

# UNH Export Control and Embargoes Management Systems

Prepared by the Export Controls and Embargoes Working Group

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**Note: This document and the management systems it describes are considered to be a working model that will evolve as the systems are implemented and evaluated.**

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## **I. Statement of Compliance**

This document describes management systems for complying with export control and embargoes laws. At one level, it is written for the UNH community generally to help explain these complex laws and why compliance is necessary. More specifically, it is directed at those administrative functions that will oversee the management systems once they are implemented. Finally, it is intended to help the Export Controls and Embargoes Working Group guide the implementation of the systems.

The University of New Hampshire (UNH) intends to comply fully and completely with all United States (U.S.) export control laws and regulations, including those implemented by the U.S. Department of Commerce (DOC) through its Export Administration Regulations (EAR) and the U.S. Department of State through its International Traffic in Arms Regulations (ITAR) as well as those embargo regulations imposed by the U.S. Treasury Department through its Office of Foreign Assets Control (OFAC).

## **II. Background**

**Introduction:** Federal laws restricting export of certain goods and technologies have been in place since the 1940s. The purpose of these laws is to restrict export of “sensitive” or “controlled” goods, technologies and related technical information that might hurt U.S. interests or contribute to the military capabilities of countries whose policies are in conflict with ours. The laws also cover the sharing of such items or information here on U.S. soil (including our campus) with individuals from certain specifically embargoed countries.

Events surrounding September 11<sup>th</sup>, the 2001 USA Patriot Act, and other recent developments have heightened the Federal government’s interest in the enforcement of export control laws. Stricter enforcement of these very complex laws has been applied to the business community and now is being applied to the broader university community.

Export control laws have significant implications for scholarly activities – implications that are not always recognized or understood by a university community whose culture purposefully promotes the dissemination of knowledge. Consequently, many universities are just now developing export control management plans so as to maintain an open and vigorous teaching and research environment while remaining in compliance. As one might imagine, complying--- while respecting our traditions of academic freedom and openness in research and scholarship--- is a challenge.

Much of the impact to universities such as ours falls under the research administration umbrella, but export control laws also affect how we manage intellectual property, process visas, hire foreign nationals, purchase and use scientific equipment, conduct work and collaborate with colleagues here in and outside the U.S., and travel outside the U.S. for scientific and educational purposes.

Unfortunately, civil and criminal sanctions, including fines and/or prison sentences for individuals violating export control and embargo laws, are substantial, and apply to individual UNH community members as well as to UNH as an institution. It is important that faculty, staff, students and administrators understand their obligations under these laws.

**Overview:** Research, innovation, and development of critical technologies are central to the U.S. technological advancement and to the protection of significant economic interests of this country. Although academic research normally is conducted openly and most research activities are not subject to export control laws, there are certain conditions under which the export of technology, which includes certain technical and scientific data, either is prohibited or requires a license. Certain technologies (called "covered" technologies) require an export license unless they meet the test that the research results will be placed in the public domain. Perhaps the most significant demonstration of that test is that, according to National Security Decision Directive 189, fundamental research results are freely publishable and there is no restriction on access and dissemination of the research results. Either publication restrictions (other than a limited review for patent protection or for the removal of a sponsor's inadvertently included proprietary information) or limitations on access or dissemination of research results (such as to foreign nationals who are not permanent U.S. residents ) removes the information from the public domain and, for covered technologies, generally requires application for and receipt of a license from either the U.S. Department of Commerce or State before the research activity may begin.

**Definitions:** The following are used here:

- **Export:** Any oral, written, electronic or visual disclosure, shipment, transfer or transmission outside the U.S. to anyone, including a U.S. citizen, of any commodity, technology (information, technical data, or assistance) or software/codes.
- **Deemed Export:** An export (as defined above) but to a foreign national (other than a U.S. citizen or permanent resident) inside the U.S.; either on or off the UNH campus.
- **Fundamental Research:** Basic or applied research where resulting data, technology, or other information is made available publicly with minimal or no access costs (e.g. essentially free information).
- **Classified Research:** Any information or material that has been determined by the U.S. Government to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph r or section 11 of the Atomic Energy Act of 1954.

**Fundamental Research:** Fundamental research, as used in U.S. export control laws, includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the U.S. where the resulting information, in some cases, is ordinarily published and shared broadly in the scientific community and, in other cases, where the resulting information has been or is about to be published. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or pursuant to specific U.S. Government access and dissemination controls. University research will not be deemed to qualify as fundamental research if the university or research institution accepts any restrictions on the publication of the information resulting from the research, other than limited pre-publication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsors or to insure that publication will not compromise patent rights of the sponsor. More specifically, if the research is federally funded and specific access or dissemination controls regarding the resulting information have been

accepted by the university or the researcher, the research will not qualify as fundamental research.

The UNH Office of Sponsored Research (OSR) personnel are trained to determine if a sponsored program/joint venture meets the definition of fundamental research. Where contract terms and conditions are presented to UNH for a sponsored program or joint ventures that do not fall under the fundamental research umbrella, those terms and conditions are negotiated with the non-UNH entity. The negotiations may involve OSR's export control administrator, the researchers, and, if necessary, the Vice President for Research and Public Service. In particular, international collaborations are reviewed carefully for any possibility of an exchange of technology or information between collaborating institutions or entities that would be subject to export control laws. No UNH department, laboratory, or center personnel or individual researcher has the legal authority to sign any legal document (e.g., contract, technical assistance agreement, materials transfer agreement, non-disclosure agreement) containing a provision that would preempt the fundamental research exception for any project.

UNH researchers are encouraged to contact OSR's export control administrator for assistance prior to developing their research projects so that the projects and/or intended travel outside the U.S or interactions with foreign researchers may be evaluated for export control considerations.

**Export Control Laws (EAR and ITAR):** Federal export control of "sensitive" or "controlled" technologies is regulated by the U.S. DOC's Export Administration Regulations (EAR) promoting trade protection and the U.S. Department of State's International Traffic in Arms Regulations (ITAR) protecting national security. EAR pertains to "dual use" technologies (commercial in nature with possible military application), whereas ITAR pertains to technologies more closely related to military applications.

Typically, EAR and ITAR apply to:

- Physical transfer of sensitive or controlled technologies and related technical information, including software, to persons and entities outside the U.S.
- Disclosure of technical data or information on sensitive or controlled technologies to foreign persons while in the U.S. These so-called "deemed exports" may include formal presentations, informal conversations, or even observations during site tours.
- Training and offering services involving sensitive or controlled technologies to foreign persons.

**Embargoed Countries Law (OFAC):** The U.S. Treasury Department's Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions against foreign countries, individuals, and organizations identified as being terrorists, international narcotics traffickers, or those supporting proliferation of weapons of mass destruction. Individuals may not provide technologies or services to embargoed entities or sanctioned organizations and individuals without first requesting and obtaining licenses from OFAC and the U.S. Department of Commerce or State. This licensing process is extremely rigorous and restrictive.

**Types of Potentially Export-Controllable Technologies:** For EAR, (note those in *bold italics* are areas where UNH scholarship is likely to take place), general categories include: nuclear

materials, facilities & equipment (and miscellaneous items); *materials, chemicals, microorganisms, and toxins; materials processing; electronics design, development and production; computers; telecommunications and information security; sensors and lasers; navigation and avionics; marine; and rocket propulsion systems, space vehicles and related equipment.*

For ITAR (note those in *bold italics* are areas where UNH scholarship is likely to take place), general categories include: *firearms*, close assault weapons and combat shotguns; guns and armament; ammunition/ordnance; launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs and mines; explosives and energetic materials, propellants, incendiary agents and their constituents; vessels of war and *special naval equipment*; tanks and military vehicles; *aircraft and associated equipment*; military training equipment; protective personnel equipment; military electronics; fire control, range finder, *optical and guidance and control equipment*; auxiliary military equipment; *toxicological agents, including chemical agents, biological agents, and associated equipment; spacecraft systems and associated equipment*; nuclear weapons, design and testing related items; classified articles, technical data and defense services not otherwise enumerated; *directed energy weapons (lasers)*; and *submersible vessels, oceanographic and associated equipment.*

An export license is required when exporting technologies regulated by the EAR, ITAR or when engaged in activities regulated by OFAC. The following examples deserve special attention:

- EAR and ITAR export licenses are not required when there are no publication, foreign national, or access and dissemination restrictions.
- Shipment of covered hardware and software outside the U.S. requires a license (EAR, ITAR, and OFAC). UNH will apply for such licenses; appropriate time must be allowed to obtain license prior to shipment. (See section III, Licensing Process.)
- Technical assistance agreements (TAAs) where U.S. citizens or permanent residents are providing training of foreign nationals where a covered technology is involved requires a license and UNH will apply for such licenses.
- Acceptance of export controlled data for use by foreign national researchers in a UNH laboratory requires a license and UNH will apply for such licenses.
- When a research agreement would carry restrictions on publications/foreign nationals, a license is required. Typically, UNH would not accept such an agreement unless an exception is made by the UNH Vice President for Research & Public Service because it is clear and demonstrable that UNH's instructional, scholarship, and research objectives would be served under UNH's Academic Plan or, where applicable, a UNH unit's academic or strategic plans.

### **Issues for UNH Researchers Conducting Research in Engineering and Sciences Fields:**

There are significant issues faced by faculty and other researchers with respect to compliance with export control laws. The most significant is involvement of foreign national students and collaborators and restrictions that may inadvertently be placed on them as a result of working on export-controlled technologies. Normal interaction with other students, departmental seminars,

theses, etc. may be affected such that the student may be unable to realize the full value of the educational experience.

Non-compliance with the export control laws or a researcher's agreeing to terms and conditions not in an official award document ("side deals") may subject the individual to large and serious penalties (both civil and criminal), and subject UNH to large fines and the possibility of suspension of certain research programs.

Finally, although the UNH faculty, staff member, student, or visitor may be free to work on an export-controlled technology under available exclusions (i.e., fundamental research, publicly available), the shipping of a technology outside the U.S. may require an export license. (See section III on the export licensing process.)

**General Issues for Faculty and Staff Researchers:** Under export control laws, faculty and staff conducting research and scholarship outside the science and engineering disciplines generally do not have to concern themselves with export control. However, they do need to be aware of matters pertaining to embargoed countries (as described below in the section IV).

**Issues for Students:** Under export control laws, students involved in fundamental or open and publicly available research are free to be exposed to export-controlled technologies in the laboratory, regardless if they are U.S. citizens or foreign nationals covered by some type of U.S. visa. However, in those rare cases where research on export-controlled technologies is occurring under restrictions, access to some information or technology use may be limited for foreign nationals.

All students need to be aware of matters pertaining to embargoed countries (as described below in section IV).

**Administrative Responsibility:** The following have primary administrative responsibility:

- Export Controls: UNH OSR Export Controls Administrator (presently Victor Sosa).
- Embargoes: Director of the UNH Center for International Education (presently Dr. Ted Howard).

**Prospective Policies on Classified Research, Openness in Research, and Access to and Participation in Research:** Three formative institutional policies (classified research, openness in research, access to and participation in research) have been developed for possible adoption after comment from the UNH community. (See recommended guidelines for developing UNH policies at <http://usnholpm.unh.edu/UNH/III.Admin/E.Guidelines.htm>). The draft policies are put forth as a means to further frame UNH's fundamental role in inquiry and outreach scholarship.

**Why should UNH adopt such policies?**

- UNH interests and purposes are well served by the conduct of extramurally sponsored activities consistent with UNH's instructional, scholarship, and research objectives as a nonprofit, tax-exempt, educational institution of higher learning.

- As the federally-funded research landscape becomes more complex and as Federal laws (e.g., Export Control Laws, the 2001 USA Patriot Act) become more strictly enforced for basic and applied research conduct and dissemination, the ability of a university to stand by its principle of academic freedom is buttressed when policies are in place that forthrightly announce the institution's commitment to its core values.
- UNH can use the presence and enforcement of such policies when negotiating with Federal and private sector sponsors over terms and conditions in sponsored programs and other legal agreements that attempt to restrict dissemination of certain types of knowledge or limit participation of foreign nationals in the research.
- Most Carnegie-classified Doctoral/Research Extensive universities have these types of policies. Adoption of the policies is in keeping with the maturation of the UNH scholarship mission.

The three working draft policies are briefly described are:

**Classified Research:** This draft policy would basically provides foundation to espouse the principle that instruction, research, and services will be accomplished openly and without prohibitions on the publication and dissemination of the results of academic and research activities. The policy contains five rather specific declarations, summarized briefly here. (i) UNH does not conduct classified research. (ii) UNH will not enter into any sponsored agreement (either grant or contract) that would restrict disclosure of such an agreement. (iii) UNH project directors and other researchers and principal investigators may receive classified information to assist in the development of unrestricted, fundamental research projects. (iv) Faculty consulting or other non-UNH activities are not covered by this policy. (v) The policy does not require disclosure of the identity of human research subjects or confidential student, patient or employee information.

**Openness in Research:** This policy would reinforce that instruction, research, and service will be accomplished openly for the free exchange of ideas among faculty and students and without prohibitions on the publication and dissemination of the results of academic and research activities in any forum -- classroom, laboratory, seminar, meeting, and elsewhere. The policy contains four declarations. (i) UNH will not accept proprietary data for UNH research projects if the full dissemination of scholarly findings is restricted. (ii) UNH will not enter into any agreements that would bar eventual dissemination of scholarly findings. (iii) The external sponsor may not retain ownership of the results of or data generated by a project. (iv) Under rare circumstances, exceptions to these declarations can be made when UNH's instructional, scholarship, and research objectives will be served ultimately.

**Access and Participation in Research:** This policy would reinforce that instruction, research, and service will be accomplished openly for the free exchange of ideas among faculty and students and without prohibitions on participation in academic and research activities. The policy contains three declarations: (i) Discrimination based on citizenship is unacceptable at UNH. (ii) UNH will not accept restrictions on any agreements that limit full and open participation. (iii) Under rare circumstances, exceptions to declaration ii can be made when UNH's instructional, scholarship, and research objectives will be served ultimately.

### **III. Export Control Compliance**

**Reasonable Export Control Obligations:** UNH employees must take reasonable and prudent measures to prevent the disclosure of, access to, and/or use of export-controlled technologies by unauthorized, unlicensed foreign persons. What qualifies as reasonable depends on the circumstances. The following are examples of measures that project directors and researchers should consider adopting:

- Clearly marking “controlled” technologies.
- Identifying personnel who may lawfully access the technologies.
- Storing hard copies of controlled technologies in locked cabinets or desks.
- Securing access to electronic copies of and communications containing controlled technologies by passwords, user IDs, or other controls.
- Storing technologies in a single location.
- Making only that number of copies of data as is necessary.
- Requiring all persons with lawful access to controlled technologies to sign the project director and researcher certification used by OSR to monitor compliance with applicable laws.

Appropriate measures are determined on a case-by-case basis in conjunction with the UNH OSR export control compliance administrator, and are subject to periodic review.

In those rare instances where receipt of export- controlled technologies (meaning the technology, associated technical know-how, and/or associated technical data) has occurred at UNH without an approved license, the recipients of the technologies may be held liable personally for disclosures of the technologies to unauthorized foreign persons.

#### **General Overview of Sponsored Project Compliance:**

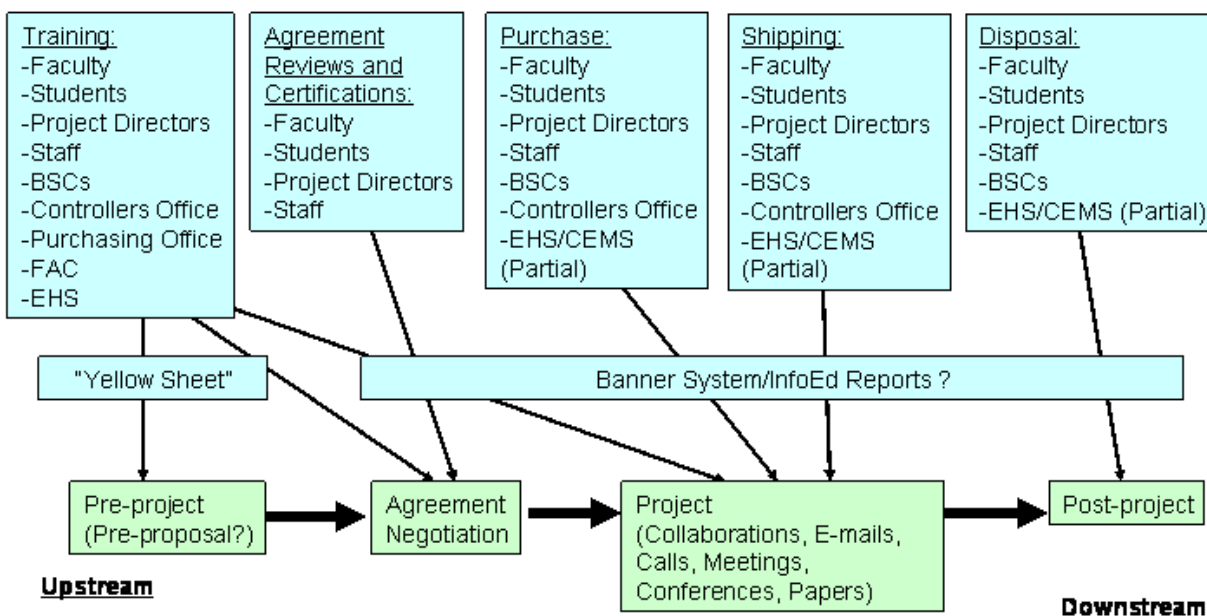
For those sponsored projects where export controls compliance is necessary, a general system of controls will be used both upstream and downstream through the life history of the project.

The system (see Figure 1 on the next page), is based on awareness and training of faculty, students, project directors, staff, BSCs, the Controllers Office, the Purchasing Office, the Finance and Administration Council, and the Office of Environmental Health and Safety (EHS). Awareness and training can happen at numerous points in the system.

The best opportunity to capture projects is the pre-proposal stage when a “yellow sheet” is submitted to OSR. If flags are raised, then at the time of award negotiation, some initial training of project participants can occur. Additional control points downstream of project inception afford less effective control but ones that can help to reinforce upstream control.

OSR will explore the use of attribute fields that can be assigned in Banner and/or InfoEd (with reporting out of WebI) when projects are initially loaded that allow Deans, Center Directors, BSC Managers, project directors and faculty to receive reports of projects with export control compliance requirements.

## Upstream and Downstream Control Points



## Sponsored Project Timeline

**Figure 1: Schematic depicting general approach to control of projects with export control requirements**

**Awareness and Training:** The UNH OSR export control compliance administrator has conducted and will continue to conduct periodic awareness and training programs with potentially affected UNH individuals or groups, including:

- OSR's Research Administration Grant and Contract Administrators
- The Finance and Administration Council under the Vice President for Finance and Administration
- BSC staff
- Faculty of the colleges, schools, institutes, laboratories, and centers
- Offices of the USNH Controller, Purchasing and Contract Services, Travel, and Internal Audit; and the UNH Office of International Students and Scholars (OISS), Office of Research Partnerships and Commercialization (ORPC), EHS, and others

Initial training materials have been developed. (See Appendix IV). Materials are subject to review and will be updated as necessary and appropriate by the export controls compliance administrator.

**Sponsored Programs Internal Approval Form ("Yellow Sheet") Flags:** Although the full compliance effort will begin for UNH externally-sponsored programs at the award negotiation stage, certain indicators will be identified at the proposal submission stage. (See Appendix I for

the recently revised “Yellow Sheet.”) To help OSR become aware of potential projects where sponsor negotiation may require special attention, flags regarding the following have been added to the “Yellow Sheet”:

- Possible Export Controlled Technologies or Information
- Communications With U.S. Embargoed Countries
- Shipping Technologies Out of the U.S.
- Restrictions on Publications or Foreign Nationals in RFP or BAA

**Agreement Reviews:** For all agreement instruments under negotiation [e.g., sponsored programs, cooperative agreements, material transfer agreements (MTAs), non-disclosure agreements (NDAs), technical assistance agreements (TAAs), teaming agreements], a formal checklist (see Appendix II) will be used by OSR or ORPC administrators to identify likely export control matters. If export controls could be an issue, the appropriate administrator will work with the project director(s) and researcher(s) to make a formal determination. Further, ORPC will modify various agreements (particularly materials transfer, the non-disclosure template and licensing) to include suitable export control clauses.

**Project Director/Researcher Certification Process:** If the agreement in question requires active control of its export activity, then the project directors and researcher(s) will be required to sign a certification form(s) (see Appendix III) before UNH will agree to accept a formal agreement from an outside party or entity. Signed certifications will be maintained by both the project directors(s) and researcher(s) and the appropriate OSR or ORPC administrator.

**Licensing Authority and Process for Exports and “Deemed” Exports:** The UNH Vice President for Research & Public Service, the Executive Director of Sponsored Research, and the OSR export control compliance administrator are UNH's "empowered officials" for export control issues. The Vice President for Research & Public Service arranges for sufficient UNH support to address export control and license issues, and is empowered to make exceptions to related UNH policies. Typically, OSR's Executive Director and export controls compliance administrator are the authorized officials who sign and submit license applications on behalf of UNH to the U.S. Departments of State, Commerce, and Treasury. It normally takes from 2-6 months (although somewhat shorter for expedited license applications) to secure a license for the following situations:

- Export licenses for shipping covered hardware and software outside the U.S. (EAR, ITAR, and OFAC). UNH will apply for such licenses; appropriate time must be allowed to obtain license prior to initiating work.
- Export licenses for technical assistance agreements (TAAs) where U.S. citizens or permanent residents are providing training of foreign nationals where a covered technology is involved. UNH will apply for such licenses; appropriate time must be allowed to obtain license prior to initiating work.
- Export licenses where acceptance of export controlled data for use by foreign national researchers in a UNH laboratory occurs. UNH will apply for such licenses; appropriate time must be allowed to obtain license prior to initiating work.

Research carrying restrictions on publications/foreign nationals or where export controlled data are provided to and used by researchers in a UNH laboratory ("deemed export") and where UNH would not typically accept such an agreement (unless a rare exception is granted by the Vice President for Research and Public Service because it is clear and demonstrable that UNH's instructional, scholarship, and research objectives will be served under UNH's Academic Plan and/or an applicable unit's academic or strategic plan.)

**Hazardous Materials Tracking:** UNH currently maintains an inventory of all hazardous chemicals and radiological materials through the UNH Chemical Environmental Management System (CEMS). (A biological tracking system is being developed to manage infectious materials at UNH.) CEMS is used to generate reports of hazardous materials used and stored in UNH laboratories (including EAR- and ITAR- listed materials). UNH personnel working with EAR/ITAR-listed hazardous materials must maintain an inventory of those items in CEMS. Visit the CEMS website for additional information: <http://www.cems.sr.unh.edu>.

**Select Agent Exporting Procedures:** The EAR Commerce Control List (CCL) and the ITAR U.S. Munitions List (USML) name many select agents. Consequently, control of select agent possession and use is a matter of export control management. The export of any regulated select agent requires the prior approval of the Director of EHS. Refer to the UNH Select Agent Procedures at the following web address for more information: <http://www.unh.edu/ehs/BS/SA-Procedures.html>.

**Purchasing:** In anticipation of expected stricter interpretations of EAR and ITAR regulations, the Controllers Office, in conjunction with the Purchasing and Contract Services Office, will explore developing a simple system to identify when the purchase of an export-controlled technology occurs, how the technology will be inventoried and assigned to the existing UNH space inventory, and best methods for notifying BSC personnel, faculty and students. Such a system may become a Federal requirement.

**Shipping:** If a technology is export-controlled, shipping it to a non-U.S. location may require an export license. UNH faculty, Business Service Center (BSC) personnel, and other administrators have been made aware of this issue. Contact OSR's export control compliance administrator when a sponsored programs agreement is involved; ORPC for MTAs; and/or OEHS to discuss the appropriate shipping requirements for equipment, chemicals, biological agents or any other potentially hazardous items. If there is no sponsored agreement or MTA involved, contact the embargoes compliance administrator in the UNH Center for International Education.

**Record Keeping:** UNH OSR is responsible for maintaining a centralized record keeping system as required under EAR §762.2. As specified under EAR §762.6, records of all export control transactions must be kept for five years, including:

- Agreement check-off forms
- Certifications
- Export control documents as defined EAR §772
- Memoranda, notes, and correspondence
- Contracts
- Invitations to bid
- Books of account
- Financial records

- Documents and reports on restrictive trade practice or boycott
- Other records pertaining to transactions involving exports from the U.S. of commodities, software, or technology and any known re-exports, trans-shipment, or diversion of items exported from the U.S.

Documentation of all cases of EAR- and ITAR- listed reviews for export control technology determination, including those where determination is made that a license is not required, is maintained in OSR's the export controls compliance administrator's office. This documentation is subject to periodic review by UNH and non-UNH officials with a demonstrated need-to-know.

**System Reviews:** USNH Internal Audit Department will assist the UNH Administration on the analysis of the efficacy of the system. Review areas may include, but are not limited to, the following:

- Record keeping system
- Awareness and training programs
- "Reasonable" export control compliance

#### **IV. Embargoes Compliance**

**Awareness Training:** The UNH Center for Internal Education Director will conduct periodic awareness training with potentially affected individuals or groups, including:

- UNH's international education program staffs and participants
- Other UNH international travel organizations
- Faculty and staff of UNH's colleges, schools, institutes, laboratories, and centers
- BSCs
- Appropriate student organizations

Initial training materials have been developed. (See Appendix V) Materials are subject to review and will be updated as necessary and appropriate by the embargoes compliance administrator.

**Foreign Travel Authorization:** For faculty and staff foreign travel, BSCs will check and monitor to ensure that travel is not being requested to an embargoed country.

**Overseas Goods or Services Authorization:** Before processing payments to a foreign entity or individual, BSCs will check to ensure that the goods or services were not or would not be provided to a country on the current U.S. list of embargoed countries.

**System Reviews:** USNH Internal Audit Department will assist the UNH Administration on the analysis of the efficacy of the system. Review areas may include, but are not limited to, the following:

- Awareness and training programs
- Foreign travel and goods/services authorization documentation

## V. International Employees, Scholars, and Students

**Hiring Practices:** The USNH Personnel Policy Manual is a resource document outlining UNH's personnel policies and practices for all UNH employees, including foreign nationals. The Manual covers hiring, transferring, and terminating employees.

**Employment and Enrollment of Foreign Nationals:** The OISS helps UNH comply with Federal regulations pertaining to employment and enrollment of foreign nationals in certain visa classifications. Direct services to students and scholars include orientations, immigration and non-academic advising, and administrative support in their interactions with state and Federal agencies such as the Social Security Administration, the Internal Revenue Service, and the Division of Motor Vehicles. The OISS also serves as a resource and referral center for the UNH community and as the interface between UNH and the government for immigration matters for its international community.

**International Scholars/Employees:** UNH has authorized the OISS to act on its behalf to handle immigration matters for its international scholars and employees, who may or may not be receiving UNH funding. OISS uses the term "international scholars" to include virtually all non-U.S. citizens and non-holders of green cards who are not students at UNH. (See the next section below for International Students.) Thus, the term "international scholar" includes UNH employees in a broad range of positions, mostly in teaching and research functions, but also working in Professional, Administrative, or Technical (PAT) positions such as in information technology, accounting, coaching, and residence hall directors. The term also includes short-term visitors to UNH, who may be on sabbatical leave, self-funded, home-government-funded, or receiving minimal financial support from UNH and other U.S. sources.

Most international scholars are in H-1B non-immigrant status. OISS files temporary (up to six years) non-immigrant worker petitions for these scholars. Some international scholars are in TN status (reserved for Canadians and Mexicans working at UNH under the terms of the North American Free Trade Agreement of 1993) while others are F-1 students on "optional practical training" having completed degrees at other universities in the U.S. OISS also files immigrant petitions ("green cards") for permanent UNH employees for whom the six-year limitation of H-1B status does not allow long-term employment. Most of the latter are tenure track faculty.

The "SEVIS" system described below under "International Students" also includes J "scholars" at UNH, but not UNH employees in any other non-immigrant status (such as H-1B, TN, etc.). Most J "scholars" are not "employed" by UNH in the traditional sense, but instead are on sabbatical leave from their home institutions outside the U.S., are self-funded, or are paid relatively small sums from research grants for short stays. In addition, J scholars tend to work less often in academic departments and research laboratories where export controls are a concern.

**International Students:** OISS is authorized by the U.S. Department of Homeland Security (DHS) and the U.S. Department of State to issue two types of "Certificates of Eligibility" to students who meet UNH's admissions criteria and who demonstrate their ability to finance their education. Forms I-20 and DS-2019 allow students to apply for F or J (exchange student) status, respectively.

**Student and Exchange Visitor Information System (SEVIS):** SEVIS is a web-based system for maintaining information on international students and exchange visitors (typically F, J visa classifications) in the U.S. (See <http://www.ice.gov/graphics/sevis/index.htm>). SEVIS is administered by the Student and Exchange Visitor Program (SEVP), a division of U.S. Immigration and Customs Enforcement (ICE), the largest investigative arm of DHS. SEVIS information is accessible to the Citizenship and Immigration Services, Customs and Border Protection, and U.S. Embassies and Consulates, as well as other Federal agencies such as the Social Security Administration.

All institutions certified by the DHS to enroll international students and designated by the U.S. Department of State to administer the “J” Exchange Visitor Program for students and scholars are granted access to SEVIS. Access is restricted to officials with primary responsibilities in immigration compliance and advising. At UNH, these functions are carried out solely by OISS staff.

SEVIS was first conceived as a method of tracking international students and exchange visitors because of security concerns (following the first World Trade Center bombing in 1993, with renewed focus after September 11<sup>th</sup>). The system, barely two years old in its final form, is not yet used to full effect for other issues such as export controls, although it certainly has the potential in the future to track those issues too, once the system is running more reliably and smoothly.

**Validation and Tracking:** The following are conducted to validate and track F and J visa holders:

- a) Validation of Program Participation: Students and scholars in F and J status are required to report to OISS upon arrival at UNH to schedule one-on-one or group orientations, and for review of their immigration documents for SEVIS record validation or activation. If the individual’s SEVIS record is not validated within 30 days of his/her arrival, the record may be terminated and the individual may be subject to immigration enforcement action.
- b) SEVIS data maintained by OISS include name, birth country, birth date, citizenship, country of permanent legal residence, site of activity, gender, U.S. and foreign addresses, education level, major, program start and end dates, and financial information for each international scholar and student. Data captured at the time of visa issuance and entry to the U.S. include visa type, passport number, visa number, visa issue date, port of entry, date of entry and admission number.
- c) Program Updates: During the individual’s course of study/research/teaching, OISS is required to report to DHS via SEVIS student/scholar progress; full-time enrollment each term; address, degree program, major, or funding changes; extensions of academic programs transfers to other academic programs and other "events". At any time, if UNH is unable to verify in SEVIS the individual’s compliance with regulations, the SEVIS record may be terminated and the person may be subject to immigration enforcement action.

## **Appendices**

- I. Sponsored Program Internal Approval Form (“Yellow Sheet”)
- II. Agreement Reviews
- III. Project Director/Researcher certification
- IV. Export Controls Compliance Awareness Presentation
- V. Embargoes Compliance Awareness Presentation

**Appendix I. Sponsored Program Internal Approval Form (“Yellow Sheet”)**

# UNIVERSITY OF NEW HAMPSHIRE

## Sponsored Program Proposal Internal Approval Routing Form

Please submit 1 completed copy of this form to the Office of Sponsored Research (OSR) in Service Building Room 111 AT LEAST 5 WORKING DAYS PRIOR TO SPONSOR DEADLINE, along with 1 original of the final proposal. Proposals received by the OSR within 5 working days are not guaranteed to meet the sponsor deadline. See toolbar at bottom of this form for explanation of fields to be completed or visit this website for more information: <http://www.unh.edu/osr>

**1. UNH PROJECT DIRECTOR**

Name:

E-mail Address:

Banner ID #        -        -

Campus Phone #        -        -

**2. PROPOSAL PROJECT TITLE**

Short (Maximum 30 Characters):

Long (Maximum 175 Characters):

**3. PROJECT DEPT/CENTER/INSTITUTE**

**4. PROJECT LOCATION(S)**     On     Off    Where:

**5A. PROPOSED SPONSOR**

CFDA#        .

**5B. PRIME SPONSOR (if pass-through)**

CFDA#        .

**6. PROPOSAL RESPONDS TO PROGRAM ANNOUNCEMENT OR NON-PROFIT SPONSOR**     If checked, copy guidelines to OSR w/ proposal or URL:

**7. REQUESTED PROJECT DATES** From:        To:

**8. COST SHARING**     None     Mandatory\*     Voluntary\*    (\*Attach OSR Cost-Sharing Form.)

**9. PROGRAM INCOME**     No     Yes    Anticipated \$

**10. APPLICATION TYPE** (Check one; complete block where required)

New     Competitive Renewal:         Pre-proposal

Supplement: Banner Grant Code or UNH PID:

Revised Budget: UNH PID:

**11. PURPOSE** (Check one)

Research     Instruction     Other

**12. PROJECT COSTS**

Total Direct: \$        Total Indirect: \$        Rate:        %

**13. SUBMISSION TO PROSPECTIVE SPONSOR**

# Copies:        and/or Electronic Submission

Deadline Date     ASAP     Postmark or     Sponsor Receipt

Sponsor Mailing Name:

Address:

**OSR USE ONLY**

DATE REC'D	_____
PROJECT ID	_____
ON/OFF CAMPUS	_____
PGM INC TYPE	_____
SUBMITTED VIA	_____
	(UPS, electronic, other)
F&A WAIVER	_____
F&A RATE CODE	_____
F&A BASIS	_____
TOTAL C/S \$	_____

**14. SPECIAL CONSIDERATIONS FOR THIS PROJECT**

Check **only and all** items below that could apply to this project. Complete and submit required UNH forms or applications to appropriate UNH office or regulatory entity.

- |  |  |
|--|--|
| <input type="checkbox"/> New Position(s)                       | <input type="checkbox"/> Equipment With Purchase Price At Least \$50K            |
| <input type="checkbox"/> Personnel From Other UNH Departments* | <input type="checkbox"/> Intellectual Property Participation Agreement (Federal) |
| <input type="checkbox"/> Faculty A/Y Release Time              | <input type="checkbox"/> Export-Controlled Technologies or Information           |
| <input type="checkbox"/> Faculty A/Y Supplemental Salary       | <input type="checkbox"/> Shipping Technologies Out of the United States          |
| <input type="checkbox"/> Faculty Summer Salary                 | <input type="checkbox"/> Interactions With US-Embargoed Countries                |
| <input type="checkbox"/> Graduate Students                     | <input type="checkbox"/> RFP/BAA Publications or Foreign Nationals Restrictions  |
| <input type="checkbox"/> For-Credit Courses                    |  |
| <input type="checkbox"/> Sub-recipients                        |  |

\* If this project will include effort of UNH employees from other-than-the Project or Co-Project Director's department, attach an OSR Additional Faculty or Staff Form for each such employee.

Use Approved by Appropriate UNH Regulatory Body?

	Pending	Yes	If Yes, Protocol #
Human Subjects	<input type="checkbox"/>	<input type="checkbox"/>	
Vertebrate Animals	<input type="checkbox"/>	<input type="checkbox"/>	Where Housed:
Radioactive Materials	<input type="checkbox"/>	<input type="checkbox"/>	
Recombinant DNA	<input type="checkbox"/>	<input type="checkbox"/>	
Infectious Agents/BL	<input type="checkbox"/>	<input type="checkbox"/>	
SCUBA/ Research Diving	<input type="checkbox"/>	<input type="checkbox"/>	

**I certify that: I will comply with all applicable regulations (above) for this project. I have read and understand UNH's policy on Financial Conflict of Interest in Research; have made all required financial disclosures; as project leader, have made every effort to ensure that all responsible for the design, conduct, or reporting of the research have submitted the required disclosures; and prior to award expenditures will have reached an agreement with UNH on conditions or restrictions necessary to manage, reduce, or eliminate any conflicts of interest under UNH policy. (See <http://usnholpm.unh.edu/UNH/II.Acad/D.htm>.) I am not currently suspended, debarred, or otherwise ineligible to receive Federal or State funds.**

Co-Project Director Name:

\_\_\_\_\_/\_\_\_\_\_  
Project Director Signature /Date

\_\_\_\_\_/\_\_\_\_\_  
Co-Project Director Signature /Date

**15. CERTIFICATIONS, ENDORSEMENTS, AND APPROVALS**

**I certify that I am not currently suspended, debarred, or otherwise ineligible to receive Federal or State funds. I accept responsibility for this project.**

\_\_\_\_\_/\_\_\_\_\_  
Department/Center/Unit Head Endorsement /Date

\_\_\_\_\_/\_\_\_\_\_  
Department/Center/Unit Head Endorsement /Date

\_\_\_\_\_/\_\_\_\_\_  
Institute/Center Director Approval /Date

\_\_\_\_\_/\_\_\_\_\_  
Institute/Center Director Approval /Date

\_\_\_\_\_/\_\_\_\_\_  
College/School Dean or Vice Pres. Approval /Date

\_\_\_\_\_/\_\_\_\_\_  
College/School Dean or Vice Pres. Approval /Date

\_\_\_\_\_/\_\_\_\_\_  
Office of Sponsored Research Final Approval for UNH

## **Appendix II. Agreement reviews**

**UNH AGREEMENT RECORD OF EXPORT CONTROL REVIEW**

Title of Project  
 UNH Contract Number (if  
 Researcher(s)/Principal  
 Department and School/College  
 Sponsor

\*\*\*\*\*

**PART I: GRANT/CONTRACT/MTA/NDA/TAA REVIEW (To be completed by OSR or OIPM Officials)**

- Does the instrument contain any clause that
- |  |                             |                             |
|--|-----------------------------|-----------------------------|
| a. references U.S. export regulations?                                   | <input type="checkbox"/> YE | <input type="checkbox"/> NO |
| b. restricts non-US entity participation?                                | <input type="checkbox"/> YE | <input type="checkbox"/> NO |
| c. prohibits access by non-US citizens to project information?           | <input type="checkbox"/> YE | <input type="checkbox"/> NO |
| d. prohibits the hiring of non-US persons?                               | <input type="checkbox"/> YE | <input type="checkbox"/> NO |
| e. addresses the use of proprietary information?                         | <input type="checkbox"/> YE | <input type="checkbox"/> NO |
| f. addresses security concerns? (If "yes", is the Education Alternative  | <input type="checkbox"/> YE | <input type="checkbox"/> NO |
| g. grants the Sponsor a pre-approval right over research publications?   | <input type="checkbox"/> YE | <input type="checkbox"/> NO |
| h. grants the Sponsor a right to prepublication review for matters other | <input type="checkbox"/> YE | <input type="checkbox"/> NO |
| than the inclusion of patent and/or proprietary sponsor information?     | <input type="checkbox"/> S  | <input type="checkbox"/> NO |
| i. Allows the Sponsor to claim resulting research information as         | <input type="checkbox"/> YE | <input type="checkbox"/> NO |

Completed by \_\_\_\_\_ OSR or OIPM Administrator \_\_\_\_\_ Date

IF YES IS GIVEN TO ANY OF THE QUESTIONS ABOVE, A TECHNICAL REVIEW PART II MUST BE DONE BY THE UNH DIRECTOR OF EXPORT CONTROL COMPLIANCE IN CONJUNCTION WITH THE PARTICIPATING RESEARCHERS OR PRINCIPAL INVESTIGATORS. NOTE: MOST OF THESE CLAUSES MAY CONFLICT WITH UNH POLICY AND/OR MAY NEGATE THE FUNDAMENTAL RESEARCH EXCLUSION UNDER EXPORT LAWS. IN THESE CASES, CLAUSES WILL NEED TO BE MODIFIED OR DELETED.

\*\*\*\*\*

**Part II: Technical To be completed jointly by UNH Director of Export Control Compliance &**

The agreement instrument identified above contains provisions that may require University compliance with export control laws and regulations that are issued by the Department of Commerce and/or State. A final determination of the application of those regulations to this particular project depends on whether the research falls within a category of technology the government has determined raises particular issues of national security

**Procedure:** Working jointly with the UNH Director of Export Control Compliance, UNH Researcher(s) and PI(s) must review descriptions of technologies that are controlled by the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR) and decide if the technology involved with this particular

If you have any questions, contact Victor Sosa, Director of Export Control Compliance, Office of Sponsored Research (2-2032, victor.sosa@unh.edu)

**CERTIFICATION**

We have reviewed the relevant EAR and ITAR regulations and determined that the above agreement:

- \_\_\_\_\_ Does not involve technologies that are covered by either the EAR or the ITAR;
- \_\_\_\_\_ May involve technologies that are covered by either the EAR or the ITAR;
- \_\_\_\_\_ Is dominated by EAR-governed technology, specifically (*identify category by* \_\_\_\_\_)
- \_\_\_\_\_ Includes discrete, easily identifiable and separable research components that are within the scope of an ITAR-governed technology, specifically (*identify category by name and section*)
- \_\_\_\_\_ Includes discrete, easily identifiable and separable research components that are within the scope of an EAR-governed technology, specifically (*identify category by name and section*)
  1. By EAR – *Specify* \_\_\_\_\_
  2. BY ITAR – *Specify* \_\_\_\_\_

\_\_\_\_\_  
 Printed Name & Signature, PI

\_\_\_\_\_  
 Printed Name & Signature, Director of Export Control Compliance

\_\_\_\_\_  
 Date

### **Appendix III. Project Director/Researcher Certification**

## UNIVERSITY OF NEW HAMPSHIRE CERTIFICATION ON THE HANDLING OF EXPORT CONTROLLED INFORMATION

**Overview:** The research project identified below will involve the receipt and/or use of technical data that is controlled under United States export control laws: the Export Administration Act and Export Administration Regulations (“EAR”), enforced by the Bureau of Industry and Security in the Department of Commerce or the Arms Export Control Act and its implementing regulations, the International Traffic in Arms Regulations (“ITAR”), enforced by the Office of Defense Trade Controls in the State Department.

**ITAR:** The ITAR control the export of equipment, technologies and technical data that are primarily military in nature. It is unlawful under the ITAR to send ITAR controlled technical data to any foreign persons outside the United States or to disclose – in written, oral or visual form -- ITAR-controlled technical data to any foreign persons in or outside the United States unless one of several exclusions applies or the State Department has issued a license authorizing the disclosure or export of the technical data to specific foreign persons.

**EAR:** The EAR control the export of equipment, technologies (including software), and technical data that serve primarily civil uses. The prohibition on the export or disclosure of technical data controlled under the EAR is determined on a country-by-country basis for each disclosure of controlled technical data. As a result, it is unlawful to export technical data out of the US or to disclose technical data in or outside the US to foreign persons of countries for which a license is required as a condition of making such exports and disclosures.

### **Definitions:**

A “**foreign person**” is anyone who is “not a lawful permanent resident” of the United States (i.e., not a green card holder) or does not have refugee or asylum status.

In general, **export controlled technical data** is specific information that is needed to develop, produce, maintain, manufacture, assemble, test, repair, operate, modify, process or otherwise use equipment or technologies that are on the control lists of the EAR or the ITAR. Controlled technical data may take the form of “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.” Basic marketing information on function or purpose of equipment; general system descriptions; general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities and related information, and information that is in the public domain -- commonly available to interested persons – does not qualify as controlled technical data under the export control laws. The export laws and regulations determine if technical data is controlled, not your intended or actual use of the information.

**Obligations:** Recipients of export controlled technical data may be held personally liable for disclosures of export-controlled technical data to unauthorized foreign persons. As a result, researchers must take reasonable measures to prevent the disclosure to and use and access of export-controlled technical data by unauthorized, unlicensed foreign persons. What qualifies as reasonable depends on the circumstances. Examples of measures researchers should consider adopting include clearly marking “controlled” technical data that is controlled, identifying personnel who may lawfully access the technical data, storing hard copies of controlled technical data in locked cabinets or desks, securing access to electronic copies of and communications containing controlled technical data by passwords, user ids, or other controls; storing technical data in a single location; making only that number of copies of technical data as is necessary, and requiring all persons with lawful access to controlled technical data to sign this certification.

**Penalties:** Individual liability for the disclosure of controlled technical data to unauthorized foreign persons under the ITAR includes fines up to \$500,000 per violation for civil violations and up to ten years imprisonment and penalties up to \$1,000,000 per violation for criminal violations. Liabilities under the EAR may involve fines ranging from \$10,000

to \$120,000 for each civil violation and fines ranging from \$50,000 to \$1,000,000 for each criminal violation and 10 years imprisonment. Individual researchers and the university also face loss of export privileges and debarment from federal contracts and grants.

**Certification:** I certify that I am familiar with the export control issues summarized above and have read and understand this certification. I understand that I could be held personally liable if I unlawfully disclose export controlled technical data to foreign persons and agree to take reasonable measures to prevent unauthorized foreign persons from having access to or using any export controlled technical data I may receive under the contract identified below. I agree to take appropriate security measures and to contact the ORAA Compliance Administrator, identified below, before making any type of disclosure of controlled technical data to any foreign person.

Signature of Researcher: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name of Researcher: \_\_\_\_\_

Department: \_\_\_\_\_

Research Project Title: \_\_\_\_\_

Proposal ID # \_\_\_\_\_

Sponsor: \_\_\_\_\_

**Submit completed certification** to Victor Sosa, Director of Export Control, (2-2032, victor.sosa@unh.edu)

For additional information on export controls, contact the OSR Director of Export Control Compliance or visit the Bureau of Industry and Security web site at <http://www.bxa.doc.gov/policiesandregulations/index.htm> for information on the EAR, the Office of Defense Trade Controls web site at [http://www.pmdtc.org/itar\\_index.htm](http://www.pmdtc.org/itar_index.htm) or information on ITAR, or the ORAA web site at <http://www.umresearch.umd.edu/ORAA/ecg/>.

## **Appendix IV. Export Controls Compliance Awareness Presentation**



## UNH EXPORT CONTROLS COMPLIANCE

### SOME BASICS FOR ALL

Based in part on the NCURA *Online* Education  
Program  
February 3, 2005

1



## What are export controls?

U.S. laws that regulate the distribution to foreign nationals and foreign countries of strategically important technology, services and information for reasons of foreign policy and national security.

Export control laws apply to all activities – not just sponsored research projects.

2



## What is an Export?

- Transfer of controlled technology, information, equipment, software or services to a foreign person in the U.S. or abroad by any means; e.g.,
  - actual shipment outside the U.S.
  - visual inspection in or outside the U.S.
  - written or oral disclosure

3



## Definition: Foreign Person

- Any person who is not a lawful permanent resident of the US
- Any foreign corporation or other entity or group that is not incorporated or organized to do business in the U.S.
- Any foreign government

4

## Definition: U.S. Person

- Any U.S. citizen or lawful permanent resident (green card holder)
- Any foreign corporation, society or other entity or group that is incorporated or organized to do business in the U.S.
- Any federal, state or local government entity in the U.S.

5

## Responsible U.S. Agencies

- State Department: Inherently military technologies--International Traffic in Arms Regulations (ITAR)
- Commerce Department: "Dual-Use" technologies (primary civil use) -- Export Administration Regulations (EAR)

6

## Special Note: Encrypted Software and Select Agents

None of these can be exported:

- Encrypted Software
- Select Agents (see <http://www.cdc.gov/od/sap/docs/salist.pdf>)
  - Viruses
  - Toxins
  - Bacteria
  - Prions
  - Fungi
  - Genetic Elements, Recombinant Nucleic Acids, & Recombinant Organisms Related to Select Agents

7

## Categories – ITAR (from the U.S. Munitions List)

- 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 and Energetic Materials, 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

8

## Categories – ITAR (from the U.S. Munitions List)

- XI- Military Electronics
- XII- Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIII- Auxiliary Military Equipment
- XIV- Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated 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

9

## Some Examples of Controlled Technologies Under ITAR

- Satellites and spacecraft components
- Lasers/Directed Energy Devices
- Submersible vessels (tethered, untethered)
- Magnetic, Pressure and Acoustic Sensors
- Sonar Systems
- Radar Systems
- Computers
- Cryptography Systems

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## Categories – EAR (from the Commerce Control List)

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

11

## Some examples of Controlled Items Under EAR

- Technologies (listed generally, there are many hundreds!)
  - Lasers, radars, sonar systems, satellite components, computers, signal processors, cameras, centrifuges, fermenters, electron beam systems, fiber optics, freeze dryers, GPSs, graphite, ion implantation equipment, inertial navigation equipment, vacuum pumps, radiation-hardened devices, semiconductors, chips/wafers, hydrophones, telecom components

12

## Some examples of Controlled Technologies Under EAR

- Chemicals (listed generally, there are many hundreds!)
  - Benzilic acid, thionyl chloride, triethanolamine, triethyl phosphite, ammonium bifluoride, diisopropylamine, hydrofluoric acid, potassium cyanide, potassium fluoride, sodium fluoride, triethanolamine

13

## Some Examples of Controlled Technologies Under EAR

- Microorganisms (listed generally, there are many!)
  - Bacteria: *Bartonella*, *Chlamydia*, *Clostridium*, *Rickettsia*, *Salmonella*, *Shigella*, *Vibrio*, *Xanthomonas*, *Yersinia*
  - Fungi: *Puccinia*
  - Viruses: African horse sickness, African swine fever, porcine herpes, avian influenza, blue tongue, goat pox, Hantaan, Junin, Nipah,
  - Zoonoses

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## Implications of Export Laws

- No effect on most university research
- **Potential** impact on
  - Ability of foreign students or researchers to participate in research involving a controlled technology (mostly under ITAR)
  - Ability to provide services (including training in the use of controlled equipment) to foreign persons (ITAR, EAR)
  - Ability to send controlled equipment to foreign countries (ITAR, EAR)

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## Disseminating Information aka "Deemed Exports"

- In the absence of an exclusion, a license must be obtained from Commerce or State to share controlled technical information with a foreign person in the U.S. or abroad.
- Methods of disclosure include
  - Fax
  - Telephone discussions
  - E-mail communications
  - Computer data disclosure
  - Face-to-face discussions
  - Training sessions
  - Tours which involve visual inspections

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## Exclusions

A license is not required to disseminate information if one of three exclusions applies:

- Fundamental Research Exclusion (ITAR, EAR)
- Employment Exclusion (ITAR only)
- Education Exclusion (ITAR, EAR)

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## Legal Implications...

- Exclusions remove the PI and the University outside the legal domain for compliance matters relating to deemed export.

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## Fundamental Research Exclusion

- No license is required to disclose to foreign persons information that is “published and which is generally accessible or available to the public [through, for example,] fundamental research in science and engineering at universities where the resulting information is *ordinarily published and shared broadly in the scientific community.*”

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## The Fundamental Research Exclusion is Destroyed if

The university accepts any contract clause that:

- Forbids the participation of foreign persons;
- Gives the sponsor a right to approve publications resulting from the research; or
- Otherwise operates to restrict participation in research and/or access to and disclosure of research results.

20



## Fundamental Research Exclusion Violation

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“Side deals” between a PI and Sponsor destroy the fundamental research exclusion, return the PI and the University into the legal compliance domain, and may also violate university policies on openness in research.

21



## University Strategy

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Protect fundamental research exclusion by negotiating the elimination of all contractual clauses that restrict university control over publications or limit access to or participation in research.

22



## Employment Exclusion

---

- No license is required to share controlled technical information with a foreign person who
  - Is a full-time, bona fide university employee
  - With a permanent address in the US while employed *provided that person is*
    - Not a national of certain countries and
    - Is advised in writing not to share controlled information with other foreign persons.

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## Education Exclusion

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- No license is required to share with foreign persons “information concerning general scientific, mathematical or engineering principles commonly taught in universities or information in the public domain.”
- Foreign students using controlled equipment to conduct research should be registered for a research credit class.

24

## Equipment Use Exclusions?

There are **no express** exclusions that allow foreign persons to use controlled equipment or software without a license.

Most universities nonetheless legally rely on

- The fundamental research exclusion on the ground that using equipment is part and parcel of conducting fundamental research and/or
- The education exclusion when the program of instruction requires using equipment.

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## Providing Services to Foreign Persons

- ITAR and EAR prohibit assisting & training foreign persons anywhere in the design, development, use, testing etc. of controlled equipment without a license from Commerce or State
  - Ex. Fermenters having a capacity of at least 20 liters

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## Shipping Controlled Equipment Abroad

- A license is required to ship equipment controlled by **ITAR** to **any** foreign country (few exclusions or exceptions).
- A license **may** be required to ship equipment controlled under the **EAR** out of the US depending on what the equipment is, where it is being sent and whether an exception applies.

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## Shipping Equipment cont'd

- The process to classify equipment under the EAR is tedious, detailed and time consuming.
- It can take *months* to obtain a license from State or Commerce.

Note: A license may be required to ship software out of the US.

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## License Example

University archeologists desire to take GPS systems to France to use in training foreign colleagues.

- GPS equipment is covered by EAR Category 7, Navigation and Avionics, under ECCN nos. 7A005, 7A105, and 7A994. Two of those entries redirect the exporter to ITAR.
- The exporter must evaluate the EAR entries and ITAR Category XV, Spacecraft Systems and Associate Equipment, to identify the appropriate licensing authority and classification.

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## Laptop Exception (EAR)

- *Excluding countries under sanction*, faculty who wish to take their laptops out of the country to use in a project that qualifies as fundamental research may be able to do so under the license exception for temporary export (TMP) if the laptop meets the requirement for "tools of trade" and faculty retain control of the laptop at all times. (15 CFR Part 740.9).

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## Accepting Export Controlled Information

- In deciding whether to accept an award that requires the institution to receive export controlled information, consider whether the information is
  - Central to the project (probably rendering the entire project export controlled) or
  - Tangential in that the PI needs the information but not others working on the project.

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## Accepting Export Controlled Information cont'd

- If you decide the information is tangential
  - Execute a nondisclosure agreement
  - Require that the information be clearly marked "export controlled," and
  - Work with the PI to safeguard the information and have the PI sign a statement accepting responsibility for protecting the information

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## Accepting Export Controlled Information cont'd

- Libraries may have future opportunities to accept controlled information or signed DoD form DD2345 (Militarily Critical Technical Data Agreement). [None at UNH currently have]
- Acceptance creates compliance issues for individuals and the university.

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## Liability and Violations

- Liability is personal and institutional and may take the form of:
  - Administrative penalties
  - Monetary fines
  - Jail time.
- Voluntary disclosure of violations *may* serve as a “mitigating factor” in deciding penalties.

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## Administrative Penalties

- Termination of export privileges (EAR and ITAR and/or
- Suspension and/or debarment from government contracting (EAR and ITAR).

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## Penalties for EAR Violations

- Criminal (willful) violations:
  - Up to \$1 million for a university or company
  - Up to \$250K per violation for individuals and/or up to 10 years in prison
- Civil violations:
  - Up to \$12k per violation for individuals, a university or company

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## Penalties for ITAR Violations

- Criminal (willful) violations:
  - Up to \$1 million for a university or company
  - Up to \$1 million per violation for individuals and/or up to 10 years in prison
- Civil violations:
  - Up to \$500k per violation for individuals, a university or company

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## UNH Compliance Plan

- Raise awareness.
- Victor Sosa in OSR serves as the point person for researchers and government agencies on export control issues.
- Outside Counsel is available to assist.
- Yellow sheet review
- Agreements (Grant, contract, non-disclosure agreement, materials transfer agreement, technical assistance agreement) reviewed
- PI certification

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## UNH Compliance Plan Elements cont'd

- Grant and Contract Administrators training
- Procurement, auditing, travel training.
- BSC awareness training for research, tech transfer, procurement and shipping.
- Ongoing awareness program for faculty and other researchers.

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## UNH Compliance Plan Elements cont'd

- Export Control and Embargoes Management System
- Web site
- Facilitating policies

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## Check List Items

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Check lists developed for faculty and/or research administrators to use in deciding if a project raises export control concerns should ask such questions as:

- Does the project involve:
  - Shipping equipment to a foreign country?
  - Collaborating with foreign colleagues in foreign countries?
  - Training foreign persons in using equipment?
  - Working with a country subject to a US boycott?

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## Check List Items

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- Do the terms of the RFP/BAA or award require:
  - Sponsor approval rights over publications?
  - Sponsor approval of the participation of foreign persons?
- Is the RFP or SOW marked "Export Controlled"?

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## RESOURCES

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Selected government websites:

<http://www.dtic.mil/dtic/stinfo/exportcontrol.html>

(defense technical information center with numerous links to gov't export control sites)

<http://pmdtc.org> (Office of Defense Trade Controls (State) w/links to ITAR)

<http://www.bxa.doc.gov/licensing/ExportingBasics.htm> (Bureau of Industry and Security (Commerce) w/ EAR information)

<http://www.hq.nasa.gov/office/codei/nasaecp/> (NASA export control program)

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## **Appendix V. Embargoes Compliance Awareness Presentation**

## UNH EMBARGOES COMPLIANCE:

### SOME BASICS FOR ALL

Based in part on NCURA *Online Education*  
Program  
February 3, 2005

1

## Responsible US Agencies

- Treasury Department, Office of Foreign Assets Control (OFAC): Prohibits transactions with countries subject to boycotts, trade sanctions, embargoes

2

## Definition: Embargoed, Sanctioned, Boycotted Countries

- OFAC embargoed and sanctioned countries currently include Cuba, Iran, Iraq, Libya, Liberia, Sudan and North Korea, as well as certain entities in the Balkans, Burma and Zimbabwe.
- For complete and current listing of countries subject to OFAC sanctions and descriptions of prohibited activities, visit OFAC website: <http://www.treas.gov/offices/eotffc/ofac/sanctions/index.html>
- This list is subject to change.

3

## Providing Services Under OFAC

- In general, OFAC programs prohibit the provision of services to countries subject to US sanctions, boycotts, etc. w/o a license.
- Services include:
  - Conducting surveys and interviews in boycotted countries
  - Providing marketing & business services to persons in boycotted countries

4

## Providing Services cont'd

- Creating new information materials at the behest of persons in a boycotted country
- Engaging the services of persons in a boycotted country to develop new information materials

*Note: Restrictions vary by country*

5

## Specific Services

OFAC Embargoes Apply When:

- Payments of compensation, honoraria, contracts/ services/value to or in embargoed countries or to foreign nationals and entities of some embargoed countries – depends on applicable sanctions
  - Attending or planning international conferences
- Travel to Embargoed Countries
  - Travel to Cuba allowed if the university has an export license and the traveler is a full-time employee of the university
  - Students may travel under the university license if they are students enrolled at the university that has the license but with conditions
- Payments/Services/Value to specifically listed individuals

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## Specific Services cont'd

Editing, Reviewing, Authoring Publications:

- An OFAC letter dated April 2, 2004 allows peer review as well as copy and style editing of articles written by Libyan Nationals [<http://www.treas.gov/offices/enforcement/ofac/rulings/ia040504.pdf>]
- December 17, 2004 OFAC General License for Cuba, Sudan and Iran allows most editing/joint authorship with nationals of these countries (but not the governments or government employees) (31 C.F.R. 515, 538, 560)

7

## Shipping Equipment To Embargoed Countries

There is a presumption under **OFAC** sanction programs that any and all shipments of equipment and provision of services to countries under sanction or persons in those countries are **ILLEGAL**.

8

## Liability and Violations

- Liability is personal and institutional and may take the form of:
  - Administrative penalties
  - Monetary fines
  - Jail time.
- Voluntary disclosure of violations *may* serve as a “mitigating factor” in deciding penalties.

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## Penalties for OFAC Violations

- Criminal (willful) violations:
  - Maximum fine of \$100k for individuals (including corporate officers) and/or 10 years imprisonment
  - Maximum fine of \$1m for a university or company
- Civil penalties:
  - Maximum fine of \$55k per violation

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## UNH Compliance Plan

- Raise awareness with Administrators, Faculty and Students.
- Ted Howard in the Center for International Education serves as the point person for students and faculty.
- Web site: <http://www.unh.edu/cie/>
- Export Control and Embargoes Management System describes administrative compliance plan.

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## UNH Compliance Plan Elements cont'd

- Procurement, auditing, travel training.
- BSC awareness training for research, tech transfer, procurement and shipping.
- Ongoing awareness program for faculty and students.

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## RESOURCES

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Selected government websites:

[http://www.treas.gov/offices/enforcement/  
ofac/sanctions/index.html](http://www.treas.gov/offices/enforcement/ofac/sanctions/index.html) (OFAC)