POLICY STATEMENT

The University of North Dakota (UND) requires faculty, staff, students, and persons affiliated with UND to be aware of and comply with UND’s policy and procedures and United States (U.S.) export control laws and regulations.

Export control laws and regulations have a direct impact on what hardware, laboratory equipment, materials, software, technology and technical data that UND can export out of the country by any means and, in certain cases, allow access to individuals working in and visiting its research laboratories. Export control laws and regulations also affect what institutional research partners UND works with during the course of its U.S.-based and international collaborations; how UND disseminates research results and to whom; and travel abroad for teaching and research purposes. Export controls affect all scientific disciplines (regardless of whether the activity concerns sponsored or non-sponsored research) as well as business and service transactions with restricted countries and restricted end users.

Both the institution and individuals are subject to sanctions for violations of export controls laws including the loss of research funding, loss of export privileges, as well as civil and criminal penalties, including imprisonment.

REASON FOR POLICY

UND, as an accredited institution of higher education, is committed to complying with U.S. export control laws and regulations and UND’s policy is to pursue its mission in teaching, research, and service in a manner consistent with these laws and regulations.

Export control laws and regulations govern how the U.S. government regulates the transmission, transfer or shipment of technology, services, and information to foreign nationals and foreign countries for multiple reasons including: to protect national security; to prevent the proliferation of weapons of mass destruction; to advance foreign policy, and to promote commercial trade. The U.S. laws and regulations regarding exports restrict the use of, and access to, certain sensitive or controlled technical information, materials, and technology. UND recognizes the importance of complying with all U.S. export control laws regulations and its requirements to do so. UND is committed to full compliance with these laws and regulations.

This policy complies with North Dakota State Board of Higher Education policy 305.1.
SCOPE OF POLICY

This policy applies to:

- President
- Vice Presidents
- Deans, Directors & Department Heads
- Area Managers & Supervisors
- Faculty
- Staff
- Students
- Affiliates
- Others

WEB SITE REFERENCES

This policy: [http://und.edu/research/_files/docs/policy/1-4-export-control.pdf](http://und.edu/research/_files/docs/policy/1-4-export-control.pdf)
Vice President for Research and Economic Development: [http://und.edu/research](http://und.edu/research)
Office of Research Development and Compliance: [http://und.edu/research/resources/index.cfm](http://und.edu/research/resources/index.cfm)
Export Controls: [http://und.edu/research/resources/export-controls.cfm](http://und.edu/research/resources/export-controls.cfm)
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy Statement</td>
<td>1</td>
</tr>
<tr>
<td>Reason for Policy</td>
<td>1</td>
</tr>
<tr>
<td>Scope of Policy</td>
<td>2</td>
</tr>
<tr>
<td>Web Site References</td>
<td>2</td>
</tr>
<tr>
<td>Related Information</td>
<td>4</td>
</tr>
<tr>
<td>Contacts</td>
<td>5</td>
</tr>
<tr>
<td>Definitions</td>
<td>6</td>
</tr>
<tr>
<td>Principles (overview)</td>
<td>13</td>
</tr>
<tr>
<td>Procedures</td>
<td>14</td>
</tr>
<tr>
<td>Export Control Oversight: Functions, Activities and Responsibilities of the Office of Research Development and Compliance</td>
<td>14</td>
</tr>
<tr>
<td>Jurisdiction and Classification of Export Controlled Items</td>
<td>16</td>
</tr>
<tr>
<td>License and Export Authorizations</td>
<td>17</td>
</tr>
<tr>
<td>Restricted Party / End User Screening Against Government Watch Lists</td>
<td>18</td>
</tr>
<tr>
<td>Human Resources / Office of International Programs</td>
<td>18</td>
</tr>
<tr>
<td>Information Technology</td>
<td>19</td>
</tr>
<tr>
<td>Physical Security Measures</td>
<td>19</td>
</tr>
<tr>
<td>Technology Control Plans</td>
<td>19</td>
</tr>
<tr>
<td>Procurement</td>
<td>20</td>
</tr>
<tr>
<td>Licensed Software Programs</td>
<td>20</td>
</tr>
<tr>
<td>Sponsored Research</td>
<td>20</td>
</tr>
<tr>
<td>High Performance Computer Facilities</td>
<td>21</td>
</tr>
<tr>
<td>Distance Education</td>
<td>21</td>
</tr>
<tr>
<td>International Travel</td>
<td>21</td>
</tr>
<tr>
<td>International Collaboration</td>
<td>22</td>
</tr>
<tr>
<td>International Visitors and Activities</td>
<td>22</td>
</tr>
<tr>
<td>Technology Commercialization and Transfer</td>
<td>23</td>
</tr>
<tr>
<td>Shipping / Receiving Services</td>
<td>24</td>
</tr>
<tr>
<td>Embargoed Country Compliance/Office of Foreign Asset Control Regulations</td>
<td>24</td>
</tr>
<tr>
<td>Antiboycott Restrictions</td>
<td>25</td>
</tr>
<tr>
<td>Issue reporting and Notification</td>
<td>25</td>
</tr>
<tr>
<td>Violations and Penalties for Non-Compliance</td>
<td>26</td>
</tr>
<tr>
<td>Recordkeeping</td>
<td>27</td>
</tr>
<tr>
<td>Export Control Training</td>
<td>28</td>
</tr>
<tr>
<td>Conducting Export Self-Assessments</td>
<td>28</td>
</tr>
<tr>
<td>Incubator and Spin-off Activity</td>
<td>28</td>
</tr>
<tr>
<td>Foundations</td>
<td>28</td>
</tr>
<tr>
<td>Non-Retaliation</td>
<td>29</td>
</tr>
<tr>
<td>Emergency Management</td>
<td>29</td>
</tr>
<tr>
<td>Responsibilities</td>
<td>29</td>
</tr>
<tr>
<td>Forms</td>
<td>32</td>
</tr>
<tr>
<td>Appendices (list)</td>
<td>33</td>
</tr>
<tr>
<td>UND Finance &amp; Operations Organizational Chart</td>
<td>34</td>
</tr>
<tr>
<td>UND Organizational Structure</td>
<td>35</td>
</tr>
<tr>
<td>UND Research &amp; Economic Development Chart</td>
<td>36</td>
</tr>
<tr>
<td>Revision Record</td>
<td>33</td>
</tr>
</tbody>
</table>
### RELATED INFORMATION

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Commerce Control List (CCL)</td>
<td><a href="http://beta-www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl">http://beta-www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl</a></td>
</tr>
<tr>
<td>Deemed export frequently asked questions (FAQ)</td>
<td><a href="http://www.bis.doc.gov/index.php/policy-guidance/deemed-exports/deemed-exports-faqs?view=category&amp;id=33#subcat34">http://www.bis.doc.gov/index.php/policy-guidance/deemed-exports/deemed-exports-faqs?view=category&amp;id=33#subcat34</a></td>
</tr>
</tbody>
</table>
http://www.ice.gov/project-shield |
http://www.pmddtc.state.gov/regulations_laws/itar_consolidated.html |
| Office of Antiboycott Compliance | http://www.bis.doc.gov/complianceandenforcement/antiboycottcompliance.htm  
Advice line: (202) 482-2381 |
| Office of Foreign Assets Control (OFAC) 31 C.F.R. §§ 500-599 | http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx  
http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx |
| Office of Patents and Trademarks (PTO) 37 C.F.R. § 5 | http://www.uspto.gov |
| Restricted/Denied Party Screening | http://export.gov/ecr/eg_main_023148.asp |
| The Commerce Department’s Bureau of Industry and Security (BIS) | http://www.bis.doc.gov  
http://www.bis.doc.gov/licensing/exportingbasics.htm |
| UND Fraud Hotline | Phone: (866) 912-5378  
Online reporting: http://und.edu/finance-operations/fraud-hotline/ |
CONTACTS

Questions about this policy can be answered by the Export Control Officer and the Office of Research Development and Compliance. Specific questions should be directed to the following:

<table>
<thead>
<tr>
<th>Subject</th>
<th>Contact</th>
<th>Telephone</th>
<th>Department/Office Email/ Web Address</th>
</tr>
</thead>
</table>
| Policy Content and Clarification       | Export Control Officer                               | (701) 777-2049 | http://und.edu/research/resources/export-controls.cfm  
|                                        | Associate Vice President for Research & Economic Development/Research Development and Compliance | (701) 777-4278 | http://und.edu/research/resources/index.cfm  
|                                        | Institutional Biosafety Committee                    | (701) 777-4279 | http://und.edu/research/resources/institutional-biosafety-committee.cfm  
| Empowered Officials                    | Export Control Officer                               | (701) 777-2049 | http://und.edu/research/resources/export-controls.cfm  
|                                        | Associate Vice President for Research & Economic Development/Research Development and Compliance | (701) 777-4278 | http://und.edu/research/resources/index.cfm  
|                                        | Office of Vice President for Research & Economic Development | (701) 777-6736 | http://und.edu/research/  
| International Scholar Services/Visa Information | Office of International Programs                    | (701) 777-4231 | http://und.edu/academics/international-programs/  
| Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA) | Export Control Officer                               | (701) 777-2049 | http://und.edu/research/resources/export-controls.cfm  
|                                        | Office of General Counsel                            | (701) 777-6345 | http://und.edu/general-counsel/  

Page 5 of 33
Non-Disclosure Agreements (NDA)

| Intellectual Property | (701) 777-6772 | http://und.edu/research/intellectual-property/index.cfm |
| Export Control Officer | (701) 777-2049 | http://und.edu/research/resources/export-controls.cfm |
| Office of General Counsel | (701) 777-6345 | http://und.edu/general-counsel/ |

Sponsored Research

| Grants and Contracts Administration | (701) 777-2504 | http://und.edu/research/grants-and-funding/index.cfm |

DEFINITIONS

Code of Federal Regulations (C.F.R.)
The C.F.R. is 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. federal government.

Commerce Control List (CCL)
The CCL is a list that includes commodities, software and technology subject to the export licensing authority and jurisdiction of the Bureau of Industry and Security (BIS) of the U.S. Department of Commerce. The CCL is contained in Title 15 C.F.R. 774, Supplement 1 of the Export Administration Regulations (EAR).

Commodity Jurisdiction Request (CJ)
A Commodity Jurisdiction request is a letter to the Directorate of Defense Trade Controls (DDTC) requesting that the agency opine on the proper jurisdiction of an item, i.e. whether it is covered under the USML (and if so, under which Category) or falls under Commerce Department control.

Deemed Export
Under the EAR the release of technology or source code to a foreign national in the United States is “deemed” to be an export to the home country of the foreign national, even though the release took place within the United States. (15 C.F.R. §734.2(b)(2)(ii))

Deemed exports may occur through such means as a demonstration, oral briefing, or plant visit, as well as the electronic transmission of non-public data that will be received abroad.

Deemed export examples include: (1) Laboratory tours by foreign nationals; (2) Foreign national students, faculty or staff conducting export controlled research or having access to a laboratory where export controlled research is being conducted; (3) Email communication, oral exchanges, visual inspection

The ITAR does not use the EAR term “deemed export;” however, the same rule is incorporated through its definition of an “export,” which includes “[d]isclosing or transferring technical data to a foreign person, whether in the United States or abroad.” (22 C.F.R. § 120.17)

Defense Article
Any item or technical data found in the United States Munitions List. This term includes technical data recorded or stored in any form, models, mock ups or other items that reveal technical data directly relating to items designated in the United States Munitions List. It does not include basic marketing information of function or purpose or general system descriptions. (22 C.F.R. § 120.6)
<table>
<thead>
<tr>
<th>Defense Service</th>
<th>The furnishing of assistance (including training) to foreign persons, within the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; or The furnishing of technical data controlled by the ITAR to foreign persons, within the United States or abroad. It also includes the provision of military training to foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad by correspondence courses; technical, educational or informational publications and media of all kinds; training aid; orientation; training exercise; and military advice. This may involve public domain or commercial hardware. (22 C.F.R. § 120.9)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dual Use</td>
<td>Tangible items, software, and/or technology that have both commercial and military or proliferation applications. Purely commercial items also are subject to the EAR (15 C.F.R. § 772.1).</td>
</tr>
<tr>
<td>Educational Information Exclusion</td>
<td>Information is not subject to the EAR if it is released by instruction in catalog courses and associated teaching laboratories of academic institutions. Certain types of information related to encryption software cannot be considered “educational information” and therefore are subject to the EAR even if they are released “by instruction in catalog courses and associated teaching laboratories of academic institutions.” (15 C.F.R. §§ 734.3(b)(3) and 734.9) Information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities is not controlled by ITAR. (22 C.F.R. § 120.10 (5)).</td>
</tr>
<tr>
<td>Empowered Official</td>
<td>A U.S. person who: (1) is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and (2) is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and (3) understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability, and administrative penalties for violating the Arms Export Control Act (AESA) and the International Trafficking in Arms Regulations (ITAR); and (4) has the independent authority to: (a) Enquire into any aspect of a proposed export or temporary import by the applicant;and (b) Verify the legality of the transaction and the accuracy of the information to be submitted; and (c) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse. (22 C.F.R.§120.25)</td>
</tr>
<tr>
<td>End-use</td>
<td>A detailed description of how the ultimate consignee intends to use the commodities being exported.</td>
</tr>
<tr>
<td>End-user</td>
<td>The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.</td>
</tr>
</tbody>
</table>
| **Export** | The term is defined separately in both the ITAR and the EAR and generally means the actual shipment or transmission of items subject to the EAR or ITAR out of the United States, or release of technology or software subject to the EAR or ITAR to a foreign national/foreign person in the United States. Release of export-controlled technology and source code also occurs through transmission via e-mails, faxes, designs, and verbal correspondence.

Under the ITAR regulations, export means not only sending or taking a defense article out of the U.S. in any manner, but also disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the U.S. or abroad. An export also means performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the U.S. or abroad.

The term applies to exports of tangible and intangible items from the U.S including technology or information and the passing of that information or technology to foreign nationals in the United States. (ITAR, 22 C.F.R. § 120.17; EAR, 15 C.F.R. § 734.2(b)) |
| **Export Administration Regulations (EAR)** | The Export Administration Regulations (EAR), refer to the regulations promulgated and implemented by the Bureau of Industry and Security (BIS) of the U.S. Department of Commerce, that regulate the export and re-export of items and related technology identified on the Commerce Control List (CCL). (Title 15, Sections 730–774 of the Code of Federal Regulations) |
| **Export Control Classification Number (ECCN)** | The alpha-numeric code used by the Department of Commerce to classify commercial items. An ECCN describes a particular item or type of item, and shows the export controls placed on that item. All ECCNs are listed in the Commerce Control List (CCL). (Supplement No. 1 to Part 774 of the EAR) |
| **Export Controls** | Federal regulations that restrict the release of certain items, information and software to Foreign Nationals/Persons in the United States and abroad for reasons of national and international security and protection of the U.S.’s economic vitality. The regulations include the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR), as well as regulations administered by the Office of Foreign Assets Control (OFAC). |
| **Export License** | The approval documentation issued by the Bureau of Industry and Security (BIS), the Directorate of Defense Trade Controls (DDTC), the Office of Foreign Assets Control (OFAC), or other export agency authority, authorizing the license recipient to export, re-export, make a financial transfer, or other regulated activities specified on the license. |
| **Foreign National/Foreign Person** | Natural persons who are not U.S. citizens, aliens who are “Lawful Permanent Residents” (Green Card), [8 USC § 1101(a)(20)], or other “Protected Individuals” under the Immigration and Naturalization Act [8 USC §1324b(a)(3)] designated an asylee, refugee, or a temporary resident under amnesty provisions.

A foreign national/foreign person also means: any foreign corporation, business association, partnership, trust, society, or any other entity or group that is not incorporated or organized to do business in the United States; and international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions). (22 C.F.R. § 120.16)

Examples of foreign nationals/foreign persons are students, scholars or researchers with F-1 or J-1 visas, and UND employees with H1-B visas. |
Under the ITAR, the DDTC currently considers both all current countries of citizenship and the country of origin (i.e., country of birth) in reviewing license applications. For example, an ITAR license application involving an Iranian-born citizen of Canada would be reviewed on the basis that it could be an export to both Iran and Canada.

Under the EAR, the BIS generally looks at the person’s most recent citizenship or permanent residence in reviewing license applications.

Under OFAC the definitions for a U.S. and a foreign person differ for purposes of the OFAC sanctions.

<table>
<thead>
<tr>
<th>Fundamental Research</th>
<th>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. (Defined by the National Security Decision Directive 189)</th>
</tr>
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<tbody>
<tr>
<td>Fundamental Research Exclusion (FRE)</td>
<td>The products of fundamental research are not subject to export license requirements or other government approval. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons (EAR) or pursuant to specific U.S. government access and dissemination controls (ITAR). However, the fundamental research exclusion can be invalidated if there are publication restrictions or there are limitations on access or dissemination of the research results. If the fundamental research exclusion is invalidated, then the research would be subject export control regulations. Under EAR university research will normally be considered as fundamental research unless the university or its researchers accept sponsor restrictions on the publication of scientific and technical information resulting from the project or activity. The EAR permits limited prepublication reviews by research sponsors to prevent the inadvertent divulging of proprietary information provided to the researcher by the sponsor or to ensure that publication will not compromise the patent rights of the sponsor. (15 C.F.R. § 734.8) Under ITAR university research will not be deemed to qualify as fundamental research if: (1) the university or its researchers accept any restrictions on the publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher. (22 C.F.R. § 120.11 (8))</td>
</tr>
<tr>
<td>International Traffic in Arms Regulations (ITAR)</td>
<td>Federal regulations used primarily to control the import and export of defense articles, defense services and related technical data promulgated by the Directorate of Defense Trade Controls (DDTC) of the U.S. Department of State. (22 C.F.R. §§120-130)</td>
</tr>
<tr>
<td>International Visitors</td>
<td>International Visitors are foreign persons/foreign nationals who are not employees or enrolled students of UND and are coming to UND on a temporary basis as a result of a verbal or written invitation made to the foreign person/foreign national by an employee, faculty member, researcher or administrator.</td>
</tr>
</tbody>
</table>
Knowledge

Knowledge, and variants such as “reason to know” or “reason to believe,” includes not only positive knowledge that the circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness is inferred from evidence of the conscious disregard of facts known to a person and also is inferred from a person’s willful avoidance of facts.

Office of Foreign Assets Control (OFAC)

The Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury administers and enforces economic embargoes and trade sanctions based on U.S. foreign policy and national security goals. OFAC targets foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC acts under presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under U.S. jurisdiction.

Public Domain/Publicly Available

Generally, the ITAR and the EAR do not control information which is published and accessible or available to the public; however, the ITAR and the EAR differ in the specific information that qualifies as publicly available.

The ITAR defines public domain as: information which is published and which is generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions that are available without restriction to any individual who desires to obtain or purchase the published information; (3) through second-class mailing privileges granted by the U.S. government; (4) at libraries open to the public or from which the public may obtain documents, including most university libraries; (5) through published patents; (6) through unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, in the United States (ITAR) or anywhere (EAR); (7) through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency, including websites accessible to the public for free and without the host’s knowledge of or control of who visits or downloads the software and/or information (clearly acceptable under EAR and likely acceptable under ITAR); and (8) through fundamental research in science and engineering at accredited institutions of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. (22 C.F.R. §§ 120.10(a)(5) and 120.11)

The EAR defines publicly available software and technology, except certain encryption software, as: (1) are already published or will be published as generally accessible to the interested general public in any form, including: in periodicals, books, etc.; ready availability at libraries; in patents and published patent applications; released at an open conference, meeting, seminar, trade show, or other open gathering; or submissions of papers to domestic or foreign editors or reviewers of journals or to organizers of open conferences with the understanding that the papers will be made publicly available if favorably received; (2) arise during or result from fundamental research; (3) are educational information released by instruction in catalog courses and associated teaching laboratories of academic institutions; or (4) are included in certain patent applications. (15 C.F.R. §§ 734.3(b)(3), 734.734.8, 734.9 and 734.10)

The EAR requires that the publication is available for distribution free or at a price not to exceed the cost of reproduction and distribution; however, the ITAR does not have such a requirement.
The EAR allows for participation at a conference abroad so long as the conference is open to all technically qualified members of the public, and attendees are permitted to take notes.

The ITAR limits participation in conferences and similar events to those that are taking place in the United States.

<table>
<thead>
<tr>
<th>Re-export</th>
<th>An actual shipment or transmission of controlled tangible items, software or information from one foreign country to another foreign country. The export or re-export of controlled tangible items, software or information that will transit through a country or countries, or will be unloaded in a country or countries for reloading and shipment to a new country, or are intended for re-export to the new country, are deemed to be exports to the new country and are subject to U.S. export control regulations.</th>
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<tbody>
<tr>
<td>Restricted Party</td>
<td>Certain locations, individuals and entities that UND and its employees may be prohibited by law or are required to obtain a license or other government approval to export to or engage in controlled transactions. The U.S. government identifies restricted parties through export denial, debarment, and blocked persons lists: the Denied Persons List, Entity List, and Unverified List (Department of Commerce); the Debarred Parties Lists (Department of State); and the Specially Designated Nationals (Department of Treasury).</td>
</tr>
<tr>
<td>Restricted Research</td>
<td>Research, development, or testing subject to: (1) publication restrictions; (2) access and dissemination controls; (3) federally funded research with specific national security restrictions; (4) accepting third-party controlled items or information; or (5) providing defense services on, or access to, a defense article. Restricted research is subject to EAR and ITAR regulations, and a license or other government approval may be required for foreign person/foreign national participation.</td>
</tr>
<tr>
<td>Sanctioned Countries</td>
<td>Countries designated by OFAC as having limited or comprehensive trade sanctions imposed by the United States for anti-terrorism, non-proliferation, narcotics trafficking, or other reasons. OFAC sanctions are promulgated under the International Emergency Economic Powers Act of 1977, 50 U.S.C. §§ 1701-1706 (IEEPA). The embargoes on Cuba and North Korea are promulgated under the Trading with the Enemy Act of 1917, 12 U.S.C. § 95a (TWEA).</td>
</tr>
<tr>
<td>Significant Military Equipment</td>
<td>Defense articles for which special export controls are warranted because of their capacity for substantial military capability or utility. (22 C.F.R. §120.7)</td>
</tr>
<tr>
<td>Specially Designated Nationals Persons List</td>
<td>A list of individuals and entities, maintained by OFAC, identified as terrorists, international narcotics traffickers, representing restricted countries or engaged in activities related to the proliferation of weapons of mass destruction. Their assets are blocked and U.S. persons are generally prohibited from engaging in export transactions with entities that appear on the Specially Designated Nationals. (15 C.F.R. Part 764, Supplement 3)</td>
</tr>
<tr>
<td>Technical Assistance</td>
<td>May take forms such as instruction, skills training, working knowledge, and consulting services, and may involve the transfer of technical data. (15 C.F.R. § 772)</td>
</tr>
<tr>
<td>Technical Data</td>
<td>Means: (1) Information, other than software as defined in 22 C.F.R. §120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation; (2) Classified information relating to defense articles and defense services; (3) Information covered by an invention secrecy order; (4) Software as defined in 22 C.F.R. §121.8(f) directly related to defense articles. (ITAR, 22 C.F.R. §120.10; EAR, 15 C.F.R. § 772)</td>
</tr>
<tr>
<td>Technology</td>
<td>Means specific information necessary for the “development,” “production,” or “use” of a product. The information takes the form of “technical data” or “technical assistance.” Information that is generally accessible or available to the public is not “technology” subject to the EAR. It may also include know-how whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, manuals, or software—or in intangible form, such as training or technical services. (15 C.F.R. § 772)</td>
</tr>
<tr>
<td>Temporary Import</td>
<td>Any defense article that is brought into the U.S. that is to be returned to the country from which it was shipped. (22 C.F.R. § 120.18)</td>
</tr>
<tr>
<td>Ultimate consignee</td>
<td>The principal party in interest located abroad who receives the exported or re-exported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end-user.</td>
</tr>
<tr>
<td>United States Munitions List (USML)</td>
<td>A list of articles, services and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act (AECA). The State Department has stated that the USML is illustrative only; therefore, the absence of an item on the USML does not exclude the possibility of the item being a defense article or defense service. (22 C.F.R. § 121.1)</td>
</tr>
<tr>
<td>United States Principal Part in Interest (USPPI)</td>
<td>The legal entity in the United States who receives the primary benefit, monetary or otherwise, from the export transaction. The University of North Dakota will qualify as the USPPI when recognized as the U.S. seller, manufacturer or order party.</td>
</tr>
<tr>
<td>“Use” Technology</td>
<td>Pursuant to the Export Administration Regulations, the routine “use” of controlled equipment by foreign nationals (e.g., using it in the ordinary way specified in the user manual) in such a manner that does not disclose technical information about the equipment beyond what is publicly available, does not require a license. The regulatory definition of “use” is technology for the “operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing. All six attributes must be present in order to qualify as controlled “use” technology. However, a license may be required if a foreign national is “using” the equipment in such a way as to access technical information beyond what is publicly available (for example, accessing the source code of software or modifying a piece of equipment in such a way as to gain non-publicly available technical information about its design.)</td>
</tr>
</tbody>
</table>
PRINCIPLES

OVERVIEW – UND requires faculty, staff, students, and persons affiliated with UND to comply with its policy and procedures and United States (U.S.) export control laws and regulations.

UND, as an accredited institution of higher education, is committed to complying with U.S. export control laws and regulations and UND’s policy is to pursue its mission in teaching, research, and service in a manner consistent with these laws and regulations.

Export control laws and regulations have a direct impact on what hardware, laboratory equipment, materials, software, technology and technical data that UND can export out of the country by any means and, in certain cases, allow access to individuals working in and visiting its research laboratories. Export control laws and regulations also affect what institutional research partners UND works with during the course of its U.S.-based and international collaborations; how UND disseminates research results and to whom; and travel abroad for teaching and research purposes. Export controls affect all scientific disciplines involving sponsored or non-sponsored research, contracts, agreements, business and service transactions with restricted countries and restricted end users, shipping items to foreign destinations, international travel, or the hiring of foreign faculty or graduate students. Export controls also apply to the re-export of items, software and technology from one foreign country to another.

U.S. export control laws and regulations, including the Arms Export Control Act, implemented through the International Traffic in Arms Regulations, the Export Administration Act, implemented through the Export Administration Regulations, and the Office of Foreign Assets Control regulations, are part of a complex export control system that has been in existence since the 1940s. The U.S. government places the burden of understanding and complying with the regulations on UND. Under U.S. export control regulations, any individual or institution who is undertaking any export activity is responsible for properly complying with the regulations.

Most on-campus UND activities do not require an export control license or other government authorization and will be eligible for one of the following exclusions to export control regulations: the fundamental research exclusion; the publicly available or public domain information exclusion; or the educational exclusion. For activities that are not eligible for an exclusion, each employee is personally responsible for safeguarding export-controlled data/information, i.e., controlled technology or technical data, as required by the respective federal agency from disclosure to foreign persons/foreign nationals without prior approval. A license from the respective federal agency or a determination by UND that an export license exception or exemption is available is required before a foreign person/foreign national may be given access to items or technology/technical information controlled by the federal government.

Three principal federal agencies have jurisdiction over the control of exports and regulate export control laws and regulations:

- The U.S. Department of State administers control of defense exports (International Traffic in Arms Regulations) through the Directorate of Defense Trade Controls (DDTC);
- The U.S. Department of Commerce administers the export of commercial, “dual-use” and less sensitive defense articles (Export Administration Regulations) through the Bureau of Industry and Security (BIS); and
- The U.S. Department of the Treasury administers exports to embargoed countries and designated entities (Foreign Asset Control Regulations) through the Office of Foreign Assets Control (OFAC).

UND faculty, staff, students and affiliates must be aware that complying with the export control regulations of one of the three principal agencies may be insufficient for an export control analysis and that other federal agencies have regulations applicable to a specific activity or research project that may require evaluation to ensure compliance with export control laws and regulations (e.g., the Department of Energy; the Department of Treasury; the Nuclear Regulatory Commission, and the U.S. Department of Agriculture)
Prior to engaging in export controlled activities, faculty, staff, students and affiliates must be aware of and identify the export control ramifications. Scenarios that may require export control analysis include:

- Foreign Persons/Nationals proposing and participating in research;
- Partnering with a foreign company;
- Hosting foreign visiting scholars for the purpose of research that involves technologies subject to export controls; or
- Exporting abroad equipment needed for experiments or research, including, laptops, GPS equipment, other hand-held mobile devices, or other devices containing encrypted software.

With research or other educational activities involving export controlled or sanctioned transactions, UND must document its analysis of export control issues, including the availability of any exclusions from or exemptions to export control laws and regulations.

The RDC is delegated UND-wide authority for all export control matters and all export control analysis will be undertaken with the guidance of the Export Control Officer in cooperation the school, college, department, division, program, principal investigator or researcher.

Any license determination analysis must be conducted prior to engaging, or agreeing to engage in the export controlled activity. The process for obtaining a U.S. government license or approval may involve several months.

After reviewing the export control concerns, UND may decide not to accept funding for research with export controls or restrictions, participate in training programs, allow visiting researchers to participate in UND projects, or allow international travel. Circumstances may include:

- Insufficient time to obtain a license or to take measures to insure compliance with export control laws and regulations;
- The expense of achieving export control compliance is prohibitive; or
- Export control compliance may be antithetical to the purpose and mission of UND or the State Board of Higher Education.

Both the institution and individuals are subject to sanctions for violations of export controls laws including the loss of research funding, loss of export privileges, as well as civil and criminal penalties, including imprisonment. Violations of export control laws and regulations may also result in the loss of future export privileges or debarment from participation in future federal contracts.

When determining penalties, the federal agencies will consider mitigating factors such as voluntary disclosure, whether the violation is an isolated incident or a pattern of continuing behavior, whether UND had a compliance program in place, whether UND took steps to improve the compliance program to prevent future violations and whether the violation was due to inadvertence, mistake of fact, or a good faith misinterpretation of the laws and regulations.

This policy complies with North Dakota State Board of Higher Education policy 305.1.

PROCEDURES

Export Control Oversight: Functions, Activities, & Responsibilities of the Office of Research Development and Compliance

To implement UND’s commitment to export control compliance the University President and the Vice President for Research and Economic Development directed the Office of Research Development and Compliance (RDC) to develop the University of North Dakota Policy and Compliance Program Manual for United States Export Control Laws and Regulations and to establish the appropriate procedures to ensure compliance with U.S. export control laws and regulations.
The Office of Research Development and Compliance, a Division of Research and Economic Development, is the administrative unit at UND charged with the responsibility for management and oversight of compliance with federal export control laws and regulations, for all applicable exports and regulated transactions with sanctioned individuals, entities, and countries.

**EMPOWERED OFFICIALS** – The Vice President for Research and Economic Development, the Associate Vice President for Research and Economic Development, Research Development and Compliance, and the Export Control Officer are UND’s Empowered Officials for export control matters. In this capacity, the Empowered Officials have the authority to represent UND before the export control regulators in matters related to registration, licensing, commodity jurisdiction requests, or voluntary disclosures. While certain oversight functions may be delegated, only the Empowered Officials have the power to sign such paperwork and bind the university in any proceeding before DDTC, BIS, OFAC, or any other government agency with export control responsibilities.

**EXPORT CONTROL OFFICER** – UND’s Export Control Officer (ECO) reports to the Associate Vice President for Research and Economic Development, Research Development and Compliance. The ECO has the authority and the responsibility for the implementation of the procedures set forth in this Export Compliance Program. The ECO works closely with the Associate Vice President for Research and Economic Development, Research Development and Compliance and the Division of Research and Economic Development in performing ECO responsibilities and will serve as a key resource to perform the following functions, as supported by internal and external advisors:

- Determine whether an item being exported (hardware, software, materials, or technical data) requires an export license by virtue of its ITAR jurisdiction, EAR classification, end user status, or potential OFAC restriction
- Assist UND in screening end users against the U.S. Government’s published Restricted Party Lists
- Apply for export licenses and authorizations where required and advise supervising Principal Investigators (PIs) and license recipients on how to comply with license conditions
- Advise faculty members on travel-related export control requirements, conducting research abroad, and international collaborations
- Advise and support compliance for those Departments potentially effected by export control requirements, including, but not limited to, the following functions:
  - Shipping Services
  - Human Resources
  - Procurement/Purchasing
  - Information Technology
  - Campus Security
  - Grants and Contracts Administration
  - IP Commercialization/Technology Licensing
  - Office of International Programs
  - Internal Audit
- Oversee export control recordkeeping processes
- Conduct campus-wide export control training for faculty, administrators, and others requiring such training
- Conduct periodic audits of export control processes and activities to proactively manage compliance
- Serve as the liaison between UND and any U.S. Government agency requesting documentation from UND, inquiring about a particular export transaction, or inquiring about any other matter which involves a regulatory matter.

UND, in implementing its policy for compliance with export and sanction regulations, cooperates with those governmental agencies with license and enforcement responsibilities. The RDC serves as the university’s point of contact with those agencies. The ECO will assist any UND college, school, unit, department, or center, in filing for any license or other government approval necessary to conduct a university approved activity.
Jurisdiction and Classification of Export Controlled Items

UND’s tangible items such as laboratory instruments and materials, as well as software and technical data need to be classified prior to exportation to determine which control requirements apply to the item; in certain cases, laboratory access by certain foreign nationals/foreign persons for whom particular items are restricted, may also apply.

**JURISDICTION DETERMINATION** – UND must ensure that all “defense articles” (equipment, materials, technical data and software that appear on the United States Munitions List) are properly identified and treated as such. The process of determining whether an item is controlled as a defense article under the USML is called “jurisdictional determination,” because it is a process of determining whether they are controlled under the jurisdiction of the Department of State’s Directorate of Defense Trade Controls (DDTC’s), International Traffic in Arms Regulations (ITAR).

This process is fundamental to UND’s export compliance program, as an ITAR determination governs licensing and authorization requirements for access by foreign nationals/foreign persons in our laboratories, as well as transfers and exports out of the country. Therefore, UND requires that no item (equipment, material, technical data, or software) can be exported by any means, including access by foreign nationals/foreign persons within the U.S. until jurisdictional determination is confirmed by the ECO or RDC.

An important exception to ITAR laboratory access restrictions involves ITAR items that UND self-invents (whether or not patented), as the product of fundamental research. When the process and results are intended for publication, a restriction may not apply. However, outbound ITAR exports will always a trigger a license requirement analysis; and use of an ITAR item that UND procures or licenses from a vendor or third party to develop or inform its fundamental research may likewise trigger access restrictions, because the procured/licensed item is not per se self-invented.

The requirement to determine whether an item meets the definition of a defense article may be triggered at numerous phases of the research process, beginning with the earliest concept design stages. Many activities and functions such as Procurement, Human Resources, and Information Technology, are directly affected by this requirement. Therefore, all affected personnel must be aware of the jurisdiction determination process as assisted by the ECO and remain aware of all locations where such items are being used or stored. Once the jurisdiction determination has been made, this information shall be provided to all affected parties by the ECO.

In the event a clear jurisdictional determination cannot be made from the available relevant information (i.e., there is an ambiguity as to whether the item may be alternatively controlled by the Department of Commerce as “dual use” or not controlled at all), UND will apply for a Commodity Jurisdiction (“CJ”) from DDTC. CJs are potentially complex documents that require significant preparation, the results of which can have significant implications for UND’s current and future endeavors.

**USML CATEGORIZATION (ITAR)** – Once an item has been determined to fall under ITAR jurisdiction, its USML category must be identified. A defense article’s categorization has important implications for UND in terms of potential licensing requirements or export restrictions, so categorizations must be performed precisely. For example, an asterisk next to a category’s subparagraph denotes Significant Military Equipment (SME) which carries special licensing provisions and/or reporting. Final USML categorization will be determined by the ECO.

**ECCN CLASSIFICATION (EAR)** – Items which do not fall under ITAR jurisdiction are controlled by the Department of Commerce (DOC), Bureau of Industry and Security (BIS), under the Export Administration Regulations (EAR). These items require EAR classification prior to export.

EAR classification is the exercise of understanding where an item or technology falls in the Commerce Control List (CCL). The CCL describes “dual-use” items (those items that may be considered for commercial or military use.) A classification will determine whether an export license is required based on the destination of the item or technology. It is important to note that items for purchase off-the-shelf, directly from a manufacturer, or by any other commercial means may be controlled under the EAR. Likewise, imported items (not withstanding foreign origin) could likewise be subject to EAR restrictions upon export out of the country.
UND requires proper export classification of EAR items to determine licensing requirements before any shipment or release is made. This also includes “deemed exports,” defined as access by foreign nationals under certain circumstances to controlled EAR data for development, production or use of an item, where such applications fall outside the normal fundamental research exclusion. There are three ways to classify an item. UND may self-classify; use a classification provided by a manufacturer, if available/applicable; or seek a formal classification from BIS.

Self-classifications of items that are under the jurisdiction of the BIS, will be performed by the ECO in conjunction with the appropriate UND personnel, typically Principal Investigators or Researchers. Together the ECO and the employee will identify the most accurate Export Classification Number (ECCN) on the CCL. The classification will be performed as follows: (1) review categories 0 through 9 on the CCL which cover areas such as electronics, lasers, computers, sensors, aviation and marine applications, encryption, telecommunications, and identify the most applicable category; (2) identify the most applicable product groups (A through E) such as components, test equipment, materials, software, and technology within the category; and (3) determine which ECCN heading and subheading will apply to the item by reviewing the characteristics of the item being classified. The ECCN will explain possible related export controls, possible license exceptions, and the reason for control. The reason for control in combination with the destination of the item will determine licensing requirements.

For assistance with Jurisdiction Determinations, ITAR Categorization, or EAR Classification, please contact the ECO. All requests for export licenses or other government approvals will be submitted by the RDC.

Licenses and Export Authorizations

**ITAR LICENSING** – Items and activities controlled under the ITAR may require licensing or other authorization from the DDTC. Unless otherwise authorized, ITAR items of any kind must not be exported, or accessed by a non-U.S. person, without proper licensing or authorization from the Department of State. The specific type of license or authorization required depends on the type of export transaction subject to control; for example, temporary versus permanent export licenses. ITAR authorizations also include Technical Assistance Agreements (TAAs) and Manufacturing License Agreements (MLAs). For more information on ITAR authorizations, please refer to the DDTC web site.

Each type of license requires its own specific set of data points that DDTC collects through its DTrade application process and associated documentation, such as Transmittal Letters. A Transmittal Letter describes the transaction in detail, including end use, end user profile, ultimate disposition of the item, etc. Therefore, data requirements are specific to the type of license/authorization being used.

Before UND applies for an ITAR license, it must comply with all DDTC requirements pertaining to registration as an ITAR exporter, Empowered Official (EO) designation and DTRADE User status. Therefore, all ITAR license applications or other government approvals must be submitted by the RDC.

**EAR LICENSING** – Under the EAR, exports of controlled items that do not meet certain license exceptions require prior authorization (licensing) from the Bureau of Industry and Security (BIS), before export.

This requirement applies to outbound shipments of items or data; reexports of items or data; and export of a non-controlled item to a person or entity identified on one of the Government’s Restricted Entity lists. As with the ITAR, there are several different types of BIS licenses required (e.g., individual licenses, deemed export license, etc.) depending on the type of transaction. However, all license templates may be found in the BIS SNAP-R licensing system, which will specify the required range of data necessary to each application type. It is essential that UND capture all such data and verify its accuracy prior to submitting a license application package.

BIS uses an on-line SNAP-R licensing system to request licenses and authorization. The ECO and the Associate Vice President for Research & Economic Development/Research Development and Compliance are UND’s designated SNAP-R Account Administrators. Only these individuals will submit BIS EAR license applications on behalf of UND.
Restricted Party /End User Screening Against Government Watch Lists

The Departments of State, Treasury, and Commerce maintain published lists of known export violators. These lists are referred to collectively as the restricted party lists. UND must not enter into contracts, conduct business, exchange information, or otherwise participate, directly or indirectly, in any activities with any entity or person found on these lists. In order to comply with this requirement, UND employs a software service for restricted party screening.

If a match using the software is discovered pertaining to a person or entity appearing on any of the U.S. Government restricted party lists and a name or entity on UND transaction, the transaction must be stopped and evaluated in order to avoid export violations.

The restricted party screening software service allows for continuous rescreening of previously screened entities and individuals in order to ensure that these have not been included in updates to the lists. Entities subject to these screening and rescreening requirements include individual research collaborators/signatories to MOUs/MOAs, as well as foreign research institutions and organizations.

Human Resources/Office of International Programs

This process addresses the I-129 certification process for visa applicants who may have access to export controlled items (affected visa categories include H-1B, H-1B1 (Chile and Singapore), L1, and O1A) and also the process for using the bona fide employee license exemption for allowing foreign national PI access to ITAR applications.

**I-129 CERTIFICATION** – As part of its I-129 Visa Application process, the U.S. Citizenship and Immigration Service (USCIS) requires a certification as to whether the beneficiary (visa applicant) will require an export license to access export controlled technology or technical data during the course of his/her professional position. If a license is required, the certification also requires the petitioner (UND) to state that it will prevent access or disclosure through a control plan until a license or other government authorization is approved by the Department of Commerce or State.

In certain cases, the U.S. Government might not issue a license for particular sensitive control reasons. For example, currently under ITAR Part 126.1, China is a proscribed country for which DDTC will not issue an ITAR license; this prohibition and presumption of license denial extends to Chinese foreign nationals for whom ITAR items remain absolutely restricted. As a result, it is critical to evaluate whether access will require an export license as well as the likelihood of obtaining a license, in advance of an I-129 visa petition being submitted to USCIS.

UND must assess precisely what controlled technology or technical data it has or plans to have which could be accessed by the visa beneficiary. Toward this objective, the appropriate UND personnel (Human Resources, the Office of International Programs, and the department) in collaboration with the pertinent faculty members and administrators shall complete UND’s Form I-129 Export Control Questionnaire and return the form to the ECO during any I-129 Visa Application process. The ECO will review the Questionnaire and evaluate the need for any license requirements or access restrictions.

When the visa beneficiary is required to work in an environment that is export controlled, but for which direct access (and therefore licensing) is not required or is required but must be deferred pending license approval, the ECO, in collaboration, with the school, college, department, division, program, principal investigator or researcher shall develop and implement a Technology Control Plan, to be administered by all relevant functions including Information Technology and/or Facilities Management where a license application to allow access is pending.

**BONA FIDE EMPLOYEE EXEMPTION** – Under certain circumstances where UND receives an ITAR defense article and/or data which is essential for background information purposes to launch or conduct fundamental research, the ITAR provides for an exemption to the foreign person requirements to allow UND to disclose unclassified technical data in the U.S. by U.S. institutions of higher learning to foreign persons who are their bona fide and full time regular employees. This exemption is available only if: (i) the employee's
permanent abode throughout the period of employment is in the United States; (ii) the employee is not a national of a country to which exports are prohibited pursuant to Section 126.1 (of the ITAR); and (iii) the institution informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of the DDTC.

The “bona fide and full time regular employee” element required for the exemption typically does not include students and may not include postdoctoral researchers. (21 C.F.R. § 125.4(b)(10))

Assuming the requirements are satisfied, the foreign person employee is subject to the same ITAR restrictions that a U.S. person is with regard to restricting access to the item from all other foreign persons (i.e. foreign national students, visitors, post docs who are not employees) as governed by a TCP.

**Information Technology**

UND’s Chief Information Officer specifically addresses EAR and ITAR-driven access restrictions. While certain standard IT protocols will be adequate to address EAR and ITAR requirements, others (particularly with regard to unauthorized foreign national/person access) will have to differentiate between ITAR and EAR controls. Typically, IT requirements will have to address, among other things, the following areas: laptop security, network security, back-up and storage applications, file access approval (including download and print permissions), and email protocols.

ITAR and EAR controlled technical data must be securely limited to approved access only. The Chief Information Officer must at all times maintain a secure data file approval process to prevent inadvertent access to controlled data.

For assistance with export control IT procedures, please contact the ECO and/or the Chief Information Officer.

**Physical Security Measures**

At UND laboratories or other locations containing export controlled equipment, materials, software, and technical data, UND is required to maintain safeguards that prevent unauthorized physical and/or visual access to such items.

Depending on the particular control requirement, access restrictions may apply to UND personnel as well as visitors (vendors, research collaborators, etc.). Where Foreign national/Foreign person personnel are authorized by license to access controlled items, such personnel and their PIs/managers must be fully aware of the limits of such access as provided for in the license and/or its provisos.

Physical security and access restrictions and controls will be outlined in the TCP for a given project. The ECO, with assistance from the appropriate UND staff, will ensure adequate resources are in place to implement the TCP, when applicable.

For assistance with export control site/physical security procedures, please contact the ECO.

**Technology Control Plans**

UND may be required to implement Technology Control Plans (TCPs) to restrict access to laboratories or other locations containing export controlled equipment, materials, software, and technical data from Foreign nationals/Foreign persons for whom the item is controlled, and would otherwise require an export license to access. Circumstances could include the safeguarding of ITAR instruments or data that UND has not self-invented, or the receipt of proprietary information from a sponsor or collaborator that UND uses to pursue its fundamental research.

The TCP is a documented set of procedures that generally includes but is not limited to the following areas: responsible parties for implementing the TCP; physical controls (laboratory security); IT controls (data file/computer access security); deemed export license requirements (as potentially applicable to Foreign nationals/Foreign persons who UND believes should have authorized access but for whom the items are otherwise restricted); protocols for sharing and transferring the items with other authorized parties outside the scope of the UND laboratory other locations containing export controlled items; and any other requirements...
concerning screening, personnel authorization, labeling of items as controlled and time frame for which the TCP is applicable.

All ITAR controlled items are required to have a TCP or have the written approval of an Empowered Official to be exempt from the TCP requirement.

When a U.S. Government agency wishes to review a TCP as part of a licensing procedure or as part of an audit process, the PI and/or administrator in charge of implementing the TCP shall notify the ECO or the Associate Vice President for Research & Economic Development/Research Development and Compliance of such a request so that appropriate oversight is in place.

Procurement

When UND purchases, or receives as a donation or gift, a controlled item or material for research purposes, it shall identify the item and communicate the controlled status to the person responsible for purchase and the user, for example the laboratory director, program administrator or principal investigator. Identification and communication are especially important where ITAR items are concerned, as Foreign national/Foreign person access may be restricted or prohibited. UND’s procedure is to request vendors of laboratory items, equipment or instruments to provide the ITAR Category number or EAR ECCN or designation to the extent that either is applicable to the item procured.

Once the vendor or supplier has identified the export control status, this information shall be transmitted to the ECO, the laboratory user, administrator, or principal investigator and noted for further disposition. The ECO shall maintain a database of all such items so that access restrictions (ITAR) and outbound export of these items (ITAR or EAR) are appropriately flagged for potential licensing. For ITAR items, UND shall also screen those vendors from whom it is procuring the item against the U.S. Government restricted party lists to ensure compliance with screening guidelines.

Purchases valued at less than $5,000 may be made by using a UND Procurement Card (P-card), if otherwise eligible, under UND policy and procedures. All individuals issued a P-card are provided information on export controls and informed of their responsibility to request export control information from vendors prior to placing an order and are required to notify the ECO of the purchase of any ITAR controlled items (defense articles).

Licensed Software Programs

Software products may be identified by the licensor or vendor as “export controlled.” To understand the access implications for UND, it is necessary to determine whether the control notification is a general notification for purposes of alerting the user against exporting to OFAC-restricted countries, or whether a more specific control is applicable as may be the case with cryptographic functionality, or ITAR-governed software. The individual(s) purchasing, or receiving the software as a gift or donation, the software shall work with the ECO to evaluate whether there is a general or specific control in place.

If the software is determined to be for general purposes, it is no different than any other item which UND might, in turn, export: restrictions against exporting to certain countries apply under both OFAC and EAR regulations. If the software is more specifically controlled (e.g., due to cryptographic functionality or as an ITAR defense article) UND is obligated to implement a TCP and evaluate the article for export licensing where outbound export is contemplated. In these circumstances, the employee must inform and work with the ECO to ensure compliance and obtain the necessary licenses or government authorizations.

For assistance in making these determinations, please contact the ECO.

Sponsored Research

Grants and Contracts Administration is responsible for determining whether an agreement, award or contract contains or triggers export control restrictions. Subject to review by the RDC, UND may accept restrictions in its awards or contracts that could restrict UND faculty members, students and administrators who are not U.S. persons from access to research and research results which would otherwise remain unrestricted under the Fundamental Research Exclusion (FRE). In circumstances where the agreement, award or contract contains provisions that may eliminate the FRE, Grant and Contracts will evaluate the merits of the proposal and make a determination with the assistance of other UND personnel whether to accept or attempt to negotiate out the
particular provision. If the provision remains, Grants and Contract will make the ECO and other appropriate individuals aware of the export control concerns prior to committing to the obligation or accepting its financial benefits.

In certain cases, a sponsor’s intention with regard to export controls or the control implication of a particular clause or set of clauses may be ambiguous as to UND’s export control responsibilities. For example, this may occur with respect to “flow down” restrictions in a subcontract, or vague or open ended publication and/or citizenship limitations. In situations where such ambiguities arise or assistance is required in negotiating out a particular clause, is incumbent upon Grants and Contracts to resolve the matter prior to committing to the obligation or accepting its financial benefits.

High Performance Computer Facilities

The operation of the UND High Performance Computing Facilities involves the use of export controlled items and information. High Performance Computing Facilities have developed and implemented a TCP in coordination with the ECO to prevent unauthorized access of Controlled Information or Controlled Physical Items to Foreign persons/Foreign nationals. Export control issues related to High Performance Computing Facility operations will be identified, assessed and managed by the UND Chief Information Officer, in coordination with the ECO using this Manual as a guide.

Distance Education

UND officials responsible for offering distance education courses, in cooperation with the RDC, will screen courses as appropriate for purposes of compliance with export control laws and regulations and this Manual.

International students who never enter the U.S but are enrolling in distance education courses from outside the U.S. or through one of UND’s colleges, schools, units, departments, or centers will be subject to restricted party screening.

International Travel

UND personnel, who intend to travel abroad for fieldwork, conferences, etc., must be familiar with whether these activities are subject to export controls under the ITAR, EAR, and OFAC regulations, to the extent that the scope of activity involves the transfer of technical data and/or any commodity. This includes possible transfer of proprietary data by laptop, jump drive, or other portable device. Destination concerns are applicable for countries sanctioned/embargoed under OFAC, and restricted party screening requirements are applicable to research partners/collaborators, etc.

For travel to certain countries subject to OFAC the analysis must not only take into account the transfer of commodities and technical data, but the travel destination itself and in many cases, the full extent to which the activity provides a restricted “service” to those countries.

For purposes of conducting fundamental research abroad, shipping instruments used in field research or during the course of an inter-institutional collaboration may require obtaining an export license and sufficient lead time should be taken into account in order to receive an export license/authorization as necessary.

Presenting fundamental research results at international conferences or teaching curriculum-based courses abroad do not trigger export control requirements. However, the shipping or hand-carrying of materials in support of these activities may have control requirements.

Any international travel-related questions related to export control should be directed to the ECO. An international travel questionnaire must be completed and returned to the ECO for an evaluation of export control travel concerns prior to travel outside of the United States. If an export license or other government authorization is required, it must be received prior to travel.
International Collaboration

When drafting or planning to sign a Memorandum of Understanding (MOU) or Memorandum of Agreement (MOA) with a non-US research partner that does not directly fall under the auspices of Grants and Contracts, it is UND’s policy that the faculty member, employee, or researcher planning to enter into such an Agreement alert the ECO so that any export control implications to the proposed agreement can be evaluated in advance.

Prior to signing such an agreement, the ECO shall screen such entity and signatories against the U.S. Government’s watch lists to ensure that potential partners are not listed. UND faculty and administrators shall not execute any such MOU or MOA prior to the screening by the ECO, and they shall maintain records of any communications with regard to the screening with their records for the given project.

MOUs or MOAs may contemplate the exchange of export controlled items or data that drive the collaborative research. Because the export of such items or their receipt into UND’s laboratories potentially has export control implications, these implications must be identified at the earliest opportunity so that the parties can plan accordingly. In situations where the research is predicated on the receipt of (or access to) an export controlled item that requires prior government approval through a license or authorization, it is important that the parties take this contingency into account either in the MOU/MOA process or in a subsequent writing. It is UND’s policy not to bind itself to a contractual obligation, without acknowledging the need to fulfill a regulatory condition without which the program cannot proceed as intended.

Subsequent amendments to the MOU/MOA must proceed according to the same evaluation process, to the extent they subsequently alter the terms of the initial MOU/MOA or where the parties/signatories change over time.

When the MOU/MOA contemplates concurrent or subsequent Non-Disclosure Agreements (NDAs) and/or the receipt of export controlled items or data, contact the RDC to determine the precise export control language that shall be inserted into the NDA. The purpose of this language will be to alert UND in advance of a party’s intention to provide export controlled items, so that UND can determine the correct handling and disposition of such items consistent with control requirements or, where appropriate, decline acceptance of these items.

International Visitors and Activities

RESPONSIBILITY TO REQUEST AUTHORIZATION TO VISIT – It is the responsibility of all colleges, schools, units, departments, centers, faculty, researchers, and administrators at UND intending to invite or host international visitors to notify and request from the ECO the approval of such visit before the arrival of the international visitor. This includes all Foreign Nationals/Foreign Persons teaching, conducting research, or presenting workshops, symposia, or other academic presentations at UND who are not employed by UND and are not currently employed by a college or university based in the U.S. The ECO will conduct restricted party screening for all visitors to evaluate for export control concerns prior to participation in academic or research programs at UND.

No international visitor may have access (whether verbal, written, electronic, and/or visual) to export controlled information or physical items until the access has been reviewed by the ECO or RDC for export control concerns and, if required, an export control license or other appropriate authorization has been obtained. It is the responsibility of the faculty, researcher, or administrator hosting the visitor to ensure compliance with export control restrictions and to promptly disclose and report to the ECO.

RESTRICTED PARTY SCREENING – Screening of international visitors includes the screening of the foreign entity or institution where the international visitor is employed. Screening is needed whenever a written or verbal invitation to visit UND is made to an international visitor regardless of whether the international visitor is present or not in the U.S.

Faculty, researchers, and administrators inviting and hosting international visitors must, prior to the visit, provide information to the ECO sufficient for the ECO to conduct restricted party screening. The ECO will then report the results to the requestor.
If the restricted party screening results are of concern and/or impose restrictions, the ECO will notify the host department and attempt to resolve the concerns and/or restrictions, if possible. If not possible, the ECO will deny the visit and notify the host department/individual.

If restricted party screening results do not raise concerns the ECO will approve the visit unless further inquiries are warranted based on the disclosures made by the host department/individual. If further inquiries are warranted, the ECO will contact the host department/individual and resolve accordingly.

It is the responsibility of all employees at UND to comply with the initial terms and intent of the visit as communicated to the international visitor, and to immediately notify the ECO of any changes in the intent of the visit prior to engaging the international visitor in any activity that may require a restricted party screening.

Exempted International Visitors – restricted party screening of an International Visitor, as described above, is not required if no honorarium or reimbursement of expenses will occur and if one or more of the following conditions exist with respect to the anticipated visit of the International Visitor: (i) meet with colleagues to discuss a research project or collaboration if the meeting will not involve the release of export controlled items, technology or software, (ii) tour labs or research facilities that are not otherwise restricted, involve ITAR controlled items or are part of a Technology Control Plan, or (iii) participate in general academic or scientific meetings or presentations not subject to export control regulations. It is the responsibility of all employees at UND to comply with the initial terms and intent of the visit as communicated to the International Visitor, and to immediately notify the ECO or RDC of any changes in the intent of the visit prior to engaging the International Visitor in any activity that may require a Restricted Party Screening. This exemption does not apply to international visitors or their foreign entity or institution subject to OFAC sanctions or embargoes.

RESPONSIBILITY FOR INTERNATIONAL ACTIVITIES – The RDC is responsible for developing and implementing procedures to screen international programs, centers, and activities for compliance with export control laws and regulations. In the case of UND activities conducted outside the U.S., it is the responsibility of the UND activity organizer and/or responsible official to seek and obtain appropriate export control approvals from the ECO for activities including, but not limited to, the following: execution of agreements to be performed outside the U.S.; non-credit bearing study abroad courses; and making payments to Foreign Person vendors.

STUDENTS SUBJECT TO RESTRICTED PARTY SCREENING – All Foreign Nationals/Foreign Persons who are attending courses and/or receiving instruction at UND; or enrolled in a UND credit bearing program abroad; or participating in a UND non-credit bearing program, activity, or field trip abroad who have not previously attended UND and are not enrolled as continuing students at a college or university based in the U.S., will undergo restricted party screening by the ECO prior to participation in the Study Abroad program or in the non-credit bearing program, activity, or field trip as soon as reasonably possible once identified.

Technology Commercialization and Transfer

Because the transfer of technology and/or materials pursuant to a Material Transfer Agreement (MTA) may trigger export control requirements, UND’s Intellectual Property Commercialization and Economic Development Office (IPCED) shall work directly with the research compliance staff to proactively identify and resolve export control requirements associated with an MTA. Such requirements may be triggered when the activity contemplates an international transfer or is domestic within the U.S., but UND has knowledge that the item will be re-exported by the receiving party. As applicable to the transaction at hand, the Material Transfer Agreement shall take into account necessary export control provisions that include but are not limited to notification of export control status (ITAR or EAR) as well as general end use/user restrictions and applicable destination control statements.

Incoming NDAs (where UND is requested to sign another party’s confidentiality agreement covering the receipt of proprietary items or data) must likewise be reviewed and provisioned for export control purposes. As the potential modification of another party’s Confidentiality Agreement can take additional time, the IPCED shall be alerted as soon as possible to a pending Agreement so as to allow sufficient opportunity for timely evaluation.
Shipping/Receiving

**GENERAL SHIPPING AND RECEIVING** – UND requires that all personnel shipping items outside the United States (including hand-carrying items such as research equipment, materials, data, and biological materials) to evaluate, for export control purposes, all items and associated documentation which are intended to be sent to foreign destinations in coordination with the ECO and other appropriate offices.

It is critical that UND personnel engaged in shipping/receiving functions understand the scope of the proposed export and have at their disposal all available information in the file (such as screening records and, where applicable, a copy of the export license) in which to make an independent judgment as to the compliance of the export. It is best practice for those engaged in the shipping/receiving activity to double check the terms and condition of a license against the ship-to instructions associated with a proposed export.

Prior to shipping any item, all export documentation including appropriate references to classification, value, licensing where applicable, license conditions, quantity, consignee, Schedule B #, and numerous other data points must be incorporated into all shipping documentation, including Automated Export Statement (AES) filing.

Likewise, when UND receives items into inventory, certain regulatory requirements (Customs and export control control) must be anticipated. For example, when an ITAR item is imported, the item will need to be handled consistent with ITAR physical security access restrictions.

For export compliance related to the shipping/receiving function, please contact the ECO.

**BIOLOGICAL MATERIALS** – Risk management protocols, (e.g., Institutional Biosafety Manual) also require that the transfer of biological materials by UND to another person strictly adhere to UND’s protocols. In certain cases, such materials may also be export controlled under the EAR and in rare cases under the ITAR. As such, individuals planning to export biological materials shall work directly with the ECO to determine whether export control requirements are being met, and what if any special arrangements (including export licensing, destination control statements, end user agreements, and authorization from other government agencies regulating biological materials) shall be affected pursuant to such transfers.

**Embargoed Country Compliance/Office of Foreign Asset Control Regulations**

The Department of Treasury administers the Office of Foreign Assets Control (OFAC) regulations. These regulations outline the parameters of economic embargoes against various countries. When contemplating any activity involving an OFAC country, UND must ensure compliance with the applicable OFAC regulations for that country. OFAC regulations vary on a country-by-country basis, depending on the type of activity involved. For the import/export of certain items and services provided to beneficiaries in certain countries, particular license rules apply.

Collaborative research arrangements, that contemplate the transfer or receipt of tangible materials; the establishment of research facilities at institutions in these countries; field work being conducted in these countries; and the payment of any kind for service performed (even in support of fundamental research activity) can trigger these restrictions and require prior authorization. When required, the RDC will apply for the appropriate license or government authorization.

UND faculty, staff, students or affiliates who are planning to travel to or engage in any transactions or collaborations with any of the OFAC embargoed countries must inform the ECO in advance to determine whether OFAC requirements apply.

BIS controls a number of items for “AT” (Anti-Terrorism) purposes, controls which apply in parallel with the OFAC regulations but are distinct controls. AT-controlled items on the CCL are specifically referenced for certain countries in relation to the Country Chart. Likewise, ITAR independently controls any export to Section 126.1 prohibited countries, which includes but does not directly correspond to the list of OFAC designated countries.
The ECO will perform restricted party screening for travel to, and transactions or collaborations with OFAC embargoed countries. Restricted party screening should always include the Specially Designated Nationals List (SDN), comprised of individuals/entities which OFAC specifically restricts and associates with a licensing requirement.

For OFAC-related concerns and questions, please contact the ECO.

**Antiboycott Restrictions**

Antiboycott provisions were implemented to address foreign governments’ economic boycotts of countries friendly to the U.S. The law prevents U.S. persons from doing business under terms that would restrict that person’s ability to do business with other countries under a boycott not recognized by the U.S. The impetus for the establishment of the antiboycott provisions was the Arab League boycott of Israel. The antiboycott regulations are found in the Export Administration Act (EAA) and Tax Reform Act (TRA).

The Office of Antiboycott Compliance (OAC) is part of the Bureau of Industry and Security in the U.S. Department of Commerce and is charged with enforcing the U.S. antiboycott provisions. (15 C.F.R. § 760) The TRA does not prohibit specific conduct; rather, it denies tax benefits for certain types of boycott related activities.

Anti-boycott restrictions are most likely to arise in dealings with entities in Arab League countries. The regulations include strict reporting requirements even when the U.S. person refuses to participate in a requested boycott action.

Antiboycott laws generally apply to any person or entity in the U.S. and to U.S. person or entities abroad. For example: A foreign company’s affiliate or permanent office in the U.S.; or A U.S. company’s foreign affiliate’s transaction with a third-party if the affiliate is controlled by the U.S. company and the transaction involves shipment of goods to or from the U.S.

The BIS has identified the following as signs of anti-boycott restrictions:

- Agreements to refuse or actual refusals to do business with Israel or with blacklisted companies.
- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality.
- Agreements to furnish or actual furnishing of information about business relationships with Israel or with blacklisted companies.
- Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person.
- Paying or otherwise implementing letters of credit that include requirements to take boycott-related actions prohibited by the antiboycott regulations.

Exceptions to these prohibitions exist but are limited (15 C.F.R. § 760.3).

The EAR requires U.S. persons to report requests they have received to comply with, further, or support an unsanctioned foreign boycott on a quarterly basis. See the Related Information Section for links to the required report forms, regulations and the Office of Antiboycott Compliance advice line. The U.S. Internal Revenue Service (IRS) also requires U.S. taxpayers to report operations in or relating to boycotting countries and nationals and requests to cooperate with boycott activities.

**Issue Reporting and Notification**

UND will make every effort to identify and investigate suspected or actual violations that occur in conjunction with its export activities. All known or suspected export compliance problems should be documented in writing and reported to the ECO. Timeliness of reporting is a key issue, since export violations are evaluated not only in terms of their content, but also frequency of occurrence, and university system-wide implication.

Every instance of a suspected violation shall be reviewed by the ECO. The ECO will notify all parties engaged in activities related to the given violation. Upon notification, all export shipments and releases of technical data related to the suspected issue must be placed on hold until otherwise authorized by the ECO or the RDC. The
ECO will report compliance issues to the Office of General Counsel, as appropriate, and consider Voluntary Disclosure to the relevant federal agency (agencies), as applicable.

Timeliness of reporting is a key issue, since export violations are evaluated not only in terms of their content, but also frequency of occurrence, and system-wide implication. See the Related Information Section for UND Fraud Hotline reporting information.

UND’s policy is to voluntarily self-disclose violations, as required. The penalties for these export regulation violations can be severe, including personal liability, monetary fines, and imprisonment. However, government agencies assign great weight to voluntary self-disclosures as a mitigating factor.

Any individual who suspects a violation has occurred must immediately notify the ECO or the RDC. The ECO, or RDC staff will then send an initial notification about the suspected violation to the appropriate government agency (For EAR violations, see 15 C.F.R. § 764.5. For ITAR violations, see 22 C.F.R. § 127.12(c)).

Possible violations of governmental laws/regulations will be investigated by the ECO or the RDC or designee. Action will be taken according to the nature, severity, and scope of the offense.

UND’s RDC shall have the authority to suspend or terminate a research, teaching, testing, or other export activity if it is determined that the activity is not in compliance, or will lead to noncompliance with existing export or sanction laws or policy.

The ECO will conduct an internal review of the suspected violation by gathering information about the circumstances, personnel, items, and communications involved. Once the review is complete, the ECO will provide the government agency with a supplementary letter with a thorough account of:

1. The project’s description and background;
2. A description of the suspected violation;
3. Which items and controlled categories were involved;
4. Which dates the violations occurred on;
5. Which countries were involved;
6. Who was involved and their citizenships;
7. An explanation of why the violation occurred;
8. Any corrective actions taken; and
9. UND’s commitment to export controls compliance.

Once the initial notification and supplementary letter have been sent, UND will follow the government agency’s instructions.

Most importantly, if there is any question as to whether an activity would be a violation of the export control laws, it is important to consult with the ECO prior to engaging in the activity.

Violations and Penalties for Non-Compliance

Any person or entity that brokers, exports, or attempts to export a controlled item without prior authorization, or in violation of the terms of a license, is subject to penalties. Violation of export control laws can result in both civil and criminal penalties including fines and imprisonment. In assessing penalties, DDTC, BIS, and OFAC will consider mitigating factors.

Mitigating factors include whether the disclosure of the violation was made voluntarily, whether the violation is an isolated incident or part of a pattern of continuing behavior, whether the company had a compliance program in place at the time of the violations, whether steps were taken to improve the compliance program after the discovery of the violation and whether the violation was due to inadvertence, mistake of fact, or a good faith misinterpretation of the laws.

If there is a question as to whether an activity would be a violation of the export control laws, it is important to consult with the ECO prior to engaging in the activity.
Penalties for violations can apply to both individuals and UND and are subject to the items involved, the federal regulatory agency and applicable enforcement statute. Penalties include:

**ITAR**
- **Criminal**
  - UND: A fine of up to $1,000,000 for each violation.
  - Individual: A fine of up to $1,000,000 or up to 20 years in prison, or both, for each violation.
- **Civil**
  - UND: A fine of up to $500,000 for each violation.
  - Individual: A fine of up to $500,000 for each violation.

**EAR**
- **Criminal**
  - UND: A fine of up to the greater of $1,000,000 or five times the value of the exports for each violation.
  - Individual: A fine of up to $1,000,000 and up to 20 years in prison, or both, for each violation.
- **Civil**
  - UND: A fine of up to $250,000 for each violation, or twice the value of the transaction, whichever is greater.
  - Individual: A fine of up to $250,000 for each violation, or twice the value of the transaction, whichever is greater.

**DEPARTMENT OF TREASURY (OFAC)**
- **Criminal**
  - UND: A fine of up to $1,000,000 for each violation.
  - Individual: A fine of up to $1,000,000 or up to 20 years in prison, or both, for each violation.
- **Civil**
  - UND: A fine of up to $250,000 for each violation, or twice the value of the transaction, whichever is greater.
  - Individual: A fine of up to $250,000 for each violation, or twice the value of the transaction, whichever is greater.
- Violation of specific sanctions laws may add additional penalties.

Additional sanctions for each violation may include the denial of export privileges, the loss of federal funding for UND or the individual, and/or seizure or forfeiture of goods involved in the transaction.

**DISCIPLINARY ACTIONS** – In recognition of the seriousness of non-compliance with export controls, UND will address non-compliance in accordance with the State Board of Higher Education Rules and Regulations as well as the UND policy. All UND employees responsible for export controls compliance or participating in export-controlled projects must be aware of the substantial criminal and civil penalties imposed for violation of the export regulations including personal liability, monetary fines and imprisonment and the potential loss of research funding and export privileges. Finally, employees and students may be subject to disciplinary action up to and including termination per UND rules and Policies and Regulations.

**Record Keeping**
UND must comply with regulatory requirements regarding export control-related recordkeeping. These records must be organized so as to be available when requested by U.S. governmental authorities or for internal auditing purposes. Records include printed and hard copy documents, as well as electronic records (including email, email attachments and other electronic files).

All records will be retained for a minimum period of five (5) years from the date of export, reexport, deemed export or from the date of license expiration, as per the requirements of 22 C.F.R. §§ 122.5, 123.22(b)(3)(iii), 123.26, and 125.6 (ITAR) and 15 C.F.R. § 762.6 (EAR) or as required by other applicable law, policy, or procedure, whichever period is longer. Departments or programs will be the custodian of records for their project files and must keep soft or hard copies of all export documentation, including financial records, shipping documentation (Commercial Invoices, Shipper's Export Declarations), and appropriate UND Certifications in their files for the minimum period of (5) five years.
Certain records may require restricted access where, for example, they contain controlled technical data as part of the transaction. When necessary, access restrictions will be outlined in the project’s TCP.

UND personnel engaged in Shipping/Receiving shall be responsible for maintaining such records. The RDC shall be responsible for maintaining all documentation it generates and/or participates in as part of its export control oversight function, including, but not limited to, MOUs/MOAs, classification and jurisdiction determinations, license-related documentation, screening records, end user statements, sponsored research evaluations, U.S. government communications. When RDC is the custodian of an export record, the Office will comply with the UND Records Retention Policy. Any UND personnel engaged in any export control oversight function shall also be responsible for maintaining all documentation they generate.

Export Control Training

The ECO will provide annual export control training sessions for faculty, staff and students and affiliates. The ECO will also provide ongoing export briefing sessions for faculty, staff, students, and affiliates on an as-needed or requested basis. The training sessions are designed to provide an overview of export control law and regulations, provide an update on recent developments with export control issues, and answer specific questions pertaining to research and international collaborative endeavors. The U.S. Government’s export control authorities consider awareness training a key element of a compliance program, and it is UND’s intention to familiarize faculty and staff as comprehensively as possible on these requirements. In this regard, training logs should be maintained, reflecting the date of trainings given and attendees.

Please contact the ECO to learn about the next scheduled Export Control training or to arrange customized briefing sessions.

Conducting Export Self-Assessments

UND’s export assessment program is designed to identify and address export compliance gaps and weaknesses. UND requires assessments on a priority basis, as determined by campus Deans and administrators. The ECO will conduct periodic self-assessment of university export or sanction restricted activities and report its findings to the Associate Vice President for Research & Economic Development, Research Development and Compliance, as appropriate.

If a compliance exposure is discovered, corrective action procedures shall be implemented and, depending on the particular circumstances, a voluntary disclosure notification to the appropriate government agency may be initiated.

Incubator and Spin-off Activity

The use of UND’s laboratories and resources for any activity other than fundamental research could trigger export control requirements that UND would not otherwise be aware of or accept as part of its compliance risk. It is important that the directors and administrators of incubators or spin-off businesses and entities (who may in parallel hold teaching and research positions at UND) be aware that, per UND’s policy, all such proprietary activities must be performed separately from UND’s own and dedicated research laboratory space. This also includes proprietary consulting arrangements that faculty members may have.

Foundations

Although created to benefit UND, the Foundations are separate legal entities and generally would not be subject to University export control policy or procedures, including this manual. However, the RDC will cooperate with the Foundations to perform export control assessments and ensure that any items and technology disclosed to and accepted by the Foundation but retained by UND for the purpose of continuing use or development are appropriately marked and controlled.

As separate legal entities, the Foundations are responsible for performing their own restricted party screenings, making their own export licensing decisions, and obtaining any necessary export authorizations prior to exporting UND developed items, technical data, or technology to Foreign National/Foreign persons. UND will make its services available to the Foundations, including consultation with the ECO, when evaluating their export control concerns.
Non-Retaliation

In accordance with the UND’s policies and procedures, no individual shall be punished or retaliated against solely because he or she reported what was reasonably believed to be an act of wrongdoing or export control violation. However, a UND employee may be subject to disciplinary action if the employee knowingly fabricated, knowingly distorted, or knowingly exaggerated the report.

Emergency Management

NOTIFICATION – Effective implementation and administration of the UND’s export compliance policy and procedures requires cooperation between UND and its personnel to ensure compliance with U.S. export control regulations and laws. Certain events require UND personnel to immediately notify the Office of General Counsel.

If any of the following events occur, prior to taking any action, immediately contact the Office of General Counsel, the ECO, or the Associate Vice President for Research & Economic Development, Research Development and Compliance:

- Non-routine contact, by phone, letter or in person, by a U. S. Government official or agency concerning exports or imports, including any request to review or discuss a previously issued export license or past export shipment.
- A shipment to or from UND is detained or seized by U.S. Customs.
- A suspected violation of export control laws or UND policy and procedures regarding exports.

Notification shall occur as soon as possible after any of the foregoing events.

GOVERNMENT SUBPOENAS – In the event any subpoena, other criminal procedure notifications, or other request for documents is received from any Federal agency related to U.S. export or import laws, immediately contact the Office of General Counsel for appropriate and timely response. Also, if a Federal agency representative arrives on campus, immediately contact the Office of General Counsel. You shall not interfere with or obstruct any Federal agent or law enforcement officer in the performance of his/her duties.

RESPONSIBILITIES

| Grants and Contracts (Sponsored Research) | Review contracts and subcontracts for “troublesome clauses” or flow-down restrictions which would restrict non-U.S. persons/nationals from participating in research activities.
| | - Can include citizenship restrictions or publication restrictions.
| | - Consult with ECO regarding the presence of such clauses.
| | Review all re-proposal documentation for export control implications such as licensable shipments, access restrictions, etc.
| | With ECO, department Deans, other authorized personnel and Associate VP for Research and Economic Development, coordinate MOUs and MOAs for export control implications prior to execution.

| Human Resources and Payroll Services | Work with the ECO to screen employees against US Government watch lists as required.
| | When informing IT and Security of termination of foreign national employees, provide additional reminder of the importance of complying with the Technology Control Plan (TCP), when applicable.
| | Work with ECO to establish “Bona Fide Employee” status of employees who intend to utilize the Bona Fide Employee exemption.
| | When informing IT and Security of termination of foreign national employees, provide additional reminder of the importance of ensuring access restrictions on a go-forward basis.
| | During exit interviews with foreign nationals who have been party to an export license or to a Bona Fide Employee exemption, provide copies of
signed Technology Control Plans and additional reminders regarding ongoing control of any relevant technical data.

| Information Technology | ▪ Establish secure file storage and restricted access protocols for controlled technical data.  
  o Segregate ITAR data from EAR data (with assistance from ECO in identifying ITAR data).  
  ▪ Ensure that backup storage protocols, network security, etc. are in compliance with Export Controls.  
  ▪ In concert with Export Control Officer, contribute to creation of Technology Control Plans as required.  
    o Ensure that IT provisions of Technology Control Plans are adhered to.  
  ▪ In concert with ECO, create and maintain a travel policy for employees with regard to technical data stored on portable electronic devices. Provide “clean” laptops as necessary.  
  ▪ As directed by ECO, implement any required IT access restrictions for foreign national employees.  
    o Ensure that such restrictions are represented in relevant Technology Control Plan. |

| Office of International Programs | ▪ Immediately alert ECO regarding any intended global exchange, study abroad or visiting scholarship appointment involving an OFAC-restricted country or a national from an OFAC-restricted country.  
  ▪ Work with the ECO to screen international parties and related entities employees against US Government watch lists as required.  
  ▪ Complete the I-129 Visa application process as required:  
    o Coordinate with ECO and contact(s) from the relevant department to determine accurate responses to Export Control Certification required by USCIS.  
    o Provide completed application, including Export Control Certification, to the ECO. |

| Office of Safety | ▪ Alert ECO of all intended international transfers in order to assess for export control implications. |

| Physical Security | ▪ Create and implement export control policy requirements for all campus areas (laboratories, etc.) containing controlled items, including:  
  o “Clean desk” policy and other controls regarding hard copy technical data storage.  
  o Laptop/portable electronic device storage (including flash drives).  
  ▪ Ensure that Visitor Policy is in compliance with Export Controls.  
    o Screen visitors against US Government watch lists as required.  
    o For areas containing controlled items, this may include citizenship checks, badging, escort requirements, and allowable walk space designations.  
  ▪ In concert with ECO, contribute to creation of Technology Control Plans as required.  
    o Ensure that the physical security provisions of Technology Control Plans are adhered to.  
  ▪ As directed by ECO, implement any required laboratory access restrictions for foreign national employees.  
    o Ensure that such restrictions are represented in relevant Technology Control Plan. |

| Purchasing | ▪ Screen and rescreen all vendors/suppliers against government watch lists using a UND approved software service for restricted party screening  
  ▪ Ensure that, for each purchase of laboratory equipment/instrumentation, the vendor/supplier provides export control classification information.  
    o Submit vendor-supplied export control classification to the ECO for
confirmation.

- If vendor is unable to supply a classification, notify ECO (who will either self-classify or obtain a formal classification from the appropriate federal agency).
- Communicate export control classification (as verified by ECO) to the item’s user on campus.
- Communicate export control classification to the ECO for inclusion in the database of controlled inventory.

### Research Departments: Export Control Focal Point Roles/Responsibilities

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<tr>
<th>In general: to serve as an export control liaison ensure that all export control inquiries as identified below are timely referred to the ECO</th>
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<tbody>
<tr>
<td>- Ensure that ITAR-classified items (hardware, software, materials, technical data) that are present in the laboratory or will be received into the laboratory, are evaluated for a Technology Control Plan (TCP) to safeguard from unauthorized access; evaluation to be conducted with ECO.</td>
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<tr>
<td>- Similarly, notify ECO of any EAR controlled proprietary data that the PI receives from a sponsor that would likewise require a Technology Control Plan (TCP) to safeguard from unauthorized access.</td>
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<td>- Where a Non-Disclosure Agreement (NDA) is contemplated to receive such data, contact ECO for further guidance.</td>
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<tr>
<td>- Where the classification of an item is unknown or ambiguous for purposes of restricted access or export abroad, assist the ECO in properly classifying such item under the Commerce Control List (EAR) or the USML (ITAR).</td>
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<tr>
<td>- Where an item requires a Technology Control Plan (TCP) to restrict access, work with ECO and PI in creating and implementing Plan.</td>
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<tr>
<td>- Where a PI or Research Administrator is planning to export a controlled commodity (hardware, software, materials) abroad or transfer it domestically with the understanding that the consignee is planning to export abroad, contact ECO at least 45 days in advance of planned transfer so that proper export authorization can be obtained.</td>
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<tr>
<td>- Where a PI or Research Administrator is planning to exchange technical data (any data that is not covered under the FRE and is subject to export control EAR or ITAR, notify ECO at least 60 days in advance to ensure that proper export authorization is arranged.</td>
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<td>- When an export authorization is in place, ensure that PI/beneficiary is aware of any license conditions and limitations that may apply.</td>
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<tr>
<td>- Where the PI or Research Administrator is planning to hand-carry any research tool or instrument (including laptops hand held devices containing proprietary information that is export controlled), notify ECO of such plans so that proper export control evaluation occurs prior to travel.</td>
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<tr>
<td>- Where the PI or Research Administrator engages in an international collaboration or accepts a foreign faculty appointment that will likely involve the exchange of data (regardless of whether such data is the result of fundamental research and is published) and commodities with an individual or entity abroad, contact ECO to ensure that foreign recipient has been properly screened against all restricted entity watch lists.</td>
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<tr>
<td>- Where the PI plans to host a foreign national visitor or group of visitors to the campus, and such visits included laboratory access and exposure, contact ECO for further guidance to ensure that any potential ITAR safeguards are in place prior to visit.</td>
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<tr>
<td>- Where the PI or Research Administrator plans to transfer any ITAR commodity domestically, ensure that such item or data is properly marked (including emails in the case of attached or embedded ITAR data) so as to alert the recipient of the ITAR-controlled status.</td>
</tr>
<tr>
<td>- Where the PI or Research Administrator plans to enter into any transaction with an embargoed country for any purpose, contact the ECO for further guidance in advance of transaction.</td>
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Where the Department plans to employ a foreign national on either an H or J visa, ensure that all I-129 certifications are evaluated in advance of such placements.

Shipping/Receiving

All UND personnel involved with shipping items outside the United States shall:
- Work with the ECO to evaluate, for export control purposes, all items (including documentation) which are intended to be sent to foreign destinations.
  - This includes shipment of biological materials, which may be subject to export controls.
- In the event of a shipment authorized by an export license, ensure that shipment is in compliance with the terms of the license, including
  - Items shipped match the items listed on the license;
  - Destination of shipment matches destination listed on the license;
  - Recipient matches the end user listed on the license.
- Work with the ECO to prepare AES filing (or, if delegated to Freight Forwarder, ensure that it has been completed).
- When receiving controlled items into inventory, work with ECO to ensure that they are marked and stored in compliance with the relevant Technology Control Plan, as appropriate.
- Work with the ECO to conduct restricted party screening for all freight forwarders and end users of shipped items.
- Maintain all required export recordkeeping (shipment documentation, AES confirmations, correspondence regarding export control, correspondence from customs authorities, etc.).

Technology Commercialization and Transfer

- In concert with ECO, review MTAs which involve international transfer.
  - This includes situations in which UND has knowledge that an item will be exported by its domestic recipient.
  - Ensure that all such MTAs include necessary export control provisions such as notification of ITAR/EAR status, end use/end user restrictions, destination control statements, etc.
- Hold all international transfers pending approval from the ECO.
- In cooperation with Grants and Contracts, review incoming NDAs for export control provisions and determine implications of such provisions.

FORMS

<table>
<thead>
<tr>
<th>Bona Fide Employee Certification and Written Notification</th>
<th>Contact Export Control Officer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certification for the use of UND loaned, transferred, or sold items subject to U.S. export control regulations</td>
<td>Contact Export Control Officer</td>
</tr>
<tr>
<td>Export Control Checklist</td>
<td>Contact Export Control Officer</td>
</tr>
<tr>
<td>Hosting Foreign Visitors or Guests</td>
<td>Contact Export Control Officer</td>
</tr>
<tr>
<td>I-129 Certification Questionnaire</td>
<td>Contact Export Control Officer</td>
</tr>
<tr>
<td>International Travel Questionnaire</td>
<td>Contact Export Control Officer</td>
</tr>
<tr>
<td>Shipment Checklists</td>
<td>Contact Export Control Officer</td>
</tr>
<tr>
<td>Sponsored Research/MOA/MOU Checklist</td>
<td>Contact Export Control Officer</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Technology Control Plan</td>
<td>Contact Export Control Officer</td>
</tr>
<tr>
<td>Technology Control Plan Questionnaire</td>
<td>Contact Export Control Officer</td>
</tr>
<tr>
<td>Temporary Export</td>
<td>Contact Export Control Officer</td>
</tr>
<tr>
<td>Visa Beneficiary Questionnaire</td>
<td>Contact Export Control Officer</td>
</tr>
</tbody>
</table>

### APPENDICES

| UND Finance & Operations Organizational Chart | [http://und.edu/finance-operations/_files/docs/vpfo-org-chart.pdf](http://und.edu/finance-operations/_files/docs/vpfo-org-chart.pdf) |

### REVISION RECORD

| 08/26/2013 – Policy Implementation | Signed by President Robert O. Kelley |