

# **New Mexico Institute of Mining and Technology**

*Export Compliance Plan (ECP)*

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# **1. Introduction**

New Mexico Institute of Mining and Technology (NMT) is committed to full compliance with all applicable U.S. export control laws and regulations. As export controls continue to expand within the research environment, particularly with the rapid growth of artificial intelligence (AI) and advanced data-driven technologies, the University maintains the Export Compliance Program (ECP) and the Export Control Policy (OR-03.1-2025) to ensure appropriate oversight and to support faculty, staff, administrators, and students in understanding their compliance responsibilities.

The ECP is essential to protecting national security and safeguarding controlled technologies and information. These federal requirements govern the transfer of certain commodities, technologies, and data to individuals and entities outside the United States, as well as to foreign nationals within the United States.

Export control regulations may apply to a broad range of university activities, including sponsored and non-sponsored research, international travel and collaboration, procurement, property management and disposal, material transfers, non-disclosure agreements, I-129 petitions for nonimmigrant workers, and transactions involving restricted countries, entities, or individuals. AI-related research, cloud-based computing resources, and the sharing of training data or model outputs may also trigger export control considerations.

Students engaged in research activities, whether for coursework, theses, dissertations, capstone projects, or independent study, are subject to the same export control requirements as faculty and staff. Student research involving controlled technologies, restricted data, foreign collaboration, or AI-enabled systems may require review, authorization, or specific safeguards before work begins. Faculty advisors and research supervisors are responsible for ensuring that students receive appropriate guidance and do not access or share export-controlled materials without proper approval.

Violations of export control laws may result in significant civil and criminal penalties, including fines and/or imprisonment, and may apply to both individuals and the institution. Effective compliance requires proactive oversight of all export-controlled activities.

Because export control regulations are complex and may be difficult to interpret, the Research Compliance & Safety Office (RCSO) and the Export Control Officer (ECO) provide guidance, resources, and support to assist the NMT community in meeting all federal compliance obligations.

The research conducted by the university community may be excluded from export controls if the activities qualify for the following exclusions:

### **1.1. Fundamental Research Exclusion**

The Fundamental Research Exclusion refers to information that arises from both basic and applied research in the fields of science and engineering. This exclusion applies as long as the research activities are carried out without imposing any restrictions on the participation of foreign nationals, such as limitations on who can be involved in the research process. Additionally, it requires that there are no constraints on the publication or dissemination of the research results, ensuring that the findings remain accessible to the broader scientific community and public.

### **1.2. Public Domain Exclusion**

The Public Domain Exclusion pertains to information that is already accessible to the general public and resides within the public domain. This means the information has been published and made readily available to the public through channels that do not impose restrictions on its distribution. Examples of such information include materials published in books, journals, or periodicals; details disclosed in patents; presentations or findings shared at open conferences held within the United States; and content accessible through unrestricted websites. Additionally, it covers any other form of public release that has been explicitly authorized by the U.S. government, ensuring that the information is freely available for use and dissemination by anyone.

### **1.3. Education Exclusion**

The Education Exclusion applies to the instruction of subjects within the fields of science, mathematics, and engineering as offered by academic institutions in the United States. This exclusion encompasses the teaching of scientific, mathematical, and engineering principles that are typically covered in courses formally listed in institutional catalogues and taught within associated

teaching laboratories. It ensures that the exchange of such knowledge, when presented as part of standard academic coursework, is not restricted under export control regulations.

However, it is important to note that the Education Exclusion does not extend to articles or services included on the United States Munitions List (USML). Even if such items are commonly addressed in courses and laboratories listed in academic catalogues, they remain outside the scope of this exclusion due to their sensitive nature and national security implications. This distinction highlights the limitations of the exclusion while safeguarding regulated materials and knowledge. The previously detailed exclusions are not without their limitations.

1) For example, the following activities are not covered by these exclusions:

- a) exports and research concerning military, weapons, defense, chemical or biological weapons,
- b) encryption technology & software,
- c) space or other dual-use items,
- d) restricted technologies,
- e) exports and/or research with or for sanctioned/embargoed countries (e.g., Iran, Cuba, Syria, North Korea, Crimea, Donetsk, and Luhansk regions of Ukraine). <sup>1</sup>

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<sup>1</sup> This list is subject to change based on The Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury. <https://ofac.treasury.gov/>

## **2. Purposes**

The purpose of an Export Compliance Plan (ECP) is to create a series of procedures that help the university operate its export activities in accordance with the Export Administration Regulations (EAR)

### **2.1. Plan Elements**

New Mexico Tech's ECP is in accordance with the guidelines established by the U.S. Department of Commerce Bureau of Industry and Security (BIS). BIS establishes the following foundations<sup>2</sup> of an Export Compliance Plan:

- 1) Management Commitment
- 2) Risk Assessment
- 3) Export Authorization
- 4) Recordkeeping
- 5) Training
- 6) Audits
- 7) Handling export violations and taking corrective actions

### **2.2. NMT ECP Intent**

Following BIS guidelines, NMT's ECP is intended to:

- 1) Reinforce senior management commitment to comply with U.S. export laws and regulations to all parties within the university.
- 2) Provide management structure and organization for the processing of export and deemed export transactions.
- 3) Develop written guidelines for NMT personnel to seamlessly incorporate into their daily tasks, enabling them to "screen" export transactions. These guidelines should ensure compliance with general prohibitions related to Exports, Deemed Exports, Re-exports, Deemed Reexports, and specific transfers to restricted end-uses and end-users.
- 4) Identify transactions that could normally be exported without an Export License, but because of the end-use or end-user, require a license.

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<sup>2</sup> *Export Compliance Guidelines: The Elements of an Effective Export Compliance Program*  
U.S. Department of Commerce, Bureau of Industry and Security, pp 3-4 and 5-7,  
<https://www.bis.doc.gov/index.php/documents/pdfs/1641-ecp/file>

- 5) Enhance accountability for export control tasks by identifying who is responsible for performing each part of the process and who is responsible for overall effectiveness of the ECP.
- 6) Provide compliance safeguards across NMT's portfolios to produce consistent export decisions.
- 7) Serve as a vehicle to communicate Red Flag indicators that raise questions about the legitimacy of a user or transaction.
- 8) Provide personnel with tools to help them ensure they are performing their export control functions accurately and consistently.
- 9) Streamline the process and reduce time spent on compliance activities when employees have written instructions, tools and on-going training.
- 10) Protect employees through training and awareness programs from inadvertently violating export control regulations.

### **2.3. Plan Structure**

The remaining parts of the NMT Export Compliance Plan are as follows:

- a) **[Section 3](#)**: provides an overview of export controls to serve as background for ECP users.
- b) **[Section 4](#)**: identifies responsibilities for assuring compliance with export control laws and regulations within the university.
- c) **[Section 5](#)**: presents the general requirements that are integral parts of the administration of NMT's export control program (Section 6) as well the procedures that govern its implementation (Section 7).
- d) **[Section 6](#)**: define the program procedures that guide the administration of export control activities at the university. While these procedures are overseen and managed by the Export Control Officer, their successful implementation requires the active involvement of all NMT personnel.
- e) **[Section 7](#)**: describes the procedures to be followed to assure export control compliance across institute portfolios where export controls apply.
- f) **[Section 8 - The Appendices](#)**: includes tools and resources required to implement ECP requirements. Export control federal regulations define and use specific terms, and this terminology varies somewhat from regulation to regulation. To assure consistency in this the ECP employs the set of terms and expressions in Appendix A, definitions of export control terms.

## **2.4. Plan Evolution**

Export control requirements are change on a regular basis. Government agencies in the U.S. are evaluating and updating their regulations and protocols as a result of new laws and directives, as well as administrative and judicial experience. While this ECP will be reviewed and revised on a regular basis, it is essential that all NMT personnel keep current with information and training provided by the Export Control Officer.

NMT's export compliance program is also evolving. The procedures outlined in this ECP are being developed by the Export Control Officer in partnership with the appropriate administrative offices at the university. The procedures included in this ECP will be revised and refined as the university builds its export control program.

### **3. Background**

Export controls are a framework of U.S. government laws and regulations designed to safeguard national security, uphold foreign policy objectives, ensure compliance with international treaties, and maintain the nation's leadership in strategic technologies and economic priorities. These regulations govern the transfer of sensitive items, materials, information, software, data, technology, and technical assistance to foreign individuals, entities, and governments, both within the United States and internationally. Any proposed export, deemed export, reexport, or deemed reexport must undergo thorough review to ensure compliance with all relevant laws and regulations prior to execution.

Export controls serve to protect U.S. economic and security interests domestically and abroad by preventing the proliferation of weapons of mass destruction, supporting regional stability, enforcing anti-terrorism and crime prevention measures, and advancing human rights protections. Furthermore, the United States imposes economic embargoes on countries whose governments perpetuate human rights violations or support global terrorism.

While export controls have been in effect since the 1940s, their scope and complexity have significantly expanded over time, particularly following the events of September 11, 2001. This pivotal moment underscored the critical need for clear safeguards to both address emerging threats and protect sensitive technologies. Export regulations are extensive, intricate, and subject to frequent updates, requiring vigilant interpretation and compliance to navigate effectively.

#### **3.1. Agencies, regulations, and technologies**

Various federal departments and agencies have established export control regulations in response to specific statutes, executive orders, and presidential directives. Additionally, the United States collaborates with international partners to align export control measures through agreements such as the Wassenaar Arrangement and the Australia Group. At NMT, due to the nature of its research and educational activities, this Export Compliance Plan (ECP) is primarily guided by the requirements and regulations of three key federal agencies:

#### **3.2. Export Administration Regulations (EAR)**

Administered by the U.S. Department of Commerce Bureau of Industry and Security (BIS), EAR [15 CFR 2 700-774<sup>3</sup>] implements the Export Administration Act of 1979, as amended, and the

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<sup>3</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-774>

International Emergency Economic Powers Act, as amended. EAR controls the export of commercial items, including “dual-use” items (both commercial and military or proliferation applications) as well as items without an obvious military use.

### **3.3. International Trafficking in Arms Regulations (ITAR)**

Administered by the U.S. Department of State Directorate of Defense Trade Controls (DDTC), ITAR [22 CFR 120-130<sup>4</sup>] implements the Arms Export Control Act and Executive Order 11958, as amended. ITAR controls the export of items with predominant military use or space application.

### **3.4. Office of Foreign Assets Control (OFAC)**

An office within the U.S. Department of the Treasury, OFAC acts under Presidential wartime and national emergency powers, as well as authority granted by specific statutes establishing economic and trade sanctions. OFAC regulations [31 CFR 500-590<sup>5</sup>] control dealings, including exports of civilian and military items, with targeted foreign countries, terrorists, narcotics traffickers, and those involved in proliferation of weapons of mass destruction.

While EAR, ITAR, and OFAC are prominent, many other Federal departments, agencies, and commissions have export control regulations in place. While specifics vary with agency and regulation, export controls generally include items, commodities, and software, as well as the information, technical assistance and services, and know-how required to develop, produce, and use them.

#### **3.4.1. Antiboycott provisions**

In addition to the export controls above, the Export Administration Regulations include antiboycott provisions that discourage and, in some cases, prohibit transactions that support the boycott of Israel by the Arab League and certain other countries. Administered by the Office of Antiboycott Compliance at the U.S. Department of Commerce, these provisions [15 CFR 760<sup>6</sup>] apply to “U.S. persons” (defined to include individuals and companies located in the United States and their foreign affiliates) who sell, purchase, or transfer goods, information, or services

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<sup>4</sup> <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M>

<sup>5</sup> <https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V>

<sup>6</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-760>

within the U.S. or between the U.S. and certain foreign countries. Antiboycott provisions regulate U.S. exports and imports, financing, forwarding and shipping, and certain other transactions that may take place wholly offshore.

#### **3.4.2. Exports and reexports**

Under export controls, an export occurs, or is deemed to occur, when an item, information, or service is transferred (“released”) by visual inspection, oral disclosure, electronic transmission, or physical shipment to a foreign individual, entity (e.g., university, business, technical society, or other organization), or government. A reexport occurs, or is deemed to occur, when an export-controlled item, information, or software is transferred from one foreign country to another foreign country.

#### **3.4.3. Deemed exports**

A deemed export occurs when export-controlled technology, technical data, or source code is released to a foreign national. Under federal regulations, this release is treated as an export to the individual’s country of citizenship. Deemed export rules apply to all academic, research, instructional, and operational activities, not only sponsored projects.

#### **3.4.4. Restricted parties and sanctioned countries**

Export controls regulate exports and reexports to foreign individuals, entities, and governments identified on one of several Federal agencies lists as denied, debarred, or otherwise sanctioned for export purposes. These restricted parties include Foreign Nationals and Foreign Persons<sup>7</sup> in the U.S. as students, scholars, technical experts, and business people as well as abroad.

#### **3.4.5. Export licenses and exceptions**

Prior to an export or deemed export, or to a reexport or deemed reexport, the university must:

- 1) Apply to the cognizant Federal agency for an export license, or
- 2) Apply for a determination that an exception or exclusion to the law applies, or
- 3) Make its own determination of exception or exclusion (self-classification).

Applications and determinations are made only by NMT’s Export Control Officer. They must be in writing and follow agency procedures for submission, documentation, record keeping, and record retention.

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<sup>7</sup> EAR refers to “Foreign Nationals” and ITAR to “Foreign Persons”; see [Appendix A](#) for definitions

### **3.4.6. Export controls in practice**

Regulations such as the EAR, ITAR, and OFAC are independent and interrelated. The nature of the export, destination, end-use, and intended end-user all interact to determine if an export license or license exception is required. The decision to apply for an export license or a license exception involves many factors and, sometimes, detailed analysis. Licenses are granted by the cognizant Federal agency and the application process may take several months. Consequently, the procedures in this ECP emphasize forward planning, as well as early and continuous involvement of the Export Control Officer.

### **3.4.7. Publicly-Available Information**

The information is published and already in the public domain through unlimited and unrestricted distribution [15 CFR 734.7<sup>8</sup>].

### **3.4.8. Educational Information**

The information is released by instruction as listed in catalog courses and associated teaching laboratories in U.S. accredited academic institutions [15 CFR 734.9<sup>9</sup>].

### **3.4.9. Fundamental Research**

The item, information, or service results from basic and applied science performed by accredited universities in the U.S. where the research results are published and shared broadly within the scientific community [15 CFR 734.8<sup>10</sup>].

### **3.4.10. Bona Fide Employee Exception**

The bona fide employee exception [22 CFR 126.18<sup>11</sup>] permits a university to share unclassified export-controlled technical data or technology with a foreign national employee in the United States without an export license when the individual is a full-time regular employee, maintains a permanent U.S. address during employment, is not a national of an embargoed or otherwise prohibited country, and receives written notice that the information may not be shared with other

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<sup>8</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734/Section-734.7>

<sup>9</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734/Section-734.9>

<sup>10</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734/Section-734.8>

<sup>11</sup> <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-126/section-126.18>

foreign persons without government approval. The university must also document and retain records of the disclosure.

### **1) Postdoctoral Researchers**

Postdoctoral Researchers typically do not qualify because they are generally considered trainees rather than regular employees, particularly when holding F-1 or J-1 visas, and the exception is usually limited to individuals on employment-based visas such as H-1B, L-1, or O-1A. Even when eligibility is possible, the exception requires extensive documentation and a Technology Control Plan to ensure that only the designated individual can access the controlled data.

### **2) Deferred Action for Childhood Arrivals (DACA)**

Deferred Action for Childhood Arrivals (DACA) students are also considered foreign nationals for export control purposes, meaning they are subject to the same restrictions and cannot access export-controlled technical data or technology under this exception.

## **3.1. Fundamental Research Exclusion (FRE)**

It is important that NMT and its researchers operate within the FRE granted by the export control regulations and the National Policy on the Transfer of Scientific Technical and Engineering Information in National Security Decision Directive (NSDD) 189<sup>12</sup>.

### **3.1.1. When the Fundamental Research Exclusion Does Not Apply**

The FRE is lost if the university accepts a contract, grant, or award that restricts the free, open, and broad sharing of the research results within the scientific community [15 CFR 734<sup>13</sup>]. This includes accepting terms and conditions that forbid or require pre-approval for the participation of foreign nationals or foreign persons, give the sponsor the right to approve publications, or otherwise operate to forbid participation and/or access to and disclosure of research results. Similarly, the FRE is lost if a researcher enters into confidential discussions or accepts “side bar” agreements that restrict sharing research results within the scientific community.

## **3.2. Individual Responsibilities and Penalties**

Export control laws and regulations are applicable to individuals, and the responsibility for compliance lies with individuals. Criminal and civil penalties for noncompliance are severe (**up to**

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<sup>12</sup> NSDD 189 is included as [Appendix B](#)

<sup>13</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734?toc=1>

**\$1 million per violation, and imprisonment of up to 20 years, depending on the violation)** and may be imposed against individual investigators as well as their institutions.

Violators may also be subject to denial of their export privileges (prohibiting them from participating in any way in any transaction subject to the EAR or ITAR), and debarred from any government-funded support.

## 4. Responsibilities

### 4.1. General Management Responsibilities

The Export Control Officer is responsible for the overall management of NMT's export control program, including implementation of this Export Compliance Plan (ECP).

**Research Office Building (R.O.B.)**

**Email: [export@npe.nmt.edu](mailto:export@npe.nmt.edu)**

**Phone: (575)-835-5749**

### 4.2. Empowered Official (EO)

The NMT has an individual Empowered Official (EO) for export control matters under the U.S. Arms Export Control Act [22 U.S.C. 2778<sup>14</sup>] and its regulations, and in this capacity has the authority to:

- 1) Oversee all NMT export licensing or approval activities, including signing license applications or other documentation relating to such licensing or to exporting approval.
- 2) Approve any and all written exceptions to export control requirements.
- 3) Represent NMT before export control regulators in matters related to registration, licensing, commodity jurisdiction and classification requests, and voluntary disclosures.
- 4) Bind the university in any proceeding before any government agency with export control responsibilities. Under the applicable regulations [22 CFR 120.25<sup>15</sup>] the EO is a U.S. person who is directly employed by the university or a subsidiary; is legally empowered in writing to sign license applications or other requests for export approval; 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 regulations; and has the independent authority to:
  - a) Inquire into any aspect of a proposed export, temporary import, or any other transaction within the scope of export control regulations.

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<sup>14</sup> <https://www.govinfo.gov/content/pkg/USCODE-2023-title22/pdf/USCODE-2023-title22-chap39-subchapIII-sec2778.pdf>

<sup>15</sup> <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120?toc=1>

- 5) Verify the legality of the transaction and the accuracy of any information to be submitted to a licensing or approval authority.
- 6) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse being taken by the university.
- 7) As implied by [22 CFR 120.25], the EO is free of any encumbrances and operates under the full support of the NMT administration to pursue without interference for any and all forms of investigation required to comply with all export control laws and regulations as well as NMT's Export Compliance Plan (ECP).

### **4.3. Export Control Officer (ECO)**

The Empowered Official has assigned specific responsibilities under the ECP to the Export Control Officer (ECO). The ECO reports to the Director for the Research Compliance & Safety, and undertakes responsibilities such as the following:

- 1) Monitors export control developments (legislation, regulations, cases, penalties, etc.) and develops procedures to ensure the university remains in compliance with all export control regulations (not limited to the EAR, ITAR and OFAC).
- 2) Identifies NMT activities that are or may be impacted by export control regulations and develops strategies and procedures to manage the risks.
- 3) Recommends procedures to the senior NMT administration to maintain NMT's compliance.
- 4) Educates faculty, researchers, graduate students, academic units, research centers, and administrative offices charged with implementation of export control procedures under this ECP.
- 5) Works with all campus personnel to facilitate understanding and compliance with export controls.
- 6) Assists investigators, researchers, and offices within NMT when research or research results are export-controlled.
- 7) Assists researchers with respect to their research activities, data, software, and technology transfer, so they may be in compliance with export control regulations.
- 8) Develops a Technology Control Plan (TCP) for each export-controlled project consistent with this ECP to aid the principal investigator in meeting his or her export control responsibilities.
- 9) Applies for export licenses, Commodity Jurisdictions, Export Control Classification Numbers, Technical Assistance Agreements, and other export approvals.
- 10) Advises and approves, with regard to export control issue, all foreign persons/nationals visiting NMT under visa sponsorship.

- 11) Investigates and documents voluntary disclosures of any violations of the export control laws and regulations.

The ECO may also be designated, by NMT administration in writing, as an Empowered Official (EO), with the additional authority in [Section 4.2](#). While certain oversight functions may be delegated, only an Empowered Official has the power to sign paperwork and bind the university in any proceeding before DDTC, BIS, OFAC, or other government agency with export control responsibilities [22 CFR 120.25].

#### **4.4. Principal Investigators and Research Staff**

Principal Investigators (PIs) bear the ultimate responsibility for the execution and integrity of a research project. Their duties encompass the design, implementation, and oversight of all project activities, ensuring compliance with ethical standards and regulatory frameworks. PIs are also accountable for achieving project objectives, managing resources effectively, and maintaining alignment with institutional policies and sponsor requirements. Ultimately, they are responsible for the scientific rigor, transparency, and validity of the research outcomes.

Research Staff operate under the direction of the PI to support the effective execution of a research project. This group includes research scientists, postdoctoral scholars, undergraduate students, and other qualified personnel who conduct experimental procedures, manage and curate data, operate specialized instrumentation, and contribute domain-specific expertise essential to the project's success.

NMT researchers are central to export control management and compliance. They work with strategically important technologies, engage foreign persons/nationals in their laboratories, and advise them on their studies. They participate in international research collaborations, conferences, and scientific and technical exchanges in the U.S. and abroad; host campus visitors; and engage in other activities that may be subject to export control.

While the procedures outlined in the ECP will assign specific responsibilities, it is essential that all researchers and staff, and especially Principal Investigators:

- 1) Become familiar with export controls and export control compliance, using communications and training provided by the university and the Export Control Officer. It is not necessary to become experts, but researchers are expected to develop a basic understanding so as to know when to raise questions and alert NMT to possible export control issues. Refer to [Section 3.7](#) for potential ramifications for researchers and NMT.

- 2) Refrain from entering into any agreement applicable to their research or NMT employment that defeats the university's Fundamental Research Exclusion. This includes language restricting participation of foreign persons/nationals, sponsor approval of publications, non-disclosure agreements, confidentiality agreements, and 'side bar' agreements related to NMT research.
- 3) Evaluate research opportunities at the earliest stage to identify possible export control issues (especially the use or development of strategic technologies, and involvements of foreign persons/nationals as students, staff, and collaborators), flag these issues, and discuss them prior to making a proposal or any other commitment to do the work.
- 4) Once the project has begun, reevaluate export control decisions as a result of changes in project scope, staffing, use of export-controlled items provided by third parties, and any other changes in project circumstances.
- 5) Consult with the ECO in a timely fashion to permit the time needed to evaluate the research in question and obtain any necessary licenses or authorizations.
- 6) Refrain from bringing any item (commodity, technical data, or technology) or a proprietary software package obtained as part of an outside consulting assignment onto the campus or into an NMT research project that is not already part of campus research or educational activities, and that may subject research or educational activity to export controls.
- 7) Contact the ECO if the investigator knows or becomes aware there is a high probability that an item will be used directly or indirectly in activities related to satellites, missiles, chemical/biological weapons, or sensitive nuclear activities.
- 8) Coordinate with the recipient of all materials to make sure that they have obtained the proper importation permits.
- 9) Ensure that all items sent to foreign persons/nationals, foreign entities, or foreign countries are packaged according to applicable U.S. Customs and export regulations

#### **4.5. Deans, Chairs, and Center Directors**

Academic deans, department chairs, and research center directors are responsible for the following:

- 1) Become and remain familiar with export control management and compliance requirements, including those presented in this ECP.
- 2) Monitor any Technology Control Plans established within their units.
- 3) Notify the ECO of any issues that arise with the implementation of, or compliance with, Technology Control Plans in their units.

#### **4.6. Other NMT Personnel**

While this Export Control Management and Compliance Plan assigns specific responsibilities to NMT personnel in several university portfolios, it is important to remember that, as described in [Section 3.7](#). **ALL NMT and NMT-related personnel and students are responsible for compliance with export control laws and regulations.**

## 5. General Requirements

The following requirements are integral to all procedures in Sections 6 and 7 of this plan:

- 1) Except where labeled as “advisory,” the procedures in the ECP are required to manage exports and maintain export control compliance. Deviations may be made only with the explicit written approval of the Empowered Official.
- 2) Plan requirements apply to all NMT and NMT-related personnel as described in Section 4 of this plan. Under the law, responsibility for export control compliance rests with individuals as well as with the Institute. Violators may be subject to criminal and administrative penalties.
- 3) Export control requirements are in constant flux, and the Export Control Officer will issue updates and advisories to assist in implementation. NMT personnel are responsible for keeping up to date with communications from the ECO.
- 4) Procedures addresses export control issues as they are commonly encountered at NMT and other technological research universities; they cannot anticipate every circumstance. NMT personnel are to be vigilant for situations that, though not specifically covered in the ECP, may involve export controls.
- 5) Some decisions and transactions require export control approvals. As described in EMCP [Sections 4.3](#) and [4.4](#) only the Empowered Official (EO), or a Export Control Officer (ECO) designated by Empowered Officer, may make application to a U.S. government agency for a Commodity Jurisdiction, a Commodity Classification (ECCN), or an Export License; issue a License Exception; or determine that the law does not apply in a given situation (License Exclusion).
- 6) U.S. government agency approvals can take several months. NMT personnel are advised to review relevant procedures and plan well in advance of their needs. The procedures in the ECP emphasize early and continuing involvement of the Export Control Officer to help researchers and other NMT personnel to meet their goals, follow university policy and procedures, and comply with export laws and regulations.
- 7) Any NMT community member who has reason to believe that an export control violation has occurred must notify the Export Control Officer. They will provide the appropriate Federal agency notification. Honest errors do occur and, when they do, timely reporting is

essential. Such Voluntary Self Disclosure [15 CFR 764.5<sup>16</sup>] does not preclude being prosecuted or fined; it may minimize severity. Failing to do so, however, will have serious repercussions for both individuals and the university (see [Section 4](#)).

- 8) NMT's Export Control Officer is available for consultation. Any NMT employee, student, consultant, or volunteer is encouraged to contact the ECO for guidance and assistance at [export@npe.nmt.edu](mailto:export@npe.nmt.edu).

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<sup>16</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-764>

## **6. Export Control Administration**

### **6.1. Oversight and Management**

#### **6.1.1. NMT's Export Control Program**

The Export Control Officer (ECO) is responsible for oversight and management of NMT's export control program, including implementation of this Export Compliance Plan (ECP). The ECO will:

- 1) Monitor export control developments (from the regulatory bodies) and best practices (in peer research universities) and incorporate these into NMT's export control program.
- 2) Provide legal advice to NMT on export control requirements and compliance.
- 3) Review and update NMT's Export Control Management and Compliance Plan on a timely basis consistent with regulatory changes.
- 4) Make the Export Compliance Plan (ECP) broadly available to the NMT community.
- 5) Accomplish the specific activities and responsibilities assigned to the Export Control Officer by the Export Control Administration Procedures in [Section 6](#) of this EMCP.
- 6) Accomplish the specific activities and responsibilities assigned to the Export Control Officer by the university procedures in [Section 7](#) of this ECP.
- 7) Appoint the Empowered Official (EO) who meets the regulatory requirements [22 CFR 120.25<sup>17</sup>] and is authorized and supported to accomplish the responsibilities outlined in [Section 4.2](#) and in the procedures Sections 6 and 7 of this ECP.
- 8) Appoint a Export Control Officer (ECO) who is authorized and supported to accomplish the responsibilities outlined in [Section 4.3](#) of this ECP.
- 9) Respond to inquiries and aid the university community in all export related matters.

#### **6.1.2. Research Compliance & Safety Office (RCSO)**

The RCSO is to have the resources to accomplish these activities. The ECO and EO are to be given sufficient resources and training to attain a significant degree of expertise in applicable export control regulations and processes to fulfill their training, licensing, record keeping, audit, agency notifications, and other responsibilities in this EMCP. Their training is to include, at a minimum, courses offered by the U.S. Commerce, State, and Treasury Departments related to the EAR, ITAR, and OFAC export control requirements.

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<sup>17</sup> <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120?toc=1>

## **6.2. Training**

The Export Control Officer is responsible for providing export compliance training for all NMT personnel. The Export Control Officer will:

- 1) Develop and maintain a collection of current source documents, including regulations and interpretations; lists of export-controlled items; lists of restricted entities and sanctioned countries; and relevant information, guidance, and export control decision processes.
- 2) Design, implement, and maintain a program of communication to the NMT community.
- 3) Conduct at least one workshop each academic year for:
  - a. Senior administration and policy makers
  - b. Faculty and researchers
  - c. Personnel in offices charged with implementation of the ECP
  - d. Other groups at their request or as identified by the Export Control Officer
  - e. Audit follow ups
- 4) Include in these workshops, at minimum, an overview of export control regulations, examples of activities that may trigger export controls, explanations of exceptions and exclusions, and updates since the last training session.
- 5) Provide consultation by phone, email, or group presentations as requested.
- 6) The Empowered Official and Export Control Officer are to have the resources and training to accomplish these activities. Their training is to include, at a minimum, courses offered by the U.S. Commerce, State, and Treasury Departments related to the EAR, ITAR, and OFAC export control requirements.

## **6.3. Export Licensing**

NMT's Export Control Officer is responsible for submitting Commodity Jurisdiction (CJ) applications, Commodity Classification (ECCN) requests, and Export License applications, as well as documenting License Exceptions and License Exclusions on behalf of NMT.

- 1) By law, only the Empowered Official or designated Export Control Officer may submit a CJ, ECCN, or Export License application to the U.S. Department of State, U.S. Department of Commerce, U.S. Department of the Treasury or other agency as may be required for the following situations:
  - a. Export License for sharing Export-controlled or confidential information with a Foreign National or a Foreign Person. When required, an Export License or

exception determination must be issued prior to the sharing of the information with the foreign national or person.

- i. This includes the sharing of Export-controlled items, information, or services within an NMT laboratory.
  - b. Export License for shipping covered hardware and software outside the U.S. (EAR, ITAR, and OFAC).
  - c. Export License for Technical Assistance Agreements (TAAs) where U.S. citizens or permanent residents are providing technical service or training to Foreign Nationals or Foreign Persons where an Export-controlled item is involved.
- 2) Only the Empowered Official and the Export Control Officer are authorized to issue a License Exception or License Exclusion. License Exceptions and License Exclusions must be in writing and approved by NMT's Empowered Official.
- 3) An appropriate time must be allowed to obtain a license prior to initiating an export. It normally takes from three to six months to secure an Export License from the BIS at the Department of Commerce. If a Commodity Jurisdiction is required, the licensing process may take an additional two months for DDTC review.

#### **6.4. Record Keeping and Retention**

Export control regulations impose specific record keeping requirements on individuals involved in export transactions. The EAR specifies the transactions subject to BIS regulation [15 CFR 762.1<sup>18</sup>], the documents to be retained [15 CFR 762.2], and the necessary records retention period, which is **five years from the date of the export** [15 CFR 762.6]. During the retention period, NMT personnel may be asked to produce records and make them available for inspection by BIS or any other agency of the U.S. Government [15 CFR 762.7]. ITAR has similar requirements [22 CFR 122.5<sup>19</sup>].

- 1) In response to these requirements, and for overall program management consistency, NMT establishes the following procedures in order to document its commitment to, and compliance with, export control regulations; and to be prepared for any export control audit by a responsible U.S. Government agency:

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<sup>18</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-762/Section-762.1>

<sup>19</sup> <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-122>

- a. The Export Control Officer is responsible for developing and maintaining a centralized record keeping system, and communicating detailed requirements to NMT personnel involved in export management activities.
- 2) Principal investigators, schools, departments, centers, and administrative offices charged with export management responsibilities in this ECP will:
  - a. Maintain, in their files, digital or physical copies of all export documentation for a period of **five years from the date of the Export**, Deemed Export, Reexport, or Deemed Reexport.
  - b. Documentation is to include, at minimum [15 CFR 762.2]:
    - i. Export control documents as defined by EAR at [15 CFR 772<sup>20</sup>]
    - ii. Memoranda, notes, and correspondence
    - iii. Contracts
    - iv. Invitations to bid
    - v. Books of account
    - vi. Financial records
    - vii. Documents and reports on restrictive trade practice or boycotts
    - viii. Other records pertaining to transactions involving exports from the U.S. of export-controlled items, information, or services and any known re-exports, trans-shipment, or diversion of items exported from the U.S.
- 3) Provide to the Export Control Officer with original copies of records relating to export control transactions as well as decisions within NMT as established in the Procedures in [Section 7](#) of this ECP. The Export Control Officer will retain these records for at least five years and comply with audit requirements ([Section 6.4](#)).
- 4) Export Control Officer will maintain a record of applications for Export Licenses, License Exceptions (including temporary license exceptions), License Exclusions, Technology Control Plans, TCP Certifications, and other documents conveying Export Control Officer approvals for a period of at least five years. This record is intended to comply with the audit requirements ([Section 6.5](#)). Additional record keeping requirements are included in each Procedure in Section 7 of this ECP.

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<sup>20</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-772>

## **6.5. Audit**

### **6.5.1. Internal Audits**

In order to maintain NMT's export compliance program and ensure consistent adherence to U.S. export laws and regulations, the Export Control Officer may conduct internal reviews of export-related transactions and documents, e.g., research agreements, non-disclosure and other confidentiality agreements, inter-institutional agreements (IIA), intellectual property disclosures, compliance with conditions detailed in Technology Control Plans (TCP), and documents associated with personnel appointments and arrangements, purchasing, shipping, travel, etc. The purpose of the reviews is to identify possible violations as well as deficiencies in training, procedures, etc., that can be rectified.

- 1) Should an infraction of the law exist, the Export Control Officer will notify the appropriate agency to comply with "full disclosure" per regulations. Working with all involved, the Export Control Officer will develop an appropriate course of action to bring the effort into compliance. Though errors do occur and could have serious consequences, gross negligence and willful intent are punishable. Violations are civil and criminal, punishable by fines and jail time.
  - a. Any deficiencies noted in internal audits will be incorporated into updating the compliance program.

### **6.5.2. External Audits**

The Export Control Officer will coordinate university participation in, and response to, audits or audit inquiries by agencies with export control responsibilities.

- 1) Any NMT personnel receiving an audit inquiry or notice from an agency with export control responsibilities are to contact the Compliance & Safety Office, who will coordinate university response and participation as outlined in [Section 6.5](#).

## **6.6. Violations**

- 1) All NMT personnel are to report any violations of export control regulations to the Export Control Officer as soon as they are discovered. Refer to [Section 3.7](#) for possible ramifications to the researcher and NMT.
- 2) The Empowered Official in the Export Control Officer will provide appropriate notifications to the BIS, DDTC, OFAC, or other cognizant export control agency.

## **7. Procedures**

### **7.1. Institute Portfolios**

Export control decisions are made at every stage of a research project, beginning with review of solicitations, proposals, and awards; continuing through conduct of the work; and concluding with project close-out, record keeping, and record retention.

### **7.2. Scope and Applicability**

- 1) All research and scholarly activity at NMT, regardless of funding source, are subject to export laws and regulations and, thus, subject to the requirements of this Export Compliance Plan. This includes, but is not limited to:
  - a) Sponsored research (through Research Administration & Finance).
  - b) Gift-based research (through the Office for Advancement and Alumni Relations).
  - c) Research undertaken as part of cooperative university-industry programs, consortium arrangements, consulting agreements, and “master agreements” covering multiple projects.
  - d) Research undertaken pursuant to Memoranda of Understanding (MOU), Technology Transfer Agreement (TTA), CDA, MTA, IIA, and similar types of agreements (e.g., ATP, SBIR, STTR).
  - e) Research involvements with foreign countries.
  - f) Research undertaken without a written agreement between NMT and a sponsor.
- 2) While all NMT personnel are responsible for export control compliance, research investigators assume the responsibilities in [Section 4.4](#) of this ECP as well as the specific responsibilities assigned by the Procedures in [Section 7](#) of this ECP.

### **7.3. Solicitations, Proposals, and Awards**

Research solicitations, proposals, and awards will be reviewed for compliance with export control regulations. These reviews are intended to assist researchers in assessing the impact of export controls on project scope, staffing, work plan, equipment usage, schedule, and budget should the investigator and the university choose to respond to a solicitation, submit a proposal, or accept an award.

#### **7.3.1. Solicitations**

Where proposals are contemplated in response to a Request for Proposal (RFP), Request for Quotation (RFQ), Broad Agency Announcement (BAA), or other form of solicitation, the

principal investigator (PI) works with the Office for Research's Manager of Research Development to review these documents to help identify apparent and potential export control issues.

### **7.3.2. Proposals**

As part of the university's proposal and approval process, the PI works with the Sponsored Projects Development (SPD) office who provides a Research Administrator to assess proposals for apparent and potential export control issues.

### **7.3.3. Awards and agreements**

As part of the university's research award processing and approval process, the Manager of Research Development and Sponsored Project Administration's (SPA) Research Administrator review proposed research contracts, awards, grants, and sub-agreements, independent of the source, for apparent and potential export control requirements

## **7.4. Additional Factors**

Of particular import are factors such as:

- 1) Restrictions on publication and dissemination of research results.
- 2) Restrictions on the participation of Foreign Nationals or Foreign Persons in the research, including their access to facilities and information.
- 3) Third-party provision of confidential, proprietary, or restricted information.
- 4) Involvement of foreign sponsors or collaborators; communications and transactions with U.S. sanctioned and embargoed countries; and travel, shipping, or work to be performed outside the U.S.
- 5) The potential for using or creating Export-controlled items, materials, information, software, data, technology, and technical assistance as part of the research; the consequent need to apply for Export Licenses or License Exceptions, Commodity Jurisdictions, Commodity Classification (ECCN) determinations, or other U.S. government approvals; and the implications of these activities for project schedule and budget.
- 6) Military and space applications of project results.
- 7) Funding from the Department of Defense, NASA, or other agency with military and space missions and programs.
- 8) References to export laws and regulations (beyond a simple statement to comply with the law).

## 7.5. General Requirements Procedures

- 1) Sponsored Projects Development (SPD) shall review all proposals and pre-award agreements for language that restricts publication or dissemination of research results, limits personnel participation based on citizenship or nationality, or otherwise imposes active export control requirements that would eliminate NMT's Fundamental Research Exclusion (FRE). SPD shall attempt to negotiate to remove or modify such language prior to institutional execution. This authority applies to the pre-award phase only, through institutional signature; responsibility for post-award amendments transfers to Sponsored Projects Administration (SPA) in coordination with the ECO. Where standard export control clauses appear in a contract but do not impose restrictions that eliminate the FRE (e.g., routine DFARS 252.204-7012, DD Form 2345 acknowledgment language, or general export control applicability notices), SPD's standard pre-award routing record serves as documentation of that determination. No separate award file entry or ECO written approval is required for such standard language. A prepublication review clause that permits only a short, defined review period to protect sponsor-provided proprietary information or to identify patentable inventions, and that cannot result in suppression or indefinite delay of publication, does not eliminate the FRE and does not require ECO referral. Where publication restrictions, access controls, personnel restrictions based on citizenship or nationality, or other FRE-eliminating requirements remain in an agreement after SPD's negotiation, SPD shall refer the matter to the ECO. Any such remaining requirements must be reviewed and approved in writing by the ECO before SPD routes the agreement for institutional signature. SPD shall not route absent that written ECO determination, which shall be retained in the award file.
- 2) During pre-award contract review, SPD shall conduct an initial review of each proposal and agreement for restricted party red flags. Red flags include entities or individuals in OFAC-sanctioned or embargoed countries, foreign nationals from countries of concern identified in applicable U.S. government guidance, or entities identified in solicitation language as subject to access restrictions. Where a red flag is identified, SPD shall refer the matter to the ECO for formal restricted party screening against the Consolidated Screening List, Specially Designated Nationals list, and BIS Entity List ([Appendix C](#)). Routine domestic academic personnel and collaborators on standard DOD fundamental research awards do not require ECO screening as a condition of proposal submission or award execution. Any individual or entity identified through ECO screening as a restricted party shall be

discussed with the PI and, if possible, removed from the project. Any identified restricted party remaining in a proposal or agreement must be approved in writing by the ECO before SPD routes the agreement for institutional signature. Post-award personnel additions are the responsibility of PI, which shall refer individuals of concern to the ECO before permitting them to begin work on the project.

- 3) Where the sponsor is providing export-controlled items, technology, or technical data, the ECO shall determine the applicable Commodity Jurisdiction (CJ) and Commodity Classification (ECCN). If an Export License is required for the transfer of such items or data to NMT's research team, the sponsor bears responsibility for obtaining the appropriate license prior to transfer. Confidential or proprietary sponsor information that is not independently subject to ITAR or EAR is governed by the applicable nondisclosure or confidentiality provisions of the sponsored agreement and is addressed through SPD's standard contract review process.
- 4) Together with the Office of the Vice President for Research and SPD, the Export Control Officer participates in compliance-specific negotiations with the PI and SPD to explore avenues for satisfying or eliminating active export control requirements. This includes reframing the project to qualify as fundamental research, avoiding export-controlled items or technical data, and redefining exchanges of technical information within the project team. Compliance negotiations involve the ECO and the sponsor's compliance or contracting personnel; for DOD contracts, agency compliance personnel prevail in agency decision-making. The ECO will keep the PI and SPD informed of the status and outcome of compliance negotiations. SPD leads contract language negotiations, ensuring that the outcomes of compliance negotiations are reflected in final agreement terms before routing for institutional signature. For DOD contracts, these two sets of negotiations often involve different counterparts at the sponsor and should proceed concurrently rather than sequentially.
- 5) Where necessary, the Export Control Officer will apply to the appropriate U.S. government agency for a Commodity Jurisdiction (CJ), Commodity Classification (ECCN), and/or Export License; issue a License Exception; or decides that export control regulations do not apply (License Exclusion). The PI should keep in mind that U.S. government applications and approvals may take several months.
- 6) A Technology Control Plan (TCP) is required when the ECO determines that the research involves: ITAR-listed defense articles or defense services; EAR-controlled technology or

items above the EAR99 designation that cannot be brought under the FRE; or sponsor-provided controlled technical data, hardware, or software subject to ITAR or EAR. A TCP is not required solely because the sponsor is a DOD agency or because the contract contains standard DFARS export control compliance clauses. Where the ECO determines a TCP is required, the PI is required to assist with its development as described in [Section 7.8](#). An example of TCP requirements is provided in [Appendix E](#). The TCP must be approved by the ECO before NMT can accept the sponsored research agreement. SPD shall not route the agreement for signature by the Authorized Organizational Representative (AOR) until written ECO TCP approval is received and documented in the award file. The AOR holds institutional signature authority; SPD controls the routing.

- 7) Where the ECO identifies a condition requiring resolution prior to award acceptance, including but not limited to a required TCP, an unresolved restricted party issue, or a pending export license application, the ECO shall notify SPD in writing (at [awards@nmt.edu](mailto:awards@nmt.edu)) of the hold and the specific condition requiring resolution. SPD shall not route the agreement for AOR signature while any ECO-issued hold is outstanding. The ECO shall notify SPD in writing when the condition has been resolved and routing may proceed. When a research award is accepted, and regardless of the outcome of the reviews above, the principal investigator, SPD, and SPA will receive a PI memo ([Appendix D](#)) describing export controls. This memo shall be issued by the Export Control Officer, at the time SPD transmits the fully executed agreement to SPA.
- 8) Where a change requires a formal amendment to the sponsored agreement, SPA shall route the agreement back to SPD for pre-award review. SPD shall assess the modified scope for export control implications, coordinate with the ECO as required, and re-route the executed amendment to SPA upon completion. Where a change does not require a formal agreement amendment, SPA shall coordinate directly with the ECO for evaluation and document the outcome in the award file.
- 9) To prevent undue delay in award acceptance and project setup, the following response timelines apply to ECO obligations under this section. The ECO shall acknowledge in writing any referral from SPD within three business days of receipt. The ECO shall provide a written determination on standard referrals within ten business days of acknowledgment. Where a TCP or export license application is required, the ECO shall provide a written status update to SPD every ten business days until the determination or application is complete, with a target completion of thirty business days from referral. Where the ECO

does not meet these timelines, SPD shall notify the Office of the Vice President for Research in writing on the first business day following the missed deadline. The VPR holds authority to authorize interim routing or to direct sponsor notification of a delay. These timelines do not apply to U.S. government processing of license applications, which are outside NMT's control.

## 7.6. Project Administration

Where a Technology Control Plan (TCP) is required, Researchers are to conduct export-related project activities in accord with the approved TCP ([Section 7.8](#)) and be able to demonstrate compliance in accord with the TCP when an internal or outside audit ([Section 6.5](#)) is conducted. The following should be included:

- 1) Student research and thesis supervision associated with the project activities
- 2) Information technology and software development
- 3) Intellectual property and technology transfer
- 4) Purchasing and receiving
- 5) Shipping
- 6) Travel outside the U.S.,
  - a. including taking materials, specimens, laptops, and other electronic devices abroad. As outlined in [Section 7.16](#), this includes submitting a travel itinerary and [\*Certificate Of Registration For Personal Effects Taken Abroad\* CBP Form 4457](#)<sup>21</sup> [19 CFR 148.1<sup>22</sup>] to the Compliance & Safety Office.
- 7) International collaborations, conferences, and scientific/technical exchanges ([Section 7.17](#)).
- 8) Hosting international visitors ([Section 7.10](#)) or performers and artists (Section 7.13).
  - a. Any other activities that raise export control Red Flags.

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<sup>21</sup> [https://www.cbp.gov/sites/default/files/2024-06/cbp\\_form\\_4457.pdf](https://www.cbp.gov/sites/default/files/2024-06/cbp_form_4457.pdf)

<sup>22</sup> <https://www.ecfr.gov/current/title-19/chapter-I/part-148/subpart-A/Section-148.1>

## 7.7. Transferring/Sharing

- 1) Prior to transferring/sharing Export-controlled Items, materials, information, software, Technical Data, Technical Assistance, or Technology with Foreign National or Foreign Persons, the PI must establish that:
  - a) The Item, information, or service is excluded from export control regulations because it is in the Public Domain (Publicly Available Information), is Educational Information, and/or is the result of Fundamental Research, or
  - b) The recipient is eligible to receive the item, information, or service under the export control regulations AND an Export License has been received from the appropriate U.S. government agency, or that a License Exception or License Exclusion has been granted by the Export Control Officer.
- 2) The Decision Flowcharts ([Appendix F](#)) can be used for guidance in determining if an Export License is required. The Export Control Officer is available for assistance on any project management issue relating to apparent or potential export controls.
- 3) To comply with export control regulations ([Section 6.4](#)), all documentation developed as part of proposal review and submission; award review, negotiation, and acceptance; contract changes and amendments, and export control transactions and decisions during the project must be retained for a period of five years following the close-out of the project. Principal investigators must provide the Export Control Officer with **original copies of records**, including hard and digital copies of memoranda, notes, and e-mail messages. The Export Control Officer will retain these records for at least five years.

## 7.8. Technology Control Plan (TCP)

- 1) Where active control of exports or re-exports (deemed or otherwise) is required, a Technology Control Plan details the methodology as to how the Export-controlled items, information, and services will be restricted from any means of transfer to an unlicensed Foreign National or Foreign Person.
- 2) When Research Administration & Finance and the Export Control Officer determine that export controls apply to a project, the Export Control Officer works with the principal investigator to develop and implement a Technology Control Plan (TCP).

### 7.8.1. TCP Necessities

A Technology Control Plan provides a commitment to export controls compliance and includes:

- a) Identification of the relevant Export-controlled Items, including commodities, software, Technical Data, Technical Assistance, Defense Articles, Defense Services, and Technology as defined in the export control regulations.
  - b) Identification of the project, sponsor(s), principal investigator, co-PIs, and each individual participating in the project.
  - c) Identifications of the location(s) of the export-controlled items.
  - d) Identification of personnel authorized to use the export-controlled items.
  - e) Plans for item security, including measures to identify and mark export-controlled items.
  - f) Plans for personnel security, including measures to identify authorized personnel and track their access to designated areas.
  - g) Plans for physical security, including measures to secure facilities, shield equipment and manuals from view, schedule facilities to avoid unauthorized access, etc.
  - h) Plans for information security, including measures to secure controlled electronic information.
  - i) Plans for conversation security, including measures to limit discussions to authorized personnel and only in areas where unauthorized personnel are not present.
  - j) Export control training for all individuals associated with the project, e.g., PI, research staff, graduate students, and building maintenance is required. Certification of training received is required.
  - k) Security measures for and following project termination.
- 3) [Appendix E](#) provides an overview of a Technology Control Plan, including some examples of physical, information, item, and personnel security.
  - 4) The Technology Control Plan must be signed by the principal investigator and any co-PIs, the department chair or center director, and Export Control Officer (ECO).
  - 5) Before any other individual may observe or access export-controlled items, information, or services, that individual must:
    - a) Be briefed on export control requirements under the applicable regulations;
    - b) Be briefed on the procedures authorized under the TCP;
    - c) Certify their agreement to comply with all security measures outlined in the TCP by completing and signing a TCP briefing acknowledgment.
    - d) Receive approval of the Empowered Official or the Export Control Officer in the Export Control Officer.

- 6) To comply with export control regulations ([Section 6.4](#)), copies of approved Technology Control Plans and TCP Certifications, together with supporting documentation, are to be retained in the PI, the Office for Research and Export Control Officer project files for five years following project close-out.

- i) Records are required to be available for internal or outside third-party audit.

#### **7.8.2. When to Edit the TCP**

As the research project or scholarly activity progresses, the PI and other NMT personnel engaged in the work are expected to screen their daily activities for export control requirements not foreseen and addressed in the original language of the TCP. Changes to their project might include:

- a. Changes in the project team, ([Sections 7.3](#) and [7.4](#)) including:
  - i. employees,
  - ii. visiting scientists,
  - iii. fellows,
  - iv. students, and
  - v. outside collaborators

### **7.9. Human Resources**

The Division of Human Resources (HR) is responsible for the hiring of all regular, temporary, and fixed- term exempt and nonexempt employees, including faculty, researchers, and staff. HR helps NMT comply with federal regulations pertaining to employment of foreign nationals/persons in certain visa classifications.

- 1) As part of the hiring process, HR identifies each potential hire either as a U.S. Person or as a Foreign National (or Foreign Person).
- 2) As part of the hiring process, the Export Control Officer will review project assignment or area of proposed technical responsibility; assess export control compliance requirements related to Commerce Control List (CCL) and U.S. Munitions List (USML) categorization and associated country restriction and licensing requirements; and screen the prospective Foreign National or Foreign Person against Restricted Parties and Sanctioned Countries Lists ([Appendix C](#)). The Export Control Officer (ECO) in the Export Control Officer discusses any individuals identified in this screen with the hiring supervisor (and the HR manager as appropriate) to review export control management responsibilities.
  - a) If an Export License is required from BIS, DDTC, OFAC, and/or another agency, the Export Control Officer applies for it, a process that may take several months. A

Foreign National or Foreign Person may not work on, participate in, or observe any discussion relating to any project involving export control until an Export License is received, or a License Exception or License Exclusion is granted by the Export Control Officer.

- 3) If a potential hire is a nonimmigrant coming to the United States temporarily to perform services or labor or to receive training, HR is responsible for filing Form I-129<sup>23</sup>, [\*Petition for Non-immigrant Worker\*](#), and certify whether an Export License is required.
- 4) To comply with export control regulations ([Sections 7.4](#) and [6.4](#)), HR must retain all records associated with the appointment and approval of employees who are Foreign Nationals or Foreign Persons, including the Restricted Parties and Sanctioned Countries Lists screen, U.S. government agency transactions, and communications with the Export Control Officer, for a period of five years. Records are required to be available for internal or outside third-party audit.

#### **7.10. International Students, Scholars, and Visitors**

Among their responsibilities, the International Program Coordinator in the Office of Admissions helps NMT comply with Federal regulations, including export controls, pertaining to international students, scholars, and visitors. NMT may be required to apply for an Export License before admitting the student or inviting the scholar or visitor. In some cases, NMT may be compelled to deny admission or invitation based on export control laws and regulations.

#### **7.11. Information Technology and Software**

- 1) Software developed by NMT personnel may be subject to export controls under the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR):
  - a) The sharing, shipping, transmission, or transfer of software or encryption software in either source code or object code that is specifically designed or developed for a military, intelligence, or space application is subject to ITAR.
  - b) The sharing, shipping, transmission, or transfer of almost all Dual-Use software or encryption software, in either source code or object code, is subject to the EAR. Some commercial software (as well as hardware items) may be encrypted and therefore require

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<sup>23</sup> <https://www.uscis.gov/i-129>

an Export License before the source code or object code can be transmitted, transferred, or posted.

- c) Encryption software and hardware present a special export challenge. Encryption can be used to maintain the secrecy of information, and thus may be used by persons abroad to harm U.S. national security, foreign policy, and law enforcement interests. The United States has a critical interest in ensuring that important and sensitive information of the public and private sector is protected. Consistent with its international obligations as a member of the Wassenaar Arrangement, the United States has a responsibility to maintain control over the Export and Reexport of encryption items. Exports and Reexports of software and hardware are controlled because of this functional capacity to encrypt information, and not because of any informational or theoretical value that such software may reflect, contain, or represent—or that its Export or Reexport may convey to others abroad. In addition, some countries will not allow the importation of encrypted software or hardware containing embedded encrypted functions prior to granting approval.
- 2) Export control requirements and procedures apply to all NMT personnel developing software and encryption software, including:
  - a) Researchers, as part of sponsored research projects.
  - b) Researchers using software with accessible encryption source code.
  - c) Faculty, students, and staff as part of their scholarly activities.
  - d) Software developers in departments, centers, and administrative offices.
  - e) Developers, installers, and managers in the Division of the Chief Information Officer with responsibilities for encrypted software and hardware with encrypted software.
- 3) Software relating, directly or indirectly, to proliferation of nuclear explosive devices, missiles, and chemical or biological weapons is Export-controlled [15 CFR 734.5<sup>24</sup>], and the researcher or developer must contact the Export Control Officer, who will apply for an Export License. **There is no assurance that a license will be granted.**
- 4) Under EAR, it may not be possible to Export or Reexport commercial and Dual-Use software involving encrypted source code or object code, as well as hardware and components that employ encrypted software, without an Export License or License

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<sup>24</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734/Section-734.5>

Exception. The criteria for identifying types and levels of encryption are very detailed and very complex<sup>25</sup>. EAR controls also apply to foreign-made software or commodities incorporated into NMT-developed software and hardware. EAR may also control where and to whom encryption software and hardware may be exported.

5) Given these complexities:

- a) NMT personnel planning to share encryption software or hardware must contact the Export Control Officer before releasing these items to any Foreign National or foreign entity, including posting to a publicly-available Web site.
- b) The Export Control Officer will work with the researcher or developer to establish if and how the EAR regulations, and possibly other export controls, apply.
- c) If necessary, the Export Control Officer will apply for an Export License or the applicable License Exception. NMT may need to apply to BIS at the U.S. Department of Commerce for an encryption classification under License Exception ENC. BIS, in conjunction with other agencies, reviews applications on a case-by-case basis to determine whether the Export or Reexport is consistent with U.S. national security and foreign policy interests.
- d) EAR-controlled encryption software may not be posted, uploaded onto a publicly-available Web site, or otherwise shared with a Foreign National until NMT has received the necessary agency approvals or the Export Control Officer has determined that export control regulations do not apply.

6) Commercial and Dual Use software developed at NMT, which **does not** require an Export License or License Exception under [Section 6.3](#), is excluded from EAR export control as Publicly Available Software and Technology [15 CFR 734.3(b)(3)<sup>26</sup>] if the software is already published (Publicly Available Information), is the product of Fundamental Research (Fundamental Research Exclusion), or is used in university courses (Educational Information).

- a) To maintain NMT's Fundamental Research Exclusion, researchers and software developers must upload NMT-generated code onto a publicly-available Web site as soon as possible. The code must be freely downloadable by all interested members of the

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<sup>25</sup> <https://www.bis.doc.gov/index.php/policy-guidance/encryption>

<sup>26</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734/Section-734.3>

scientific community and without NMT's knowledge of where or by whom the code is being downloaded; that is, access to the code must not include login requirements or other password or authentication procedures.

- 7) Under ITAR, software included on the U.S. Munitions List [22 CFR 121.1(a)<sup>27</sup>] cannot be shared with a Foreign Person unless the code is already published or otherwise in the Public Domain. Researchers and software developers follow the public posting process described in [Section 7.7](#).
- 8) Personnel in the Division of the Chief Information Officer, as well as in any department or center planning new hardware or software installations for campus access, must contact the Export Control Officer, particularly where access to encrypted source codes is possible. An Export License or License Exception may be required before providing access or assistance to Foreign Nations or Foreign Persons.
- 9) To comply with export control regulations ([Section 6.4](#)), all communications and transactions regarding Export-controlled software and hardware, including applications, e-mail messages, URLs, Export Licenses, and License Exceptions, must be retained for five years. Records are required to be available for internal or outside third-party audit.

## **7.12. Intellectual Property and Technology Transfer**

- 1) Invention disclosures and patent applications (both provisional and non-provisional) contain confidential technical data and, possibly, information that enables design, development, production, and use of the invention. Given the confidential restriction on dissemination of a potentially patentable idea, invention disclosures and patent applications fall under export control regulations of the BIS, DDTC, and the U.S. Patent and Trademark Office (PTO). They may not be shared, transferred, transmitted, or otherwise disclosed to a Foreign National or Foreign Person without an Export License or License Exception until the information has been published by the United States PTO, which is usually 18 months following the PTO's Priority Date.
- 2) U.S. PTO regulations provide for the export to a foreign country of unclassified technology in the form of a patent application or an amendment, modification, or supplement [37 CFR 5<sup>28</sup>]; and under the Export Administration Act, the U.S. Department of Commerce Bureau of

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<sup>27</sup> <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-121/subject-group-ECFRf7e5fe639be4566/Section-121.1>

<sup>28</sup> <https://www.ecfr.gov/current/title-37/chapter-I/subchapter-A/part-5>

Industry and Standards has delegated authority to approve such Exports and Reexports to the United States PTO. Exports and reexports of such technology not approved under PTO regulations **must** comply with the EAR.

- 3) Technology may be licensed to a foreign-owned or foreign-controlled company or other entity if such a license enables the United States to realize economic, environmental, and societal benefits of the technology.
- 4) Upon receipt of an invention disclosure, NMT's Office of Innovation Commercialization (OIC) is responsible for evaluating the disclosure for applicability under export control regulations. This evaluation must be done by U.S. Persons; no Foreign National or Foreign Person may be involved in the assessment. If it is necessary to apply for a Commodity Jurisdiction (CJ) or Commodity Classification (ECCN) in order to make the determination, the Office of Innovation Commercialization will work with the Export Control Officer, who will make the necessary applications to the appropriate U.S. government agencies.
- 5) A patent (provisional or non-provisional) application that contains export-controlled items, information, software, or technology **may not** be filed with a foreign patent office without first having obtained an Export License or first filing with the U.S. PTO [37 CFR 5.11 and 5.12<sup>29</sup>].
- 6) A Non-Disclosure Agreement (NDA) for sharing disclosure and pre-publication of a patent application information, as well as developing an NDA for "shopping" an unpublished invention to potential developers or investors, may create an export control violation. The OIC will work with the Export Control Officer to determine the appropriate compliance steps required prior to dissemination of the information subject to the NDA to a potential client.
- 7) The **Office of Innovation Commercialization** will work with the Export Control Officer on any proposed technology licensing to a foreign- owned or foreign-controlled entity to assure that export control requirements are met. Foreign entities are to be screened by the Export Control Officer against the Restricted Parties and Sanctioned Countries Lists ([Appendix C](#)) prior to initiating a detail transfer of confidential and export control information.

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<sup>29</sup> <https://www.ecfr.gov/current/title-37/chapter-I/subchapter-A/part-5>

- 8) If the Office of Innovation Commercialization and the Export Control Officer determine that export controls apply to an invention disclosure, patent application, NDA, or technology licensing activity, the Export Control Officer work to:
- a) Apply for any necessary Export License or License Exception.
  - b) Undertake a Restricted Parties and Sanctioned Countries Lists screen ([Appendix C](#)).
  - c) Develop a Technology Control Plan (TCP) to secure the controlled technology from access by unlicensed Foreign Nationals or Foreign Persons, as outlined in [Section 7.8](#).
  - d) If the Office of Innovation Commercialization employs or engages a Foreign National or Foreign Person to be involved in a disclosure assessment, a TCP will be executed. All incoming disclosures will be assessed with respect to the Export Control Officer (ECO), and if required, the ECO will apply for an Export License. This license must be received before any NMT personnel (including PI, researchers, and Office of Innovation Commercialization staff) or the inventor shares any aspect of the invention disclosure or patentable idea, item, technology, data, software, etc. with the Foreign National or Foreign Person.
  - e) To comply with export control regulations ([Section 6.4](#)), all communications and transactions related to invention disclosures, patent applications, NDA agreements, and technology licensing involving foreign individuals and entities must be retained for five years. Records are required to be available for internal or outside third-party audit.

### **7.13. Purchasing and Receiving**

NMT personnel procure and receive goods, software, information, and services in the course of their everyday work.

- 1) Export control regulations apply to all NMT personnel, including researchers; school, department, and research center staff; as well as to the purchase of equipment, software, and services by ITC and other administrative offices.
- 2) A requisition for the purchase of goods and services is to:
  - a) Describe the item or service at a level sufficient for Purchasing Services to determine whether it is controlled by EAR, ITAR, or other export regulation.
  - b) Include an EAR Commodity Classification number (ECCN), if known to the requestor.
  - c) Identify the proposed vendor(s) at a level sufficient for Purchasing Services to conduct a Restricted Parties and Sanctioned Countries Lists screen ([Appendix C](#)).
  - d) Identify how the purchased item or service will be used and where will it be used.

- e) Identify who will use the purchased item or service, and if there are multiple users, the various aspects of each Foreign National or Foreign Person “use” as required by EAR [15 CFR 772.1<sup>30</sup>].
  - f) Reference any applicable sponsored research agreement.
- 3) Purchasing Services will review the purchase requisition for export control compliance by:
- a) Screening the requested item or service against the EAR (Commerce Control List), ITAR (United States Munitions List), and other relevant regulating agency lists.
  - b) Conducting a Restricted Parties and Sanctioned Countries Lists screen ([Appendix C](#)) on vendors and users for foreign-acquired equipment and “*de minimis* U.S. content” [15 CFR 734.4<sup>31</sup>].
  - c) Requesting that vendors supply the Commodity Classification (ECCN) of all items quoted, whether the assigned ECCN was “self-classified,” and export controls, if any, placed on their goods and services.
    - i) If problematic issues or other Red Flags arise in these processes, Purchasing Services will notify the Export Control Officer.
- 4) Prior to placing a purchase order or committing to services, the Export Control Officer must provide approval if:
- a) The requested vendor is a foreign individual, entity (university, business, society, etc.), or government.
  - b) The requested item or service will be imported from a foreign country.
  - c) The requested item or service imported from a foreign country contains U.S. technology and “*de minimus*” U.S. content.
  - d) The requested item will require active export control once in use at NMT, e.g., application for a Commodity Jurisdiction (CJ) or Commodity Classification (ECCN), application for Export License or License Exception, and/or a Technology Control Plan and TCP Certifications.
  - e) The requested item or service is already export-controlled and, thus, will require export control once in use at NMT.

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<sup>30</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-772/Section-772.1>

<sup>31</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734/Section-734.4>

- 5) Items, software, information, and services are sometimes received from sponsors, vendors, research collaborators, or other third parties without being purchased by NMT. In these cases, it is the receiver's responsibility to assure that these items are not already export-controlled or that, once in use at NMT, they will be subject to export controls. The Decision Flowcharts ([Appendix F](#)) will help in this assessment, and the Export Control Officer (ECO) is available for assistance.
- 6) Before NMT will agree to accept delivery of an export-controlled item or service:
  - a) A Technology Control Plan (TCP), as outlined in [Section 7.8](#), must be in place to secure the item or service from access by unlicensed Foreign Nationals or Foreign Persons.
  - b) The requestor must agree to comply with all security measures outlined in the TCP, as outlined in [Section 7.8](#).
  - c) Any chemical, bio-controlled, radiological, or other hazardous materials or select agent must also meet NMT requirement for receiving, inventory and use.
- 7) In anticipation of expected stricter interpretations of EAR and ITAR regulations, the Offices of Administration and Finance will:
  - a) Review all Purchasing Services policies and practices to assure compliance with export control regulations.
  - b) Explore the development of a system to identify how an Export-controlled item will be added to the NMT property administration system and assigned to the NMT space inventory, as well as best methods for notifying employees, researchers, faculty, and students.
- 8) To comply with export control regulations ([Section 6 .4](#)), all communications and transactions regarding purchase requisitions, purchase orders, receiving reports, Export Licenses, License Exceptions, Technology Control Plans, and related transactions must be retained for five years. Records are required to be available for Internal or outside third-party audit.

#### **7.14. Shipping outside the U.S.**

- 1) The U.S. Customs and Border Protection agency of the Department of Homeland Security has export and import jurisdiction over all items, software, and information, unless some other agency has expressly been given such authority. The shipment of tangible items, transmission of software code, and transfer of technical information outside United States borders may constitute an Export, Deemed Export, Reexport, or Deemed Reexport under the Export Administration Regulations or other agency export control regulations.

- 2) To determine whether it is necessary to obtain an Export License or a Commodity Classification (ECCN) from the Department of Commerce Bureau of Industry and Security, or other relevant federal agency, to send export-controlled items, software, or information outside the U.S., researchers or other personnel preparing the shipment, transfer, or transmittal:
- a) The shipper must determine if the item, software, or information is excluded from export control regulations because it is the result of the Fundamental Research Exclusion and the results are to be published:
    - i) is it Educational Information?
    - ii) is Publicly Available Information (is it in the Public Domain)?
    - iii) is Publicly Available Technology or Software?
  - b) If the shipment is not covered by one of these exclusions, provide the Export Control Officer (ECO) with a description of the:
    - i) item, software, or information
    - ii) technical characteristics and specifications
    - iii) destination
    - iv) end user and/or intended end use
  - c) Exports must not only comply with U.S. export regulations but also comply with import regulations and customs of the country to which the shipment is being made. It is recommended that, prior to exporting, the exporter obtain an End Use Certificate and file an export declaration.
    - i) The Export Control Officer can assist the exporter with complying with export clearance requirements of the Bureau of Census Foreign Trade Statistics Regulations (FTSR) [15 CFR 30<sup>32</sup>] and the U.S. Customs Service recognition that officials of BIS, the Office of Export Enforcement, the U.S. Customs Service and postmasters, including post office officials, are authorized and directed to take appropriate action to assure compliance with the EAR [15 CFR 758.7<sup>33</sup>].
    - ii) The Decision Flowcharts in [Appendix F](#) will help determine whether an Export License is required. If an Export License is required or indicated, the researcher

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<sup>32</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-I/part-30?toc=1>

<sup>33</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-758/Section-758.7>

must contact the ECO before initiating the shipment, transfer, or transmittal. The ECO will evaluate the shipment and make a determination as outlined in [Section 7.7](#).

- 3) Departments, centers, and administrative offices with Federal Express, UPS, DHL, or other shipping accounts must contact the ECO before shipping to international destinations. Departments must provide a full description of the item(s) to be shipped, Commerce Clearing List ECCN designation, the name of the shipper, the name of the person or company to receive the shipment, and the destination country. The ECO may request additional information.
- 4) The Export Control Officer will evaluate the shipment and make a determination as outlined in [Section 7.6](#).
  - a) It is important to remember that the PI, researcher, student, or other NMT person shipping internationally is considered the Principal Party in Interest (PPI) with respect to shipping documents [15 CFR 758.3(a)<sup>34</sup>].
- 5) The Export Control Officer will evaluate potential shipments, transfers, and transmittals outside the U.S. for export control compliance. Using information provided by the exporter, the Export Control Officer will:
  - a) Conduct a Restricted Parties and Sanctioned Countries Lists screen ([Appendix C](#)) on the intended recipient(s).
  - b) If appropriate, provide a written determination that a License Exception or a License Exclusion applies, and the appropriate document markings are furnished.
  - c) If required, apply for a Commodity Jurisdiction (CJ), Commodity Classification (ECCN), or an Export License to the appropriate U.S. Government agency, a process that may take several months.
- 6) If an Export License or other U.S. Government agency action is required, the shipment, transfer, or transmittal may not be initiated until these have been received by NMT, and the Export Control Officer has given its approval.
- 7) Exporting requires reasonable care in checking the safety and purpose of the items being exported. Export must not only comply with U.S. export regulations but also comply with

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<sup>34</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-758/Section-758.3>

import regulations and customs of the country to which the shipment is being made as noted in [Section 7.7](#)

- 8) NMT personnel must consult other requirements in this ECP if:
  - a) The transmittal includes encryption software ([Section 7.8](#)).
  - b) They are planning to carry items, information, or software outside the United States, including laptop computers, PDAs, smart phone, and other electronic devices and media ([Section 7.16](#)).
  - c) They are planning to share items, information, or software with a Foreign National or a Foreign Person as part of an international research collaboration, at an international conference outside the U.S., at a hosted visit to a NMT laboratory or research facility, or as part of a scientific/technical exchange ([Section 7.17](#)).
- 9) To comply with export control regulations ([Section 6.4](#)), individuals and administrative offices must retain all communications and records regarding shipping, transfers, and transmittals for five years. Records are required to be available for internal or outside third-party audit.

### **7.15. International Travel**

NMT personnel travelling outside the U.S. with NMT-owned goods, materials, samples, specimens, software, data sets, drawings, and technical information are exporting these items. A traveler carrying a laptop computer or other electronic device (e.g., disc, hard drive, universal serial bus (USB) drive, secure digital (SD) card, digital camera, global positioning system (GPS) device, smart phone, etc.) is exporting not only the information and software on the device but also the device itself—which may incorporate export-controlled technology and encrypted software in its design.

- 1) In export control regulations, there are several meanings of the word "**Export**", which can include any of the following:
  - a) The actual shipment of any goods or items covered under the regulations.
  - b) The electronic or digital transmission of any goods, items, or related goods covered under the regulations.
  - c) A release or disclosure, including verbal disclosures or visual inspections, or any technology, software, or technical data to any Foreign National or Foreign Person.
  - d) The actual use or application of covered technology on behalf of or for the benefit of any foreign individual or entity anywhere.
- 2) Researchers and other NMT personnel travelling outside the U.S. must check to ensure that:

- a) Travel is not to a sanctioned, embargoed, or boycotted country.
  - b) The traveler is not planning to carry export-controlled items, software, or information.
  - c) NMT-owned computers and other electronic devices are free of any export-controlled information, encryption software, and encryption hardware.
- 3) Export-controlled items, information, and software must either remain in the U.S. or not leave the U.S. until NMT has received an Export License or has established and documented a License Exception.
- 4) It is strongly advised that researchers review international travel plans with the Export Control Officer well before the date of the planned trip. To help the Export Control Officer assess export control requirements, travelers are advised to submit an itinerary and a U.S. Customs and Border Protection (CBP) Form 4457<sup>35</sup> as part of this process. If necessary, the Export Control Officer will apply for an Export License, a process that may take several months.
- 5) Researchers who take NMT-owned laptops and other electronic devices out of the country for use in a university project that qualifies as Fundamental Research may be able to do so under the License Exception for temporary export (TMP). The Export Control Officer makes this determination and issues the License Exception in accord with EAR regulations [15 CFR 740.9<sup>36</sup>]. Generally, License Exceptions are not given for travel to countries subject to U.S. sanctions, embargoes, or boycotts.
- a) To qualify for a TMP License Exception, electronic devices must meet the requirement for “tools of trade” and remain “under the effective control” of the traveler while out of the country. Deviations from these requirements may constitute export control violations:
- 6) “Tools of trade” are usual and reasonable kinds and quantities of commodities, software, and technology for use in a lawful enterprise or undertaking of the exporter, providing the transaction meet the requirements of 15 CFR 740.9.
- a) The “tools of trade” category is broad and dependent on the needs and activities associated with the reason for the travel [*15 CFR 771.2; other pertinent regulations*]

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<sup>35</sup> <https://www.cbp.gov/document/forms/form-4457-certificate-registration-personal-effects-taken-abroad>

<sup>36</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-740/Section-740.9>

*include 15 CFR 30.37<sup>37</sup> (Foreign Trade Regulations), 15 CFR Part 740 (License Exceptions), 15 CFR 770 (interpretation) and 15 CFR 774 (Commerce Clearing List).]*

- 7) “Under the effective control” of the traveler means that such items are kept in one’s physical possession at all times or secured in an environment such as a hotel safe, bonded warehouse, or a locked or guarded exhibition facility [15 CFR 772.1]. Leaving items in a hotel room does not constitute safe and secure control.
- 8) NMT travelers are advised that, when they travel outside the U.S. with items, software, and information (including that on laptops and other electronic devices), these items and devices:
  - a) May be inspected or retained by U.S. Customs on leaving or re-entering the United States.
    - (1) Customs officials are authorized to search or retain electronic devices, even without probable cause in order to look for export control violations as well as other immigration and customs regulations.
  - b) Are subject to the import and export regulations of the destination country. Each destination country has its own rules, and many are stricter than those of the U.S.
- 9) It is recommended that faculty and other NMT employees meet with the Export Control Officer (ECO) for a briefing, both prior to and upon returning from international travel. These pre- and post-trip briefings are recommended when one or more of the following is true:
  - a) The employee has a security clearance and is working on a classified contract.
  - b) The employee is working with unclassified but sensitive material which is deemed Export- controlled under federal regulations.
  - c) The employee is traveling to any embargoed country (e.g. Cuba, Iran, North Korea, Sudan, and Syria).
    - i) If lecturing at a conference, the presenter will review, with the ECO, the intended presentation **beforehand** to ensure that the material does not include classified or export-controlled information in any format (text, photographs, graphs, or other visuals).
  - d) Upon returning from a trip, employees subject to these requirements should meet with the ECO to report anything out of the ordinary, such as suspicious contacts, requests

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<sup>37</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-I/part-30/subpart-D/Section-30.37>

for information, unsolicited emails, airport detention, and surveillance detection; loss, theft, or compromise of laptop or cell phone; or if they are a victim of a crime.

- 10) To comply with export control regulations ([Section 6.4](#)), travelers must keep records of their itineraries, interactions with the Compliance & Safety Office, and copies of Export Licenses and temporary license exceptions for five years after competing travel. Records are required to be available for internal or outside third-party audit.

## **7.16. International Research Collaborations, Conferences, and Scientific/Technical Exchanges**

- 1) NMT researchers and other professional staff routinely participate in the exchange of scientific and technical information with Foreign Nationals or Foreign Persons as part of:
  - a) Research collaborations.
  - b) Participation in research and technical conferences.
  - c) Organized meetings between NMT and researchers from academia or industry.
  - d) Related forms of scientific and technical exchange.
- 2) When participating in such exchanges, NMT personnel must take care not to violate export control laws and regulations. All should keep in mind that the exchange or “release” of Export-controlled information may take place through oral exchanges in person or by telephone; exchange of documents; electronic exchanges, including fax transmission or e-mail; laboratory tours; or training or technical assistance activities.
  - a) In addition, researchers must be aware of U.S. sanctions, embargoes, and boycotts.

Administered by the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC<sup>38</sup>), these sanctions are imposed and changed frequently. Some sanctions are very specific and detailed, due to foreign-policy changes; others are long-standing and broad, and are focused on specific regimes. Sanctions can hamper international collaborations conducted at U.S. universities, thus increasing the risk of violating U.S. law.
- 3) Most scientific and technical exchanges between NMT personnel and Foreign Nationals or Foreign Persons can take place without an Export License as long as the exchange presents and discusses research findings that:

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<sup>38</sup> <https://ofac.treasury.gov/>

- a) Are published and generally accessible to the scientific community (Publicly Available Information, or in the Public Domain), or
  - b) Have been released by instruction in catalog courses and associated teaching laboratories at academic institutions (Educational Information), or
  - c) Result from Fundamental Research conducted at NMT or another accredited institution of higher learning located in the U.S. (Fundamental Research Exclusion) and are intended for publication (*that is, not subject to sponsor restrictions on publication or other confidentiality requirements*).
- 4) OFAC publishes sanctions programs and country information<sup>39</sup>
- a) As outlined in [Section 6.3](#), there are circumstances where an Export License may be required.
- 5) ITAR regulates the release of “detailed” information on Defense Articles on the U.S. Munitions List, including the provision of such information as part of providing Defense Services. While ITAR does not control the release of overview information (i.e., general systems description, basic marketing information on function or purpose, or information in the Public Domain), ITAR likely requires an Export License before sharing the following information with a Foreign Person or entity: unpublished, detailed information about “how-to” design, manufacture, and test; design, manufacture, test methodology, or philosophy; technical trade-off methodology or detailed alternatives; detailed test data or test procedures; detailed description of integration and test plans; or detailed schematic diagrams or interface information, as well as manufacturing or assembly processes and analytical methods of procedures . Researchers are advised to contact the Export Control Officer before engaging in scientific and technical exchanges related to Defense Articles and Defense Services.
- 6) Before processing a payment to a foreign individual or entity, the department, center, consortium business administrator must check to ensure that the goods or services were not, or would not be, provided to a country on the current U.S. list of sanctioned, embargoed, or boycotted countries. This applies to conference and meeting expenses as well as goods and services purchased abroad.
- 7) NMT personnel should consult other requirements in this ECP if the scientific/technical exchange involves:

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<sup>39</sup> <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

- a) Transfer or transmittal of encryption software ([Section 7.13](#)).
  - b) Receiving items, information, or software from outside the U.S. ([Section 7.14](#)).
  - c) Shipping items, information, or software outside the U.S. ([Section 7.15](#)).
  - d) Travel outside the U.S. ([Section 7.16](#)).
  - e) Hosting international visitors ([Section 7.18](#)) or international performers and artists (Section 8.13) at NMT
- 8) To comply with export control regulations (see Section 6 7.4), all communications and transactions regarding these activities must be retained for five years. Records are required to be available for internal or outside third-party audit.

## **7.17. Department and Functional Area Specific Procedures**

### **7.17.1. Hosting International Visitors at NMT**

Contact the Facility Security Officer (FSO) for guidance on the relevant procedures.

### **7.17.2. International Performers and Artists**

Contact Performing Arts Series (PAS) for guidance on the relevant procedures.

### **7.17.3. Environmental Health and Safety**

Contact the Export Control Officer (ECO) for guidance on the relevant procedures.

### **7.17.4. Finance and Accounting**

Contact the Offices of Administration and Finance for guidance on the relevant procedures.

### **7.17.5. Financial and Business Management**

Contact the Offices of Administration and Finance for guidance on the relevant procedures.

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## 8. Appendices

### 8.1. Appendix A: Definitions - Export Control Terms

- 1) **Bureau of Industry and Security (BIS)** – The bureau at the U.S. Department of Commerce responsible for enforcing the Export Administration Regulations (EAR). [15 CFR 730-774]
- 2) **Code of Federal Regulations (CFR)** – The codification of the general and permanent rules and regulations published in the *Federal Register* by the executive departments and agencies of the U.S. Government. CFR citations appear in [brackets] in NMT’s Export Control Management and Compliance Plan.
- 3) **Commerce Control List (CCL)** – A list of Items under the export control jurisdiction of the BIS [15 CFR 772.1]. The CCL is at 15 CFR 774, Supplement 1.
- 4) **Commodity Jurisdiction (CJ)** – A determination of whether a particular Defense Article or Defense Service is covered by the U.S. Munitions List (USML). The determination entails applying to the DDTC as to whether an article or service is currently covered by the USML. [22 CFR 120.4; 15 CFR 734.6]
- 5) **Commodity Classification** – A classification of Items on the Commerce Control List that are subject to the export licensing authority of the Bureau of Industry and Security [15 CFR 738.2]. The classification is represented by an Export Control Classification Number (ECCN).
- 6) **Deemed Export** – The release of any Item (information, data, Technology, or source code) or service subject to export controls to any Foreign National in the United States, including graduate students and training fellows. Deemed exports may occur through such means as a demonstration, oral exchanges, or visual inspection of U.S. located equipment and facilities (including a lab visit), as well as the electronic transmission of non-public data

that will be received abroad. This exchange is “deemed” to be an export to the country of the Foreign National. [15 CFR 734.2]

- 7) **Deemed Reexport** – The release of any Item (information, data, Technology, or source code) or service subject to export controls by a Foreign National who has been licensed to receive it to the national of another foreign country who has not been licensed to receive it. [15 CFR 734.2(b)]
- 8) **Defense Article** – Any Item or Technical Data designated in the United States Munitions List (USML). Includes Technical Data recorded or stored in any physical form, models, and mock-ups, or other Items that reveal Technical Data directly relating to the Defense Article listed in the USML; does not include basic marketing information on function, purpose, or general system description [22 CFR 120.6]. In addition, USML Category XXI includes “any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed or modified for military purposes” [22 CFR 121.1].
- 9) **Defense Service** – Means the furnishing of assistance (including training), whether in the United States or abroad, to a Foreign Person in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of Defense Articles; or to the furnishing of any controlled Technical Data to a Foreign National anywhere. [22 CFR 120.9]
- 10) **Directorate of Defense Trade Controls (DDTC)** – The directorate at the Department of State responsible for the administration and enforcement of the International Traffic in Arms Regulations (ITAR). [22 CFR 120-130]
- 11) **Dual Use Item** – A term used for EAR-controlled Items that can be used both in commercial applications and in military and other strategic uses. [15 CFR 772.1]
- 12) **Employment Exclusion** – No license is required to export an Export-controlled Item to a Foreign National who is a full-time NMT employee; has a permanent address in the U.S.

while employed; is not a national of a sanctioned country; and agrees in writing not to share the export-controlled item with any foreign national. For export control purposes, graduate students working as research assistants on research projects are considered to be students and *not* employees.

- 13) **Export Administration Regulations (EAR)** – Department of Commerce Bureau of Industries and Security (BIS) regulations [15 CFR Parts 730-774] implementing the Export Administration Act of 1979 (EAA), as amended, and the International Emergency Economic Powers Act, as amended.
- 14) **Export Control Classification Number (ECCN)** – A five-character alphanumeric classification [15 CFR 738.2(d)] used to identify Items on the Commerce Control List that are subject to the export licensing authority of the Bureau of Industry and Security. [15 CFR 738.2]
- 15) **Export Control Officer (ECO)** – is responsible for developing and implementing policies regarding export control obligations.
- 16) **Educational Information** – Information released by instruction in catalog courses and associated with teaching laboratories of academic institutions; this educational information is not subject to export controls. [15 CFR 734.9]
- 17) **Export** – Any release of Export-controlled Items, information, or services outside the U.S. to anyone (including a U.S. citizen). “Release” includes shipment as well as oral, written, electronic (fax, e-mail, Internet, etc.), or visual disclosure [15 CFR 734.2(b)(1-3); 22 CFR 120.17] as well as the export of encryption source code or object code software [15 CFR 734.2(b)(9)]. Any release of Export-controlled Items, information, or services to a Foreign National or Foreign Person in the U.S. is a Deemed Export.
- 18) **Export-controlled** – Any Item, information, assistance, Technology, Technical Data, or service which can be considered an Export or Reexport under the export control regulations such as EAR, ITAR, and OFAC.

- 19) **Export License** – A written authorization provided by the appropriate governing regulatory authority (such as BIS or DDTTC) detailing the specific terms and conditions under which the import or an Export, Deemed Export, Reexport, or Deemed Reexport of Export-controlled Items, information, Technology, services, or other regulated activities is allowed. [15 CFR 772.1; 22 CFR 120.20 and 123]
- 20) **Foreign National** – Any person who is not a U.S. citizen (native or national); an alien who is a “lawful permanent resident” (Green Card) as defined by 8 U.S.C. 1101(a)(20); or a “protected individual” as defined by 8 U.S.C. 1324b(a)(3) designated as an asylee, refugee, or a temporary resident under amnesty provisions. Any foreign corporation, business association, partnership, trust, society, or any other foreign entity or group, as well as any international organization or foreign government, is considered to be a Foreign National under the EAR. [15 CFR 772.1]
- 21) **Foreign Person** – Any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). [22 CFR 120.16]
- 22) **Fundamental Research** – Basic or applied research in science and engineering conducted at an accredited institution of higher learning located in the U.S. where resulting data, technology, or other information is made available publicly with minimal or no access costs (e.g. essentially free information) within the scientific community [15 CFR 734.8; 22 CFR 120.11(8)]. Information that results from fundamental research is not subject to export control.
- 23) **Fundamental Research Exclusion (FRE)** – No license is required to disclose information to a Foreign National or Foreign Person if it is published and is generally accessible to the public and provided the Fundamental Research is basic and applied in science and engineering, and conducted at an accredited institution of higher education located in the United States. [15 CFR 734.8; 22 CFR 120.11(8)]

- 24) **International Traffic in Arms Regulation (ITAR)** – Department of State Directorate of Defense Trade Controls (DDTC) regulations [22 CFR 120-130] implementing the Arms Export Control Act [22 USC 2778] and Executive Order 11958, as amended.
- 25) **Item** – A commodity, software or Technology. [15 CFR 772.1]
- 26) **License Exception** – An authorization, described at 15 CFR 740, that allows NMT exporters (facility, researchers, administrators, students, etc.) to Export or Reexport, under stated conditions, items subject to the EAR that otherwise would require a license. Unless otherwise indicated, these License Exceptions are not applicable to exports under the licensing jurisdiction of agencies other than the Department of Commerce. [15 CFR 772.1]
- 27) **License Exclusion** – An Export License is not required if one of these exclusions applies: Fundamental Research (ITAR, EAR); Education Information (ITAR, EAR); Employment Exclusion (ITAR only); Publicly Available Information (EAR), or information in the Public Domain (ITAR).
- 28) **Office of Foreign Assets Control (OFAC)** – The office at the Department of the Treasury responsible for blocking assets of foreign countries subject to economic sanctions; controlling participation by U.S. Persons, including foreign subsidiaries, in transactions with specific countries or nationals of such countries; and administering embargoes on certain countries or areas of countries. [31 CFR 500 -590]
- 29) **Public Domain** – ITAR defines Public Domain as information which is published and which is generally accessible or available to the public. [22 CFR 120.11(a)(1-8)]
- 30) **Publicly Available Information** – Information that is generally accessible to the interested public in any form and, therefore, not subject to the EAR. [15 CFR 772.1; 15 CFR 734.7(a)]
- 31) **Publicly Available Technology and Software** – Technology and software that are already published or will be published, that arise during or result from Fundamental

Research, are educational, or are included in certain patent applications. [15 CFR 734.3(b)(3); 15 CFR 734.7]

- 32) **Red Flags** – Possible indicators of an unlawful diversion or an abnormal or suspicious circumstance. [15 CFR 732 Supplement 3]
- 33) **Reexport** – A shipment or transmission of Export-controlled items, information, and services from one foreign country to another foreign country. ITAR [22 CFR 120.19] and EAR [15 CFR 772.1] impose restrictions on shipment or transfer to a third country of goods or technology originally exported from the United States without proper authorization.
- 34) **Research Compliance & Safety Office (RCSO)** – Oversees, implements, monitors and reports on compliance with federal and state regulations, laws, statutes and rules that pertain to New Mexico Tech research and research laboratory operations.
- 35) **Technical Assistance Agreement (TAA)** – An agreement for the performance of Defense Service(s) or the disclosure of Technical Data as opposed to an agreement granting a right or license to manufacture Defense Articles. [22 CFR 120.22]
- 36) **Technical Assistance** – May take forms such as instruction, skills training, working knowledge, or consulting services. Technical Assistance may involve transfer of Technical Data. [15 CFR 772.1]
- 37) **Technical Data** – For purpose of ITAR control, this means information regarded as required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of Defense Articles. Technical Data includes information in the form of blueprints, drawings, photographs, plans, instructions, or documentation [22 CFR 120.10(a)]. The EAR further identifies Technical Data which may take the forms 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, tape, or read-only memories [15 CFR 772.1].

38) **Technology** – Specific information necessary for the “development”, “production”, or “use” of a product. The information takes the form of “technical data” or “technical assistance”. Controlled “technology” is defined in the General Technology Note and in the Commerce Control List (Supplement No. 1 to part 774 of the EAR). The definitions of “required,” “development,” “production,” and “use” are found in 15 CFR 772.1.

39) **Tools of Trade** – Usual and reasonable kinds and quantities of tools of trade (commodities, software, and Technology) for use in a lawful enterprise or undertaking of the exporter. For the exporter or reexporter of commodities or software, the transaction meets the requirements of 15 CFR 740.9 paragraph (a)(2)(i)(A) or (a)(2)(i)(B). For export or reexport by U.S. persons of authorized Technology, the transaction must meet the requirements of 15 CFR 740.9 paragraph (a)(2)(i)(A).

40) **U.S. Person** – Any individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2), or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). Further definition is provided at 15 CFR 740.9 and 740.14; 15 CFR 744.6 and 744.10-744.14; 15 CFR 746; and 15 CFR 760. [15 CFR 772.1]

41) **United States Munitions List (USML)** – A list of 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). [22 CFR 121.1(a)]

Additional EAR and ITAR definitions are available at 15 CFR 772.1 and 22 CFR 120, respectively.

## 8.2. Appendix B: National Security Decision Directive 189



### NATIONAL POLICY ON THE TRANSFER OF SCIENTIFIC, TECHNICAL AND ENGINEERING INFORMATION

September 21, 1985 (re-affirmed May 24, 2010) [stamped:] UNCLASSIFIED

#### **I. PURPOSE**

This directive establishes national policy for controlling the flow of science, technology, and engineering information produced in federally-funded fundamental research at colleges, universities, and laboratories. Fundamental research is defined as follows:

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

#### **II. BACKGROUND**

The acquisition of advanced technology from the United States by Eastern Bloc nations for the purpose of enhancing their military capabilities poses a significant threat to our national security. Intelligence studies indicate a small but significant target of the Eastern Bloc intelligence gathering effort is science and engineering research performed at universities and federal laboratories. At the same time, our leadership position in science and technology is an essential element in our economic and physical security. The strength of American science requires a

research environment conducive to creativity, an environment in which the free exchange of ideas is a vital component.

In 1982, the Department of Defense and National Science Foundation sponsored a National Academy of Sciences study of the need for controls on scientific information. This study was chaired by Dr. Dale Corson, President Emeritus of Cornell University. It concluded that, while there has been a significant transfer of U.S. technology to the Soviet Union, the transfer has occurred through many routes with universities and open scientific communication of fundamental research being a minor contributor. Yet as the emerging government-university-industry partnership in research activities continues to grow, a more significant problem may well develop.

### **III. POLICY**

It is the policy of this Administration that, to the maximum extent possible, the products of fundamental research remain unrestricted. It is also the policy of this Administration that, where the national security requires control, the mechanism for control of information generated during federally-funded fundamental research in science, technology and engineering at colleges, universities and laboratories is classification. Each federal government agency is responsible for:

- a) determining whether classification is appropriate prior to the award of a research grant, contract, or cooperative agreement and, if so, controlling the research results through standard classification procedures;
- b) periodically reviewing all research grants, contracts, or cooperative agreements for potential classification.

No restrictions may be placed upon the conduct or reporting of federally-funded fundamental research that has not received national security classification, except as provided in applicable

S. Statutes.

[stamped:] UNCLASSIFIED

#### NATIONAL POLICY ON THE TRANSFER OF SCIENTIFIC, TECHNICAL AND ENGINEERING INFORMATION

### 8.3. Appendix C: Restricted Parties and Sanctioned Countries List

The U.S. Commerce, State, and Treasury Departments maintain various lists of individuals, entities, and countries to which U.S. persons and organizations cannot freely export or reexport export-controlled items, information, and services. An Export License or License Exception may be required; in some cases, the export may be prohibited altogether. To comply with the law, NMT is obligated to do a Restricted Parties and Sanctioned Countries screen before an export occurs. Restricted Parties and Sanctioned Countries: Agency Lists can be found here <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern>.

- 1) There are considerable challenges to screening the various lists of sanctioned parties and countries:
  - a) There are multiple lists promulgated and enforced by multiple government agencies. Each has the force of law and each must be screened before an export is made. Each list is updated constantly, adding and subtracting individuals, entities, governments, and entire countries as violators are discovered (and debarred from receiving exports) and possibly later removed from lists; as violators form new organizations and entities which, when discovered, are added to the lists; and as sanctions and embargoes are imposed and lifted. Updates are generally published in the *Federal Register* and, later, collated into the various lists.
- 2) Screening necessarily considers several simultaneous factors including the nature of the export, the agency and regulation controlling the export, and the intended recipient of the export as well as the intended end-user (if not the recipient).
  - a) Given the complexities described, NMT's Export Control Officer will perform Restricted Parties and Sanctioned Countries Checks. The screening includes agency lists as well as the lists of sanctioned countries and embargoes posted by the Commerce, State, and Treasury Departments.
  - b) While this practice relieves individual NMT faculty, researchers, and administrative offices of the screening burden, it does require that they:
    - i) Contact the Export Control Officer in a timely manner when they are contemplating an export.
    - ii) Provide the detailed information necessary to facilitate the screening.

## 8.4. Appendix D: PI Memo

*Research Administration and Finance will distribute this notice to each principal investigator and co-PI at the time of award.*

The United States is committed to encourage technology exchanges that are consistent with U.S. national security and nuclear nonproliferation objectives. Although most of the research and technology development NMT conducts is exempt from U.S. export control regulations, we must still comply with the regulations.

Under these regulations, an export can occur, or be deemed to occur, by “releasing” any export-controlled items, materials, information, software, technical data, technology, or technical assistance to any non-U.S. citizen, whether here in the U.S. or abroad. The “release” may occur through visual inspection, oral communication, shipping, or written and electronic communication (including e-mail).

If you are doing fundamental research and the results of the research will be in the public domain, you probably will not have export control issues unless you have a foreign national working with or access to export-controlled items in conjunction with your research project. The foreign national may be a staff member, post-doctoral fellow, student, research collaborator, subcontractor, vendor, participant in a scientific/technical exchange, or visitor to your laboratory. If this is the case, the Institute, through the Export Control Officer, will have to apply to the U.S. government for an export license or determined that a license is not needed.

If your project involves export-controlled or proprietary technology, or if the sponsor has placed access controls on the technology, you must have a Technology Control Plan (TCP) in place that limits access to only U.S. citizens and foreign nationals with a green card.

If you are traveling with items (including your laptop) or shipping them outside the U.S. in conjunction with your project, there are export control issues to consider and a license could be required.

Federal regulations require that all documentation associated with export control applications, reviews, decisions, and implementation must be filed and retained for five years. It is NMT's policy to retain this information for five years from the date of project completion or close-out.

Please contact Export Control Officer if you have any questions about export controls related to your project. Contact the Export Control Officer at [export@npe.nmt.edu](mailto:export@npe.nmt.edu) or call at (575)-835-5749

## 8.5. Appendix E: Technology Control Plan

### General Information Overview for Technology Control Plan (TCP)

- 1) The material, equipment, or software (hereinafter “material”) described in the accompanying document may be classified as export-controlled information under one or both of the following:
  - a) The State Department’s International Traffic in Arms Regulations (ITAR), or
  - b) The Department of Commerce’s Export Administration Regulations (EAR).
- 2) Depending upon the export-controlled classification, it may be unlawful under the ITAR or EAR to send or take export-controlled information out of the U.S into certain countries without an export license. In addition, depending upon the export-controlled classification, and the nature of the use, it may be unlawful under the ITAR or the EAR to disclose, orally or visually, or to transfer export-controlled information to certain foreign persons inside or outside the U.S. without an export control license. A foreign person is a person who is not a U.S. citizen or permanent resident alien of the U.S. The law makes no exceptions for foreign graduate students
- 3) Therefore, depending on the type of export-controlled material and the type of use contemplated, it may be necessary to restrict the use and observation of certain technical information, data, materials, software, or hardware by unlicensed non-U.S. citizens. Security measures, developed with the guidance of the Export Control Officer, should be designed to be appropriate to the classification involved.

#### 8.5.1. Physical Security

- 1) *Personnel identification*: Individuals participating in the project are required to wear a badge, special card, or other similar device indicating their access to designated project areas.
- 2) *Access logs*: Physical movement into and out of a designated project area is logged.
- 3) *Laboratory compartmentation*: Project operations are limited to secured laboratory areas physically shielded from access or observation by unauthorized individuals. These areas must remain locked at all times.
- 4) *Time blocking*: Project operations are restricted to secure time blocks when unauthorized individuals cannot observe or access.

- 5) *Locked storage*: Tangible items such as equipment, associated operating manuals, and schematic diagrams are stored in rooms with key-controlled access. Digital, soft and hard-copy data, lab notebooks, reports, and other research materials are stored in locked cabinets.
- 6) *Shielding of material*: Material is physically shielded from observation by unauthorized individuals by using the material in secured spaces, or during secure time blocks when observation by unauthorized persons is prevented.

#### **8.5.2. Information Security:**

- 1) Measures to secure controlled electronic information including:
  - a) User ID, password control, SSL or another approved encryption technology.
  - b) Database access (may be managed via a Virtual Private Network (VPN)).
  - c) Only authorized users can access the site.
  - d) All transmissions of data over the Internet will be encrypted using 128-bit Secure Sockets Layer (SSL) or other advanced, federally approved encryption technology.
- 2) *Confidential communications*: Discussions about the export-controlled material or projects involving use of the material should be limited to authorized personnel and held only in areas where unauthorized personnel are not present.
- 3) *Communications with third parties*: Discussions with sub-contractors and other third parties are to be avoided and only should be conducted under signed agreements that fully respect the non-U.S. citizen limitations for such disclosures.

#### **8.5.1. Item Security:**

- 1) *Marking*: Export-controlled information is clearly identified and marked as export-controlled.

#### **8.5.2. Personnel Security:**

- 1) *Authorized personnel*: U.S. Citizens who are authorized to use the material must be clearly identified.
- 2) *Employee and student responsibilities*: Authorized personnel who interface with foreign nationals must receive a copy of the TCP and a briefing that addresses their export control responsibilities.
- 3) *Supervisory responsibilities*: Supervisors of cleared personnel must ensure that employees and visitors are aware of, and knowledgeable about, their export control responsibilities.
- 4) *Training*: Export control training for all individuals associated with the project, e.g., PI, research staff, graduate students, and building maintenance is required.
- 5) *Training certification*: Certification of training received is required.
- 6) *Personnel additions*: New personnel must review the TCP and sign TCP certifications.

- 7) *Personnel changes*: Measures for collecting keys to project areas, removing access to project facilities, computers, and other electronic storage devices when personnel leave the project, etc.

## 8.6. Appendix F: Decision Flowcharts

Every potential export is unique, and its handling under export control laws and regulations depends on specific facts and circumstances.

The Export Administration Regulations provide flow charts [15 CFR 732<sup>40</sup>, Supplements No. 1 and No. 2] to assist exporters in determining if items, information, and services are subject to the EAR and, if so, whether the exporter needs an Export License or a License Exception. Additional flow charts reproduced in [Sections 8.6.1.](#) and [8.6.2.](#) are from the Export Compliance Training Institute (ECTI), while they do not belong to NMT, are useful recourses.

Export compliance questions that should be considered include:

- 1) *Subject to the EAR?* For non-military goods, technologies, and services—those not administered by the Department of State under the International Traffic in Arms Regulations (ITAR)—determining whether the transaction is subject to the EAR is the first step in determining if an export license is required. Answer the key questions proceeding through the first flow chart to help make that determination. If you determine that your transaction will be subject to the EAR, advance to the second flow chart.
- 2) EAR Export Control flow chart is based on the model given in the Export Administration Regulations (EAR) at 15 CFR 732 and presented in Supplement No. 1 to Part 732. The various parts of the EAR referenced are linked on each respective flow panel.
- 3) For more information consult Export Compliance Training Institute's (ECTI) Quick Reference Flip Chart<sup>41</sup>
  - a) The (ECTI) has developed a useful Quick Reference Flip Chart to help exporters navigate this challenging path.
  - b) Designed to be in compliance with U.S. export regulations administered by the U.S. Departments of State (ITAR), Commerce (EAR) and Treasury (OFAC), including:
    - i) Step-by-step ITAR and EAR Order of Review flowchart

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<sup>40</sup> <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-732?toc=1>

<sup>41</sup> [https://info.learnexportcompliance.com/quick-reference-flip-chart?\\_gl=1\\*12hr4qi\\*\\_gcl\\_au\\*MTg0NDcwNDkzMC4xNzM2ODcxNTg2](https://info.learnexportcompliance.com/quick-reference-flip-chart?_gl=1*12hr4qi*_gcl_au*MTg0NDcwNDkzMC4xNzM2ODcxNTg2)

- ii) EAR Export Flow Chart, along with related links to export control tools and resources
- iii) Reexport Key Analysis Steps to determine controls on activities outside the U.S.
- iv) Common AES Filing Citations and Exemptions
- v) AES Filing Data Element Summaries
- vi) University Export Controls Quick Reference Pad

## 8.6.1. ITAR Flow Chart: Subject to the EAR?

Based on 15 CFR 732 and Supplement No. 2 to Part 732



### University Export Controls QUICK REFERENCE PAD

| University Exemptions and Exceptions |               |
|--------------------------------------|---------------|
| EAR TSU Employees in U.S.            | §740.13(f)    |
| EAR TMP Employees Abroad             | §740.9(a)(3)  |
| EAR AVS Research Satellites          | §740.15(e)    |
| ITAR Employees in U.S.               | §125.4(b)(10) |
| ITAR Employees Abroad                | §125.4(b)(9)  |

| Key Provisions and Definitions |                   |
|--------------------------------|-------------------|
| EAR                            | Citation          |
| Educational Information        | §734.3(b)(3)(iii) |
| Export                         | §734.13           |
| Fundamental Research           | §734.8            |
| Published                      | §734.7            |
| Technology                     | §772.1            |

| ITAR                 |               |
|----------------------|---------------|
| Export               | §120.50       |
| Defense Service      | §120.32       |
| Foreign Person       | §120.63       |
| Fundamental Research | §120.34(a)(8) |
| Public Domain        | §120.34       |
| Regular Employee     | §120.64       |
| Technical Data       | §120.33       |
| U.S. Person          | §120.62       |

### ITAR Fundamental Research Flowchart

Published and generally available to the public at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community?

if **NO** → **STOP** Not Fundamental Research

if **YES** continue ↓

Basic and applied research in science and engineering ordinarily published and shared broadly?

if **NO** → **STOP** Not Fundamental Research

if **YES** continue ↓

Publication restrictions?

if **YES** → **STOP** Not Fundamental Research

if **NO** continue ↓

U.S. government funding and dissemination controls?

if **YES** → **STOP** Not Fundamental Research

if **NO** continue ↓

**IT IS FUNDAMENTAL RESEARCH**

There are **better ways** to make compliance decisions.

ECTI's training will give you confidence in your compliance.

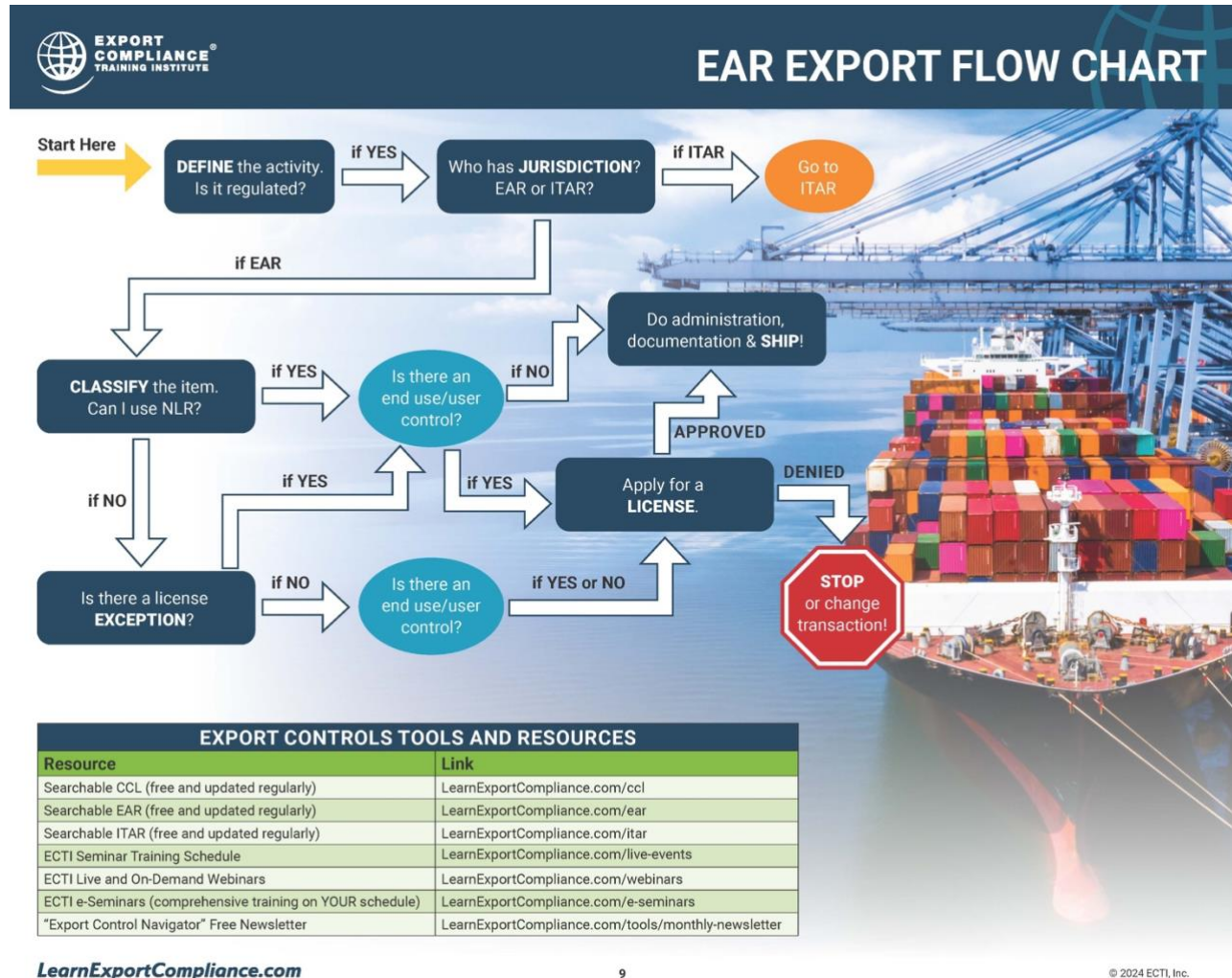
[LearnExportCompliance.com](https://LearnExportCompliance.com)

### EXPORT CONTROLS TOOLS AND RESOURCES

| Resource                                                  | Link                                                                                                                        |
|-----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| Searchable CCL (free and updated regularly)               | <a href="https://LearnExportCompliance.com/ccl">LearnExportCompliance.com/ccl</a>                                           |
| Searchable EAR (free and updated regularly)               | <a href="https://LearnExportCompliance.com/ear">LearnExportCompliance.com/ear</a>                                           |
| Searchable ITAR (free and updated regularly)              | <a href="https://LearnExportCompliance.com/itar">LearnExportCompliance.com/itar</a>                                         |
| ECTI Seminar Training Schedule                            | <a href="https://LearnExportCompliance.com/live-training">LearnExportCompliance.com/live-training</a>                       |
| ECTI Live and On-Demand Webinars                          | <a href="https://LearnExportCompliance.com/webinars">LearnExportCompliance.com/webinars</a>                                 |
| ECTI e-Seminars (comprehensive training on YOUR schedule) | <a href="https://LearnExportCompliance.com/e-seminars">LearnExportCompliance.com/e-seminars</a>                             |
| "Export Control Navigator" Free Newsletter                | <a href="https://LearnExportCompliance.com/tools/monthly-newsletter">LearnExportCompliance.com/tools/monthly-newsletter</a> |

## 8.6.2. EAR Export Control Flowchart

Based on 15 CFR 732 and Supplement No. 1 to Part 732



## 8.7. Appendix G: Export Control Links

**All links are active as of January 20, 2026**

### **Export Administration Regulations (EAR)**

EAR home page: <https://www.bis.gov/regulations/ear>

U.S. Department of Commerce, Bureau of Industry and Security (BIS)

BIS home page: <http://www.bis.doc.gov/>

### **International Trafficking in Arms Regulations (ITAR)**

ITAR home

page: [https://www.pmddtc.state.gov/ddtc\\_public/ddtc\\_public?id=ddtc\\_kb\\_article\\_page&sys\\_id=24d528fddbfc930044f9ff621f961987](https://www.pmddtc.state.gov/ddtc_public/ddtc_public?id=ddtc_kb_article_page&sys_id=24d528fddbfc930044f9ff621f961987)

### **U.S. Department of State, Directorate of Defense Trade Controls (DDTC)**

DDTC Home page: [https://www.pmddtc.state.gov/ddtc\\_public/ddtc\\_public](https://www.pmddtc.state.gov/ddtc_public/ddtc_public)

U.S. Munitions List: <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-121>

### **Office of Foreign Assets Control (OFAC)**

OFAC home page: <https://ofac.treasury.gov/>

### **U.S. Department of the Treasury**

OFAC home page: <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx> (The RESOURCES tab links to OFAC Sanctions Programs and Guidance) Sanctions Programs and Country Information:  
<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

### **National Aeronautics and Space Administration (NASA)**

Export control program home page: <http://oiir.hq.nasa.gov/nasaecp/index.html>

## **8.8.Appendix H: NMT Resources**

NMT Export Control Page - <https://www.nmt.edu/research/iecp.php>

NMT Export Control Email – [export@npe.nmt.edu](mailto:export@npe.nmt.edu)

## **8.9. Appendix I: Attribution**

Our gratitude is extended to the following Institutions who have a part in the development of NMT's Export Compliance Plan through discussions and online postings: National Council of University Research Administrators (NCURA), Council on Government Relations (COGR), Stanford University, University of Tennessee, Massachusetts Institute of Technology, Virginia Polytechnic Institute and State University, University of California Board of Regents, Michigan State University, University of Texas Austin, University of New Hampshire, Georgia Institute of Technology, University of North Carolina Wilmington, and the United States Departments of Commerce, State and Treasury.