SUBJECT: Export Controls - Interim
NUMBER: 8:1

1. Purpose

This interim policy and its procedures support compliance with federal laws and regulations concerning export controls and a permanent policy will be developed and approved in accordance with University Policy 1.2. The University’s export controls policy and procedures are designed to assure compliance with regulations in those activities of the University to which the regulations may apply, which helps protect the University and its personnel from the consequences of non-compliance.

2. Definitions

a. Blanket restrictions, Boycotts, Anti-terrorism: A boycott is limitation or prohibition of exports, including services, or purchases from countries or individuals that have been identified by the U.S. government, except for public information. [http://www.treasury.gov/offices/enforcement/ofac/programs/](http://www.treasury.gov/offices/enforcement/ofac/programs/)

b. International Traffic in Arms Regulations (ITAR): Laws (22 C.F.R. parts 120 – 130) relating to items and associated software or technology of primarily military significance, chemical agents, imaging systems, software or technology intended for space launch, and satellite instrumentation of a non-military, scientific nature administered by the State Department. An item subject to ITAR generally requires a license for export to any country. [http://pmddtc.state.gov/regulations_laws/itar_official.html](http://pmddtc.state.gov/regulations_laws/itar_official.html)

c. Educational Information: Information released as part of a course listed in the University’s course catalog, and through instruction in the classroom or teaching laboratory. Participation in the course should be open to any qualified student enrolled at the academic institution. Educational information is not subject to the EAR, even if the faculty member is teaching the class at an institution outside the U.S.

d. Export: Generally, an export includes any: (1) actual shipment of any covered goods or items; (2) the electronic or digital transmission of any covered goods, items or related goods or items; (3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any foreign national; or (4) actual use or application of covered technology on behalf of or for the benefit of a foreign entity or person anywhere. The term “export” can mean not only technology leaving the shores of the United States (including transfer to a U.S. citizen abroad whether or not it is
pursuant to a research agreement with the U.S. government), but also transmitting the technology to an individual other than a U.S. citizen or permanent resident within the United States (a “deemed export”). Even a discussion with a foreign researcher or student in a campus laboratory is considered a “deemed export.” Export controls preclude the participation of all foreign nationals in research that involves covered technology without first obtaining a license from the appropriate government agency.

e. Export Administration Regulations (EAR): Laws (15 C.F.R. parts 730 – 799) relating to the control of certain exports, re-exports, and activities that are administered by the Commerce Department. [http://www.bis.doc.gov/policiesandregulations/ear/index.htm](http://www.bis.doc.gov/policiesandregulations/ear/index.htm)

   The EAR contains some blanket restrictions, but also contains a detailed list of “dual use” items (i.e., materials and technology that have both military uses and significant civilian uses). Nonexclusive examples are composite materials, pathogens, and accelerometers. This is known as the Commerce Control List (CCL). [http://betawww.bis.doc.gov/index.php/regulations/commerce-control-list-ccl](http://betawww.bis.doc.gov/index.php/regulations/commerce-control-list-ccl)

f. Export Controls: U.S. federal government laws and regulations that require federal agency approval before the export of controlled items, commodities, technology, software or information to restricted foreign countries, persons and entities (including universities). Export controls establish legal prohibitions against exporting certain materials, software or technology without a license.

g. Foreign National: Any person who is not a U.S. citizen or permanent resident of the U.S., or who has not been granted asylum.

h. Fundamental Research: Basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons. The complete definition and discussion of fundamental research, including University based research is found at 15 C.F.R. § 734.8. University research is considered to be fundamental to the extent that researchers do not accept restrictions on the publication of scientific and technical information resulting from the research. Temporary delays in publication for the protection of sponsor proprietary information do not remove research from the fundamental domain. However, if that sponsor’s proprietary information is subject to the export controls, then that information remains subject in the conduct of the research.

i. Technology Control Plan (TCP): A formal, written plan, approved by the University Research Compliance Coordinator and the Vice President for Research. Legal review will be provided by University Counsel, SDBOR General Counsel, or their designee, describing what measures will be taken to secure export controlled equipment, data, or technology from access by unlicensed Foreign Nationals. The TCP will include:
   i. An affirmation of compliance with export control regulations;
   ii. identification of the applicable export controls and items or technologies subject to the controls;
iii. a description of the security measures that will be implemented to control the item/technology including as appropriate:
   1. Laboratory compartmentalization
   2. Time blocking
   3. Marking
   4. Locked storage
   5. Electronic security
   6. Confidential communications;

iv. identification and nationality of each individual who will have access to the controlled item or technology;

v. personnel screening measures for granting access to the controlled item/technology;

vi. appropriate security measures for disposal of the item/technology when use is complete.

3. Policy

   a. It is University policy that no University employee, including members of the faculty, or student may engage in any activity, or commit the University to engage in any activity that is prohibited by export control regulations, or requires a license or other agency approval under these regulations, until such license or approval has been obtained.

   b. Employees and students who participate in projects that involve export controls must acquire a level of understanding of the requirements appropriate for their role through education, information, and support resources.

   c. Departments and employees who work with employees, visiting faculty, scholars, or students from foreign countries and foreign boycotted countries are required to be aware of the export control regulations that relate to those countries and related compliance requirements. Individuals may not share, not even in informal social interaction, export controlled information or items with foreign nationals without prior export control review and approval of the Research Compliance Officer, and if appropriate, the Vice President for Research, University Counsel, SDBOR General Counsel, or their designees, and any other protocols required at law or herein, in accordance with this policy and its procedures.

   d. Employees who engage in International Travel within the scope of employment are responsible for understanding export laws and regulations and how they apply to their respective situations, including the impact on any students, employees, collaborators, consultants, or other personnel who they ask to accompany them or attend on their behalf. If any controlled information, technology, software, or equipment will be transferred to a foreign party overseas, a license may be required prior to the transfer unless a valid licensing exception or exclusion applies. Individuals must seek export control review from the Research Compliance Officer prior to travel that has such impacts.

   e. To implement this policy, University individuals who are involved in activities subject to export controls, are required to engage the export control review assistance of the Research Compliance Coordinator and, as appropriate, the University Counsel, SDBOR General Counsel, or their designee, to determine the applicability of export control regulations, the exemptions thereto, and compliance requirements.
f. Violations of export control laws discovered at the University should be reported to the Research Compliance Officer or to the University Counsel or as appropriate the SDBOR General Counsel.

g. Training and resources related to export controls will be coordinated by the Research Compliance Office.

4. Procedures
   a. The University must comply with all applicable U.S. government export regulations. When activities, including but not limited to contracts, research projects, hire or visit of foreign national, foreign travel, or other proposed activity involves export controls or sharing of export controlled information, the employees, including Principal Investigators, as part of the initial planning for the activities, and before any commitments, however tentative, have been made, will disclose necessary information to the Research Compliance Officer for review.

   b. The information will be reviewed by the Research Compliance Officer, and if needed, the University Counsel or SDBOR General Counsel, or their designee, prior to disclosure of any export controlled information to a foreign national. Awareness of restrictions will not result in immediate disapproval, and the Research Compliance Coordinator will work with the Principal Investigator or other applicable individuals and the sponsoring entity to determine as soon as possible the nature and impact of such restrictions.

   c. In instances where it is anticipated that a foreign national may be hired and immigration petitions supported for the purposes of employment, an export control review will be performed by the Research Compliance Officer in consultation with the direct supervisor and an export control determination will be provided to SDBOR Shared Immigration Services. There may be instances where the SDBOR and University would be required to obtain a license before allowing the individual to work with export controlled items or when the SDBOR and University is unable to support an immigration petition based on this determination.

   d. The Research Compliance Officer will perform and initial review of the requested proposal, award, or change in scope of an existing project or activity.

   e. When export controlled equipment, data, or technology is identified for a project or activity, the Research Compliance Officer will work with the PI or individual to develop and implement a TCP to appropriately secure the equipment, data, or technology from access by unlicensed non-U.S. persons. Before any individual may have access to export controlled items or technology, he or she must be informed of the conditions of the TCP and agree to comply with the security measures outlined in the TCP.

   f. If a Department of State or Department of Commerce license is required in support of export controlled international University activities, a request will need to be approved in the following order the Research Compliance Officer, the Vice President for Research, the University President, and the SDBOR or their designees, upon the advice and support of University Counsel and SDBOR General Counsel respectively. Activities that require a license will not occur without appropriate license.
g. The University will maintain export-related records based on individual controlled items or activities. Unless otherwise provided for or instructed by the University Counsel or SDBOR General Counsel, all records shall be maintained consistent with the SDBOR record retention policy, as modified by federal law.

h. In order to maintain the University’s export compliance program and to ensure consistent adherence to U.S. export laws, the Research Compliance Officer may conduct internal reviews of TCPs and export records. The purpose of the reviews is: (i) to identify possible violations; and (ii) to identify deficiencies in training, procedures, etc. that can be rectified.

i. If the results of such reviews indicate that an exemption from the export control regulations may not be available, the Research Compliance Coordinator will forward the documentation to the University Counsel, who will then confirm the review of Research Compliance Coordinator and if the research contract or grant contains terms or conditions that affect the University’s exemption from export control regulations, the matter will then be referred to the Vice President for Research.

5. Responsible Administrator

The Vice President for Research or designee is responsible for ad hoc review of this policy and its procedures. The University President is responsible for approval of this policy and its procedures.

SOURCE: Approved by President on 08/30/2013.