



# Idaho State University

## POLICIES AND PROCEDURES

### ISU Export Controls

#### ISUPP 7040

#### *POLICY INFORMATION*

**Policy Section:** *Research*

**Policy Title:** *Export Controls*

**Responsible Executive (RE):** *Vice President for Research*

**Sponsoring Organization (SO):** *Office for Research*

**Dates: Effective Date:** *January 28, 2013*

**Revised:** *10-20-20, 9-10-18, 7-21-14*

**Review Date:** **TBD**

## I. INTRODUCTION

Export Controls are federal laws and regulations that govern the transfer or disclosure, by whatever means, of controlled items, software, technology, services or funds originating in the United States to persons or entities in foreign countries or to non-U.S. persons, even if located in the United States. In practice, the impact of Export Controls is limited to a narrow set of issues and individuals. Despite the narrow scope, it is extremely important for the University to comply with these laws to avoid significant penalties, including fines and criminal liability. Federal penalties for non-compliance with Export Controls laws are severe and may impact both the institution and the employee. This policy describes the laws and University procedures that apply to these activities and interactions.

## II. DEFINITIONS

- A. **Deemed Export:** Transmission or release of any technology, know how, defense article, defense technology, or non-encryption source code to anyone who is not a United States citizen or permanent resident is “deemed” to be an export to that person’s country of citizenship. A Deemed Export can occur anywhere in the world, including inside the United

States, and can occur in any format. Export Controlled technology is “deemed” an export when: it is made available to Foreign Persons for visual inspection (such as reading technical specifications, plans, blueprints, etc.); technology is exchanged orally (such as demonstrations, meetings, and/or trainings); and/or technology is made available by practice or application under the guidance of persons with knowledge of the technology.

- B. **Defense Article:** 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 United States Munitions List (USML). Defense articles also include things such as models, mock-ups, or other items, i.e. technical data related to items.
- C. **Export Controls:** Federal laws and regulations that govern the transfer or disclosure, by whatever means, of controlled items, software, technology, services, or funds originating in the United States to persons or entities in foreign countries or to non-U.S. persons, even if located in the United States. Export Controls laws govern activities, including:
  - 1. Sending, taking, or shipping an item or Defense Article outside the U.S.;
  - 2. Furnishing any technical data to Foreign Persons or performing a defense service on behalf of or for the benefit of a person, whether this happens in the U.S. or abroad;
  - 3. Releasing to a Foreign Person, within the U.S. or abroad, technology or software by visual inspection of U.S.-origin equipment/facilities and/or oral exchanges of information; and/or,
  - 4. Releasing of technical data or software controlled by Export regulations, by means including demonstrations, meetings, and/or training of a Foreign Person.
- D. **Export Control Officer (ECO):** A U.S. person, appointed by the Vice President for Research, who is legally empowered to submit documentation on behalf of ISU to U.S. Governing Bodies, including license applications. The ECO is the ISU official who makes determinations related to Export Controls, including but not limited to application for license exclusions, exceptions, and exemptions, or to designate such determinations to other qualified individuals.
- E. **Foreign Person:** A person who is not a U.S. citizen, is not lawfully admitted for permanent residence in the U.S., or is not a protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)).

### III. POLICY STATEMENT

It is the policy of Idaho State University to comply with all United States Export Control laws and regulations including but not limited to those implemented by the Department of Commerce through its Export Administration Regulations (EAR) and the Department of State through its International Traffic in Arms Regulations (ITAR) as well as trade controls imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC)..

This policy applies to all University personnel including faculty, staff, postdoctoral fellows, students, and all other persons studying or working at the University (including visiting scholars and scientists) or persons with whom the University has contracted to teach, conduct research, or provide or receive service activities at, for or on behalf of the University.

Certain University activities may meet criteria involving Export Controls laws and regulations. These criteria require close review prior to commencement of the activities to ensure they are exempt or do not need specific handling. Examples of activities that must be reviewed and approved by the Export Control Officer (ECO) include, but are not limited to, any of the following:

- A. Engaging in research sponsored by any entity that restricts either publication of results or participation by Foreign Persons;
- B. Shipment or transfer of Export Controlled information, technology, technical data or items outside of the United States, whether temporarily or permanently;
- C. Transfer of Export Controlled information, technology, or technical data to a Foreign Person located within the United States when such transfer would constitute a Deemed Export requiring approval pursuant to Export Controls laws, regulations, or policies;
- D. International Travel;
- E. Taking to another country any electronic device that can store or communicate data;
- F. Interaction with a citizen of or an entity located in a comprehensively sanctioned country, as defined by the U.S. Office of Foreign Assets Control (OFAC), The Export Administration Regulations (EAR), and/or the U.S. Department of State, including travel to, importing or exporting to or from, signing agreements, building partnerships, and engaging in online education with an individual located in a sanctioned country;
- G. Research involving Export Controlled information, technology, technical data or items which are enumerated on either the United States Munitions List or Commerce Control List;
- H. Hosting visiting scholars from a restricted foreign university or country;
- I. International Material Transfer Agreements (MTAs); and
- J. Non-Disclosure Agreements indicating the exchange of Export Controlled information.

#### **IV. AUTHORITY AND RESPONSIBILITIES**

- A. The Vice President for Research has ultimate authority for the implementation of this policy and will designate an ECO.
- B. The ECO is the primary point of contact for the state and federal agencies that monitor compliance with Export Controls laws.
- C. Faculty, staff, and students are responsible for being familiar with this policy , for complying with any Export Controls requirements related to their work and travel, and for ensuring no exports or Deemed Exports are made contrary to any Export Controls regulations. Primary responsibility for compliance with Export Controls laws, regulations, sponsored research agreements, and this policy rests with the PI overseeing the relevant project.
- D. All members of the University community must immediately report any suspected violation of Export Controls laws, regulations, or this policy to the ECO. Additionally, failure to comply with Export Controls laws, regulations, or this policy may result in University disciplinary action, up to and including termination.

#### **V. PROCEDURES**

Any faculty, staff, or student engaging in any activities listed in this policy must contact the ECO for guidance specific to their plans. This includes plans to establish agreements and collaborations, exchanges of personnel, equipment, and data, and any purchases involving international sources or contracts.

The ECO provides support and information to help faculty, staff, and students successfully navigate federal requirements and avoid significant penalties, including fines and criminal liability for both the institution and the individual. Additional training/consultation is available for individuals who regularly collaborate internationally and/or whose research regularly intersects with Export Controls laws. The ECO and the individual may create a personalized plan to facilitate efficient pursuit of research activities while remaining compliant with federal law.

Additional information and procedures related to such arrangements can be found in the ISU Export Control Manual located at the Office for Research website at [isu.edu/research/research-integrity-and-compliance/export-controls/](http://isu.edu/research/research-integrity-and-compliance/export-controls/).



# Idaho State University

## POLICIES AND PROCEDURES

### ISU Export Controls ~~and Working with Foreign Nationals Policy~~

ISUPP 7040

#### POLICY INFORMATION

**Policy Section:** *Research*

**Policy Title:** ~~ISU Export Controls and Working with Foreign Nationals Policy~~

**Responsible Executive (RE):** *Vice President for Research*

**Sponsoring Organization (SO):** *Office ~~of~~ Research*

**Dates: Effective Date:** *January 28, 2013 ~~(7-21-14)~~*

**Revised:** ~~September 10, 2018-20-20, 9-10-18, 7-21-14~~

**Review Date:** ~~September 2023~~ **TBD**

## I. INTRODUCTION

~~“Export Controls are federal laws and regulations that govern the transfer or disclosure, by whatever means, of controlled items, software, technology, services or funds originating in the United States to persons or entities in foreign countries or to non-U.S. persons, even if located in the United States. In practice, the impact of Export Controls is limited to a narrow set of issues and individuals. Despite the narrow scope, it is extremely important for the University to comply with these laws to avoid significant penalties, including fines and criminal liability. Federal penalties for non-compliance with Export Controls laws are severe and may impact both the institution and the employee. This policy describes the laws and University procedures that apply to these activities and interactions.~~

~~Export Control” is a term associated with a wide range of regulations and guidance concerning interactions with foreign persons or entities:~~

- ~~• The transfer, or “Export” of specified items or information to people or entities outside the United States;~~
- ~~• The disclosure of certain information to certain Foreign Nationals inside the United States (often called a “Deemed Export”);~~

- ~~The training or offering of services involving controlled equipment or information to Foreign Nationals; and~~
- ~~Transactions with, or providing services to, certain foreign countries or individuals who are on the denied entities/persons lists.~~

## II. DEFINITIONS

~~A. **Controlled Technology:** Information, technical data, or source code that is necessary to make, use, or develop an item on the CCL or U.S. Munitions List. Controlled Technology and Software is “released” for Export through visual inspection by Foreign Nationals, by oral exchanges of information in the U.S. or abroad, or by applying personal knowledge or technical expertise to situations abroad.~~

~~B. **Deemed Export:** The release of any Controlled Technology or Software to a Foreign National. Thus, Controlled Technology or Software may be deemed to be Exported even if it never physically leaves the U.S.A.~~

~~C. **Export:**~~

~~A. **Deemed Export:** Transmission or release of any technology, know how, defense article, defense technology, or non-encryption source code to anyone who is not a United States citizen or permanent resident is “deemed” to be an export to that person’s country of citizenship. A Deemed Export can occur anywhere in the world, including inside the United States, and can occur in any format. Export Controlled technology is “deemed” an export when: it is made available to Foreign Persons for visual inspection (such as reading technical specifications, plans, blueprints, etc.); technology is exchanged orally (such as demonstrations, meetings, and/or trainings); and/or technology is made available by practice or application under the guidance of persons with knowledge of the technology.~~

~~B. **Defense Article:** 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 United States Munitions List (USML). Defense articles also include things such as models, mock-ups, or other items, i.e. technical data related to items.~~

~~C. **Export Controls:** Federal laws and regulations that govern the transfer or disclosure, by whatever means, of controlled items, software, technology, services, or funds originating in the United States to persons or entities in foreign countries or to non-U.S. persons, even if located in the United States. Export Controls laws govern activities, including:~~

1. ~~Sending~~, taking, or shipping an item or Defense Article outside the U.S.;

2. ~~furnishing~~**Furnishing** any technical data to ~~foreign persons~~**Foreign Persons** or performing a defense service on behalf of or for the benefit of a person, whether this happens in the U.S. or abroad;
3. ~~release~~**Releasing** to a Foreign ~~National~~**Person**, within the U.S. or abroad, ~~of~~ technology or software by visual inspection of U.S.-origin equipment/facilities and/or oral exchanges of information; and/or,
4. ~~the release~~**Releasing** of technical data or software controlled by Export regulations, by means including demonstrations, meetings, and/or training of ~~a~~**Foreign Nationals****Person**.

~~For the purposes of this Policy, Export also includes the "re-Export" of the above, i.e., shipment or transmission of items 1-4 above from one foreign country to another.~~

~~See also Deemed Export~~

**D. Export Control Officer (ECO):** A U.S. person, appointed by the Vice President for Research, who is legally empowered to submit documentation on behalf of ISU to U.S. Governing Bodies, including license applications. The ECO is the ISU official who makes determinations related to Export Controls, including but not limited to application for license exclusions, exceptions, and exemptions, or to designate such determinations to other qualified individuals.

**B.E. Foreign National Person:** A person who is not a U.S. citizen, is not lawfully admitted for permanent residence in the U.S., or is not a protected individual under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). ~~The term includes individuals with study and work visas.~~

~~**Fundamental Research:** In the context of U.S. Export regulations, Fundamental Research refers only to research where the resulting information has no publishing restrictions or restrictions on the nationality of persons who may work on the research.~~

### III. POLICY STATEMENT

~~It is the policy of Idaho State University to comply with Aall United States ISU faculty and staff involved with foreign persons or entities in any capacity must follow Export Control laws and regulations including but not limited to those implemented by. The primary laws and regulations with which this policy is concerned are the EAR regulations (dual-use items) administered through~~

~~the Department of Commerce through its Export Administration Regulations (EAR), and the Department of State through its International Traffic in Arms Regulations (ITAR) as well as trade controls imposed by the -administered by the U.S. Department of State, and Treasury Department through its the Office of Foreign Assets Control (OFAC)., a part of the U.S. Department of Treasury. There are additional regulations originating in other agencies, which potentially may apply, including, U.S. Department of Agriculture, U.S. Department of Energy and the Nuclear Regulatory Commission. All ISU Export control procedures can be found at the Office for Research Outreach and Compliance (ROC) website.~~

~~This policy applies to all University personnel including faculty, staff, postdoctoral fellows, students, and all other persons studying or working at the University (including visiting scholars and scientists) or persons with whom the University has contracted to teach, conduct research, or provide or receive service activities at, for or on behalf of the University.~~

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~~Faculty, staff and employed students involved in research are responsible to be familiar with this policy and the related material posted on the ROC website.~~

~~Certain University activities may meet criteria involving Export Controls laws and regulations. These criteria require close review prior to commencement of the activities to ensure they are exempt or do not need specific handling. Examples of activities that must be reviewed and approved by the Export Control Officer (ECO) include, but are not limited to, any of the following:~~

- ~~A. Engaging in research sponsored by any entity that restricts either publication of results or participation by Foreign Persons;~~
- ~~B. Shipment or transfer of Export Controlled information, technology, technical data or items outside of the United States, whether temporarily or permanently;~~
- ~~C. Transfer of Export Controlled information, technology, or technical data to a Foreign Person located within the United States when such transfer would constitute a Deemed Export requiring approval pursuant to Export Controls laws, regulations, or policies;~~
- ~~D. International Travel;~~
- ~~E. Taking to another country any electronic device that can store or communicate data;~~
- ~~F. Interaction with a citizen of or an entity located in a comprehensively sanctioned country, as defined by the U.S. Office of Foreign Assets Control (OFAC), The Export Administration Regulations (EAR), and/or the U.S. Department of State, including travel to, importing or~~



exporting to or from, signing agreements, building partnerships, and engaging in online education with an individual located in a sanctioned country;

G. Research involving Export Controlled information, technology, technical data or items which are enumerated on either the United States Munitions List or Commerce Control List;

H. Hosting visiting scholars from a restricted foreign university or country;

I. International Material Transfer Agreements (MTAs); and

J. Non-Disclosure Agreements indicating the exchange of Export Controlled information.

#### **IV. AUTHORITY AND RESPONSIBILITIES**

A. The Vice President for Research (~~VPR~~) has ultimate authority for the implementation of this policy and will designate an ECO.

B. ~~The Assistant Vice President for Research, through Research Outreach and Compliance, has been designated as the responsible office for execution of this policy. The Assistant VPR is designated ISU's Export Control Officer.~~ The ECO is the primary point of contact for the state and federal agencies that monitor compliance with Export Controls laws.

C. ~~Faculty, staff, and employed students involved in research~~ are responsible ~~to be~~ for being familiar with this policy ~~and the related material posted on the ROC website. , for complying with any Export Controls requirements related to their work and travel, and for ensuring no exports or Deemed Exports are made contrary to any Export Controls regulations.~~ Primary responsibility for compliance with Export Controls laws, regulations, sponsored research agreements, and this policy rests with the PI overseeing the relevant project.

D. All members of the University community must immediately report any suspected violation of Export Controls laws, regulations, or this policy to the ECO. Additionally, failure to comply with Export Controls laws, regulations, or this policy may result in University disciplinary action, up to and including termination.

#### **V. PROCEDURES**

Any faculty ~~or~~ staff ~~who are planning to work with foreign entities (universities, businesses, individuals), or student engaging in any capacity~~ activities listed in this policy must contact the ~~Export Control Office.~~ "Planning to work" ECO for guidance specific to their plans. This includes plans to establish agreements and collaborations, exchanges of personnel, equipment, and data, and any purchases involving international sources or contracts.

The ECO provides support and information to help faculty, staff, and students successfully navigate federal requirements and avoid significant penalties, including fines and criminal liability for both the institution and the individual. Additional training/consultation is available for individuals who regularly collaborate internationally and/or whose research regularly intersects with Export Controls laws. The ECO and the individual may create a personalized plan to facilitate efficient pursuit of research activities while remaining compliant with federal law.

Additional information and procedures related to such arrangements can be found in the ISU Export Control Manual located at the ~~website~~Office for Research Outreach and Compliance website at [isu.edu/research/research-integrity-and-compliance/export-controls/](http://isu.edu/research/research-integrity-and-compliance/export-controls/).