Introduction

Export Control Laws (ECL) broadly describes a comprehensive series of regulations enforced by the Federal Government concerning the export of certain controlled technologies. The regulatory scheme encompassing ECLs requires certain technologies to be controlled because: 1) the nature or type of technology has potential military applications; 2) the nature or type of technology raises some sort of trade/economic protection issue; 3) there are concerns about the country, organization, individual or "end user" of the technology requiring control.

As mentioned, ECLs involve a number of different regulations. The three major regulatory schemes in place governing ECLs are the Export Administration Regulations or EAR, administered by the Department of Commerce; the International Traffic in Arms Regulations or ITAR, administered by the Department of State; and the Office of Foreign Asset Control or OFAR, administered by the Department of Treasury.

ECLs control the conditions under which certain information, technologies, and commodities can be shipped, shared, or transmitted ("export") overseas to anyone, including U.S. citizens, or to a foreign national on U.S. soil. In the same manner, such controls can extend to interactions with foreign corporations. Most commonly, the control would involve obtaining a "license" from the Federal Government prior to exporting of any controlled technologies.

The term export when used in the context of ECLs is much broader than the standard notion of a tangible item being shipped out of the United States. Under ECLs, the term export includes any: (1) actual shipment of any covered goods or items; (2) the electronic or digital transmission of any covered goods, items or related goods or items; (3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any foreign national; or (4) actual use or application of covered technology on behalf of or for the benefit of a foreign entity or person anywhere.

The term "export" can mean not only technology leaving the shores of the United States (including transfer to a U.S. citizen abroad whether or not it is pursuant to a research agreement with the U.S. government), but also transmitting the technology to an individual other than a U.S. citizen or permanent resident within the United States (a "deemed export"). Even a discussion with a foreign researcher or student in a campus laboratory is considered a "deemed export." Export controls preclude the participation of all foreign nationals in research that involves covered technology without first obtaining a license from the appropriate government agency.
While University research has traditionally been free of governmental regulation, ECLs have the potential to substantially impact research and researchers in most fields of science and engineering working at UTPB. If research involves specified technologies, the ECLs may require that the University of Texas of the Permian Basin obtain prior federal approval before allowing foreign nationals to participate in the research, before partnering with a foreign company, or before sharing research results in any manner (including by publication or presentation at conferences) with persons who are not U.S. citizens or permanent resident aliens.

Fortunately, even if an item appears on one of the lists of controlled technologies, most of the research at the University of Texas of the Permian basin will be excluded from regulation under ECLs as a result of the exclusion for fundamental research (as long as there are no restrictions on publication of the research or other restrictions on dissemination of the information) or, in some cases, as long as the research or information is made public or is intended to be made public. Fundamental research, as used in the ECLs, includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the U.S. where the resulting information either is ordinarily published and shared broadly in the scientific community or where the resulting information has been or is about to be published.

Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or pursuant to specific U.S. government access and dissemination controls. University research will not qualify as fundamental research if (1) the institution accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information or to insure that publication will not compromise patent rights of the sponsor; or (2) the research is federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the university or the researcher.

Information becomes "published" or considered as "ordinarily published" when it is generally accessible to the interested public through a variety of ways: Publication in periodicals, books, print, electronic or any other media available for general distribution to any member of the public or to those that would be interested in the material in a scientific or engineering discipline. Published or ordinarily published material also includes the following: readily available at libraries open to the public; issued patents; and releases at an open conference, meeting, seminar, trade show, or other open gathering. A conference is considered "open" if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (but not necessarily a recording) of the proceedings and presentations. In all cases, access to the information must be free or for a fee that does not exceed the cost to produce and distribute the material or hold the conference (including a reasonable profit).
Public domain is the term used for "information that is published and generally accessible or available to the public" through a variety of mechanisms. Publicly available software or technology is that which already is, or will be, published.

It is important that faculty and other researchers understand their obligations under the regulations and follow them. The consequences of violating the regulations can be severe, and include loss of research funding, fines, and/or prison time. Faculty can be held personally liable for failure to comply with the ECLs.