

Export Controls Compliance

**Division of Research
The Research Foundation of State University of New York
At Binghamton University**

The purpose of this document is to provide overall guidance on export control regulations and internal procedures. For additional information or assistance please contact Nancy Lewis, Assistant Vice President for Research Compliance by phone at 607-777-3532 or email nlewis@binghamton.edu. You may also contact Lisa Gilroy, Assistant Vice President of Sponsored Programs by phone at 777-6136 or email lgilroy@binghamton.edu

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Binghamton University is committed to compliance with all applicable export control laws and regulations that pertain to the conduct and dissemination of our research and to the export of tangible items such as equipment, components, or materials. While our primary mission is education, research and dissemination of knowledge, the responsibility remains to balance the services of this mission with safeguarding national assets through adherence of the export regulations, rules and laws of our country.

The purpose of this manual is to provide the university community the essential aspects of the laws and regulations concerning exports, confirm our policy for compliance, and explain how the Binghamton University will provide our researchers with the assistance they may need to ensure compliance with these complicated laws.

Export controls cover all fields of science and engineering. In export control regulations, there are several meanings to the term “export” which include the following:

- Actual shipment of any covered goods or items;
- The electronic or digital transmission of any covered goods, items, or related goods or items;
- Any release or disclosure, including verbal disclosures or visual inspections, or any technology, software or technical data to any foreign national; or
- Actual use or application of covered technology on behalf of or for the benefit of any foreign entity or person anywhere.

Export Controls and University Research

U.S. national security and economic interests are heavily dependent on technological innovation and advantage. Many of the nation's leading-edge technologies, including defense related technologies, are being discovered by U.S. and foreign national students and scholars in U.S. university research and university-affiliated laboratories. As the Department of Defense (DoD) invests less and less of its funding on in-house research and development, university based discoveries are becoming increasingly vital to national security and other U.S. interests. U.S. policymakers recognize that foreign students and researchers have made substantial contributions to U.S. research efforts, but the potential transfer of knowledge of controlled defense or dual-use technologies to their home countries could have significant consequences for U.S. national interests. The U.S. export control agencies place the onus on universities to understand and comply with the regulations.

Export controls present unique challenges to universities and colleges because they require balancing concerns about national security and U.S. economic vitality with traditional concepts of unrestricted academic freedom, and publication and dissemination of research findings and results. University researchers and administrators need to be aware that these laws may apply to research, whether sponsored or not. However, it also is important to understand the extent to which the regulations do not affect normal university activities.

Federal Law

The three main Export Control Regulations applicable to the university are the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), and the Office of Foreign Assets Control (OFAC).

However, other federal agencies also regulate the export, re-export or re-transfer of certain items and technologies: the Nuclear Regulatory Commission (nuclear equipment and materials), the Department of Energy (nuclear technology, high-energy lasers, etc.), the Food and Drug Administration (drugs and medical devices) and the Drug Enforcement Agency (drugs and certain chemicals).

Foreign National/Person

The federal definition of a foreign national is a person who is **not**:

- granted permanent U.S. residence, as demonstrated by the issuance of a permanent residence card, i.e., a "Green Card"
- granted U.S. citizenship
- granted status as a "protected person" under 8 U.S.C. 1324b(a)(3), e.g., political refugees, political asylum holders, etc.

This includes all persons in the U.S. as students, business people, scholars, researchers, technical experts, etc.

Note: "Foreign national" is the term used by the Department of Commerce, while "foreign person" is the term used by the Department of State.

I. REGULATIONS

A. International Traffic in Arms Regulations (ITAR)

Under the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130, Department of State Directorate of Defense Trade Controls (DDTC) administers the export and re-export of defense articles, defense services and related technical data from the United States to any foreign destination, or to any foreign person, whether located in the United States or abroad. Section 121.1 of the ITAR contains the United States Munitions List ("USML") and includes the commodities and related technical data and defense services controlled for export purposes. The ITAR controls not only end items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that are incorporated into the end item. Certain non-military items, such as commercial satellites, and certain chemical precursors, toxins, and biological agents, are also controlled.

ITEMS CONTROLLED UNDER THE ITAR

The ITAR uses three different terms to designate export controlled items – defense articles, technical data, and defense services. With rare exceptions, if an item contains any components that are controlled under the ITAR, the entire item is controlled under the ITAR. For example, a commercial radio that would normally not be controlled under the ITAR becomes a controlled defense article if it contains an ITAR-controlled microchip.

1. Defense Article means any item or technical data that is specifically designed, developed, configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the USML. Defense article also includes models, mock-ups, or other items that reveal technical data relating to items designated in the USML.

2. Technical Data means any information for the design, development, assembly, production, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings or assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed. However, technical data does not include general scientific, mathematical, or engineering principles commonly taught in schools, information present in the public domain, general system descriptions, or basic marketing information on function or purpose.

3. Defense Service means providing assistance, including training, to a foreign person in the United States or abroad in the design, manufacture, repair, or operation of a defense article, as well as providing technical data to foreign persons. Defense services also include informal collaboration, conversations, or interchanges concerning technical data.

DEFINITION OF EXPORT UNDER THE ITAR

The ITAR defines the term “export” broadly. The term applies not only to exports of tangible items from the U.S., but also to transfers of intangibles, such as technology or information. The ITAR defines as an “export” the passing of information or technology to foreign nationals even in the United States. Specifically, “export” is defined as:

- (1) Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or
- (2) Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the U.S. Munitions List (USML), whether in the United States or abroad; or
- (3) Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or
- (4) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad; or
- (5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad;
- (6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes (see § 126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.

THE U.S. Munitions List (USML) CATEGORIES

The USML designates particular categories and types of equipment as defense articles and associated technical data and defense services. The USML divides defense items into 21 Categories, listed below.

An electronic version of the USML is available on the Department of State website at: <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>

- | | |
|-----|---|
| I | Firearms, Close Assault Weapons and Combat Shotguns |
| II | Guns and Armament |
| III | Ammunition / Ordnance |
| IV | Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines |
| V | Explosives, Propellants, Incendiary Agents, and their Constituents |
| VI | Vessels of War and Special Naval Equipment |

VII	Tanks and Military Vehicles
VIII	Aircraft and Associated Equipment
IX	Military Training Equipment
X	Protective Personnel Equipment
XI	Military Electronics
XII	Fire Control, Range Finder, Optical and Guidance and Control Equipment
XIII	Auxiliary Military Equipment
XIV	Toxicological Agents and Equipment and Radiological Equipment
XV	Spacecraft Systems and Associated Equipment
XVI	Nuclear Weapons, Design and Testing Related Items
XVII	Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
XVIII	Directed Energy Weapons
XIX	[Reserved]
XX	Submersible Vessels, Oceanographic and Associated Equipment
XXI	Miscellaneous Articles

Things to Remember:

- Articles should first be reviewed for ITAR designations; if the article does not appear on the USML then the article should be reviewed for Export Administration Regulations (EAR) designations.
- If an USML article is incorporated into a larger article, then the larger article becomes controlled under ITAR.
- ITAR is article based: NO article on the USML can be exported without a license or exemption.
- Arms Embargo: NO article on the USML may be exported under a license or license exemption to countries proscribed in 22 CFR § 126.1.
 - Additional restrictions apply to other countries, whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States – as proscribed further in 22 CFR § 126.1 .
- Complete versions of the ITAR and USML are available at:

http://pmdtdc.state.gov/regulations_laws/itar.htm

B. Export Administration Regulations (EAR)

15 CFR Parts 730-774 are promulgated and implemented by the Department of Commerce, Bureau of Industry and Security (BIS), and regulate the export control, the export and re-export of commercial and dual use (commercial and military/security applications) items, including encrypted software, identified on the Commodity Control List (CCL). The Website for Department of Commerce export control guidance is:

<http://www.bis.doc.gov/licensing/exportingbasics.htm>

Export as defined in 15 CFR 734.2

- “Export” means an actual shipment or transmission of items subject to the EAR out of the United States, or release of technology or software subject to the EAR to a foreign national in the United States.
- “Re-export” means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country; or release of technology or software subject to the EAR to a foreign national outside of the United States

- “Deemed Export”: any release of technology or source code subject to the EAR to a foreign national. Such release is deemed to be an export to the home country or countries of the foreign national.
- “Deemed Re-export”: any transfer of a controlled U.S. technology (deemed export) to a third-country national overseas.

*Note: for purposes of the EAR transfer of technology or source code to a foreign national in the United States is the same as a transfer to the foreign national’s home country.

Regulated items are identified on the Commodity Control List (CCL) 15 CFR 774 Supplement 1 in the following ten broad categories:

- 0-Nuclear Materials, Facilities and Equipment and Miscellaneous
- 1-Materials, Chemicals, "Microorganisms," and Toxins
- 2-Materials Processing
- 3-Electronics
- 4-Computers
- 5-Telecommunications and Information Security
- 6-Lasers and Sensors
- 7-Navigation and Avionics
- 8-Marine
- 9-Propulsion Systems, Space Vehicles and Related Equipment

Within each category, items are arranged by group:

- A-Equipment, Assemblies and Components
- B-Test, Inspection and Production Equipment
- C-Materials
- D-Software
- E-Technology

“Export Control Classification Number” (ECCN) is the alpha-numeric designation proscribed to a particular item on the CCL according to category and group.

Things to Remember:

- Items not designated on the USML or the CCL are classified as EAR99.
- The CCL is destination based and export or re-export of both ECCN designated items and EAR99 items are controlled based upon the country of destination.
- Complete versions of the EAR and CCL are available at:
<http://www.bis.doc.gov/policiesandregulations/index.htm>

C. Office of Foreign Assets Control Regulations (OFAC)

31 CFR Parts 500-597 are promulgated and implemented by the US Treasury Department and regulate economic trade with foreign countries. OFAC administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United Statesⁱ.

The Trading with the Enemy Act (TEWA), 50 U.S.C. §§ 1-44, which gives the President the power to restrict and oversee all trade between the United States and its enemies during the time of war; and

International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§ 1701-1706, which allows the President to identify any unusual extraordinary threat that originates outside the United States and to confiscate property and prohibit transactions in response.

Specially Designated Nationals and Blocked Persons List, 15 C.F.R. Part 764, Supplement 3, comprised of individuals and organizations deemed to represent restricted countries or known to be involved in terrorism and narcotics trafficking. At present, OFAC administers seventeen sanctions programs, including Cuba, Syria, Sudan, Iran, and North Korea, and the Specially Designated Nations and Blocked Persons list. Since the list changes it is important to check with the updated Treasury listing at:

<https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>

Things to Remember:

- Sanction programs and the Specially Designated Nations and Blocked Persons list are subject to change and are updated routinely.
- OFAC sanction programs are available at: <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>
- Complete version of OFAC is available at: <https://sanctionssearch.ofac.treas.gov/>

D. Restricted Parties

Restricted party designation is not based upon nationality but instead is based upon previous behavior or action. There are over fifty lists issued by governmental agencies that restrict transactions with specific individuals, groups and entities, which include the following:

Department of Commerce:

- Denied Persons List is a list of individuals and entities that have been denied export privileges. Any dealings with a party on this list would violate the terms of its denial order and is prohibited;
- Entity List is a list of parties whose presence in a transaction can trigger a license requirement under the EAR. The license requirements are in addition to any license requirements imposed on the transaction by other provisions of the EAR;
- "Unverified" List is a list of parties where the Bureau of Industry and Security has been unable to verify the end-user in prior transactions.

Department of State:

- Debarred List is a list of parties who are barred by 22 CFR §127.7 (ITAR) from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by ITAR;
- Nonproliferation Sanctions is a list of parties that have been sanctioned under various statutes.

Office of Foreign Assets Control:

- Specially Designated Nations and Blocked Persons is a list of individuals and organizations deemed to represent restricted countries or known to be involved in terrorism and narcotics trafficking.

Things to Remember:

- Restricted parties are not limited to foreign entities and can include US persons.
- Restricted parties are subject to change and are updated routinely.
- The Research Foundation of SUNY has licensed Visual Compliance software, which allows the various campus offices to screen for this requirement.

E. Anti-Boycott Regulations

Anti-Boycott laws are administered and enforced by the Department of Commerce, Bureau of Industry Security, under the “Restrictive Trade Practices and Boycotts” of the EAR (15 CFR Part 760) and by the Department of Treasury under the “Ribicoff Amendment” to the Tax Reform Act of 1976 adding §999 to the Internal Revenue Code. Anti-Boycott regulations prohibit U.S. businesses from taking actions in support of unsanctioned foreign boycotts, including the Arab League’s boycott of Israel. They also prevent U.S. persons from conducting business under terms that would restrict a person’s ability to do business with other countries under a boycott not recognized by the United States.

F. Penalties/Sanctions

Violations of ITAR:

Criminal sanctions on the entity of up to \$1,000,000 for each violation; individuals may be subject to a fine of up to \$1,000,000 or imprisonment of up to ten years, or both, for each violation. Civil administrative sanctions can reach \$500,000 for each violation.

Violations of the EAR:

Criminal sanctions for willful violations may result in the institution paying a fine of up to \$1,000,000 or five times the value of the exports (whichever is greater) for each violation; and the individual may be fined up to \$250,000 or be imprisoned for up to ten years, or both, for each violation. Civil sanctions include \$12,000 for each violation.

Additionally, for each violation of the EAR, any or all of the following may be imposed:

- The denial of export privileges; and/or
- The exclusion from exporting practice; and/or
- Seizure/Forfeiture of goods.

Violations of OFAC:

- International Emergency Economic Powers Act (IEEPA) Penalties
 - Civil penalty: \$250,000 per violation or twice the transactional value whichever is greater
 - Criminal penalty: \$1,000,000 per violation and up to 20 years incarceration
- Trading with the Enemy Act (TWEA) Penalties (Cuba and North Korea)
 - Civil penalty: \$65,000 per violation
 - Criminal penalty: \$1,000,000 per violation and up to 10 years incarceration

G. Possible Exceptions/Exemptions for University Research

The Fundamental Research Exception (FRE)

The Fundamental Research Exception in both EAR and ITAR pertains to basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the U.S. where

the results will be published and shared broadly in the scientific community (and under the EAR where the resulting information has been or is about to be published). Fundamental research is distinguished from research that results in information restricted for proprietary reasons or national security reasons or pursuant to specific U.S. government access and dissemination controls.

Publicly Available (EAR) or Public Domain (ITAR) Information***

Export controls do not apply to information that is already published and widely available from:

- libraries, book stores or newsstands ;
- trade shows, meetings or seminars that are open to the public;
- published patent information;
- web sites that are accessible to the public;
- courses listed in university catalogs.

The Department of Commerce defines this information as “Publicly Available” in the Export Administration Regulations (EAR), while the Department of State defines this information as “Public Domain” in the International Traffic in Arms Regulations (ITAR).

This exclusion may be void if the university or PI accepts any of the following conditions, regardless of sponsor:

- prepublication reviews, except for limited time reviews for patentability or for comment;
- sponsor approvals or conditions on publication or information;
- foreign national controls or approvals;
- access and dissemination controls on the research;
- National Security Controls.

Educational Information Exclusion (EIE)

The EIE allows teaching commonly taught information at universities to continue.

For the Department of Commerce (EAR), the EIE:

- focuses on venue
- export controls do not apply to educational information conveyed in courses listed in course catalogs and associated teaching laboratories
- does not cover encrypted software
- this exclusion may be void if that same information is transferred to a foreign national outside of class.

For the Department of State (ITAR), the EIE:

- focuses on subject matter
- only covers general science, math and engineering principles commonly taught in universities.

Employment Exclusion

Under ITAR (not EAR), full-time employees have a license exemption. This exemption applies to disclosures in the U.S. by U.S. universities of unclassified technical data to foreign nationals.

However, this exclusion may be void unless these conditions are met:

- the person must be a full-time, regular employee - post-docs, students and visiting researchers usually do not qualify
- the employee must have a permanent U.S. residence during his or her period of employment
- the employee is not a foreign national of an embargoed country
- the university must notify the employee in writing that technical data cannot be transferred or re-exported to other foreign nationals without prior government approval.

NOTE: The fundamental research exception applies only to information not to covered goods or materials that are always subject to export controls when sent out of the country.

H. Record Keeping

The ITAR and EAR require that records be kept reflecting the export and temporary import of defense articles, defense services, dual-use commodities and related technologies. The records that are required to be maintained depend on the activities and how items are controlled for export.

Transactions Subject to Recordkeeping Requirements:

- Exports of controlled commodities, software or technical data from the United States or by a U.S. person;
- Re-export or transshipments of controlled products or technical data originally exported from the United States or by a U.S. person;
- Any other transaction subject to export control, whether the export or re-export actually occurs;
- Exports, where it appears that a person in another foreign country has an interest in the transaction or that the commodity or technical data will be exported, transshipped, or diverted;
- Negotiations in connection with an export.

Records Required to be Kept:

Any paperwork detailing: internal export control assessments, including any documentation regarding the applicability of any licensing exemptions; license determinations; license submissions; and post-license management.

Period of Retention:

- International Traffic in Arms Regulations
Records must be maintained for five (5) years from:
 - The expiration of the license or other approval to which the documentation relates;
 - The date the license or other authorization is exhausted or used completely; or
 - The date the license or other authorization is suspended, revoked, or no longer valid.
- Export Administration Regulations (§762.6)
Records must be retained for five (5) years from the latest of the following times:
 - The date the export from the U.S. occurs;
 - The date of any known re-export, transshipment, or diversion of such item;
 - The date of any termination of the transaction, whether contractual, legal, formally in writing or by any other means; or
 - In the case of records of or pertaining to transactions involving restrictive trade practices or boycotts, the date the regulated person received the boycott-related request.

Accessibility:

Records must be kept in a manner in which facilitates the ability to retrieve the records for any purpose and to review the records during internal or U.S. Government audits.

II. EXPORTS AND UNIVERSITY RESEARCH

A. Deemed Export

“An export of technology or source code (except encryption source code) is ‘deemed’ to take place when it is released to a foreign national within the United States. Technology is ‘released’ for export when it is available to foreign nationals for visual inspection (such as reading technical specifications, plans, blueprints, etc.); when technology is exchanged orally; or when technology is made available by practice or application under the guidance of persons with knowledge of the technology.” See §734.2(b)(2) of EAR.

Note: While ITAR does not incorporate the term “deemed export” the concept is in the definition of an export and pertains to the release of ITAR technical data and defense services.

It is important to determine if there is an export issue with research proposals/projects in which a foreign national will be assisting or in situations where a software license agreement contains language indicating that the software is controlled to certain countries. As with other exports, technology that is publicly available is not subject to the deemed export rule, nor would the rule apply to fundamental research within an appropriate structure where any export controlled information or technology would not be released to foreign nationals on the project.

B. Visitors

Foreign visitors to campus should be screened against the various governmental restricted parties’ lists to ensure compliance with US laws and regulations. The host department for any foreign visitor must report the name and home country of that visitor to the SUNY Human Resources Office one month in advance of their arrival.

C. Foreign Travel

Foreign Travel Approval:

Employees must comply with United States’ laws and regulations as well as SUNY and the Research Foundation for SUNY’s policies when traveling internationally on Research Foundation for SUNY business. Faculty who intend to travel to a country that is on the State Department Travel Advisory list or an OFAC embargoed country must get both SUNY and the Research Foundation of SUNY approval prior to traveling. The SUNY Policy that controls travel to sensitive areas can be found at:

http://www.suny.edu/sunypp/documents.cfm?doc_id=337

It explicitly states that all University personnel must comply with state and federal regulations controlling travel. This includes following federal regulations listed in the following website:

<https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>

Department of State travel advisory list is available at:

<https://travel.state.gov/content/passports/en/alertswarnings.html>

Laptops, PDAs and Cell Phones:

When traveling outside the U.S. with your laptop computer, PDA, cell phone, data storage devices and/or encrypted software you may need an export license to take that equipment.

A laptop is generally an exception to the EAR and ITAR lists of controlled items/equipment. However, this exception is **NOT** automatically allowed:

- a license is required when a laptop with controlled research data or encrypted/proprietary software is hand-carried or shipped abroad to a restricted country and/or to a denied person/entity
- for example: A laptop being hand-carried to any country with research data on a genetically modified organism will currently require a license
- genetically modified organisms are controlled items for chemical, biological and anti-terrorism reasons and there are no applicable license exceptions

When hand-carrying a laptop or other portable equipment outside the U.S:

- you **MUST** retain exclusive control of the equipment at all times
- you **MUST** not let the equipment be used by anyone in the foreign country
- you **MUST** not intend to keep these items in these countries for longer than one year
- you **ARE NOT** traveling to Cuba, Iran, North Korea, Sudan or Syria
- you **MUST** verify that no government licenses are required

D. Presenting at Conferences or Workshops Overseas

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. Faculty presenting at conferences or meetings overseas are responsible for understanding export laws and regulations and how they apply to their respective disciplines. In general, if a conference will be open to anyone and the information to be presented *is* already published (ITAR) or is information that *will be* published (EAR) a license should not be required.

E. Shipping

SUNY or Research Foundation for SUNY equipment, software or technology being shipped off of campus needs to be reviewed by the Division of Research for possible export control issues and for the determination of whether or not an agreement is required.

International Shipping

International shipments may require that an Electronic Export Information (EEI) be filed with the U.S. Census Bureau.

- The EEI must be prepared regardless of value for all shipments requiring an export license.
- Destination statement should appear on any items subject to US control – “These commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to US law is prohibited.”
- The EEI must be prepared for shipments when the shipment through U.S. Postal Service (USPD) is valued over \$500. EEIs are required for shipments not using the USPS when the value of the commodities classified under any single schedule B number is over \$2,500. If no EEI is required the airway bill or other loading document should state “No EEI required - no individual Schedule B number valued over \$2,500.”
- A copy of the EEI documentation should be provided to the Office of Sponsored Programs or Office of Technology Licensing and Industry Relations, as appropriate.

- Intangible exports of technology controlled under Commerce (EAR 99) do not require an EEI. (15 CFR 30.55(o)).

III. INTERNAL EXPORT CONTROL PROCEDURES

A. Commitment to Export Control Compliance

Binghamton University is committed to the highest level of compliance with all applicable export control laws and regulations that pertain to the conduct and dissemination of our research and to the export of tangible items such as equipment, components, or materials

B. The Research Foundation for SUNY Central Office

The Research Foundation of SUNY's Central Office provides export control policy guidance; assists the individual campuses in the completion and submission of Commodity Jurisdiction Requests, License Agreements and Voluntary Disclosures; and ensures OFAC compliance for wire transfer payments to foreign third party vendors.

C. Office of the Vice President for Research (OVPR)

Empowered Official:

The Empowered Official for the Research Foundation for SUNY at Binghamton is the Campus Operations Manager.

According to 22 C.F.R. § 120.25, the Empowered Official is a US person who:

- (1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and
- (2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
- (3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and
- (4) Has the independent authority to:
 - (i) Inquire into any aspect of a proposed export or temporary import by the applicant, and
 - (ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and
 - (iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

Export Controls Administrator

The Associate Vice President for Research is the Export Controls Administrator. The Assistant Vice President for Sponsored Programs is the Alternate to the Export Controls Administrator.

Visual Compliance is an export compliance software program utilized by the Research Foundation of SUNY. Visual Compliance is used to screen for restricted parties, to assist in classification of items and technology on the United States Munitions List and the Commodity Control List and to assist in license determination of export controlled items and technology.

Office of Sponsored Programs (OSP) at the pre-award stage, OSP reviews program announcements (or requests for proposals) and the 4-page form or COEUS export control questions to identify any potential export control issues and/or restricted parties. At the award stage, OSP reviews the award document to ensure that the fundamental research exemption is maintained, that any export control issues are appropriately addressed and that any identified project participants are not on a restricted parties list. Also, when a principal investigators desire to transfer materials on or off campus, OSP negotiates material transfers agreements and reviews the proposed transaction for export control issues and/or restricted parties

Office of Sponsored Funds (SFA) reviews all post award transactions that could have export control implications including travel advances, transmittal of materials out of the control, and the hiring of Research Foundation employees who are foreign nationals.

D. Procurement

Both Offices (SUNY and Research Foundation) are required to be aware of the export control regulations and take actions to identify the purchase and shipping of articles that must comply with export control regulations.

E. Deans and Chairs

- Knowledge of Export Control Regulations: Deans and chairs should be familiar with the information provided in this manual, the information on the Research Division's export control website, the information on the Research Foundation for State University of New York's export control website and the export controls as they relate to the area(s) of research that are under their purview.

F. Principal Investigators

- Knowledge of Export Control Regulations: Principal Investigators should be familiar with the information provided in this manual, the information on the Division of Research's export control website, the information on the Research Foundation for State University of New York's export control website and the export controls as they relate to their area of research.
- Assist in the Assessment of Possible Export Control Issues: Principal Investigators should assist campus offices in assessing the possibility of export control issues by completing the Export Control Questions on the SUSB299 or in COEUS and as applicable the License Assessment Form to the best of their knowledge and seeking assistance from the appropriate campus office when additional information is needed to complete these forms. (See attached Appendix ___)
- Assist in Commodity Jurisdiction Requests, License Requests, and Voluntary Disclosures: Principal Investigators should assist the Division of Research in obtaining all of the required information to facilitate the expedient and accurate completion of Commodity Jurisdiction Requests, License Requests, Voluntary Disclosures and Technology Control Plans.

G. Export Review Process

An effective export control compliance program necessitates participation and coordination of multiple parties in the export review process.

The first step in the export review process is to determine which regulations apply to the situation. Projects involving exports to foreign nationals will be reviewed by the Office of Sponsored Programs. The review process is initiated upon completion of the export control questions in COEUS. The Principal Investigator is in the best position to explain the technology involved in the export review. Proper determination relies on the Principal Investigator's completion of the export control questions in making the determination as to whether the research falls within export controlled areas. Researchers may be held personally liable for violations of the EAR and ITAR and should exercise care in completing the required forms.

Resources for Export Control Review:

Resources for export control review are coordinated by the Export Control Official or Alternate. Faculty and staff who feel they need to address an export control issue should contact these officials as soon as possible to coordinate the appropriate response. Other resources available are:

This guide manual

Websites identified in this guide

Division of Research website:

H. Commodity Jurisdiction Requests

When it is unclear whether an item and/or technology falls under jurisdiction of the US Department of State (ITAR) or the Department of Commerce (EAR), a Commodity Jurisdiction Request can be submitted through the Export Control Official or Alternate to the Office of Defense Trade Controls. (See 22 CFR 120.3 and 120.4).

I. Classification of Items/Technology Requests

When it is unclear what an item/technology's appropriate classification is under the EAR, a Classification Request can be submitted to the Bureau of Industry Standards through the Export Control Official or Alternate. If it is unclear whether or not a license is required for a particular transaction, a request for an advisory opinion can be submitted to the Bureau of Industry Standards.

J. Voluntary Disclosure

If after reviewing the export control information provided in this manual and/or any of the supporting documents and/or websites, it is believed that an export violation may have occurred, please contact the Office of Sponsored Programs. OSP will work in conjunction with the principal investigator to determine if a violation has occurred; and if required will coordinate with the Empowered Official and the Research Foundation of SUNY's Legal Office to file a voluntary disclosure to the appropriate agency.

US Department of State:

The Department of State strongly encourages the disclosure of information to the Office of Defense Trade Controls (ODTC) by persons, firms, or any organization that believes that they may have violated any export

provisions. Voluntary self-disclosure may be considered a mitigating factor in determining the administrative penalties, if any, that can be imposed by the Department of State.

Department of Commerce:

The Department of Commerce encourages the disclosure of any violation of the EAR to the Office of Export Enforcement (OEE). Disclosure to OEE prior to the time that OEE, or any other agency of the US government, has learned the same, or substantially similar information, is considered a mitigating factor in determining what administrative actions, if any, will be sought by the OEE.

K. Technology Control Plans

A Technology Control Plan (TCP) is required for all research work involving an ITAR or EAR export issue or any other restrictions (publication, foreign national restrictions) that remove the work from the Fundamental Research Exemption. The TCP shall include a physical and information security plan, personnel screening procedures and a process for carrying out the research in a controlled environment.

The TCP will document compliance with the contract terms and conditions and contains the following elements:

- OSP project number and title
- PI name and dept/lab
- Research location (lab/bldg)
- Sponsor name & contract number
- Brief statement of need for plan
- Description of plan for protection of technology
- Project Director/Principal Investigator signature
- Empowered Official signature
- INCLUDE TCP TEMPLATE

L. Licenses

License Applications to the US Department of State

Prior to export, defense articles and defense services require an export license, which will be issued by ODTIC. The Office of Sponsored Programs follows this procedure when preparing a license application:

- Review Section 126.1 of ITAR. This is a list of countries for which U.S. policy denies licenses (exports) of defense articles and defense services. No sale or proposal to sell or transfer any defense articles, defense services, or technical data subject to this section should be made without first obtaining approval of ODTIC. Review the name of the proposed recipient/entity to ensure that it does not appear on any of the following lists: statutorily debarred parties listed under DDTC website and DOD excluded parties, BIS denied party lists, and OFAC SDN list. This end-user screening may be done by the Office of Sponsored Programs with Visual Compliance.

- Review the Munitions List at Section 121 of the ITAR to determine if the commodity or service is on the list. The technical point of contact (Principal Investigator) should provide answers to the following questions when a licensing determination is being made:
 - What is the item? Describe its use.
 - Source: Did the university develop the item? Was it developed under a US Government sponsored contract? If so, provide contract identifying information.
 - What capabilities does the item have?
 - What is the end user's intended purpose?
 - Are there other applications in addition to the intended use?
 - Country of ultimate destination?
 - What is the foreign availability for like items?
 - What is the specific purpose for exporting? (If export is in support of a US government program, provide specific program information.
 - Provide name and contact information of U.S. Government contact familiar with item or technology.

- Determine the type license/approval that will be needed for a particular circumstance. Types include:
 - DSP 5 Application for Permanent Export of Unclassified Defense Articles. A DSP 5 is typically used when a defined data package is exported for a specific end use.
 - DSP 73 Application for Temporary Export of Unclassified Defense Articles. Persons intending to temporarily export a defense article must complete the DSP 73 for approval.
 - DSP 61 Application for Temporary Import of Unclassified Defense Articles
 - DSP 85 Classified Defense Articles/Technical Data
 - DSP 119 License Amendments

All requested information must be provided by the Principal Investigator to the Office of Sponsored Programs who will work in conjunction with the Research Foundation of SUNY's Office of General Council to file for the license through the electronic filing process.

Supporting documentation must include letter of explanation, purchase order or letter of intent, the DSP-83 non transfer and use certificate for any item classified as Significant Military Equipment (SME), and the end use and foreign end-user. Documentation of previous licenses to the same entity will be helpful as are product literature (drawings, technical specs, brochures), web links to information explaining the technology or supporting the item. Attachments and supporting technical data or brochures should be submitted in word or PDF. Certification letters from the Empowered Official must be attached. (22 CFR 123.1) [A DSP 83 Non Transfer and Use Certificate is required for the export of significant military equipment and classified articles including technical data. A DSP 83 may also be required for the export of other defense articles or defense services under a Technical Assistance Agreement.]

The date of issue of the Department of State license will appear in the upper right hand corner of the license. The Principal Investigator must ensure that the conditions listed in the approval are adhered to for every transfer/shipment. Licenses are valid for four years from the date issued. Most hardware export licenses must be deposited with Customs prior to the AES filing see 123.22(a)(1). AES filing is required 8 hours prior to exports by truck and 24 hours prior to exports by rail or vessel. Technical data exported electronically must be reported to DDTC prior to export by writing a letter to DDTC. The Research Foundation of SUNY's Office of General Council retains the actual license in this situation. Unused, expired, expended, suspended, or revoked licenses must be returned immediately to OTDC (*Holder must submit*

these to the Office of Sponsored Programs for official handling). Licenses often contain limitations or provisos imposed by OTDC.

Technical Assistance Agreement

A Technical Assistance Agreement (TAA) is required to be submitted and approved by ODTC before defense services or training, including technical data, may be provided to a foreign person either in the U.S. or in a foreign country.

Manufacturing License Agreement

Manufacturing License Agreements (MLA) are similar to TAAs but usually involve the export of technical data, the performance of defense services, and the export of defense articles necessary for the manufacturing or production of an ITAR controlled item.

Office of Defense Trade Controls Review Process

Once OLA submits the License Application or TAA, ODTC will staff out the case to various federal governmental agencies for review (such as DOD – DTSA). Factors to be considered include policies, region, country, technology, level of technology at destination vs. U.S. systems and countermeasures, end-user and end-use history, military operational impact, inter-operability requirements, foreign availability of like systems, and classified data transfers.

ODTC Approvals

Once a TAA is approved by ODTC (which can take an average of 6 months from the date of submittal), exports of technical data in furtherance of the Agreement may be made without additional export licenses so long as the data exported does not exceed the approved scope of the agreement (22 CFR 124.3). The Agreement is not effective until approved by ODTC. If an Agreement is approved, a copy signed by the U.S. and foreign parties must be filed with ODTC not later than 60 days after its effective date. If the Agreement is not implemented by the parties, ODTC must be notified within 60 days of this decision (22 CFR 124.5). ODTC must be informed, in writing, of the impending termination of a TAA not less than 30 days prior to its expiration (22 CFR 124.6). A Technical Assistance Agreement may only be amended with ODTC's approval, unless the amendment only alters the delivery schedule and does not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreement. One copy of all minor amendments must be submitted to ODTC within 30 days after they are concluded (22 CFR 124.1 (d)).

License Applications to the Department of Commerce

To determine licensing requirements:

1. Screen the most recent denied party lists (denied party lists shall include but not be limited to the Commerce Denied Persons' list, entity lists and unverified list, U.S. Treasury Department SDN and Blocked Persons Lists, Department of State's Designated Terrorist organizations and the terrorist exclusion lists) in the EAR to ensure that the individuals or entities to receive the technology or items to be exported are not on any of the lists. This screening may be completed by the Office of Sponsored Programs using Visual Compliance Software. Individuals' names will also be checked against the "List of Specially Designated Nationals" maintained by the Department of the Treasury's Office of Foreign Assets Control.
2. Review the EAR for embargo information or other restrictions to the particular country of destination.

3. Determine whether the commodity or activity is subject to the EAR, Part 734. If not subject to the EAR the commodity will be classified as EAR 99 and it may be exported “NLR” – no license required (unless embargoes apply to the destination or entity).

If the commodity is subject to the EAR, review the Commerce Control List contained in the EAR. All commodities, technology or software subject to the licensing authority of BIS are included in the Commerce Control List (CCL) which is found in Supplement 1 to Part 774 of the Export Administration Regulations. On the CCL, individual items are identified by an Export Control Classification Number (ECCN). To classify the technology or item, begin with a review of the general characteristics of the item/technology. This will usually guide you to the appropriate category on the CCL. Once the appropriate category is identified, match the particular characteristics and functions of the subject item/technology to a specific ECCN. The ECCN will state the specific countries that require a license by cross checking the Country Chart in Part 738 of the EAR. Parts 748 and 750 of the EAR provide information on license submissions and processing. If the commodity falls under U.S. Department of Commerce jurisdiction and is not listed on the CCL, it is designated as EAR 99 and may be sent “NLR” -- no license required (unless embargoes apply to the destination or entity).

Note: In order to determine the most appropriate description of the commodity or technology, assistance from the Principal Investigator is essential.

M. Internal Assessments

Internal assessments will be undertaken by the Export Control Official, Alternate or other offices to ensure that Binghamton University is compliant with the requirements for export control

N. Training

Broad training will be conducted to make sure a large audience is aware of export control regulations and more in-depth training will be provided to individuals and units that have greater exposure. Researchers who may be at greater risk will be identified in the Sponsored Programs Office by the types of research undertaken and special purpose training will be provided to them.

ⁱ Office of Foreign Asset Controls, <http://www.treas.gov/offices/enforcement/ofac/> (2/16/10)