



Northwestern  
University

**Approving University Official(s):** Provost

**Responsible Office:** Export Controls & International Compliance (ECIC)

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## EXPORT CONTROLS & INTERNATIONAL COMPLIANCE

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### Policy Statement

Northwestern University (“Northwestern” or “University”) must comply with all export control regulations issued by the federal government, which apply to all activities at Northwestern.

### Purpose

This policy outlines the responsibilities of the Northwestern community to comply with federal export control regulations, and the repercussions of noncompliance. These regulations were created to protect national security, foreign policy, and economic interests of the United States. The federal government regulates the export of certain items—including commodities, software, and technology through the issuance of regulations that either prohibit, or require licensing prior to, the export of such items.

An export may occur through either the actual shipment or transmission of certain items—including commodities, software, and technology outside of the United States through various means or through the release of controlled technical information or source code to a Foreign National within the United States.

The federal government has also imposed restrictions on certain countries, and those restrictions may impact certain University activities. Violation of export control regulations and sanctions could result in criminal and civil penalties, including significant monetary penalties, imprisonment, debarment and suspension, and the loss of exporting privileges.

## **Audience**

All members of the Northwestern community, including faculty, staff, and students.

## **Definitions**

*CCL (Commerce Control List)*: a list of “*Dual Use*” items under the specific jurisdiction of the Department of Commerce, subject to regulation under the Export Administration Regulations (EAR). The CCL is used to help determine if an export license is needed for U.S. exports.

*Commodity*: Any article, material, or supply except technology and software.

*Deemed Export*: the release of technology or source code controlled under the EAR to a Foreign National within the United States.

*Dual Use Items*: items controlled under the EAR that can be used both in military and civilian applications.

*EAR (Export Administration Regulations)*: policies and regulations issued by the U.S. Department of Commerce’s Bureau of Industry and Security, which govern “*Dual Use*” items—including commodities, software, and technology.

*Export*: the transfer of export-controlled items—including commodities, software, and technology (technical information), or providing a defense article or service to a non-U.S. Person or entity. An export can occur in several ways, such as: a physical shipment, hand-carrying an item out of the U.S., email transmission of controlled data, presentations, discussions, or visually accessing export-controlled data.

*Foreign National*: an individual who is not a United States citizen, permanent resident alien of the United States (*i.e.*, “green card holders”), lawfully admitted temporary resident alien or refugee, or other protected individual as defined by 8 U.S.C. 1324b(a)(3).

*Fundamental Research (under the EAR)*: research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

*Fundamental Research (under the ITAR)*: research in science and engineering at accredited institutions of higher learning in the U.S., where the resulting information is ordinarily published and shared broadly in the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. government access and dissemination controls. Research will not be considered fundamental research if: (i) the university or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or (ii) the research is funded by the U.S. government and specific access and dissemination controls protecting information resulting from the research are applicable.

*Fundamental Research Exclusion (FRE)*: a policy established under National Security Decision Directive 189, issued in 1985, which states that the products of Fundamental Research are excluded from the export

control regulations.

*ITAR (International Traffic in Arms Regulations)*: regulations issued by the U.S. Department of State's Directorate of Defense Trade Controls, which control the export and import of defense articles, defense services, and technical data.

*Item (under the EAR)*: "Item" means "commodities, software, and technology."

*Export Controls & International Compliance (ECIC)*: a centralized office within Northwestern's Office for Research which is responsible for implementing, overseeing, and communicating policies and procedures governing export controls and research security compliance within the University.

*OFAC (Office of Foreign Assets Control)*: a division of the U.S. Department of Treasury, which administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

*Restricted Party Lists*: lists of parties (persons, academic institutions, companies, or other entities) for which the U.S. Government prohibits or restricts transactions (e.g., doing business with them, exporting items, or making payments, etc.). Examples of these lists include the Entity List, Denied Persons List, the Unverified List, the DOD 1286 List, the Specially Designated Nationals List, the Debarred List, and the Excluded Parties List.

*Software*. (Cat: all)—A collection of one or more "programs" or "microprograms" fixed in any tangible medium of expression.

*Technology or technical information*: Information necessary for the "development," "production," "use," operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified on the Commerce Control List that control "technology") of an item.

*Technology Control Plan (TCP)*: an internal written document that provides for the policies and procedures to be used to protect potentially controlled items.

*USML (United States Munitions List)*: a list of defense articles, technical data, and defense services which are designated as defense- and space-related by the U.S. government and thus subject to ITAR regulations.

## Policy Implementation

### 1.0 Guiding Principles

One of the underlying principles in conducting research at Northwestern is academic freedom. Relative to export control regulations, this means that research activities should be undertaken freely and openly with no restrictions on the dissemination of research results or access to research results by Foreign Nationals. By adhering to this principle, Northwestern is generally able to operate under the Fundamental Research Exclusion (FRE), which largely limits the impact of the export control regulations on Northwestern's research activities. The FRE allows Northwestern to conduct its research without having to obtain licenses before sharing technology or software with Foreign Nationals. **This exclusion, however, does not apply in all circumstances.** In the absence of this exclusion or any other available exception, exemption or exclusion outlined in this Policy and/or in the export control regulations, Northwestern must obtain the appropriate license or approval, if necessary, before engaging in any exporting.

### 1.1 *Fundamental Research Exclusion*

Under the FRE, Northwestern operates within a safe harbor that largely excludes the University from the export control regulations as they relate to university research. This exclusion requires that research be conducted freely and openly, with no restrictions upon access to the underlying research by Foreign Nationals. Under the ITAR, “fundamental research” may occur at “any accredited institution of higher education located in the United States,” while under the EAR, such research may occur at facilities other than accredited institutions of higher learning in the United States. In the absence of the FRE, Northwestern would be required to obtain licenses and/or restrict the involvement of certain Foreign Nationals from research. Thus, the protection of the FRE is critical to Northwestern’s ability to conduct research in an open environment consistent with the principle of academic freedom.

Codified in both the EAR and the ITAR regulations, the FRE provides a safe harbor for institutions, including Northwestern, who are engaged in the conduct of Fundamental Research. The FRE can be destroyed if the University: (a) accepts restrictions on publication other than a temporary delay to ensure the appropriate safeguarding of proprietary information and patent rights; or (b) accepts restrictions on the participation of Foreign Nationals in the research. Additionally, any arrangements between a researcher and outside sponsors that act contrary to the principles of openness in research, outlined below, could serve to destroy the FRE.

### 1.2 *Openness in Research*

Northwestern is committed to freedom of access by all interested persons to the underlying data, processes, and results of research through the publication and broad dissemination of those results. Consistent with this approach, Northwestern does not undertake secret or classified research or research whose results may not be published without prior approval by the sponsor. Additionally, unless required by law, no restriction on participation in research may be based on one’s country of origin or citizenship.

### 1.3 *Policy on Discrimination and Harassment*

The University’s [Policy on Discrimination, Harassment, and Sexual Misconduct](#) holds that Northwestern does not discriminate or permit discrimination by any member of its community against any individual on the basis of any classification protected by law in matters of the educational programs or activities it operates. Consistent with this policy, Northwestern does not accept restrictions upon the involvement of Foreign Nationals in its research projects, unless required by law.

## 2.0 *Activities Beyond the Scope of the FRE*

While the FRE provides Northwestern with a safe harbor in which to conduct its research, it does not cover all activities at the University. For instance, the shipment of physical items beyond the borders of the United States is not covered by the FRE. Any item that comes into Northwestern’s possession which is protected under proprietary disclosure of information or non-disclosure agreement, including material transfer agreements, is not covered by the FRE. Also, any activity involving a restricted party or an embargoed country must be reviewed to ensure that it is appropriate under the law. To ensure that any activities falling outside the scope of the FRE are given proper attention, Northwestern faculty and staff should engage the

[Export Controls & International Compliance \(ECIC\)](#) office to review any issues that may be subject to the export control regulations.

### 3.0 *Additional Exclusions from the Export Control Regulations*

#### 3.1 *Public Information Exception*

The EAR (at [15 C.F.R. 734.7](#)) and ITAR (at [22 C.F.R. 120.34](#)) specifically exclude “publicly available technology and software” (EAR) and “information in the public domain” (ITAR) from those export control regulations. These regulatory provisions provide a further safe harbor for activities at Northwestern, related to information that has been published or resides in the public domain.

#### *Educational Information Exclusion*

The EAR (at [15 C.F.R. 734.3](#)) and ITAR (at [22 C.F.R. 120.33](#)) regulations each contain an educational information exclusion, which states that the export control regulations do not apply to: (a) “information and software that are released by instruction in a catalog course or associated teaching laboratory of an academic institution” (EAR) nor to “information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities” (ITAR). These regulatory provisions mitigate concerns about export control violations occurring in the classroom setting. These exclusions provide a safe harbor for Northwestern in teaching its students, both through classroom activities and through research.

### 4.0 *Deemed Exports*

In the University setting, an export can occur on campus when wholly within the United States, under the Deemed Export rule. This rule holds that the release of controlled technology or technical information to Foreign Nationals in the United States is “deemed” to be an export to that Foreign National’s country or countries of nationality or residency. Deemed Exports may be undertaken only within an appropriate exemption, exclusion (including the FRE), or license issued by the federal government.

### 5.0 *Regulated Items and Regulating Agencies*

#### 5.1 *Commerce Control List (CCL)*

The primary list of items subject to control under the export control regulations is the CCL, which is published by the Department of Commerce’s Bureau of Industry and Security at <http://www.bis.doc.gov/>. This list specifies “dual use” items that are classified under an Export Control Classification Number (“ECCN”) and then controlled based upon various concerns and the destination of the item.

#### 5.2 *United States Munitions List (USML)*

The State Department publishes the USML, a separate list of defense-related items controlled due to their potential use in military applications. Items specifically listed on the USML require a license before they can be exported. The USML is published at <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-121>

For a complete list of federal departments and agencies having export control responsibilities, please visit:

<http://www.bis.doc.gov/index.php/about-bis/resource-links>.

## 6.0 *Northwestern University ECIC*

Northwestern's [Export Controls & International Compliance](#) (ECIC) office exists within the Office for Research and is responsible for implementing policies and procedures in compliance with the regulations governing export controls and research security.

ECIC is responsible for:

- educating the Northwestern community regarding its obligations under the law;
- identifying high risk areas that are impacted by export control and research security regulations, guidelines, and policies;
- monitoring and interpreting developments in the export control and research security regulations field;
- interacting with regulating agencies to maintain an open dialogue regarding the applicability of the export control and research security regulations, guidelines, and policies in the university setting;
- engaging with other University offices, as appropriate, to ensure that often complex regulations are properly reviewed and that perspectives are shared;
- creating and implementing Technology Control Plans (TCPs) and Risk Mitigation Plans, with the assistance of researchers and administrative staff, to ensure compliance with export control regulations;
- applying for export control licenses, when necessary;
- ensuring that appropriate records are kept, and that periodic audits are conducted to monitor export-controlled activities at Northwestern; and
- creating and maintaining an export controls and research security website.

ECIC is the primary point of contact for the review of all issues related to export controls and research security at the University, including those raised in agreements with external parties.

While ECIC should be engaged whenever there is any question regarding the applicability of export control and research security regulations, guidance, or policies, various other offices within Northwestern may be affected by or otherwise involved in export controls and research security compliance. These offices include but are not limited to the Office of General Counsel, Sponsored Research, Conflict of Interest, the International Office of Student and Scholar Services, Financial Operations (including the Treasurer and Accounts Payable), Purchasing, Research Safety, Human Resources, Global Safety and Security, Study Abroad, Innovations and New Ventures, and Core Facilities, among others. Each of these offices is directly (or indirectly) impacted by the export control and research security regulations, and ECIC will work closely with these offices to ensure compliance with the regulations.

## 7.0 *Acceptance of Export-Controlled Technology*

Northwestern generally does not accept export-controlled technology without having first been informed and having granted written authorization. The acceptance of export-controlled technology necessitates obtaining licenses (when applicable) and implementing other practices and procedures to ensure that such information is appropriately protected. In addition to determining whether such technology can be shared with a Foreign National, Northwestern would be required to safeguard the information to prevent any inadvertent disclosures. By requiring notice and written agreement, Northwestern is engaging in due diligence to maintain compliance with the export control regulations. These processes can be time-consuming and potentially costly, so the earlier these issues are identified, the better-equipped Northwestern is to manage the situation.

Under these unique circumstances, the ECIC team will be engaged and will work with the requesting party to implement a TCP that must be signed by the responsible Principal Investigator, the appropriate Associate Dean of Research, and the Department Chair to ensure compliance with the export control regulations.

When it is necessary to accept export-controlled information, ECIC will implement a TCP to ensure compliance with the export control regulations. The TCP will demonstrate a commitment to export controls compliance, will identify applicable export-controlled items or technologies subject to the export controls, and will outline the security measures to be taken to ensure compliance. These measures may include : (1) physical security controls (e.g., secure areas, laboratory compartmentalization); (2) administrative controls (e.g., restricted party screenings, personnel access list, written marking of controlled items); and (3) information technology controls (e.g., encryption, confidential communications) or other appropriate measures. The TCP will also identify by nationality (including citizenship and residency) each participant in the research who will potentially have access to the export-controlled item or information and will provide for appropriate screening of all such participants. Any individual having access to items or information under a TCP must be informed of the TCP requirements and must acknowledge acceptance of and compliance with those terms in writing.

## 8.0 *I-129 Certifications*

The federal government, through the Department of Homeland Security, requires that certain petitions filed by employers on behalf of Foreign Nationals must be accompanied by a certification indicating that: (a) an export license is not required from either the U.S. Department of Commerce and/or the U.S. Department of State to release any technology to the Foreign National; or (b) a license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology to the Foreign National and the petitioner will prevent access to the controlled technology by the Foreign National unless and until the employer has received the required license or other authorization to release the technology.

Typically, Northwestern can certify Foreign Nationals will not receive access to any controlled technology. The certifications are generally due to the following three reasons:

1. An appropriate exclusion removed such technology from the export control regulations (such as the FRE).
2. Northwestern has appropriately vetted the technology, determining it is not export-controlled or that an export control license is not required.
3. To the extent that any controlled technology or data may come to exist at Northwestern, the appropriate party must engage ECIC for an export control consultation and request a license, if required.

## 9.0 *Obtaining Licenses*

Generally, as outlined above under the FRE and other exclusions, Northwestern is not required to pursue licenses to undertake most of its activities at the University. However, as circumstances warrant, Northwestern's ECIC will work with the appropriate federal agency to secure licenses for export controls and sanctions compliance. Most commonly, a license might be required for the physical shipment of items overseas or for activities involving a [sanctioned country](#) (even virtually from the U.S., such as giving a virtual presentation to people located in an OFAC sanctioned country, participating in a virtual conference based in an OFAC sanctioned country, conducting surveys or interviews, or in general, working with anyone located in, or who is ordinarily a resident of a comprehensively OFAC-sanctioned country).

It is expected that the requesting party will notify ECIC of the need to ship potentially controlled items overseas and will work with ECIC to properly identify those items and determine whether a license is required. It is also expected that parties intending to undertake activities involving [sanctioned countries](#) will contact ECIC for assistance in determining if federal authorization is required.

The license process can take several weeks or months, so ECIC should be engaged as soon as possible to ensure that the licensing process does not unduly interfere with the work. For example, if it is recognized during a grant proposal that there may be export controlled materials required as deliverables under the agreement, then ECIC should be engaged at the time of proposal to ensure that a timely license application can be made.

#### 10.0 *Screening at Northwestern*

Northwestern screens both individuals and entities that are identified as potential risks for export control violations or research security risks. When appropriate, employees, students, visitors, and other members of the community as well as entities with whom Northwestern conducts business (e.g., vendors, sponsors, and subcontractors) may be screened against various Restricted Party Lists to ensure that conducting business with such individuals and/or entities is appropriate and within the law. Northwestern should not conduct business with any person or entity that is identified as a match against these lists until ECIC is informed. Once ECIC is informed, the appropriate due diligence will be undertaken to ensure that Northwestern will remain in compliance with the regulations. Additionally, there are restrictions upon activities involving certain countries subject to sanctions or embargoes ([OFAC sanctioned countries](#)) enforced by the U.S. Department of the Treasury.

#### 11.0 Research Security

Researchers applying for or receiving federal funding must comply with all federal laws and regulations, to include but not limited to the below. Reference: [Research Security Website](#).

##### 11.1 *Research Security Training*

Covered personnel, which may vary by agency, must complete mandatory research security training. Reference: [Research Security Training](#).

##### 11.2 *Export Control Training*

The principal investigator of a project (“PI”) is required to complete NU’s online export control training or CITI’s export control training within two years of the implementation of a TCP. The PI and all TCP project participants are required to attend or view the TCP onboarding, which includes export control training provided by the ECIC team. Reference: [Export Control Training](#).

##### 11.3 *Malign Foreign Talent Recruitment Program (MFTRP)*

Participation in a MFTRP is prohibited for researchers applying for or receiving federal funding. Investigators must disclose if they are talent program members (malign or otherwise) for appropriate review. Reference to the Policy on Conflict of Interest in Research for details. Note: a restricted party screening is not an exhaustive way to make a MFTRP determination. Researchers may contact the ECIC and COI teams for assistance with assessing if a talent program is malign. Reference: [Policy on Conflict of Interest in Research](#), [Foreign Talent Programs Website](#)

## 11.4 International Travel Registry

If required by federal regulations, researchers may be required to register their travel with Northwestern and take the federal government foreign travel training.

## 12.0 *Reporting*

To ensure compliance, and to provide the Northwestern community with the opportunity to report any suspected incidents of non-compliance, ECIC suggests that any reports or concerns be communicated by either e-mail [exportcontrols@northwestern.edu](mailto:exportcontrols@northwestern.edu) or telephone 847-467-0090. Reports can also be made through EthicsPoint, by calling 866-294-3545 or via the [Ethics Point website](#).

### **Consequences of Violating this Policy**

Failure to comply with the various export control and research security regulations can result in both individual criminal and civil penalties. Under the EAR regulations, criminal penalties can involve imprisonment and significant monetary penalties up to \$1 million per violation, while civil penalties are also substantial. Additionally, the loss of exporting privileges – including the FRE – may result, which could substantially curtail Northwestern’s ability to conduct research with its international student population, and international collaborators, as Northwestern would be required to obtain licenses before sharing certain items—including commodities, software, and technology with any Foreign National or foreign entity. Any violation of this policy may result in disciplinary action, up to and including termination of employment and academic dismissal.

## **Related Information**

[Export Control Compliance Manual](#)

[Policy on Conflict of Interest in Research](#)

[Department of Commerce Bureau of Industry and Security website](#)

[Export Administration Regulations \(EAR\), 15 C.F.R. 730-774](#)

[State Department Directorate of Defense Trade Controls website](#)

[International Traffic in Arms Regulations \(ITAR\), 22 C.F.R. 120-130](#)

[Office of Foreign Assets Control \(OFAC\) website](#)

[U.S. departments and agencies with export control responsibilities](#)

[National Security Presidential Memorandum – 33 \(NSPM-33\)](#)

[OSTP Guidelines for Research Security Programs at Covered Institutions](#)

[Northwestern Office for Export Controls & International Compliance \(ECIC\) website](#)

[Deemed Export Certification](#) – I-129 certification required by law as of October 2022 is incorporated into [H-1B Department Request Form](#).

[EthicsPoint](#) website

[Policy on Discrimination, Harassment, and Sexual Misconduct](#)

## **Contacts**

The following office can address questions regarding this policy:

[Export Controls & International Compliance](#) Office; email [exportcontrols@northwestern.edu](mailto:exportcontrols@northwestern.edu)

## **History**

Policy originated in May 2014 and was last amended on January 4, 2023

## **Policy URL:**

<http://exports.northwestern.edu/policies/>