

Export Control

From University of Nebraska Medical Center

Human Resources	Safety/Security	Research Compliance	Compliance	Privacy/Information Security	Business Operations	Intellectual Property
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Policy No. **8005**

Effective Date: **12/18/12**

Revised Date: **05/08/13**

Reviewed Date: **05/08/13**

Export Control Policy

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Policy

Export controls, set forth in regulations administered by several federal agencies, impose access, dissemination, and participation restrictions on the transfer and retransfer of "controlled" information and on the export and reexport of tangible items. The United States Department of Commerce must issue an export license or there must exist an exception to or exclusion from license requirements before any controlled tangible item, software or information on the U.S. Commerce Control List (CCL) of the Export Administration Regulations (EAR) may be exported or reexported. Likewise, if a tangible item, software or information is on the U.S. Munitions List (USML), the U.S. State Department must issue an export license or provide for an exception to or exclusion from licensing requirements.

Export controls restricting a foreign national's participation in university research within the United States, i.e., "deemed export" restrictions, generally do not apply to the conduct or results of fundamental research. Fundamental research conducted outside of the U.S., however, remains subject to export controls.

In the case of shipments of certain tangible items, software or information outside the U.S., UNMC has the responsibility to either:

- Obtain an export license;
- Document an express determination that an exception to export licensing requirements applies; or
- Document an express determination that no license is needed.

Definitions

EXPORT: Means to send or take controlled tangible items, software or information out of the United States in any manner, to transfer ownership or control of controlled tangible items, software or information to a foreign person, or to disclose information about controlled items, software or information to a foreign government or foreign person. The controlled tangible item, software or information being sent or taken out of the United States is also referred to as an "export."

REEXPORT: Means an actual shipment or transmission of controlled tangible items, software or information from one foreign country to another foreign country. The export or reexport of controlled tangible items, software or information that will transit through a country or countries, or will be unloaded in a country or countries for reloading and shipment to a new country, or are intended for reexport to the new country, are deemed to be exports to the new country.

DEEMED EXPORT: Is a term used by the U.S. Commerce Department to describe the situation where a foreign national on U.S. soil may be exposed through visual inspection or oral transmission of information relating to an export-controlled item or export-controlled software or information.

U.S. PERSON/FOREIGN PERSON: A "U.S. person" is a citizen of United States, a lawful permanent resident alien of the U.S., (a "Green Card" holder), a refugee or someone here as a protected political asylee or under amnesty. U.S. persons also include organizations and entities, such as universities, incorporated in the U.S. The general rule is that only U.S. persons are eligible to receive controlled items, software or information without first obtaining an export license from the appropriate agency unless a license exception or exclusion is available.

A "foreign person" is anyone who is not a U.S. citizen, lawful permanent resident or who is not a protected individual as defined by 8 USC section 1324b (a)(3). A foreign person also means any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do business in the U.S. Foreign persons may include international organizations, foreign governments and any agency or subdivision of foreign governments such as consulates. In determining nationality for International Traffic in Arms Regulations (ITAR) purposes, the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) will consider country of birth as well as any country where the person is or was a citizen. The U.S. Department of Commerce considers only the country of citizenship for the purposes of its "deemed export rule".

FUNDAMENTAL RESEARCH: The concept of "fundamental research" was established by National Security Decision Directive 189. NSDD 189 defines fundamental research as:

basic and applied research in science and engineering where the resulting information is to be shared broadly within the scientific community.

NSDD 189 provides that the conduct, products, and results of fundamental research are to proceed largely unfettered by deemed export restrictions. It also states that the government must determine - before releasing a research opportunity - whether the research should be classified or otherwise kept secret. Research that carries access, participation, or dissemination restrictions will not qualify as fundamental research for purposes of the export control regulations. Faculty, staff, students and affiliates of the University of Nebraska Medical Center will comply with all applicable federal regulations that apply to the export of equipment and technology developed or used in the course of research.

Applicable Federal Regulations

The export control regulations summarized here each impose severe monetary and criminal penalties for failure to comply with their requirements.

U.S. Department of State - International Traffic in Arms Regulations (ITAR) 22 CFR 120-130

The U.S. Department of State, Directorate of Defense Trade Controls (DDTC), is responsible for items and information inherently military in design, purpose, or use. Referred to as "defense articles," such items are found on the U.S. Munitions List (USML), 22 CFR 121. Spacecraft and satellites, even if not for military use, are on the USML, along with their associated systems and related equipment. Information related to defense articles is referred to as "technical data."

U.S. Department of Commerce - Export Administration Regulations (EAR) 15 CFR 700-799

The U.S. Department of Commerce, Bureau of Industry and Security (BIS), has export jurisdiction over everything in the United States, although BIS does not require a license for every export. BIS controls goods and information having both civilian and military uses by including them on the Export Administration Regulations (EAR) Commerce Control List (CCL), 15 CFR 774, also known as the "Dual Use List." BIS uses the term "technology" when referring to information about the goods on the CCL.

U.S. Department of the Treasury - Office of Foreign Assets Control (OFAC) CFR 500-599

The U.S. Department of the Treasury oversees U.S. economic sanctions and embargoes through its Office of Foreign Assets Control (OFAC). Empowered by the Trading with the Enemy Act and the International Emergency Economic Powers Act, OFAC enforces trade, anti-terrorism, narcotics, human rights and other national security and foreign policy based sanctions prohibiting the provision of anything of value, either tangible or intangible, to sanctioned countries, organizations or individuals. The pertinent regulations provide OFAC with broad authority to block or interdict vaguely defined "prohibited transactions" involving restricted destinations or parties.

Export Licenses for Overseas Shipments

The U.S. Department of Commerce has export jurisdiction over all goods and all "technology" or information in the United States, unless some other agency has expressly been given such authority. However, this does not mean that a license must be obtained before any item or piece of information can be shipped. An Export Control Decision Tree is available to assist in determining the applicability of export control regulations in the case of shipments of tangible items or transfers or transmission of software code or information outside U.S. borders.

In order to determine whether it is necessary to obtain an export license from the relevant federal agency to send tangible items or to transfer or transmit software code or information outside the United States, the researcher preparing the shipment or transfer needs to consider:

- whether the software code or information is proprietary or disclosure-restricted and thus possibly export controlled, or whether it resulted from fundamental research to which export controls do not apply,
- the description of the tangible item, software or information,
- the technical characteristics and specifications of the item, software or information
- its intended end-use and end-user, and
- its destination.

All tangible items, software code and information not on a U.S. export control list may be shipped or transmitted to any country, individual or entity that is not sanctioned, embargoed or otherwise restricted for export. Such items, code and information may be exported as EAR99 or as "No License Required" (NLR), with identified Export Control Classification Number (ECCN) and exception.

Certain overseas shipments or transmissions being handled on a "No License Required" basis will require an explanation and justification (ECCN and License Exception) for that classification. For international shipments involving shipping chemicals, biologicals or other dangerous materials, contact UNMC's Chemical Safety Officer and Biosafety Officer as applicable.

Accepting a Third Party's Controlled Items or Data

Export-controlled items, software code or information provided by a third party may not be openly shared with certain foreign nationals, even though those individuals may be important contributors to the performance of the fundamental research. For example, a corporate vendor or a research partner may have to disclose the proprietary information on a piece of export-controlled hardware being provided for use in carrying out a fundamental research experiment. Proprietary or restricted information that is required for the development, production or use of export-controlled equipment is itself export-controlled. It carries with it export control requirements that must be honored by the researcher who agrees to be a recipient of such information.

Generally, federal regulations require that only U.S. persons may be provided with export-controlled items, software code or information without having to obtain an export license. Nonetheless, there are some specific exemptions (ITAR) and license exceptions (EAR) available to those within the University community that may be useful. It is extremely important to keep them in mind should it become necessary to share any export-controlled items, software code or information beyond the original recipient.

Additional Information and Resources

For questions regarding the use of "No License Required" or license exceptions and exemptions, please contact the UNMC Export Control Officer (402-559-4518).

For additional information concerning the applicability of the export control regulations to any specific set of facts should be directed to the UNMC Export Control Officer (402-559-4518). Inquiries may also be addressed to the ITAR Empowered Official/Chief Compliance Officer (402-559-6767).

Export Control Decision Tree

ITAR Website

EAR Website

OFAC Website

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