

Policies of the University of North Texas at Dallas	Chapter 13
13.008 Export Controls	Research

Policy Statement:

The mission of the University of North Texas at Dallas (UNT) includes global engagement and international research, education, and service. In carrying out these responsibilities, UNT 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 are 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 State through its International Traffic in Arms Regulations (ITAR), the U.S. Department of Commerce through its Export Administration Regulations (EAR), 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.

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 likely to be excluded from the scope of export control laws and regulations because of one of the following exclusions: 1) the fundamental research exclusion; 2) the “publicly available” (EAR) and the “public domain” (ITAR) exclusion; or 3) the educational information exclusion. There are other exclusions that may apply as well. However, only the Export Control Officer can determine if an exclusion applies to a research activity.

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 UNTD 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 that 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, news stands, 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:

1. The UNTD Office of Sponsored Projects is the administrative unit at UNTD that is responsible for implementation of this export control policy and development of related procedures. The Office of Sponsored Projects shall only approve sponsored research projects and research activity coming under export control laws and regulations when an exclusion applies.

Responsible Party: UNTD Office of Sponsored Projects

2. The Director of the Office of Sponsored Projects shall serve as the Export Control Officer. The Export Control Officer is responsible for overseeing and helping to ensure compliance with the federal statutes and regulations regarding export control.

The Export Control Officer shall be responsible for supporting principal investigators, university researchers, and research administrators with questions about and actions required for export control compliance. Responsibilities shall include but not be limited to the following:

- a. Evaluating research activity for export control compliance;
- b. Reviewing proposed or on-going research projects and determining the presence and disposition of controlled information or controlled physical items;
- c. Determining whether the fundamental research exclusion, the “publicly available” (EAR), the “public domain” (ITAR) exclusion, the educational information exclusion or any other exclusion applies to research activity;
- d. Determining whether foreign persons or entities may be involved in research activity;
- e. Determining whether controlled information and controlled physical items may be taken or shipped outside the United States;
- f. Identifying whether foreign persons or entities that will be involved in a research activity are restricted countries, persons, or entities;
- g. Maintaining records of export control reviews; and
- h. Advising on export control compliance questions.

Responsible Party: Export Control Officer

3. All UNTD faculty, staff, and students must be aware of and are responsible for the export-control implications of their research activities 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 export control compliance for that project.

Specifically, principal investigators and researchers are required to:

- a. Notify the Export Control Officer when foreign person involvement is anticipated to occur in a sponsored research proposal, research collaboration, or any research activity (and do not proceed until such involvement has been approved);
- b. Notify the Export Control Officer prior to the export, deemed export, or re-export of controlled information or controlled physical items;
- c. Only engage in sponsored research projects and research activity coming under export control laws and regulations when approved by the Office of Sponsored Projects and when an exclusion to the laws and regulations applies;
- d. Make available to the Export Control Officer any and all information necessary to determine the presence, disposition, and classification of controlled information and controlled physical items to ensure export control compliance in research activity;

- e. When a sponsored research project or research activity has been approved because the Export Control Officer has determined that an exclusion to the export control laws and regulations applies, notify the Export Control Officer at any time that the scope of the project or project staff changes or when the role of a foreign person changes in the sponsored project or research activity. Consult with the Export Control Officer in advance of a change in order to permit review and evaluation of the research in question;
- f. Supervise access to controlled information and controlled physical items;
- g. Ensure that foreign persons are excluded from access to controlled information or controlled physical items until the Export Control Officer has confirmed an exclusion to export control laws and regulations applies;
- h. Comply with export control laws and regulations when shipping controlled information or controlled physical items outside the United States (including hand-carrying items such as research equipment, materials, data, and biological materials);
- i. Comply with directives of the Export Control Officer related to export controlled information and controlled physical items.

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

- 4. The Office of Sponsored Projects shall review a sponsored projects proposal or award for provisions that may impact export control compliance and shall specifically identify those that involve the following factors:
 - a. Restrictions on, or approval rights applicable to, publication or release of research results (beyond a reasonable delay to protect a sponsor's confidential information or to preserve the patentability of an invention);
 - b. The proposal or award provides that research results will be considered trade secret, confidential, or proprietary information owned by the sponsor;
 - c. Foreign persons or entities will have access to controlled items or controlled physical items;
 - d. The research activity involves controlled information or controlled physical items;
 - e. The research activity involves foreign persons or entities.

If the problematic provisions are unable to be removed and a determination cannot be made that an exclusion to export control laws and regulations applies, then the proposal or award shall not be entered into by UNTD.

Responsible Party: Office of Sponsored Projects

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

5. Education and Training

The Export Control Officer and other appropriate offices will develop and implement an appropriate training program on export control.

Responsible Party: Export Control Officer

6. Violations and Penalties

Each University employee has the responsibility to report possible violations of export control laws or regulations. Suspected violations should be reported to the University's Research Compliance Officer with the details of the suspected violation. The Provost may suspend or terminate a research activity if he or she determines that the activity is not in compliance, or will lead to noncompliance, with export control laws and regulations.

Failure to comply with applicable export control laws and regulations may result in severe civil and criminal penalties to the University and individual employees, students, and contractors. An individual who violates export control laws and regulations or who does not comply with this policy may be subject to University disciplinary action up to and including termination, dismissal, or expulsion in accordance with University policies and procedures. Individuals also may be subject to loss of research privileges, loss of research funding, fines, and/or imprisonment.

Responsible Party: UNTD Faculty, Staff, and Students; Principal Investigators and Researchers; 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.pmdtdc.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 is available at <http://www.bis.doc.gov/licensing/exportingbasics.htm>
- Deemed Exports Questions and Answers are available at <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

Forms and Tools

N/A

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Revised: