

Important Notice Regarding Testing Services Agreements and Export Controls

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External sponsors may engage NCSU Centers, Institutes, Laboratories, and Service Centers for testing services utilizing materials, information, software, or other technologies that are controlled under the Export Administration Regulations (EAR), Title 15, Parts 730-774 of the Code of Federal Regulations (CFR) or the International Traffic in Arms Regulations (ITAR), Title 22 CFR Parts 120-130. It is the policy of NCSU to fully comply with all applicable federal statutes, executive orders, regulations, and contractual requirements including the safeguarding of controlled technical information in its possession. For more information, see <http://www.ncsu.edu/sparcs/export/index.html>.

It is unlawful to export controlled commodities or technical information to a foreign person without first obtaining a license from either the Department of Commerce (EAR) or the Department of State (ITAR) unless an exemption or exception applies.

Violation of export control laws may result in criminal penalties for individuals of up to 10 years in prison and up to \$1 Million in fines and civil penalties of up to \$500,000 in fines. Criminal penalties for the institution may include fines up to \$1 Million and civil penalties of up to \$500,000.

It is important to remember that to EXPORT means more than just shipping a commodity overseas. Under the export control regulations, "exports" include (1) Transfers of controlled information, including technical data, to persons and entities outside the United States; (2) Shipment of controlled physical items, such as scientific equipment, that require export licenses from the U.S. to a foreign country; and (3) **Verbal, written, electronic, and/or visual disclosures of controlled scientific and technical information related to export controlled commodities or technology to foreign persons in the United States.** This is referred to as a "Deemed Export", because the transfer of technology or source code by any method to a foreign national in the U.S. or abroad is *deemed* to be an export to that individual's country of citizenship. A "foreign person" is any person who is not a US citizen or lawful permanent resident of the US (green card holder).

It is the responsibility of the TSA Project Coordinator to contact the Compliance Officer in Research Administration (telephone and email address above) to determine if export controlled materials or technology will be utilized in a TSA. The university's standard Testing Services Agreement has also been revised to require the external sponsor to inform the University in writing if any export controlled materials or technology are to be sent to the University for testing.

Upon receipt of the notice, the Compliance Officer will 1) determine whether the commodity is subject to the EAR or ITAR, 2) determine if any of the exceptions to the regulations apply, and 3) (if necessary) work with the Service Center Director to develop an appropriate written technology control plan (TCP) that will detail how the Service Center will prevent the controlled technology from being improperly disclosed to a foreign person as a deemed export.

The broad exemptions that protect university activities do not apply to testing services. In many cases, the materials and information being provided for testing are identified by the external sponsor as proprietary, so the technology will not be in the public domain. Second, testing activities are not routinely taught to students as a class, so the Education exemption does not apply. Finally, unlike sponsored research, the information generated as a result of testing services may not be freely published. As such, these results are not protected under the exemption for Fundamental Research.