, Vice President for Academic Affairs

11/16/11

Date

Paul E. Stanton

Dr. Paul E. Stanton
President

11/17/11

Date

Appendix A

Export Control Compliance Policy

Authority: Provost and Vice President for Academic Affairs

History: Established 11/10/11

Source of Authority:

Export Administration Regulations (EAR) 15 CFR 700-799;
International Traffic in Arms Regulations (ITAR) 22 CFR 120-130;
Office of Foreign Assets Control (OFAC) regulations; National
Security Decision Directive 189 (NSDD 189); UNC GA Policy
Manual 500.1

Responsible Office:

The Office of Research and Sponsored Programs (ORSP)

I. Purpose

East Tennessee State University (ETSU) is committed to complying with all applicable laws and regulations regarding federal export controls, including those implemented by the Department of Commerce through its Export Administration Regulations (EAR), the Department of State through its International Traffic in Arms Regulations (ITAR), and those imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC).

II. Scope

The ETSU Export Control Compliance Policy applies to all university employees, both full and part time, including faculty and students. These policies, as amended from time to time, shall be deemed to be a part of the conditions of employment of every employee, including student employees, and of the conditions of enrollment and attendance by every student at the institution.

III. Policy

A. Free Dissemination of Research Findings

While it is recognized that it may be necessary for a faculty member or student in carrying out a research project to gain knowledge of information considered to be controlled technology by the government or proprietary by a private company, faculty and students of the university must have the right to disseminate freely and openly their

research findings, and research sponsors may not abridge this basic right. Research conducted under any form of sponsorship must maintain the university's open teaching and research philosophy and must adhere to a policy that prohibits secrecy in research. ETSU is committed to maintaining a teaching and research environment that is open for the free exchange of ideas among faculty and students in all forums— classrooms, laboratories, seminars, meetings, and elsewhere. Such an environment contributes to the progress of research in all disciplines. There can be no fundamental limitation on the freedom to publish as the result of accepting extramural research support. Restrictions on publication of the results of research are incompatible with the basic concept of an educational institution as a source of knowledge.

B. Defense-related Research

The university will not knowingly undertake research on weapons development, or directly on problems of chemical and biological warfare, except in times of declared national emergency and upon request of governmental authority. (Such research brings with it extensive export control regulations.) The EO is authorized to waive this requirement if it is in the national, state, or institutional interest to do so. The university will not attempt to determine whether or not a study, the results of which may have broader applications in the civilian economy, may conceivably also be used in some way for military purposes. The university will continue to accept support for research contracts and grants through the Department of Defense as well as through other defense-related government agencies as long as they meet the general university criteria for research.

IV. Delegation of Responsibilities

A. Plan Implementation and License Application

The Empowered Official (EO) is ultimately responsible for implementing ETSU's export control management plan and for license application or other approval through the regulatory agencies. Accordingly, the EO must be knowledgeable of the applicable regulations and be legally empowered to sign license applications on behalf of ETSU. The Vice Provost for Research and Sponsored Programs is best suited to serve as the EO at ETSU. The EO has the independent authority to enquire into any aspect of a proposed export or temporary import by the applicant, verify the legality of a transaction and the accuracy of the information submitted, and refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

B. Compliance and Training

The Office of Research and Sponsored Programs (ORSP) has been charged with the responsibility for review and approval of proposals for sponsored research, clearance of sponsored programs through appropriate university channels, and for assistance in negotiation with sponsoring agencies. ORSP is delegated the responsibility to monitor and direct ETSU's compliance with export control regulations. ORSP will prepare,

maintain and update detailed guidelines for complying with the federal statutes and regulations which require export control compliance.

C. Oversight

The Vice Provost for Research and Sponsored Programs shall appoint an Export Control Advisory Committee, consisting of no less than seven members, one of whom shall be designated by the Vice Provost to serve as chair. In addition to the EO, a representative from the following areas shall serve on the committee: Office of Research and Sponsored Programs Administration; International Advisory Council; Office of Information Technology; and a faculty member from a science department. The regulatory compliance officer shall serve *ex officio* and will convene the committee. University counsel may be consulted for guidance when needed. The committee shall review and recommend procedures for the implementation of this policy and compliance with export control statutes and regulations; shall resolve questions of restrictions on dissemination of research or involvement of foreign nationals in research; shall resolve questions on restrictions related to overseas travel and shipment or export of controlled items by faculty; and shall make such recommendations as are deemed appropriate to encourage compliance with export control statutes and regulations and assure prompt and expeditious handling, evaluation, and resolution of export control issues related to research opportunities.

V. Procedures

ETSU faculty, staff and students are required to communicate with ORSP on concerns about export control regulations and comply with directives from the ORSP which attempt to assist them in their compliance with these regulations. Before entering into a research project, exporting technology or interacting with foreign nationals in research which may involve the use of what export control regulations deem "controlled technology," all parties involved, including the faculty member(s), the graduate student(s), the department head(s), and the dean(s), shall contact the ORSP for assistance in determining both the nature and extent of the restrictions required of the members of the university.

A. ETSU faculty and staff must take the following steps to assure that they do not violate the export regulations and become personally liable for the substantial civil and criminal penalties:

1. Shipping Commodities

Prior to shipment of any commodity out of the U.S., determine if the commodity requires an export license and assist in securing such license, when required. Secure license approval or verify license exception prior to shipment for all controlled items. Contact ORSP for guidance for verifying license exceptions and submission of license applications.

2. Release of Technical Data

Assure that all technical data about export-controlled commodities, technologies or software qualify as "publicly available" under the export control regulations (e.g., publish early and often) prior to releasing data to foreign nationals.

3. Sharing Export-Controlled Information

If the researcher has a need to share export-controlled information with others, the researcher must then determine a proposed recipient's eligibility under export control regulations. This is done by notifying ORSP of the need to share the export-controlled information before it is shared in order to assure proper determination of export control eligibility. If the proposed recipient is determined to be a foreign national and eligible to receive the export-controlled information, the primary researcher must document the available license exclusion or license exception.

4. Review any Confidentiality/Non-Disclosure Agreements

Review any Confidentiality/Non-Disclosure Agreements to insure that ETSU is not assuming the burden of restricting dissemination based on citizenship status or securing licenses.

B. University employees and students must refrain from the following steps:

1. Restrictions on Employment or Participation

Any clause which restricts employment or participation in university research on the basis of citizenship is contrary to policy and should not be accepted. Consistent with this policy, it is university practice that access to university classrooms, libraries, laboratories, and specialized research facilities is open, without regard to citizenship, residency status, or Visa category. Questions regarding citizenship status may not be asked of those entering such facilities due to the classification of the technology located at the facility.

Before entering into a research project which contemplates restrictions either on the release or publication of information or results, or the involvement of foreign nationals, all parties involved, including the faculty member(s), the graduate student(s), the department head(s), and the dean(s), shall contact the ORSP for assistance in determining whether these restrictions will trigger the need for further steps in order to comply with export control regulations and how to next proceed. No agreement, however, may interfere with the publication or oral defense of research theses and dissertations of graduate students.

2. Publication Restrictions

Do not accept publication controls or access/dissemination restrictions (such as approval requirements for use of foreign nationals), enter into “secrecy agreements,” or otherwise agree to withhold results in research projects conducted at ETSU or that involve ETSU facilities, students, or staff.

3. Receipt of Confidential Information

Do not accept proprietary information from another that is marked "Export Controlled." Return to the manufacturer any materials they provide to you about export-controlled equipment that is marked "Confidential." If the researcher believes that such information or materials are necessary to his or her research, he or she must contact ORSP. If the receipt of such information is in compliance with university policy or a request for an exception to university policy needs approval, the researcher must contact ORSP and explain the reason it is in compliance or request approval.

4. Closed Meetings and Conferences

Do not attend meetings that foreign nationals are specifically prohibited from attending. Do not sign the DD2345, Militarily Critical Technical Data Agreement, as a condition of attending a conference or receiving materials from the government.

5. Traveling to Embargoed Countries

Do not travel to conduct research or educational activities to embargoed countries without first checking with ORSP to ascertain whether a license from the Department of Treasury, Office of Foreign Assets Control, is required. A link to lists of embargoed countries can be found on the ETSU Export Controls website.

Contact ORSP for assistance if you encounter problems in any of the above areas. ORSP staff will help you resolve the matter so that your research may proceed in a manner that avoids violation of the export regulations.

VI. Recordkeeping Requirements

Each of the relevant export control regulations contain specific recordkeeping requirements that must be satisfied. In addition, the university maintains its own recordkeeping requirements in order to document its commitment to, and compliance with, export control regulations generally. Departments or programs must keep soft or hard copies of all export documentation, including financial records, shipping documentation (Commercial Invoices, Shipper's Export Declarations), and any internal campus forms related to export control regulations in their research project files for a period of five years from the date of the export, re-export or controlled deemed export.

Furthermore, any original campus form related to export control must be provided to ORSP, who shall also maintain a copy for a period of five years as described above.

11/11/11