

Policy Name: Export Controls
Policy Date: June 1, 2008
Initiating Dept.: Office of Research
Policy Number: OR-06
Application: Faculty, Staff, and Students
Page: 1 of 4

1. Purpose of the Policy

Export control laws are federal statutes that control the conditions under which certain information, technologies, and commodities can be transmitted overseas to anyone, including U.S. citizens, or to a foreign national here in the United States. These statutes are implemented by both the U.S. Department of Commerce through its Export Administration Regulations (EAR) and the U.S. Department of State through its International Traffic in Arms Regulations (ITAR).

The export control laws and regulations have several purposes: to restrict exports of goods and technology that could contribute to the military potential of U.S. international adversaries; to help prevent proliferation of weapons of mass destruction and terrorism; to advance U.S. foreign policy goals; and to protect the U.S. economy.

Export control laws have the potential to impact UNTHSC researchers. If a research project involves certain types of technologies as specified in the regulations, the EAR and/or ITAR may require UNTHSC to obtain prior federal approval before allowing foreign nationals to participate in the research, before partnering with a foreign company, or before sharing research results in any manner (including by publication or presentation at academic conferences) with persons who are not U.S. citizens or permanent resident aliens.

Export regulations apply whether or not the research is funded and, if funded, whether or not the EAR or ITAR regulations are referred to in the award document. If a UNTHSC researcher accepts export-controlled technology or information knowingly or not, the researcher is subject to ITAR or EAR regulations.

Most UNTHSC research activities are excluded from the scope of export controls because of a general exception for fundamental research (see below for more details) under the export control regulations.

It is important that UNTHSC researchers understand their obligations under the regulations and follow them strictly. The consequences of violating the regulations can be severe and include loss of research funding, fines, and/or imprisonment. The principal investigator for a research project has the primary responsibility for compliance.

Policy Name: Export Controls
Policy Date: June 1, 2008
Initiating Dept.: Office of Research
Policy Number: OR-06
Application: Faculty, Staff, and Students
Page: 1 of 4

2. Definitions

Export - Any item that is sent from the United States to a foreign destination. Items include commodities, software or technology, such as clothing, building materials, circuit boards, automotive parts, blue prints, design plans, retail software packages and technical information.

EAR – Export Administration Regulation, Title 15, Sections 730-774 of the Code of Federal Regulations (CFR)

ITAR – International Traffic in Arms Regulations, 22 CFR Sections 120-130

Fundamental research – Basic or applied research in science at an accredited institution of higher education learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community.

Deemed export - An export of controlled technology and software to a foreign national (other than a U.S. citizen or permanent resident) inside the United States.

3. Export Controls Restriction

Export control laws prohibit the unlicensed export of certain materials or information for reasons of national security or protection of trade. Only exports that the U.S. government considers license controlled under the EAR and/or ITAR require licenses.

Generally, an export includes any:

- (1) actual shipment of any covered goods or items;
- (2) the electronic or digital transmission of any covered goods, items or related goods or items;
- (3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any foreign national; or
- (4) actual use or application of covered technology on behalf of or for the benefit of a foreign entity or person anywhere.

Policy Name: Export Controls
Policy Date: June 1, 2008
Initiating Dept.: Office of Research
Policy Number: OR-06
Application: Faculty, Staff, and Students
Page: 1 of 4

The term export can mean not only technology leaving the shores of the U.S. (including transfer to a U.S. citizen abroad whether or not it is pursuant to a research agreement with the U.S. government), but also include transmitting the technology to an individual other than a U.S. citizen or permanent resident within the U.S. (a deemed export). Even a discussion with a foreign researcher or a foreign student in a UNTHSC laboratory can be considered a deemed export. Export controls prohibit the participation of all foreign nationals in research that involves covered technology without first obtaining a license from the appropriate government agency.

When an item is controlled, a license may be required before the technology can be exported. This requirement relates not only to tangible items (prototypes or software) but also to the research results.

There are certain countries where U.S. policy generally denies licenses for any transfer of these items. For a list of some of these restrictions, please consult the Embargo Reference Chart published by the U.S. State Department at <http://pmdtc.state.gov/country.htm>

4. Fundamental Research Exclusion for Universities

Even if an item appears on one of the lists of controlled technologies, generally there is an exclusion for fundamental research as long as there are no restrictions on publication of the research or other restrictions on dissemination of the information, or, in some cases, as long as the research or information is made public or is intended to be made public.

Fundamental research, as used in the export control regulations, means basic or applied research in science and/or engineering performed at an accredited institution of higher learning in the U.S. where the resulting information either is ordinarily published and shared broadly in the scientific community or where the resulting information has been or is about to be published. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons (EAR) or restricted pursuant to specific U.S. government access and dissemination controls (ITAR).

The EAR normally considers university research as fundamental research unless the university or its researchers accept sponsor restrictions on publication of scientific and technical information resulting from the project or activity. The EAR specifically permits limited prepublication reviews by research sponsors to prevent inadvertent

Policy Name: Export Controls
Policy Date: June 1, 2008
Initiating Dept.: Office of Research
Policy Number: OR-06
Application: Faculty, Staff, and Students
Page: 1 of 4

divulging of proprietary information provided to the researcher by the sponsor or to insure that publication will not compromise patent rights of the sponsor.

The ITAR states that university research will not qualify as fundamental research if: (1) the university or its researchers 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.

5. Learn More about Export Controls

Export Administration Regulations (EAR), Title 15, Sections 730-774 of the Code of Federal Regulations (CFR) are issued and implemented by the U.S. Department of Commerce. The EAR regulations regulate the export of goods and services identified on the Commerce Control List (CCL), Title 15 CFR section 774, Supp. 1. The EAR and CCL are available on-line at <http://www.access.gpo.gov/bis/>.

International Traffic in Arms Regulations (ITAR), 22 CFR Sections 120-130, are issued and implemented by the U.S. Department of State and regulate defense articles and services and related technical data that are identified on the Munitions Control List (MCL), 22 CFR Section 121.1. The ITAR are available at http://www.pmddtc.state.gov/itar_index.htm The MCL is available at http://www.access.gpo.gov/nara/cfr/waisidx_01/22cfr121_01.html

U.S. Department of Commerce, Bureau of Industry and Security

Introduction to Commerce Department Export Controls

<http://www.bis.doc.gov/licensing/exportingbasics.htm>

Deemed Exports Questions and Answers

<http://www.bis.doc.gov/DeemedExports/DeemedExportsFAQs.html>

Council on Governmental Relations (COGR), “*Export Controls and Universities: Information and Case Studies*” (Feb. 2004), and other resources on COGR website at <http://www.cogr.edu/> (on main page, see “Educational Materials” and select “Export Controls”).