



THE PENNSYLVANIA STATE UNIVERSITY

Export Compliance Program (ECP)

(Updated – June 2018)



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I. INTRODUCTION

United States Export Control laws, regulations, and guidelines (collectively referred to as “U.S. Export Controls”) are a group of government pronouncements that are designed to achieve various objectives such as preventing the proliferation of weapons of mass destruction, advancing U.S. economic interests at home and abroad, aiding regional stability, implementing anti-terrorism and crime controls, and protecting human rights. U.S. Export Controls are largely shaped, therefore, by the national security, foreign policy, and economic interests of the United States.

As a part of current U.S. Export Controls, the U.S. Government regulates the export of not only physical items, such as equipment, materials, parts, and components, but also the export of “technology”, “technical data”, and/or certain services associated with controlled items¹. Controlled technical data may include information such as blueprints and manuals. Controlled services or technical assistance may involve design efforts, manufacturing assistance, information transfers, and training. In general, U.S. Export Controls restrict the export of defense articles, defense services, and/or “dual use” commodities and technologies (i.e. those that have both commercial and military applications). Mere commercial availability of commodities or technologies does not make such commodities or technologies exempt from U.S. Export Control. U.S. Export Controls may even control U.S.-origin equipment and technology after it has exported (i.e., by restricting the reexport or retransfer abroad to additional third parties or destinations). It is important to understand that while some physical items and information commonly referred to as “classified” information or technology have been formally reviewed and designated as such by a cognizant U.S. agency with resultant strict access and dissemination restrictions imposed, such items and information represent only a small portion of the items and information controlled under U.S. Export Controls.

In addition to content based controls, U.S. Export Controls also encompass economic sanctions that limit specified transactions and activities with specific foreign countries, regimes, entities, and/or individuals. These sanctions are designed to limit involvement with those engaged in activities that are in conflict with U.S. policy. These sanctions include various economic embargoes against a number of countries that may result in a prohibition of most transactions by U.S. persons with these countries, their citizens, and/or businesses located and incorporated in the embargoed location.

There are three (3) primary U.S. Export Control regimes in place:

- The **U.S. Department of State**, under the Directorate of Defense Trade Controls (DDTC), regulates the export of defense articles and defense services under the International Traffic in Arms Regulations (ITAR);
- The **U.S. Department of Commerce**, under the Bureau of Industry and Security (BIS), regulates the export of certain non-ITAR covered defense and security items and technology, “dual-use” items, as well as purely commercial goods under the Export Administration Regulations (EAR); and
- The **U.S. Department of the Treasury**, under the Office of Foreign Assets Control (OFAC), administers economic sanctions against embargoed countries and restricted parties under specialized regulatory actions or executive orders.

While these three regimes represent the primary intersection point with U.S. Export Controls at Penn State, other government agencies (such as the Department of Energy, the Nuclear Regulatory Commission, Department of Agriculture, etc.) may also have regulations that restrict certain exports. While this Program focuses mainly on DDTC, BIS, and OFAC, all applicable regulations should be considered before engaging in any University Affiliated transactions or activities that may be subject to U.S. Export Controls. This Export Compliance Plan is designed to provide basic guidance and direction on the policies and procedures in place at Penn State to facilitate compliance with U.S. Export Controls and largely addresses the management of unclassified but export controlled items, though the export of classified materials will also be captured within the scope of the Penn State export compliance programs. Penn State supports and operates its export compliance activities in accordance with the policy directives of NSDD 189² and with a policy expectation that, absent appropriately identified national security concerns, the research conducted at Penn State shall be fundamental research in accordance with the definition of such term under NSDD 189 and relevant export control regulations and guidelines.

¹ Definitions for common terms and an expansion of commonly used acronyms are available at the University Export Compliance Website (<https://universityethics.psu.edu/export-compliance-terms>).

² The Policy statement in NSDD 189 states: “It is the policy of this Administration that, to the maximum extent possible, the products of fundamental research remain unrestricted. It is also the policy of this Administration that, where the national security requires control, the mechanism for control of information generated during federally-funded fundamental research in science, technology and engineering at colleges, universities and laboratories is classification. Each federal government agency is responsible for: a) determining whether classification is appropriate prior to the award of a research grant, contract, or cooperative agreement and, if so, controlling the research results through standard classification procedures; b0 periodically reviewing all research grants, contracts, or cooperative agreements for potential classification. No restrictions may be placed upon the conduct or reporting of federally-funded fundamental research that has not received national security classification, except as provided in applicable U.S. Statutes.”

II. STATEMENT OF MANAGEMENT COMMITMENT



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Wayne:

Commitment to Export Control Compliance at The Pennsylvania State University

The Pennsylvania State University is committed to excellence in all of the programs and efforts conducted by its faculty, staff, and students. This includes a commitment to maintaining appropriate, effective, and comprehensive compliance programs designed to facilitate and encourage compliance with all applicable governmental laws, regulations, and guidelines.

One such group of laws, regulations, and guidelines with which the University must comply are those which aim to protect our national security, secure our economic interests, and support our foreign policies. Collectively, these laws, regulations, and guidelines are commonly referred to as "Export Controls". Compliance with Export Controls at Penn State is a shared responsibility between the institution and its individual members. University faculty, staff, and students are reminded that violations of U.S. Export Controls can result in both personal and institutional liability, including fines and imprisonment. It is important, therefore, for all Penn State faculty, staff, and students to be familiar with U.S. Export Controls in order to avoid inadvertent, noncompliant actions. Penn State is committed to providing assistance to its faculty, staff, and student in conducting their University efforts in compliance with U.S. Export Controls.

The University Export Compliance Office at Penn State, a unit within the larger Office of Ethics and Compliance, has been established and empowered to provide this assistance. The academic and research experiences and efforts of our faculty, staff, and students are enhanced through effective stewardship of resources, policies, training, and related compliance programs designed to meet the requirements of this complex regulatory environment.

The University Export Compliance Office has been staffed with trained specialists and resourced with various tools to help support the University community in its domestic and international academic and research activities. The University Export Compliance Office seeks to help members of the campus community be aware of potential export compliance

Wayne L. Mowery, Jr., Esq.

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issues and to seek the advice of the trained export compliance staff when necessary to obtain guidance and direction, interpret regulatory requirements, educate on compliance obligations, document export compliance determinations and efforts, evaluate the need for and obtain required export licenses, and provide assistance with the implementation of required internal security efforts and/or the development of appropriate technology control plans.

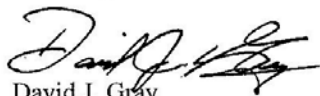
Export Controls may impact any number of University related transactions and activities. Typical university transactions or activities that may have export control implications include:

- Shipping or hand-carrying equipment, items, samples or controlled data to an international destination or foreign end-user;
- Traveling internationally for actual or potentially controlled, restricted, or sensitive activities, programs, or efforts;
- Receiving controlled data, materials or research samples for use at Penn State;
- Accepting Sponsorship or other Agreements which include publication or foreign national restrictions;
- Collaborating with a foreign institution, person or entity;
- Providing Foreign nationals, including foreign nationals resident at Penn State facilities, with access to actual or potentially controlled items or information; or
- Participating in any transactions or activities involving sanctioned countries such as Cuba, Iran, North Korea, Sudan and Syria.

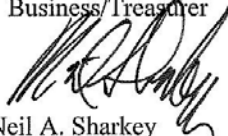
Penn State is committed to complying with Export Controls in all University related transactions and activities. Under no circumstances will any University related transaction or activity be undertaken that is known or believed to be in violation of any applicable U.S. Export Controls. The University Export Compliance Officer and Empowered Official, currently Wayne L. Mowery, Jr. (wmm12@psu.edu), has been designated as the University authority for the final determination of any export compliance obligations which Penn State may face in undertaking any University related transactions or activities.

For additional information or training regarding Export Controls and Penn State's related compliance efforts, please visit the University Export Compliance Office [website](#) or contact the export compliance staff at export@psu.edu.

Sincerely,



David J. Gray
Senior Vice President for Finance &
Business/Treasurer



Neil A. Sharkey
Vice President for Research

III. EXPORT CONTROLS – RESPONSIBILITIES AND THE UNIVERSITY ENVIRONMENT

Compliance with Export Controls at Penn State is a shared responsibility between the institution and its individual members. University faculty, staff, and students are reminded that violations of U.S. Export Controls can result in both personal and institutional liability, including fines and imprisonment. It is important for all Penn State faculty, staff, and students to be familiar with U.S. Export Controls in order to avoid inadvertent, noncompliant actions.

Penn State is committed to providing assistance to its faculty, staff, and student in conducting their University efforts in compliance with U.S. Export Controls. While traditionally Universities have focused their export compliance efforts to transactions and activities undertaken as a part of the research endeavors of the institution, U.S. Export Controls apply to all University activities, even those that do not involve research. For example, entering into a procurement contract with foreign entities, sending money to denied parties or to entities in embargoed locations, international travel with University equipment, invitation of foreign visitors or scholars, or the shipment of goods or information to a foreign destination each have their own unique export compliance implications for Penn State.

The majority of the compliance challenges experienced at Penn State under U.S. Export Controls are related to our research activities, both here and abroad, as well as our academic programs conducted abroad. U.S. Export Controls create a unique struggle in an academic research environment given the need to balance our compliance obligations for national security and economic advantage purposes against traditional concepts of academic freedom in research and the unrestricted publication and dissemination of research findings and results. At Penn State, it is our general policy to conduct the vast majority of the university's research efforts as Fundamental Research³ without restriction or controls on publication or foreign person involvement in the research efforts. Appropriate restrictions or controls will be accepted only when necessary to protect national interests, including national security concerns.

While U.S. policymakers recognize "the linkage between the free exchange of ideas and scientific innovation, prosperity, and U.S. national security is undeniable"⁴ — and that foreign students, faculty, and visitors have made substantial contributions to university research missions — there is still concern over the potential transfer of controlled technologies to other countries and the consequences for U.S. national interests.⁵ Therefore, U.S. government agencies require that universities understand and comply with export control and sanctions regulations. All Penn State faculty, staff, and students must be mindful of potential export control implications in University transactions and activities, paying particular attention to their impact on University research efforts, whether externally sponsored or funded through other mechanisms.

³ For a definition of the term Fundamental Research as used in the export compliance environment see <https://universityethics.psu.edu/export-compliance-terms#Terms%20FR>.

⁴ National Association of College and University Attorneys Publication Series, *Negotiating the Minefield: The Conduct of Academic research in Compliance with Export Controls*, Carol T. Carr, 2006, available at <http://www.higheredcompliance.org/resources/publications/Export-Controls-Pub.pdf>.

⁵ GAO Report "Export Controls: Agencies Should Assess Vulnerabilities and Improve Guidance for Protecting Export-Controlled Information at Universities," December 2006, available at <http://www.gao.gov/new.items/d0770.pdf>.

IV. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)⁶

Under the International Traffic in Arms Regulations (ITAR), the United States Department of State, by and through its Directorate of Defense Trade Controls (DDTC), regulates the export and reexport of defense articles, defense services and related technical data from the United States to any foreign destination, or to any foreign person wherever located (commonly referred to as a “deemed export”). The ITAR contains the United States Munitions List (USML) which lists specifically identified commodities, related technical data, and defense services controlled for export control purposes.

A. ITEMS CONTROLLED UNDER THE ITAR

The ITAR regulates the export of defense articles, which includes any “item or technical data” listed on the USML. These include items specially designed for military use and the associated information needed for the design, operation, repair, maintenance, etc. of such defense articles. In other words, the ITAR covers not just physical items, but also the technical data, “know-how,” and software required to run those items. Because the “know how” (commonly the information related to the development, operation, maintenance, or improvement) associated with a defense article is controlled, training another person on or using that “know how” may also be a controlled activity known as a “defense service”.

The ITAR also controls the parts, components, and technology incorporated into an item, unless otherwise noted in the USML.⁷ While predominately focused on military use technology and information, some non-military items (such as commercial satellites with specific characteristics⁸) and certain chemical precursors, toxins, and biological agents, are also controlled under the ITAR. Furthermore, it is important to understand that the ITAR designation applies to an item regardless of how it is being used. This is even the case where an ITAR item is used for research unrelated to that item’s military purpose.

B. THE UNITED STATES MUNITIONS LIST (USML)

The United States Munitions List (USML) enumerates defense articles and defense services (including related technical data), as designated by the Arms Export Control Act of 1979, and groups them into 21 categories. Items captured on the USML are traditionally referred to as ITAR controlled items. An electronic version of the USML is available online.⁹

C. JURISDICTION AND CLASSIFICATION¹⁰

Determining the jurisdiction and the subsequent classification of items is the first step in evaluation of any potential export compliance obligations which may apply to sensitive or potentially sensitive technology or information. Accuracy in jurisdictional determinations and classification efforts is crucial for enabling appropriate compliance oversight of the intersection of University programs with the U.S. Export Controls.

An initial determination of whether an item is subject to the jurisdiction of the ITAR must be made to enable classification under the USML, when appropriate, and to allow identification of any export, retransfer, or reexport

⁶ An electronic version of the ITAR is available online via the e-CFR website at <https://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=8c8ed089edb4b04fc2cb62c8d4fc576d&mc=true&tpl=/ecfrbrowse/Title22/22C1subchapM.tpl>. For purposes of University policy and procedures, this version of the ITAR, including the United States Munitions List, as represented at the provided link and updated by the government accordingly, shall be the definitive version of the ITAR and USML.

⁷ If an item contains any components that are controlled under the ITAR, the entire item is thereby controlled under the ITAR unless otherwise specifically noted in the USML. This is due to an unwritten DDTC policy, commonly referred to as the ‘see through’ rule. “The ‘see-through’ rule was most succinctly articulated in the State Department’s [Draft Charging Letter](#) in the Boeing ‘QRS-11’ matter, as follows: ‘the QRS-11 is covered by the U.S. Munitions List’ and ‘did not cease to be controlled by the ITAR simply by virtue of its inclusion into a non-USML flight instrument.’” Global Trade Law Blog, *Military Electronic Export Reform: Let the Chips Fall Where They May*, Scott Maberry and Reid Whitten, posted on December 4, 2014, <https://www.globaltradelawblog.com/2014/12/04/military-electronics-export-reform-let-the-chips-fall-where-they-may/>.

⁸ “Spacecraft, including satellites and space vehicles, whether designated developmental, experimental, research, or scientific, or having a commercial, civil, or military end-use, that [meet one or more of thirteen listed characteristics]” are enumerated in Category XV-Spacecraft Systems and Related Articles. (22 CFR §121.1, emphasis added.) In addition to controls on the actual spacecraft, additional ITAR controls may apply to components, sensors, or related hardware/software due to performance capabilities and potential military end-use applications, even when such components, sensors, or related hardware/software is used for commercial/civil applications.

⁹ See https://www.ecfr.gov/cgi-bin/text-idx?SID=86008bdfdd1fb2e79cc5df41a180750a&node=22:1.0.1.13.58&rgn=div5#se22.1.121_11.

¹⁰ ‘Classification’ here refers to the analysis and selection of a USML category for a defense article. It is not a reference to information that, for national security purposes, has been classified pursuant to Executive Order 13526 and is subject to the National Industrial Security Program (NISP).

limitations or restrictions for that item. DDTC has the priority in claiming jurisdiction over items which DDTC believes should be deemed ITAR controlled. Therefore, items should be presumed to be ITAR controlled until it is confirmed that the item is not specifically enumerated on the USML or captured in any ITAR catch-all subcategories or designations. The principle driver in most jurisdictional determinations is a determination of whether the item in question is predominantly used in civil or military applications.¹¹

If the jurisdictional status of an item is resolved by determining that the item is subject to the ITAR, the next step is to determine its specific classification status (namely where on the USML the item is described or captured). This second step must be completed before a determination can be made as to whether a license or other government authorization or exemption is required to export, retransfer, or reexport the item to the proposed destinations, end-users, or end-uses.

U.S. Export Controls, and related policies and procedures of DDTC and/or BIS, encourage exporters to self-classify items wherever possible. If self-classification is not possible, a Commodity Jurisdiction (CJ) request can be submitted to DDTC to determine the appropriate classification under the ITAR.

Given the critical importance of accurate jurisdictional and classification determinations, University employees should contact the University Export Compliance Office (UECO) for assistance prior to attempting to classify any item. The UECO will work with University employees to determine appropriate jurisdiction and/or classification internally whenever possible. If a CJ determination is necessary, the UECO will file the request on behalf of the University. The UECO may also elect to file a request for a non-binding Advisory Opinion¹² from DDTC to obtain guidance on or interpretation of the ITAR and/or ITAR licensing requirements. University employees are not authorized to file any export compliance requests directly on their own behalf for any matters directly related to any University Affiliated activities or programs.

D. EMBARGOED COUNTRIES UNDER THE ITAR¹³

DDTC maintains a list of countries under U.S. or United Nations arms embargoes which are subject to more stringent export restrictions under the ITAR. License exemptions are not available for ITAR exports to these countries. The State Department has a policy of denying license applications to export, or otherwise engage in transactions involving, ITAR-controlled defense articles and/or defense services to certain countries;¹⁴ license applications for other countries are reviewed and approved on a case-by-case basis.

E. AUTHORIZATION TO EXPORT UNDER THE ITAR

With few exceptions, the export of defense articles and defense services to all non-U.S. destinations and/or to all foreign persons in the U.S requires a license from DDTC. For the vast majority of our programs and efforts, Penn State personnel are not engaged in the creation of data that is subject to the ITAR as the University is generally engaged in the development, analysis, or testing of articles for theoretical or experimental purposes. In the event that Penn State personnel are involved in research or other activities involving ITAR controlled items or technical data, no license is needed if only U.S. persons are involved and all such activities related to the access or use of such ITAR controlled items will occur in the United States.

In the event Penn State personnel desire to involve foreign persons in an ITAR-controlled, restricted research project, an internal export review must be completed prior to provision of any access to or use of the ITAR controlled items or information to such foreign persons. In such circumstances, the UECO can confirm the availability of any licensing exemptions that may permit the direct involvement of foreign persons in the project¹⁵, or if a license from DDTC would be required for such foreign person access to the ITAR controlled items and/or information. Such licensing obligations would require the University to apply for and receive specific authorization

¹¹ More information about the criteria used by DDTC in providing a commodity jurisdiction determination can be found in 22 CFR §120.4 (Commodity Jurisdiction).

¹² For more information on Advisory Opinions under the ITAR see 22 CFR §126.9 available online at https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=c9eb7aa8ede01e906272f325d0f20135&mc=true&n=pt22.1.126&r=PART&ty=HTML#se22.1.126_19.

¹³ A complete list of U.S. arms embargoes is available online at https://www.ecfr.gov/cgi-bin/text-idx?SID=27b995b1496d445aa73bdab8a4498bda&mc=true&node=se22.1.126_11&rgn=div8.

¹⁴ A current listing of countries subject to a policy of denial under the ITAR is available in 22 CFR 126.1. See https://www.ecfr.gov/cgi-bin/text-idx?SID=27b995b1496d445aa73bdab8a4498bda&mc=true&node=se22.1.126_11&rgn=div8.

¹⁵ On such example of a licensing exemption available to Universities is the Bona Fide, Full-time Foreign Employee exemption in 22 CFR 125.4(10) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=8c8ed089edb4b04fc2cb62c8d4fc576d&mc=true&node=pt22.1.125&rgn=div5#se22.1.125_14.

from DDTC prior to the export of any USML item, the release of ITAR controlled technical data, or the provision of a defense service to the foreign person. All ITAR licenses must be submitted by the UECO under signature of a University Empowered Official.¹⁶ University personnel may not independently submit license applications or register with DDTC for any University Affiliated activities.

F. REGISTRATION WITH THE DIRECTORATE OF DEFENSE TRADE CONTROLS (DDTC)

Any U.S. person or entity that manufactures, brokers, or exports defense articles or services must be registered with DDTC. Registration is also required prior to applying for any license under the ITAR and/or utilizing some of the ITAR license exemptions. Penn State is registered with DDTC and renews its registration annually. Penn State regularly reviews its research projects to identify potential ITAR related concerns. This includes evaluating programs to determine if a license is required to complete the program or effort, as well as to review the potential application of available ITAR license exemptions. Assistance from the Penn State personnel involved in such projects is critical and expected in order to accept restricted research. Any request for licensing must be routed to the UECO for review, processing, and submission to DDTC. University personnel may not independently submit license applications or register with DDTC for any University Affiliated activities.

¹⁶ For information about the Responsibilities of the University Empowered Official(s), please see Penn State Policy ADG09 available online at <https://policy.psu.edu/policies/adg09>.

V. EXPORT ADMINISTRATION REGULATIONS (EAR)¹⁷

The Department of Commerce, by and through its Bureau of Industry and Security (BIS), regulates the export of commercial and dual-use products and technology under the Export Administration Regulations (EAR). The EAR cover a wide range of products and technologies, which are enumerated on the Commerce Control List (CCL). The product classification process under the EAR can be highly technical in nature and licensing requirements are often dependent upon the type of product involved, the final destination(s) (countries, recipients, or end-users), and the intended end use.

A. ITEMS CONTROLLED UNDER THE EAR

Generally, all non-ITAR items of U.S.-origin, wherever located, are subject to the EAR. Foreign-made items that incorporate a defined amount of controlled U.S. origin components, technology, or software may also be subject to the EAR. Finally, all items actually in the U.S., regardless of origin, are captured under and subject to the EAR.

The EAR can require a license for the export of a wide range of commercial items that have potential military use (commonly referred to as “dual-use” items), or that otherwise have non-military strategic value to the U.S (including economic, data security, IT security, non-proliferation concerns, etc.). In addition, under the ongoing process of “Export Control Reform,” a large number of items previously regulated under the ITAR have been transferred to the jurisdictional control of the EAR. Thus, the EAR now also regulates certain lower-level military products, commercial avionics and aerospace materials, and related replacement parts and components. Unlike the ITAR ‘see through’ rule, the EAR typically—though not always—considers the complete product being exported rather than each subcomponent of the item (i.e., a ‘black box’ approach).

B. THE COMMERCE CONTROL LIST (CCL)

Items subject to control under the EAR are enumerated on a detailed list called the Commerce Control List (CCL). If an item (including the technology and/or software associated with that item) is listed on the CCL, it may require a license prior to export, depending upon the reason for the control and the specific country or countries to which it will be exported. The reason for control may be based on United Nations or other multi-national agreements related to reducing global proliferation in areas such as, for example, nuclear weapons, missile technology, or chemical/biological weapons.

Items listed on the CCL are assigned an Export Control Classification Number (ECCN) based on a category and a product group. The first digit of an ECCN represents the category, and each of the ten categories is divided further into five product groups, represented by the second digit of an ECCN. The last three digits establish the specifics of the controls that apply, generally with the most stringent controls having the lowest numerical value in a given numerical series (for example, numbers beginning with a ‘zero’ or ‘one’ (e.g., 4A001), indicate highly rigorous controls while those beginning with a “nine” (e.g., 4A994), are subject to lower levels of control).

Most common, commercially available goods and materials are not listed on the CCL and do not have an associated ECCN. These items are designated as EAR99 and generally consist of low- level technology and consumer goods. Although they are not specifically enumerated on the CCL, EAR99 items are still subject to the EAR though they generally can be exported without a license to any destination other than to an embargoed country, to a restricted party, or for use in certain prohibited end-uses.

C. JURISDICTION AND CLASSIFICATION¹⁸

As discussed above, DDTC has priority in determining whether an item is under the jurisdiction of the ITAR or the EAR. DDTC encourages exporters to self-classify items to be exported. In the event an exporter is unable to determine or is unsure of the appropriate classification of an item, a CJ request may be submitted to DDTC by an authorized official of the exporter to determine whether an item is ITAR or EAR controlled. (See Part IV.C above for the additional information about the CJ request process.) Items that do not fall under ITAR jurisdiction are

¹⁷ An electronic version of the EAR is available online via the e-CFR website at <https://www.ecfr.gov/cgi-bin/text-idx?SID=a0127de393592df4c5557793eefb924&mc=true&tpl=/ecfrbrowse/Title15/15CVIISubchapC.tpl>. For purposes of University policy and procedures, this version of the EAR, including the Commerce Control List (CCL), as represented at the provided link and updated by the government accordingly, shall be the definitive version of the EAR and CCL.

¹⁸ Again, ‘Classification’ here refers to the analysis and selection of a CCL category for a commodity. It is not a reference to information that, for national security purposes, has been classified pursuant to Executive Order 13526 and is subject to the National Industrial Security Program (NISP).

controlled under the EAR.

Once jurisdiction under the EAR is established, the next step is to classify¹⁹ the item on the CCL to determine its ECCN or EAR99 status. As with initial jurisdiction determinations, the regulatory agencies encourage exporters to self-classify items intended for export. Self-classifications of items that are under the jurisdiction of BIS will be performed by the UECO, in conjunction with the PI, sponsor, manufacturer, and other parties as appropriate, to identify an accurate Export Control Classification Number (ECCN), if appropriate, on the CCL. Items subject to the jurisdiction of the EAR which clearly are not captured in a specific ECCN shall be designated as EAR99. When the UECO is unable to adequately determine the ECCN or EAR99 status for a particular item, the UECO may elect to submit a “Classification Request” to BIS.²⁰ Additionally, the UECO may elect to file a request for a non-binding “Advisory Opinion”²¹ from BIS to ask for guidance in regards to any interpretations of the EAR or to determine whether a license is required, or would be granted, for a particular transaction.

It is important to understand that export violations which result from an erroneous self-classification or misinterpretation of the EAR can create liability for both the University and for the individual exporter, if any. Therefore, Penn State personnel should contact the UECO for assistance when attempting to classify an item intended for export. If a classification request or an advisory opinion is necessary, the UECO will file the request on behalf of the University. University employees are not authorized to file any export compliance requests to BIS, including any Classification Requests or Advisory Opinion Requests directly on their own behalf for any matters directly related to any University Affiliated activities or programs.

D. EMBARGOED OR SANCTIONED COUNTRIES UNDER THE EAR

The EAR also controls the export of commodities, technology, and software to countries under U.S. or United Nations arms embargoes or sanctions programs. While BIS attempts to coordinate its regulatory controls²² and license requirements with the Department of the Treasury’s Office of Foreign Assets Control (OFAC, see Section VI below), it is advisable to check both regulations before concluding that a particular foreign transaction is free from export controls.

E. AUTHORIZATION TO EXPORT UNDER THE EAR

An item’s ECCN enables the determination of any need for an export license. An ECCN is at its basic level a list of specific items or technology controlled under that ECCN description. In addition to listing the specifically controlled items or technology, each ECCN includes information on the “Reasons for Control”, notes any available license exceptions, and provides other valuable clarifying or limiting information. Using the “Reasons for Control” provided for any discrete ECCN and cross-referencing using the country or countries of ultimate end use or destination in the EAR “Country Chart”²³, an exporter can determine if an export license is required for a particular transaction.

Registration with the BIS electronic licensing system is required prior to applying for a license; PSU is registered with BIS. Any request for licensing must be routed to the UECO for review, processing and submission to BIS. University employees may not submit license applications or register with BIS independently for any University Affiliated activities.

¹⁹ It is important to distinguish the use of the term “classify” here. As used in this Export Compliance Plan, the terms “classify” or “classification” typically are used in reference to determining the unique export control designation for a controlled item under the ITAR or EAR. Unless specifically referenced in association with the use of these terms, the terms should not be read to refer to any government action to formally classify information or materials under authority of Executive Order 13526 (See <https://www.federalregister.gov/documents/2010/01/05/E9-31418/classified-national-security-information>).

²⁰ BIS can provide assistance with determining the specific ECCN of a dual-use item listed on the CCL. However, BIS defers to DDTC in jurisdictional determinations. If any doubt exists as to ITAR or EAR jurisdiction, BIS will forward the issue to DDTC for jurisdiction determination before proceeding with classification.

²¹ For more information on Advisory Opinions under the EAR see 15 CFR §748.3(c) available online at https://www.ecfr.gov/cgi-bin/text-idx?SID=95ad7b82a1c6acd60a76ec9533e12d50&mc=true&node=se15.2.748_13&rgn=div8.

²² For more information on embargo or sanctions based controls under the EAR see 15 CFR §742 available online at <https://www.ecfr.gov/cgi-bin/text-idx?SID=96e1e6b1c33787e533c9f8e7b592f1f4&mc=true&node=pt15.2.742&rgn=div5> and 15 CFR §746 available online at <https://www.ecfr.gov/cgi-bin/text-idx?SID=96e1e6b1c33787e533c9f8e7b592f1f4&mc=true&node=pt15.2.746&rgn=div5>.

²³ The EAR Country Chart is available online at <https://www.bis.doc.gov/index.php/forms-documents/regulations-docs/14-commerce-country-chart/file>.

F. ANTI-BOYCOTT RESTRICTIONS

Anti-boycott regulations, administered by BIS under the EAR, were largely implemented to prevent U.S. businesses from participating directly or indirectly in the Arab League Boycott of Israel. While the Arab League's boycott has lessened over the years (but still remains in effect in some countries), the regulations were broadly written so as to apply to any boycott not endorsed by the U.S. government.

U.S. law prohibits U.S. businesses and their employees from agreeing to participate in, further, or support an international boycott of any country that is a United States ally, or that is not sanctioned by the United States. Anti-boycott restrictions prevent PSU from agreeing to actions that include:

- Refusing to do business in or with a boycotted country or person;
- Discriminating against persons based on race, religion, sex, national origin, or nationality;
- Furnishing information about business relationships in or with a boycotted country; or
- Providing information about the race, religion, sex, national origin, or nationality of another person.

The Treasury Department publishes a list of countries which "require or may require participation in, or cooperation with, an international boycott."²⁴ Penn State personnel should take care when reviewing and negotiating contracts or other agreements with entities from these countries.

Boycott requests can take many forms and may not always be obvious. One example is a request for a certification that goods are not coming from a specific country, such as, "In the case of overseas suppliers, this order is placed subject to the suppliers being not on the Israel boycott list published by the central Arab League."²⁵ A request for information about a business relationship with a specific country or about a person's race, religion, or national origin may also signal a boycott request.²⁶

Penn State personnel may not agree to any contractual terms requiring participation in a boycott under any circumstances. Please contact the UECO for assistance concerning such requests. U.S. persons asked to engage in these types of activities are mandated by law to report the request to BIS or the Internal Revenue Service. The University will submit an institutional level report as needed, so individuals need not report such requests on an individual basis, provided such requests have been disclosed to the University pursuant to University policy and procedure.

²⁴ List of Countries Requiring Cooperation With an International Boycott, 82 FR 147 (August 2, 2017). As of July 26, 2017, that list includes Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen.

²⁵ BIS, Examples of Boycott Requests, at <https://www.bis.doc.gov/index.php/enforcement/oac/7-enforcement/578-examples-of-boycott-requests>.

²⁶ Association of University Export Control Officers, Guidance Paper: Anti-boycott Compliance, Issued June 2017, at <http://aueco.org/wp-content/uploads/2016/12/Antiboycott-Guidance.pdf>.

VI. ECONOMIC SANCTIONS PROGRAMS AND RESTRICTED PARTY LISTS

Economic sanctions are used to achieve foreign policy and national security goals by isolating the targets of the sanctions and depriving them of resources, in particular the lucrative U.S. market. In addition, sanctions programs are often implemented: to compel targets to change their practices; to penalize targets for existing practices; or to make a political statement of opposition to the practices of the targets. Specifically, sanctions regulations are in place to prevent U.S. persons and organizations from doing business with: embargoed countries; nationals of some targeted countries; individuals, organizations, and countries supporting terrorism activities; international traffickers in narcotics, persons, and/or other contraband; and other specified entities or individuals engaged in activities related to the proliferation of weapons of mass destruction or other threats.

The Office of Foreign Assets Control (OFAC) in the Department of Treasury implements most of the active sanctions programs under the umbrella of the Foreign Assets Control Regulations (FACR). OFAC acts under Presidential wartime and national emergency powers, and through the authority granted by specific legislation such as the International Emergency Economic Powers Act (diamond trading, Sudan, Iran, Zimbabwe, the Balkans, terrorism, narcotics, nonproliferation, Syria & Burma) and the Trading with the Enemy Act (Cuba & North Korea).²⁷ OFAC has the authority to prohibit U.S. persons and corporations from making payments, providing services, or exporting/providing anything of value (including information, instructional programs/materials, or other items of traditional academic “value”)²⁸ to embargoed or sanctioned countries, governments, businesses, organizations, or individuals. OFAC can impose controls on business transactions of all kinds and freeze any assets that are under U.S. jurisdiction. OFAC can also prohibit travel to, and certain other commercial/economic dealings with, embargoed countries.

A. SANCTIONED COUNTRIES

Traditionally, U.S. economic sanctions prohibit most transactions between a U.S. person and (1) persons or entities in an embargoed country or (2) the government of an embargoed country. This prohibition includes importing and exporting goods and services (directly or indirectly), as well as a U.S. person’s “facilitation” of transactions between foreign parties and a sanctioned country. These traditional sanctions programs paint with a wide brush and include specific authorizations to enable those transactions deemed beneficial to U.S. interest in the embargoed nation (for instance, relief efforts/medical care for the population are often enabled due to the social and political benefits that accrue from such activities). More recently, the government has started to utilize a more targeted approach to sanctions programs by issuing limited sanctions designed to block specific transactions or require licenses under certain discrete circumstances for exports to a number of countries.

There are a handful of countries commonly referred to as “OFAC countries” or “embargoed destinations”—a few of the most widely known in recent years have been Cuba, Iran, North Korea, and Syria—to whom comprehensive trade sanctions, administered by OFAC, have been applied. While U.S. policy is normally to deny export licenses for trade with countries under comprehensive sanctions, exceptions do exist which permit exports or the provision of services in specific circumstances.

The OFAC electronic version of the sanctions programs shall be, for purposes of this manual, the appropriate authority for the contents of the sanctions, and is available on the OFAC website at <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx> (select “Resources” tab for information on specific sanctions programs).

While most sanctions are administered by OFAC, other government agencies have additional embargos and jurisdiction over certain exports prohibitions. BIS maintains lists of designated persons and entities to whom exports may require a license or be otherwise restricted. BIS also has implemented comprehensive embargoes against certain countries and limited embargoes for specific categories of items to countries subject to United Nations Security Council arms embargoes. DDTC also maintains a list of embargoed countries (see III.D above).

²⁷ Other major OFAC laws include the Iraqi Sanctions Act (Iraq); the United Nations Participation Act (Iraq and diamond trading); International Security and Development Cooperation Act (Iran); The Cuban Democracy Act (Cuba); The Cuban Liberty and Democratic Solidarity Act (Cuba); The Antiterrorism and Effective Death Penalty Act (Cuba, North Korea, Iran, Iran, Syria and Sudan); the Foreign Narcotic Kingpin Designation Act; the Syria Accountability and Lebanese Sovereignty Act; and more.

²⁸ Under OFAC regulations, providing a service may be construed as providing something of value even if no payment is made. This potentially includes many activities that occur in a university environment, such as the exchange of unpublished data or research results or testing/analysis of samples with colleagues in certain embargoed countries.

B. RESTRICTED PARTY LISTS

As part of its enforcement efforts, OFAC publishes lists of individuals and companies owned by, controlled by, acting for, or acting on behalf of targeted countries. OFAC also lists individuals, groups, and entities, such as terrorists and narcotics traffickers, designated under sanctions programs that may not be tied to specific countries. Collectively, these lists are referred to as the "Specially Designated Nationals and Blocked Persons List (SDN)." Other U.S. Government agencies maintain a number of lists of individuals or entities barred or otherwise restricted from entering into certain types of transactions with U.S. persons. All lists must be screened to ensure that the University does not engage in a transaction with a barred entity. Penn State has purchased software to expedite screening of all government lists of restricted parties. University employees should contact the UECO prior to attempting to search these lists and/or to obtain access to the University licensed solution.

C. AUTHORIZATIONS UNDER OFAC SANCTIONS

There are many OFAC sanctions programs: each is based on a unique set of foreign policy priorities and therefore each program is distinct and different. Some programs are comprehensive in scope, prohibiting all or most unlicensed activities. Other programs may be more focused and target a specific activity, activities, or commercial field. Additionally, because sanctions are political in nature and intended to bring about desired changes in behavior, OFAC regulations are constantly being revised to meet changing socio-political concerns. University employees should contact the UECO prior to attempting to apply the sanctions regulations.

Each sanctions program specifies the activities that are exempted from coverage under the embargo, as well as those activities that are permissible under a general license (i.e. a regulatory license available to use without requiring formal license application and/or prior government approval – roughly analogous to an ITAR license exemption or EAR license exception). Activities that are not exempt and do not fall under a general license may be allowed under a specific license upon application by the University and approval by OFAC or the appropriate agency. If clarification by OFAC or another agency, or a license to conduct the activity, is necessary, the UECO will file the request on behalf of Penn State. University personnel may not independently file a license application with OFAC or to any other sanctions/embargo for approval of any University Affiliated activities.

VII. PENALTIES FOR VIOLATIONS, VOLUNTARY DISCLOSURES, AND REPORTING CONCERNS

A. GENERAL OVERVIEW

Any person or entity that brokers, exports, or attempts to export a controlled item without prior authorization or in violation of the terms of a license, or who exports goods or services, engages in financial transactions, or otherwise acts contrary to or in violation of sanctions regulations, may be subject to criminal or civil penalties, or both. Typically, multiple unauthorized exports will result in multiple violations in connection to each shipment. Therefore, a series of violations occurring over a period of time could result in extensive fines²⁹, criminal prosecution and jail time, or both.

B. DEFENSE EXPORT VIOLATIONS

The Arms Export Controls Act (AECA), the implementing legislation for the ITAR, provides that willful (criminal) violations can incur fines of up to \$1,000,000 per violation, twenty years of imprisonment, or any combination of both. In addition, the Secretary of State may assess civil penalties, which can exceed \$1 million per violation,³⁰ whether in addition or as an alternative to any other penalty. Any articles exported or imported as a result of a violation, and any vessel, vehicle or aircraft involved in such violation, are also subject to seizure. DDTC may also order that the violator be debarred, or prohibited from exporting defense items, for a period of time thus jeopardizing the ability to conduct future international trade or controlled research efforts.

In addition to the civil, criminal, and sanctions penalties, all actionable violations under the ITAR are subject to public reports and news releases, thus creating potential negative publicity and impacting future revenue opportunities.

C. VIOLATIONS UNDER THE EAR

The Export Administration Act of 1979, the primary statutory authority for the EAR,³¹ establishes fines for export violations for items subject to the EAR and anti-boycott violations, which can exceed \$1,000,000 per violation in criminal cases, and \$289,238 per violation in most administrative (civil) cases.³² In addition, criminal violators may be sentenced to prison time up to 20 years. Administrative penalties may include the denial of export privileges that would prohibit an individual or a U.S. company from exporting for a designated period of time.

D. VIOLATIONS OF SANCTIONS REGULATIONS

The potential civil penalties that may be assessed in the event of a violation may change across the various OFAC sanctions programs and can exceed \$1 million depending the specific program an entity or person under which a violation occurs. Those who violate economic or trade sanctions imposed under the International Emergency Economic Powers Act (IEEPA), which is the primary sanctions regime the University is most likely to encounter, may be subject to a maximum civil penalty of \$284,582 per violation, with the exception of exports to Cuba or North Korea under the Trading with the Enemy Act (TWEA). Violations of the TWEA are subject to a maximum civil penalty of \$85,236 per violation. The U.S. Government can also criminally prosecute willful violations and in such circumstances, fines may reach \$1 million per violation and imprisonment of up to 20 years. In addition, where there is egregious conduct by the offender, BIS (who assists OFAC in enforcing sanctions) may suspend export privileges.

E. VOLUNTARY DISCLOSURES

Export and sanctions regulations are complex and accidental or inadvertent violations may occur. DDTC, BIS, and

²⁹ Maximum fine amounts listed in this document may not be up-to-date. Regulatory fines and penalties may be adjusted to reflect changes in valuation due to inflation or other cost-adjustment principles.

³⁰ Under the ITAR, violations of different provisions of the Arms Export Control Act will carry different penalties. For example, violations associated with the improper export of USML items currently carry a civil penalty not to exceed \$1,111,908. (§127.10).

³¹ For the complete legal authority for the EAR, including the Export Administration Act of 1979, the International Emergency Powers Act, as amended, other statutory provisions related to the EAR, and associated Executive Orders and other Presidential documents, see http://www.bis.doc.gov/index.php/forms-documents/doc_download/876-legal-authority-for-the-export-administration-regulations-2014.

³² Under the EAR, the maximum penalty is the greater of the listed fine or five times the value of the illegal transaction.

OFAC all have mechanisms in place for violations to be self-disclosed. These agencies will consider a voluntary disclosure (or lack thereof) as a mitigating or aggravating factor when determining whether to assess penalties for a violation.

Mitigating factors include whether

- The disclosure was made **voluntarily**;
- The violation was a **first offense**;
- Compliance **procedures were implemented**;
- **Steps were taken to improve compliance** after discovery of violations; and
- The incident was unintentional, resulting from **mistake of fact or a good faith misapplication of the laws**.

Aggravating factors include whether:

- The violations were **willful or intentional**;
- There was a **failure to take remedial action** after discovery;
- The **organization lacks a compliance program**;
- If there is evidence or a **history of repeat or continuing violations**; or
- There are any **deliberate efforts to hide or conceal** the violations.

F. REPORTING EXPORT COMPLIANCE CONCERNS AT PENN STATE

Penn State encourages all University employees to report any concerns about potential export or sanctions violations of which they become aware. Employees can report export compliance concerns directly to the UECO or to the Office of Ethics and Compliance. Anonymous reporting is also available to University personnel through the Penn State Hotline which can be accessed by calling a toll-free number, 1-800-560-1637, or online at <http://hotline.psu.edu>.³³ All efforts will be made to investigate credible claims of potential violations and take appropriate remedial actions. In accordance with University policy, retaliation against any individual who makes a good faith report of potential export compliance concerns to the University or any appropriate authority, or who participates in any investigation or legal proceeding related to such a report, is strictly prohibited.³⁴

³³ For more information about reporting misconduct at Penn State, please see the University Code of Conduct (AD88) available at <https://policy.psu.edu/policies/ad88>, the reporting misconduct resources website available at <https://universityethics.psu.edu/resources-reporting-wrongdoing>, or the Penn State Hotline website available at <https://universityethics.psu.edu/penn-state-hotline>.

³⁴ For Penn State's statement on non-retaliation, see the University Code of Conduct (AD88) available at <https://policy.psu.edu/policies/ad88>.

VIII. KEY EXPORT COMPLIANCE CONCERNS IN THE UNIVERSITY ENVIRONMENT

A. DEEMED EXPORTS

Both the ITAR and the EAR place controls on the sharing of information with foreign nationals regardless of where such information sharing occurs. Such transfers of information that occur within the U.S. are generally designated as “Deemed Exports”.³⁵ A deemed export occurs when controlled technical data (ITAR), technology (EAR), or software source code (EAR) is released or otherwise transferred to a foreign person in the U.S. In other words, technical data, technology, or source code does not need to exit the territory of the United States in order to be considered an “export.” This greatly expands the reach of U.S. Export Controls to include transactions and activities that most University faculty, staff, and students do not commonly consider to be subject to such controls

Deemed exports may be made orally, visually, virtually, or by any other means resulting in a release of such information, such as through:

- Demonstrations;
- Oral briefings;
- Telephone calls or messages;
- Presentations at conferences and meetings;
- Collaborations or meetings with foreign colleagues;
- Laboratory or plant visits;
- Emails, faxes, or written correspondences;
- Design reviews;
- Electronic information posting, uploads, or transfers; or
- Disclosures via hand-carried documents, hardware, or drawings.

The issue of deemed exports is particularly relevant in university research where information is intended to be exchanged openly and broadly. While as an institution, Penn State may only occasionally be involved in the actual shipment abroad of tangible items, faculty and students are often engaged in teaching and research that necessarily involves the sharing of information with a broad spectrum of collaborators and end users. This can and often does include sharing such information with foreign persons located both in the U.S. and abroad. Whenever teaching or research involve controlled equipment or technology and foreign students or researchers, export compliance management may be needed even if those activities are occurring solely in the United States.

B. U.S. PERSONS AND FOREIGN PERSONS

The Pennsylvania State University is a state-related, land grant institution operating on an international scale. The University encompasses a significant population of foreign students, staff, visiting scholars, and faculty who are engaged in all aspects of the University’s operations, including as participants in both the University’s academic and research missions.

Under U.S. Export Controls, a U.S. person is defined as a U.S. entity or a U.S. citizen, a person lawfully admitted for permanent residence in the United States (i.e., green card holder), or a person who is a protected individual under the Immigration and Naturalization Act (i.e., certain classes of asylees).³⁶ Generally speaking, any U.S. person may be engaged in export controlled activities without need for a license or other governmental exemption or approval.

A foreign person is generally defined as anyone who does not meet the definition of a U.S. person.³⁷ Unlike the involvement of U.S. Persons in export controlled activities, the involvement of foreign persons in export controlled activities may require government approval in the form of a license or license exemption or approval. Specific

³⁵ For a more detailed definition of “Deemed Exports”, please visit the UECO website at <https://universityethics.psu.edu/export-compliance-terms#Terms%20Deemed>. Deemed exports are designated as such because the release of controlled information to a foreign national is “deemed” to be an export to the countries of citizenship (and/or permanent residency) for the recipient foreign national.

³⁶ For the definition of U.S. Person see <https://www.ecfr.gov/cgi-bin/text-idx?SID=1b652515805b8b5ab8339e94ae989e7c&mc=true&node=pt22.1.120&rgn=div5#se22.1.120.117> (ITAR – 22 CFR §120.14) and <https://www.ecfr.gov/cgi-bin/text-idx?SID=c5b82e2b31bbddea3a14ce56e8881ca4&mc=true&node=pt15.2.772&rgn=div5#se15.2.772.11> (EAR – 15 CFR §772.1). Note that the definitions for a U.S. and a foreign person may differ for purposes of other export control laws and regulations such as OFAC sanctions. Please contact the UECO for assistance with the application to other control regimes.

³⁷ For the definition of U.S. Person see <https://www.ecfr.gov/cgi-bin/text-idx?SID=1b652515805b8b5ab8339e94ae989e7c&mc=true&node=pt22.1.120&rgn=div5#se22.1.120.117> (ITAR – 22 CFR §120.16) and <https://www.ecfr.gov/cgi-bin/text-idx?SID=c5b82e2b31bbddea3a14ce56e8881ca4&mc=true&node=pt15.2.772&rgn=div5#se15.2.772.11> (EAR – 15 CFR §772.1).

examples of export controlled activities that may require government prior approval include the export of controlled items, information, technology, and/or software to a foreign person. When making export license determinations under the ITAR, DDTC may consider all countries (both past **and** present) of which a foreign person has held citizenship or permanent residence status.³⁸ Under the EAR, BIS will generally only consider the country or countries from which an individual currently holds citizenship and/or permanent residence status.³⁹

C. INFORMATION NOT SUBJECT TO OR EXCLUDED FROM EXPORT CONTROLS

A substantial majority of the research and educational activities conducted at Penn State involve information that is not subject to U.S. Export Controls at all. In addition, efforts which involve information that is otherwise subject to U.S. Export Controls may not require any government licensing or approvals when conducted in a traditional academic environment. Both the ITAR and the EAR have special provisions relating to information that is not subject to export controls, including limited exclusions regarding the release of information in the context of university research and educational activities. The sanctions regulations also have exceptions for certain “information and informational materials.”

1. PUBLICLY AVAILABLE INFORMATION

The ITAR and the EAR exclude from control information which is published and/or otherwise generally accessible or available to the public. While both regulatory regimes are moving toward a more common definition of “published” and “public domain”, the ITAR and the EAR differ in the specific information that qualifies as publicly available and each should be consulted as appropriate before making any determination as to whether information should be considered to be excluded from U.S. Export Controls.⁴⁰

Generally speaking, information that has been made available to the general public with no restrictions on access or further dissemination is not subject to U.S. Export Controls. This may include—but is not solely limited to—information that is available:

- through sales at newsstands and bookstores, or through subscriptions available with no restrictions on who may obtain the information;
- at libraries open to the public or from which the public can obtain documents;
- through patents or published patent applications available at any patent office; or
- through unlimited distribution at a conference, meeting, seminar, trade show or exhibition that is generally open and accessible to the interested public.⁴¹

2. EDUCATIONAL INFORMATION

As a general rule, faculty do not need to be concerned about the information they present in the classroom as both the ITAR and the EAR exclude from control general educational information related to items listed on the USML or CCL.

Under the ITAR, the definition of ‘technical data’ expressly excludes “information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities.”⁴² ⁴³Notwithstanding the foregoing, faculty are reminded that the ITAR exclusion above covers only general principals and not specific information and technical data about ITAR controlled items

³⁸ For example, see 22 CFR §120.17(b) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=1b652515805b8b5ab8339e94ae989e7c&mc=true&node=pt22%0b.1.120&rgn=div5#se22.1.120_117.

³⁹ For example, see 15 CFR §734.13(b) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=8f0a00c336cc4463e37debb29fc93954&mc=true&node=pt15.2.734&rgn=div5#se15.2.734_113.

⁴⁰ For the ITAR definition of “Public Domain”, see 22 CFR § 120.11 available at - https://www.ecfr.gov/cgi-bin/text-idx?SID=3b889d9b73614b57538f1995a6b2cc16&mc=true&node=se22.1.120_111&rgn=div8. For the EAR definitions related to “Published Information”, see 15 CFR §734.7 available at - https://www.ecfr.gov/cgi-bin/text-idx?SID=b677b4eedf30f308b19015dfb01451f6&mc=true&node=pt15.2.734&rgn=div5#se15.2.734_17.

⁴¹ Under the ITAR, presentations at a conference, meeting, seminar, etc. only fall in the public domain for domestic, U.S.-based events. Presentation abroad may still require a license and the UECO should be consulted. See CFR §120.11(a)(6) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=3b889d9b73614b57538f1995a6b2cc16&mc=true&node=se22.1.120_111&rgn=div8.

⁴² See 22 CFR §120.10(b) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=3b889d9b73614b57538f1995a6b2cc16&mc=true&node=se22.1.120_110&rgn=div8.

⁴³ Additional exclusions of certain types of information may be found in this section of the ITAR (e.g., exclusion of basic marketing information on function or purposes). For assistance in applying these additional exclusions from coverage, please contact the UECO.

(“defense articles”). As a result, specific information about defense articles, (including operation manuals, data sets, blue-prints, etc.) may not be released to foreign nationals, even in an instructional environment, unless such technical data is otherwise excluded or exempt from the ITAR or released under an applicable license or license exemption. In addition, foreign persons may not use or operate ITAR-controlled equipment, even in the context of an educational setting, without obtaining an appropriate license or the application of an applicable license exemption.

Under the EAR, information and “software” that “are released by instruction in a catalog course or associated teaching laboratory of an academic institution” are not subject to the EAR.⁴⁴ The information will not be controlled even if the course contains recent and unpublished results from laboratory research, so long as the university did not accept separate obligations with respect to limiting the publication or dissemination of those results, e.g., a contractual publication restriction. Likewise, the operation of technology associated with most EAR controlled equipment (formerly referred to as the transfer of operation technology) in an educational setting generally does not create any deemed export concerns.

Questions about the applicability of export control regulations to information, equipment, or materials used in an instructional setting or as a part of a teaching lab can be directed to the UECO.

3. FUNDAMENTAL RESEARCH RESULTS

National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, was issued on September 21, 1985, and affirmed on November 1, 2001.⁴⁵ NSDD 189 provides the generally accepted definition of fundamental research that forms the baseline for the Fundamental Research Exclusion (“FRE”) available under both the ITAR and the EAR. As a result of Export Reform, the EAR also now includes a specific definition of fundamental research that is similar to that in NSDD 189.⁴⁶

As defined in NSDD 189, “fundamental research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from Industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reason.” Fundamental research, then, is research undertaken with the intention of releasing the resulting information to the general public. As such, fundamental research is often the default approach to research conducted at Universities as a part of carrying out the public educational and service missions of the institution.

The current ITAR definition of fundamental research largely correlates to the original NSDD 189 definition.⁴⁷ A revised ITAR definition of fundamental research that is more closely aligned with the EAR definition resulting from the export reform process is anticipated.

The current EAR definition of fundamental research is somewhat broader than the original NSDD 189 definition.⁴⁸ The EAR definition adds the field of “mathematics,” removes the limitation to “basic and applied,” and removes the distinguishing reference to “industrial development,” while continuing to emphasize publication and sharing of results within the research community.

One key difference between the FRE under the ITAR and EAR is that under the ITAR fundamental research must be performed “at accredited institutions of higher learning in the United States” in order to qualify for the FRE. Under the EAR, fundamental research may occur at facilities other than accredited institutions of higher learning in the United States.

⁴⁴ See 15 CFR §734.3(b)(3)(iii) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=b677b4eedf30f308b19015dfb01451f6&mc=true&node=pt15.2.734&rgn=div5#se15.2.734_17.

⁴⁵ Original copy and full text of NSDD 189 available online from the National Archives at <https://catalog.archives.gov/id/6879779>.

⁴⁶ See 15 CFR §734.8(c) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=b677b4eedf30f308b19015dfb01451f6&mc=true&node=pt15.2.734&rgn=div5#se15.2.734_18.

⁴⁷ See 22 CFR §120.11(a)(8) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=3b889d9b73614b57538f1995a6b2cc16&mc=true&node=se22.1.120_111&rgn=div8.

⁴⁸ See 15 CFR §734.8(c) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=abc187b3f456cce95d54db3797092ca7&mc=true&node=se15.2.734_18&rgn=div8.

A point of emphasis is that the FRE, under both the ITAR and the EAR, applies only to the information (ITAR) or technology (EAR) that results from the research effort. The FRE does not apply to any physical items (i.e., prototypes, equipment, materials, etc.) that are used in, created during, or are otherwise generated through the research effort. The FRE also does not apply to the actual research efforts (services) undertaken as part of the research project. So, for instance, if, in the conduct of a project, a foreign person needs to engage in activities which would otherwise require government approval (e.g., use ITAR controlled materials or equipment in performance of the research effort), a license (or the application of a license exemption) may be required even if the research results are intended to be openly disseminated. Finally, the FRE does not apply to any inputs (information, items, software, or materials) brought into a research project unless such inputs are themselves FRE covered results of previous fundamental research efforts. Therefore, if the research project is dependent upon the receipt of controlled technology (such as third party proprietary information that is subject to the EAR or the ITAR), a license may be required before it can be released to a foreign person even when the research otherwise qualifies as fundamental research.

The general policy and default position at Penn State is that research should be conducted in a manner consistent with the performance of fundamental research, as that term is generally defined within relevant U.S. Export Controls. It is important for faculty and staff to understand, therefore, that University based research will **not** be considered fundamental research if the University or its researchers accept restrictions on the publication of or access to the information resulting from the research. This limitation includes any informal “side deals” between project staff and a sponsor. Such “side deals” are never appropriate and represent a violation of Penn State policies. Faculty should, therefore, refrain from making any verbal or written promises to withhold research results and/or limit research team membership.

i. Prepublication Review

The ITAR does not currently address in any detail the impact of prepublication reviews on the determination of whether a project qualifies as fundamental research. The EAR does provide specific regulatory guidance concerning acceptable prepublication reviews which do not invalidate the fundamental research status of a research effort.⁴⁹ Specifically, the EAR acknowledges that the prepublication review by a sponsor of university research solely to ensure that the publication will not inadvertently divulge proprietary information that the sponsor has initially furnished, or would otherwise compromise patent rights, does not constitute a restriction on publication that invalidates the FRE. Such a review must also be conducted in a reasonable timeframe and not cause more than a “temporary delay” in publication.

ii. Participation Restrictions vs. Funding Restrictions

Occasionally, a sponsor may limit recipients of funds associated with an award to U.S. citizens or permanent residents. Often, these restrictions are associated with federally funded training programs whose citizenship restrictions result from a policy mandate to enhance U.S. capabilities or manpower in certain areas of science, engineering, or medicine. These types of funding restrictions do not constitute participation restrictions imposed as “specific national security controls” if foreign persons are otherwise permitted to participate in the project (through alternate funding sources) and there are no publication restrictions associated with the project. Examples of funding restrictions that do not nullify fundamental research are traditional NIH and NSF training grants.⁵⁰

⁴⁹ See 15 CFR §734.8(b) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=b677b4eedf30f308b19015dfb01451f6&mc=true&node=pt15.2.734&rgn=div5#se15.2.734_18 and the FAQs related to “Revisions to the Definitions in the Export Administration Regulations (Sep 1, 2016) at <https://www.bis.doc.gov/index.php/forms-documents/compliance-training/export-administration-regulations-training/1554-ear-definitions-faq/file> (Pages 3-7).

⁵⁰ See also NASA restrictions on funding activities with China: NASA funds may not be used to “participate, collaborate or coordinate bilaterally in any way with China or any Chinese-owned company.” This NASA funding restriction is a policy decision about how funds coming to a University can be used and is not necessarily intended to designate a project as subject to U.S. Export Controls that would otherwise restrict a Chinese citizen from participating on a NASA-funded project. Under the NASA China restrictions, “‘China’ or ‘Chinese-owned’ means the People’s Republic of China, any company owned by the People’s Republic of China, or any company incorporated under the laws of the People’s Republic of China. Chinese universities and other similar institutions are considered to be incorporated under the laws of the PRC and, therefore, the funding restrictions apply to grants and cooperative agreements that include bilateral participation, collaboration, or coordination with Chinese universities.” NASA Procurement Information Circular 12-01A available at <https://www.hq.nasa.gov/office/procurement/regs/pic12-01A.html>.

4. RELEASE TO “BONA FIDE, FULL-TIME EMPLOYEES”⁵¹

In very limited circumstances, under both the ITAR and the EAR, Penn State may release controlled, unclassified technical data in the U.S. to certain foreign person employees of the University. Application of this exemption is dependent upon meeting a prescribed set of requirements:

- The foreign person is a bona fide and full-time, regular employee of Penn State;
- The employee’s permanent abode [*note – this refers to residential location and is not to be confused with the term/concept of “permanent resident” status*] throughout the period of employment is in the United States;⁵²
- The employee is not a national of an embargoed country;⁵³ and
- The University informs the employee in writing that the disclosed information, technology, technical data, source code, etc. may not be transferred to other foreign persons without prior government approval.

Foreign graduate students and visiting scholars will generally not qualify for this exemption. Penn State employees may not apply this exemption independent from a review and approval from the UECO or appropriate designated reviewing authority. Please contact the UECO for additional assistance in applying this exemption to a specific transaction or activity.

5. INFORMATIONAL MATERIALS & PUBLISHING ACTIVITIES UNDER OFAC⁵⁴

OFAC sanctions permit, without requiring a specific license, the export or import of information and informational materials to most sanctioned countries. These exceptions or general licenses do not serve to authorize the export of controlled technical data without first obtaining any required licenses from DDTC or BIS. These exceptions or general licenses also do not authorize the export/import of “information and informational materials not fully created and in existence at the date of the transaction.”

In addition, “the substantive or artistic alteration or enhancement of informational materials” may be a service requiring an OFAC license unless the U.S. party is engaging in certain peer review or general style and copy editing activities. The OFAC exceptions or general licenses typically do not apply when engaged directly with sanctioned governments, though in limited circumstances OFAC may allow these activities with an academic institution that would otherwise be considered an agency or instrumentality of a sanctioned government. PSU employees may not apply these exemptions independently for any University-related activity. Please contact the UECO for assistance.

D. EXPORT COMPLIANCE AND GRADUATE THESES OR DISSERTATIONS

One of primary intentions behind the development of a thesis or dissertation is to communicate the results of the research conducted by the student to the scholarly community and/or the public at large. As such, Penn State’s “Thesis and Dissertation Guide”⁵⁵ prohibits students from using “any information that is restricted or cannot be disseminated to the public” in any thesis or dissertation documents. Faculty should take this prohibition into consideration when considering the involvement of graduate students in any controlled research projects. Prior to inclusion of a graduate student on any project subject to a Technology Control Plan (see below), a waiver from the Graduate School must be obtained by the project Principal Investigator. A waiver is not required for participation

⁵¹ For the ITAR, see 22 CFR §125.4(b)(10) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=e6e02e2c5fcf5b91e82fef78c5e8a66c&mc=true&node=pt22.1.125&rgn=div5#se22.1.125_14. For the EAR, see 15 CFR §740.13(f) available at https://www.ecfr.gov/cgi-bin/text-idx?SID=73c653ceb85e1e4fd6870172811fce4d&mc=true&node=pt15.2.740&rgn=div5#se15.2.740_113.

⁵² “The requirement that the employee’s ‘permanent abode throughout the period of employment’ is understood to mean ‘residence throughout the period of employment.’ Employees who return home for short periods of time (for example, over winter break) are not disqualified from qualifying as an ‘employee’ for [these] purposes.” Association of University Export Control Officers guidance document “Bona fide, Full-time Employees (BFE),” Apr 28, 2016, available at <http://aueco.org/wp-content/uploads/2016/04/bonafideemployeeauecoguidance.pdf>.

⁵³ For the ITAR, the employee may not be a national of a country listed in 22 CFR §126.1 available at https://www.ecfr.gov/cgi-bin/text-idx?SID=373eed0a11c4c862485ea7fdca4d462&mc=true&node=se22.1.126_11&rgn=div8. For the EAR, the employee may not be a national of a country listed in Country Group D:5 (see Supplement No. 1 to Part 740 available at https://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=15.2.1.3.4.25#ap15.2.740_121.1).

⁵⁴ *Office of Foreign Assets Control Guidance on Certain Publishing Activities*, dated 28 Oct 2016, available at https://www.treasury.gov/resource-center/sanctions/Programs/Documents/guidance_on_certain_publishing_activities.pdf.

⁵⁵ Available online at <http://gradschool.psu.edu/current-students/etd/thesisdissertationguidepdf>.

in restricted research by graduate students who are engaged in non-thesis/non-dissertation related research efforts.

E. CLASSIFIED RESEARCH

All classified research at Penn State must be conducted under the auspices of the University's Applied Research Laboratory.

IX. EXPORT COMPLIANCE PROCEDURES AT THE PENNSYLVANIA STATE UNIVERSITY

A. STANDARD OPERATING PROCEDURES

Penn State, by and through the Export Compliance Officer (ECO), has implemented Standard Operating Procedures that outline the processes used to foster a culture of compliance with U.S. Export Controls and with this Export Compliance Plan. These procedures are in furtherance of this ECP and are maintained by and regularly reviewed and updated by the UECO. Additional guidance on specific programs and procedures may be obtained from the UECO [website](#) or by contacting the UECO.

B. COMMITMENT TO COMPLIANCE

Penn State is a leader in higher education with a mission of teaching, research, and service. Penn State is committed to the highest standards of ethics, honesty, and integrity in pursuit of its mission. Penn State endorses the principles of freedom of inquiry and open exchange of knowledge and expects Penn State employees to “uphold academic freedom and freedom of expression in accordance with the law and University policy.”⁵⁶ Penn State recognizes its role as a corporate citizen of the United States and is committed to complying with all relevant and applicable laws, regulations, and guidelines,⁵⁷ including, but not limited to, those related to U.S. Export Controls.⁵⁸

Penn State, by policy and by practice, reiterates its commitment to academic freedom; welcomes the contributions of international staff, students, and visitors; and asserts that research conducted by Penn State faculty, staff, and students should as a regular course of the Penn State’s operations be released into the public domain and considered fundamental research. Most Penn State research is therefore exempt from export licensing requirements. However, where export control and sanctions laws, regulations, and guidelines are expressly applicable to Penn State activities, or where and to the extent that Penn State accepts classified or restricted research projects, it is the expectation that such efforts will be conducted in full compliance with the law as required.

Penn State is committed to export controls and sanctions compliance, and the UECO is tasked with advising and assisting the University community in its compliance obligations. More information and resources regarding export controls, sanctions, and other regulations that impact University activities can be found at the UECO [website](#) or by contacting the UECO.

C. RESPONSIBILITY FOR EXPORT CONTROL COMPLIANCE⁵⁹

1. EMPOWERED OFFICIALS

As a part of the registration process with the Directorate of Defense Trade Controls (DDTC) under the ITAR, Penn State has designated specific individuals in writing as Empowered Officials who have the authority to represent the University before DDTC in matters related to registration, licensing, CJ requests, or voluntary disclosures. While certain oversight functions may be delegated to others, only the Empowered Officials have the power to bind the University in any proceeding before DDTC. Moreover, Penn State’s Empowered Officials have been granted clear institutional authority to sign import/export documentation and conduct any actions necessary, including preventing or limiting actions of others, to comply with any applicable export control laws, regulations or guidelines. The Penn State Empowered Officials have direct access to senior administrators, the Board of Trustees, and the officers of the corporation as necessary to perform their role as final arbiters of the international trade compliance issues for the institution.

2. EXPORT COMPLIANCE OFFICER

The Penn State Export Compliance Officer (ECO) reports to the Chief Ethics and Compliance Officer⁶⁰ of the University. In addition, the ECO serves as an Empowered Official of Penn State. The ECO seeks to balance

⁵⁶ See the University Code of Conduct (AD88) available at <https://policy.psu.edu/policies/ad88>.

⁵⁷ Under Policy AD88, all employees must also “obey all applicable federal, state, and local laws”.

⁵⁸ See the University Export Compliance Policy (AD89) available at <https://policy.psu.edu/policies/ad89>.

⁵⁹ For more information and details about specific roles and responsibilities for export compliance at Penn State, please see the University Export Compliance Definitions, Procedures and Implementation Guidelines (ADG09) available at <https://policy.psu.edu/policies/adg09>.

⁶⁰ For more information about the Penn State Office of Ethics and Compliance (E&C), please visit the E&C website at <https://universityethics.psu.edu>.

the need for international collaboration in the higher education market with the requirement for all U.S. persons, including institutional persons such as The Pennsylvania State University, to fully comply with all applicable federal export control regulations in their operations.

The ECO has the authority and the responsibility for the implementation of the Penn State's Export Compliance Program by:

- Identifying University activities that are impacted by export control and sanctions laws, regulations, and guidelines;
- Developing policies and procedures to ensure the University remains in compliance;
- Recommending processes and procedures to the senior administration to strengthen overall compliance with applicable export laws, regulations, and guidelines;
- Educating the University community about export control and sanctions laws, regulations, and guidelines, as well as any and all Penn State export compliance policies and procedures;
- Monitoring and interpreting legislation and related regulatory changes;
- Working collaboratively with others on campus to cultivate a culture of compliance;
- Assisting investigators, project staff, and campus offices in implementing and managing project specific operational restrictions when the research or research results are determined to be export controlled or where such programs or results may otherwise be impacted by export control and sanctions laws, regulations, and guidelines;
- Seeking legal assistance as deemed necessary in the classification of controlled items and in filing license applications; and
- Implementing appropriate measures to limit unauthorized access to restricted research projects through consultation and support of the efforts of the Office of Sponsored Programs and the research communities within the various colleges, campuses, departments, and other academic units (See Part IX.E).

3. OFFICE OF SPONSORED PROGRAMS⁶¹

The Office of Sponsored Programs (OSP)⁶² provides assistance to the UECO in identifying University activities that may be impacted by U.S. Export Controls and in managing restricted research activities by:

- Notifying the UECO upon identification of restrictive language (e.g. publication restrictions – see the discussion in Section VIII.C.3 above) or any other export compliance red flags in agreements for sponsored research;⁶³
- Negotiating with sponsors to remove restrictive language, if possible; and
- Implementing and documenting any recommended measures for the management of restricted research projects including any departmental awareness notices, sign-offs, or any required technology control plans.⁶⁴

4. UNIVERSITY MANAGERS

Academic and administrative deans, directors, and department heads share the responsibility of overseeing export control compliance in their respective colleges, campuses, schools, departments, centers, institutes, and units and for supporting the UECO in implementing procedures as deemed necessary by the UECO for export control and sanctions compliance.

⁶¹ Due to the significant amount of intersection between sponsored research activities and efforts and export control issues, sponsored research specific export compliance policies (RA40) and guidelines (RAG40) are available at <https://policy.psu.edu/policies/ra40> and <https://policy.psu.edu/policies/rag40>.

⁶² For more information about the Penn State Office of Sponsored Programs (OSP), please visit the OSP website at <https://www.research.psu.edu/osp>. For more information about the role of OSP staff in the Penn State Export Compliance Program, please see the OSP Export Compliance website and materials available at <https://www.research.psu.edu/osp/manage-awards/export-compliance>.

⁶³ It is important to remember that export and sanctions regulations are statutorily based requirement and that such regulations will apply regardless of whether the University receives funding via a grant, cooperative agreement, or contract, and whether or not such regulations are cited explicitly in the award document, unless covered by an exemption or exception. Under the Christian Doctrine, such terms may be imputed for public policy reasons if inadvertently omitted by a governmental funding organization. Therefore, inclusion of restrictive language in funding vehicles may serve as a “red flag” but is not nor should be deemed totally determinative of the export compliance status of any project or award.

⁶⁴ For more information about Technology Control Plans (TCPs), please see Part IX.E below.

5. PRINCIPAL INVESTIGATORS

The principal investigator (PI) on a research project has the best understanding of his or her research and thus is best suited to advise the UECO whether the particular technology, data, or information involved in that research is subject to export control regulations. PIs should carefully review the information on export controls and sanctions compliance provided in this document and on the UECO web site, and contact the UECO with questions or to request additional training.

Before beginning any research, the PI should determine whether any export control or sanctions issues may be present by reviewing the RFP or solicitation, and any award documents, for export control markings or indications that the sponsor requires pre- approval rights over publications or the participation of foreign persons. The PI should also evaluate projects for the potential for:

- Shipping equipment to a foreign country, including the potential return of materials, samples, prototypes or equipment provided by a foreign collaborator, vendor, or sponsor;
- Collaborating with foreign colleagues in the U.S. or abroad;
- Training foreign persons in using equipment; or
- Working with a country subject to U.S. economic sanctions.

If any such issues are identified, or if there are questions, the PI should contact the UECO for assistance. After work on the project has begun, the PI should also notify the UECO prior to implementing any changes that may result in the application of export controls or sanctions regulations, such as a change in the scope of work or the addition of new staff to the project.

If a project constitutes restricted research or is otherwise subject export controls or sanctions regulations, the PI must adhere to any applicable contractual restrictions, UECO policy, and/or the terms of a government-issued license and cooperate fully with the University's efforts to monitor compliance.

D. ANALYSIS OF SPONSORED PROJECTS

Penn State utilizes an electronic sponsored research proposal and award system, the Strategic Information Management System (SIMS), to facilitate proposal development, award negotiation and administration, and general sponsored research compliance actions and reviews. Penn State has enabled certain embedded compliance checks in SIMS using the online Internal Approval Form (IAF) System to flag potential export compliance concerns on proposals, awards, and some post-award activities. In addition, at award stage additional export compliance reviews may be initiated due to specific award terms or details identified as part of the OSP award negotiation procedures. The UECO and OSP have developed detailed policies and procedures for the review of sponsored research for export and sanctions compliance concerns,⁶⁵ an overview of which is outlined here.

1. AUTOMATED PROCESSES

All sponsors and sub-recipients are currently subject to Restricted Party Screening⁶⁶ at the time of entry into the SIMS/IAF database. All legacy sponsors and sub-recipients have been batch screened for RPS purposes.

In addition, all international travel at Penn State is now subject to an export compliance review as part of the University International Travel Requirements Policy, including any international travel conducted as part of Penn State sponsored research efforts.⁶⁷ Therefore, no review of international travel is now conducted as part of the OSP export compliance processes.

⁶⁵ For more information about the policies and procedures governing export compliance in Penn State sponsored research efforts, See the Research Administration policy – Compliance with Federal Export Regulations (RA40) available at <https://policy.psu.edu/policies/ra40> and Research Administration Guideline – Guidelines for Ensuring Compliance with Export Control Policy RA40 (RAG40) available at <https://policy.psu.edu/policies/rag40>.

⁶⁶ For more information about Restricted Party Listings, see Part VI.B above.

⁶⁷ See the University International Travel Requirements policy (TR01) available at <https://policy.psu.edu/policies/tr01>.

2. PROPOSAL AND AWARD COMPLIANCE USING THE IAF SYSTEM⁶⁸

As part of the IAF submission process, investigators will be asked to identify potential export compliance-related triggers. This will enable OSP to perform an Export Review to determine whether or not a project will be impacted by U.S. export laws, regulations and guidelines. The IAF system is designed to require the completion of various compliance questions, including those related to export controls, before the submission of a proposal and/or the acceptance of a subsequent award.

Based upon the answers provided as part of the IAF compliance questions at initial entry of the proposal/award into the IAF System, if any potential export control red flags are identified, then OSP export compliance specialists will be notified by the IAF System to initiate an export review. Depending on the stage of the proposal or award, OSP export compliance specialists may contact the responsible PI to obtain additional information. The OSP export compliance specialists may also coordinate with the UECO to develop and/or implement any necessary compliance plans or procedures necessary to mitigate any export control risks to levels acceptable by Penn State. Should any IAF submission require governmental licensing and/or internal compliance plan implementation, OSP will work with the UECO and ECO to obtain all internal or external approvals before releasing the IAF for further processing, submission, or award acceptance. No internal efforts may be commenced on any proposal or award subject to an OSP export review until the export review has been completed and appropriate entries are made in the IAF Systems.

Given the automated nature of the IAF System notification process, it is critical that faculty and staff using the IAF System to generate proposal or award files use the best efforts to accurately answer the IAF compliance questions. If it is determined that compliance questions in the IAF are answered incorrectly, resulting in a false positive notification of potential red flags, OSP and/or the UECO may require correction and resubmission of the IAF. It is the responsibility of faculty and/or staff to promptly and accurately complete any and all forms provided by OSP in order to complete an effective export review.

3. MANUAL AWARD REVIEWS⁶⁹

In addition to any automated reviews and/or reviews initiated through the IAF System, all incoming awards, as well as some proposals and requests for proposals, may be manually reviewed by OSP staff to identify any export control red flags in the language of the proposed terms, performance term, and/or related files (Statements of Work, Budgets, etc.). As with reviews initiated in the IAF system, OSP export compliance specialists will be notified by the assigned OSP Contract Negotiator to initiate an export review if any such red flags are identified. It is the responsibility of faculty and/or staff to promptly and accurately complete any and all forms provided by OSP in order to complete an effective export review.

4. NON-FINANCIAL AGREEMENTS⁷⁰

Not all documents and transactions reviewed and processed by OSP are initiated through the IAF system. Non-IAF documents and transactions may include Non-Disclosure Agreements, Data Use Agreements, Memoranda of Understanding, and non-contractual reporting and documentation forms. As a part of OSP handling of such documents and transactions, OSP may require additional information, documentation or forms in order to determine whether or not a particular agreement or transaction will be impacted by export control laws and regulations. It is the responsibility of faculty and/or staff to promptly and accurately complete any and all forms provided by OSP in order to complete an effective export review.

⁶⁸ For more information about export reviews of IAF transactions, see Research Administration Guideline – Guidelines for Ensuring Compliance with Export Control Policy RA40 (RAG40) available at <https://policy.psu.edu/policies/rag40>.

⁶⁹ For more information about manual export reviews initiated within OSP, see Research Administration Guideline – Guidelines for Ensuring Compliance with Export Control Policy RA40 (RAG40) available at <https://policy.psu.edu/policies/rag40>.

⁷⁰ For more information about export reviews of non-financial agreements within OSP, see Research Administration Guideline – Guidelines for Ensuring Compliance with Export Control Policy RA40 (RAG40) available at <https://policy.psu.edu/policies/rag40>.

E. TECHNOLOGY CONTROL PLAN

The purpose of a Technology Control Plan (TCP)⁷¹ for a restricted research project is to establish procedures to secure controlled items from access by unauthorized foreign persons. OSP export compliance specialists will work with the PI, unit representatives, and the UECO to develop and implement any necessary TCPs. A TCP will include reasonable physical and information security measures appropriate to the project. All project personnel will be identified in the TCP, briefed on the procedures authorized under the TCP, receive basic export compliance training, and be responsible for conducting their research efforts in conformity with the TCP terms. All TCPs will be reviewed and authorized by the UECO before allowing the commencement of effort, including the expenditure of funds regardless of funding source. A TCP is an official internal document and subject to review and/or audit by the UECO or other authorized Penn State staff.

F. LICENSING

A foreign person must be specifically licensed prior to receiving controlled items and/or participating in any controlled activity, including potential research activities, for which a license is required. Licensed foreign persons may participate in controlled projects covered by a TCP only to the extent that their participation is either exempt from the applicable controls, their effort is not related to nor requires access to or use of any controlled items, or to the extent such participation is appropriately licensed by the responsible federal agency. A license is also required for any Penn State personnel or units to engage in conduct otherwise restricted or prohibited under any applicable sanctions regime.

The decision whether to seek any license or other government approval for export compliance purposes rests with the ECO. All licenses and governmental approvals for export control purposes must be processed, submitted and/or signed by authorized persons within the UECO. For clarity purposes, it is Penn State policy that Penn State personnel may not independently apply for any export or sanctions license necessary to conduct any university affiliated business. When a license is needed, the UECO will work with the impacted unit and/or faculty member to prepare the necessary documentation for obtaining the license. Once finalized, an Empowered Official or other authorized University official will submit the license application on behalf of Penn State. All parties involved should be aware that license applications require considerable time and effort to prepare. In addition, government evaluation and response in the form of a license determination and issuance may take months from the date of submission. Sufficient time should be allotted to the process in order to avoid impacts to critical programs and/or contractual deadlines.

All Penn State export licenses, regardless of the authorizing agency, shall be maintained by the UECO. All persons conducting efforts under a Penn State export license are required to comply with any and all license terms, as well as any additional guidelines issued by the UECO for the implementation of such terms.

G. EXPORT REVIEWS BY THE UNIVERSITY EXPORT COMPLIANCE OFFICE⁷²

In addition to the reviews completed by OSP as part of the sponsored research administration process, the UECO conducts independent export reviews on a variety of foreign transactions with potential export compliance sensitivities. Foreign transactions that may require an export review by the UECO include the following specifically identified transactions. Additional transactions may require a review on a case-by-case basis.

1. INTERNATIONAL TRAVEL

Penn State is an internationally involved and respected educational and research institution. In performance of the University mission, academic and research efforts and collaborations occur world-wide and often require international travel by faculty, staff, and students. While international travel is a necessity for any globally engaged University, travel with, or the transmission of, controlled data to destinations outside the U.S. can have serious export control implications.

All international travel activities to be undertaken by a Penn State traveler for University-affiliated

⁷¹ For more information about Restricted/Controlled Research Projects and the implementation of a TCP, see Research Administration Guideline – Guidelines for Ensuring Compliance with Export Control Policy RA40 (RAG40) available at <https://policy.psu.edu/policies/rag40>.

⁷² For a more detailed description of the types of reviews and foreign transactions of concern, please see [ADG09](#): Export Compliance Definitions, Procedures and Implementation Guidelines.

purposes must be reviewed prior to departure by the UECO.⁷³ The purpose of this pre-travel review is not to approve any destinations or proposed activities, but instead to help identify any export control concerns and then provide resources or support to mitigate any significant export control risks created by the planned travel activities. For most international travel, general educational and awareness materials and support is sufficient to mitigate any export control related risks.

To facilitate the completion of such reviews, an export compliance questionnaire has been included in the online travel enrollment system mandated under the University's International Travel Requirements policy.⁷⁴ The information collected in this mandatory questionnaire allows the UECO to identify specific export control concerns, if any, and to determine whether the proposed travel generally complies with OFAC, EAR, and ITAR regulations. When reviewing a traveler's travel record, the UECO will determine whether any of the proposed activities implicates embargoed destinations; restricted parties, persons, or end-users of concern; or controlled goods, materials, software, data, information, or services.

2. VISITING INTERNATIONAL SCHOLARS

Foreign visitors, including all visitors for whom the University shall be an official sponsor or facilitator in obtaining U.S. Visa entry approvals, should be screened prior to arrival on campus as such visits may implicate any of the following: OFAC Embargoed Destination Restrictions; OFAC/EAR/ITAR Restricted Parties/Persons or End-User of Concern Restrictions; and/or EAR/ITAR controls on access to goods, materials, software, technical data, information and/or services (Deemed Export).⁷⁵ At a minimum, visiting scholars information must be reviewed by the UECO and/or other designated export compliance staff in advance to identify any export compliance risks associated with the proposed visit. For any Visiting International Scholars requesting J-1 or H1-B visa sponsorship by Penn State, an export review has been built into the visa sponsorship process.⁷⁶ For all other Visiting International Scholars, an export review may be initiated through submission of UECO provided forms.⁷⁷

3. DEEMED EXPORT ATTESTATIONS

Many of the foreign persons employed by the University under H-1B visas as scientists or researchers conduct fundamental research, which is not subject to export control requirements and, therefore, do not require an export license. However, not all research qualifies as fundamental research, and an export license may be required for a foreign national employee. The U.S. Citizenship and Immigration Services (USCIS) now requires that all U.S. businesses perform a "deemed export attestation" during the processing of H-1B visa applications for foreign national employees being hired in specialty occupations. Specifically, Penn State must evaluate whether a deemed export license will be required before a foreign employee on an H-1B visa can access controlled products or technology in order to perform the work specified on the H-1B application. An attestation about the applicant's need for a license is a required section of the visa application.

The UECO will work with the sponsoring College, Department, or Unit, as well as the Directorate of International Student & Scholar Advising within the Office of Global Programs, to ensure that any deemed export attestation in a visa application is completed correctly. The UECO will subsequently submit an export license request to the appropriate agency, as needed.

4. FOREIGN SHIPMENT

Foreign shipments, and, in particular, the shipment of hazardous materials and/or materials, items and technical data involving high-technology systems, components or supplies, should be reviewed prior to

⁷³ For the general requirement to review international travel activities, please see [ADG09](#).

⁷⁴ All international travel at Penn State for University affiliated purposes must be enrolled in the University's designated travel enrollment system. For more information about policies and procedures for international travel at Penn State, please see the University International Travel Requirements policy (TR01) available at <https://policy.psu.edu/policies/tr01>.

⁷⁵ See [ADG09](#): Export Compliance Definitions, Procedures, and Implementation Guidelines

⁷⁶ For more information about the Visa sponsorship process and/or about Penn State support services for foreign students, faculty, and/or scholars, please visit the Directorate of International Student and Scholar Services website available at <https://global.psu.edu/international>.

⁷⁷ To access the current online forms used for visiting foreign scholars, please see the UECO website at <https://universityethics.psu.edu/export-compliance-procedures#Online%20Submission%20Forms>.

commencing shipment to determine whether the proposed shipment implicates any of the following: OFAC Embargoed Destination Restrictions; OFAC/EAR/ITAR Restricted Parties/Persons or End-User of Concern Restrictions; and/or EAR/ITAR controls on goods, materials, software, technical data, information and/or services.⁷⁸ Foreign shipments identified and disclosed as part of the award of any sponsored research project are reviewed at the time of award by the export compliance specialists within OSP. For all other foreign shipments of potentially controlled information, software, materials, equipment, or supplies, an export review may be initiated through submission of UECO provided forms.⁷⁹ Export reviews should also be requested for any materials (including samples), equipment (including prototypes) or supplies which will be received from (or hand-carried by) and later returned to a foreign party, as foreign-origin items once in the U.S. are subject to U.S. Export Controls.

5. CONTRACTUAL TERMS AND OTHER TRANSACTIONAL REVIEWS

Non-Disclosure Agreements (NDA), Data Use Agreements (DUA), Memorandums of Understanding, Purchase Orders, Donation Agreements, and other business agreements not processed by OSP or through the IAF system⁸⁰ (for example, software licenses, material transfer agreements (MTAs), Intellectual Property licensing agreements, Master Services Agreements, facility access agreements, donations/gifts from foreign entities or persons, etc.) may also be impacted by U.S. or international export controls.⁸¹ As part of an internal export compliance review of such documents and transactions, certain information, documentation, or forms may be required in order for the UECO or other authorized unit to perform a meaningful review. A review of such contractual documents is done to determine whether or not a particular transaction will be significantly impacted by U.S. export laws, regulations and guidelines. It is the responsibility of faculty and/or staff to promptly and accurately complete any and all forms provided by any export reviewer in order to complete an effective Export Review.

Upon request, the UECO will provide guidelines and procedures to offices within Penn State with administrative responsibility for the development, negotiation, processing, and implementation of such transactional activities. When appropriate, the UECO may designate specific thresholds or “red flags” which necessitate the completion of an export review prior to undertaking certain transactions. Units tasked with management of such transactions may contact the UECO directly for assistance in evaluating any specific transactions or to develop internal review procedures or guidelines for specific classes of transactions.

6. CERTIFICATIONS

Occasionally documents or forms may be received as part of a business transaction that require certification of compliance with U.S. or international export control laws and regulations. Such certifications should be completed by an Empowered Official after review of the potential export compliance risks presented. Examples of typical certifications including: DDTC/ITAR registration certification, End-user Certifications, End-Use certifications, and/or non-proliferation activities certifications. To request the completion and/or execution of such documents, please contact the UECO.

H. OTHER EXPORT COMPLIANCE OPERATIONAL CONCERNS

1. DATA PROTECTION

The adequate protection of export controlled information and data is a critical component of any

⁷⁸ See [ADG09](#): Export Compliance Definitions, Procedures, and Implementation Guidelines

⁷⁹ To access the current online forms used for reviewing proposed foreign shipment of potentially controlled items, please see the UECO website at <https://universityethics.psu.edu/export-compliance-procedures#Online%20Submission%20Forms>.

⁸⁰ For more information about OSP related export review efforts, please see Section IX.D above.

⁸¹ Financial transactions with sanctioned or restricted entities/persons may be either proscribed by regulation and/or made more difficult to complete due to financial sector restrictions on activities. In addition, procurements, MTAs, donations of equipment/materials, and the licensing of Intellectual Property interests could require licensing determinations under the ITAR, the EAR, and/or OFAC sanctions programs. Penn State faculty and staff with questions about whether and/or how U.S. export laws could impact their efforts should request guidance from the UECO at <http://export.psu.edu>.

effective export compliance plan. Technical Data⁸² or Technology⁸³ which is controlled under the ITAR and/or the EAR must be protected while in the possession, transmission, or use of the University and any authorized persons. Under PSU Policy AD95⁸⁴ export controlled information is considered Restricted Data (Level 4) and subject to the highest level of data security and handling requirements. Any University Persons with access to or control of any export controlled data must follow the IT Security Standards and Requirements for Restricted (Level 4) data⁸⁵ in the management of such export controlled data. For additional assistance with determining best practices and procedures for handling/managing export controlled data, please contact the UECO.

2. TRAINING PROGRAMS

The UECO or other authorized University units will develop, provide, or deliver appropriate and regularly updated training materials to help Penn State faculty, staff, and students understand their obligations under applicable export control laws and regulations. The UECO or other authorized University units will provide appropriate briefings and/or training to employees or students engaged in any export controlled project. The UECO or other authorized unit will maintain records of all required trainings or briefings provided. General export control information, FAQs, and presentations will be available to the university community via the UECO website.

3. RECORDKEEPING

The UECO shall maintain export-related records consistent with the applicable PSU record retention policy, any applicable record retention schedules, and/or any applicable agency requirements. Records related to any controlled projects and/or licensed activities shall be retained no less than five years after the project's TCP termination date or license termination date, whichever is later. Records that should be retained include all memoranda, notes, jurisdiction and classification determinations, restricted party screening results, general correspondence (including email), financial records, shipping documentation, as well as any other information related to the export activities or the evaluation of the same.⁸⁶

4. CONTINUOUS MONITORING

In order to maintain the export compliance program and ensure consistent adherence to U.S. export laws, the UECO may conduct internal reviews of TCPs and certain projects. The purpose of the reviews is: (i) to identify deficiencies in training, procedures, etc. that can be rectified; and (ii) to identify possible violations. University Empowered Officials have been delegated express authority to investigate and review any and all transactions with any potential export control sensitivities. University faculty, staff, students, and other impacted persons shall provide any and all reasonable assistance to the UECO in order to monitor or review any ongoing export sensitive activities.⁸⁷

5. DETECTING AND REPORTING VIOLATIONS

It is the policy of the University to self-disclose violations as required by law. PSU personnel who suspect a violation has occurred must immediately notify the UECO, an Empowered Official, or report their suspicions through the University's "Ethics and Compliance Hotline." Upon receipt of any such allegations, the UECO, by and through an Empowered Official, will conduct an internal review of the

⁸² The term "Technical Data" is defined in the ITAR to include Information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. For a more detailed description of the term Technical Data, please visit the UECO website at <https://universityethics.psu.edu/export-compliance-terms#Terms%20TD>. The official definition under the ITAR is available in [22 CFR §120.10](#).

⁸³ The term "Technology" is defined in the EAR Specific information necessary for the "development", "production", or "use" of a product. For a more detailed description of the term Technology, please visit the UECO website at <https://universityethics.psu.edu/export-compliance-terms#Terms%20Technology>. The official definition under the ITAR is available in [15 CFR §772](#).

⁸⁴ University Policy AD95 is available online at <https://policy.psu.edu/policies/ad95>.

⁸⁵ For information on the applicable standards and requirements for Restricted (Level 4) data, please see the information/guidance provided in the materials linked to University Policy AD95.V "Adherence to IT Security Standards and Requirements" at <https://policy.psu.edu/policies/ad95#D5>.

⁸⁶ For more information about records management at Penn State including access to published record retention schedules, please visit the Records Management website at <https://libraries.psu.edu/about/departments/records-management>.

⁸⁷ For more information on roles and responsibilities, please see the "Responsibility" section of University Guideline ADG09 at <https://policy.psu.edu/policies/adg09#C>.

suspected violation and, when appropriate, provide the cognizant government agency a thorough narrative account. Upon engagement with a government agency, the UECO will follow the government agency's instructions concerning the continued investigation, handling, or review of the violation, including implementation of any immediate mitigating actions that are appropriate. Upon the conclusion of any such review and/or any government investigation, the UECO will work to facilitate any improvements in University export compliance practices.

6. DISCIPLINARY ACTIONS

All PSU personnel responsible for export controls and sanctions compliance or participating in restricted research projects shall be made aware of the substantial criminal and civil penalties imposed for violation of the export regulations including personal liability, monetary fines and imprisonment. When disciplinary actions are deemed necessary, appropriate action shall be taken as provided under applicable PSU Human Resources policies and procedures.