

UT SOUTHWESTERN
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TO: Deans, Department Chairs, Center Directors, and Principal Investigators

FROM: Perrie M. Adams, Ph.D., Associate Dean for Research

SUBJECT: Federal Export Laws and Regulations

DATE: November 15, 2006

The export of certain technologies, information, 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. UT Southwestern and all its employees are required to comply with the laws and implementing regulations issued by the Department of State, through its International Traffic in Arms Regulations (ITAR), and the Department of Commerce, through its Export Administration Regulations (EAR). Violations of the requirements can lead to criminal sanctions (including monetary and/or prison sentences for individuals).

In the aftermath of September 11, 2001 and the increased security needs of the United States, the importance of compliance with these regulations with respect to research contracts and agreements received by universities from sponsors, both Federal and industrial, in which export control provisions are contained, has increased significantly. The purpose of this memorandum is to provide guidance to the faculty and other researchers in the application of the export control regulations in order that they may understand their obligations under these regulations and adhere to them.

All exports from the United States require some type of authorization, and the regulations govern almost every field of science and engineering; however, only a very small percentage of exports actually requires a license. For academic and research institutions, the regulations provide for an exclusion from the licensing requirements for the great majority of our research activities through an exclusion for the conduct of fundamental research. "Fundamental Research" is defined under the EAR at 15 CFR § 734.8 and under the ITAR at 22 CFR § 120.11 and includes basic or applied research in science and/or engineering where the results of the research are ordinarily shared with the scientific community, published in the public domain and made accessible and available to the public." The research will lose the exclusion and not qualify as "fundamental research" under the ITAR and EAR, however, if: (a) the research agreements contains any prior approval requirements or any other restrictions on the publication of the information resulting from the research, other than reasonable pre-publication review to determine whether a sponsor's confidential information provided to the University is contained in the publication and to insure that patent rights are not compromised by the premature release of information; or (b) the prime funding of the research is federal and specific controls over the access to and dissemination of information are contained in the agreement.

With respect to export controls, it is important to understand: (1) the nature of the technology that is export controlled and how it is recognized, (2) the fundamental research exclusion noted earlier, and (3) the concept of a “*deemed export*.” In addition, please note the following special considerations:

Licenses under the ITAR and EAR are required only for exports that the U.S. government considers “license controlled” (some controlled exports don’t require a license). Reasons for control over the export usually arise due to the nature of the export or concerns of the Government with:

- the actual or potential military applications of the export or economic protection issues
- the destination country, organization, or individual, or
- the declared or suspected end use or the end user of the export

Although an item may appear on one of the lists of controlled technologies, an exclusion for fundamental research is generally available (provided there are no restrictions on publication of the research or other restrictions on dissemination of the information) or, in some cases, as long as the research or information is made public or is intended to be made public.

However, when an item is controlled technology, a license may be required before the technology (both information and hardware, including prototypes or software) can be exported or any disclosure may be made to a foreign national/entity. “Export” can mean not only technology leaving the borders of the United States (including transfer to a U.S. citizen abroad whether or not it is pursuant to a research agreement with the U.S. government), but also disclosing or transmitting the technology to an individual other than a U.S. citizen or permanent resident within the United States. Prohibitions against disclosure or transmission includes verbal disclosure, visual inspection, electronic or digital transmission, or by actual shipment of any covered items of any software, technical data, technology or equipment covered by the regulations, including the research results themselves. A “deemed export” requiring an export license and imposing access restrictions occurs whenever a foreign national on U.S. soil may be exposed to or have access to an item controlled by these regulations. A disclosure to a foreign researcher or student in a University laboratory is considered a “deemed export.” For example, a faculty member’s oral disclosure or demonstration of technology to a foreign national in a University laboratory may be a “deemed export” under the regulations and would require an export license prior to such disclosure or demonstration in order to avoid violation of the law and possible personal criminal and civil penalties. Other examples where export control applies include the return of foreign equipment to its country of origin after repair in the United States, and University generated email or other electronic transmission of non-public data that would be received, directly or indirectly, abroad.

With respect to certain countries, it is the policy of the United States generally to deny licenses for the transfer of controlled items. These countries are currently Afghanistan, Armenia, Azerbaijan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, Tajikistan, and Vietnam.

Fortunately, the great majority of the research activities in which UT Southwestern is involved are excluded from export controls because UT Southwestern can assert the fundamental research exclusion. However, when this is not the case (such as when one needs to export a tangible

research item, such as a prototype or software), it is critically important to begin the process of seeking a license from either the Department of Commerce or State (as applicable) early, since it can take as long as six months or longer to receive a license after the submission of the license application.

Attached are the websites for on-line documentation of the EAR and ITAR that will help in addressing these difficult but critical issues.

For EAR go to: <http://www.bis.doc.gov/licensing/exportingbasics.htm>

For ITAR go to: <http://pmdtc.org/reference.htm>

For questions or further information, the contact point is Perrie Adams, Ph.D., Associate Dean for Research, extension 82258.

** Modified from The University of Texas at Austin*