

Policies of the University of North Texas Health Science Center	Chapter 12 Research
<b>12.103 Export Controls</b>	

**Policy Statement.**

The University of North Texas Health Science Center 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) and the U.S. Department of State through its International Traffic in Arms Regulations (ITAR) and by the 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 UNTHSC, 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, technical knowledge, or software, 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.

**Authority**

This policy is intended to comply with the export controls requirements of the U.S. State Department’s International Traffic in Arms Regulations (ITAR), 22 CFR 120-130, the U.S. Commerce Department’s Export Administration Regulations (EAR), 15 CFR 700-799, and regulations of the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC), 31 CFR 500-598.

**Application of Policy.**

All UNTHSC personnel, including faculty and staff, visiting scientists, postdoctoral fellows, students, and other persons working at or for UNTHSC must conduct their research in accordance with federal export control laws and regulations. This policy specifically applies to all UNTHSC 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. Whether the UNTHSC researcher knowingly or

unknowing accepts or creates export-controlled items or information, the researcher is subject to ITAR or EAR regulations.

**It is important that UNTHSC 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 UNTHSC, 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.** A “Deemed export” occurs when a foreign national on U.S. soil (other than a U.S. citizen or permanent resident) is exposed to, or has 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 UNTHSC laboratory can be considered a deemed export. A deemed export is 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 individual 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 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, 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 is excluded from export controls. The exclusions apply provided that the federal government has not imposed export controls or restrictions as a condition of funding and 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 U.S. 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 Office of Grant Management (OGCM) completes the export control review and assessment of newly awarded, renewals, or amended sponsored projects. OGCM will notify the Office of Research

Compliance (“ORC”) if possible export control issues have been identified.

Responsible Party: Office of Grant Management (OGCM)

2. Once potential export control issues have been identified by OGCM, the ORC along with the Principle Investigator (PI) will complete the final review. The Office of General Counsel will assist as needed. Upon completing the final review, the ORC will advise the PI concerning whether any export controls apply to the project, the restrictions on access by foreign persons, countries, or entities, and any other relevant requirements pursuant to ITAR and EAR. Additionally, the Director of Research Compliance will help ensure the University documents and maintains all records regarding export control.

Responsible Party: Office of Research Compliance (ORC)

3. PIs have expert knowledge of the type of items, information and technology involved in a research project. PIs also have knowledge of University activity, such as presenting at conferences, and discussing research findings in class with fellow researchers or collaborators as part of the project. PIs must ensure that they do not disclose controlled information or transfer controlled articles or services outside the U.S. or to any a foreign national person without prior authorization as required. To meet these obligations, each PI must:
  1. understand the obligations under export control regulations, and participate in regular trainings to help identify export control issues;
  2. assist the University in classifying the technology involved in the research or other University activity to determine if the technology is controlled;
  3. identify foreign persons that may be involved , the need for export controls, initiate the process of obtaining the appropriate licenses, as outlined in Section 4 of this policy, well in advance to ensure that a license is obtained in a timely manner. Immediately implement proper measures to isolate foreign persons from participation and restrict any foreign travel that involves the export of controlled items or information associated with the project;
  4. if undertaking an export controlled project, brief the students and other researchers involved in the project of their obligations under export control laws and regulation and any associated licenses; and cooperate with the ORC in developing the Technology Control Plan (TCP). The PI has the responsibility to implement and follow the TCP.

Responsible Party: Principal Investigator

4. Obtain Export Licenses, If Applicable

If a faculty member or researcher determines, with the assistance of the University, that a particular

project or activity is subject to export controls and an export license is required, the faculty member or researcher is responsible for securing the controlled items and information against disclosure or transfer to any foreign person, country inside or outside the United States, and against disclosure to anyone anywhere outside of the U.S., until a license or other authorization is obtained. Also the faculty or researcher will be required to complete the *Certification on the Handling of Export-Controlled Information*.

Securing the appropriate licensing is a lengthy and complex process. It is not unusual for a license application to take six (6) months. When an export license is required, the faculty member or researcher will be responsible for preparing the required license application and supporting materials to obtain the appropriate license under the ITAR, EAR, or OFAC regulations. All license applications will be submitted through ORC.

Responsible Party: Principal Investigator

#### 5. Development – Technology Control Plan (“TCP”)

Once the license is obtained, the ORC will work with the PI to develop and implement a TCP to ensure compliance with the license.

The ORC will assist researchers and educators in complying with export control laws, **but the primary responsibility rests with each individual involved in the project. Researchers and educators are most informed about potential projects and are responsible for notifying the ORC in order to obtain any required licenses.**

Responsible Party: Principal Investigator

#### 6. Complete a Certification on the Handling of Export-Controlled Information

The PI must certify that appropriate controls have been implemented by completing the *Certification on the Handling of Export-Controlled Information*.

Responsible Party: Principal Investigator

#### Monitoring

In order to maintain UNTHSC’s export compliance program and ensure consistent adherence to U.S. export laws, the ORC may conduct internal reviews of TCPs and certain projects. The purpose of such reviews is: (i) to identify possible violations; and (ii) to identify deficiencies in training, procedures, etc. If possible violations are identified; they will be reported to the Chief Compliance and ERM Officer for further review and the Office of General Counsel notified.

#### Criminal and Civil Penalties

Violations of export control laws and regulations are severe. Violations can lead to fines for the University, the Principal Investigator, and the University's complete debarment from all export activity. Penalties for individuals include fines up to \$1,000,000 and 10 years in prison.

Voluntary self-disclosures, if made appropriately, can mitigate the seriousness of the penalty. Contact ORC for information on the self-disclosure process.

### Recordkeeping Requirements

Each of the relevant export control regulations contain specific recordkeeping requirements that must be satisfied. Researchers must keep copies of all controlled export documentation and appropriate UNTHSC Certifications in their research project files for a period of five years from the date of the controlled export, reexport, or controlled deemed export.

### References and Cross-references.

1. List to Check <http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm>
2. Export Administration Regulations Database  
  
[http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)
3. Lists to Check / Denied Persons List  
<http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm>
4. OFAC Sanctions Programs <http://www.treas.gov/offices/enforcement/ofac/programs/>  
  
Special Designated Nationals  
<http://www.treas.gov/offices/enforcement/ofac/sdn/>
5. US Department of State, ITAR [http://www.pmddtc.state.gov/regulations\\_laws/itar\\_consolidated.html](http://www.pmddtc.state.gov/regulations_laws/itar_consolidated.html)
6. Red Flag Indicators <http://www.bis.doc.gov/enforcement/redflags.htm>
7. How do I Avoid Dealing with Unauthorized Parties  
<http://www.bis.doc.gov/complianceandenforcement/unauthorizedparties.htm>
8. Know Your Customer Guidance  
<http://www.bis.doc.gov/complianceandenforcement/knowyourcustomerguidance.htm>
9. ITAR <http://www.fas.org/spp/starwars/offdocs/itar/p121.htm#P121.1>  
  
[http://www.pmddtc.state.gov/embargoed\\_countries/index.html](http://www.pmddtc.state.gov/embargoed_countries/index.html)
10. *Deemed Exports Questions and Answers*

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

11. 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”).

### **Forms and Tools.**

See ORC website, <http://www.hsc.unt.edu/Sites/OfficeofResearchCompliance/>, for latest version of appropriate export control forms and checklists.

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