NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY (NMT)

IMPORT | EXPORT COMPLIANCE PROGRAM MANUAL

December 2011
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NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY (NMT) IMPORT | EXPORT COMPLIANCE PROGRAM MANUAL

Introduction

This manual is designed to assist you in complying with U.S. import | export controls. If you have any questions regarding the materials contained in this Export Compliance Manual, please contact the individuals noted below:

Export Compliance Officer

Vice President for Research and Economic Development
575-835-5606

Director, Import | Export Compliance Program – first point of contact
Bob Brumley
Office of the Vice President for Research and Economic Development
bbrumley@admin.nmt.edu
575-835-6782
University’s Policy Statement Regarding Import | Export Controls

It is the policy of New Mexico Tech to totally and completely integrate applicable U.S. import and export laws and regulations into our programs, projects and processes. The following Memorandum issued by Dr. Romero, Vice President for Research and Economic Development at NMT, is intended to convey NMT’s clear commitment to import and export compliance and how we are going to integrate this program into our daily business. This statement of policy is to be widely disseminated to all employees and associates. Point of Contact for this Policy Statement is Bob Brumley (6782).
Memo from the Vice President for Research and Economic Development

TO: All Employees

FROM: Van Romero
Vice President for Research and Economic Development

DATE: 1 December 2011

SUBJECT: Compliance with Import | Export Controls

The U.S. Department of Commerce, the U.S. Department of State, and certain other Federal Agencies oversee United States import|export control policies and regulations. These rules have a very broad reach and are not intuitively obvious in many cases; nonetheless, violations can result in severe financial and criminal penalties, for NMT and also for individual employees.

It is especially noteworthy that Agencies of the U.S. Federal Government, which monitor compliance with export controls, have standing authority to audit our records at any time during reasonable business hours - no advance notice is required! Further, the Federal Government has increased enforcement and investigations of universities since 9/11/2001.

Rapid advances in many academic disciplines, especially science and engineering, have resulted in a closer connection between universities and industry. This close association often involves import | export controlled data, information, materials and technology. Although NMT as a University enjoys many exemptions from import|export controls, our University personnel must demonstrate by action a basic understanding of export law and maintain a program of strict compliance.

Total compliance is NMT’s objective; achieved through best management practices, professional discipline, employee awareness and responsibility, being knowledgeable of the application processing and relevant administrative task, careful recordkeeping, and regular training. At a minimum, employees need to know how to recognize when an import | export control issue may exist, and who first to contact at NMT for assistance.

NMT’s Director for Import | Export Compliance, Bob Brumley, will review, before program/project/grant award, all supporting and relevant documentation, services, software, data, request for proposals (RFP), statements of work (SOW) and certain other technical information; and before a NMT employee participates in foreign area conferences, with special attention to activities funded by the U.S. Government. Our Compliance Director will follow specified procedures and obtain necessary import | export licenses and forms required by the circumstances and Federal laws.
In addition, important and recent changes in Federal law require NMT to certify our compliance with export controls on all H1B Visa Applications. Please coordinate with Human Resources (x5955) if you contemplate employing an individual requiring an H1B Visa; additional time in the hiring process will be necessary for processing nonimmigrant work visas.

I want to be clear: under no circumstances will any export [deemed or otherwise] be made by NMT contrary to U.S. export control regulations. Failure to abide by the policies set out in this Manual, - reflective of Federal laws and regulations and can result in disciplinary action up to and including termination and/or fines up to $1,000,000.

If you have any questions concerning the applicability of U.S. import | export controls to a customs transaction, please confer with NMT’s Compliance Director. If you have concerns about any pending transaction as possibly resulting in a violation of U.S. export regulations, you must bring such concerns to my attention immediately or that of the Compliance Director.

Thank you for your attention to this absolutely important matter; your compliance efforts are critical. Once again, POC for this program is Bob Brumley; 6782; bbrumley@admin.nmt.edu

Van Romero
New Mexico Institute of Mining and Technology
Vice President for Research and Economic Development
HOW TO USE THIS MANUAL

This manual is intended to provide a basic understanding of export control regulations together with instructions regarding common NMT activities, which may involve an export. Appendix A supplements this manual, providing useful Acronyms, Terms, and Definitions.

The aim of NMT’s Import | Export Compliance Program is to achieve then sustain an exceptional program of compliance with export | import laws, regulations, codes and status, by all University activities; to implement this program in the most “business friendly” manner possible.

This is a “living document” with updates anticipated. Any comments or suggestions for future updates should be directed to Bob Brumley at bbrumley@admin.nmt.edu.
EXPORT BASICS

QUESTIONS

AND

ANSWERS
Why Government Controls?

The U.S. Government uses export controls as a way to limit and track sensitive technologies and military hardware leaving the United States. Some of the reasons our Government maintains control over these technologies and military hardware are:

- To ensure the national security of the United States and its allies.
- To promote the United State’s foreign policy agenda.
- To protect human rights.
- To combat terrorists and countries sponsoring terrorism.
- To inhibit proliferation, or widespread use, of weapons of mass destruction.

Export controls serve an important role in preserving American’s innovative leadership, business pre-eminence and in support of our national defense.

What is an Export?

TRANSFER of controlled technology, data, information, equipment, hardware, software or services TO A FOREIGN PERSON IN THE UNITED STATES OR ELSEWHERE BY ANY MEANS!

Examples of transfer:

- Actual shipment, by any method, [to] outside the US (controlled commodities)

- Visual inspection, including electronic access to systems, within the U.S. or outside the U.S. (facilitate and allow)

- Written or oral disclosure (deemed exports)
What is the Scope of Export Regulations?

Export Controls apply to all U.S. origin products. Although some controls are stricter than others, exporters are required by law to report all exports to U.S. Customs. In addition, exports within specific product categories must be reported to the agency or agencies that govern that type of export.

Export controls apply to all U.S. origin technical data. Similar to the controls governing U.S. origin products, all technical data produced in the United States are subject to export controls.

Finally, export controls also apply to foreign components that result from U.S. data, services supplied by U.S. persons, and the employment of foreign nationals.

Who/What is a “Foreign Person” - aka Foreign National - for Purposes of Export Control?

• Any foreign government;

• Any foreign corporation or organization that is not incorporated or organized for business in the U.S.;

• Any individual who is NOT either a U.S. citizen, lawful permanent resident of the U.S. (green card holder), or person granted asylum by the U.S. Government

What U.S. Agencies Control Exports?

Exports from the United States are regulated by a wide variety of agencies. Each agency has its own set of regulations governing exports that they control.

U.S. Department of Commerce (DOC): The DOC is an agency whose mission is to facilitate economic growth, including the promotion of exports. It promulgates the Export Administration Regulations (EAR), which pertain to civilian and “dual use” technologies (civilian or military). EAR’s list of controlled technologies is called the Commodity Control List (CCL) (see pages 24 & 25). Anticipate the majority of exports | imports will fall under EAR’s jurisdiction.

U.S. Department of State (DOS): The U.S. State Department – Directorate of Defense Trade Controls (DDTC) is primarily responsible for licensing the export of sensitive military equipment, technological hardware, and related technical data. Their rules are known as the International Traffic in Arms Regulations (“ITAR”), and the list of ITAR controlled technologies is known as the “Munitions Control List” (MCL) (see page 35). The U.S. State Department has final authority to allow NMT to export more strictly controlled products and technologies deemed to be military in nature.

Office of Foreign Assets Control (OFAC): The Office of Foreign Assets Control (OFAC), within the Treasury Department, enforces economic and trade sanctions against specific foreign countries, terrorists, international narcotics traffickers, and those engaged in weapons of mass destruction proliferation. NOTE: Sanctioned programs, enforced by OFAC, can be extremely restrictive of university science and research activities, and can affect payments (compensation, honoraria, contracts) to embargoed
OFAC Continued) countries/nationals/entities, attendance at or planning for international conferences, surveys and services to embargoed countries/nationals/entities, and editing or joint authorship of articles with nationals of sanctioned countries.

U.S. Department of Defense (DOD): The U.S. Department of Defense acts as a resource for the U.S. State Department. The DOD assigns specialists to review defense articles and technical data being licensed for export when it is outside the scope of the DOS licensing officer’s experience and knowledge. The DOD’s recommendation is often the basis for the DOS to allow or disallow the export of military hardware and technical data.

U.S. Customs and Border Protection (CBP): U.S. Customs and Border Protection serves as a gateway agency for both imports and exports. Although they are primarily concerned with goods coming into the United States, they also regulate some export activity. U.S. Customs acts as an administrative and enforcement capability for agencies like the U.S. State Department, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and the Drug Enforcement Agency (DEA).

Other Government Agencies having interest in Import | Export Controls:

- Food and Drug Administration (FDA)
- Environmental Protection Agency (EPA)
- Federal Bureau of Investigation (FBI)
- Department of Homeland Security (DHS)

What are Common Higher Education Exemptions?

Export regulations have several exclusions and exemptions that may remove University research from export control restrictions. There are three exclusions that are relevant to academic research: the fundamental research exclusion, the public domain exclusion, and the bona fide full-time employee exemption.

The Fundamental Research Exclusion

Fundamental research is excluded from export control regulations. Fundamental research is basic or applied research in science and engineering performed or conducted 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. Fundamental research is distinguished from research that results in information that is restricted or classified for proprietary or national security reasons (EAR) or pursuant to specific U.S. government access and dissemination controls (ITAR). It is important to note that ONLY the information (not the materials or technology) resulting from research may be disclosed to foreign nationals.

University research will not qualify for this exclusion if: (1) the University or researcher accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication review by research sponsors to ensure proprietary information is not inadvertently disclosed or to ensure that publication will not compromise the patent rights of the sponsor;
or (2) the research is federally funded and specific access and dissemination controls regarding the
resulting information have been accepted by the University or researcher.

It is important to remember that the Fundamental Research Exclusion only applies to information. Also,
it does not apply to a sponsor's existing proprietary information when some or all of that information is
required to be confidential.

In addition, it is important to note the exclusion may not apply to information relating to export-controlled
equipment used in research projects and classes. In the past some researchers have assumed incorrectly
they could share such information with foreign nationals without a license, since the information is being
used while conducting fundamental research.

Export control regulations do not apply to information already released in academic catalog-listed
courses or in teaching labs associated with those courses. This means that a faculty member teaching a
University course may discuss what might otherwise be export-controlled technology in the classroom or lab
without an export control license even if foreign national students are enrolled in the course. This exclusion
is based on the recognition in ITAR that "information concerning general scientific, mathematical, or
engineering principles commonly taught in schools, colleges, and universities, or information in the public
domain" should not be subject to export control restrictions.

The Public Domain Exclusion

Information that is published and generally available to the public, as well as publicly available
technology and software is outside the scope of the export control regulations. This exclusion does not
apply to encrypted software, to information if there is reason to believe it may be used for weapons of mass
destruction, or where the US government has imposed access or dissemination controls as a condition of
funding.

Exemption for Disclosures to Bona Fide Full-time Employees

Export control regulations exempt disclosures of unclassified technical data in the U.S. by U.S.
Universities to foreign nationals where 1) the foreign national is a University's bona fide full-time regular
employee, 2) the employee's dwelling throughout the period of employment is the U.S., 3) the employee is
not a national of an embargoed country pursuant to Sec. §126.1 of ITAR, and 4) the University informs the
employee in writing that information disclosed may not be further disclosed to other foreign nationals without
U.S. Governmental approval.
IMPORTANT! What are the Penalties for Export Violations?

Penalties are the major enforcement tool for export law. Penalties for violating any portion of the regulations governing controlled exports include:

- Personal and corporate fines – up to $1,000,000.00 per violation (one mistake can comprise several violations).
- Prosecution – up to ten years imprisonment per violation (one mistake can comprise several violations).
- Loss of export privileges. (Debarment from receipt of Federal grants or contracts).

**NOTE:** most violations of export regulations involve unauthorized release of technical data (either classified or unclassified) to foreign persons in the United States or abroad.
NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY (NMT) IMPORT | EXPORT COMPLIANCE PROGRAM MANUAL

PROCESSES AND RESPONSIBILITIES: WORKING WITH NMT’s IMPORT | EXPORT COMPLIANCE ADMINISTRATORS
NMT Employee Responsibilities:

1. To understand the basics of export control and NMT policy, and to ask the following important questions that are critical in every potential export transaction:
   - What product, services or technology is being considered for export? The answer to this question determines which U.S. Agency will have jurisdiction, and often, whether it is a controlled commodity or not.
   - Where (to which country) is the product, service, or technology going? The answer to this question indicates how significant the controls are likely to be, e.g., fewer controls for Canada, more and numerous controls for China.
   - Who is the recipient (person, business, university, government entity) within that country? Very important! The country could be friendly, but the actual recipient could be illegitimate. NMT has an obligation to check out the recipient person or organization.
   - How will the product, service, or technology be used? This is known as “End-Use” and often determines the degree of export control, especially for dual-use items (civilian/military).
   - How else could the product, service, or technology be used? This question is important not just for determining the degree of export control, but also to assess whether the recipient is planning on wrongfully using or diverting the exported item.

2. Develop an Import | Export training program for staff and faculty.

3. Provide complete and accurate information when working with NMT’s Export | Import office. This will become a part of the record of events and subject to audit/s by the Federal Government.

4. Allow time for export analysis and processing of H1B Visa or license applications, if they are required. DO NOT make contractual commitments that depend upon an export approval timeframe or anticipated outcome. Any NMT manager who contemplates hiring a foreign national must work with the H1B Visa Export Coordinator and the Import | Export Compliance Director. This includes, but not limited to general employees, custodians, outsourced IT services and maintenance, vending suppliers and outside contractors with sensitive access. The Visa Coordinator will provide a questionnaire that must be returned with complete and accurate information. This information will remain on file in the individual’s personnel folder for a minimum of 5 years. At the five year point; all records older than five years will be identify, inventory and a record of documents to be destroyed. A record of this event will be provided to each of the representative above for their respective files.

5. Be mindful of and comply with export controls and Basic Special Caution Situations outlined in the next Section.
6. Promptly report suspected violations as follows:

- All NMT employees are responsible for immediately reporting possible violations of export regulations to their immediate supervisor or manager, the Director of Import | Export Compliance and Vice President for Research and Business Development.

- Managers will be similarly responsible for reporting possible violations to the Director of Import | Export Compliance.

- All reports will be thoroughly investigated according to NMT protocols. Initially, the Director of Import | Export Compliance will act as the Investigation Officer and will secure all relevant matters for further investigation by an outside agency and further disposition.

- ONLY the Vice President for Research and Economic Development, in consultation with the President, other senior NMT Managers, and NMT’s legal counsel will determine if it is appropriate to file a Voluntary Disclosure.

7. Act responsibly and cooperatively in the presence of Federal Officials. NMT personnel may not, under any circumstances, interfere with or impede any Federal law enforcement officer performing their official duties. In the event any request for documents is received from a United States Government agency or representative, immediately contact the Office of Vice President for Research and Economic Development to provide contact information. Take no further action. In the event United States Government authorities appear at any NMT facility, immediately contact the Office of Vice President for Research and Economic Development. Collect and retain any official United States Government documents, whether subpoenas or other access requests and deliver immediately to the Office of Vice President for Research and Economic Development. Take no further action until you receive instructions from a NMT administrator.

**Director, Import | Export Compliance Responsibilities:**

1. Process incoming transactions as expeditiously as possible in accordance with export | import regulations.

2. Conduct due-diligence on unknown entities or persons.

   New consultants, carriers, and export countries will be subject to an initial investigation by the Director, Import | Export Compliance to ensure exports to that entity or country are not restricted. Existing entities will be updated as needed.

   Screening procedures will include:
   - Comparison of the party in question to restricted parties lists.
   - A search of DOC, DOD, and CBP regulations regarding denied countries.
   - A search of the Federal Register to determine federal restrictions against a carrier.
3. Submit commodity jurisdiction requests, as necessary, and license applications on behalf of NMT. The Compliance Director will be responsible for submitting license requests, recordkeeping, and ensuring that articles are imported and exported in accordance with U.S. Government regulations and Federal Laws.

4. Arrange for and conduct periodic training for staff and faculty.

Compliance training should be conducted on an annual basis, or at any interval necessary to educate new employees, update critical material, etc. This training may include:

- General instructions regarding export compliance
- Changes to applicable U.S. regulations
- Current procedures and related policies
- Distribution of revised NMT compliance literature
- Any other activity or material necessary to meet the goal of informed compliance.

The Compliance Director will schedule and facilitate this training program. Invite Law Enforcement and Legal representatives to speak about their specific skill set and how they fit into the whole system of Import | Export controls is an example of a training event. As an alternative, arrange for other outside agencies for briefings, demonstrations and seminars to maintain a level of employee education consistent with this policy. The Compliance Director is responsible for maintaining a record of all NMT training conducted and attendance to demonstrate due diligence and reasonable care.

5. Professionally maintain records demonstrate the University’s clear understanding of the Import | Export commitment to and compliance with U.S. export control regulations. Recordkeeping is an extremely important aspect of export compliance as many transactions may occur and be documented without a requirement to involve the Government. NMT must be able to provide these records on demand for a period of five years from the date of export or license expiration. In many cases, documents that demonstrate compliance under NMT’s export program will avoid violations and application of penalties. At the prescribed time, records will be destroyed by the most efficient means available. Intent is to destroy records as quickly after the five-year requirement expires.

Export Records Management:

- Any paperwork detailing internal export control assessments, including any documentation regarding the applicability of any licensing exemptions (such as public domain or fundamental research).
- Classification decisions issued by the cognizant government agency;
- License applications, and all supporting documents;
- Issued export licenses with limitations or provisos, if any;
- Receipts, bills of lading and other documents related to export clearance;
- Reports of boycott requests, and all documents relating to the requests;
- Any other document issued by the U.S. Government that demonstrates that a export occurred;
- Applications for registration;
- Purchase orders;
- Relevant written matter pertaining to any export.
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- **Export Control Documents:** Memoranda’s; Notes; Correspondence; Contracts; Invitations to bid; Request for Proposals; Books of account; Chart of accounts; Financial records; Restrictive trade practice/s or boycott/s; Documents and reports; And other records pertaining to this type of transaction.

- **Licensing:** Records concerning the manufacture, acquisition and disposition of civilian or defense articles; the provision of civilian or defense services; and information on political contributions, fees, or commissions furnished or obtained.

- **Exemptions:** Relief from securing for an export license or other written approval from either the Department of Commerce or the Department of State. When an exemption is claimed for the export of unclassified technical data, the exporter must maintain a record of each such export. The business record should include the following information: A description of the unclassified technical data, the name of the recipient/end-user, the date and time of the export, and the method of transmission.

The Compliance Director will be responsible for file/s maintenance and quality control of:

- Export license files.
- Providing quality control over the recordkeeping process.
- Maintaining records related to exemptions and their use.
- Periodic review and randomly on an annual basis.
- Destruction of records maintained beyond the requirement of law. Expired records will be destroyed on an annual basis.

NMT’s preferred freight forwarder/broker will be responsible for generating all remaining shipping documents, procurement of necessary licenses, and for filing required documentation. A copy of any/all paperwork relative to the freight forwarder/broker actions on a specific import | export.

6. Cooperate and Assist with all Federal Inquiries and/or Voluntary Disclosures. Advise the VP for Research and Economic Development of everything the Federal agent/s are focused on, request for paperwork about NMT’s import | export program in general or a specific import or export transaction.
SPECIAL SITUATIONS and

CAUTIONS
E-mail and Electronic Transmission

E-mail provides everyone with the ability to seamlessly transfer a massive amount of technical data across international borders with very little effort. *Be aware at all times that sending an e-mail may legally constitute an export.*

*It is illegal to export controlled or sensitive technical data via e-mail or any other means of electronic transmission to a country outside of the United States without the written permission of the U.S. Government. Failure to properly license electronic transmissions that contain controlled information can result in criminal and civil charges.*

It is the policy of NMT to properly license electronically transmitted technical data in accordance with U.S. Government regulations, when such transmission would require formal export licensing by the U.S. Government.

- In accordance with NMT’s export control policy, all e-mail forwarded pursuant to a formal U.S. Government export license and intended for a destination to either a foreign national or foreign country must be approved by the Director of Import | Export Compliance before transmission.
- All data of a technical nature considered ‘export sensitive’ may not be emailed without the specific approval of the Director of Import | Export Compliance.
- The Director of Import | Export Compliance is responsible for obtaining permission/s from the U.S. Government, necessary recordkeeping, and exemption addenda to allow electronic transmission of authorized technical data. A log of these exemptions and supporting e-mails will be kept on file.

Academic Conferences and Meetings

The international business arena is expanding at a rapid rate. It is no longer uncommon for foreign nationals to visit, work, and live in the United States. This expansion, however, also facilitates movement of foreign nationals who are hostile to the interests of the United States. Any information provided to foreign nationals, regardless of their intent, is considered an international export.

All *meetings* that include non-NMT employees (i.e., persons unfamiliar to NMT) or clearly identified foreign nationals should begin with the following questions:

- “Is anyone present here today considered a foreign national for export purposes?”
- “Is anyone present here today blocked, denied, or debarred from receiving U.S. exports?”

Perhaps the response might be laughter, but that is far preferable than dealing with a potential export violation later or facing personal liability.

Meetings where foreign nationals, or those on a government controlled export list, are present should have their conversation restricted to non-specific information and public topics.
When the nationality of a person cannot be determined, NMT employees must assume, for purpose of this policy, that that person is a foreign national. Topics of conversation should remain general in nature at all times.

In the event export controlled subjects are to be discussed, the foreign national should be asked to leave the area until the controlled event is complete; at that time they may return to the general, non-specific and public discussion of the subject matter.

Travel with Laptop and/or Electronic Data Storage Devices (Plan ahead)

*Employees are expected to be mindful of export concerns at all times,* but especially when planning to leave the country with a laptop and/or other electronic device/s. Consider this; it may take as long as eight weeks to obtain necessary approvals and required paperwork, starting when the application is submitted.

Information stored on electronic data devices intended to be used for international business travel will be assessed for export issues prior to departure. Any sensitive or controlled data that may be subject to EAR or ITAR regulations must be offloaded to local NMT computer facilities and/or purged from the travel device prior to departure. Plan for this pre-departure requirement.

The Director of Import | Export Compliance is responsible for acquiring any necessary permission/s from the U.S. Government and all necessary recordkeeping to allow travel with authorized technical data. It is the policy of NMT to properly license hand carried technical data, if such data falls within the definition of “Sensitive Technical Data”, in accordance with U.S. Government regulations.
APPENDIX A

Acronyms
Definitions
and
Terms
### ACRONYMS

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<th>Description</th>
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<tr>
<td>AECA</td>
<td>Arms Export Control Act</td>
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<tr>
<td>BIS</td>
<td>Bureau of Industry and Security (Department of Commerce)</td>
</tr>
<tr>
<td>CCL</td>
<td>Commerce Control List (Department of Commerce)</td>
</tr>
<tr>
<td>CFR</td>
<td>Code of Federal Regulations</td>
</tr>
<tr>
<td>CJ</td>
<td>Commodity Jurisdiction</td>
</tr>
<tr>
<td>DDTC</td>
<td>Directorate of Defense Trade Controls (Department of State)</td>
</tr>
<tr>
<td>EAR</td>
<td>Export Administration Regulations (Department of Commerce)</td>
</tr>
<tr>
<td>ECCN</td>
<td>Export Control Classification Number</td>
</tr>
<tr>
<td>ITAR</td>
<td>International Traffic in Arms Regulations (Department of State)</td>
</tr>
<tr>
<td>OFAC</td>
<td>Office of Foreign Assets Control (Department of Treasury)</td>
</tr>
<tr>
<td>PI</td>
<td>Principal Investigator</td>
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<tr>
<td>SDN List</td>
<td>Specially Designated Nationals and Blocked Persons List</td>
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<tr>
<td>TAA</td>
<td>Technical Assistance Agreement</td>
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<td>TCP</td>
<td>Technology Control Plan</td>
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<td>USML</td>
<td>United States Munitions List</td>
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Definitions and Terms

The legal terms used to describe exports, export regulations, export law, etc. are complicated and are difficult to understand. Certain Agencies even have different regulatory definitions for the same term. This list of definitions and terms is provided for ease of reference and is not a substitute for the definitions found in the laws, regulations, and referenced University policies themselves.

Basic Marketing Information (BMI)
Information relative to the general function, purpose, or generic system descriptions of technologies or defense articles. This information is generally available in the public domain.

Classified
The government may classify information deemed to be important to the national security interests of the United States. Classification is the means by which information is restricted. The standard categories of classification include confidential, secret, and top secret. A project that includes classified information is a sub-category of Restricted Research, defined later in this section.

Code of Federal Regulations (CFR)
The United States Code of Federal Regulations (CFR) is the codification of the general and permanent rules and regulations published in the Federal Register by the Executive Departments and Agencies of the Federal Government.

Commerce Control List (CCL)
A list of items under the export control jurisdiction of the Bureau of Industry and Security (BIS) and U.S. Department of Commerce (DOC). The CCL is found in Supplement 1 to part §774 of the Export Administration Regulations (EAR).

Commerce Control List Categories (10)

(0) Nuclear Materials, Facilities and Equipment, and Miscellaneous;
(1) Materials, Chemicals, "Microorganisms," and Toxins;
(2) Materials Processing;
(3) Electronics Design, Development and Production;
(4) Computers;
(5) Telecommunications;
(6) Sensors;
(7) Navigation and Avionics;
(8) Marine;
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Commerce Control List (CCL) Group
The CCL is divided into 10 categories outlined above. Each category is further subdivided into five
groups, designated by the letters A through E:

(A) Equipment, assemblies, and components;
(B) Test, inspection and production equipment;
(C) Materials;
(D) Software;
(E) Technology

Commodity Jurisdiction
Although the majority of exports from NMT are civilian applications, some exports could be of use to both
military and/or civilian agencies. In those cases where a question arises as to whether an article or service
intended for export is considered a strategic export, the Department of Commerce can help to determine
what regulations govern that article by means of a written Commodity Jurisdiction (CJ) request.

The State Department, Office of Defense Trade Controls (ODTC), will also provide, upon written request,
a determination whether the United States Munitions List (USML) includes an article or service. The request
may also seek consideration of a re-designation of an article or service currently covered by the USML.
Requests must identify the article or service, a history of the product's design, development, use and
justification for the re-designation request.

Controlled Country
A list of countries designated as controlled for national security purposes found in Country Group D: 1,
include: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, the People's Republic of China,
Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Moldova, Mongolia, Romania, Tajikistan,
Turkmenistan, Ukraine, Uzbekistan, and Vietnam. Cuba and North Korea are controlled countries, but they
are listed in Country Group E: 2 (unilateral embargoes) rather than Country Group D:1. These groupings
are subject to change at any time and without notice.

Deemed Export
The disclosure or transfer of export controlled software, technologies or technical data to a foreign entity
or individual inside the US is “deemed” to be an export to the home country of the foreign entity or individual.
Example of potential transfers includes tours of laboratories, involvement of foreign national employees in
certain research, development or manufacturing activities, or hosting of foreign interns or scientists.
Defense Article
A military article is determined by the Department of State and listed on the USML to include technical data. The USML includes any weapons, weapons system, munitions, aircraft, vessel, boat or other implement of war; any property, installation, commodity, material, equipment, supply or goods used for the purposes of furnishing military assistance or making military sales; any machinery, facility, tool, material, supply or other item necessary for the manufacture, production, processing, repair, servicing, storage, construction, transportation, operation or use of any other defense article or any component or part of any articles listed above, but shall not include merchant vessels, major combatant vessels or as defined by the Atomic Energy Act of 1954, source material, by-product material, special nuclear material, production facilities, utilization facilities, or atomic weapons or articles involving restricted data.

Defense Service
Furnishing assistance, including training to foreign persons, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a defense article.

Denied Parties Listings
Lists maintained by Agencies of the Federal Government that indicate individuals and organizations barred from receiving any form of U.S. export due to terrorism affiliations or a history of prior violations.

  • **Denied Persons List**
    A list of individuals and entities that have been denied export privileges. Any dealings with a party on this list would violate the terms of its denial order.

  • **Unverified List**
    A list of parties that BIS has not been able to verify as the end-user 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 any export transaction.

  • **Entity List**
    A list of parties whose presence in a transaction can trigger a license requirement under the Export Administration Regulations (EAR). The list specifies the license requirements that apply to each listed party. These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the EAR.

    • **Specially Designated Nationals List**
      A list compiled by the Treasury Department and the Office of Foreign Assets Control (OFAC). OFAC’s regulations may prohibit a transaction if a party on this list is involved. In addition, the EAR require a license for exports or re-exports to any party or entity on this list that contains any of the suffixes "SDGT", "SDT", "FTO", "IRAQ2" or "NPWMD".

    • **Debarred List**
      A list compiled by the State Department of parties who are barred by §127.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR §127.7) from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by the ITAR.
• **Nonproliferation Sanctions**
  Several lists compiled by the State Department of parties that have been sanctioned under various statutes. The Federal Register notice imposing sanctions on a party will state the sanctions that apply to that party. Some of these sanctioned parties are subject to BIS’s license application denial policy described in §744.19 of the EAR (15 CFR §744.19).

**Dual-Use Item**
Items having both a civil and military application/s as determined by the Department of Commerce and are subject to the EAR.

**Due Diligence**
The process of conducting relevant [administrative] research to obtain a broad array of information in order to make an informed decision regarding a particular transaction.

**Electronic Data Storage Device**
Any device or medium capable of storing data in electronic format. This includes but not limited to; laptops, notebook computers, iPads, Blackberries, photo and smartphones, memory sticks, CDs, DVDs, e-readers and voice recorders, etc.

**Electronic Transmission**
Messages, usually text, sent from one person to another via cell phone, smart phone, computer, fax, or other electronic device. E-mail and other electronic transmissions can also be sent automatically to a large number of addresses and may contain file attachments, images, and other forms of sensitive data.

**Embargoed Countries**
In general, no ITAR exports may be affected either under license or license exemption to countries proscribed in 22 C.F.R. § 126.1, e.g. Cuba, Iran, North Korea, Sudan, and Syria. Additional restrictions apply to other countries; a complete list of U.S. arms embargoes is available online. www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf.

**Empowered Official (22 CFR §120.25)**
A U.S. person who:
1. Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and
2. Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
3. Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and
4. Has the independent authority to:
   i. Research any aspect of a proposed export or temporary import by the applicant, and
   ii. Verify the legality of the transaction and the accuracy of the information to be submitted, and
   iii. When necessary, refuse to sign any license application or other request for approval without prejudice or other adverse recourse. (22 C.F.R.§ 120.25)
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End-Use
A detailed description of how the ultimate consignee intends to use the commodities being exported or services being provided.

End-User
The person or organization abroad that receives and ultimately uses the exported or re-exported item/s. The end-user is not a forwarding agent, broker or intermediary, but may be the purchaser or ultimate consignee.

Exclusion
Information that is specifically excluded from export licensing requirements by policy or for practical reasons. Such information includes technology, software, and technical data that is the result of fundamental research, is within the public domain, or is taught within classrooms and teaching laboratories.

Exemption
Relief from securing an export license or other written approval from the Office of Defense Trade Controls to export defense articles or defense services.

Export (Legal Definition by Agency)

• **Department of Commerce** - The term “export” means for purposes of the EAR:
  (a) An actual shipment, transfer, or transmission of goods or technology out of the United States;
  (b) A transfer of goods or technology in the United States to an embassy or affiliate of a controlled country, or
  (c) A transfer to any person of goods or technology either within the United States or outside of the United States with the knowledge or intent that the goods or technology will be shipped, transferred, or transmitted to an unauthorized recipient.

• **Department of State** - Export means, for purposes of the ITAR:
  (a) Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or
  (b) Transferring registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite covered by the U.S. Munitions List, whether in the U.S. or abroad; or
  (c) Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or
  (d) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the U.S. or abroad; or
  (e) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.
  (f) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes, the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.
**U.S. Customs and Border Protection** - An export is considered “attempted” when the merchandise is placed in the “export stream” (e.g., has been delivered to the carrier at a port of export in a manner indicating “intent to export” or has been delivered to a freight forwarder with instructions to transport it to the international carrier, etc.). At that point, the goods are subject to detention or seizure if export documentation is not in order.

Export (Generally Accepted Definition Across All Agencies))

a. Sending, taking or shipping an item or defense article outside the United States.

b. Furnishing of any technical data to foreign persons or performing a defense service on behalf of or for the benefit of a foreign person within the United States or abroad.

c. The release of technology or software to a foreign national within the United States or abroad through the visual inspection by foreign nationals of U.S.-origin equipment and facilities and oral exchanges of information.

The transfer of technical data can take place through a variety of media including telephone or direct conversations, fax or telex transmissions, computer links via direct connection or modem, and the like. These all represent “exports” and must be covered by an appropriate export license or exemption.

**Export Administration Regulations (EAR)**

The Export Administration Regulations, Title 15, sections §730-774 of the Code of Federal Regulations (CFR), means the regulations promulgated and implemented by the Department of Commerce that regulate the export of goods and related technology identified on the Commodity Control List (CCL), Title 15 CFR §774, Supp. 1. Goods and technology on the CCL are not inherently military in nature; they are primarily and inherently commercial or potentially commercial in nature.

**Export Control Classification Number (ECCN)**

Identifies items on the CCL that are subject to the export licensing by authority of the Bureau of Industry and Security.

**Export Control Statements**

Statements which are required when shipping or otherwise conveying products or technical data that are export controlled.

**For Technical Data:**

EXPORT SENSITIVE: ITAR CONTROLLED

Information contained herein is subject to the Code of Federal Regulations, Chapter 22, International Traffic in Arms Regulations. This data may not be resold, diverted, transferred, transshipped, made available to a foreign national within the United States, or otherwise disposed of in any other country outside of its intended destination, either in original form or after being incorporated through an intermediate process into other data without the prior written approval of the US Department of State.
**NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY (NMT)**

**IMPORT | EXPORT COMPLIANCE PROGRAM MANUAL**

For Hardware:

**EXPORT SENSITIVE: ITAR CONTROLLED**

Hardware contained herein is subject to the Code of Federal Regulations, Chapter 22, International Traffic in Arms Regulations. This hardware may not be resold, diverted, transferred, transshipped, made available to a foreign national within the United States, or otherwise disposed of in any other country outside of its intended destination, either in original form or after being incorporated through an intermediate process into another product without the prior written approval of the US Department of State.

**Exporter**

For purposes of this document; any individual at NMT who will process the export. For instance, in a material transfer, the individual shipping or transmitting the material is the exporter. If sharing information with a foreign national, it is the individual sharing the information that is the exporter.

**Foreign National/Person**

Persons, who are not U.S. citizens, are not lawfully admitted for permanent residence in the United States (green card holders), or are not persons who are protected individuals granted asylum under the Immigration and Naturalization Act (8 U.S.C. §1324b(a)(3)). This includes but is not limited to foreign diplomats, buyers, salespeople, engineers, etc. of any country including Canada and Mexico.

**Fundamental Research (EAR & ITAR)**

Basic or applied research in science and engineering performed or conducted 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. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons (EAR) or pursuant to specific U.S. government access and dissemination controls (ITAR).

**International Business Travel**

Any travel of a business related nature in which the participant leaves from a point of embarkation in the United States to a point of debarkation in any other country.

**License**

The term “license” = permission. In many cases, regulations provide exemptions or other means that enable the exporter to complete the transaction without a formal written instrument from the Government, although records must be kept to demonstrate the process under which the export was made. In a formal context, a License refers to a document bearing the word “license”, issued by the Department of Commerce, Bureau of Export Administration. The same word is also used by the DDTC, or his authorized designee, when issuing a document that permits the export or import of a specific defense article or defense service controlled by the ITAR.

**Manufacturing License Agreement (MLA)**

An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization to manufacture defense articles, abroad and involves or contemplates (a) the export of technical data or defense articles or the performance of a defense service, or (b) the use by the foreign person of technical data or defense articles previously exported by the U.S. person.
Non-Sensitive Data
Data that has been made generally available to the public in any form, including:

- Data released orally or visually at open conferences, lectures, trade shows, or other media open to the public.
- Publications that may be purchased without restrictions at a nominal cost, or obtained without costs, or are readily available at libraries open to the public.

Person (Legal Definition by Agency):
- **Department of the Treasury** - Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

- **Department of Commerce** - A corporation, partnership, limited partnership, association, company, trust, or any other kind of organization, situated, residing, or doing business in the U.S. or any foreign country, including any government or agency thereof, as well as a citizen or national of the U.S. or any foreign country.

- **Department of State** - Person means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision of this does not refer exclusively to a foreign person or U.S. person then it refers to both.

Proprietary Research
Privately funded research activity undertaken pursuant to a contract between NMT and an outside sponsor with commercial interests and where the information is shared by the outside sponsor and the research results are restricted contractually. This is a sub-category of Restricted Research, defined below.

Public Domain
Information that is published and that is generally accessible or available to the public:
(1) through sales at newsstands and bookstores; (2) through subscriptions which 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 United States; (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; and (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.

Reasonable Care
The degree of care with which a person of ordinary prudence and intelligence would exercise in the same or similar circumstances. Failure to exercise such care is negligence.
**Red Flags**

A baseline checklist published by the US Department of Commerce that provides several "red flags" that indicate a transfer may violate export control policies or laws. Possible indicators that your recipient might plan an unlawful diversion include:

a. The transferee is reluctant to offer information about the end use of the items.
b. The technical data or services do not fit the transferee’s line of business; for example, a small bakery is involved in research regarding sophisticated lasers.
c. The items transferred are incompatible with the technical capability of the Transferee. For example, semiconductor-manufacturing equipment would be of little use in a country without an electronics industry.
d. The transferee has little or no relevant background.
e. The transferee is unfamiliar with the technology or technical data.
f. Delivery dates are vague, or deliveries are planned for out of the way destinations.
g. Performance/design requirements are incompatible with the foreign end-user’s resources or environment.
h. Stated end-use is incompatible with the customary or known applications for the technology or technical data.

If red flags exist, inquire! The purpose of the inquiry and reevaluation is to determine whether the red flags can be explained or justified. If they can, NMT may proceed with the transaction. If red flags cannot be explained or justified and NMT proceeds, NMT and associated personnel are at risk of having had "knowledge" that would render the action a knowing violation of the EAR or the ITAR.

**Re-export or Retransfer**

The term 're-export' in the Export Administration Regulations (EAR), or in any license, order, or export control document issued there under, includes re-export, transshipment, or diversion of commodities or technical data from one foreign destination to another. The written approval of the Department of State must be obtained before reselling, diverting, transferring, transshipping, or disposing of a defense article in any country other than the country of ultimate destination as stated on the export license, or on the shipper’s export declaration in cases where an exemption is claimed under the ITAR.

**Restricted Research**

University research, development, or testing subject to (a) publication restrictions, (b) access and dissemination controls, (c) federally funded research with contract specific national security restrictions; (d) accepting third party controlled items or information, or (e) providing access to defense services or, a defense article.

**Sensitive Technical Data**

Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation. This definition includes but is not limited to technical data belonging to NMT customers and affiliates.
Software
A collection of computer programs fixed on any tangible medium of expression. This includes system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis, and repair of defense articles.

Specially Designated National (SDN)
Any person who as determined by the U.S. Secretary of the Treasury to be a specially designated national for any reason under regulations issued by the Office of Foreign Assets Control (OFAC).

Sponsored Project
Any project receiving external support that has defined performance requirements or conditions.

Technology
Specific information necessary for the "development", "production", or "use" of a product.

Technology Control Plan (TCP)
A written plan that establishes processes practices and procedures to restrict access to export-controlled information, software and technology in accordance with export control laws and regulations.

Technical Data (Generally Accepted)
Technical Data may be in many forms and formats such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, thumb drives, portable hard drives, tape, or read-only memories. Also information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. All items with classifying information (e.g., Confidential, Secret, Top-Secret, SCI) relating to defense articles and services is classified technical data. In addition, all information covered by an invention secrecy order is considered technical data under ITAR. Technical data does not include basic marketing information on function or purpose or general system descriptions.

Technical Data (Legal Definition by Agency)
- **Department of Commerce** - Technical data means information of any kind that can be used, or adapted for use, in the design, production, manufacture, utilization, or reconstruction of articles or materials. The data may take a tangible form, such as a model, prototype, (models and prototypes are controlled both as technical data and as commodities), blueprint, or an operating manual (the tangible form may be stored on recording media); or they may take an intangible form such as technical service. All software is considered technical data.

- **Department of Defense** - Classified or unclassified information of any kind that can be used, or adapted for use, in the design, production, manufacture, repair, overhaul, processing, engineering, development, operation, maintenance, or reconstruction of goods or munitions; or any technology that advances the state of the art or establishes a new art in an area of significant military applicability in the United States. The data may be tangible, such as a model, prototype, blueprint, or an operating manual, or may be intangible, such as a technical service or oral or visual interactions.
• **Department of State** - Classified information relating to defense articles and defense services; Information covered by an invention secrecy order; and/or Information which is directly relating to the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles. This includes, for example, information in the form of blueprints, drawings, plans, photographs, instructions, computer software and documentation. This also includes information that advances the state of the art of articles on the U.S. Munitions List.

**Technical Data Exclusion**

“Technical Data” does not include information concerning general scientific, mathematical or engineering principles commonly taught at universities or information in the public domain. Information which does not exceed that normally included in sales brochures or marketing data sheets or similar products, readily available to the public (including competitors) at trade shows or other public events, normally does not constitute technical data within the spirit and intent of the ITAR. The Office of Defense Trade Controls has stated in public forum that a reasonable ‘rule-of-thumb’ which companies may use in helping evaluate whether or not information is technical data, for licensing purposes, is whether or not the company would readily provide the information to a competitor.

**Technical Assistance Agreement (TAA)**

An agreement (e.g., contract) for the performance of defense services or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles.

**Temporary Import**

Temporary import means bringing into the United States from a foreign country any defense article that is to be returned to the country from which it was shipped or taken, or any defense article that is in transit to another foreign destination. Temporary import includes withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or country from which it was shipped or for shipment to another foreign destination. Imports of defense articles into the United States are normally regulated by the Department of Treasury. However, the Department of State also regulates imports of defense articles if the article is being returned to the United States under the authority of a temporary export license (DSP-73) or if the article is brought in as an in transit shipment or temporary import.
Articles, services and related technical data designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act (22 U.S.C. §2778 and §2794(7)). Such designations are made by the Department of State with the concurrence of the Department of Defense.

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:


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