

## Export Control FAQ: The Basics

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### ***What are export controls?***

Export controls are regulations that require access to certain technologies be restricted because:

- They have actual or potential military applications;
- They raise trade/economic protection issues;
- The government has concerns about the country, organization, individual, end-user or end-use of that technology; or
- Control serves to implement foreign policy.

Control is intended to serve various national objectives and interests including:

- Advancing U.S. foreign policy and economic goals;
- Preventing the proliferation of weapons of mass destruction; and
- Restricting the export of goods and technologies that could contribute to the military potential of U.S. adversaries.

Most export control issues fall under the jurisdiction of either the Department of Commerce, through its Export Administration Regulations (EAR), or the Department of State, through its International Traffic in Arms Regulations (ITAR). Another set of regulations, implemented by the Treasury Department's Office of Foreign Asset Control, concerns the enforcement of economic and trade sanctions based on US foreign policy and national security goals.

## ***What is an export?***

The term export, in the context of export control regulations, is more expansive than the prevailing concept of a tangible article being shipped out of the United States. Under these regulations, the term export includes:

- The actual shipment of any covered goods or information outside of the U.S.;
- The electronic or digital transmission of any covered goods or information outside of the U.S.;
- Any release or disclosure, including verbal disclosures or visual inspections, of any covered technology, software or technical data to any foreign national; or
- The actual use or application of covered technology on behalf of or for the benefit of a foreign entity or person anywhere.

Transmitting covered technology to an individual other than a U.S. citizen or permanent resident *within the United States* is referred to as a "deemed export". Deemed exports commonly take place through an oral or written disclosure of information, or through visual inspection (e.g., email, telephone, websites, laboratory tours, foreign research collaborations). Deemed exports are the principal export control issue facing university researchers.

## ***Why should UNH be concerned about export controls?***

Certain elements of export control compliance can *potentially* conflict with traditional values and practices of an academic culture in that they tend to discourage free and open exchange of information and they institutionalize barriers to collaboration with foreign colleagues. Compliance is also made more difficult by the fact that the regulations are extremely complex and even the most basic level of due-diligence requires a considerable investment of time and effort.

Export control laws apply to all activities and technologies —not just sponsored research— and they constitute a major element of the University's overall compliance program. **Violations can result in significant civil and criminal penalties for the individual as well as the institution.**

## ***Why do researchers need to know about export controls?***

Researchers are on the front-line of export control issues because they define the elements of a research project that in due course establish how export controls apply to a project (e.g., technologies under consideration and involvement by foreign personnel).

In addition to the considerations concerning research projects, export controls can impact scholarly activities by limiting:

- The presentation/discussion of unpublished research at conferences and meetings where foreign nationals may be in attendance;
- Research collaborations with foreign nationals and technical exchange programs;
- Travel to embargoed countries;
- Transfers of research equipment abroad; or
- Laboratory visits by foreign scholars.

## ***What is the impact of export controls on the University of New Hampshire?***

These regulations have no effect on *most* University of New Hampshire activities; however, they have a *potential* impact in nearly all fields of science and engineering by limiting our ability to:

- Have foreign students or researchers participate in research involving a controlled technology;
- Provide services (including training in the use of controlled equipment) to foreign nationals;
- Travel to embargoed countries;
- Engage in collaborative research with foreign colleagues;
- Have laboratory visits by foreign scholars; and
- Send controlled equipment to field sites in foreign countries.

Most research at the University of New Hampshire will fall under the fundamental research exclusion and thus fall outside of the control requirements of the regulations; that said, compliance often requires the University to document its determination that an exclusion/exemption is being used appropriately.

### ***What is fundamental research?***

As defined in the regulations, fundamental research includes basic or applied research in science and/or engineering at an accredited institution of higher learning *in the United States* where the resulting information is ordinarily published and shared broadly in the scientific community. In the case of the ITAR, the expectation is that the resulting information *has been or is about to be published*. The expectation that research results will be broadly shared marks fundamental research as distinct from research whose results are restricted for proprietary reasons or pursuant to specific U.S. government access and dissemination controls.

Research will not qualify as fundamental research if the University or researcher accepts either restrictions on the publication of the research results\* or specific access/dissemination controls under an agreement.

### ***What happens if an activity falls outside the fundamental research exclusion?***

If the activity doesn't qualify as fundamental research under the ITAR or EAR, as applicable, the Office of Sponsored Research will work with the Project Director to assess the compliance burden and determine if the activity can proceed. If the activity can be managed without any actual or "deemed" exports and without disruptive restrictions on the use of facilities by faculty, staff and students, regardless of their nationality, it may be possible to undertake the activity without a license even if it is outside the exclusion.

There are many exemptions available under the export control regulations besides fundamental research, but if none is available as an alternative means of compliance for a particular activity, it may be necessary for the University to secure an export license from the appropriate government agency before the Project Director can proceed with the activity. If alternative exemptions are not available and an export license cannot be secured from the relevant agency within a reasonable time and under reasonable conditions, the activity will either need to be revised to bring it

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\* Limited prepublication reviews to prevent inadvertent disclosure of a research sponsor's proprietary information or to insure that publication will not compromise sponsor's patent rights are allowable and will not negate the fundamental research exclusion.

back under the fundamental research exclusion or else the activity may not be undertaken at the University.