

The University of Texas at Tyler Institutional Policy on Export Control

1. Policy Overview

The University of Texas System (UT System) policy for compliance with federal export control regulations is based upon maintaining an open, fundamental research environment. UT System and its 15 member institutions encourage the exchange of research and technology consistent with U.S. national security and nuclear nonproliferation objectives. Although most research at UT System institutions is excluded from the U.S. export control regulations, UT System and its 15 member institutions will comply with all export control regulations, including obtaining any required export licenses, for the transfer of export controlled materials, data, technology, or equipment to a foreign national, either in the United States (U.S.), or abroad.

2. Background

The export of certain technologies, software and hardware is regulated and controlled by federal law for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction and for competitive trade reasons. The University of Texas at Tyler and all its employees are required to comply with the laws and implementing regulations issued by the government including the Department of State, through its International Traffic in Arms Regulations (ITAR), the Department of Commerce, through its Export Administration Regulations (EAR), and the Department of the Treasury, through its Office of Foreign Assets Controls (OFAC).

While most research conducted on U.S. college and university campuses is excluded from these regulations under the Fundamental Research Exclusion (as discussed in Section 3.5 below) and is considered to be in the public domain, university research involving specified technologies controlled under the EAR and/or ITAR, or transactions and exchanges with designated countries, individuals and entities, may require the university to obtain prior approval from the appropriate agency before allowing foreign nationals to participate in controlled research, collaborate with a foreign company and/or share research—verbally or in writing—with persons who are not U.S. citizens or permanent residents. The consequences of violating these regulations can be quite severe, ranging from loss of research contracts to monetary penalties and jail time for the individual violating these regulations.

The export control regulations affect not only research conducted on campus, but also travel and shipping items outside the U.S. Simply traveling to certain sanctioned countries could require a license from OFAC. OFAC sanctions prohibit transactions and the exchange of goods and services with certain countries and with designated persons and entities. Multiple lists of denied individuals and parties are maintained and enforced by federal agencies including the Departments of State, Commerce, and Treasury. Shipping items outside the U.S. as well as taking controlled items on a flight, even if the shipping or traveling is done in the conduct of research, could require a license from these agencies.

The University of Texas at Tyler is committed to full compliance with all applicable U.S. export control laws and regulations. This Policy applies to all activities in which The University of Texas at Tyler resources are used. All University of Texas at Tyler employees (defined in Section 3.0 below) are responsible for complying with this Policy as well as any procedures implementing this Policy. Each of the University of Texas institutions will provide export control training to its employees and offices whose job responsibilities are affected by the export control regulations.

3. Explanation of Terms

- 3.1 Empowered Official (EO) means a U.S. citizen who is legally empowered in writing by an institution of The University of Texas System to sign export license applications or other requests for approval on behalf of the University. The EO must understand the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the regulations. The EO has the independent authority to inquire into any aspect of a proposed export, verify the legality of the transaction and the accuracy of the information to be submitted, and refuse to sign a license application or other request for approval without prejudice or other adverse recourse. If ITAR-controlled work which requires a license is to be conducted, The University of Texas at Tyler must first register with the Department of State before an EO can be appointed.
- 3.2 Export Controls Officer (ECO) means a person who is identified formally at The University of Texas at Tyler for purposes of institutional compliance with export control regulations.
- 3.3 Employees mean all The University of Texas at Tyler employees, full-time and part-time; including student employees, consultants, visitors, and others using The University of Texas at Tyler resources.
- 3.4 Resources means all resources owned or leased by The University of Texas at Tyler, or otherwise utilized by The University of Texas at Tyler personnel within the scope of The University of Texas at Tyler.
- 3.5 Fundamental Research means basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the U.S. (for ITAR only – the EAR states that fundamental research is not determined by location) where the resulting information is ordinarily published and shared broadly in the scientific community. The ITAR says fundamental research is distinguished from research that results in information that is restricted for proprietary or national security reasons or pursuant to specific U.S. government access and dissemination controls. The EAR says that fundamental research is distinguished from research that results in information that is restricted for proprietary reasons. In other words, university research will not be considered fundamental research if: the university or its researchers accept restrictions on the publication of the results of the project or activity (EAR and ITAR); the sponsor requires prior approval before publication of the results of the project (EAR and ITAR); or the research is funded by the U.S. government and specific access and

dissemination controls protecting information resulting from the research are applicable (ITAR). Other restrictions such as foreign national approval or a requirement that no foreign nationals work on a project, could invalidate the fundamental research exclusion.

3.6 ITAR Definition of Public Domain: ITAR defines public domain to mean information that is published and which is generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions that are available without restriction to any individual who desires to obtain or purchase the published information; (3) through second class mailing privileges granted by the U.S. Government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the U.S.; (7) through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency; (8) through fundamental research in science and engineering at accredited institutions of higher learning in the U.S., where the resulting information is ordinarily published and shared broadly in the scientific community (see section 3.5 above).

3.7 EAR definition of Public Domain: Published Information and Software. Information is “published” when it becomes generally accessible to the interested public in any form, including but not limited to: (1) publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution; (2) being readily available at libraries open to the public or at university libraries; (3) when issued patents or open patent applications are published and available at any governmental patent office; and (4) when such information is released or publicly discussed at an open conference, meeting, seminar, trade show, or other open gathering.

4. Authority

The President shall appoint or approve the appointment of an ECO for purposes of compliance with U.S. export control regulations. The ECO shall receive authority from the President of The University of Texas at Tyler to perform his/her job duties.

5. Implementation of an Export Controls Compliance Program

The export regulations affect many areas across campus. To implement this Policy, the ECO shall work with the appropriate Vice Presidents, College Deans, Department Heads, Directors, the Compliance Office, and the Office of Legal Affairs or General Counsel (if applicable) and/or the UT System Office of General Counsel to implement procedures that comply with the export control regulations. Areas, offices, or activities that are affected by export compliance include, but are not limited to:

- a. Research conducted by faculty and students on campus as well as research projects conducted abroad (also includes foreign visiting scientists on campus);

- b. Items shipped outside the U.S.;
- c. International Programs – includes students and faculty studying or teaching abroad;
- d. Office for Purchasing/Accounting (vendor payments);
- e. Office of Technology Commercialization/Technology Transfer;
- f. Human Resources Department; and
- g. Travel Office – for travel outside the U.S.

To facilitate the creation of an effective export controls compliance program, the following “best practices” are suggested for export control review in the office of sponsored projects or similar office/unit tasked with the processing of proposals and awards.

- 5.1 The Grant or Contract Specialist assigned to a particular research award will review the terms of the award for provisions that restrict access to or publication of research and technical data, that limit the participation of foreign nationals in the research effort, or that otherwise render the exclusion from the export control regulations inapplicable. The results of such review will be indicated on a checklist developed by The University of Texas at Tyler and designed to facilitate such review. The checklist will be signed and dated by the Grant or Contract Specialist for each award.
- 5.2 The Grant or Contract Specialist will contact the research sponsor to attempt to negotiate the removal or modification of unnecessary provisions in the contract or grant that would destroy the University’s exclusion from export control regulations. If such negotiation does not result in the removal or modification of the identified clauses, the matter will be referred to the ECO/EO for further export control review, including a determination of whether the project falls under the EAR or the ITAR.
- 5.3 If the ECO/EO determines the project is export controlled, the Grant or Contract Specialist and/or the ECO/EO will contact the Principal Investigator (PI) to determine if he/she plans to utilize foreign nationals, whether as employees or students to work on the project. If the PI confirms that his/her intention is to hire foreign nationals, then an export control license from the Department of Commerce or Department of State may be needed depending on the classification of the proposed research. If the project is export controlled, but no foreign nationals will be working on the project, then Grant or Contract Specialist must develop a Technology Control Plan (TCP) to prevent any foreign national from gaining access to the controlled information. The PI may also choose to close the research effort due to the burdens or restrictions associated with complying with the export control regulations.
- 5.4 No work can begin or an account set up under an export controlled award or proposed award, until a TCP is in place and/or any required export control license has been issued.

To implement this policy, The University of Texas at Tyler will adopt an export controls compliance program that documents and disseminates information on roles, responsibilities, and procedures for identification, approval, licensing, and tracking of items or activities subject to the export control laws. The program will also include record-keeping, awareness training, and procedures for self-assessment and monitoring.

The administrative unit at The University of Texas at Tyler that is charged with the responsibility for implementation of this Policy and development of related procedures is as follows:

Business Affairs – role of training, Export Controls Officer, Shipping, Human Resources, Travel Office and Purchasing/Accounting.

Office of Sponsored Programs for research and grant compliance and technology transfer/commercialization.

Provost's Office for faculty travel.

Student Affairs for student travel.

6. Violations and Penalties

In addition to civil and criminal penalties that may apply under applicable laws¹ to individual University of Texas at Tyler personnel and to The University of Texas at Tyler, violation of Export Control laws and regulations may subject the violator to remedial or disciplinary action by The University of Texas System for misconduct, including termination or dismissal, in accordance with applicable University of Texas System and The University of Texas at Tyler policies and procedures.

Note:

Policy based upon Model Policy by: Office of General Counsel, UT System - May 3, 2010

¹ ITAR penalties: Civil – up to \$500,000 each violation, extra compliance measures, debarment, and loss of export privileges. Criminal – up to \$1,000,000 each violation and 10 years imprisonment.

EAR penalties: Civil – up to \$250,000 per violation or twice the amount of the transaction and loss of export privileges. Criminal – up to \$1,000,000 and 20 years imprisonment.

OFAC penalties: Civil - up to \$250,000 per violation. Criminal – refer to appropriate law enforcement agencies for criminal investigation and/or prosecution. Actions could include license denial/revocation; subject person could be ordered to cease and desist.