

Policies of the University of North Texas	Chapter 13
13.010 Export Controls	Research

Policy Statement:

The University of North Texas is committed to conducting research in accordance with applicable export control laws and regulations. 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 located in the United States. These statutes are implemented by the U.S. Department of Commerce through its Export Administration Regulations (EAR), by the U.S. Department of State through its International Traffic in Arms Regulations (ITAR) and by the U.S. Treasury Department through its Office of Foreign Assets Control (OFAC). 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.

At UNT, if research involves technologies governed by export control laws and regulations, then the EAR and/or ITAR may restrict the transfer of certain tangible items, such as software, technology, or research information to a foreign national or to a foreign country. Export control laws and regulations also may require that federal approval be obtained 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.

Application of Policy:

All UNT personnel, including faculty and staff, visiting scientists, postdoctoral fellows, students, and other persons working at or for UNT must conduct their research in accordance with federal export control laws and regulations. This policy specifically applies to all UNT employees with managerial or supervisory authority over foreign nationals or projects involving materials or technology subject to export control laws or regulations.

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 UNT researcher accepts or creates export-controlled technology or information knowingly or not, the researcher is subject to ITAR or EAR regulations.

Most UNT 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. However, it is important that UNT researchers understand their obligations under the export control laws and regulations and follow them strictly. The consequences for violations

can be severe and can be imposed on UNT, the individual or both. Penalties include loss of export privileges, loss of research funding, fines, and/or imprisonment.

Definitions:

1. **Controlled Information.** “Controlled Information” means information subject to export control restrictions. This includes information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of controlled physical items and may be released through visual inspection, oral exchanges, or the application of personal knowledge or technical experience with controlled physical items. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation. Also included in this definition are non-physical items (software and algorithms, for example) listed under EAR and ITAR. (See 15 CFR 730-774 and 22 CFR 120-130 for further details.)
2. **Controlled Physical Item.** “Controlled Physical Item” means technology listed under EAR and defense articles listed in ITAR (See 15 CFR 730-774 and 22 CFR 120-130 for further details.)
3. **Deemed export.** “Deemed export” means whenever a foreign national on U.S. soil (other than a U.S. citizen or permanent resident) may be exposed to, or have access in any manner to, controlled physical items or controlled software or information. Even a discussion with a foreign researcher or a foreign student in a UNT laboratory can be considered a deemed export. A deemed export is considered the same as an export under export control laws and regulations.
4. **EAR.** “EAR” means Export Administration Regulation, Title 15, Sections 700-799 of the Code of Federal Regulations (CFR).
5. **Educational Information Exclusion.** “Educational Information Exclusion” means general scientific, mathematical and engineering principles released by instruction in catalog courses and associated teaching laboratories or academic institutions are excluded from export controls under EAR and ITAR. However, under EAR, the exclusion does not cover controlled information conveyed outside the classroom or teaching lab of an academic institution.
6. **Export.** “Export” means when a controlled physical item or controlled information is transmitted outside the United States. It means the actual shipment or electronic or digital transmission of any controlled physical item, software or controlled information out of the U.S. in any manner; the release or disclosure, including verbal disclosures or visual inspections, of controlled information, including technology, software or technical data, to any foreign national; or the actual use or application of controlled physical items or controlled information on behalf of or for the benefit of a foreign entity or person

anywhere. A prohibited export can include transfer to a U.S. citizen abroad whether or not it is pursuant to a research agreement with the U.S. government.

7. Foreign person (foreign national). “Foreign person” means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the U.S.; any international organization, foreign government and any agency or subdivision of foreign governments; and any person who is not a U.S. citizen, a lawful permanent resident of the U.S., or who does not have refugee or asylum status in the U.S.
8. Fundamental Research Exclusion. “Fundamental Research Exclusion” means basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the U.S. where the resulting information is to be shared broadly in the scientific community and is likely to be excluded from EAR and ITAR export controls under an exclusion granted by National Security Decision Directive 189. 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 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. Research activities will not qualify for the fundamental research exclusion if (a) the institution accepts restrictions on the publication of the information resulting from the research, other than limited pre-publication reviews by research sponsors to prevent inadvertent divulging of proprietary information or to ensure that publication will not compromise patent rights of the sponsor; or (b) the research is federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the institution or the researcher. Certain corporate-sponsored research may not qualify as fundamental research. The fundamental research exclusion applies to controlled information but not to controlled physical items.
9. ITAR. “ITAR” means International Traffic in Arms Regulations, 22 CFR Sections 120-130.
10. OFAC. “OFAC” means U.S. Treasury Department’s Office of Foreign Assets Control, 31 CFR 500-598.
11. Principal Investigator. “Principal Investigator” means the researcher who is primarily responsible for the conduct of the instruction, research, or education activities whether or not the activity it is funded.

12. Publicly Available/Public Domain Exclusion. “Publicly Available/Public Domain Exclusion” means information that is published or generally accessible or available to the public and scientific community and is excluded from export controls. The exclusions apply as long as the federal government has not imposed export controls or restrictions as a condition of funding and provided there is no reason to believe that the exported information will be used for weapons of mass destruction. The “publicly available” exclusion under EAR and the “public domain” exclusion under ITAR only apply to the export or deemed export of controlled information, not to the export of controlled physical items or services listed on the United States Munitions List (USML) or the Commerce Control List (CCL). Information that is published and available to the public at libraries, newsstands and bookstores through subscriptions without restriction, through patents available at any patent office, through unlimited distribution at conferences, meetings, seminars, trade shows and exhibitions held in the United States and generally open to the public are excluded from export controls. (See 22 CFR 120.11 and 15 CFR 734.3 for further details.)
13. Re-export. “Re-export” means any actual shipment or transmission of items subject to export regulations from one foreign country to another foreign country. For the purposes of the EAR, the export or re-export of items subject to the EAR that will transit through a country or countries to a new country, or are intended for re-export to the new country, are deemed to be exports to the new country.
14. Technology. “Technology” means specific information necessary for the development, production, or use of a product.

Procedures and Responsibilities:

The Vice President for Research and Economic Development will appoint an Export Control Officer who will be familiar with the federal statutes and regulations regarding export controls and licensing, including the provisions regarding criminal, civil and administrative penalties for violating such requirements.

Responsible Party: Vice President for Research and Economic Development

All faculty, staff and students must be aware of and are responsible for the export-control implications of their work and must ensure that their activities conform to export control laws and regulations. The principal investigator for a research project has the primary responsibility for compliance. The Export Control Officer must be notified and required license/approval must be in place before the export, deemed export or re-export of anything constituting controlled information or a controlled physical item. The Export Control Officer will provide assistance to UNT faculty, staff and students in assessing the applicability of export control laws and regulations; however, primary responsibility for compliance rests with the individuals involved in the export, including principal investigators and others in supervisory positions.

Should a researcher have a need to share export controlled information with others, the researcher must determine a proposed recipient's eligibility under export control regulations. The researcher must notify the Export Control Officer 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 researcher must document the license that authorizes such disclosure or an available exclusion.

Specifically, researchers are required to:

- Consult with the Export Control Officer prior to commencing any research that may be subject to export control laws or regulations to determine whether and what controls may affect the research.
- Make available to the Export Control Officer any and all information necessary to determine the presence, disposition, and classification of export controlled information and controlled physical items.
- Re-evaluate any decision that was made regarding the applicability of such controls at any time that the scope of the project or project staff changes.
- Consult with the Export Control Officer in advance in order to permit review and evaluation of the research in question and obtain any necessary license or authorization.
- Ensure that foreign nationals are excluded from access to restricted data or technology until the Export Control Officer has issued an exclusion or an export license has been obtained.
- Comply with directives of the Export Control Officer related to export controlled information and controlled physical items.

Responsible Party: UNT Faculty, Staff and Students; Principal Investigators; Export Control Officer

Upon request, the Export Control Officer shall be responsible for reviewing proposed or on-going research projects and determining the presence and disposition of export controlled information or controlled physical items. The Export Control Officer shall be responsible for obtaining export control licenses or approvals from appropriate federal agencies. The Export Control Officer shall determine whether the following exclusions apply to a research project: (1) the fundamental research exclusion; (2) the publicly available/public domain exclusion; or (3) the educational information exclusion.

Responsible Party: Export Control Officer

Each of the export control regulations contain specific recordkeeping requirements that must be satisfied by the Principal Investigator or Researcher. The Export Control Officer will maintain records of export control reviews conducted and any export controls licenses applied for and issued.

Responsible Party: UNT Faculty, Staff and Students; Principal Investigators; Export Control Officer

References and Cross-references.

Export Administration Regulations (EAR), Title 15, Sections 700-799 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.pmdotc.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").

U.S. Treasury Department's Office of Foreign Assets Control (OFAC), 31 CFR 500-598.

National Security Decision Directive 189

Atomic Energy Act of 1954 and Nuclear Regulatory Commission Regulations to 10 CFR Part 110

Approved: 8/19/2011

Effective: 8/19/2011

Revised: