

UTHSC Export Control Policy

It is the policy at the University of Tennessee Health Science Center (UTHSC) that all personnel, including employees, students and visiting scholars, comply with all United States export control laws and regulations. Failure to comply with these regulations may result in civil and criminal penalties both for the employee exporting the item and/or information out of the country and for the institution.

For answers to questions about or information regarding this policy, contact Francine Rogers (frogers1@utmem.edu) in the Office of Research Compliance (ORC).

BACKGROUND:

Export control laws, for reasons of national security, regulate the shipment of goods and/or the transfer of technological data or information to foreign nationals or foreign countries. The primary federal laws regulating export are:

- 1) International Traffic in Arms Registration (ITAR), administered by the State Department.
- 2) Export Administration Regulations (EAR), administered by the Commerce Department.
- 3) Foreign Asset Control Regulations, administered by the Treasury Department through its Office of Foreign Assets Control (OFAC).

The U.S. Department of Commerce must issue an export license or provide an exemption before any tangible item, software or information located on the Commerce Control List may be exported or re-exported. The U.S. State Department must do the same for items, software or information on the U.S. Munitions List. Failure to secure the required licenses or exemptions subjects the individual to possible criminal and civil penalties as well as to university sanctions.

APPLICABILITY:

Most research conducted at UTHSC is exempt from export controls by the fundamental research exemption. Fundamental Research is defined as “basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community.” Research involving product development, production, design or use and having results that are restricted for proprietary or national security reasons, does not fall under the fundamental research exemption. Contracts restricting the dissemination of research results usually prevent those results from being publicly available and exclude those results from the fundamental research exemption. The fundamental research exemption applies only to the dissemination of research data and information, not to the transmission of material goods. Travelling abroad with a computer raises additional issues for consideration including those related to: software, information, or encryption stored on the computer, accessibility to the software, information, or encryption stored on the computer as well as the physical security of the computer which may be compromised by leaving the computer unattended or in the foreign country.

The UTHSC has a policy of openness in research. Thus, contractual requirements restricting access of foreign nationals to research data and laboratories conflict with this policy and create problems for the university. While UTHSC may accept research agreements that result in the generation of data

subject to export controls and which include requirements limiting the involvement of foreign nationals, such agreements must be evaluated individually.

This policy also covers "Deemed Exports," defined by Export Administration Regulations (EAR) as the release of technology or source code subject to the EAR to a foreign national in the United States. Any such release is "deemed" to be an export to the home country of the foreign national. Situations that can involve the release of U.S. technology or software include foreign nationals involved in specific research, development, and manufacturing activities such as:

- Laboratory tours
- Face-to-face interactions
- Telephone conversation
- E-mail
- Fax
- Sharing of computer files
- Visual inspections

The PRIMARY export control issue facing universities is related to deemed exports.

Foreign nationals are subject to deemed export requirements unless they are granted:

- U.S. citizenship;
- Permanent residence status (i.e., "Green Card" holders); or
- Status as a "protected individual." Protected individuals include political refugees and political asylum holders.

RESPONSIBILITIES:

All UTHSC personnel involved in research of any type, funded or not funded, are responsible for familiarizing themselves with basic export control regulations and for reviewing these regulations to determine whether they apply before initiating a new project. All engaged in any research are expected to periodically review the project to determine whether any changes in type, personnel or sponsorship have occurred that now bring export control policies to bear. The University of Tennessee system's web site (<http://research.utk.edu/exportcontrol/>) contains detailed information regarding all aspects of export control. It also contains a "Decision Tree" to assist investigators in determining whether their research is exempt from export control regulations. If the investigator determines that a project is not exempt from export control regulations or if he/she is unsure whether a project is exempt, it is his/her responsibility to notify the ORC (frogers1@utmem.edu).

It is the responsibility of the ORC to assist investigators in determining whether their research is covered by export control regulations. If the decision is made to go forward with non-exempt research the ORC will also assist in obtaining the required licenses. Periodically the ORC presents courses on biosafety and compliance. These courses also contain information regarding export control.