Testing Services Agreements and Export Controls

External sponsors may engage NC State 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) or the International Traffic in Arms Regulations (ITAR). It is NC State policy to fully comply with all applicable federal statutes, executive orders, regulations, and contractual requirements including the safeguarding of controlled technical information in its possession. 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 (for EAR controls) or State (for ITAR controls) unless an exemption or exception applies.

The broad exemptions that protect the majority of educational, research, and administrative activities at NC State 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, meaning the technology is not in the Public Domain.
- Testing activities are not routinely taught to students in a catalog course, so the Education exemption does not apply.
- 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 Fundamental Research exemption.

Violation of export control laws can result in criminal penalties for individuals of up $1 Million and/or 10 years in prison, and civil penalties of up to $500,000. In addition to individual penalties, the University could be subject to criminal penalties of up to $1 Million and/or civil penalties of up to $500,000.

It is important to remember that to EXPORT means more than just shipping a commodity overseas. Under export control regulations, “exports” include:

- Transfers of controlled information, including technical data, to persons and entities outside the United States;
- Shipment of controlled physical items, such as scientific equipment, that require export licenses from the U.S. to a foreign country; and
- 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.*

It is the responsibility of the TSA Project Coordinator to contact the Export Compliance Administrator (Export_Controls@ncsu.edu) in SPARCS 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 Export Compliance Administrator will:

1) Determine regulatory jurisdiction (ITAR or EAR);
2) Determine if any exceptions to the regulations apply; and (if necessary)
3) Work with the Service Center Director to develop an appropriate written technology control plan (TCP) detailing how the Service Center will prevent the controlled technology from being improperly disclosed to a foreign person as a deemed export.

*This is referred to as a “Deemed Export”, where the transfer of technology (by any method) to a “foreign person” is deemed to be an export to that person’s country of citizenship. A “foreign person” is any person who is not a US citizen or lawful permanent US resident (e.g. green card holder).