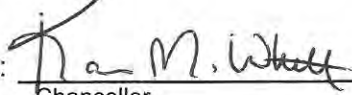


**Office of the Chancellor
Pennsylvania State System of Higher Education
Procedures and Standards for University Operations**

**Procedure/Standard Number 2012-14-A
Compliance with United States Export Control Laws**

Approved by:  Date: 7-3-18
Chancellor

History: Adopted October 12, 2012

Revised: Amended July 3, 2018

Additional History:

Related Policies, Procedures or Standards:

Key Words/Categories: Academic, Research, Personnel, Students, Travel, Procurement

Additional References:

I. Introduction

The Pennsylvania State System of Higher Education (State System) is committed to the principle that teaching, research and service shall be conducted openly and without prohibitions or restrictions to the publication and dissemination of the results of academic, scholarly and research activities. However, export control laws are federal laws and regulations that restrict the transfer of certain materials, technology, related technical data and certain services outside the United States in the interest of protecting the national security and domestic economy. These laws have been in existence for many years. Every university faculty member, researcher, department head, dean and administrator should have a fundamental understanding and general awareness of export control laws to know when to raise questions and alert responsible officials to a possible export control or embargo issue.

II. Definitions

A. **Commerce Control List (CCL):** A list of items (technology, hardware and software) regulated by the United States Department of Commerce through the Export Administration Regulations (EAR). Items on this list are marked for dual-use, which means that they are commercial goods that could be used for military purposes. A CCL index is available at <https://www.bis.doc.gov/index.php/forms-documents/regulations-docs/13-commerce-control-list-index/file>. The complete CCL is available at <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>.

B. **Deemed Export:** Providing, transferring or disclosing export controlled items (see Section II.E. below) to a foreign national within the United States (See 15 CFR 734.2(b)(2)(ii).) The following are examples of how a deemed export can be transmitted:

face-to-face discussions, tours of labs, training sessions, computer access, fax, telephone conversations, email communications or social media.

- C. **Exclusions:** Activities that are specifically described as excluded from export control in the federal legislation. There are three exclusions from the EAR:
1. **Educational Information:** Information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities; or information in the public domain. This includes information released in the university's academic courses, which are listed in its catalog, or in teaching labs associated with those courses. Limits of this exclusion are reviewed on pages 8-9.
 2. **Fundamental Research:** Basic or applied research in science or engineering or mathematics at an accredited institution of higher learning in the United States, where the information is ordinarily published and shared openly in the scientific community or is about to be published. Limits of this exclusion are reviewed on page 8.
 3. **Public Domain:** Information that is published and generally available to the public, as well as publicly available technology and software, is "public domain" and is excluded from export control laws. The scope of this exclusion is reviewed on page 9.
- D. **Export:** Any oral, written, electronic or visual disclosure, shipment, transfer or transmission outside the United States to anyone, including a United States citizen, of any commodity, technology (information, technical data or assistance) or software/codes. Transfers can be by actual shipment outside the United States; electronic or digital transmission; visual inspection in or outside the United States; written or oral disclosure; or actual use or application on behalf or for benefit of foreign person or entity.
- E. **Export Control Regulations:** The federal regulations most applicable to university activities include (but are not limited to) the following.
1. [Export Administration Regulations \(EAR\)](#), implemented by the United States Department of Commerce, which controls the export of dual use technologies, i.e., items that are used, or have the potential to be used, for both military and commercial purposes that could adversely affect national security if exported.
 2. [International Traffic in Arms Regulations \(ITAR\)](#), implemented by the United States Department of State to regulate military or defense-related articles, technologies and services.
 3. Treasury Department's [Office of Foreign Assets Control \(OFAC\)](#) administers and enforces economic and trade sanctions to protect foreign policy and national security goals. It controls the transfer of items and services of value to embargoed nations and imposes trade sanctions, and trade and travel embargoes aimed at controlling terrorism, drug trafficking and other illicit activities.
- F. **Export Control Officer (a.k.a. Empowered Official):** The Export Control Officer/Empowered Official is the chief senior official in the State System who is responsible for compliance with export controls and embargoes. The Chancellor has

designated an Export Control Officer to serve all universities in the System. His/her functional responsibilities are described on page 5.

- G. **Foreign National/Foreign Person:** Any natural person who is not a lawful permanent resident (i.e., not a green card holder) or who does not have refugee or asylum status. It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).
- H. **Items:** Include commodities, software and technology. Examples of commodities include computer equipment, research equipment and components.
- I. **License:** When export control regulations apply and when no statutory or regulatory exclusion or exception is available, an export license from the appropriate federal agency is required before export-controlled items or information can be shared, abroad or on campus, with participating or collaborating foreign nationals, or before a university can do business with a sanctioned entity.
- J. **License Exception:** The Department of Commerce and the Department of State have published regulatory criteria for exceptions to the license requirement that *would otherwise apply* to the activity. Use of any exception requires classification of the exception that is used, and documentation and certification that university personnel will abide by the regulatory criteria/conditions for the exception. (License Exceptions should not be confused with Export Control Exclusions.)
- K. **Restricted or Embargoed Countries:** ITAR regulations (2 CFR 126.1) specify countries to which exports and sales of *defense articles and defense services* are prohibited.
- L. **Sanctioned Countries:** Identified by the United States Department of the Treasury, through its Office of Foreign Assets Control (OFAC), in order to administer economic and trade sanctions that at times can restrict transactions and travel, or require licensing in order to travel to a sanctioned country, or to conduct business with a foreign entity or individual.
- M. **Specially Designated Nationals (SDN) List:** OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Their assets are blocked and United States persons are generally prohibited from dealing with them.
- N. **Technology:** Information related to the development, use or production of an item. Examples of technology include operating manuals, data, drawings and specifications.
- O. **Technology Control Plan (TCP):** A plan to manage security on export controlled items and activities. A TCP is usually required when an export or activity requires a license. It is a significant tool in institutional and personal compliance with the export control laws.
- P. **United States Munitions List (USML):** A list published by the Department of Defense featuring twenty-one categories of defense articles and services that are controlled by the International Traffic in Arms Regulations (ITAR). The list is available at the State Department website.

III. General Requirements

A. International Travel or Transmission/Shipment

In general, the majority of international exchanges among faculty and students can go forward without the requirement of an export license, provided they do not concern detailed information regarding controlled items or technologies (See Section II.E. above). When an individual is traveling outside of the United States, taking encrypted software and/or research equipment, or even a laptop computer, smart phone, or data storage device, s/he might require an export license, or certification and documentation of a license exception. A laptop computer taken abroad to a controlled country might contain strong encrypted software that is regulated under export control laws. The university is required to document the export (even a temporary export) of licensed items, or exceptions, if the items are owned by the university. A checklist to determine license exceptions is included in Supplemental Information.

Any individual intending to travel with **or transmit/ship controlled** items outside the United States (or to foreign nationals) should first consult with the appropriate university office to determine if there are any export control issues or requirements.

All license *exceptions* for **research** activities must be documented with the University Office of Sponsored Programs and forwarded to the State System Export Control Officer. All exceptions or exemptions for **non-research** activities must be documented by the designated university office and forwarded to the State System Export Control Officer. Details on license exceptions are included in Supplemental Information.

B. Functional Responsibilities

1. **Export Control Officer:** The Chancellor shall designate an Export Control Officer for the following export control duties:
 - Assist University Designated Officials, administrators, faculty and staff in compliance with the export control restrictions;
 - Provide resources to enable compliance with the export control regulations, such as "Supplemental Information", consultations, screening checklists, model documents and training material;
 - Conduct high-level risk assessments and prepare a System-wide risk management plan;
 - Submit license requests for restricted or controlled activities to federal agencies;
 - Determine eligibility for license exception;
 - Approve Technology Control Plans for activities and projects;
 - Conduct inquiries into export activities;
 - Act as liaison to federal agencies;
 - Provide for central record keeping and retention;
 - Work to raise campus awareness of export control requirements; and
 - Organize and chair a System-wide Export Control Procedures/Standards Committee that comprises university personnel from all areas of responsibility.
2. **University Designated Officials:** Each university shall identify Designated Officials who shall be responsible for export control compliance in their respective areas, e.g., travel, research, information technology, procurement, asset control, human resources and other areas as necessary. Officials from these areas may have

significant roles and responsibilities to fulfill when implementing a Technology Control Plan, such as restricting computer access or securing controlled research equipment from unauthorized foreign persons. See Appendix K in the Supplemental Information document.

3. **Human Resources Officers:** Human Resources (HR) officers must be alert to the requirement for a certification on H1-B Visa applications, which require the university official to certify whether an export license is required, based on the technology or technical data that the university will release, or otherwise provide access to the beneficiary (i.e., employee). Internally, HR officers shall obtain information from academic deans on an H1-B visa holder's access to technology and technical data, both at the time of hiring an H1-B visa holder and at any time thereafter during the life of the H1-B visa when there is a change in access. Upon a change in the H1-B visa holders' technology access, research focus and other items subject to export control, HR officers shall consult with legal counsel and/or the Export Control Officer to determine if export license or TCPs are required.
4. **Academic Deans:** Academic deans shall cooperate with Human Resources when hiring an H1-B visa holder and provide information on an H1-B visa holder/employee's access to technology and technical data to HR officers, both at the time of hiring the H1-B visa holder and at any time thereafter during the life of the H1-B visa. Changes in the visa holders' technology access, research focus and other items subject to export control must be forwarded promptly to the Human Resources office for follow-up.

Academic deans have an important role in developing and implementing a TCP, particularly in designing security measures that involve export-controlled equipment and research projects that are housed within the department or college. A dean might have to ensure the appropriate project director creates, secures approvals and implements the TCP.

5. **Procurement Officers:** When purchasing items, university procurement officers shall request that vendors provide technical specification sheets and the Department of Commerce's assigned ECCN or the Department of State's USML classification number. Purchased commodities that are on an export control list shall be tagged. Computers on which controlled software is installed shall also be tagged. Both technology and information about technology that is controlled, such as operating manuals, technical specifications, etc., shall be tagged and stored securely. Before awarding bids and again at the time of signing contracts or placing orders, the purchasing officer shall confirm the vendor is not on any restricted parties list by checking the database at MKDenial.com
6. **Travel "Approvers:"** University administrators who approve official travel requests must be aware that, when traveling to **embargoed or sanctioned** countries, regulations may actually prohibit traveling with research equipment, a laptop, GPS, smartphone or similar data devices and prevent one from purchasing certain in-country business services. In addition, travel advisories containing general precautions and entry requirements are posted by the Department of State and should be consulted and followed. Travel to countries with comprehensive embargoes or sanctions, specifically (as of March 2018) Sudan, Cuba, Iran, Syria and North Korea, must be reviewed with the Export Control Officer. In addition, restricted parties lists, such as BIS Denied Persons or Denied Entities, or Treasury's Specially Designated Nationals identifies individuals and entities with which the

university or the traveler may not do business. Financial transactions involving SDNs will be blocked, so advance screening is required.

- 7. Chief Information Officers (CIOs) or designee:** CIOs shall provide “clean” laptops for travelers from high-risk program areas on university-sponsored business to reduce risks and facilitate use of license exceptions. A clean laptop has no export-controlled hardware, software, data or information. It has no high-encryption software. It has no personal files or settings, no passwords, no student records, personnel records or other sensitive confidential information. It may contain commercially-available software, and encryption that protects any State System network log-in. Utilizing a “clean” laptop greatly reduces the risk of loss, theft or inadvertent disclosure of protected information.

In many cases, CIOs have an important role in developing and implementing a TCP. CIOs shall be prepared to adopt extra network security measures when members of the university community need to store export controlled information or data on the university computer system. This is particularly important when unauthorized foreign nationals might otherwise have access to the shared network resources.

CIOs will be the primary university resource for other Designated University Officials who might have questions on the nature of encrypted software that the university deploys. (For example, encryption that is used to prevent remote access or reverse engineering of software is not controlled by the EAR.) The Department of Commerce provides two decision trees to assist in this determination: [BIS Encryption flow Chart 1](#) and [BIS Encryption flow Chart 2](#)

- 8. International Education:** Directors of Study Aboard programs should be aware of the Embargoes and Export Control Regulations. In most cases, study abroad programs are conducted in non-export controlled countries. However, the travel restrictions and concerns outlined in section B5, above, are relevant.

Faculty who lead an overseas joint faculty-student research project (and/or administrators who approve such travel) shall consult with the Sponsored Research Officer as outlined in Section B9, below.

- 9. Distance Education Deans and Enrollment Managers/Registrars:** Foreign students residing in countries that are under a comprehensive sanctions, as administered by OFAC, may not enroll in online courses unless a Specific License is requested and received from OFAC. There may be certain circumstances that will not require a Specific License. Those will be determined by the Export Control Officer. The Student information System must flag such residents and prevent their automatic registration for online courses. (As of March 2018 those countries were Cuba, Sudan, Iran, Syria and North Korea.)

- 10. Foreign National Visiting Scholars or Students:** Foreign national visiting scholars or foreign national students (and other foreign nationals) involved in research may create a risk of a deemed export of controlled items depending upon their access or use of such items. The restrictions that apply to exports to a specific country also apply to visiting scholars and students from that country. For example, if a specific piece of research equipment or related technology is export controlled, meaning it cannot be exported to specific countries without a license, then visiting scholars and

students from those countries may not be authorized to use that piece of equipment without a license. A determination must be made if there is actually a transfer of technology by that person's nature or level of use, for example, simple operation of a piece of equipment may not be "use" as defined in the EAR or ITAR regulations.

University officials who approve the placement of foreign nationals as visiting scholars or as student research workers must ensure that export control laws are applied and, if necessary, consult with the Export Control Officer who will determine if a license application is necessary or if a license exception covers the case or deny the placement of the foreign national in the specific capacity.

11. **Sponsored Research Officers:** Research is perhaps the area of university operations where compliance with Export Controls will be the most prevalent and varied. Sponsored Research Officers shall screen all research proposals (including internally sponsored research) to determine if the research activity involves any foreign travel or foreign nationals. It shall also determine if the project involves any restriction on publication or access to restricted or confidential data. If a project involves either of these elements, the Sponsored Research Officer shall screen proposals in depth to determine if the research qualifies for the Fundamental Research Exclusion and to determine compliance with EAR, ITAR and OFAC regulations. The following activities, among others, may be restricted:

- The ability of foreign scholars and students to participate in export-controlled research at a State System university;
- The ability of State System university researchers to disclose or discuss previously unpublished research at conferences and meetings where foreign nationals are in attendance;
- The ability of State System university researchers to engage in collaborations with foreign researchers, including restrictions on teaching foreign collaborators how to use export-controlled items in research; and,
- The ability to transfer research equipment abroad.

12. **ROTC Programs and Campus Police:** ROTC programs and campus police must securely store all firearms, preventing any and all public access. The university must ensure that no firearm is issued to a foreign national employee without first ensuring the weapon is not on the USML and consulting with the System's Export Control Officer. If campus police store student firearms they must determine if the firearm is on the USML and if the student is a foreign national or on the SDN list. If firearms or weapons are confiscated on campus, the items will be secured per normal campus security protocol and the subsequent investigation will include verification of any export controls that apply to the item through consultation with the System's Export Control Officer.

13. **Export Control Procedures/Standards Committee**

A System-wide Export Control Procedures/Standards Committee will include university representatives from all areas of functional responsibility. Its purpose will be to identify areas of noncompliance and procedures for compliance; provide input on the effect of federal Export Control Reform and regulatory changes and propose revisions/updates to the procedure/standards; provide assistance in preparing a System-wide risk management plan; develop additional supplemental information as

needed; provide expertise in specific areas to the benefit of other System universities; and other functions that arise related to this purpose.

C. Exclusions from Export Control Laws

There are several exclusions provided for in the export control legislation, making them outside the scope of the law. These exclusions cover many of the activities that occur in PASSHE and help preserve freedom to do basic research, teach and publish without restriction.

1. **Fundamental Research Exclusion:** Fundamental research includes research in science or 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.. It is **not** proprietary research or industrial development, design, production and product utilization, the results of which are ordinarily restricted for proprietary or national security reasons. Only information and software, **not** the materials resulting from fundamental research is excluded from Export Control Regulations.

The Fundamental Research Exclusion will be voided if researchers sign side agreements (including material transfer and non-disclosure agreements) that contain publication restrictions or restrictions on who can participate in the research. *It is vital that no one sign any agreements that pertain to export controls, or contain any language that restricts publication or who can participate in the research, without first consulting with the university-sponsored Research Officer to initiate legal review.*

Particular care must be exercised in the negotiation and acceptance of research projects that might be subject to restrictions on the export of data and information. System universities may accept research agreements that: (1) indicate that technical data generated under the agreement might be subject to export control regulations; and (2) include the requirement that foreign nationals be identified to the sponsor prior to their involvement in the project. If the sponsor exercises further restrictions on the publication of these data or on the access to, or the participation in, the research by foreign nationals, the university may elect to decline or terminate the agreement if these restrictions are deemed unreasonable under the circumstances. Any agreement that goes beyond these basic parameters—which specifically indicates that the technical data resulting from the project shall be subject to export control and/or reserves sponsor approval in connection with the hiring of foreign nationals—must be evaluated on a case-by-case basis by the university.

2. **Educational Information Exclusion:** Export control regulations do not apply to information released in the university's academic catalog-listed courses or in teaching labs associated with those courses. This means that a faculty member teaching a university course may discuss what might otherwise be export-controlled technology in the classroom or lab without an export control license even if foreign national students are enrolled in the course and present in the classroom. This exclusion is based on the recognition in EAR and ITAR that "information and software released by instruction in a catalog course or associated teaching laboratory of an academic institution or information in the public domain" should not be subject to export control restrictions.

The exclusion is available for courses available globally online (distance learning) but it does not allow residents of (OFAC's) comprehensively sanctioned countries to enroll in such courses due to a specific prohibition on the export of services", i.e. providing educational courses in return for a tuition payment. (As of March 2018 those countries were Cuba, Sudan, Iran, Syria and North Korea.) Because sanctions are subject to change without notice, the university should consult with the System's Export Control Officer to research the availability of a General License or possibility of a student-specific License or a change in the county specific sanction regulations as situations arise. Independent study courses and courses not described in the university course catalog do **not** qualify for this exclusion. Encrypted software does **not** qualify for this exclusion.

3. **Public Domain Exclusion:** Information that is published and generally available to the public, as well as publicly available technology and software, is outside the scope of the export control regulations. This exclusion does **not** apply to encrypted software, to information if there is reason to believe it might be used for weapons of mass destruction, or where the United States government has imposed access or dissemination controls as a condition of funding.

Information and research results are considered "**published**" when they appear or are generally accessible to the interested public through print, electronic or any other media available for general distribution to any member of the public. It is considered "**generally available**" to the public when it is available through:

- Sales at newsstands and bookstores;
- Subscriptions available without restriction to anyone who purchases it;
- Second class mailing privileges granted by the United States government;
- Libraries open to the public or from which the public can obtain documents;
- Patents available at any patent office;
- Unlimited distribution at a conference, meeting, seminar, trade show or exhibition that is generally accessible to the public and is in the United States;
- Website publication where the site owner does not have knowledge or control of who visits the site or downloads the software/information;
- Public release (i.e., unlimited distribution) in any form (not necessarily published) after approval by the cognizant United States government department or agency; and,
- Fundamental research.

The exclusion applies to a project:

- That does **not** involve export controlled equipment, encrypted software, listed-controlled chemicals or bio-agents or toxins, and
- In which there is no reason to believe that any information or non-encrypted software being released will be used for a weapon of mass destruction, and
- For which any information or software involved in the project is already published.

Dissertation research must meet the standards for "fundamental research" to qualify as "publicly available."

If the research falls under the Public Domain Exclusion, there would be no further concerns about the need for an export license.

D. **Voluntary Disclosures of Violations**

Due to the complexity of the federal regulations, unintentional release of export-controlled items might occur. If such cases are discovered, the best response is voluntary disclosure. As such instances are discovered, they should be researched by the relevant designated university officer, who will relay and discuss the matter with the System's Export Control Officer, who will investigate further and make the final determination as to whether an unauthorized export has occurred and notify the appropriate federal agency.

E. **Record Keeping and Retention**

Compliance with export control requirements must be documented, through use of questionnaires, checklists and other tools. Use of any license or license *exception* and compliance with the limitation of the license or exception must be documented. The record must be maintained for at least five years after the termination of the project or the travel return date. Any license applications and related documents, such as TCPs, are to be centrally retained by the Export Control Officer.

F. **Supplemental Information**

The Procedure/Standard 2012-14, *Compliance with U.S Export Control Laws*, is accompanied by a Supplemental Information document that includes procedural details for specific areas; additional definitions; identification of high-risk areas; information on control lists, forms and processes; frequently asked questions; case studies; online links; university designated officials; and other resources. The Supplemental Information will be updated as necessary.

G. **Related Laws**

Additional laws or federal regulations may apply to export controlled research or other export activities, including but not limited to:

- Dual Use Research of Concern
- Controlled Unclassified information
- U.S. Department of Energy, Nuclear Energy Regulatory Commission
- Foreign countries import restrictions

It is the responsibility of the university administrators and faculty to identify the applicability of other laws or regulations and seek the appropriate guidance to ensure compliance.

H. **Noncompliance**

Failure to comply with export control laws and regulations might result in prosecution by the federal government and the imposition of federal, civil, criminal and/or administrative penalties or sanctions, denial of export privileges and loss of reputation. It might also result in disciplinary action in accordance with the appropriate Collective Bargaining Agreement or personnel policies.

I. **Effective Date** Immediately.

**Pennsylvania State System of Higher Education
Procedure/Standard Number 2012-14:
*Compliance with United States Export Control Laws***

Supplemental Information

Links amended 7/24/13
Appendix F revised 2/21/2014
Appendix J revised 2/21/2014
Revised 5/30/2018

Appendices

- A: Export controlled areas/activities
- B: An Additional Exemption under ITAR
- C: Guidance for Export Controlled Research
- D: Guidance for Travel
- E: Guidance for Distance Education
- F: Technology Control Plans
- G: Forms and Processes
- H: Definitions
- I: Scenarios
- J: Links
- K: University Designated Officers

Internet resource:

<https://secure.passhe.edu/asa/ExportControls/Pages/Export-Controls-Home.aspx>

Appendix A: Export controlled areas/activities

High Risk Areas:

It is useful to note that export controls are frequently, but not exclusively, associated with items, information or software within the following general areas:

- Chemical, Biotechnology and Biomedical Engineering
- Materials Technology (esp. airplanes, rockets, space vehicles)
- Remote Sensing, Imaging and Reconnaissance
- Navigation, Avionics and Flight Control
- Robotics
- Propulsion System and Unmanned Air Vehicle Subsystems
- Telecommunications/Networking
- Nuclear Technology
- Sensors and Sensor Technology
- Advanced Computer/ Microelectronic Technology; Artificial Intelligence
- Information Security/Encryption
- Laser and Directed Energy Systems
- Rocket Systems
- Marine Technology

The ITAR Munitions List (USML)

Categories of items contained on the export control list published by the Department of State relating to military items:

1. Firearms and Related Articles
2. Guns and Armament
3. Ammunition and Ordnance
4. Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
5. Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents
6. Surface Vessels r War and Special Naval Equipment
7. Ground Vehicles
8. Aircraft and Related Articles
9. Military Training Equipment and Training
10. Personal Protective Equipment
11. Military Electronics
12. Fire Control, Range Finder, Optical and Guidance and Control Equipment
13. Materials and Miscellaneous Articles
14. Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
15. Spacecraft and Related Articles
16. Nuclear Weapons Related Articles
17. Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated
18. Directed Energy Weapons
19. Gas Turbine Engines and Associated Equipment
20. Submersible Vessels and Related Articles
21. Articles, Technical Data, and Defense Services Not Otherwise Enumerated

The EAR Commerce Control List

Categories of items on the list that is published by the Department of Commerce including dual-use items:

- 0 – Nuclear Materials, Facilities and Equipment and Miscellaneous
- 1 – Materials, Chemicals, "Microorganisms" and Toxins
- 2 – Materials Processing
- 3 – Electronics Design Development and Production
- 4 – Computers
- 5 – Telecommunications and Information Security
- 6 – Lasers and Sensors
- 7 – Navigation and Avionics
- 8 – Marine Technology
- 9 – Aerospace and Propulsion Systems

Appendix B – Bona-Fide Employee Exemption/Exclusion

1. The EAR License Exception for Technology and Software

The EAR has several License Exceptions which allow defined activities under specific conditions. The “Technology and Software – Unrestricted” (TSU) license exception authorizes release of technology and source code in the United States by U.S. universities to foreign nationals who are their bona fide and full time regular employees. This License Exception is defined in 15 CFR 740.13(f) and the restrictions include the following:

- (i) The employee's permanent residence throughout the period of employment is in the U.S.;
- (ii) The employee is not a national of a destination listed in Country Group D:5 and
- (iii) The university informs the individual in writing that the “technology” or source code may not be transferred to other foreign nationals without prior U.S. Government authorization. The obligation not to transfer technology extends beyond the tenure of employment at the university.

A regular employee means:

- (i) An individual permanently and directly employed by the university; or
- (ii) An individual in a long-term contractual relationship with the university where the individual works at the university's facilities; works under the university's direction and control; works full time and exclusively for the university; executes nondisclosure certifications for the university; and where the staffing agency that has seconded the individual has no role in the work the individual performs (other than providing that individual for that work) and the staffing agency would not have access to any controlled technology (other than where specifically authorized by a license or where a license exception is available).

Exclusions not allowed under this License Exception.

- (i) No “technology” or source code may be released to a foreign national who is subject to restrictions on end-use or end-user control under 15 CFR Part 744 (e.g. weapons of mass destructions, restricted entity list, designated global terrorist, etc.)
- (ii) No “technology” controlled for Encryption reasons (EI) or “technology” or source code controlled for Missile Technology (MT) reasons may be released.

2. The ITAR Exemption for Disclosures to Bona Fide Full-time Regular Employees

A distinct exemption for ITAR items is available for bona fide full-time regular employee that may use items controlled by the ITAR.

ITAR regulations exempt disclosures of unclassified technical data in the United States by United States universities to foreign nationals where 1) the foreign national is the University's bona fide full-time regular employee, 2) the employee's permanent abode throughout the period of employment is the U.S., 3) the employee is not a national of an embargoed country pursuant to [22 CFR Part 126.1](#) of ITAR, and 4) the University informs the foreign national employee in writing that information disclosed may not be disclosed to other foreign nationals without governmental approval.

This exemption is not available to temporary and adjunct foreign national faculty, any foreign national students or full time employee foreign nationals from embargoed countries. It is not available for contractors or consultants.

In the above section “embargoed” refers to a country to which exports are prohibited pursuant to 22 CFR part 126.1

A foreign-born faculty member who is tenured or on tenure track and a permanent resident of the United States, and not from an embargoed country, should qualify for the exemption **for ITAR controlled items**. Many universities find that only H-1B visa holders appear to meet the criteria above. The above exemption allows disclosure to qualifying foreign nationals that are full time employees of the institution and have a permanent United States residence.

3 Using the EAR License Exception or the ITAR exemption

If a bona-fide fulltime foreign national employee qualifies for either the EAR License Exemption or the ITAR Exemption, then the University Office of Human Resources, in collaboration with other offices as appropriate, will issue the required written notice (referenced above) to the individual the provided s/he is NOT a resident of an D:5 or embargoed country. This notice should be issued at the time of hire and annually as long as the employee has access to EAR or ITAR controlled items.

4. For additional guidance

<http://aueco.org/wp-content/uploads/2016/04/bonafideemployeaeuecoguidance.pdf>

Appendix C: Guidance for Export Controlled Research

A. Institutional Reviews:

No program of research that requires secrecy may be conducted at a State System University, other than the exceptions specifically allowed after careful and deliberate review by the Provost or President.

In regard to sponsored research, State System Universities shall adapt the following for inclusion on Institutional Proposal Routing Forms:

Export Control:

1. Does this project involve a) restrictions on publication or b) access to restricted or confidential data? Yes/No

If the answer is Yes, the Sponsored Research Office (SRO) should have the principle investigator (PI) complete the additional questions contained on Form 1, which screens projects to determine if they do NOT qualify for the Fundamental Research Exclusion. Also, at the point that any research agreements are signed the SRO must complete Form 2, which is a final check on the Fundamental Research Exclusion.

2. Does this project involve any foreign nationals or foreign travel? Yes/No

If the answer is Yes, the SRO must undertake a more comprehensive review of the research for export control compliance using Form 3. Documentation shall be retained in the SRO files.

B. Export Licensing

Where export control regulations apply and where no regulatory exclusion or exemption is available, an export license from one or more U.S. government agencies might be required before export-controlled items or information can be shared, abroad or on campus, with foreign nationals participating or collaborating in affected research projects. The following activities, among others, might be restricted:

- The ability of foreign scholars and students to participate in export-controlled research at State System Universities;
- The ability of State System University researchers to disclose or discuss previously unpublished research at conferences and meetings where foreign nationals are in attendance;
- The ability of State System University researchers to engage in collaborations with foreign researchers, including restrictions on teaching foreign collaborators how to use export-controlled items in research; and
- The ability to ship, send or take research equipment abroad.

If a project is export controlled and a license(s) is needed, the System's Export Control Officer may apply for an export license to allow the disclosure of information to foreign students and researchers. Note that each foreign student must be specifically licensed for each controlled project and specific goods, technology, or software. An Export License application requires documentation of the technology and its end use/users in the foreign country; its processing can greatly delay a project implementation. Also note that a Technology Control Plan (TCP) will be implemented whenever a license is requested. The responsible faculty member and the University SRO in coordination with the System's Export Control Officer, and legal counsel, will prepare and sign the TCP.

Appendix D: Guidance for Travel

A. General

The guidance provided herein applies to all university funded or sponsored travel. It also applies to faculty who travel when on sabbatical.

In general, the majority of international exchanges among faculty and students may go forward without the requirement of an export license, provided they do not concern detailed information regarding controlled items or technologies (information and items subject to Export Controls). As you plan your trip, verify with the designated University office that your technology or information falls into one or more of the following categories prior to travelling:

- Published information
- Publicly available software
- Educational information
- Patent applications

In addition, University travelers should perform a “restricted party” screening to ensure that they are not doing export controlled business with a sanctioned country or with individuals or institutions that are listed on a restricted parties list, such as the Treasury Department’s “Specially Designated Nationals”, which means the U.S. government has sanctioned them in some way, or BIS’s Restricted Parties or Restricted Entities List. In most cases, travel to those countries with comprehensive sanctions is difficult, although a General License maybe available for some travel purposes to specific countries.

The State System has a shared subscription to an [online screening tool](https://www.mkdataservices.com/services/denied-parties-screening/mkdenial-com), MKDenial.com, with the vendor Descartes. (URL - <https://www.mkdataservices.com/services/denied-parties-screening/mkdenial-com>). The program log-in is located at <https://www.mkdenial.com/login.cfm>. This tool is to be used to identify foreign nationals and countries that are prohibited from business with U.S. persons.

University SROs and/or Travel Officers shall adopt procedures to ensure this screening occurs for University-sponsored travel. Administrators may consult with the System’s Export Control Officer for further guidance. Such consultation is encouraged when a positive “hit” is found on the search of the lists as applying for a government license could be a possible next step.

While typical personal travel costs to an sanctioned country are allowed, including lodging and meals; transactions of a business nature (i.e. paying for other services or goods) or contact with government entities might be illegal or may require prior authorization from OFAC. In some limited cases personal security services might be an appropriate travel cost.

B. Conferences

When planning a trip abroad, travelers should familiarize themselves with export controls and embargoes. The university traveler must ensure that any information that he/she will discuss or any items that he/she will transport are either not controlled, or eligible for a BIS or DDTC license exception or OFAC General License, or, if controlled, proper licenses are in place. Because the traveler and the University can be held liable for improperly transferring controlled items or technology, it is important that travelers and travel approvers be aware of the federal requirements.

Most travel for conferences will fall under an exclusion to the export control regulations: Information that is published and is generally accessible to the interested public through publication in books or periodicals available in a public library or in bookstores, or information that is presented at a conference, meeting, seminar, trade show or other open gathering is considered to be in the public domain. An open gathering is one in which members of the general public are eligible to attend (even if there is a nominal registration fee) and attendees are permitted to take notes.

C. Sanctioned Countries

The Department of the Treasury, through its Office of Foreign Assets Control, administers economic and trade sanctions that at times can restrict transactions and travel, or require licensing in order to travel to a foreign country, or to conduct business with a foreign entity or individual. Before considering travel to sanctioned countries to conduct **research or educational** activities, check first with the designated university office. A determination will be made by the appropriate office in consultation with the State System Export Control Officer as to whether a license is required. Some countries can require a specific license that might take several weeks to obtain. For the most current list of restricted countries please consult the [OFAC's Sanctions Program and Country Summaries](#) website.

D. Laptop computer, PDA, cell phone, and data storage devices.

When an individual is traveling outside of the United States, a laptop computer, PDA, cell phone, data storage devices and encrypted software might require an export license or other government approval to be taken to many countries outside of the United States. These items appear on the CCL. The University is required to document the export (even a temporary export) of these items if they are owned by the University.

A personal computer taken abroad might contain strong encrypted software that requires a license exception or a government license for export to many countries.

Regardless of ownership, any **controlled** technology must remain under your constant effective control. Temporary exports under the "Tools of Trade" or the "Baggage" license exception apply when the laptop, PDA, cell phone, data storage devices and encrypted software are:

- Hand carried with you at all times while you travel,
- Carried in your luggage or baggage that travels with you, or
- Shipped no more than thirty days prior to your departure, or may be shipped to you at any time while you are outside the country

Generally, so long as the traveler (1) retains the laptop computer, PDA, cell phone, data storage devices and encrypted software under his/her personal custody and effective control for the duration of travel; (2) does not intend to keep these items in these countries for longer than 1 year; and (3) are not traveling to Cuba, Iran, North Korea, Sudan or Syria, no government export license is required. Note that this license exception is not available for equipment, components or software designed for use in/by/with most satellites or spacecraft. "Effective control" means retaining physical possession of an item or maintaining it in a secure environment.

Checklist certifications are available for travelers taking university OR personal laptop computer, PDA, cell phone, data storage devices and encrypted software to controlled countries. The certification should be carried with the person at all times. The certifications follow in Appendix F as Forms 5 and 6.

Taking such devices to Cuba and Sudan is allowed under a License Exception for Consumer Communication Devices (Form 7).

E. Other University Equipment

Researchers frequently need to take other university equipment temporarily outside of the United States for use in University-sponsored research. The tools of trade license exception will not always apply to research equipment. Some equipment (e.g., global positioning systems (GPS), thermal imaging cameras, magnetometers, inertial measurement units and specialty software), are highly restricted and might require an export license to take, even if hand-carried. If taking University equipment other than a laptop computer, PDA, cell phone, data storage devices, contact the designated University office, which shall consult with the State System Export Control Officer to determine if an export license or other government approval is required prior to taking the equipment out of the country. A temporary transport out-of-country might be feasible if the equipment does not require a license; however, it still requires a Certification that is filed with the University and forwarded to the PASSHE Export Control Officer.

F. Country specific advice

Cuba: Sanctions against Cuba are designed to cumulatively channel economic activities away from the Cuban military, intelligence, and security services, while maintaining opportunities for Americans to engage in authorized travel to Cuba and support the private, small business sector in Cuba. Individual academic travel is permitted, and “people-to-people” group non-academic travel is also allowed under specific restrictions. Individuals interested in travelling to Cuba for student academic activities or for faculty research activities must understand the current parameters of allowed activities published at the U.S. Treasury’s [Resource Center – Cuba Sanctions](#). Any group travel should use an agent that is authorized to sponsor people-to-people travel and ensure the agent can provide documentation of the appropriate license. Faculty and staff must notify the Export Control Officer if travel to Cuba is planned for either themselves or their students. The Export Control Officer will evaluate the desired travel to Cuba against the permitted activities and their conditions.

Individuals traveling to Cuba for a purpose that is authorized by the regulations, may utilize two license exceptions to take their personal electronic devices with them. Use Form 7 or Form 8 depending on the nature of your trip.

Other countries: If you are traveling to other sanctioned countries, please review the country specific rules that are available at [U.S. Treasury’s Resource Center](#).

G. License Exceptions and Exemptions Related To Travel Outside the United States

A *License Exemption*^[3] might be available to ITAR controlled technical data transmitted outside the United States if the individual transmitting the technical data can certify that:

1. the technical data is to be used overseas solely by a United States person(s);
2. the United States person overseas is an employee of the University or the United States Government and is not an employee of a foreign subsidiary;
3. if the information is classified, it will be sent overseas in accordance with the requirements of the Department of Defense Industrial Security Manual; and,

^[3] See 22 C.F.R. § 125.4.

4. no export will be made to countries listed by 22 C.F.R. § 126.1.^[4]

Please note that other exceptions or exemptions might be available. Any individual intending to travel or transmit controlled data outside the United States should first consult with the designated University office.

All exceptions or exemptions for **research** activities must be documented with the University Office of Sponsored Programs and forwarded to the State System Export Control Officer. All exceptions or exemptions for **non-research** activities must be documented by the designated University office and forwarded to the State System Export Control Officer. The record must be maintained for at least five years after the termination of the project or the travel return date. In addition to Forms 5 and 6, certification forms for unique situations will be available from the System's Export Control Officer.

H. Software

The Department of Commerce has provided two decision trees to classify encrypted software as export controlled or not. Those processes are available at [BIS Encryption flow Chart 1](#) [BIS Encryption flow Chart 2](#)

I. Licensing

If a project is export controlled and a license is needed, the System's Export Control Officer may apply for an export license to allow the travel to occur. In situations where the federal agency has a standard policy of denial, the Export Control Officer will not request a license. An Export License application requires extensive documentation of the technology and its end use/users in the foreign country; its processing can greatly delay a project implementation. Also note that a Technology Control Plan (TCP) will be implemented whenever a license is requested. The responsible traveler and the University Designated Official, in coordination with the System's Export Control Officer, and legal counsel, will prepare and sign the Technology Control Plan. A template TCP will be available from the State System Export Control Officer.

^[4] The full list of proscribed countries may be found at http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf.

Appendix E. Guidance for Distance Education

Regulations Related to Distance Education

Offering distance education courses to individuals residing in foreign countries falls under the scope of exporting a service, per the regulations of the Office of Foreign Assets Control (OFAC), part of the U.S. Department of Treasury. Export of services includes delivery of distance education courses that are offered for credit and charge tuition to the student.

When a country is sanctioned by the U.S. Government, the university may require a government license **before** enrolling students residing in an OFAC sanctioned country. Currently that list includes: Cuba, Iran, North Korea, Sudan, Syria which are all considered State Sponsors of Terrorism. As an example, 31 CFR Part 560.204 of the Iranian Transaction Regulations states, in part, that “the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, technology, or services to Iran or the Government of Iran is prohibited”. OFAC offers General Licenses that may allow specific educational courses to be accessed in certain sanctioned countries without first obtaining a Specific License.

What To Do The University administrators should consult the list of comprehensively sanctioned countries for permitted and non-permitted services that it may offer. For general guidance on specific country limitations and General Licenses, go to the [U.S. Treasury’s Resource Center](#). For detailed consultation regarding if and when a General License applies to a particular situation, contact the System’s Export Control Officer. In addition, when enrolling students residing in *any* foreign country in a distance education course or in a course offered in any foreign country, the University should screen the class list using the restricted lists available at MKDenial.com, an [online screening tool](#) to which the State System has a shared subscription. These lists will identify known entities and individuals (e.g. terrorists, traffickers, denial order) that are prohibited from doing business with the U.S. government and U.S. entities. Any match must be evaluated by the Export Control Officer and may result in the inability of the individual to participate in the course.

Appendix F: Technology Control Plans

If the sharing of technology or software requires an export control license from a federal agency, a Technology Control Plan (TCP) will be necessary to comply with the license terms and conditions and to manage security on export controlled projects. Security measures will be appropriate to the classification of the activities. Moreover, a project-specific TCP is a significant tool in every researcher's personal compliance with the export control laws. Most TCP's are short two page documents that outline measures the university will take to maintain compliance with the approved federal license and ensure unauthorized persons do not have unauthorized "use" of the technology.

A comprehensive, institution-wide TCP can protect all controlled items (hardware, software and information) from access by unlicensed foreign nationals on campus and can, in some cases, actually alleviate the need for a government Export License, the processing of which requires extensive documentation and can greatly delay a project implementation.

A template activity-specific TCP is available from the System's Export Control Officer.

Appendix G: Forms and Processes

Form 1. FUNDAMENTAL RESEARCH EXCLUSION REVIEW—For Researchers

It is important the University and its researchers are familiar and comply with the export control laws and regulations that govern research funding. Identifying proposals subject to export control laws and regulation early in the funding process aids in efficient and effective project management. Offices of Sponsored Programs must include the following checklist as part of the institution's proposal review form.

Principal investigators shall use this tool to determine if export control regulations may apply to their proposal.

Does this proposal, project or agreement:	YES	NO	Don't Know
---	-----	----	------------

Restrict researcher participation (faculty, student, others) based on country of origin or citizenship?

Prohibit the involvement of foreign persons or entities?

Contain restrictions on foreign travel?

Require researcher to participate in meetings restricted to U.S. citizens only?

Grant the sponsor a right of prepublication review for matters other than the inclusion of patent and/or proprietary sponsor information?

Provide that any part of the sponsoring, granting, or establishing documents may not be disclosed?

Limit access to confidential data?

Accept proprietary information as part of the project?

Involve materials, equipment or technology that may be regulated by export control laws?

If the answer to any of these questions is "Yes" or if you have other questions related to export controls, please contact the University Office of Sponsored Programs.

Form 2. FUNDAMENTAL RESEARCH EXCLUSION—For Sponsored Research Offices

The principle of openness in research is one of overriding importance to the State System. Accordingly, no program of research that requires secrecy may be conducted at a System University, other than the exceptions specifically allowed after careful and deliberate review by the Provost or President. This checklist poses questions on research restrictions that might endanger the Fundamental Research Exclusion. It does NOT provide a comprehensive review under all Export Control Laws.

The University Sponsored Research Offices shall use this checklist when reviewing:

- requests for proposals or project solicitations;
- program award notices;
- Non-Disclosure Agreements (NDAs), Material Transfer Agreements (MTA’s); and,
- any other documents related to research proposals, contracts, cooperative agreements and other arrangements for sponsored research projects to assure that they do not require secrecy or impose unacceptable restrictions.

If funding will be awarded **under a federal contract**, complete this checklist twice, initially at the time of submission in order to take exception to any restrictive clauses in the funding announcement and again at the time of award when reviewing the contract

If funding is to be awarded through a **grant agreement**, complete this checklist at the time of funding award.

In any proposals for research funding, the University will include language indicating its commitment to openness in research, and its intention to adhere to this principal.

Does this project or agreement:	INITIAL REVIEW		AT AWARD	
	YES	NO	YES	NO
Restrict researcher participation (faculty, student, others) based on country of origin or citizenship?				
Require researcher participation in United States-citizen-only meetings?				
Prohibit the hiring of non-United States citizens to be involved in the proposed research?				
Grant the sponsor a right of prepublication review for matters other than the inclusion of patent and/or proprietary sponsor information?				
Provide that any part of the sponsoring, granting, or establishing documents may not be disclosed?				
Limit access to confidential data so centrally related to the research that a member of the research group who was not privy to the confidential data would be unable to participate fully in all of the intellectually significant portions of the project?				

If the answer to any of the above question is "Yes," or if you have other questions related to openness in research, please contact the University Senior Sponsored Research Administrator, or the System’s Export Control Officer.

If accepting proprietary information as part of a project:

INITIAL REVIEW		AT AWARD	
YES	NO	YES	NO

Is the information clearly defined?

Can the information be appropriately protected?

Can proprietary information be removed from research results, so that results may be freely published?

If the answer to any of the above questions is "No," please contact the Senior Sponsored Research Administrator or Export Control Officer.

If accepting information identified as export-controlled:

INITIAL REVIEW		AT AWARD	
YES	NO	YES	NO

Has a Non-Disclosure Agreement been reviewed with the University's designated office

Is there any need to share this information with others, including international students or other non-citizens?

In either case, when dealing with export controls, please contact the System's Export Control Officer.

COMPLETED AT PROPOSAL REVIEW (for contracts only)

BY: _____

DATE: _____

COMPLETED AT AWARD/CONTRACT EXECUTION

BY: _____

DATE: _____

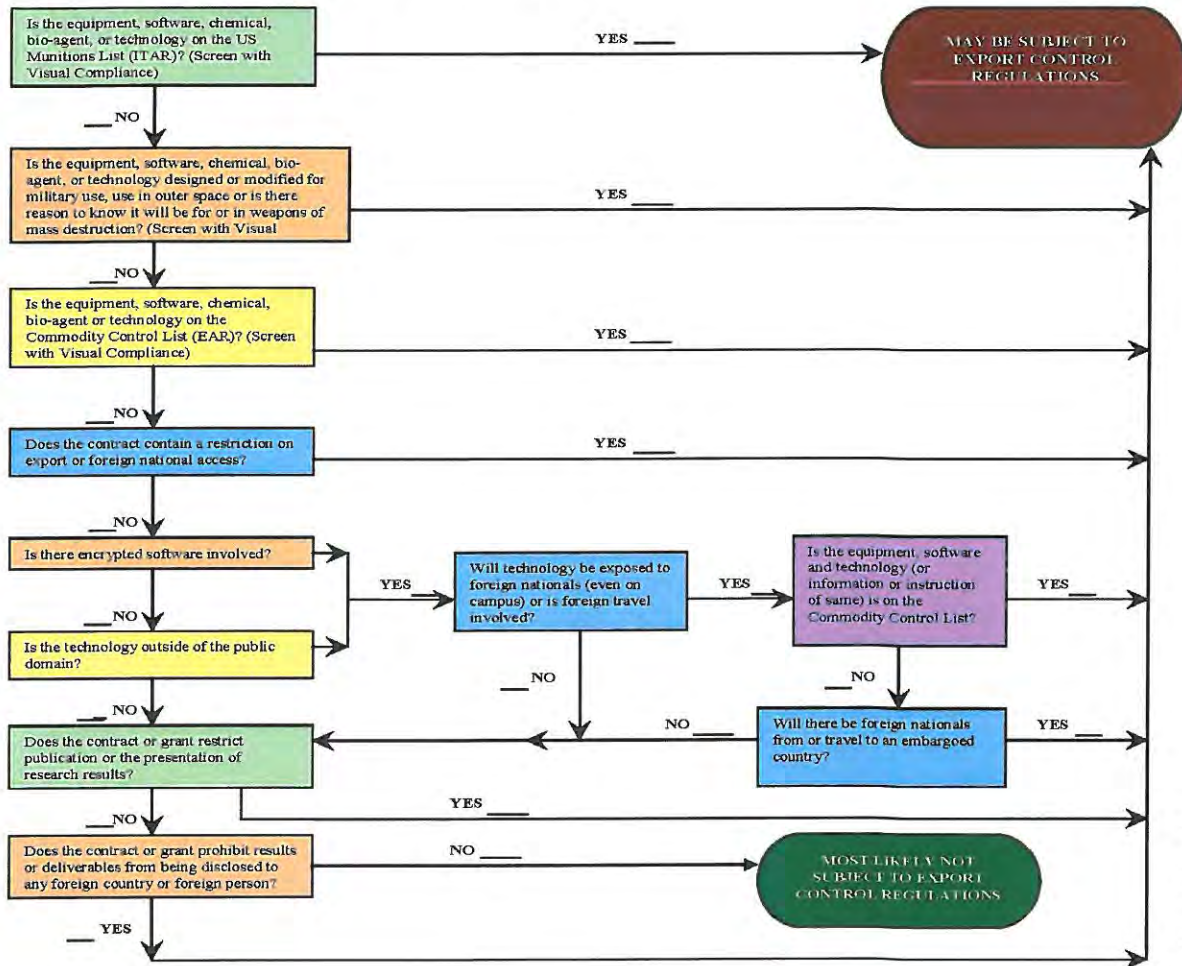
RETAIN THIS DOCUMENT IN THE PROPOSAL/PROJECT FILE WITHIN THE UNIVERSITY OFFICE OF SPONSORED PROJECTS.

Form 3. EXPORT CONTROLS DECISION TREE for SRO

The following chart will assist in determining if any export controls apply to the proposed activity. The tree is available as a separate file, "Export Controls Decision Chart for SRO.pdf"

The Office of Sponsored Projects completes this, checking the correct answer for each question, sign, date and retain in files.

Export Controls Decision Chart



Completed by: _____
 Date: _____

Form 4. ALTERNATIVE EXPORT CONTROL DECISION TREE

The University of Stanford has a well-developed, public website that provides guidance on export control as it affects research and travel. Another optional Export Control Decision Tree is available from its website at <http://export.stanford.edu/tree/index.html>. It is an excellent resource to use to determine the applicability of Export Controls to University activities and projects. When using the on-line tree, take note that State System administrators and faculty may NOT contact the individuals named as resources for Stanford University.

Export Control Decision Tree [permission granted]

1. Are you sharing, shipping, transmitting or transferring University-developed, non-commercial encryption software⁽¹⁾ in source code or object code⁽²⁾ (including travel outside the country with such software)?

--YES→**YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!

-- NO→ go to next

2. Do you know or have any reason to believe that the item, information or software to be shared, shipped, transmitted or transferred will support the design, development, production, stockpiling or use of a nuclear explosive device, chemical or biological weapons, or missiles⁽¹⁾?

--YES→**YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!

--NO→ go to next

3. Was the item, information or software to be shared, shipped, transmitted or transferred developed under a sponsored agreement imposing publication restrictions⁽¹⁾ beyond a brief review (up to 90 days) for patent protection and/or inadvertent release of confidential/proprietary information?

--YES→**YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!

--NO→ go to next

4. Did an external sponsor, vendor, collaborator or other third party provide, under a Non-Disclosure Agreement or a Confidentiality Agreement⁽¹⁾, the item, information or software to be shared, shipped, transmitted or transferred?

--YES → Is the item, information or software provided under a Non-Disclosure Agreement or a Confidentiality Agreement⁽¹⁾ **central to the research program** and/or do the disclosure restrictions affect the **ability to publish the research results**?

-- Yes→**YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!

--NO→ go to next

5. Is the item being shared, shipped, transmitted or transferred a defense article⁽¹⁾ other than information or software on the ITAR's US Munitions List (USML)?

--YES →**YOU MAY NEED TO OBTAIN AN EXPORT LICENSE**

Don't go any further without getting advice!

--NO→ go to next

6. Is the information or software being shared, shipped, transmitted or transferred technical data⁽¹⁾ on the ITAR's US Munitions List (USML)?

--YES → Is the USML-listed information or software being shared, shipped, transmitted or transferred either **published, patented or generally accessible and available**⁽¹⁾ to the public? --Yes → go to 9 -- NO → go to next

7. Are you shipping or transferring **items (2) on the Commerce Control List (CCL)**⁽¹⁾ of the Export Administration Regulations (EAR)?

--YES → Is the CCL-listed item to be shipped to a foreign country? Yes → **YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!

--NO (go to 9)

8. Are you sharing, transmitting or transferring **technology (information)**⁽¹⁾ or **software code**⁽²⁾ on the Commerce Control List (CCL)?

YES → Is the Commerce Control-Listed information or software that you are going to share, ship, transmit or transfer either **published, patented or generally accessible** to the interested public in any form⁽¹⁾?

--Yes → go to 9

--NO → go to next

9. Is the disclosure⁽¹⁾, shipment, transmission, or transfer to an entity in a country subject to US economic or trade sanctions or identified by the US Department of State as a "State Sponsor of Terrorism," namely Iran, Cuba, Sudan, Syria or North Korea (or any country on the current list of embargoed countries).

--YES → **YOU MAY NEED TO OBTAIN AN EXPORT LICENSE** Don't go any further without getting advice!

--NO

The tree may take one to this final screen: **GOOD NEWS!! YOU DO NOT NEED TO OBTAIN AN EXPORT LICENSE. JUST TWO MORE STEPS BEFORE YOU CAN SHIP TANGIBLE ITEMS INTERNATIONALLY OR SHARE EXPORT CONTROLLED INFORMATION WITH FOREIGN PERSONS.**

Because several federal agencies restrict or prohibit transactions with certain individuals and organizations, you must first screen your recipient's name, location and institution against U.S. government "DENIED PARTIES LISTS."

EXPORT LICENSE EXCEPTION (TMP) CERTIFICATION
for Export Administration Regulations (EAR) controlled Items, Technology, and Software
"Tools of the Trade" Traveler Certification

Traveler Name: _____
 Destination Countries: _____
 Dates of travel: _____

Instructions: This form applies to travel with university-owned laptops, smart phones and other electronic media storage. Review, complete, and sign this letter. Carry one copy with luggage to present to Customs if requested or in the event of a search. Return a copy to the University.

Background: The export of items, technology, commercial software, and encryption code is subject to federal export control regulations (this includes laptops, smart phones and digital storage devices). The Department of Commerce's Export Administration Regulations (EAR) makes an exception to licensing requirements for the temporary export or reexport of certain items, technology, or software for professional use as long as the criteria to which you are certifying below are met. The exception does not apply to any EAR satellite or space-related equipment, components, or software, or to any technology associated with high-level encryption products. In addition, this exception does not apply to items, technology, data, or software regulated by the Department of State's International Traffic in Arms Regulations (ITAR).

Items Eligible for TMP Exemption (15 CFR 740.9(a)(1))	Items NOT Eligible for Exemption
Tools of the trade: university-owned* laptops, tablets, smart-phones and other electronic storage media necessary and related to the purpose of the travels, including commercial encryption.	Items, technology, data, or software designed for military or dual-use purposes. Satellite or space-related equipment, components, or software, or any technology associated with high-level encryption products.

*Personal electronics may be eligible for the baggage "BAG" exemption (See [15 CFR 740.14](#) for details).

CERTIFICATION: This letter is to certify that I am hand-carrying the hardware identified below for official university business purposes, in accordance with the 15 CFR 740.9 "TMP" exemption to the above named countries. By using the License Exceptions I am certifying that the conditions for the use of the License Exception described in the EAR, and listed below, have been met.

Item Description and Model	University Asset Tag # or Serial Number

1. **I will return the items, technology, or software to the US no later than 12 months from the date of leaving the US** unless the items, technology, or software are certified by me to have been consumed or destroyed abroad during this 12 month period;
2. I will keep the items, technology, or software under my "effective control" while abroad (defined as retaining physical possession of item or keeping it secured in a place such as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility*)
3. I will take security precautions to protect against unauthorized release of the technology while the technology is being shipped or transmitted and used abroad such as:
 - a. use of secure connections when accessing e-mail and other business activities that involve the transmission and use of the technology,
 - b. use of password systems on electronic devices that store technology, and
 - c. use of personal firewalls on electronic devices that store the technology;
4. **I will not ship or hand-carry the items, technology or software to Iran, Syria, Cuba, North Korea, or Sudan.**

Signed: _____
 [Name of University Traveler]

Date: _____

Form 6.

EXPORT LICENSE EXCEPTION (BAG) CERTIFICATION
for Export Administration Regulations (EAR) controlled Items, Technology, and Software
“Baggage” Traveler Certification

Traveler Name: _____

Destination Countries: _____

Dates of travel: _____

Instructions: This form applies to travel with laptops, smart phones and other electronic media storage owned by the individual. Review, complete, and sign this letter. Carry one copy with luggage to present to Customs if requested or in the event of a search.

Background: The export of items, technology, commercial software, and encryption code is subject to export control regulations (this includes laptops, PDAs and digital storage devices). The Department of Commerce’s Export Administration Regulations (EAR) makes an exception to licensing requirements for the temporary export or reexport of certain items, technology, or software for personal or professional use as long as the criteria to which you are certifying below are met. The exception does not apply to any EAR satellite or space-related equipment, components, or software, or to any technology associated with high-level encryption products. In addition, this exception does not apply to items, technology, data, or software regulated by the Department of State’s International Traffic in Arms Regulations (ITAR).

Items Eligible for BAG Exemption <i>(15 CFR 740.14)</i>	Items NOT Eligible for Exemption
Laptops, tablets, smart-phones and other electronic storage media, commercial encryption commodities and software for personal use while traveling abroad.	Items, technology, data, or software designed for military or dual-use purposes. Satellite or space-related equipment, components, or software, or any technology associated with high-level encryption products.

CERTIFICATION: This letter is to certify that I am hand-carrying the items identified below for personal use purposes, in accordance with the 15 CFR 740.14 “BAG” exemption to the above named countries. By using the License Exceptions I am certifying that the conditions for the use of the License Exception described in the EAR, and listed below, have been met.

Detailed Description of Items, Technology or Software to which this Certification applies:

[Insert description here]

1. I personally own the items, technology, or software I am taking abroad to the above named countries.
2. I am not shipping the items as unaccompanied baggage;
3. The items, technology, or software are intended for necessary and appropriate personal use only;
4. The items, technology, or software are not intended for sale or other disposal;
5. I will return the items, technology, or software to the U.S.;
6. I will keep the items, technology, or software under my “effective control” while abroad (defined as retaining physical possession of item or keeping it secured in a place such as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility*);
7. I will take security precautions to protect against unauthorized release of the technology while the technology is being shipped or transmitted and used abroad such as:
 - a. use of secure connections when accessing e-mail and other business activities that involve the transmission and use of the technology,
 - b. use of password systems on electronic devices that store technology, and
 - c. use of personal firewalls on electronic devices that store the technology;
8. **I will not ship or hand-carry the items, technology or software to Iran, Syria, Cuba, North Korea, or Sudan.**

Signed: _____

Date: _____

[Name of University Traveler]

**EXPORT LICENSE EXCEPTION CERTIFICATION
for Export Administration Regulations (EAR) controlled items when
traveling to Cuba or Sudan**

Consumer Communication Devices (CCD) Traveler Certification

Traveler Name: _____

Destination Countries: _____

Dates of travel: _____

Instructions: This form applies to travel Cuba or Sudan with consumer communications devices, including both university-owned and personally owned items. Review, complete, and sign this letter. Carry one copy with luggage to present to Customs if requested or in the event of a search. Return a copy to the University.

Background: The export of items, technology, commercial software, and encryption code is subject to federal export control regulations (this includes laptops, smart phones and digital storage devices). The Department of Commerce’s Export Administration Regulations (EAR) makes an exception to licensing requirements for specific consumer computers, software and communication devices as long as the criteria to which you are certifying below are met. The exception does not apply to any EAR satellite or space-related equipment, components, or software, or to any technology associated with high-level encryption products. In addition, this exception does not apply to items, technology, data, or software regulated by the Department of State’s International Traffic in Arms Regulations (ITAR).

Items Eligible for CCD Exemption (15 CFR 740.19(b))	Items NOT Eligible for Exemption
Eligible items include mobile phones, digital cameras, computers, monitors, keyboards, consumer software and more (all eligible items are listed on the reverse). “Consumer” means generally available to the public by being sold, without restriction, from stock at retail selling points and designed for installation by the user without further substantial support by the supplier. Certain GPS receivers may be taken ONLY to Sudan.	Items, technology, data, or software designed for military or dual-use purposes. Satellite or space-related equipment, components, or software, or any technology associated with high-level encryption products. Encryption source code is NOT eligible. GPS receivers (7A994) may NOT be taken to Cuba.

CERTIFICATION: This letter is to certify that I am taking the items identified below in my travel to Cuba or Sudan in accordance with the 15 CFR 740.19 “CCD” exception. By signing below I am certifying that the conditions for the use of the License Exception described in the EAR, and listed below, have been met.

Item Description and Model	University Asset Tag # or Serial # or N.A.

1. I understand this exception is limited to the commodities and software listed on the reverse side of this form.
2. I will not provide the commodity or software to anyone affiliated with the Cuban Government or the Cuban Communist party and organizations they administer or control.
3. I will not share technology (i.e. information) related to the development, use, operation, maintenance, repair or overhaul of any item that is listed on the US Munitions list and/or the US Commerce Control List unless anti-terrorism is the only reason for control of that item.

Signed: _____ Date: _____

[Name of University Traveler]

See reverse for more information

Eligible commodities and software. Commodities and software listed below are eligible for this license exception (i.e. when taking the items to Cuba or Sudan). Commodities in item (18) of this section are eligible for taking to Sudan only.

Commodity/software	ECCN Classification/ Designation *
1) Consumer computers	5A992.c, 4A994.b, EAR99
2) Consumer disk drives and solid state storage equipment	5A992, EAR99
3) Input/output control units (other than industrial controllers designed for chemical processing)	EAR99
4) Graphics accelerators and graphics coprocessors	EAR99
5) Monitors	5A992.c, EAR99
6) Printers	5A992.c, EAR99
7) Modems	5A991.b.2, 5A991.b.4., or 5A992.c, EAR99
8) Network access controllers and communications channel controllers	5A991.b.4, EAR99
9) Keyboards, mice and similar devices	EAR99
10) Mobile phones, including cellular and satellite telephones, personal digital assistants, and subscriber information module (SIM) cards and similar devices	5A992.c or 5A991, EAR99,
11) Memory devices	5A992.c, EAR99
12) Consumer "information security" equipment, "software" (except "encryption source code") and peripherals	5A992.c or 5D992.c, EAR99
13) Digital cameras and memory cards	5A992, EAR99
14) Television and radio receivers	5A992, EAR99
15) Recording devices	5A992, EAR99
16) Batteries, chargers, carrying cases and accessories for the equipment described in this list	EAR99
17) Consumer "software" (except "encryption source code") to be used for equipment described in this list	4D994, 5D991 or 5D992.c, EAR99
18) (Sudan only) Global Positioning System receivers or similar satellite receivers	7A994

* If you question if your items qualify for this list, you can confirm the specific product specifications of the Classification/Designation number for your item(s) by checking the above ECCN number at 15 CFR Part 774, Supplement No.1, at http://www.ecfr.gov/cgi-bin/text-idx?node=15:2.1.3.4.45#ap15.2.774_12.1 Go to the link and use the Find feature of your browser and search for the five-digit numbers and extension.

EXPORT LICENSE EXCEPTION CERTIFICATION
for Export Administration Regulations (EAR) controlled items when
traveling to Cuba

Support for the Cuban People (SCP) Traveler Certification

Traveler Name: _____

Destination Country: CUBA

Dates of travel: _____

Instructions: This form applies to travel Cuba with certain items (i.e. commodities, technology or software) including both university-owned and personally owned items, for use in specified activities that can strengthen civil society. Use this form IF THE ITEMS DO NOT QUALIFY FOR THE CCD EXCEPTION. Review, complete, and sign this letter. Carry one copy with luggage to present to Customs if requested or in the event of a search. Return a copy to the University.

Background: The export of items, technology, commercial software, and encryption code is subject to federal export control regulations (this includes research equipment, as well as computing devices). The Department of Commerce’s Export Administration Regulations (EAR) makes an exception to licensing requirements for certain items as long as the criteria to which you are certifying below are met. The exception does not apply to any EAR satellite or space-related equipment, components, or software, or to any technology associated with high-level encryption products. In addition, this exception does not apply to items, technology, data, or software regulated by the Department of State’s International Traffic in Arms Regulations (ITAR).

Items Eligible for SCP Exemption (15 CFR 740.21(c)(2))	Items NOT Eligible for Exemption
Research equipment, software and technology limited to those designated as EAR99 or are controlled only for anti-terrorism reasons on the US Commerce Control List. Consult with your university Export Control Authorized Official for assistance in classifying items. (If your items are limited to smart phones, laptops and similar items, use the CCD Exception form if qualified.)	Items, technology, data, or software designed for military or dual-use purposes. Satellite or space-related equipment, components, or software, or any technology associated with high-level encryption products. Encryption source code is NOT eligible.

CERTIFICATION: This letter is to certify that I am taking the items identified below in my travel to Cuba in accordance with the 15 CFR 740.21 “SCP” exception. By signing below I am certifying that the conditions for the use of the License Exception described in the EAR, and listed below, have been met.

Item Description and Model	University Asset Tag # OR Serial # OR N.A.

The purpose of taking the items to Cuba is for my own use in scientific, archeological, cultural, ecological, educational, historic preservation, or sporting activities, or professional meetings or research, further limited as follows:

- a. Research is directly related to my profession, professional background or area of expertise, or graduate-level full-time study.
- b. My activities or research do not relate to the “development,” “production,” “use,” operation, installation, maintenance, repair, overhaul or refurbishing of any item described on the US Munitions List or of any item described on the Commerce Control List unless the only reason for control that applies to that item is anti-terrorism.
- c. I will keep the items, technology, or software under my “effective control” while in Cuba (defined as retaining physical possession of item or keeping it secured in a place such as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility*)

I will return the items, technology, or software to the US no later than 24 months from the date of leaving the US unless the items, technology, or software are certified by me to have been consumed or destroyed abroad during this 24 month period.

Signed: _____ Date: _____

[Name of University Traveler]

Form 9 . Optional letter to travelers

Instructions: This letter may be reproduced on the reverse side of Form 5 or Form 6.

Dear traveler,

You have indicated that you plan to travel internationally. When traveling abroad, any physical material or technical data in your possession is considered by United States regulations to have been “exported” from the United States to your final destination and any intermediate destinations. It is your responsibility to abide by the US export laws and embargoes to ensure you are in compliance with national security, economic, and foreign policy. Here are a few items you should be aware of:

Travel to Sanctioned Countries: Iran, Syria, North Korea and Sudan are sanctioned and embargoed countries. Carrying any hardware (including laptop computers or cell phones) and providing or accepting services from sanctioned entities may be a violation of US export laws. Cuba has a License Exceptions for personal communication devices. Please contact the _____ office as soon as possible if you need to travel to any of these locations.

Traveling with hardware: When traveling to many foreign locations, certain items (including laptop computers and electronic devices) must remain under “effective control” of the traveler at all times, which is defined *in federal regulations* as: “retaining physical possession of item or keeping it secured in a place such as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility”. If you need to take high-tech devices to foreign locations, it is recommend that you check with the _____ office to make sure the device can legally be exported to your destination and/or you are using the appropriate license exception for your items.

Traveling with Technical Data: Depending on the location and type of data, travelers cannot possess “controlled technical data” defined as “data required for the design, fabrication, operation, or maintenance of military or dual-use technology and, not in the public domain or otherwise exempt from licensing requirements”. Generally, this could include any proprietary data. **The best advice is to not travel to foreign locations with a computer that contains any proprietary or sensitive technology. “Clean computers” may be available from the University for your use when traveling on official business travel.**

More information on traveling abroad can be found at PASSHE’s [Export Controls](https://secure.passhe.edu/asa/exportcontrols/Pages/Export-Controls-Home.aspx) website - <https://secure.passhe.edu/asa/exportcontrols/Pages/Export-Controls-Home.aspx>

While the University has a goal of promoting academic freedom and sharing of information to the greatest extent possible, researchers and administrators need to be mindful of the legal restrictions including the significant personal liability associated with handling controlled technologies.

Please contact the _____ office to help you determine what action you should take while traveling internationally at ____ - ____ - ____.

Form 10. Optional International Travel Screening Questionnaire

Available as a fillable PDF form upon request

Prior to requiring travelers to complete Form 5 or Form 6, you may utilize the following screening tool (provided by IUP) to determine if either certification is appropriate.

International Travel Questionnaire

Name of International Traveler: _____

Proposed dates and Destinations of travel _____

Instructions: Please answer the following questions as accurately as you can. Your answers will be used to initiate conversations about travel details, to evaluate requirements and risks, to explore alternatives and to develop ways to mitigate risk factors.

Yes No N/A

1. If your travel is paid by a foreign country or a grant, does the country or grant require you to sequester or otherwise withhold publication of any data?

2. Will you be using any state funds, such as from the University Senate, your college, or dean, to pay for any portion of the travel?

3. Will you use any state funds to pay for research within the country, such as paying survey participants or for laborers?

4. Will you have an item of university equipment (e.g. laptop, cell phone, etc.) or software to be shipped or hand-carried abroad?

5. If the item is currently overseas, will it remain in the same country and with the same overseas custodian until it is returned to the U.S.?

6. Will the item or software to be shipped, retransferred or hand-carried be returned to the U.S. within 12 months or either consumed or destroyed abroad?

7. Is the item or software for temporary shipment, retransfer or hand-carry to any country **OTHER THAN:** Cuba, Iran, North Korea, Syria, or Sudan?

8. Will the item or software to be shipped, retransferred or hand-carried be used **ONLY** either a) as a "tool of the trade" to conduct PASSHE business, or b) for exhibition or demonstration, or c) for inspection, testing, calibration or repair?

9. If for inspection, testing, calibration or repair, will the item or software be shipped, retransferred or hand-carried to any country **OTHER THAN:** Albania, Armenia, Azerbaijan, Belarus, Cambodia, China, Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Libya, Macau, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan or Vietnam?

10. Will the item or software remain under the "effective control" of PASSHE personnel while the property is abroad? Note: "Effective Control" is defined as retaining physical possession of an item or maintaining it in a secure environment such as a hotel safe (not in hotel room) or a locked or guarded facility.

11. Is the encryption code incorporated in the item or on the software media limited to that available through retail purchase (phone order, mail, internet, or over the-counter transactions)? **APPROVALS**

Traveler _____
Signature _____ Date _____

Manager _____
e.g., Dean, AVP, etc.) Signature _____ Date _____

Appendix H: Definitions

Actual Export – Technology and information leaving the shores of the United States.

Commerce Control List (CCL) - A list of goods and technology and software regulated by the Department of Commerce through the Export Administration Regulations (EAR). Items on this list are marked for dual-use, which means that they are commercial goods that could be used for military purposes.

Commodity Jurisdiction Ruling – A request that can be made to the State Department to determine whether the Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR) have jurisdiction over the export of a good or technology or software.

Controlled Physical Items – Defense articles listed on the International Traffic in Arms Regulations (ITAR) and dual use items listed under Export Administration Regulations (EAR).

Controlled Unclassified Information (CUI) – Is a designation bestowed by federal agencies on 22 classes of information including “export controlled” and “export controlled research”. The written contract between a federal agency and the University must identify data the federal agency is sharing that it has specifically identified as CUI, and that the institution must follow the information security requirements specified by NIST 800-171. Without these contractual requirements CUI does not apply.

Deemed Export – Releasing or otherwise transferring “technology” or source code (but not object code) to a foreign person in the United States. Any release in the United States of “technology” or source code to a foreign person is a deemed export to the foreign person’s most recent country of citizenship or permanent residency. See [15 CFR Part 734.2\(b\)\(2\)\(ii\)](#). The following are examples of how a deemed export can be transmitted

- Uploading data to shared folder
- Providing access to shared folder
- Fax
- Telephone conversations
- Email communications
- Face-to-face discussions
- Tours of labs
- Training sessions
- Computer data

Note: There are some detailed exceptions for encrypted data. Consult with the System’s Export Control Officer for further guidance and analysis.

Defense Article – ([ITAR 22 CFR Part 120.6](#)) Any item designated in the U.S. Munitions List. Examples include specified chemical agents, cameras designated for military purposes, specified lasers, and GPS equipment. It also means any technical data recorded or stored in any physical form, models, mock-ups, or other items that reveal technical data directly relating to the particular item or “defense article” listed in the USML.

Defense Service – (See [22 CFR Part 120.9](#)) The furnishing of assistance, including training, to foreign persons, whether in the U.S. or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles (those listed on the USML). Furnishing any technical

data controlled by ITAR to a foreign person in the U.S. or abroad also constitutes a defense service under the regulations.

Dual-use – Items that are listed on the Commerce Control List (CCL). These goods and technologies are commercial in nature but could be used for military purposes.

Dual Use Research of Concern (“DURC”) - Life sciences research that, based on current understanding, can be reasonably anticipated to provide knowledge, information, products, or technologies that could be directly misapplied to pose a significant threat with broad potential consequences to public health and safety, agricultural crops and other plants, animals, the environment, materiel, or national security. It includes biological agents that are highly dangerous; some of the substances are also export controlled per other government agencies. The United States Government [Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern](#) articulates the practices and procedures required of institutions to ensure that dual use research of concern is identified at the institutional level and risk mitigation measures are implemented as necessary. It involves the following agents and toxins:

- a) Avian influenza virus (highly pathogenic)
- b) Bacillus anthracis
- c) Botulinum neurotoxin
- d) Burkholderia mallei
- e) Burkholderia pseudomallei
- f) Ebola virus
- g) Foot-and-mouth disease virus
- h) Francisella tularensis
- i) Marburg virus
- j) Reconstructed 1918 Influenza virus
- k) Rinderpest virus
- l) Toxin-producing strains of Clostridium botulinum
- m) Variola major virus
- n) Variola minor virus
- o) Yersinia pestis

DURC includes the following categories of research experiment involving the above agents or toxins:

- a) Enhances the harmful consequences of the agent or toxin
- b) Disrupts immunity or the effectiveness of an immunization against the agent or toxin without clinical and/or agricultural justification
- c) Confers to the agent or toxin resistance to clinically and/or agriculturally useful prophylactic or therapeutic interventions against that agent or toxin or facilitates their ability to evade detection methodologies
- d) Increases the stability, transmissibility, or the ability to disseminate the agent or toxin
- e) Alters the host range or tropism of the agent or toxin
- f) Enhances the susceptibility of a host population to the agent or toxin
- g) Generates or reconstitutes an eradicated or extinct agent or toxin listed above

Note: Any self-restrictions on publication may negate the Fundamental Research Exclusion for otherwise export controlled technology. Consult with the System Export Control Officer for further guidance.

“EAR99” – The “catch-all category” that applies to any good or technology subject to the Department of Commerce’s Export Administration Regulations that does not fall under one of the ten specific CCL categories and item definitions.

Embargoed Countries -See Sanctioned countriesExport –

- Actual shipment or transmission out of the United States and releasing or otherwise transferring “technology” or source code to a foreign person in the United States (“deemed export”)Technology
- Technical Data or Information
- Equipment, Components, Parts, and other tangible goods
- Software
- Services

Examples of types of transfers:

- Physical shipment outside the U.S.
- Personal baggage while travelling
- Electronic or digital transmission
- Visual inspection in or outside the U.S.
- Written or oral disclosure
- Actual use or application on behalf or for benefit of foreign person or entity
- Granting access or sharing data within the U.S.

Reference should be made to the official definition of export under the [EAR](#) and [ITAR](#) when determining whether a specific act constitutes an export. As “export” is currently defined, an exclusion, exemption, license exception, or prior license is generally required before a foreign national (either faculty, student, or visiting scholar) can participate in research that involves export-controlled technology.

Export Administration Regulations (EAR) – Federal [regulations](#) on dual-use (military and commercial) items through the U.S. Department of Commerce.

Export Control Officer (a.k.a. Empowered Official) – The Empowered Official/Export Control Officer is the chief senior official in the University/System who is responsible for compliance with export controls and embargoes. Their duties include completion of Commodity Jurisdiction requests, submission of license requests, preparation of Technology Control Plans, initiating and responding to investigations of non-compliance. ITAR regulations require that s/he is employed in a position having authority for policy or management; is legally empowered to sign license applications or other requests for approval; understands the provisions and requirements of the various statutes, regulations, criminal liability, civil liability and administrative penalties for violations. In addition, s/he must have the independent authority to: enquire into any aspect of a proposed export or temporary import; verify the legality of the transaction and the accuracy of the information; and refuse to sign any license application or other request for approval without prejudice or other adverse recourse. The System Chancellor has designated an Export Control Officer to serve all Universities in the System.

Foreign organization – see Foreign National/Person.

Foreign National/ Foreign Person – means any natural person who is not a lawful permanent resident (i.e. not a green card holder) or who does not have refugee or asylum status. It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

Fundamental Research – The EAR defines this as basic or applied research in science or engineering or mathematics where the information is ordinarily published and shared openly in the scientific community or is about to be published, and for which the researchers have not accepted restrictions for

proprietary or national security reasons. It does NOT include proprietary research or industrial development, design, production, and product utilization. See 15 CFR Part 734.8(c), Under the ITAR, a similar definition is stated; however, the research must be conducted at an accredited institution of higher learning. See 22 CFR Part 120.11.

General License – A General License is published as a rule or regulations that outlines U.S. policy for allowed activities in individual sanctioned countries. OFAC is the only federal agency that publishes General Licenses. A General License is “self-executing” by the University and is an avenue to allow specific, defined activities in a specific country that is currently under sanctions, and it allows any U.S. person to undertake the defined activities in that sanctioned country. General Licenses are available in the U. S. Treasury [Resource Center](#) under the descriptions of each country’s sanctions programs. A General License is different from a *Specific License*, which the university must specifically request of a federal agency and the agency must approve the university’s specific request. It is also different from *License Exceptions or Exemptions*, which are available through the Department of Commerce or Department of State to allow the export of specific controlled items and technology to certain countries or users under specific circumstances.

International Traffic in Arms Regulations (ITAR) – The State Department’s regulations for goods or technologies inherently military in nature.

Office of Foreign Assets Control (OFAC) – Administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals through the Department of the Treasury.

Public Domain – Information that is published and generally accessible to the public:

- through sales at newsstands and bookstores;
- through subscriptions available without restriction to anyone who may want to purchase the published information;
- through second class mailing privileges granted by the U.S. Government;
- at libraries open to the public or from which the public can obtain documents ;
- through patents available at any patent office;
- through unlimited distribution at a conference, meeting, seminar, trade show or exhibition that is generally accessible to the public and is in the U.S.;
- through public release (i.e., unlimited distribution) in any form (not necessarily published) after approval by the cognizant U.S. government department or agency; and
- through fundamental research.

[See 22 CFR Part 120.11](#)

Published Information – Information is considered published when it made available to the public without restriction upon further dissemination through the following ways:

- Subscriptions available without restriction to any individual
- Libraries or other public collections that are open and available to the public
- Unlimited distribution at a conference, meeting, seminar, or exhibition, generally open to the public;
- Unlimited distribution in any form including posting on the Internet on sites available to the public
- Submission of a written manuscript, presentation, computer-readable dataset, imagery, algorithms, or some other representation of knowledge with the intention that such information will be made publicly

See 15 CFR Part 734.7. A conference is considered “open” if all attendees are allowed to take notes and make a personal record of the presentations. In all cases, access to the information in question must be

free or for a nominal fee (e.g., the fee does not exceed the cost to produce and distribute the materials or conduct the conference.)

Sanctioned or Embargoed Countries – Designated by the US Treasury, Office of Foreign Assets Control and published at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. As of March 2018 the list includes: Cuba, Iran, North Korea, Somalia, Sudan/Darfur/South Sudan, Syria, Ukraine/Russia, Venezuela and others with varying levels of sanctions. Activities outside the U.S. and within the U.S. involving these countries or citizens from these countries often require approval from OFAC by way of a General or Specific License. In some cases, there is a policy of denial and a license application will be generally denied. The EAR and ITAR regulations contain further requirements or restrictions that may apply to transactions related to a specific sanctioned country.

Technical Data (ITAR [22 CFR Part 120.10](#)) –

- Information, other than software as defined in §120.10(a)(4), which is required for the design, development, production, manufacture, assembly operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation;
- Classified information relating to defense services;
- Information covered by an invention secrecy order; and
- Software as defined in §120.45(f) directly related to defense articles.

Excluded from this definition is information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in [22 CFR 120.11](#). It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

Technology (EAR 15 CFR Part 772) -- Information necessary for the “development,” “production,” “use,” operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in the Export Control Classification Numbers on the CCL that control “technology”) of an item. “Development,” “production,” and “use” are additional defined terms in 15 CFR 772. It’s worth noting that “use” technology does not equate to solely operation of equipment.

United States Munitions List (USML) – A list featuring twenty-one categories of defense articles and services that are monitored by the International Traffic in Arms Regulations (ITAR).

United States Person –The various government agencies have their own precise definition of a US Person. Generally speaking, this is a person who is a lawful, permanent resident of the United States (Green card holder or citizen). It includes anyone who is physically present in the U.S. (even temporarily.) It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity.

Appendix I: Scenarios [Based upon System cases or provided by J. Norris and WPI]

1. A foreign national student from Syria enrolls in a summer program at the Marine Science Consortium's facility in Wallops Island. In her activity at the MSC she is participating in rocket launches. Do we need a license?

It is very likely that this requires a license from OFAC, and possibly a second license from BIS or DDTC. The activity is not in the university's course catalog so it does not qualify for the Educational Information Exclusion. However, the license application will be rejected due to the U.S. government's standing practice of non-approval for licenses to Syria, classified as a terrorist supporting nation. There are currently (as of March 2018) four countries subject to the no-approval policy: Syria, Iran, Cuba, and North Korea.

2. I am giving students and visitors from a foreign country a tour of the *research* laboratories in my school. Does this constitute an export?

Yes. The tour may include access to areas containing export controlled goods, software, or technology that require a prior license from BIS or DDTC. Irrespective of the type of sharing that occurs, an OFAC license may be required, depending on the citizenship and/or permanent residency status of the participants.

3. A university student is traveling to Iran on a tourist visa with an interfaith organization that is traveling there under a General License allowed by the Iranian Sanction regulations. The student wants to conduct interviews with individuals that will inform academic research she is doing for accredited coursework. The student wants to take her laptop and recording devices to Iran. Is this activity allowed?

Yes, BUT because Iran is subject to a comprehensive embargo documentation and limitations apply. She can only participate in activities that are allowed in the Iranian Sanction regulations and General Licenses. A series of General Licenses issued by OFAC over the past few years allows this trip and her activities. First, as part of an organized group travel, the university can rely on the General License that is used by the sponsoring organization and should secure written information from the sponsor's export compliance contact. In this case the sponsor, and therefore the University, are relying on Iran General License G (available at the online Treasury Resource center). This limits the student's activities to those specifically described in the General License. Second, the student is allowed to interview Iranian citizens, with the exception of government officials and Specially Designated Nationals (SDNs), but she cannot necessarily compensate them for their time. In this regard the university must screen the names of individuals and affiliated organizations of the interviewees. Finally, a separate Iran General License D-1 authorizes individuals to travel to Iran with items classified as EAR99 and laptops, tablets, personal computing devices, and mobile operating systems. The student should travel with copies of the applicable General Licenses with her official travel papers. However, if the nature of her research and interview topics focused on one of the high risk areas, if she was traveling without the sponsorship of the external organization, if she was taking different research equipment, this trip may NOT be allowed. The System Export Control Officer should be consulted well in advance of any intended travel to a sanctioned country.

4. The university has received an application from a student in Syria to enroll in distance education courses. May we accept them into the course?

It is likely that an OFAC license is required before this can legally occur. In some cases, such as for graduate level STEM courses, a license will not be granted to the University. There is a possible exception if the student residing in these countries is a U.S. citizen. In all cases, the individual country sanction regulations must be consulted for next steps. Contact the System's Export Control Officer.

5. I plan to publish my telecommunications research results in a foreign journal. Do I need a license to send the manuscript to the publisher?

Telecommunications is in an EAR (dual use) category. However, the transaction is not covered by the EAR because the research results would be made public by the proposed action.

6. I teach a graduate course on solid-state lasers that is listed in our course catalog. Many of the students are foreign persons. Do I need a license?

No. Release of information by instruction in catalog courses and course laboratories of academic institutions is not subject to EAR.

7. May I have a foreign graduate student work in my lab? Do I need a license?

Yes, foreign graduate student may work in your laboratory but potentially only on research that qualifies as "fundamental research." Non-fundamental research that is also export controlled per the EAR's or ITAR's export control lists may require a license. If the student is from a U.S. sanctioned country, it's possible that an OFAC license is also required. If any of these triggers are met, contact the System's Export Control Officer for further guidance and actions.

8. I am building a small satellite to be launched on a Russian rocket. Do I need a license?

Yes. This is equipment that will be launched into space and is, therefore, covered by ITAR. The research may well be exempt under the fundamental research exemption, but the export of the satellite is not. There are also technical data considerations and regulatory exemptions that allow for the transfer of certain satellite-related data. Consult the System's Export Control Officer.

9. A faculty member is going to Germany to do research at a German university while on sabbatical. Since Germany isn't a terrorist country or on the Treasury's embargoed list, does he need any license or approval?

Yes. The research itself might be controlled and he might be sharing the results with foreign nationals from controlled countries while in Germany. The activity must be reviewed by the university which must identify the scope of the research and the foreign nationals with whom the researchers may share information. The German government also has its own export control regulations that are similar, but distinct, from the U.S. government's regulations. These would also need to be investigated as part of any transfer of information or goods back to the U.S. upon his return.

10. I am doing basic research in the area of remote sensing on a contract from the Department of Defense. The contract includes a clause restricting the release of unclassified information without sponsor approval. I would need approval from the sponsor to publish the information. Am I free to share the research results with all the students in my laboratory, including foreign students, prior to publication?

Generally speaking, contract clauses that state approval for publication require a closer analysis by the export control contact at the University. It's possible that accepting the clause negated the "fundamental research exclusion" and thus foreign nationals working on the projects or learning the research details would potentially require a license. There are some exceptions that apply in relation to government contracts. Consult the export control officer for further analysis.

11. I am a PI and working with a company on GEMS (ITAR controlled material). The contract includes a restriction on publishing information "generated under the contract" as well as "provided by the sponsor." I am a U.S. citizen and the information is only provided directly to me. Can foreign nationals work on the contract if all the ITAR controlled information is restricted to me and not shared with the students?

A DDTC license might be required. The contract verbiage pushes the research outside of fundamental research. Thus, the results are subject to the ITAR. Both the input data (provide to the PI) and results of the research may need a license from DDTC. The ITAR's USML would need to be analyzed to determine if the input technology and research results are also ITAR controlled (in addition to the actual ITAR material.) At minimum, a foreign national student would require a license to access the ITAR material, even on campus in the U.S. It's possible that the student would

also require a separate license or agreement to access any ITAR controlled technology associated with the project.

Appendix J: Links

- On-Line Training
 - [Worcester Polytechnic Institute](#)
 - [NCURA Export Controls](#) Fee required
 - [Bureau of Industry and Security on-line training room](#)
 - [Controlled Unclassified Information Training](#)

- [Department of Commerce](#) – Industry and Security
- [Department of Defense](#) – Defense Trade Controls
- [Department of Energy](#) - Nuclear Security
- [Department of State](#) – Export Control

- [Countries of concern](#) via Vanderbilt University

- [Export Control Basics](#) PDF from the University of Florida

- [Export Controls and Universities: Information and Case Studies](#) via Council on Governmental Relations

- [Export Controls - COGR](#) various Export Control guidance and commentary

- [International Traffic in Arms Regulation \(ITAR\)](#) (PDF) A primer on defense services and articles

- [Lists to Check](#) via U.S. Department of Commerce, Bureau of Industry and Security. Includes “Denied Persons,” “Debarred” and more.

- **MKDENIAL.com** A website providing automated screening of “the consolidated screening lists”. Each university has a shared log-in. [Overseas Travel Tips](#) Traveling overseas with mobile phones, laptops, PDA’s and other electronic devices.

- EAR
 - [Export Administration Regulations \(EAR\), 15 CFR Part 730-774 including the CCL and index](#)
 - [BIS Encrypted Software Guidance](#)

- ITAR
 - [International Traffic in Arms Regulations \(ITAR\), 22 CFR Part 120-130](#)
 - [ITAR US Munitions List \(USML\)](#) Wikipedia summary article
 - [Directorate of Defense Trade Controls, US Department of State](#) -- Controls the export and temporary import of defense articles and defense services subject to ITAR.

- Embargoes. [Office of Foreign Assets Control \(OFAC\)](#) -- Administers and enforces economic and trade sanctions against targeted foreign countries, terrorists, international drug traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction
 - [OFAC Sanctioned Countries and Entities List](#)
 - [OFAC List of Specially Designated Nationals and Blocked Persons List](#)

- [Controlled Unclassified Information](#) –applies to Export Controlled research

- **Universities Leading the Way in Export Control Compliance**
 - [MIT Export Control Resources](#)
 - [University of Pennsylvania](#)
 - [University of Maryland Export Control Guidance](#)

- [Vanderbilt University](#)
- [Stanford University](#)
- [University of Tennessee - Knoxville](#)
- [Coastal Carolina University](#)

- **Software Licensing Links**
 - [Exporting Microsoft Products](#)
 - [Symantec Export Control Classifications](#)
 - [McAfee Export Compliance](#)
 - [Apple Export compliance](#)
 - [Dell Regulatory Data Sheets](#)
 - [IBM Export Control](#)
 - [Adobe Product Export Information](#)
 - [Secure CRT/Secure FX/Van Dyke ClientPack Export Information](#)
 - [Hewlett Packard -HP](#)
 - [Cisco](#)

- **Export Decision Trees**
 - [Stanford University](#)
 - [University of Pennsylvania](#)
 - [Worcester Polytechnic Institute](#)
 - [Penn State](#)

- **Software encryption tree:**
 - [BIS Encryption flow Chart 1](#)
 - [BIS Encryption flow Chart 2](#)

Appendix K. Export Control University Designated Officers -- i.e. UNIVERSITY TEAMS*

University	Human Resources	Information Technology	International Education	International Travel	Procurement	Sponsored Research	Visiting scholars/scientists/official
Bloomsburg	Jerry Reed jreed@bloomsu.edu	Wayne Mohr wmohr@bloomsu.edu	Joseph Kissell jkissell@bloomsu.edu	Danielle Peters dpeters@bloomsu.edu	Jeff Mandel jmandel@bloomsu.edu	Mark Tapsak mtapsak@bloomsu.edu	To Be Determined
California	Eric Guiser guiser@calu.edu	Brian Kraus kraus@calu.edu	Daniel Engstrom engstrom@calu.edu	Tom Taylor taylor@calu.edu	Joyce Sheppick sheppick@calu.edu	Karen Primm Primm@calu.edu	Bruce Barnhart, VP Academic Affairs & Provost
Cheyney (To be confirmed)	Ann Travis (@WCU) atravis@wcupa.edu	Chris Brown chris.brown@cheyney.edu	Norma George ngeorge@cheyney.edu			Mae Stephens maestephens@cheyney.edu	
Clarion	Timothy Fogarty tfogarty@clarion.edu	Samuel Pulei spuleio@clarion.edu	Pamela Gent gent@clarion.edu	Terri Kemmer tkemmer@clarion.edu	Rein Pold rpold@clarion.edu	Amy Esterhuizen aesterhuizen@clarion.edu	Amy Esterhuizen aesterhuizen@clarion.edu
East Stroudsburg	Teresa Fritsche	Robert D'Aversa	Steven Ives	Joanne Bruno	Denise Aylward daylward@esu.edu	Christina McDonald	Joanne Bruno
Edinboro	Wayne Patterson wepatterson@edinboro.edu	Linda Kightlinger lkightlinger@edinboro.edu	Linda Kightlinger Lkightlinger@edinboro.edu	Linda Kightlinger Lkightlinger@edinboro.edu	Darla Spaid dspaid@edinboro.edu	Rosmari Graham rgraham@edinboro.edu	Linda Kightlinger lkightlinger@edinboro.edu
Indiana	Craig Bickley cbickley@iup.edu	Todd Cunningham Todd.Cunningham@iup.edu	Michele Petrucci Michele.Petrucci@iup.edu	Rick White Richard.White@iup.edu	Terry Breslawski tbreslaw@iup.edu	Hilliary Creely Hilliary.Creely@iup.edu	Timothy Moerland moerland@iup.edu
Kutztown	Sharon Picus picus@kutztown.edu	Troy Vingom Vingom@kutztown.edu	Roger Douglas & Nicole Becker douglas@kutztown.edu nbecker@kutztown.edu	Roger Douglas & Ken Steward douglas@kutztown.edu steward@kutztown.edu	Barb Reitz & John Nadolski Reitz@kutztown.edu Nadolski@kutztown.edu	Jeff Werner werner@kutztown.edu	Roger Douglas & Jeff Werner douglas@kutztown.edu werner@kutztown.edu
Lock Haven	Deana L. Hill		Rosana Campbell	Donna F. Wilson	Becky Proctor		Donna F. Wilson

	dhill@lhup.edu	Boise Miller, bmiller1@lhup.edu	rcampbel@lhup.edu	dwilson@lhup.edu	bproctor@lhup.edu		dwilson@lhup.edu
Mansfield	Jerry Reed jreed@bloomu.edu	Alex Miller amiller@mansfield.edu	Marie Domenech mdomenec@mansfield.edu	Renee Potter Vicky Wyman rpotter@mansfield.edu ; vwyman@mansfield.edu	Jeff Mandel jmandel@bloomu.edu	Phillip Swank pswank@mansfield.edu	Marie Domenech mdomenec@mansfield.edu
Millersville	Melanie DeSantis Melanie.DeSantis@millersville.edu	Nancy Pruskowski Nancy.Pruskowski@millersville.edu	Victor DeSantis victor.desantis@millersville.edu	Rene Munoz rene.munoz@millersville.edu	Lauren Weitzel Lauren.Weitzel@millersville.edu	Rene Munoz rene.munoz@millersville.edu	Victor DeSantis victor.desantis@millersville.edu
Shippensburg	David Topper datopp@ship.edu	Amy Diehl abd@ship.edu	Mary Burnett meburnett@ship.edu	Michael Felice MJFelice@ship.edu	Wes Light wwlight@ship.edu	Christopher Wonders cawonders@ship.edu	<i>to be designated</i>
Slippery Rock	Lynne Motyl lynne.motyl@sru.edu	John Zeigler john.ziegler@sru.edu	Bradley Wilson bradley.wilson@sru.edu	Molly Mercer molly.mercer@sru.edu	Patti Doyle patricia.doyle@sru.edu	Nancy Cruikshank nancy.cruikshank@sru.edu	Genevieve Bordogna genevieve.bordogna@sru.edu
West Chester	Diane Copenhaver dcopenhaver@wcupa.edu	Deke Kassabian Dkassabian@wcupa.edu	Peter Loedel PLOedel@wcupa.edu	Jeffery Osgood JOsgood@wcupa.edu	Todd Murphy TMurphy2@wcupa.edu	Nicole Bennett nbennett@wcupa.edu	Peter Loedel ploedel@wcupa.edu
Office of the Chancellor	Angela Smith-Aumen, Export Control Officer, asmith-auen@passhe.edu, 717-720-4018 Cathleen McCormack, Legal Counsel, cmccormack@passhe.edu, 717-720-4030 Chris Bowling, SAP Financial Management, cbowling@passhe.edu, 717-703-5418						

rev. 7/23/13, 2/21/2014, 4/17/14, 6/26/14, 8/13/14, 11/1/14, 1/14/15, 4/29/2015, 10/28/15, 11/24/15, 4/13/16, 5/23/16, 6/24/16, 2/22/17, 3/27/17, 6/2/17, 2/6/18, 2/22/18, 6/30/2018

Optional* University team members include:

- Distance Education director
- Enrollment Manager
- Police/ROTC
- Asset Manager
- Dean of Sciences
- Visiting Scholars/Scientists

*While optional at the University level, these positions are named in the Procedure/Standard and are represented on the system-wide Export Advisory Committee