



Export Control Decision Tree 1:

Travel or Shipping to Foreign Countries or Sharing Information with Foreign Nationals

United States export controls exist to protect the national security and foreign policy interests of this country. Export controls govern the **shipment, transmission, or transfer** of certain sensitive **items, information, or software** to foreign persons or entities. Where applicable, they may require authorization from the U.S. Government in the form of an export license. Most of the items, information or software that UNC Charlotte ships or shares with its colleagues and research partners is not of a nature that would be restricted for these purposes, nor are they destined for countries or individuals subject to U.S. embargoes or sanctions. We must, however, exercise due diligence, and this Decision Tree will ensure that we comply with U.S. export law and protect faculty and staff from unknowingly violating that law. Violations of the export control regulations can lead to significant civil and criminal penalties.

DEFINITIONS:

Foreign person - anyone who is not a "U.S. person."

U.S. person - a citizen of the United States, a lawful permanent resident alien of the U.S. (a "green card holder"), a refugee, protected political asylee or someone granted temporary residency under amnesty or Special Agricultural Worker provisions.

Person - includes organizations and entities, such as universities. The general rule is that only U.S. persons are eligible to receive controlled items, information, or software without first obtaining an export license from the appropriate agency.

Item - any tangible thing, equipment, or hardware.

Information - technical data such as models, formulae, engineering designs, and specifications, or technical assistance such as training or instruction.

Software - a collection of one or more computer programs in either source code (programming statements) or object code (machine-readable instructions).

QUESTION 1:

Is the item being shared, shipped, transmitted, or transferred a **defense article*** or **technical data**** on the ITAR **U.S. Munitions List (USML)*****?

IF NO, GO TO QUESTION 2.

IF YES, GO TO THE EXPORT CONTROL DECISION TREE 2 (ITAR)

* A defense article:

1. Is specifically designed, developed, configured, adapted, or modified for a military application, and
 - a. does not have predominant civil applications, and
 - b. does not have performance equivalent (defined by form, fit and function) to those of an article or service used for civil applications;
2. Is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability (examples are nuclear, biological, or chemical weapons and satellite technology with military application); or
3. Is on the U.S. Munitions List (USML, the State Department ITAR list).

** Technical data means:

1. Information, other than software, 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.
2. Classified information relating to defense articles and defense services.
3. Information covered by an invention secrecy order.
4. Software directly related to defense articles.

"Technical data" does NOT include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities, information in the public domain, or information generated in the course of performing "fundamental research."

It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

*** The **U.S. Munitions List (USML)** is a list of articles, services, and related technology designated as defense-related. This designation is pursuant to sections 38 and 47(7) of the Arms Export Control Act (22 USC 2778 and 2794(7)). These articles fall under the export and temporary import jurisdiction of the Department of State. Any article, service, or related data found to be on the USML requires an export license issued by the State Department.

QUESTION 2:

Are you sharing, shipping, transmitting, or transferring UNC Charlotte-developed, non-commercial **encryption software*** in source code or object code (including travel outside the country with such software)?

IF NO, GO TO QUESTION 3.

IF YES, STOP.

REVIEW THE "ENCRYPTION" TOPIC IN THE UNC CHARLOTTE EXPORT MANAGEMENT PLAN.

YOU MAY NEED TO OBTAIN AN EXPORT LICENSE. CONTACT THE EXPORT CONTROL OFFICE FOR FURTHER ASSISTANCE (exportcontrols@uncc.edu).

* The sharing, shipping, transmission, or transfer of almost all encryption software in either source code or object code is subject to U.S. export regulations (see UNC Charlotte Export Management Plan for a discussion of encryption).

Publicly available software under the EAR is exempt from export control. However, before strong encryption code is made publicly available via the internet or otherwise placed electronically in the public domain, the U.S. government must be notified of the internet location (URL) of the code. This must be done before making the software publicly available. Notification after the software is publicly available could be an export control violation.

ACTION REQUIRED

Create a publicly accessible website where your UNC Charlotte-developed strong encryption software will be available. Next send an email to **BOTH crypt@bis.doc.gov and enc@nsa.gov** with a short description of the software and the URL to the website where the software can be downloaded. Do **not** attach the software to the email. Then upload the software (both source code and object code) to the website. The encryption software must be freely downloadable by all interested members of the scientific community at no charge and without UNC Charlotte's knowledge of whom or from where the data is being downloaded. This means no login requirement or other password or authentication procedures. You do not have to notify the Government of updates or modifications to your encryption code as long as the URL of your publicly accessible website does not change.

Publicly available dual-use encryption software that does not entail "strong" encryption requires neither government notification nor review and can be freely shipped, shared, transferred, or transmitted outside of the U.S.

Two License Exceptions are available when the tangible export of items and software containing encryption code is necessary for travel or relocation:

- License Exception TMP (Temporary Exports) allows those departing from the U.S. on University business to take with them as "tools of the trade" UNC Charlotte-owned or controlled, retail-level encryption items such as laptops, PDAs, and cell phones and encryption software in source or object code to all countries except Sudan and Cuba, as long as the items and software will remain under their "effective control" overseas and are returned to the U.S. within 12 months or are consumed or destroyed abroad;
- License Exception BAG (Baggage) allows individuals departing the U.S. either temporarily (travel) or longer-term (relocation) to take with them as personal baggage family-owned retail-level encryption items including laptops, PDAs, and cell phones and encryption software in source or object code. The encryption items and software must be for their personal use in private or professional activities. Citizens and permanent resident aliens of all countries except Cuba, Libya, Syria, Sudan, North Korea and Iran may take with them as personal baggage non-retail "strong" encryption items and software to all locations except embargoed or otherwise restricted locations.

QUESTION 3:

Do you know or have any reason to believe that the item, information, or software to be shared, shipped, transmitted or transferred will support the design, development, production, stockpiling or use of a **nuclear explosive device, chemical or biological weapons, or missiles***?

IF NO, GO TO QUESTION 4.

IF YES, STOP.

YOU MAY NEED TO OBTAIN AN EXPORT LICENSE. CONTACT THE EXPORT CONTROL OFFICE FOR FURTHER ASSISTANCE (exportcontrols@uncc.edu).

* US persons are specifically prohibited from engaging in activities, either directly or indirectly, that support the proliferation of nuclear explosive devices and missiles to certain countries and their nationals without an export license. Furthermore, U.S. persons are specifically prohibited from knowingly engaging in activities that support the proliferation of chemical or biological weapons to **any** country and its nationals without an export license. Prohibited activities include direct support (through sharing, shipping, transmission, or transfer), or indirect support (through financing, contracting, servicing, transportation, support, or employment) that a U.S. person knows will facilitate the proliferation of these weapons of mass destruction (WMD) in or by those countries. In addition, an individual or organization is prohibited from proceeding with a shipment, transmission, or transfer of equipment or software, or from a disclosure of information, with the knowledge that an export control violation has, or is about to, occur.

Certain chemical and biological weapons agents and precursors are listed on the U.S. Munitions List (USML) at Category XIV and on the Commerce Control List (CCL) in Category 1 at 1C350 through 1C360.

QUESTION 4:

Was the item, information, or software to be shared, shipped, transmitted or transferred developed under a sponsored agreement imposing **publication restrictions*** beyond a brief review (up to 90 days) for patent protection and/or inadvertent release of confidential/proprietary information?

IF NO, GO TO QUESTION 5.

IF YES, STOP. DO NOT GO ANY FURTHER WITHOUT GETTING ADVICE.

YOU MAY NEED TO OBTAIN AN EXPORT LICENSE. CONTACT THE EXPORT CONTROL OFFICE FOR FURTHER ASSISTANCE (exportcontrols@uncc.edu).

* Research carrying publication and dissemination restrictions may preclude characterization of the effort as "fundamental research." As a result, you may be facing prohibitions limiting the participation of foreign persons.

"Fundamental research" is defined as basic or applied research in science or engineering, the results of which are intended to be shared with the interested scientific community or otherwise placed in the public domain. Fundamental research, by definition, is free of access, participation, or dissemination restrictions.

Fundamental research is granted special status by U.S. export regulations, such that participation by foreign persons in such research does not require export licenses to be obtained. If the research is other than "fundamental," then the conduct, products and results of that research may be subject to the full array of export control restrictions.

QUESTION 5:

Did an external sponsor, vendor, collaborator or other third party provide, under a **Non-Disclosure or Confidentiality Agreement***, the item, information, or software to be shared, shipped, transmitted or transferred?

IF NO, GO TO QUESTION 6.

IF YES:

Is the item, information or software provided under a **Non-Disclosure or Confidentiality Agreement**** central to the research program and/or do the disclosure restrictions affect the ability to publish the research results?

IF NO, GO TO QUESTION 6.

IF YES, STOP. DO NOT GO ANY FURTHER WITHOUT GETTING ADVICE.

YOU MAY NEED TO OBTAIN AN EXPORT LICENSE. CONTACT THE EXPORT CONTROL OFFICE FOR FURTHER ASSISTANCE (exportcontrols@uncc.edu).

* A reminder about NDAs and similar confidentiality agreements:

UNC Charlotte faculty may be asked to accept confidential, proprietary, or export controlled data or material as part of a research project subject to a Non-Disclosure Agreement (NDA) signed by both the discloser and the recipient. NDAs may include **licensing agreements** which limit or prohibit the disclosure or transfer of the licensed data or materials.

In general, an NDA should not restrict openness in research. That is, the information must be entirely peripheral to the research program (sufficiently remote from the intellectually significant portions of the research) and the disclosure restriction should not affect the ability to publish the research results.

If you DO accept confidential or proprietary information subject to a Confidentiality or Non-Disclosure Agreement, and the disclosure restrictions affect your ability to publish research results, the research itself will lose its characterization as "fundamental research" for export control purposes. Should the research entail information or software identified on U.S. export control lists, and you wish to have foreign nationals participate in the research, you may be required to obtain an export license.

Of course, if the confidential data pertains to such information as personal health, income, or other demographic data that does not have a strategic significance (and is thus not identified on U.S. export control lists), then export control restrictions on foreign national participation would not apply.

** If you accept confidential or proprietary information subject to a Confidentiality or Non-Disclosure Agreement (NDA), and you have agreed that the information may not be published or made publicly available as part of your research results, this information will be considered to be export-controlled. As a result, if you wish to share that information with a foreign national (including foreign national students or staff here at UNC Charlotte), you may be required to obtain an export license.

QUESTION 6:

Are you shipping or transferring items on the **Commerce Control List (CCL)*** of the Export Administration Regulations (EAR)?

IF NO, GO TO QUESTION 7.

IF YOU DON'T KNOW, WE NEED TO DO A COMMODITY CLASSIFICATION.

IF YES, WE NEED TO LOOK AT THE CONTROL CATEGORY AND CHECK THE COUNTRY LIST.

YOU MAY NEED TO OBTAIN AN EXPORT LICENSE. CONTACT THE EXPORT CONTROL OFFICE FOR FURTHER ASSISTANCE (exportcontrols@uncc.edu).

* The Commerce Control List (CCL) is maintained by the Bureau of Industry and Security (part of the U.S. Department of Commerce) as part of the Export Administration Regulations (EAR). This list is sometimes called the "dual use" list, as the items on it may have either a military or commercial application.

QUESTION 7:

Are you sharing, transmitting, or transferring **technology (information)* or software code**** on the Commerce Control List (CCL)?

IF NO, GO TO QUESTION 10.

IF YOU DON'T KNOW, WE NEED TO DO A COMMODITY CLASSIFICATION.

IF YES, GO TO QUESTION 8.

* The EAR defines "technology" as:

Specific information necessary for the "development", "production", or "use" of equipment or software. Technology includes information subject to the EAR released in the form of technical assistance or technical data. Technical assistance includes instruction, skills training, working knowledge, consulting services. Technical assistance may involve transfer of export controlled information.

Technical data includes 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.

Information that is, or will be, placed in the public domain, such as that generated by [Fundamental research](#) (see § 734.8), is not subject to the EAR and is exempt from export control regulations.

** The EAR defines software code as a collection of one or more programs or microprograms fixed in any tangible medium of expression. Software code is comprised of source code or object code:

Source Code: A convenient expression of one or more processes that may be turned by a programming system into equipment executable form ("object code" or object language).

Object Code: An equipment-executable form of a convenient expression of one or more processes ("source code" or source language) that has been converted by a programming system.

QUESTION 8:

Is the CCL-listed information or software that you are going to share, ship, transmit or transfer either **published, patented, or generally accessible** to the interested public in any form*?

IF NO, GO TO QUESTION 9.

IF YES, GO TO QUESTION 10.

* CCL-listed information and software that is generally accessible to the interested public in any form is considered to be publicly available and excluded from export controls.

CCL-listed information becomes publicly available through/at one or more of the following:

- [Fundamental research](#) (see § 734.8) in science and engineering performed at an accredited institution of higher learning **in the US**;
- 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, either free or at a cost not exceeding the cost of reproduction and distribution (with allowance for a reasonable profit on the reproduction and distribution of such materials);
- Libraries open to the public or from university libraries;
- Through subscriptions which are available without restriction either free or at a cost not exceeding the cost of reproduction and distribution (with allowance for a reasonable profit on the reproduction and distribution of such materials);
- Published patents and open (published) patent applications available at any patent office; **and/or**
- Unlimited distribution at conferences, meetings, seminars, trade shows, or exhibitions **in the U.S. or abroad** that are generally accessible to the public for a fee reasonably related to the cost, and where attendees may take notes.

CCL-listed software becomes publicly available through/at one or both of the following:

- General distribution either free or at a cost not exceeding the cost of reproduction and distribution (with allowance for a reasonable profit on the reproduction and distribution of such materials); **and/or**
- Websites which are accessible to all members of the public, free of charge, and where UNC Charlotte does not have knowledge or control of who visits the site or downloads the information or software (*i.e.*, no password control).

NOTE: In order for information or software resulting from fundamental research to be considered publicly available, the information or software must have been generated in the course of performing the research **within the United States**. Information and software resulting from research undertaken outside of the United States is not treated by U.S. export control law as publicly available, and is subject to export control, unless it qualifies under other “publicly available” criteria.

QUESTION 9:

Did the CCL-listed information or software that you are going to share, ship, transmit or transfer arise during or result from **third party proprietary research**, not ordinarily published and shared broadly within the scientific community*?

IF NO, GO TO QUESTION 10.

IF YES, STOP. DO NOT GO ANY FURTHER WITHOUT GETTING ADVICE.

YOU MAY NEED TO OBTAIN AN EXPORT LICENSE. CONTACT THE EXPORT CONTROL OFFICE FOR FURTHER ASSISTANCE (exportcontrols@uncc.edu).

* Information and software generated by a third party from proprietary research, such as industrial development, design, production, and use technology that is ordinarily restricted for proprietary reasons and not published and shared broadly with the scientific community, does not constitute fundamental research according to U.S. export regulations. Only fundamental research is granted special status under those regulations whereby foreign persons are allowed to fully and freely participate in the research without the need for an export license.

Proprietary research and its results, however, are subject to the full array of export control restrictions.

NOTE: Commercial software (excluding encryption software) generated from proprietary research, although subject to export control, may be available for export without an export license under an [exception to license requirements](#) (§ 740.13, License Exception TSU - Technology and Software Unrestricted). Shipment, transfer, transmission or disclosure may be made to all destinations except Cuba, Libya, Syria, North Korea, Sudan, and Iran and their foreign nationals when the software qualifies as "mass market." "Mass market" software is software that is generally available to the public by being:

- A. Sold from stock at retail selling points without restriction, by means of:
 - o Over the counter transactions;
 - o Mail order transactions; or
 - o Telephone call transactions; **and**
- B. Designed for installation by the user without further substantial support by the supplier.

QUESTION 10:

Is the disclosure, shipment, transmission, or transfer going to an embargoed or otherwise restricted location or to an entity on any "Debarred," "Denied," or "Specially Designated" lists?

IF NO, GO TO QUESTION 11.

IF YOU DON'T KNOW, WE WILL NEED TO SEARCH THE VARIOUS LISTS.

IF YES, STOP.

YOU MAY NEED TO OBTAIN AN EXPORT LICENSE. CONTACT THE EXPORT CONTROL OFFICE FOR FURTHER ASSISTANCE (exportcontrols@uncc.edu).

Several federal agencies bar transactions with specific individuals, entities, or countries.

QUESTION 11:

Will you take a University-owned or controlled laptop, PDA, cell phone, or digital storage device for temporary use overseas (returning within 12 months)?

IF NO, STOP. YOU DO NOT NEED AN EXPORT LICENSE AND NEED DO NOTHING FURTHER.

IF YES:

Are any of these devices or their associated software designed for use in/with/by satellites or spacecraft or other defense articles?

IF YES, STOP.

YOU MAY NEED TO OBTAIN AN EXPORT LICENSE. CONTACT THE EXPORT CONTROL OFFICE FOR FURTHER ASSISTANCE (exportcontrols@uncc.edu).

IF NO, YOU PROBABLY QUALIFY FOR EXPORT LICENSE EXCEPTION TMP AND SHOULD SUBMIT THE [FORM FOR INTERNATIONAL TRAVEL WITH UNIVERSITY-OWNED EQUIPMENT](#).

EXPORT CONTROL DECISION TREE 2 (ITAR)

QUESTION 1:

Is the item being shared, shipped, transmitted, or transferred a **defense article*** other than information or software on the ITAR's U.S. Munitions List (USML)?

IF NO, GO TO QUESTION 2.

IF YES, STOP. DO NOT GO ANY FURTHER WITHOUT GETTING ADVICE.

YOU MAY NEED TO OBTAIN AN EXPORT LICENSE. CONTACT THE EXPORT CONTROL OFFICE FOR FURTHER ASSISTANCE (exportcontrols@uncc.edu).

* A defense article:

1. Is specifically designed, developed, configured, adapted, or modified for a military application, and
 - a. does not have predominant civil applications, and
 - b. does not have performance equivalent (defined by form, fit and function) to those of an article or service used for civil applications;
2. Is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability (examples are nuclear, biological, or chemical weapons and satellite technology with military application); or
3. Is on the U.S. Munitions List (USML, the State Department ITAR list).

QUESTION 2:

Is the information or software being shared, shipped, transmitted, or transferred **technical data*** on the ITAR's U.S. Munitions List (USML)?

IF NO, GO TO QUESTION 5.

IF YES, GO TO QUESTION 3.

* Technical data means:

1. Information, other than software, 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.
2. Classified information relating to defense articles and defense services.
3. Information covered by an invention secrecy order.
4. Software directly related to defense articles.

"Technical data" does NOT include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities, information in the public domain, or information generated in the course of performing "fundamental research."

It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

QUESTION 3:

Is the USML-listed information or software being shared, shipped, transmitted, or transferred either **published, patented or generally accessible and available*** to the public?

IF NO, GO TO QUESTION 4.

IF YES, GO TO QUESTION 5.

* USML-listed information and software that is generally accessible and available to the public is considered to be in the public domain and excluded from export controls. USML-listed information and software is released and placed into the public domain through/at one or more of the following:

- [Fundamental research](#) (see § 120.33 and § 120.34) in science and engineering performed at an accredited institution of higher learning **in the US**;
- Libraries open to the public or from where the public can obtain documents;
- Sales at newsstands or bookstores;
- Subscriptions available without restriction;
- Published patents available at any patent office;
- Unlimited distribution at conferences, meetings, seminars, trade shows, or exhibitions **in the U.S.** that are generally available to the public; **and/or**
- Websites that are accessible to all members of the public, free of charge, and where UNC Charlotte does not have knowledge or control over who visits the site or downloads the information or software (*i.e.*, no password control).

NOTE: In order for information or software resulting from fundamental research to be considered in the public domain, the information or software must have been generated in the course of research performed **within the United States**. Information and software resulting from research undertaken outside of the United States is not treated by U.S. export control law as having entered into the public domain, and is subject to export control, unless it qualifies under other “public domain” criteria.

QUESTION 4:

Is the USML-listed information or software to be disclosed, transmitted, or transferred to a **foreign person** in the US, other than to qualified UNC Charlotte employees*, or to a foreign person outside of the US?

IF NO, GO TO QUESTION 5.

IF YES, STOP. DO NOT GO ANY FURTHER WITHOUT GETTING ADVICE.

YOU MAY NEED TO OBTAIN AN EXPORT LICENSE. CONTACT THE EXPORT CONTROL OFFICE FOR FURTHER ASSISTANCE (exportcontrols@uncc.edu).

* The ITAR provides for an "Employee Exemption" that allows foreign persons who are "bona fide and full-time regular employees" of UNC Charlotte, and who meet certain qualifying criteria, to receive USML-listed information without an export license. These criteria are:

1. The employee's permanent abode throughout the period of employment is in the United States, and;
2. The employee is not a national of a country to which the ITAR prohibits exports of defense articles and services.

At present, the Employee Exemption is not available for nationals of: Belarus, Cuba, Iran, Libya, North Korea, Syria, Vietnam, Burma, China, Haiti, Liberia, Somalia, Sudan, Iraq, Afghanistan, Rwanda, and the Democratic Republic of the Congo.

If you wish to share USML-listed information with a foreign national who qualifies as a full-time bona fide employee of the University, you will need to document the Employee Exemption (see form at the end of this document).

NOTE REGARDING STUDENTS AND POSTDOCS: UNC Charlotte graduate students who are working as Graduate Assistants or Research Assistants on research projects, as well as the majority of postdoctoral scholars (depending on their funding source and visa status), are NOT considered to be UNC Charlotte employees for the purposes of export control regulations. Their role at UNC Charlotte is primarily that of a student/trainee and not of an employee.

The "Employee Exemption" applies to foreign nationals who have been hired through UNC Charlotte's central HR process and who are authorized to work full-time in the U.S. for a temporary period under a non-immigrant visa. In almost all instances, they will hold an H1-B visa. The majority of UNC Charlotte's international graduate students and postdoctoral scholars enter the U.S. with either an F (students) or J (scholars) visa, underscoring their primary roles as students and scholars rather than employees.

QUESTION 5:

Is the disclosure, shipment, transmission, or transfer going to an embargoed or otherwise restricted location or to an entity on any "Debarred," "Denied," or "Specially Designated" lists?

IF NO, THERE ARE NO ITAR CONCERNS AND YOU NEED GO NO FURTHER.

IF YOU DON'T KNOW, WE WILL NEED TO SEARCH THE VARIOUS LISTS.

IF YES, STOP.

YOU MAY NEED TO OBTAIN AN EXPORT LICENSE. CONTACT THE EXPORT CONTROL OFFICE FOR FURTHER ASSISTANCE (exportcontrols@uncc.edu).

Several federal agencies bar transactions with specific individuals, entities, or countries.