



**Policy Chapter:** Chapter 13 Research and Innovation

**Policy Number and Title:** 13.010 Export Controls

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## **I. 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.

## **II. Application of Policy**

All UNT personnel, including faculty and staff, visiting scholars, postdoctoral fellows, students, and other persons working at or for UNT must conduct their research in accordance with federal export control laws and regulations.

## **III. Policy Definitions**

### ***A. Controlled Information***

“Controlled Information,” in this policy, 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. Additional information may be found in the [UNT Export Control Manual](#), [15 C.F.R. 730-774](#), and [22 C.F.R. 120-130](#).

### ***B. Controlled Physical Item***

“Controlled Physical Item,” in this policy, means technology listed under EAR and defense

articles listed in ITAR. Additional information may be found in the [UNT Export Control Manual](#), [15 C.F.R. 730-774](#), and [22 C.F.R. 120-130](#).

**C. Deemed Export**

“Deemed Export,” in this policy, 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.

**D. Educational Information Exclusion**

“Educational Information Exclusion,” in this policy, 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.

**E. Export**

“Export,” in this policy, 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.

**F. Foreign National**

“Foreign National,” in this policy, 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.

**G. Fundamental Research Exclusion**

“Fundamental Research Exclusion,” in this policy, 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 ensure that publication will not compromise patent rights of the sponsor.

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.

#### **H. *Principal Investigator***

“Principal Investigator,” in this policy, 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.

#### **I. *Publicly Available/Public Domain Exclusion***

“Publicly Available/Public Domain Exclusion,” in this policy, 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. Additional information may be found in the [UNT Export Control Manual](#), [22 C.F.R. 120.11](#) and [15 C.F.R. 734.3](#).

#### **J. *Re-export***

“Re-export,” in this policy, 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.

#### ***K. Technology***

“Technology,” in this policy, means specific information necessary for the development, production, or use of a product.

### **IV. Policy Responsibilities**

#### ***A. Export Control Officer (ECO) Responsibilities***

1. The Vice President for Research and Innovation (VPRI) will appoint an ECO 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.
2. Upon request, the ECO will be responsible for reviewing proposed or on-going research projects and determining the presence and disposition of export-controlled information or controlled physical items.
3. The ECO will be responsible for obtaining export control licenses or approvals from appropriate federal agencies.
4. The ECO will 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.
5. The ECO will review any potential collaborators, sponsors, and donors who are associated with an OFAC-sanctioned country of concern or who appears with results on a restricted party screening. Approval for collaborators, sponsors, or donors associated with an OFAC-sanctioned country of concern or who appears with results on a restricted party screening requires the approval of the ECO, VPRI , and Vice President & Chief Integrity Officer.

#### ***B. Awareness and Responsibility of Everyone Involved***

1. 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.
2. Academic deans, directors, and chairs have responsibility for overseeing export control compliance in their respective schools, departments, centers, or institutes and supporting the ECO in implementing procedures for export control compliance.
3. 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.

### ***C. Notifications to and Assistance from Export Control Officer***

The ECO 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 ECO 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.

### ***D. Sharing of Export-Controlled Information***

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 ECO 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.

### ***E. Research Responsibilities***

In addition to any other responsibilities specified in University policy or law, researchers are required to:

1. consult with the ECO 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;
2. make available to the ECO any and all information necessary to determine the presence, disposition, and classification of export-controlled information and controlled physical items;
3. 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;
4. consult with the ECO in advance in order to permit review and evaluation of the research in question and obtain any necessary license or authorization;
5. ensure that foreign nationals are excluded from access to restricted data or technology until the ECO has issued an exclusion or an export license has been obtained; and
6. comply with directives of the ECO related to export-controlled information and controlled physical items.

### ***F. Recordkeeping***

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

**G. Penalties for Non-compliance**

Failure to comply with this policy and applicable export control regulations may result in severe civil and criminal penalties for the University and individuals. Any individual who does not comply with this policy and applicable export control regulations may also be subject to disciplinary action up to and including termination, dismissal, or expulsion.

**V. Resources/Forms/Tools**

- [U.S. Government Publishing Office](#)
- [U.S. Department of State Directorate of Defense Trade Controls](#)
- [U.S. Department of Commerce Bureau of Industry and Security](#)
- [Exporting Basics](#)
- [Deemed Exports FAQs](#)
- [Council on Governmental Relations](#)

**VI. References and Cross-References**

- [10 C.F.R. Part 110](#)
- [15 C.F.R. Chapter VII Subchapter C – Export Administration Regulations](#)
- [15 C.F.R. Part 774 Supplement 1](#)
- [22 C.F.R §§ 120-130](#)
- [31 C.F.R. §§ 500-598](#)
- [National Security Decision Directive 189](#)

**VII. Revision History**

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