

Exceptions to the University of Delaware Open Research Policy
Waiver Year 2012

Draft Report compiled by Stuart J. Kaufman, Chair
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Background. Current U.S. law restricts the export of military-related technology and associated data. Two of the key legal authorities for these restrictions are the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). In some circumstances, the results of scholarly research may be considered to include data associated with such technology, and publication of such data may qualify as its “export”. Therefore, there are cases in which publication of research findings may violate U.S. export control law. For example, the procedures used in composite materials research may be considered to be military related, so publication of the details of such procedures may be deemed to violate these export control regulations. It is possible that researchers may be unaware that research they are conducting is controlled by these regulations. Nevertheless, violation of ITAR can result in fines of up to \$1,000,000 and 10 years’ imprisonment per violation; EAR violations can range even higher, up to 20 years’ imprisonment. Lists of data and technologies controlled by ITAR, EAR and other authorities are available in U.S. government-maintained databases.

University of Delaware (UD)-based research on export-restricted technologies is usually conducted under contract with agencies of the U.S. government, most often Department of Defense (DoD), Department of Energy and NASA. At the present time, all such research at UD is unclassified. However, to prevent the publication (and export) of restricted technologies and data, the terms of these contracts typically stipulate that DoD must be given a 60-day review period (extendable for 1-4 months) to examine whether any information in proposed publications based on the contracted research is enjoined under U.S. export control laws. The standard language in such contracts is that the U.S. government cannot prevent publication after that time period.

UD Policies. The administration of the University of Delaware has established policies and procedures to ensure that the University’s Open Research Policy is followed and that UD researchers are protected from inadvertent violation of export control regulations. To prevent inadvertent export control violations, the Research Office searches for keywords from research proposals using *Visual Compliance* “e-Customs” software to identify aspects of proposed research that may be subject to export controls. Researchers are then alerted to the relevant parameters. If the research is covered by export controls under ITAR, EAR or other authorities, the Research Office works with the researcher to develop a “technology control plan” for the research. When deemed appropriate, UD sometimes petitions sponsors to have publication restrictions removed. One UD researcher in a regulated area who was contacted on this issue expressed appreciation for UD’s efforts, which he saw as protecting him and other UD researchers from potential legal jeopardy.

All requests for exceptions to the Open Research Policy must be approved by the researcher's Chairperson, Dean, the Vice Provost for Research, and the Provost, to ensure academic oversight before any exception is granted. According to the Vice Provost for Research, this oversight is exerted to ensure that all exceptions are consistent with the letter and spirit of UD policies. The Vice Provost for Research is not aware of any cases in which the ultimate publication of project results was prevented by these restrictions. According to the researcher who was contacted, the largest effect of government intervention that typically results from this prior review is requests for minor changes in wording of proposed publications, requested for national security reasons. Several months' delay in publication is also a typical effect.

2012 Exemptions. The University of Delaware approved eight (8) waivers of UD's Open Research Policy in Waiver Year 2012, all of them for reasons related to U.S. export control laws. Five (5) of the cases involve research done by faculty members at UD's Center for Composite Materials; two (2) involve research by faculty members in Electrical and Computer Engineering; and one (1) concerned a researcher in the Department of Physics.

Seven (7) of the cases involve contracts for unclassified research with agencies of the U.S. Department of Defense, with the contracts including prior-restraint provisions on publication like those outlined above. The remaining case, along with three (3) of the DoD-funded projects, was noted specifically as being covered by ITAR provisions. The legal authority for export restrictions was not specified in the other documents reviewed in this investigation.