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Responsible Executive:	Vice President for Research
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Export Control Regulations

Policy Contents

I.   REASON FOR THIS POLICY

The U.S. export control laws govern: 1) the release of technology, technical data, software, and information to foreign nationals within or outside the United States; 2) the furnishing of defense services to foreign persons whether in the United States or abroad; 3) the shipment or other transmission of items or defense articles outside the United States; and 4) the ability to export or otherwise transact with certain individuals, entities and countries. Certain export transactions require a license or other written approval from the U.S. government prior to export. Some transactions are prohibited due to the end-use, end-user, or country involved. These requirements are in place for national security, nuclear non-proliferation, regional stability, prevention of chemical and biological weapon proliferation and other foreign policy reasons. These export control laws have been in existence since the 1940s but have impacted universities to a greater extent since September 11, 2001. The export control laws are implemented through Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR) and through the Office of Foreign Assets Control (OFAC).

II.   STATEMENT OF POLICY

The University of South Dakota (USD) is committed to compliance with federal laws and regulations governing exports – concomitant with the goal of fostering an academic environment of intellectual creativity, freedom to conduct ethical research, and the open dissemination of research results. All activities undertaken by the USD community, including research activities, must comply with the export control regulations as well as other university policies. A university faculty or staff member who violates export control laws, whether willfully,

knowingly, or accidentally, may face internal university disciplinary consequences in addition to possible civil and criminal penalties, fines, and imprisonment.

The University of South Dakota does not engage in classified research of any nature.

III.   DEFINITIONS

These are operating definitions for the purpose of this policy. Please refer to laws and regulations for definitions therein. In case of conflict between these definitions and definitions in legal documents, the legal definitions will hold.

CLASSIFIED: Deemed to be important to the national security interests of the United States. Classification is the means by which the government restricts information. The standard categories of classification include confidential, secret, and top secret.

DEFENSE ARTICLE: An inherently military article as determined by the Department of State and listed on the United States Munitions List, including technical data.

DEFENSE SERVICE: The furnishing of assistance, including training, to foreign persons, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a defense article.

DEEMED EXPORT: An export of technology or source code (except encryption source code) that is "deemed" to take place when it is released to a foreign national within the U.S.

DUAL-USE ITEM: Items having both a civil and military or weapon proliferation application as determined by the Department of Commerce and are subject to the Export Administration Regulations (EAR).

EXCLUSION: Information that is specifically excluded from export licensing requirements for policy or practical reasons. Such information includes technology, some software, and technical data that is the result of fundamental research, is within the public domain, or is taught within classrooms and teaching laboratories. See **Related Documents, Forms, and Tools** for a list of exclusions and other essential information.

EXPORT (INCLUDING DEEMED EXPORT):

1. Sending, taking or shipping an item or defense article outside the United States.

2. The furnishing of any technical data to foreign persons or performing a defense service on behalf of or for the benefit of a foreign person within the United States or abroad.

3. The release of technology or software to a foreign national within the United States or abroad through the visual inspection by foreign nationals of U.S.-origin equipment and facilities and oral exchanges of information.

4. The release of technology or software through the application to situations abroad of personal knowledge or technical experience acquired in the United States.

EXPORTER: For purposes of this document, individual at USD who will carry out the export. For instance, if a material transfer, the individual shipping or transmitting the material is the exporter. If sharing information with a foreign national, it is the individual sharing the information that is the exporter.

FOREIGN NATIONAL/PERSON: Persons who are not U.S. citizens, are not lawfully admitted for permanent residence in the United States, or are not persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Foreign national includes individuals with study and work visas.

PROPRIETARY RESEARCH: Privately funded research activity undertaken pursuant to a contract between USD and an outside sponsor with commercial interests where the information shared by the outside sponsor and the research results is restricted contractually.

RESTRICTED RESEARCH: University research, development, or testing subject to (i) publication restrictions, (ii) access and dissemination controls, (iii) federally funded research with contract-specific national security restrictions; (iv) accepting third party controlled items or information, or (v) providing access to, or defense services on, a defense article.

SOFTWARE: A collection of computer programs fixed in any tangible medium of expression. This includes system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis, and repair of defense articles.

SPONSORED PROJECT: Any project receiving external support that has defined performance requirements or conditions as set out in Office of Research and Sponsored Programs Policy.

TECHNOLOGY: Specific information necessary for the "development", "production", or "use" of a product. May take forms such as instruction, skills training, working knowledge, consulting services.

TECHNICAL DATA: Examples include blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories. Also information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. All classified information relating to defense articles and services is technical data. In addition, all information covered by an invention secrecy order is considered technical data under ITAR. Technical data does not include basic marketing information on function or purpose or general system descriptions.

IV. PROCEDURES

RESPONSIBILITIES OF PARTIES:

1. If the export activity (including a deemed export) is a sponsored project, it is the responsibility of the Principal Investigator to ensure that the sponsored project is consistent with the export control regulations and this policy.

2. If the export activity is not a sponsored project, it is the responsibility of the exporter to ensure the export is consistent with the export control regulations and this policy.

3. It is the responsibility of other university officers, staff, and administration to be aware of the export control requirements under the regulations and this policy. Examples of units that may encounter export control issues include: academic colleges and schools, Environmental Health & Safety, the technology transfer office, shipping centers, and those handling travel.

ROLE OF PRINCIPAL INVESTIGATORS:

1. Participate in export control training, as part of the university's annual Responsible Conduct of Research Workshop. Encourage junior colleagues and students to receive this training.

2. Determine license requirements for all planned export activity (including international travel, and deemed exports) subject to this policy and request license determination assistance from the Office of Research and Sponsored Programs well in advance of planned export.

3. Understand that providing technology to a foreign national within the United States is considered to be a "deemed export" and Export Control laws and regulations must be followed.

4. Provide all non-disclosure or confidentiality agreements pertaining to the Office of Research and Sponsored Programs for review and approval.

5. If export-controlled information or technology is received from an outside party or may be generated under a classified, restricted, proprietary project or project that is otherwise not considered fundamental research, contact your dean and the Office of Research and Sponsored Programs.

6. Contact the Office of Research and Sponsored Programs of any changes in scope or staffing that could alter the initial export control determination for a research project.

7. Contact the Office of Research and Sponsored Programs if violation of export control regulations may have occurred.

8. Document and retain all export control license determinations that are relied on for exporting items, information, technology, technical data or software for a period of five years.

ROLE OF THE OFFICE OF RESEARCH AND SPONSORED PROGRAMS:

1. Conducts export control training within the Responsible Conduct of Research Workshop, and as applicable, in seminars and with on-line training modules.

2. Responds to export compliance questions, determination requests, and interprets federal laws and regulations regarding export controls.

3. Reviews proposed research for export control issues.

   a. Compliance Question forms completed for externally funded research proposals determine if proposed research is eligible for the "fundamental research exemption." If the research is not fundamental research, then the research will be subjected to further evaluation by the Office of Research and Sponsored Programs for export control issues.

b. Annually, Department Chairs will be queried if any research is being conducted within their Department that does not qualify for the fundamental research exemption. If any research is identified as being other than fundamental research, then the research will be subjected to further evaluation by the ORSP for export control issues.

4. Applies for all export control licenses on behalf of the University of South Dakota and is the designated authorized office for certification of compliance with export control laws and regulations.

5. Negotiates and approves language in non-disclosure agreements and confidentiality agreements pertaining to sponsored research, sponsored research agreements, grants, contracts and other binding documents regarding export control responsibilities of the university

6. Documents export-control compliance for the university and retains records of all export activity that is reviewed by the Office of Research and Sponsored Programs.

7. Reviews export control measures taken by personnel at the university on a periodic basis.

8. Reports any violations.

EXCLUSIONS RELEVANT TO THE UNIVERSITY SETTING:

1. Fundamental Research Exclusion: information arising from basic and applied research in science and engineering at an accredited institute of higher learning within the U.S., where the resulting information is ordinarily published and shared broadly with the scientific community, is excluded from the scope of the ITAR and EAR.

2. Public Domain/Publicly Available:

> ITAR: information which is already published and generally accessible to the public is not subject to ITAR. Information that is available through books, periodicals, patents, open conferences in the United States, websites accessible to the public with no access controls, or other public release authorized by the U.S. government, is considered in the public domain.

> EAR: publicly available technology and non-encryption software, such as information that is the subject of an open patent application, published in a book or periodical, released at an open conference anywhere, available on a website accessible by the public with no access controls or information that will be published is not subject to the EAR. This includes submission of manuscripts to journals for consideration with the understanding that the article will be published if favorably received.

3. Educational Instruction:

> EAR: information that is released by instruction in catalog courses and associated teaching laboratories is not subject to the EAR.

ITAR: information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities is not controlled by ITAR.

4. Bona fide/full time employee: disclosure of technical data (as defined by ITAR) in the United States to a university bona fide and full-time regular employee, whose permanent abode is in the U.S., the employee is not a national of an embargoed country, and the university informs the employee in writing that the technical data may not be transferred to other foreign nationals without approval, is excluded from ITAR.

EXCLUSIONS THAT DO NOT APPLY TO ALL UNIVERSITY ACTIVITIES AND REQUIRE A REVIEW FOR EXPORT COMPLIANCE:

- Export of tangible items outside the United States
- Working with proprietary, restricted or classified information
- Projects performed abroad by university personnel
- Furnishing defense services to a foreign person within the United States
- Transacting with embargoed or sanctioned countries or parties
- Creating, receiving or working with encryption software
- Providing use technology regarding controlled equipment to a foreign national

V. RELATED DOCUMENTS, FORMS AND TOOLS

University of Washington Export Controls Regulations:

http://www.washington.edu/research/main.php?page=ecrRegulations

Council on Governmental Relations, publications on export controls:

http://www.cogr.edu/Pubs_ExportControls.cfm

The three main sets of export control regulations:

1. The Export Administration Regulations (EAR) as administered by the U.S. Department of Commerce, Bureau of Industry and Security: http://www.ntis.gov/products/export-regs.aspx

2. The International Traffic in Arms Regulations (ITAR) as administered by the U.S. Department of State, Directorate of Defense Trade Controls: http://www.pmddtc.state.gov/regulations_laws/itar.html

3. U.S. trade embargoes, sanctions, and other restrictions as administered by the U.S. Department of Treasury, Office of Financial Asset Control (OFAC):

http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx

See the University of Washington website for export control scenarios:

http://www.washington.edu/research/main.php?page=ecrApplicability