

---

THE UNIVERSITY OF NORTH TEXAS

**EXPORT CONTROLS  
COMPLIANCE MANUAL**

# List of Abbreviations

BIS	Bureau of Industry and Security (U.S. Department of Commerce)
CCL	Commerce Control List
CJ	Commodity Jurisdiction
DDTC	Directorate of Defense Trade Controls (U.S. Department of State)
EAR	Export Administration Regulations
ECCN	Export Control Classification Number
ECO	Export Controls Officer
ITAR	International Traffic in Arms Regulations
OFAC	Office of Foreign Assets Control (U.S. Department of the Treasury)
ORED	Office of Research & Economic Development
PI	Principal Investigator
SDN List	Specially Designated Nationals and Blocked Persons List
TAA	Technical Assistance Agreement
TCP	Technology Control Plan
USML	United States Munitions List
UNT	University of North Texas

# Table of Contents

<b>OVERVIEW OF EXPORT CONTROLS .....</b>	<b>6</b>
<b>I. INTRODUCTION.....</b>	<b>6</b>
<b>II. EXPORT CONTROLS AND UNIVERSITY RESEARCH .....</b>	<b>6</b>
<b>III. EXPORT OF DEFENSE ARTICLES AND SERVICES – INTERNATIONAL TRAFFIC IN ARMS REGULATIONS.....</b>	<b>7</b>
A. ITEMS CONTROLLED UNDER THE ITAR .....	7
1. Defense Article .....	7
2. Technical Data .....	7
3. Defense Service .....	7
B. THE USML CATEGORIES .....	8
C. CLASSIFICATION .....	8
D. DEFINITION OF EXPORT UNDER THE ITAR .....	9
1. Exports of articles from the U.S. ....	9
2. Extra-territorial transfers.....	9
3. Export of intangibles.....	9
E. AUTHORIZATION TO EXPORT .....	9
F. EMBARGOED COUNTRIES UNDER DDTC REGULATIONS .....	10
<b>IV. EXPORT OF COMMERCIAL DUAL-USE GOODS AND TECHNOLOGY – EXPORT ADMINISTRATION REGULATIONS.....</b>	<b>10</b>
A. ITEMS CONTROLLED UNDER THE EAR .....	10
B. THE COMMERCE CONTROL LIST CATEGORIES .....	11
C. CLASSIFICATION .....	11
D. DEFINITION OF EXPORT AND RE-EXPORT UNDER THE EAR.....	12
1. Export.....	12
2. Deemed Export .....	12
3. Re-export.....	12
4. Deemed Re-export. ....	12
E. AUTHORIZATION TO EXPORT .....	12
<b>V. OFAC SANCTIONS PROGRAM AND BARRED ENTITIES LISTS .....</b>	<b>14</b>
A. SANCTIONED COUNTRIES.....	14

B.	BARRED INDIVIDUALS OR ENTITIES LISTS .....	14
<b>VI.</b>	<b>PENALTIES FOR EXPORT VIOLATIONS .....</b>	<b>15</b>
A.	GENERAL OVERVIEW .....	15
B.	DEFENSE EXPORTS.....	15
	<b>KEY ISSUES IN UNIVERSITY RESEARCH .....</b>	<b>17</b>
<b>I.</b>	<b>DEEMED EXPORTS .....</b>	<b>17</b>
<b>II.</b>	<b>U.S. AND FOREIGN PERSONS.....</b>	<b>18</b>
<b>III.</b>	<b>INFORMATION EXCLUDED FROM OR NOT SUBJECT TO FROM EXPORT CONTROLS .....</b>	<b>18</b>
A.	PUBLICLY AVAILABLE .....	18
B.	EDUCATIONAL INFORMATION .....	19
C.	FUNDAMENTAL RESEARCH.....	20
D.	FULL-TIME UNIVERSITY EMPLOYEES .....	22
	<b>UNIVERSITY OF NORTH TEXAS EXPORT CONTROLS PROCEDURES.....</b>	<b>22</b>
<b>I.</b>	<b>COMMITMENT TO EXPORT CONTROL COMPLIANCE .....</b>	<b>23</b>
<b>II.</b>	<b>KEY ACTORS RESPONSIBLE FOR EXPORT CONTROL COMPLIANCE .....</b>	<b>22</b>
A.	EXPORT CONTROLS OFFICER.....	23
B.	OFFICE OF RESEARCH SERVICES .....	24
C.	KEY UNIVERSITY MANAGERS .....	24
D.	PRINCIPAL INVESTIGATORS (PIs).....	24
<b>III.</b>	<b>EXPORT CONTROL ANALYSIS.....</b>	<b>25</b>
A.	INITIAL REVIEW BY OFFICE OF RESEARCH SERVICES.....	25
B.	COMPLETION OF CHECKLIST BY PI AND REVIEW BY ECO .....	26
<b>IV.</b>	<b>TECHNOLOGY CONTROL PLAN.....</b>	<b>26</b>
A.	DEVELOPMENT .....	26
B.	APPROPRIATE SECURITY MEASURES .....	26
C.	TRAINING & CERTIFICATION .....	27
<b>V.</b>	<b>LICENSING .....</b>	<b>28</b>
<b>VI.</b>	<b>LICENSE EXCEPTIONS AND EXEMPTIONS RELATED TO TRAVEL OUTSIDE THE U.S.....</b>	<b>28</b>

<b>VII. TRAINING PROGRAMS .....</b>	<b>29</b>
<b>VIII. RECORDKEEPING .....</b>	<b>29</b>
<b>IX. MONITORING AND AUDITING .....</b>	<b>29</b>
<b>X. DETECTING AND REPORTING VIOLATIONS .....</b>	<b>30</b>
<b>APPENDIX A: EXPORT CONTROLS CHECKLIST FOR UNT OFFICE OF RESEARCH SERVICES.....</b>	<b>31</b>
<b>APPENDIX B: EXPORT CONTROLS OVERVIEW &amp; CHECKLIST FOR RESEARCHERS.....</b>	<b>32</b>

# OVERVIEW OF EXPORT CONTROLS

## I. INTRODUCTION

The U.S. export control system generally requires export licensing for defense items, for items that have both commercial and military applications, and for exports to sanctioned persons and destinations. U.S. national security, economic interests and foreign policy shape the U.S. export control regime. The export laws and regulations aim at achieving various objectives, such as preventing the proliferation of weapons of mass destruction, advancing the U.S. economic interests at home and abroad, aiding regional stability, implementing anti-terrorism and crime controls, and protecting human rights.

These controls generally restrict the export of products and services based on the type of product and the destination of the export. In both the defense and high-technology sectors, the U.S. Government tightly regulates the export not only of equipment and components, but also of technology. Technology includes technical data, such as blueprints and manuals, as well as design services (including the transfer of “knowledge”) and training. U.S. laws assert jurisdiction over U.S.-origin equipment and technology even after it is exported (*i.e.*, restricting the re-export or re-transfer to third parties). In addition to general export licensing, the U.S. maintains economic embargoes against a number of countries whose governments consistently violate human rights or act in support of global terrorism. Such embargoes bar most transactions by U.S. persons with these countries.

Three principal agencies regulate exports from the United States: the U.S. Department of State’s Directorate of Defense Trade Controls (“DDTC”) administers export control of defense exports; the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”) administers export control of "dual-use" technology exports; and the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) administers exports to embargoed countries and designated entities.

## II. EXPORT CONTROLS AND UNIVERSITY RESEARCH

U.S. national security and economic interests are heavily dependent on technological innovation and advantage. Many of the nation's leading-edge technologies, including defense-related technologies, are being discovered by U.S. and foreign national students and scholars in U.S. research universities and university-affiliated laboratories. U.S. policymakers recognize that foreign students and researchers have made substantial contributions to U.S. research efforts, but the potential transfer of controlled defense or dual-use technologies to their home countries could have significant consequences for U.S. national interests. The U.S. export control agencies place the responsibility on universities to understand and comply with the regulations.

Export controls present unique challenges to universities because they require balancing concerns about national security and U.S. economic vitality with traditional concepts of unrestricted academic freedom, and publication and dissemination of research

findings and results. University researchers and administrators need to be aware that these laws may apply to research, whether or not the research is sponsored by an external funder. However, it also is important to understand the extent to which the regulations **do not** affect normal university activities.

### **III. EXPORT OF DEFENSE ARTICLES AND SERVICES – INTERNATIONAL TRAFFIC IN ARMS REGULATIONS**

Under the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130, DDTC administers the export and re-export of defense articles, defense services and related technical data from the U. S. to any foreign destination, or to any foreign person, whether located in the U.S. or abroad. Section 121.1 of the ITAR contains the *United States Munitions List* (“USML”) and includes the commodities and related technical data and defense services controlled for export purposes. The ITAR controls not only end items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that are incorporated into the end item. Certain non-military items, such as commercial satellites, and certain chemical toxins and biological agents, are also controlled.

#### **A. ITEMS CONTROLLED UNDER THE ITAR**

The ITAR uses three different terms to designate export controlled items – defense articles, technical data, and defense services. With rare exceptions, if an item contains any components that are controlled under the ITAR, the entire item is controlled under the ITAR. For example, a commercial radio that would normally not be controlled under the ITAR becomes a controlled defense article if it contains an ITAR-controlled microchip.

**1. Defense Article** means any item or technical data that is specifically designed, developed, configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the USML. Defense article also includes models, mock-ups, or other items that reveal technical data relating to items designated in the USML.

**2. Technical Data** means any information for the design, development, assembly, production, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings or assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed. However, technical data does not include general scientific, mathematical, or engineering principles commonly taught in schools, information present in the public domain, general system descriptions, or basic marketing information on function or purpose.

**3. Defense Service** means providing assistance, including training, to a foreign person in the U. S. or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles. Defense service also includes the furnishing of any controlled technical data to a foreign person, whether in the U.S. or abroad.

## **B. THE USML CATEGORIES**

The *United States Munitions List (USML)* designates particular categories and types of equipment as defense articles and associated technical data and defense services. The USML divides defense items into 21 categories, listed below. An electronic version of the USML is available on the Department of State website at: [http://www.pmddtc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_121.pdf](http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf)

- I Firearms, Close Assault Weapons and Combat Shotguns
- II Guns and Armament
- III Ammunition / Ordnance
- IV Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- V Explosives, Propellants, Incendiary Agents, and their Constituents
- VI Vessels of War and Special Naval Equipment
- VII Tanks and Military Vehicles
- VIII Aircraft and Associated Equipment
- IX Military Training Equipment
- X Protective Personnel Equipment
- XI Military Electronics
- XII Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIII Auxiliary Military Equipment
- XIV Toxicological Agents and Equipment and Radiological Equipment
- XV Spacecraft Systems and Associated Equipment
- XVI Nuclear Weapons, Design and Testing Related Items
- XVII Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- XVIII Directed Energy Weapons
- XIX [Reserved]
- XX Submersible Vessels, Oceanographic and Associated Equipment
- XXI Miscellaneous Articles

## **C. CLASSIFICATION**

While DDTC has jurisdiction over deciding whether an item is ITAR- or EAR-controlled, it encourages exporters to self-classify the item. If doubt exists as to whether an article or service is covered by the USML, upon written request in the form of a Commodity Jurisdiction (“CJ”) request, DDTC will provide advice as to whether a particular article is a defense article subject to the ITAR or a dual-use item subject to Commerce Department licensing. Determinations are based on the origin of the technology (*i.e.*, as a civil or

military article), and whether it is predominantly used in civil or military applications. UNT employees should contact the Export Controls Officer (ECO) in the Office of Research & Economic Development for assistance when classifying an item.

#### **D. DEFINITION OF EXPORT UNDER THE ITAR**

The ITAR defines the term “export” broadly. The term applies not only to exports of tangible items from the U.S., but also to transfers of intangibles, such as technology or information. The ITAR includes as an “export” the passing of information or technology to foreign nationals even within the U.S. The following are examples of exports:

##### **1. Exports of articles from the U.S.**

Shipping or taking a defense article out of the U.S.

Transferring title or ownership of a defense article to a foreign person, in or outside the U.S.

##### **2. Extra-territorial transfers**

The re-export or re-transfer of defense articles from one foreign person to another, not previously authorized (*i.e.*, transferring an article that has been exported to a foreign country from that country to a third country).

Transferring the registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite covered by the USML, whether the transfer occurs in the U.S. or abroad.

##### **3. Export of intangibles**

Disclosing technical data to a foreign person, whether in the U.S. or abroad, through oral, visual, or other means.

Performing a defense service for a foreign person, whether in the U.S. or abroad.

#### **E. AUTHORIZATION TO EXPORT**

Generally, any U.S. person or entity that manufactures, brokers, or exports defense articles or services must be registered with DDTC. Registration is required prior to applying for a license or taking advantage of some license exemptions. Once the registration is complete, an exporter may apply for an export authorization by submitting a relatively simple license application for the export of defense articles or technical data; or a complex license application, usually in the form of a Technical Assistance Agreement (“TAA”), for a transaction that will require the U.S. entity to provide defense services. Most types of applications also contain

additional certifications, supporting documentation, and in some cases, non-transfer and use certification from the licensee.

However, if a university desires to involve foreign nationals in ITAR-controlled research, it must register with the DDTC to apply for a license or take advantage of certain license exemptions. License exemptions specific to universities, as well as licensing procedures, are described in detail in the *Key Issues in University Research* section below.

#### **F. EMBARGOED COUNTRIES UNDER DDTC REGULATIONS**

*ITAR Prohibitions.* In general, no ITAR exports may be made either under license or license exemption to countries listed in 22 C.F.R. § 126.1, such as China, Cuba, Iran, North Korea, Sudan, and Syria. Additional restrictions apply to other countries; a complete list of U.S. arms embargoes is available online at:  
[http://www.pmdtdc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_126.pdf](http://www.pmdtdc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf)

### **IV. EXPORT OF COMMERCIAL DUAL-USE GOODS AND TECHNOLOGY – EXPORT ADMINISTRATION REGULATIONS**

The Department of Commerce’s Bureau of Industry and Security (BIS) regulates the export of commercial products and technology under the Export Administration Regulations, 15 C.F.R. §§ 730-774 (EAR). While there are some parallels to the ITAR, there also are some major differences in how the regulations and the relevant agencies function.

#### **A. ITEMS CONTROLLED UNDER THE EAR**

Generally, the export of all items of U.S.-origin, or physically located in the U.S., are subject to the EAR. Foreign manufactured goods are generally exempt from the EAR re-export requirements if they contain less than a *de minimis* level of U.S. content by value. Such *de minimis* levels are set in the regulations relative to the ultimate destination of the export or re-export.

The EAR requires a license for the exportation of a wide range of items with potential “dual” commercial and military use, or otherwise of strategic value to the U.S. (but not made to military specifications). However, only items listed on the *Commerce Control List (CCL)* require a license prior to export. Items not listed on the CCL are designated as “EAR99” items and generally can be exported without a license, unless the export is to an embargoed country, or to a prohibited person or end-use. The following summarizes the types of items controlled under the EAR:

**Commodities.** Finished or unfinished goods ranging from high-end microprocessors and airplanes to ball bearings.

**Manufacturing Equipment.** This includes equipment specifically for manufacturing or testing controlled commodities, as well as certain

generic machines, such as computer numerically controlled (“CNC”) manufacturing and test equipment.

**Materials.** This includes certain alloys and chemical compounds.

**Software.** This includes software specifically associated with particular commodities or manufacturing equipment, as well as any software containing encryption and the applicable source code.

**Technology.** Technology, as defined in the EAR, includes both technical data and services. Unlike the ITAR, the EAR generally makes no distinction between the two. However, the EAR may apply different standards to technology for “use” of a product than for the technology for the “design” or “manufacture” of the product.

## **B. THE COMMERCE CONTROL LIST CATEGORIES**

The Commerce Control List (CCL) provides a list of very specific items that are controlled. The CCL is divided into the nine categories below. The CCL is available online at [http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)

### CATEGORIES

0. Nuclear related items & miscellaneous items
1. Chemical compounds, microorganisms and toxins
2. Materials processing
3. Electronics
4. Computers
5. pt-1 Telecommunications
5. pt-2 Information security (encryption)
6. Sensors & lasers
7. Navigation and avionics
8. Marine (vessels, propulsion, and equipment)
9. Propulsion systems, space vehicles (includes aircraft & aircraft engines)

## **C. CLASSIFICATION**

As discussed in the *Overview*, DDTC has jurisdiction to decide whether an item is ITAR-controlled or EAR-controlled. DDTC encourages exporters to self-classify the item being exported. If doubt exists, a Commodity Jurisdiction request may be submitted to DDTC to determine whether an item is ITAR- or EAR-controlled.

Once it is determined that an item is EAR-controlled, the exporter must determine its Export Control Classification Number (“ECCN”). BIS offers two assistance procedures where the proper ECCN classification or licensing requirements are uncertain. To determine EAR’s applicability and the appropriate ECCN for a particular item, a party can submit a “Classification Request” to BIS. To determine whether a license is required or would be granted for a particular transaction, a party can request that BIS provide a non-binding “advisory opinion.” While BIS provides assistance with determining the specific ECCN of a dual-use item listed on the CCL, if doubt exists as to whether an item is ITAR- or EAR-controlled, BIS will stay its classification proceeding and forward the issue to DDTC for jurisdiction determination.

Unlike the ITAR, for classification purposes BIS generally looks at the classification of the complete product being exported rather than at the classification of each subcomponent of the item.

#### **D. DEFINITION OF EXPORT AND RE-EXPORT UNDER THE EAR**

**1. Export.** Export is defined as the actual shipment or transmission of items subject to the EAR out of the United States. The EAR is similar to the ITAR in that it covers intangible exports of “technology,” including source code, as well as physical exports of items.

**2. Deemed Export.** Under the EAR the release of technology to a foreign national in the U.S. is “deemed” to be an export, even though the release took place within the U.S. Deemed exports may occur through such means as a demonstration, oral briefing, or facility visit, as well as the electronic transmission of non-public data that will be received abroad.

**3. Re-export.** Similarly to the ITAR, the EAR imposes restrictions on the re-export of U.S. goods, *i.e.*, the shipment or transfer to a third country of goods or technology originally exported from the U.S.

**4. Deemed Re-export.** Finally, the EAR defines “deemed” re-exports as the release of technology by a foreign national who has been licensed to receive it to a foreign national of another foreign country who has not been licensed to receive the technology.

#### **E. AUTHORIZATION TO EXPORT**

Once determined that a license is required, an exporter can apply for export authorization from BIS. Unlike the ITAR, there is no requirement for formal registration prior to applying for export authorization. Additionally, the EAR has no equivalent to the TAA used in ITAR exports.

The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 C.F.R. § 740, as well as review of the notes on applicable license exceptions following the ECCN entry on the

CCL.

Each category of the CCL contains ECCNs for specific items divided into five categories, A through E: "A" refers to specific systems or equipment (and components); "B" refers to test, inspection and production equipment; "C" refers to materials; "D" refers to software; and "E" refers to the technology related to that specific equipment. For example, most civil computers would be classified under ECCN 4A994. The "4" refers to Category 4, *Computers*, and the "A" refers to the subcategory, *i.e.*, equipment. Generally, if the last three digits begin with a 'zero' or 'one' (*e.g.*, 4A001), the product is subject to stringent controls, whereas if the last three digits are a "9XX" (*e.g.*, 4A994), then generally there are fewer restrictions on export.

Once an item has been classified under a particular ECCN, a person can determine whether a license is required for export to a particular country. The starting place is the information following the ECCN heading. The "List of Items Controlled" describes the specific items covered or not covered by the ECCN.

(1) *Determine Reason for Controls.* The "License Requirements" section provides notations as to the reasons for control. These reasons include:

AT	Anti-Terrorism	CB	Chemical & Biological Weapons
CC	Crime Control	CW	Chemical Weapons Convention
EI	Encryption Items	FC	Firearms Convention
MT	Missile Technology	NS	National Security
NP	Nuclear Nonproliferation	RS	Regional Security
SS	Short Supply	XP	Computers
SI	Significant Items		

The most commonly used controls are Anti-Terrorism and National Security, while other controls only apply to limited types of articles.

(2) *Apply Country Chart.* Once an item is identified as meeting the criteria for a particular ECCN, the user can refer to the chart found at 15 C.F.R. § 738, Supp. 1. If the particular control applies to that country, a license is required.

§ *Exceptions.* The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 C.F.R. 740, as well as review of the notes on applicable license exceptions following the ECCN entry. License exceptions specific to universities, as well as licensing procedures, are described in the *Key Issues in University Research* section below.

## V. OFAC SANCTIONS PROGRAM AND BARRED ENTITIES LISTS

### A. SANCTIONED COUNTRIES

U.S. economic sanctions broadly prohibit most transactions between a U.S. person and persons or entities in an embargoed country, including Cuba, Iran, North Korea, Syria, and Sudan. This prohibition includes importation and exportation of goods and services, whether direct or indirect, as well as "facilitation" by a U.S. person of transactions between foreign parties and a sanctioned country. For example, sending a check to an individual in Iran could require an OFAC license or be prohibited. More limited sanctions may block particular transactions or require licenses under certain circumstances for exports to a number of countries, including but not limited to Burma, Liberia, and Zimbabwe. (See <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx> for a full list of U.S. sanctions programs because this list is subject to change.) Economic sanctions and embargo programs are country-specific and very detailed in the specific prohibitions.

### B. BARRED INDIVIDUALS OR ENTITIES LISTS

Various U.S. Government agencies maintain a number of lists of individuals or entities barred or otherwise restricted from entering into certain types of transactions with U.S. persons. Universities must screen individuals and entities to ensure that they are not included on such lists. If an individual or entity is included on such list, the University will not engage in a transaction with such barred entity.

The "Consolidated Screening List" at [http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp) is a list of parties for which the U.S. Government maintains restrictions on certain exports, re-exports or transfers of items. If a party to a transaction matches a party name on the consolidated list, the user must check the official publication of restricted parties in the [Federal Register](#) and the official lists of restricted parties maintained on the web sites of the Departments of Commerce, State, and the Treasury to ensure full compliance with all of the terms and conditions of the restrictions placed on the parties on this list. Here are the lists included in the "Consolidated Screening List":

#### *Department of Commerce – Bureau of Industry and Security*

[Denied Persons List](#) - Individuals and entities that have been denied export privileges.

Any dealings with a party on this list that would violate the terms of its denial order are prohibited.

[Unverified List](#) - End-users who BIS has been unable to verify in prior transactions. The

presence of a party on this list in a transaction is a “Red Flag” that should be resolved before proceeding with the transaction.

[Entity List](#) - Parties whose presence in a transaction can trigger a license requirement that is supplemental to those required in the Export Administration Regulations (EAR). The list specifies the license requirements and policy that apply to each listed party.

**Department of State – Bureau of International Security and Non-proliferation**

[Nonproliferation Sanctions](#) – Parties that have been sanctioned under various statutes. The linked webpage is updated as appropriate, but the Federal Register is the only official and complete listing of nonproliferation sanctions determinations.

**Department of State – Directorate of Defense Trade Controls**

[AECA Debarred List](#) – Entities and individuals prohibited from participating directly or indirectly in the export of defense articles, including technical data and defense services. Pursuant to the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR), the AECA Debarred List includes persons convicted in court of violating or conspiring to violate the AECA and subject to “statutory debarment” or persons established to have violated the AECA in an administrative proceeding and subject to “administrative debarment.”

**Department of the Treasury – Office of Foreign Assets Control**

[Specially Designated Nationals List](#) – Parties who may be prohibited from export transactions based on OFAC’s regulations. The EAR requires a license for exports or re-exports to any party in any entry on this list that contains any of the suffixes "SDGT", "SDT", "FTO", "IRAQ2" or "NPWMD".”

<b>DEPARTMENT OF COMMERCE</b>	<b>DEPARTMENT OF STATE</b>	<b>DEPARTMENT OF THE TREASURY</b>
Denied Persons List	Nonproliferation Sanctions	Specially Designated Nationals List
Unverified List	AECA Debarred List	
Entity List		

## **VI. PENALTIES FOR EXPORT VIOLATIONS**

### **A. GENERAL OVERVIEW**

Generally, any person or entity that exports, or attempts to export a controlled item without prior authorization, or in violation of the terms of a license, is subject to penalties. Violators may incur both criminal and civil penalties. Although there is a maximum amount for a civil or criminal penalty, the actual penalty imposed is often multiplied. For instance, each shipment might be considered a separate violation, and BIS will often find multiple violations of related restrictions in connection to each shipment (*e.g.*, export without a license, false representation, actions with knowledge of a violation). A series of violations occurring over a period of time may result in hundreds of thousands or even millions of dollars of penalties.

## **B. DEFENSE EXPORTS**

The Arms Export Controls Act and the ITAR provide that willful violations of the defense controls can be fined up to \$1,000,000 per violation, ten years of imprisonment, or both. In addition, the Secretary of State may assess civil penalties, which may not exceed \$500,000 per violation. The civil penalties may be imposed either in addition to, or in lieu of, any other liability or penalty. The articles exported or imported in violation, and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition. Finally, the Assistant Secretary for Political-Military Affairs may order debarment of the violator, *i.e.*, prohibit the violator from participating in export of defense items.

While imposing criminal liability is fairly rare, many major U.S. companies have been assessed significant civil penalties involving millions of dollars.

## **C. DUAL-USE ITEMS EXPORTS AND ANTI-BOYCOTT VIOLATIONS**

Similarly to the ITAR, violations of the EAR are subject to both criminal and administrative penalties. Fines for export violations, including anti-boycott violations, can reach up to \$1,000,000 per violation in criminal cases, and \$250,000 per violation in most administrative cases. In addition, criminal violators may be sentenced to prison time up to 20 years, and administrative penalties may include the denial of export privileges. In most instances, BIS reaches negotiated settlements in its administrative cases, as a result of voluntary self-disclosures of violations by companies and individuals. Voluntary disclosures constitute a major mitigating factor in determining penalties, reducing the amount of penalty by up to 50 percent, provided certain conditions are met, such as the implementing of a comprehensive compliance program.

## **D. EXPORTS TO A SANCTIONED COUNTRY**

Although potential penalties for violations of U.S. export laws vary depending on the country and product involved, an exporter may be subject to a maximum civil penalty of \$250,000 per violation under OFAC regulations, with the exception of exports to Cuba. Violations of the Cuban sanctions are subject to a maximum penalty of \$65,000 per violation.

The U.S. Government can also seek to criminally prosecute conduct where violations are willful and knowing. Such violations may reach \$1,000,000 per violation and imprisonment of up to 20 years. In addition, where there is egregious conduct by the offender, BIS (who assists OFAC in enforcing sanctions) may suspend the export privileges of a company.

In assessing penalties, DDTC, BIS, and OFAC will consider a number of factors, both aggravating and mitigating. Mitigating factors include (1) whether the disclosure was made voluntarily; (2) whether this was a first offense; (3) whether the company had compliance procedures; (4) whether steps were taken to improve compliance after discovery of violations; and (5) whether the incident was due to inadvertence, mistake of fact, or good faith misapplication of the laws. Aggravating factors include: (1) willful or intentional violations; (2) failure to take remedial action after discovery; (3) lack of a compliance program; and (4)

deliberate efforts to hide or conceal a violation.

## **KEY ISSUES IN UNIVERSITY RESEARCH**

### **I. DEEMED EXPORTS**

While exports are commonly associated with the shipment of a tangible item across the U.S. border, export controls have a much broader application. One of the most difficult export controls issues is that the definition of export includes the transfer of controlled *information or services* to foreign nationals even when the transfer takes place within the territory of the U.S. Though taking place inside the U.S., the transfer is “deemed” to be an export (as if exporting to the country of the foreign national). The term “deemed export” is unique to the EAR; however, the same principle applies to exports regulated by the ITAR.

While the ITAR distinguishes between the transfer of *technical data* and *defense services*, the EAR generally addresses the release of *technology*. Such transfer or release may be made through oral, visual, or other means. For example:

1. a demonstration;
2. oral briefing;
3. telephone call or message;
4. laboratory or facility visit;
5. presenting at conferences and meetings;
6. faxes or letters;
7. hand-carried documents, hardware or drawings;
8. design reviews;
9. the exchange of electronic communication;
10. posting non-public data on the Internet or the Intranet;
11. carrying a laptop with controlled technical information or software to an overseas destination; or
12. collaborating with other universities/research centers through research efforts.

The issue of deemed exports is particularly relevant to university research because of the activities that normally take place at a university. While a university may be involved in the shipment abroad of equipment or machinery to participate in a conference, a joint project, or equipment loan programs, most often faculty and students are engaged in teaching and research. Whenever teaching or research are related to controlled equipment or technology, foreign students' or foreign researchers' involvement may trigger export control compliance issues.

## **II. U.S. AND FOREIGN PERSONS**

For purposes of defense and dual-use exports, a *U.S. person* is defined as a U.S. entity or a U.S. citizen, a person lawfully admitted for permanent residence in the U.S. (*i.e.*, green card holder), or a person who is a protected individual under the Immigration and Naturalization Act. A U.S. person may be engaged in activities that are export controlled, unless there are some additional restrictions that limit participation to U.S. citizens.

The regulations define foreign person as anyone who is not a U.S. person. BIS looks at the person's most recent citizenship or permanent residence. DDTC looks at the person's country of origin (*i.e.*, country of birth) and all current citizenships.

Note that the definitions for a U.S. and a foreign person differ for purposes of the OFAC sanctions. For a discussion, see *Overview of Export Controls* above.

## **III. INFORMATION EXCLUDED FROM OR NOT SUBJECT TO EXPORT CONTROLS**

It is important to note that most of the research activities that UNT engages in are fundamental research. As such, most activities at UNT are not subject to export controls, or even if controlled, do not require licensing. Both the ITAR and the EAR have special provisions relating to information that is not subject to export controls, including limited exclusions regarding the release of information in the context of university research and educational activities. Additionally, the embargo regulations have exceptions for certain information and informational materials.

### **A. PUBLICLY AVAILABLE**

The ITAR and the EAR do not control information which is published and generally accessible or available to the public. Note that even though the two regimes have similar scope, the ITAR and the EAR vary in the specific information that qualifies as publicly available.

**ITAR provision:** The ITAR describes such information as information in the *public domain*. The information in the public domain may be obtained through:

- sales at newsstands and bookstores;
- subscription or purchase without restriction to any individual;

- at libraries open to the public;
- patents available at any patent office;
- unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the U.S.;
- public release in any form after approval of the cognizant U.S. Government agency; or
- *fundamental research* in the U.S.

**EAR provision:** The EAR does not control publicly available technology if it is already published or will be published. Information is published when it becomes generally accessible to the interested public in any form, including:

- publication in periodicals, books, print, *etc.*, available for general distribution **free or at cost**;
- readily available at libraries open to the public or university libraries;
- patents and open patents applications available at any patent office; or
- release at an open conference, meeting, seminar, trade show, or other gathering open to the public.

The EAR requires that the publication is available for distribution free or at price not to exceed the cost of reproduction and distribution; however, the ITAR does not have such a requirement.

Note also that the EAR does not specify where an open conference, meeting, seminar or trade show must take place, and thus allows, for example, participation at a foreign conference as long as the conference is open to all technically qualified members of the public, and attendees are permitted to take notes. Unlike the EAR, the ITAR exclusion limits participation in conferences and similar events to those that are taking place in the U.S.

## **B. EDUCATIONAL INFORMATION**

Both the ITAR and the EAR address the issue of general educational information that is typically taught in schools and universities. Such information, even if it relates to items included on the USML or the CCL, does not fall under the application of export controls.

**ITAR provision:** The ITAR specifically provides that the definition of "technical data" does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities.

**EAR provision:** The EAR provides that publicly available "educational information" is not subject to the EAR, if it is released by instruction in

catalogue courses and associated teaching laboratories of academic institutions.

Therefore, a UNT graduate course on design and manufacture of very high-speed integrated circuitry will not be subject to export controls, even though the technology is on the CCL. The key factor is the fact that the information is provided by instruction in a catalogue course. Foreign students from any country may attend this course because the information is not controlled.

The information will not be controlled even if the course contains recent and unpublished results from laboratory research, so long as the university did not accept separate obligations with respect to publication or dissemination, *e.g.*, a publication restriction under a federal funding agreement.

### C. FUNDAMENTAL RESEARCH

During the Reagan administration, several universities worked with the Federal government to establish national policy for controlling the flow of information produced in federally funded fundamental research at colleges, universities and laboratories resulting in the issuance of the National Security Decision Directive 189 (NSDD), *National Policy on the Transfer of Scientific, Technical and Engineering Information* on September 21, 1985. In a letter dated November 1, 2001, President George W. Bush's administration reaffirmed NSDD 189. NSDD 189 provided the following definition of **fundamental research** that has guided universities in making licensing decisions relative to fundamental research exclusions provided under both the EAR and ITAR.

*Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.*

Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research. University based research is not considered fundamental research if the university or its researchers accept (at the request, for example, of an industrial sponsor) other restrictions on publication of scientific and technical information resulting from the project or activity. Scientific and technical information resulting from the research will nonetheless qualify as fundamental research once all such restrictions have expired or have been removed.

Both the ITAR and the EAR provide that information published and generally accessible to the public through fundamental research is not subject to export controls. However, there are certain restrictions. In order to take advantage of this exemption:

- such information must be produced as part of basic and applied research in science and engineering and must be broadly shared within the scientific community (*i.e.*, no restrictions on publication/dissemination of the research results);
- it is essential to distinguish the information or product that results from the fundamental research from the conduct that occurs within the context of the fundamental research;
  - while the results of the fundamental research are not subject to export controls, an export license may be required if during the conduct of the research export controlled technology is to be released to a foreign national. Such export controlled technology may come from the research sponsor, from a research partner institution, or from a previous UNT research project.

One major difference is that the ITAR requires that, to qualify as fundamental research, research must be performed at *accredited institutions of higher learning in the United States*. Under the EAR, fundamental research may occur at facilities other than *accredited institutions of higher learning in the United States*.

Under both the ITAR and the EAR, **research performed at universities will not qualify as fundamental if the university (or the primary investigator) has accepted publication or other dissemination restrictions.**

**ITAR provision:** the fundamental research exception does not apply to research the results of which are restricted for proprietary reasons, or specific U.S. Government access and dissemination controls.

**EAR provision:** the fundamental research is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons. Under the EAR, university-based research is not considered fundamental research if the university or its researchers accept restrictions (other than review to ensure no release of sponsor-provided proprietary or patent information) on publication of scientific and technical information resulting from the project.

The EAR provides that prepublication review by a sponsor of university research solely to ensure that the publication would not inadvertently divulge proprietary information that the sponsor has initially furnished, or compromise patent rights, does not constitute

restriction on publication for proprietary reasons.

The EAR also includes examples of "specific national security controls" which will trigger export controls. These include requirements for prepublication review and approval by the Government, with right to withhold permission for publication; restriction on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research.

While the ITAR does not contain such descriptive provisions, the EAR is instructive as to interpreting the limitations on fundamental research.

#### **D. FULL-TIME UNIVERSITY EMPLOYEES**

Under a specific exemption, the ITAR allows a university to disclose unclassified technical data in the U.S. to a foreign person who is the university's *bona fide* and full time regular employee. The exemption is available only if:

- the employee's permanent abode throughout the period of employment is in the U.S.;
- the employee is not a national of a country to which exports are prohibited pursuant to ITAR § 126.1 (See current list of countries at [http://www.pmddtc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_126.pdf](http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf));
- the university informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of DDTC; and
- the university documents the disclosure of technical data under the exemption providing: (1) a description of the technical data; (2) the name of the recipient / end-user; (3) the date and time of export; (4) the method of transmission; (5) the ITAR reference, *i.e.*, ITAR § 125.4(b)(10), *Full-Time University Employee*.

Note that the "full-time bona fide employee" requirement will preclude foreign students and postdoctoral researchers from qualifying for access to technical data under this exemption. Generally, an H1B work visa would be required.

This exemption only applies to the transfer of *technical data* and discussions related to the data. Discussions may occur between the foreign full-time employee and other university employees working on the project. Additionally, the outside company (sponsor of the research) would have to apply for a DSP-5 license to provide technical data directly to the foreign

national employee, and if the outside party and the employee are to engage in discussions and interchange concerning the data, then the proper authorization would be a Technical Assistance Agreement (TAA) rather than a DSP-5 license.

## **UNT EXPORT CONTROLS PROCEDURES**

### **I. COMMITMENT TO EXPORT CONTROLS**

As set forth in UNT Policy Number 16.13, the University of North Texas is committed to conducting research in accordance with applicable export controls laws and regulations.

The Office of Research and Economic Development includes an Export Controls Officer to advise and assist faculty and staff employees in conducting activities related to research and sponsored projects. More information and resources regarding these and other regulations that impact university activities can be found at <http://research.unt.edu/faculty-resources/research-integrity-and-compliance/export-controls> or by contacting the Export Controls Officer at (940) 565-3941.

### **II. KEY ACTORS RESPONSIBLE FOR EXPORT CONTROL COMPLIANCE**

#### **A. UNT EXPORT CONTROLS OFFICER**

The Export Controls Officer (ECO) is appointed by the Vice President for Research and Economic Development and reports to an Associate Vice President for Research (AVPR). The ECO has the authority and the responsibility for the implementation of the procedures set forth in this Export Controls Compliance Manual.

The ECO works closely with the AVPR and the Senior Director of Research Services in performing his or her responsibilities. The ECO:

1. identifies areas at UNT relative to research and other activities that are impacted by export control regulations;
2. develops procedures to ensure the university remains in compliance;
3. recommends procedures to the AVPR to strengthen UNT's compliance;
4. educates inventors, principal investigators, centers, and academic units about export control regulations and procedures followed at UNT;
5. educates other units within UNT about export control regulations and procedures followed at UNT;
6. works with others on campus to facilitate understanding and compliance

with export controls;

7. conducts training and outreach on export controls, with the involvement of the UNT System Office of General Counsel.
8. assists investigators, researchers and offices within UNT when research or research results are export controlled;
9. seeks legal assistance from the UNT System Office of General Counsel when uncertain about classification and in filing license applications; and
10. develops a Technology Control Plan (TCP) for each export-controlled project consistent with these procedures to aid the Principal Investigator (PI) in meeting his or her export controls responsibilities.

**B. OFFICE OF RESEARCH SERVICES**

The Office of Research Services (ORS), under the direction of the Senior Director of Research Services, provides assistance and expertise with export controls by working closely with the ECO in identifying export control issues and providing support for their solution. The ORS:

1. provides assistance to PIs in reviewing the terms of a grant or sponsorship agreement to identify restrictions on publication and dissemination of the research results, and to help PIs negotiate out such restrictions where possible;
2. requires completion of an Export Control Checklist by the PI when export controls issues are present in a proposed or awarded project and sends the completed checklist to the ECO for review;
3. is responsible for maintaining all documentation relating to a research project or education activity; and
4. coordinates with the PI and the ECO to ensure that foreign nationals will be isolated from participation in an export-controlled sponsored project in accordance with the TCP, unless UNT applies for and obtains a license from the relevant agency.

**C. KEY UNIVERSITY MANAGERS**

Academic deans, directors, and department heads whose operations present export controls issues share the responsibility of overseeing export controls compliance in their respective schools, departments, centers, or institutes and supporting the ECO in implementing

procedures as deemed necessary by the ECO for export controls compliance.

#### **D. PRINCIPAL INVESTIGATORS (PIs)**

Principal Investigators (PIs) have expert knowledge of the types of information and technology involved in a research project or other university activity, such as presenting at conferences and discussing research findings in class or with fellow researchers or collaborators. PIs must ensure that they do not disclose controlled information or transfer controlled articles or services to a foreign national without prior authorization as required. To meet his or her obligations, each PI must:

1. understand his or her obligations under export controls, and participate in appropriate training to help him or her identify export control issues;
2. assist the ECO to classify the technology involved in the research or other university activity;
3. identify foreign nationals that may be involved and, if export control is likely, initiate the process of clearing foreign national participation well in advance to ensure that a license is obtained in a timely manner, or implement proper measures to isolate foreign nationals from participation;
4. if undertaking an export controlled project, brief the students and other researchers involved in the project of their obligations under export controls; and
5. cooperate with the ECO in developing the TCP which the PI has the responsibility to follow and implement.

### **III. EXPORT CONTROL ANALYSIS**

An export control analysis should be performed when a PI submits a proposal, receives an award, or changes the scope of an existing project.

#### **A. INITIAL REVIEW BY OFFICE OF RESEARCH SERVICES**

Using the Export Controls Checklist for Research Proposals, Awards, and Contracts (Appendix A), the Office of Research Services (ORS) performs the initial review by evaluating each proposed sponsored project, awarded sponsored project, or modification of an existing sponsored project to look for the following red flags indicating possible export control issues:

1. references to U.S. export regulations (beyond a mere statement to comply with the export controls law);
2. restrictions on publication or dissemination of the research results;
3. pre-publication approval from sponsor;
4. proprietary or trade secret claims on project results;
5. restriction of access or participation to U.S. citizens only;
6. involvement of foreign sponsors or collaborators;
7. travel, shipping, or work performed outside the U.S.;
8. military applications of the project results; or
9. funding from the Department of Defense, the Department of Energy, the Army, the Air Force, the Naval Office, NASA, the National Reconnaissance Office, or other similar U.S. governmental agencies.

## **B. COMPLETION OF CHECKLIST BY PI AND REVIEW BY ECO**

If the initial review results in identification of possible export controls issues, the PI completes the Export Controls Checklist for Research Proposals, Awards, and Contracts (Appendix B) for review by the ECO. After reviewing the completed checklist and relevant information regarding the proposal or award, the ECO advises the PI concerning the export controls which apply to the project, the restrictions on access by foreign persons, and any other requirements under ITAR, EAR, or OFAC regulations.

## **IV. TECHNOLOGY CONTROL PLAN**

### **A. DEVELOPMENT**

If the ECO determines that a project is export controlled, the ECO works with the PI to develop and implement a TCP to secure the controlled technology from access by unlicensed non-U.S. citizens. The TCP includes:

1. a commitment to export controls compliance;
2. identification of the relevant export control categories and controlled technologies;
3. identification of the project's sponsors;
4. identification and nationality of each individual participating in the project;
5. appropriate physical and informational security measures;
6. personnel screening measures; and
7. appropriate security measures for the project and following project termination.

## **B. APPROPRIATE SECURITY MEASURES**

The TCP includes physical and informational security measures appropriate to the export control categories involved in the project. Examples of security measures include, but are not limited to:

Laboratory Compartmentalization. Project operation may be limited to secured laboratory areas physically shielded from access or observation by unauthorized individuals. These areas must remain locked at all times.

Time Blocking. Project operation may be restricted to secure time blocks when unauthorized individuals cannot observe or access.

Marking. Export controlled information must be clearly identified and marked as export-controlled.

Personnel Identification. Individuals participating in the project may be required to wear a badge, special card, or other similar device indicating their access to designated project areas. Physical movement into and out of a designated project area may be logged.

Locked Storage. Tangible items such as equipment, associated operating manuals, and schematic diagrams should be stored in rooms with key-controlled access. Soft and hardcopy data, lab notebooks, reports, and other research materials should be stored in locked cabinets.

Electronic Security. Project computers, networks, and electronic transmissions should be secured and monitored through user IDs, password controls, or federally approved encryption technology.

Confidential Communications. Discussions about the project must be limited to the identified and authorized project participants, and only in areas where unauthorized individuals are not present. Discussions with third party sub- contractors must occur only under signed agreements which fully respect the non-U.S. citizen limitations for such disclosures

## **C. TRAINING & CERTIFICATION**

Before any individual may observe or access the controlled technology, he or she must be briefed on the procedures authorized under the TCP, certify his or her agreement to comply with all security measures outlined in the TCP, and have his or her certification authorized by the ECO.

## **V. LICENSING**

If a project is export controlled and a license is needed to involve a foreign national, the ECO may apply for an export license to allow the disclosure of information to foreign students and researchers. Note that each foreign national must be specifically licensed for each controlled project. Also note that a TCP, as described in Section IV above, must be implemented. The ECO, in coordination with the UNT System Office of General Counsel, will prepare and sign the necessary documentation for obtaining a license.

## **VI. LICENSE EXCEPTIONS AND EXEMPTIONS RELATED TO TRAVEL OUTSIDE THE U.S.**

Travel or transmissions to destinations outside the U.S. can also implicate export control regulations. A license may be required depending on which items are taken, which countries are visited, or whether defense services are provided to a foreign person. However, an exception or exemption from license requirements may exist.

A *License Exception* may be available for EAR controlled items, technology, or software if the individual travelling outside the U.S. can certify that he or she:

1. will ship or hand-carry the items, technology, or software for UNT business only;
2. will return or certify the destruction of the items, technology, or software within 12 months of leaving the U.S.;
3. will keep the items, technology, or software within his or her effective control;
4. will take necessary security precautions to protect against the unauthorized export of the technology; and
5. will not ship or hand-carry the items, technology, or software to Iran, Syria, Cuba, North Korea, or Sudan (this list is subject to change; for current list, see 15 C.F.R. 742.1) without first consulting with the ECO.

A *License Exemption* may be available to ITAR controlled technical data transmitted outside the U.S. if the individual transmitting the technical data can certify that:

1. the technical data is to be used overseas solely by a U.S. person(s);
2. the U.S. person overseas is an employee of UNT or the U.S. Government and is not an employee of a foreign subsidiary; and
3. no export will be made to countries listed by 22 C.F.R. § 126.1.

Any individual intending to travel or transmit controlled data outside the U.S. should first consult with the ECO. All exceptions or exemptions must be documented by the ECO and the record maintained for at least five years after the termination of the project or the travel return date.

## **VII. TRAINING PROGRAMS**

Training is the foundation of a successful export controls compliance program. Well-informed employees minimize the likelihood that inadvertent violations of the law will occur. The greatest risk of non-compliance of export laws and regulations occurs during casual conversations in person, on the telephone, or via e-mail. The most effective way to prevent these types of violations is through awareness and training.

The ECO will prepare and present updated training materials for UNT faculty and staff employees, with participation by an Assistant General Counsel from the UNT System Office of General Counsel. General export control information and training presentations will be available for the university community online at the following link:

<http://research.unt.edu/faculty-resources/research-integrity-and-compliance/export-controls>.

Academic deans, directors, or department heads whose operations present export controls issues will assist the ECO in implementing export control training sessions or briefings for their respective schools, departments, centers, or institutes.

### **VIII. RECORDKEEPING**

UNT's policy is to maintain export-related records on a project basis. Unless otherwise provided for, all records indicated herein shall be maintained consistent with the UNT record retention policy, and shall be retained no less than five years after the project's TCP termination date or license termination date, whichever is later.

If ITAR-controlled technical data is exported under an exemption, certain records of the transaction must be kept even beyond UNT's five year retention period. Those records include:

1. a description of the technical data;
2. the name of the recipient/end-user;
3. the date/time of export;
4. the method of transmission; and
5. the exemption under which the export took place.

BIS has specific record-keeping requirements. Generally, records required to be kept by EAR must be kept for a period of five years from the project's termination date. However, if BIS or any other government agency makes a request for such records following a voluntary self-disclosure, the records must be maintained until the agency concerned provides written authorization otherwise.

### **IX. MONITORING AND AUDITING**

In order to maintain UNT's export compliance program and ensure consistent adherence to U.S. export laws, the ECO may conduct internal reviews of sponsored projects operating under TCPs. The purposes of such reviews are: (i) to identify possible export

controls violations; and (ii) to identify deficiencies in training or procedures that can be improved.

**X. DETECTING AND REPORTING VIOLATIONS**

The consequences of violating federal export controls regulations can be severe. However, voluntary self-disclosures can mitigate the seriousness of the penalty. UNT, in consultation with System Office of General Counsel, will make voluntary self-disclosures in accordance with federal export controls regulations.

# APPENDIX A



## EXPORT CONTROLS CHECKLIST FOR RESEARCH PROPOSALS, AWARDS, AND CONTRACTS

Principal Investigator: \_\_\_\_\_ Department: \_\_\_\_\_

Project Title: \_\_\_\_\_

Project Sponsor: \_\_\_\_\_

**Completion of this form may be requested by your Grant or Contract Officer if it is determined that that there is a potential for export controls issues to be presented by a research proposal, award, or contract. For any “YES” answers, attach a description.**

Does this proposal, award, or contract:	YES	NO
Refer to U.S. export control laws or regulations (beyond a mere statement to comply with the law)?		
Give the sponsor the right to approve/disapprove publication (excluding reasonable reviews for protection of the sponsor’s patents and/or proprietary information)?		
Prohibit the involvement of foreign nationals or require prior approval from the sponsor?		
Restrict the dissemination of research results?		
Allow the sponsor to claim resulting information as proprietary or trade secret?		
Involve activities related to developing, producing, or using nuclear explosive devices, chemical or biological weapons, missile technology, or encryption software (for which you will have access to the applicable source code)?		
Involve export outside the U.S. or sharing with foreign nationals within the U.S. (“deemed export”) of any equipment, software, technology or services listed on the <b>Export Administration Regulations’ Commerce Control List</b> or the <b>International Traffic in Arms Regulations’ U.S. Munitions List</b> (see page 2 of this form for a listing of general categories of both lists and links to specific controlled items)?		
Involve any sanctioned countries or travel to any sanctioned countries as specified by the <b>U.S. Treasury Department’s Office of Foreign Assets Control (OFAC)</b> at <a href="http://www.ustreas.gov/offices/enforcement/ofac/programs/">http://www.ustreas.gov/offices/enforcement/ofac/programs/</a> ?		

Signature of Principal Investigator: \_\_\_\_\_ Date: \_\_\_\_\_

## **EAR AND ITAR LISTS BY MAJOR CATEGORIES**

### **COMMERCE CONTROL LIST (CCL), Export Administration Regulations (EAR)**

<http://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl> (click on the applicable category for a detailed list of EAR-controlled items)

Category 0	Nuclear Materials, Facilities & Equipment (and Miscellaneous Items)
Category 1	Materials, Chemicals, Microorganisms, and Toxins
Category 2	Materials Processing
Category 3	Electronics Design, Development and Production
Category 4	Computers*
Category 5	(Part 1) – Telecommunications (Part 2) – Information Security *
Category 6	Sensors and Lasers
Category 7	Navigation and Avionics
Category 8	Marine
Category 9	Propulsion Systems, Space Vehicles and Related Equipment

\*Controls generally apply to high performance computers with an Adjusted Peak Performance (APP) of .75 WT (Weighted TeraFLOPS) and encryption software.

### **U.S. MUNITIONS LIST (USML), International Traffic in Arms Regulations (ITAR)**

[http://www.pmdtc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_121.pdf](http://www.pmdtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf)

(for a detailed list of ITAR-controlled items, see list which begins on page 473)

Category I	Firearms, Close Assault Weapons and Combat Shotguns
Category II	Materials, Chemicals, Microorganisms, and Toxins
Category III	Ammunition/Ordnance
Category IV	Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
Category V	Explosive and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
Category VI	Vessels of War and Special Naval Equipment
Category VII	Tanks and Military Vehicles
Category VIII	Aircraft and Associated Equipment
Category IX	Military Training Equipment
Category X	Protective Personnel Equipment
Category XI	Military Electronics
Category XII	Fire Control, Range Finder, Optical and Guidance and Control Equipment
Category XIII	Auxiliary Military Equipment
Category XIV	Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
Category XV	Spacecraft Systems and Associated Equipment
Category XVI	Nuclear Weapons, Design, and Testing Related Items.
Category XVII	Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
Category XVIII	Directed Energy Weapons
Category XX	Submersible Vessels, Oceanographic and Associated Equipment