

# Policy 460: Export Control

**Responsible Department:** Office of Institutional Compliance & Risk Management

**Responsible Administrator:** Director, Institutional Compliance & Risk Management and Export Control Officer

**Effective Date:** 03/01/2022

**Date of Last Review:** April 2023

**Date of Scheduled Review:** April 2027

## I. PURPOSE OF THIS POLICY

The purpose of this Policy is to provide guidance and facilitate compliance with United States export control laws and regulations at Abilene Christian University (ACU); to establish the procedural framework for handling export control matters; and to clarify the responsibilities of certain departments and officials with respect to export controls.

## II. SCOPE

This Policy applies to all persons or entities employed by or acting on behalf of the University, including but not limited to faculty, staff, students, consultants, and volunteers.

### Policy Exemptions

None. Exclusions from the applicability of certain export control laws and regulations are explained in this Policy and in guidance documents, but do not excuse any person from compliance with Policy requirements.

## III. DEFINITIONS USED IN THIS POLICY

- *Controlled Research.* Research that does not fall under the Fundamental Research Exclusion, because the University and/or PI have accepted restrictions on the publication of research, intend to keep resulting technology non-public and proprietary, and/or have accepted restrictions on foreign national project participation.
- *Deemed Export.* The release or transmission of controlled information or software to any foreign person in the U.S. Such a release of information is considered to be an export to the foreign person's home country or country of current citizenship.
- *Export.* Any item (i.e., commodity, software, technology, equipment, or information) sent from the U.S. to a foreign destination. Examples of exports include the actual shipment of goods as well as the transfer of written documents or information via email, phone, fax, internet, and verbal conversations.

- *Export Control Office (“Export Control”).* The ACU function responsible for the comprehensive administration of the ACU export control program. The Export Control Office is part of the Office of Institutional Compliance & Risk Management, reporting to the Chief Financial Officer.
- *Export Control Officer (“ECO”).* The individual primarily responsible for management of the ACU Export Control Program, under the guidance of the Export Control Office.
- *Export License.* A written authorization provided by the appropriate governing regulatory authority detailing the specific terms and conditions under which export or re-export of export-controlled items is allowed.
- *Export License Exception.* An authorization that allows one to export or re-export, under very specific conditions, items that would normally require a license. Export license exceptions are detailed in Export Administration Regulations (EAR) § 740.
- *Export Control Regulations.* The federal laws governing the export of commodities, equipment, materials, software, technology, and services. These laws and regulations include primarily the Department of State International Traffic in Arms Regulations (“ITAR”) (see 22 CFR Part 120-130), the Department of Commerce Export Administration Regulations (“EAR”) (see 15 CFR Part 730-774), and/or the Department of Energy- Nuclear Regulatory Commission Export Regulations (see 10 CFR Parts 110 and 810).
- *Foreign Person.* Anyone who is not a U.S. citizen, or who is not a lawful permanent resident of the U.S., or who does not have refugee or asylum status in the U.S. Any foreign corporation, business association, partnership, trust, society, or any other foreign entity or group as well as international organizations and foreign governments are considered foreign national(s).
- *Fundamental Research.* As defined by National Security Decision Directive 189 (NSDD 189): any “*basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community...*” is not subject to export control under the fundamental research exclusion.
- *Re-export.* Occurs whenever any item (i.e., commodity, software, technology, equipment or information) is sent from one foreign country to another foreign country.
- *Restricted Party.* An individual or entity who is on one of the lists published by the Departments of Commerce, State, or the Treasury. All exports to a restricted party are specifically prohibited without a license.
- *Sanctioned and/or Embargoed Countries.* Certain individuals, entities, and countries with whom the U.S. government actively restricts U.S. persons or entities from conducting interactions for a variety of reasons. The following departments all maintain and enforce separate blocked and sanctioned lists:
  - Department of Commerce, see Export Administration Regulations, 15 C.F.R. §746 “Embargoes and other Special Controls”;

- Department of State, see International Traffic in Arms Regulations, 22 C.F.R. §126.1; and
- Department of the Treasury, see Office of Foreign Assets Control sanctions information
- *Technology Control Plan (TCP)*. A document generated by Export Control outlining the physical, information, and personnel security measures required to safeguard controlled exports.

## **IV. POLICY STATEMENT & PROVISIONS**

Abilene Christian University (“ACU”) fosters a diverse research environment conducive to the creation and dissemination of knowledge for the public good. The university also conducts research and commercial collaborations with industry and the federal government. All such activities may be subject to federal regulations covering certain exports with destinations and persons outside of the United States. In some cases, these regulations also apply to non-U.S. citizens at the university and within the United States.

ACU seeks to comply with applicable export control regulations in all university activities, including innovative research and collaborative efforts to further the creation and dissemination of knowledge for the public good while simultaneously protecting national security, foreign policy, and the economy and commerce.

### **Policy Background**

Since the 1940s the Departments of State, Commerce, and Treasury have regulated the transfer or release from the U.S. any export that has been deemed strategically important to the U.S. for reasons of national security, foreign policy, or the protection of the economy and commerce. These regulations are collectively referred to as ‘export controls’ or ‘export control regulations.’

Many research, teaching, or service activities conducted by university faculty and staff are shielded from these federal regulations by a long-standing Fundamental Research exclusion, which is discussed in more detail below. Even though the Fundamental Research exclusion may apply to the university’s activities, all potential exports must be reviewed for applicable export control regulations and assessment under the exclusion.

Failure to comply with the export control regulations may result in severe penalties to the institution, as well as criminal sanctions to those individual(s) involved. All personnel should familiarize themselves with this policy but especially the individuals working in the following areas:

1. Engineering, physical and computer sciences (especially those involved in defense-related research);
2. Biological sciences and medicine, including those working with select agents and infectious materials; and

3. Those conducting research or academic collaborations with colleagues in countries that have been designated as sanctioned and/or embargoed countries by the U.S. Departments of State and the Treasury.

### **Scope of this Policy**

Exports and sanctioned transactions subject to this policy include but are not limited to:

1. Activities or research in controlled areas (e.g., encryption technology, nuclear technology, chemical/biological weapons, and military technologies);
2. Activities involving the shipping or taking of equipment, technology, or software outside the U.S.;
3. Activities involving teaching and research collaborations with foreign colleagues or the participation or training of foreign nationals here or abroad;
4. Activities involving travel or work outside the U.S.;
5. Conducting tours of foreign nationals through research areas;
6. Conducting research sponsored by any entity restricting publication or participation by foreign nationals;
7. Performing works for hire, including testing services, educational services, etc.;
8. Activities involving the receipt and/or use of export-controlled information or technologies from other parties;
9. Activities involving the payment of foreign persons or entities;
10. Hosting foreign national visitors;
11. Activities related to the sharing, shipping, transmitting, or transferring of encryption software in source code or object code; and
12. Activities including sharing, shipping, transmitting, or transferring any item, information, or software that will support the research, design, development, production, stockpiling, or use of nuclear technology, chemical/biological weapons, or missiles.

### **Federal Administration**

The Departments of Commerce, State, and the Treasury are the principal administrative branches of the U.S. government involved in the oversight and enforcement of export control regulations.

1. The Department of Commerce, through the Bureau of Industry and Security, administers the Export Administration Regulations, controlling the export of dual-use items (i.e., items having both commercial and military applications) as well as strictly commercial items.
2. The Department of State, through the Directorate of Defense Trade Controls, administers the International Traffic in Arms Regulations, controlling the export of items developed primarily for military or space applications.
3. The Department of the Treasury, through the Office of Foreign Assets Control, enforces specific embargoes and/or sanctions.
4. The Department of Energy, through the Nuclear Regulatory Commission, administers specific regulations around the transfer of nuclear materials, items/equipment developed for use in a nuclear reactor, and/or technical data regarding the development/maintenance/operation of a nuclear reactor.

## **Compliance Roles and Responsibilities**

1. All personnel are responsible for ensuring their educational, research, and other business activities are conducted properly and in compliance with export control regulations, all requirements of this policy, and any technology control plan on which they are included.
2. ACU is not registered with the Department of State as an exporter of items, materials, software, and/or technology controlled under the ITAR. As such, ACU does not have an Empowered Official. If such time arises that ACU seeks to commence activities requiring registration under the ITAR, the University will appoint an Empowered Official to administer all matters regarding ITAR licensure and licenses.
3. The Export Control Office is responsible for oversight of compliance for all exports and sanctioned transactions. Duties include, but are not limited to:
  - a. Developing the university's Export Compliance Program;
  - b. Leading an Export Compliance Committee (as needed);
  - c. Developing and providing training to university faculty, staff, and students regarding export compliance regulations and procedures;
  - d. Providing guidance related to specific export issues/transactions;
  - e. Authorizing the import or shipment of items, materials, equipment, etc. (including the completion of customs documents);
  - f. Submitting export classification and license requests;
  - g. Corresponding with regulatory agencies relating to any export control matter and/or the ACU export control program; and
  - h. Executing other export-control related documents and actions as necessary.
4. The Export Compliance Officer (ECO) facilitates compliance with the university's responsibilities under export control regulations. Additionally, department administrators, units, the Office of General Counsel, and staff in sponsored research, human resources, purchasing/procurement, international affairs staff, technology commercialization, ACU Dallas, and other units work in conjunction with the ECO to facilitate compliance.
5. Failure to comply with export control regulations may result in substantial civil and criminal penalties to the university and the specific individual(s) involved, as well as administrative sanctions resulting in potential loss of federal funding and export privileges.

## **V. Procedures**

The Export Compliance Office will create and maintain procedures detailing the specific procedures and requirements necessary to implement this Policy. Because federal export laws and regulations frequently change, the Export Compliance Office and ECO shall have the authority and responsibility to address any issues of export control not addressed in this policy as they arise, and to implement and apply changes to the policy and procedures in furtherance of the best interests of the University.

## **Licenses**

The ECO is responsible for applying for the appropriate license in the event of a request for a controlled export. ACU must secure from the U.S. Department of Commerce an export license or an exemption from licensing requirements before any tangible item, software, or information contained in the [Commerce Control List](#) in the EAR may be exported or re-exported. Likewise, ACU must secure from the U.S. Department of State an export license or an exemption from licensing requirements for any items, software, or information contained in the U.S. Munitions List in the ITAR before such items may be exported or re-exported. ACU must secure from the U.S. Department of Energy an export license or report any exemptions from licensing requirements for any items, software, or information covered under 10 CFR 810 before such items may be exported or re-exported. This list is not inclusive of all potential licensing requirements. Any questions should be directed to the ECO.

### **Foreign Shipments**

The ECO is charged with determining whether or not an export license is required for the shipment of items, software, technology, and information outside of the United States. In order to determine if an export license is necessary, the individual preparing the shipment or transfer must provide the ECO with the information necessary to complete an export review of the proposed shipment.

If the ECO determines that a license is required for the shipment, the ECO will prepare and apply for the appropriate license.

Certain overseas shipments or transmissions that are exported without a license will require documentation warranting and justifying the uncontrolled classification. The shipper should prepare such documentation in advance with the assistance of the ECO.

### **Disclosures or Transfers to Foreign Persons (Deemed Exports)**

The ECO will work with PIs, supervisors, and/or other responsible individuals to determine whether or not an export license is required for the disclosure or transfer of controlled tangible items, software, technology, or information to foreign persons. An export may be deemed to occur, and a license may therefore be required, even though the transfer or disclosure occurs within the United States. In order to determine if an export license is necessary for items, software, technology, or information that is disclosed or transferred to foreign persons, the individual seeking the export must provide the ECO with information regarding the technical data that will be transferred, the method of disclosure, the citizenship of the individual receiving the information, and other pertinent details of the deemed export.

### **Foreign Travel**

While most foreign travel does not require a license, traveling to certain countries with export-controlled items, software, technology, or information may require an export license. It is the responsibility of ACU faculty, staff, students, and others traveling on ACU business to submit an official notification to The Office of Institutional Compliance & Risk Management at

[risk@acu.edu](mailto:risk@acu.edu) (which includes the Export Control Office) prior to departure in order to obtain information on the necessary insurance for the proposed travel.

### **Research and Accepting Controlled Items or Data from Others**

The results of Fundamental Research may proceed openly and be shared freely with foreign nationals in the U.S. without concern for export restrictions. However, export-controlled items, software, technology or information *provided by a third party* may not be openly shared with certain foreign nationals, even though such individuals may be important contributors to the output of Fundamental Research utilizing the controlled item. Since the determination of what constitutes “Fundamental Research” is complex, the responsibility and authority for that determination is granted to the Export Control Office. Individual researchers, department heads, or others do not have the authority to make such determinations unilaterally.

Before a researcher decides to accept export-controlled items, software code or information provided by a third party, the researcher must determine the nationality of individuals who will have access to the item, code, or information. The researcher must then work in conjunction with the ECO to determine each recipient's eligibility under export control regulations. This determination must be made *before* the export-controlled item, code, or information is shared with the recipient. If the proposed recipient is eligible to receive the export-controlled information, the researcher must work with the ECC to document the available license exclusion or license exception.

Research that does not qualify as Fundamental Research often results from acceptance of restrictions on publication relating to the work. Likewise, services (distinct from research) that are performed for non-ACU sponsors do not fall under the Fundamental Research Exclusion. Such Controlled Research is subject to export control requirements, and must be carefully reviewed by the ECO to determine whether deemed exports may occur. The ECO will work with sponsored research, technology development, and the PI/unit to review proposed Controlled Research and/or Services as early as possible to identify potential export control concerns.

### **Recordkeeping Requirements**

Export control regulations contain specific recordkeeping requirements that must be satisfied. Departments must retain copies of all export documentation, including financial records, shipping documentation, and appropriate certifications in their project file for a period of five years from the date of the export, re-export, or deemed export. Additionally, the Export Compliance Office maintains a recordkeeping system in order to document the University's commitment to, and compliance with, export control regulations.

### **Technology Control Plans (“TCP”)**

To ensure adequate protection of export-controlled tangible items, software, technology, and information, a TCP or other control plan may be required for all research and other activities

involving data, material, or technology that involves export controlled items, equipment, materials, software, data, and/or services.

## **VI. COMPLIANCE**

Failure to secure the required licenses, or other failure to comply with this Policy, subjects the individual, and others involved, to potential *criminal and civil penalties* as well as University sanctions. Violations also subject the University to potentially serious sanctions, including loss of the ability to export, loss of federal funding, and monetary penalties.

## **VII. REFERENCES**

- [Department of State International Traffic in Arms Regulations \(ITAR\)](#)
- [Department of Commerce, Export Administration Regulations \(EAR\)](#)
- [Department of the Treasury, Office of Foreign Assets Control \(OFAC\) Sanctions](#)
- [National Security Decision Directive 189: National Policy on the Transfer of Scientific, Technical and Engineering Information](#)
- [Department of Energy 10 CFR 810](#)
- [NRC 10 CFR 110](#)