Kansas State University

Export Controls Compliance Program Manual

The aim of this manual is to outline the Export Controls Compliance Program (ECCP) at Kansas State University. Export control laws and regulations are complex and are revised and updated constantly. Information provided in this manual may not be comprehensive and should not be relied upon solely. Questions should be directed to the University Research Compliance Office (URCO), exportcontrols@ksu.edu, phone 785-532-3224.

Version updated: 05/14/2019

Contents

List of Abbreviations

BIS	Bureau of Industry and Security
CCL	Commerce Control List
CJ	Commodity Jurisdiction
DDTC	Department of State Dirctorate of Defense Trade Controls
DFAR	Defense Federal Acquisition Regulation
DOC	Department of Commerce
DOS	Department of State
EAR	Export Administration Regulations
FAR	Federal Acquisition Regulation
FRE	Fundamental Research Exclusion
ECCN	Export Control Classification Number
ITAR	International Traffic in Arms Regulations
ISSS	International Student and Scholar Services
KSU	Kansas State University, K-State
MTA	Material Transfer Agreement
NDA	Non-Disclosure Agreement
OFAC	Department of the Treasury Office of Foreign Assets Control
OGC	Office of General Counsel,
PAS	PreAward Services
PI	Principal Investigator
RPS	Restricted Party Screening
SDN List	Specially Designated Nationals and Blocked Persons List
TCP	Technology Control Plan
URCO	University Research Compliance Office
USML	United States Munitions List
VPR	Vice President for Research

Definitions

Export: An actual shipment or transmission out of the United States, including sending or taking an item out of the U.S. in any manner. The definition includes releasing or otherwise transferring technology, technical data, or source code (but not object code) to a foreign person in the United States (deemed export). Under ITAR, export includes performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.

Embargoed/Sanctioned Country: U.S. government sanctions administered under the export control regulations vary in scope. Some target certain exports while others are comprehensive, encompassing broad prohibitions at the country level. Comprehensive sanctions prohibit all transactions (including imports and exports) without government authorization. Embargoed countries currently include the Crimea Region of Ukraine, Cuba, Iran, North Korea, and Syria.[1]

Foreign Person: Any natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual as defined by 8 U.S.C. 1324b(a)(3).[2] It also means any corporation, business association, partnership, trust, society, or any other entity or group that is not incorporated in the United States or organized to do business in the United States, as well as international organizations, foreign governments, and any agency or subdivision of a foreign government (e.g., diplomatic mission).

Fundamental Research: ITAR defines Fundamental Research under the definition of Public Domain in 22 CFR 120.11 (a)(8): Public domain means information which is published and which is generally accessible or available to the public…through fundamental research in science and engineering at accredited institutions of higher learning *in the U.S.* where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if: (i) the University or its researchers accept restrictions on publication of scientific and technical information resulting from the project or activity, or (ii) the research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

The EAR defines Fundamental Research in part 734.8 (c): Fundamental research means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

Restricted Party Screening: The federal agencies responsible for administration of export control regulations maintain lists of restricted or prohibited parties. In the event that a transaction or activity involves a party (company, entity, or person) appearing in one of the lists, additional due diligence must be conducted before proceeding with the activity or transaction. Depending on the list, there may be a strict export prohibition, specific license requirements, or presence of a "red

---

[1] List of embargoed countries may change. Contact URCO for up-to-date information
[2] Under 8 U.S.C. 1324b (a) (3) Protected Individual includes a person who is admitted as a refugee or granted asylum.

flag." Restricted Party Screening helps in determining if a party to a transaction appears in any of the lists.

Technology: Information necessary for the "development," "production," "use," operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in ECCNs on the CCL that control "technology") of an item.

Statement of Commitment

Export Controls Compliance Program

Kansas State University is committed to its mission of fostering excellent teaching, research, and service that develop a highly skilled and educated citizenry necessary to advance the well-being of Kansas, the nation, and the international community. As we fulfill this mission, we also recognize the responsibility that we have to comply with U.S. federal government laws and regulations that have a bearing on our research and academic activities.

U.S. export controls laws that regulate the export of certain commodities and technologies intersect with several research and academic activities such as conducting sponsored research, engaging in international collaborations, international travel, and the visiting scholars' program, among others. These regulations include the International Traffic in Arms Regulations (ITAR) administered by the Department of State, the Export Administration Regulations (EAR) administered by the Department of Commerce, and economic and trade sanctions implemented through the Office of Foreign Assets Controls (OFAC) at the Department of Treasury.

Complying with legal requirements is vital. It is equally important that we continue to maintain an open research environment that welcomes the participation of researchers from around the world as part of our mission. K-State is committed to compliance with U.S. export controls laws and regulations by implementing and maintaining an effective Export Controls Compliance Program (ECCP). The overarching objective of the ECCP is to reduce individual and institutional risk and to foster a culture of compliance by providing necessary support, information, and tools to departmental units, employees, and students.

All K-State faculty, staff, and students must be aware of how export controls relate to their work and the University offers training to explain that. As part of our education and training programs, it is vital that we prepare our students for the workforce where Export Controls and information management will be core competencies for those involved in research and development. Violations of the export control laws may give rise to personal liabilities, both civil and criminal, as well as institutional liabilities and penalties. The University Research Compliance Office is responsible for implementation the ECCP at K-State and is available to give guidance and support to departments, faculty, and staff. Questions should be directed to the University Research Compliance Office, exportcontrols@k-state.edu, phone 785-532-3224.

Richard B. Myers
President

Charles S. Taber
Provost & Executive
Vice President

Peter K. Dorhout
Vice President for Research

1. **Introduction**

   Export controls refer to U.S. federal laws and regulations that regulate the export of certain items and technology, based on U.S. national security interests and foreign policy objectives. These regulations include, but are not limited to, the International Traffic in Arms Regulations (ITAR)[3] administered by the Department of State, the Export Administration Regulations (EAR)[4] administered by the Department of Commerce, and economic and trade sanctions implemented through the Office of Foreign Assets Controls (OFAC),[5] the Department of the Treasury.

   Export control regulations intersect with several research and academic activities such as conducting sponsored research, engaging in international collaborations, international travel, and visiting scholars' program. Noncompliance with export controls regulations carries severe individual and institutional penalties, including criminal and civil liability, loss of research funding, and loss of export privileges.

   Kansas State University ("K-State") is committed to complying with U.S. export control laws and regulations. The K-State export controls compliance program (ECCP) is aimed at reducing the institutional and individual risk of export controls violations by providing necessary support, information, and tools to departmental units, employees, and students.

   This manual outlines the ECCP at K-State. Export control laws and regulations are complex and are revised and updated constantly, hence information provided in this manual is not by any means comprehensive and should not be relied upon solely. Please contact URCO at exportcontrols@ksu.edu or call 785-532-3224 for more information.

2. **Export Control Exclusions**

   The majority of research and academic activities that take place in a university setting are not subject to export control regulations. In particular, the following exclusions may apply:

   2.1 Fundamental Research Exclusion (FRE)

   There is slight variation in how fundamental research is defined under ITAR and EAR (see the definitions section), but in general, fundamental research refers to research in science and engineering conducted in the United States at an institution of higher learning and whose results will be published and shared broadly with the scientific community. FRE is voided if a researcher signs an agreement with certain restrictions, including Material Transfer Agreements (MTAs) and Non-disclosure Agreements (NDAs), with provisions that restrict the publication of the results of the research or restricting who can participate in the research. It is important that researchers do not enter into side agreements with sponsors without routing the agreement through PreAward Services (PAS) for review.

---

[3] The International Traffic in Arms Regulations (ITAR) 22 CFR 120--130 can be found at
https://www.pmddtc.state.gov/?id=ddtc_kb_article_page&sys_id=24d528fddbfc930044f9ff621f961987

[4] The Export Administration Regulations (EAR) 15 CFR 730-777 can be found at
https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear

[5] Economic and Trade Sanctions administered by OFAC, Treasury Department (31CFR 500-599) can be found at
https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx

FRE applies only to information and not to physical material. For example, if export controlled biological material is used in conducting fundamental research, the biological material remains controlled, even though the research results might be excluded from export controls.

2.2 Public Domain Exclusion

Information that is published and which is generally accessible or available to the public is not export controlled. Some publicly available encryption software remains subject to export controls regulations. Additionally, the exclusion does not apply if there is reason to believe that information might be used for a prohibited end use, such as production of weapons of mass destruction. Information is published when it is made available to the public without restrictions, including through:

- Subscriptions available without restrictions.
- Libraries open and available to the public.
- Unlimited distribution at conferences.
- Public dissemination in any form including on public internet.
- Submission with intent to be made public, such as
    - To co-authors, editors, reviewers etc.
    - To researchers conducting fundamental research.
    - To organizers of open conferences.

2.3 Educational Information Exclusion

Information released in academic catalog-listed courses or in teaching labs is excluded from export controls. This exclusion allows faculty or other teaching staff to release information that may otherwise be export controlled to all students in the U.S. regardless of their citizenship. Online courses are included in this exclusion, but limitations apply to persons who may wish to take an online course while located in an embargoed country. This restriction is due to OFAC regulations, which prohibit exportation of services to embargoed destinations. There are, however, general licenses that may apply to specific education-related services to Foreign Persons located in embargoed countries. Please contact URCO for specific guidance relating to education services to nationals of embargoed countries.

3 Key Individuals and Offices Responsible for Compliance

ECCP at K-State takes the form of a hybrid system, with certain compliance activities and review processes centralized under the University Research Compliance Office (URCO) while others are performed by other offices in coordination with URCO.

3.1 Vice President for Research 532-5110

The Vice President for Research (or designee) is the Empowered Official for all purposes related to federal export laws and regulations. The Empowered Official is responsible for authorizing license applications and other approvals required for compliance with export control laws and regulations and requests including those under the Directorate of Defense Trade Controls (DDTC), the Bureau of Industry and

Security (BIS), and the Office of Foreign Assets Control (OFAC). The Empowered Official serves as K-State's representative and point of contact with federal agencies having export control jurisdiction. The Empowered Official is the K-State official authorized to bind K-State in any proceedings before government agencies with export control responsibilities and has final responsibility for compliance with export control laws and regulations.

3.2 University Research Compliance Office. 532-3224

The University Research Compliance Office is responsible for the development, implementation, monitoring, and coordination of the ECCP. URCO supports the University's academic and business units in assessing their export controls compliance obligations and in developing compliance procedures. URCO is responsible for monitoring required training in coordination with academic departments and other units.

3.3 Office of Pre-Award Services   532-6804

The Office of Pre-award Services (PAS) provides a full range of assistance to faculty, staff, and administrators in obtaining and administering funding from non-university sources to support K-State's creative and scholarly activities.

3.4 Export Controls Strategic Working Group (ECSWG)

The ECSWG draws representation from units/offices that are most affected by export controls regulations as well as from a variety of colleges. The ECSWG was created to ensure collaboration and coordination between the URCO and K-State entities potentially affected or impacted by new SOPs, policies, or other requirements.

3.5 Individual Responsibility

The Export Controls Compliance Program at K-State is designed to support K-State employees, students, and departmental units to comply with the export controls laws and regulations of the U.S. federal government. All K-State faculty, staff, and students must be aware of how export controls relate to their work. Certain employees with supervisory or administrative responsibilities that intersect with export controls are responsible for overseeing export control compliance functions in the area of their respective responsibilities. Mandatory export training is required for these employees (see Section 13). They include:

- Those with managerial or supervisory responsibilities over foreign persons.
- Principal Investigators responsible for export controlled research activities.
- Employees hosting International Visitors.
- Employees engaging in international research activities and travel.

4   Commodity Jurisdiction and Classification

Export controlled items relevant to K-State research will likely fall under either of two jurisdictions: the U.S. Departments of State, which administers the ITAR or the Department of Commerce, which administers the EAR.

ITAR covers defense articles (items and technical data) and defense services as enumerated in the U.S. Munitions List (USML). Items enumerated under the USML are grouped into 21 categories –see Appendix I. A complete list of articles, services, and related technical data designated as defense articles can be found in 22 CFR Part121.

The EAR covers dual-use and commercial items. The Bureau of Industry and Security (BIS), Department of Commerce, maintains the Commerce Control List (CCL). The CCL includes items (i.e., commodities, software, and technology) subject to the export licensing authority of BIS. The CCL is divided into 10 categories within which items are arranged by group (see Appendix I). A complete listing of all items enumerated on the CCL can be found in Supplement 1 to Part 774 of EAR. If an item falls under the jurisdiction of the U.S. Department of Commerce and is not listed on the CCL, it is designated as EAR99. The majority of commercial products are designated EAR99 and generally will not require a license to be exported or reexported. However, a license may be required to export an EAR99 item to an embargoed or sanctioned country, to a party of concern, or in support of a prohibited end-use.

The first step in determining export control obligations is to determine which regulation applies to a given item or activity. If uncertainty exists as to whether the item or service is subject to the export licensing authority of the Department of State, a commodity jurisdiction (CJ) must be requested from the Directorate of Defense Trade Controls (DDTC). DDTC is the licensing agency for exports subject to the ITAR. A CJ determination identifies the proper licensing authority for an item, but is not a license or approval to export.

URCO submits CJs on behalf of researchers and departments. URCO also works with vendors and researchers as appropriate to determine export classification when necessary. In cases where classification cannot be determined through self-classification or obtained from a vendor, URCO will request a classification by filing a commodity classification request with the BIS.

5   Export Controls Red Flags

The BIS, Department of Commerce, has a checklist that exporters can use to discover possible export controls concerns. The list can be found here BIS Red Flag Indications. In addition, the following are indicators that an export control review is necessary:

a) The sponsor indicates that the research is export controlled or is classified.
b) The results of the research are intended for military purposes or for other restricted end uses or users.
c) Foreign Persons will have access to controlled technology or technical data on campus.
d) K-State faculty or staff will export or travel abroad with research equipment, chemicals, biological materials, encrypted software, or other export controlled items, or travel abroad with laptops, cell phones, or PDAs containing export controlled information.
e) A proposed activity or transaction will involve embargoed countries or entities, individuals/entities located in embargoed countries, or who are on prohibited or restricted end-user lists, as determined by RPS.

f) The sponsor requires pre-approval rights over publications or the participation of Foreign Persons.

g) The project requires the shipping of equipment, chemical, or biological materials to a foreign country.

h) The agreement contains a Controlled Unclassified Information (CUI) clause.
(e.g. DFARS 252.204-7012)

6 Research and Other Research-Related Agreements

For the most part, information and data generated or used in research at K-State is excluded from export controls based on the Public Domain Exclusion of the Fundamental Research Exclusion (FRE). The benefits of these exclusions can, however, be lost if a research-related agreement includes certain provisions. Entering into agreements (informal or otherwise) that restrict participation of Foreign Persons in research for instance can void the FRE. Additionally, it is important to remember that restrictions and prohibitions under the Office of Foreign Assets Control (OFAC) apply to interactions with certain individuals, entities, or countries and are not affected by the ITAR or the EAR. Notably, interactions involving individuals or entities from Embargoed Countries are severely restricted.

6.1 Contract Provisions of Concern

The presence of certain provisions in research agreements or subcontracts, Material Transfer Agreements (MTAs), Non-Disclosure Agreements (NDAs), or other research related agreements, if not negotiated away can void the FRE and/or render the research export controlled. These provisions include:

a) Sponsor maintaining the right to restrict or approve publication or release of research results, beyond standard customary delay required to protect sponsor's confidential information or to allow for filing of patent application.

b) The sponsor will own research data and/or other research results.

c) Statements indicating that the research is export controlled.

d) Incorporation by reference of Federal Acquisition Regulations (FARs), agency-specific FARs, or other federal agency regulations, which impose specific controls on access to, or dissemination of, research results. See Appendix II for examples of U.S. government access and dissemination controls.

e) Restrictions on, or prohibitions against, the participation of research personnel based on citizenship or national origin.

f) Statements that the sponsor anticipates providing export-controlled items or information for use in connection with the research.

g) The research project will involve the use of export-controlled items or technical information obtained from a third party.

h) The research will take place outside the United States.

i) There is a Controlled Unclassified Information clause (e.g., DFARS 252.204-7012).

6.2 Review of Research and Research Related Agreements

The Sponsored Projects Transmittal Sheet includes a section on export controls compliance, which is completed by the Principal Investigator (PI). The checklist flags potential export controls issues that may be associated with the research. PAS prescreens all research and research related agreements using the Export Controls Review Sheet (Appendix III) to identify export controls related concerns. When an export control concern is identified, the agreement is referred to URCO for review and resolution as appropriate. The research or research related agreement may be finalized only after all export control concerns have been resolved. PAS also conducts Restricted Party Screening of all parties to an agreement.

6.3 Resolving Export Control Issues

URCO works with the PIs and/or departments as appropriate to resolve the export compliance issue. URCO review includes:

a) determining if work under proposed research will require a license or other authorization from OFAC, BIS, DDTC, or other federal agency;

b) determining if a license exemption, exception, or general license applies to export controlled research activities; or

c) determining if a Technology Control Plan (TCP) is necessary to prevent an unauthorized deemed export of controlled technology from occurring.

6.3.1   Licenses

If URCO determines that an export license or other authorization from DDTC, BIS, OFAC, or other federal regulatory agency is required, URCO will work with the PI and other parties as appropriate to gather information needed to request a license or other authorization. The Empowered Official or designee will submit the request for the license/authorization from the cognizant federal agency. No work or other activity for which a license or other authorization is sought may commence until said license or authorization has been granted.

6.3.2   License Exceptions

There are several license exceptions, exemptions, and general licenses (license exceptions) available under the export regulations. In general, when an exception is available, the export controlled activity or transaction does not require a specific license from the relevant federal agency. License exceptions include conditions that must be met for the exception to apply, including reporting obligations to the relevant federal agency and record keeping. If URCO determines that a license exception applies to export controlled work, URCO will work with PI and other parties as appropriate to document the applicability of the license exception.

6.3.3   Technology Control Plans

A TCP is essential in preventing unauthorized access and/or use of export controlled information, items, technology, or software. When URCO review determines that a TCP is necessary, URCO will work with the PI and the relevant

department to develop the TCP. A template of a TCP is included in this Manual as Appendix IV. A TCP includes:

a)   a statement of commitment to comply with export control regulations,
b)   identification of the export controlled activity or project,
c)   clear identification of the controlled item(s), and identification of the export classification or category, and the reasons for control,
d)   security measures, including physical IT security plans,
e)   identification of authorized personnel,
f)   personnel screening measures and training, and
g)   monitoring and evaluation.

A TCP is a dynamic document that is continually updated to reflect changes in research programs such as personnel changes, inclusion of new export controlled technology, change in location, etc. The PI is responsible for briefing research personnel of the provisions of the TCP and informing the URCO of any change in the research project.

7   Innovation Disclosures and Commercialization Activities

Commercialization of innovations is a multistep process involving disclosure of innovations; evaluation of innovations to determine patentability, marketability and intellectual property (IP) protection strategy; IP protection; marketing, and commercialization. Export controls regulations can impact commercialization activities, including the ability to market certain technologies to prospective licensees and to export technical data, software, source code, or technical services. K-State has established SOP for identification and evaluation of export control issues associated with disclosure of innovations and commercialization. See Appendix XI, *Export Controls Compliance Review for Activities Related to Innovations' Disclosure and Commercialization.*

8   Specialized Facilities

8.1 Biosecurity Research Institute

The BRI is a unique biocontainment research and education facility where research addressing threats to plant, animal, and human health is conducted. Researchers at the BRI perform multidisciplinary research on multiple pathogens, many of which are classified by the U.S. government as Select Agents. These biological organisms are export controlled. Sponsored research conducted at the BRI is reviewed for export controls compliance as detailed in Section 6 above. Enrolment of research personnel wishing to conduct research at the BRI includes restricted party screening. Similarly, visitors to the BRI are screened for export controls compliance. Additionally, URCO works with BRI to review transfer of research material from the BRI and to procure licenses when necessary.

8.2 Electronic Design Lab (EDL)

EDL is an in-house design service for KSU researchers. EDL provides researchers with access to advanced electronics, assists with integrating electronics technology into research programs, and aids in electronics technology transfer to users by providing ongoing

technical support. EDL capabilities include electronics design and construction, digital design and software development, testing and debugging as well as wirebonding and microchips. Research conducted at EDL is often export controlled under ITAR or EAR and may involve use of export-controlled items (commodities, software and/or technology). The facility is covered by a facility-wide TCP that lists current projects, control measures, and personnel. The TCP is updated on an ongoing basis to reflect changes in research projects, control measures or personnel. The facility director is responsible for implementation of the TCP.

8.3 TRIGA Mark II Nuclear Reactor

The Kansas State University TRIGA Mark II Nuclear Reactor Facility supports academic and education programs, research, industrial service, and outreach. Students in the MNE nuclear option utilize the reactor in two laboratory classes, and as a neutron and gamma source for a radiation-detection course. The facility falls under the oversight of the Nuclear Regulatory Commission and adheres to strict rules and regulations regarding access, security, operations, and other requirements.

9 Visitors on Campus

As a research and education institution, K-State routinely hosts visitors who come to the University for various reasons, including conducting research, participating in research collaboration, and participating in general academic and scientific meetings or presentations. Foreign Persons who are not employed or enrolled as students, and who come to K-State as visitors on the basis of a verbal or written invitation made by a K-State faculty member, researcher, or administrator, may be subject to U.S. export controls regulations, depending on the purpose of the visit. Examples include, but are not limited to, when the research that a visitor will participate in cannot be categorized as fundamental research; when the visitor will have access to export controlled information or technology; when the visitor will participate in research or activity that is subject to a TCP; when the visit includes access to secure facilities; when the visitor is a national of a sanctioned or embargoed country; or when the visitor or the institution they are affiliated with appears in any of the restricted/prohibited parties' list.

9.1 Procedures for Reviewing Visiting Scholar

9.1.1   Host

K-State employees intending to invite or host international visitors should follow the approval process required by their department or college as appropriate. In addition, the host must complete Form EC 001 *Export Control Compliance Review –International Visitors and Non-immigrant Employees,* Appendix V, and route it to URCO through the appropriate office in the department. The visitor may not engage in proposed activities or have access to export controlled information, technology, or a secure facility before the export control review process is completed and the host has been notified in writing by URCO.

9.1.2   URCO

URCO uses the information provided by the host and/or department to screen activities for export controls compliance. The review includes conducting

Restricted Party Screening (RPS) of the visitor and their institute of affiliation against restricted/prohibited parties lists. If URCO determines that an export license or other authorization from DDTC, BIS, OFAC, or other federal regulatory agency is required, URCO will work with the hiring supervisor and/or department as appropriate to gather information needed to request for license or other authorization.

The Empowered Official or designee will submit the request for license/authorization from the cognizant federal agency. No work or other activity for which a license or other authorization is sought may commence until said license or authorization has been granted.

Once the review is completed, URCO notifies the host and/or department and the International Student and Scholar Services (ISSS) for processing or other action as appropriate. Detailed procedures for reviewing international visitors can be found in SOP –*Export Control Compliance Review for International Visitors and Non-immigrant Employees,* Appendix VI.

9.1.3   Exempt Activities

Export control review is not required if no honorarium or reimbursement of expenses will occur and if the visit is for purposes of meeting with colleagues to discuss a research project or collaboration where no export controlled information or technology is exchanged; touring labs or research facilities that are not otherwise restricted; or participating in general academic or scientific meetings or presentations (seminar visits).

10 Personnel Related Export Compliance Reviews

When technology is released to a Foreign Person, it is 'deemed' to have been exported to the person's country or countries of origin. Technology is released when it is made available to a Foreign Person in the form of visual inspection such as reading technical specifications, plans, blue prints, etc., verbal or oral exchange, or by practice or application under guidance of a person with knowledge of the technology. Thus, Foreign Persons authorized to work in the U.S. are subject to export control regulations. Prior to extending an offer for employment, volunteering, or internship, the hiring supervisor (or responsible University personnel, as applicable) must carefully consider if the proposed employment/arrangement will involve deemed exports. An export license may be required if the technology to be released to the Foreign National would not be exported to their country of citizenship without authorization.

Additionally, supervisors and departments filing Form I-129, *Petition for a Nonimmigrant Worker* with the U.S. Citizenship and Immigration Services' (USCIS) should be aware of the attestation regarding release of controlled technology or technical data to Foreign Persons. It requires petitioners to indicate whether a license is required from either the Department of Commerce (DOC) or the Department of State (DOS) to release the technology or technical data to the beneficiary of the petition. If a license is required, the petitioner must certify that the beneficiary will not access such technology or data until the license has been obtained.

10.1 Procedures for Non-immigrant Employees

10.1.1 Hiring Supervisor and/or Department

Hiring supervisors must:

a) Review the job description/duties.
b) Review the EAR/Commerce Control List and the ITAR/U.S. Munitions List and determine if the technology or technical data to be released to the employee is controlled under the EAR and/or the ITAR.
c) Review research and research related agreements (if any) for restrictions.
d) Complete Form EC001 *Export Control Compliance Review – Vising Scholar and Non-immigrant Employee* Appendix V, and route it to URCO through the relevant office within the department.

10.1.2 URCO

URCO supports the hiring supervisor and/or department with making a determination whether a deemed export license is required and in making the USCIS deemed attestation, using the information provided by the hiring supervisor/department. The review includes conducting a RPS of the proposed employee. If a deemed export license or other authorization is required, URCO follows the procedure outlined in 8.1.2 above.

Once the review process is completed, URCO notifies the hiring supervisor, department, and the International Student and Scholar Services (ISSS) for visa processing or other action as necessary. Detailed procedures for reviewing international visitors can be found in *SOP –Export Control Compliance Review for International Visitors and Non-immigrant Employees* Appendix VI.

11 International Travel and Related Activities

K-State employees often travel internationally for research, fieldwork, course instruction, conferences, or other related activities on behalf of K-State. While most activities are not export controlled and would fall within export controls exclusions, some may be restricted or prohibited based on export control restrictions applicable to the country of destination.

International collaborations are reviewed as detailed in Section 6, *Review of Research and Research Related Agreements,* above.

Export control regulations may restrict or prohibit some travel related activities or destinations, and/or may require licenses for others. A summary of export controls issues related to international travel is included in this Manual as Appendix VII, *Export Control Basics – International Travel*. Additional information on travel is available on the ECCP website https://www.k-state.edu/comply/ecp/travel/index.html. Prior review and approval by the URCO is required for all activities involving embargoed or sanctioned countries.

11.1 Traveling with University and Personal Equipment

Travel with K-State equipment for university business will often qualify for a license exception *Temporary Imports, Exports, Reexports, and Transfers* (TMP). A TMP

license exception allows the traveler to take university property out of the U.S. provided the item is kept under the traveler's effective control and brought back to the U.S. within a year of the departure date. However, TMP license exception may NOT apply in some cases. Equipment such as global positioning systems (GPS), thermal imaging cameras, inertial measurement units, and specialty software may require an export license, even when it is hand carried. Travelers should complete a *TMP Certification*, Appendix VIII to document application of the TMP license exception.

Personal items including personal laptops, tablets, or cellphones can be taken under the license exception Baggage (BAG). Travelers should document application of the BAG exception using *BAG Certification*, Appendix IX.

12 Financial Transactions and Procurement

The Division of Financial Services performs restricted party screening of all vendor accounts at the time of setting up accounts. All purchasing contracts require vendors to notify Financial Services when items at issue are export controlled prior to provision of the items. The university may decline to accept any items or information

13 Records Keeping

Export controls regulations contain detailed stipulations regarding what records must be retained and for how long – see 15 C.F.R. Part 762 (EAR); 22 C.F.R section 122.5, 123.22 and 123.26 (ITAR) and 31 CFR 501.601 (OFAC). K-State records related to export controlled activities or transactions will be kept for the longer of the retention period required by the applicable regulation or the retention period required by K-State.

Records that should be retained include all memoranda, notes, correspondence (including emails), financial records, shipping documentation, and other information related to the export activities. When a license exemption or exception is used, the person making that determination must document that an exception or exemption is available and retain all records as stipulated in this section. Additional reporting to the relevant federal agency may be required. URCO should be contacted for specific guidance.

Persons and departments conducting RPS are expected to maintain documentation of screening results, including how 'hits' are resolved or discounted.

14 Export Control Training and Outreach

Recognizing that training is a key part in creating and maintaining a culture of compliance, K-State developed and implemented a university-*wide Export Controls Compliance Training Plan*, Appendix X. K-State maintains a subscription to online export controls training courses offered through CITIProgram (citiprogram.org). To minimize the risk for our faculty, students, and staff, export controls training is required for certain categories of employees, as detailed in the training plan. In addition, URCO conducts tailored export controls training and presentations for K-State faculty and staff.

15 ECCP Monitoring Plan

The Export Controls Compliance Program takes the form of a hybrid system, with certain compliance activities and review processes centralized under the URCO, while others are performed by other offices in coordination with URCO. To ensure compliance, URCO will conduct or coordinate the following monitoring activities:

15.1   Risk Assessment and Gap Analysis of the Program

15.2   Annual review of activities covered by existing TCPs, in addition to self-audits by the Principal investigators/Responsible Individual and ongoing updates on a need-to basis.

15.3   Review of existing export licenses and/or other authorizations

15.4   Review of restricted party screening activities

15.5   Monitoring training completions on ongoing basis

The detailed ECCP Monitoring Plan can be found in Appendix XII of this Manual.

16 Reporting Possible Violations

It is the responsibility of each employee to report possible violations of export controls regulations. These should be reported to the Empowered Official or designee, or to the URCO exportcontrols@ksu.edu, phone 785-532-3224. URCO will work with applicable University offices to look into suspected violations and determine the appropriate course of action.

17 Disciplinary Action

Violation of export controls carries severe institutional as well as individual penalties. These include loss of export privileges, civil and criminal penalties including imprisonment, and loss of research funding. Additionally, persons at the University who fail to follow the University's policies and procedures regarding export controls are subject to disciplinary action in accordance with University policies.

Appendices

Appendix I

U.S. Munitions List and the Commerce Control List Categories

International Traffic in Arms Regulations (ITAR) U.S. Munitions List (USML)
> Category I—Firearms, Close Assault Weapons and Combat Shotguns
> Category II—Guns and Armament
> Category III—Ammunition/Ordnance
> Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
> Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents
> Category VI—Surface Vessels of War and Special Naval Equipment
> Category VII—Ground Vehicles
> Category VIII—Aircraft and Related Articles
> Category IX—Military Training Equipment and Training
> Category X—Personal Protective Equipment
> Category XI—Military Electronics
> Category XII—Fire Control, Laser, Imaging, and Guidance Equipment
> Category XIII— Materials and Miscellaneous Articles
> Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
> Category XV— Spacecraft and Related Articles
> Category XVI—Nuclear Weapons Related Articles
> Category XVII—Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated
> Category XVIII—Directed Energy Weapons
> Category XIX—Gas Turbine Engines and Associated Equipment
> Category XX—Submersible Vessels and Related Articles
> Category XXI—Articles, Technical Data, and Defense Services Not Otherwise Enumerated

Export Administration Regulations (EAR) Commerce Control List (CCL)
> Category 0 - Nuclear Materials Facilities & Equipment [and Miscellaneous Items]
> Category 1 - Materials Chemicals Microorganisms and Toxins
> Category 2 - Materials Processing
> Category 3 - Electronics Design Development and Production
> Category 4 - Computers
> Category 5 Part 1 - Telecommunications
> Category 5 Part 2 - Information Security
> Category 6 - Sensors and Lasers
> Category 7 - Navigation and Avionics
> Category 8 - Marine
> Category 9 - Aerospace and Propulsion

> Product Group
> A. Systems, equipment and components
> B. Test, inspection and production equipment
> C. Material
> D. Software
> E. Technology

Alphabetical Index of items on the CCL is available here https://www.bis.doc.gov/index.php/forms-documents/regulations-docs/13-commerce-control-list-index/file

Appendix II

Specific U.S. Government Access and Dissemination Controls

Specific access and dissemination controls may be buried within the language of FARs, Defense Federal Acquisition Regulations (DFARs), and other agency-specific regulations included as part of a prime contract, or flowed down in a subcontract. These clauses include, but are not limited to:

(a) FAR 52.227-14 Rights in Data – General
Grants the Government unlimited rights in data first produced or delivered under the contract. Government approval is required to assert copyright in data first produced in the performance of the contract and not published in academic, technical or professional journals, symposia proceedings, or similar works. For basic or applied research, suggest requesting Alternate IV to lift this restriction. Alternate IV provides the Contractor with the right to copyright data without Government permission.

(b) FAR 52.227-17 Rights in Data – Special Works
Prevents the release, distribution, and publication of any data originally produced for the Government's internal use and represents an absolute restriction on the publication or dissemination of contractor-generated data. It should not apply to basic and applied research and should be removed from the contract on the basis of exceptions to this clause's applicability. Refer to FAR 27.405-1 (a).

(c) DFARS 252.204-7000 Disclosure of Information
States, "Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract." Three exceptions apply: (1) if the contracting officer has given prior written approval; (2) where the information is already in the public domain prior to date of release; (3) if the research is determined in writing to be fundamental research by the Contracting Officer. Refer to 27.404-2& (3) and NSDD-189 as justification for getting the restriction removed. Also, can refer to IRS Ruling 76-296. May also add alternate language that allows for review and comment on publications.

(d) DFARS 252.225-7048 Export –Controlled Items
States, "The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR." May have to require the PI to certify that the project does not involve any items that are subject to Export Control Laws.

(e) (e) ARL 52.004-4400 (Approval of Foreign Nationals)

All Foreign Nationals must be approved before beginning work on the project. Contractor is required to divulge if any Foreign Nationals will be working on the project. Provision of name, last country of residence, citizenship information, etc. is required. This clause is commonly found in contracts involving Controlled Technology and sponsored by military agencies. May need to require the PI to certify that no Foreign Nationals will be working on the project. If no Foreign Nationals will be employed on the project, Contractor may disregard this clause. If the PI is doing basic research and the sponsor will take those results and work on the controlled technology at another location, may be able to delete this clause.

(f) ARL 52.005-4401 (Release of Information)
Includes reference to "non-releasable, unclassified information" and a requirement to "confer and consult" prior to release of information. It is unclear what the review entails. Therefore, the sponsor retains publication/information approval, which voids the FRE. Substitute with ARL Cooperative Agreement Language: Prior Review of Public Releases, "The Parties agree to confer and consult with each other prior to publication or other disclosure of the results of work under this Agreement to ensure that no classified or proprietary information is released. Prior to submitting a manuscript for publication or before any other public disclosure, each Party will offer the other Party ample opportunity (not to exceed 60 days) to review such proposed publication or disclosure, to submit objections, and to file application letters for patents in a timely manner."

(g) AFMC 5352.227-9000 (Export-Controlled Data Restrictions)
Requires an export license prior to assigning any Foreign National to work on the project or allowing Foreign Nationals access to the work, equipment, or technical data generated by the project. Foreign Nationals make up a large portion of TAMU's scientific undergraduate, graduate, post-doctoral, and visiting scholar population. Often, it is difficult to find qualified U.S. citizens to work on these projects. Also, many students depend on these projects to complete their thesis or dissertation. Need to ask the PI if the project is basic or applied research. If yes, foreign students of any nationality would be allowed to work on the project without first obtaining an export license. If yes, obtain confirmation in writing.

(h) DFARS 252.204-7012 (Controlled Unclassified Information)
Requires the security requirements described in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations, http://dx.doi.org/10.6028/NIST.SP.800-171 to protect controlled unclassified information (CUI) on non-Federal information systems. For full text see (http://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm).

KSU EXPORT CONTROL REVIEW SHEET

PI(s) /Department _____
Project Title _____
Proposal (PADS)/Award # _____
Sponsor _____

PART I: Agreement and Transmittal Sheet Review (To be completed by PreAward Services)

Does the Agreement or Transmittal Sheet contain proposed activities or information that:

a. includes project tasks or technologies that are subject to U.S. export regulations? (See transmittal sheet, section 11) Yes ☐ No ☐

b. restricts non-U.S. entity participation based on country of origin? Yes ☐ No ☐

c. prohibits access by non-U.S. citizens to project information? Yes ☐ No ☐

d. prohibits the hiring of non-U.S. persons? Yes ☐ No ☐

e. could involve technologies or information from another entity protected under current Material Transfer Agreements or Confidentiality Agreements assigned to any project personnel. (See transmittal sheet, item 9.d.) Yes ☐ No ☐

f. grants the Sponsor a right to prepublication review and approval for matters other than the inclusion of patent and/or proprietary sponsor information? Yes ☐ No ☐

g. allows the Sponsor to claim resulting information as proprietary or trade secret?* Yes ☐ No ☐

   (1) Is this a Testing & Evaluation Agreement where no R&D is being conducted and K-State retains right to publish, academic use license, and ownership of its testing methods?* Yes ☐ No ☐

h. categorizes the research as classified? Yes ☐ No ☐

Comments: _____

Completed by: _____ _____
              Printed Name of PreAwards Administrator   Date

IF ANY OF THE QUESTIONS ABOVE ARE "YES," THE PREAWARDS ADMINISTRATOR WILL NOTIFY URCO AND THE PI VIA EMAIL
*Exception: if item g(1) is checked 'Yes', Reviewer may disregard any 'Yes' entry on item g.

PART II: TECHNICAL REVIEW – NOTICE TO PRINCIPAL INVESTIGATOR

TO ALL PRINCIPAL INVESTIGATORS:
It has been determined that the sponsored proposal or agreement for the project/activity identified above may contain provisions that require compliance with export control laws and regulations that are issued by the U.S. Department of Commerce and/or Department of State. The sponsored agreement has been referred to the University Research Compliance Office (URCO) for further review and determination. The URCO will work with the Principal Investigator to determine:

a. if there is need to apply for an export license or other authorization
b. if an exclusion or a license exception is available
c. if a Technology Control Plan (TCP) will be necessary to prevent unauthorized deemed export of technology from occurring

PART III: TO BE COMPLETED BY URCO

a. a license is required for project /activities
b. a license is not required for project/activities
c. a technology control plan is required and has been put in place. TCP #_____

Comments: _____

Completed by: _____ _____
              University Research Compliance Office   Date

University Research Compliance Office: comply@ksu.edu, 785-532-3224
              Rose Ndegwa: rndegwa@ksu.edu, 785-532-3546

Appendix IV

Technology Control Plan (TCP)

Kansas State University (K-State) is committed to export control compliance. All K-State employees and students are responsible for the export control implications of their work. They must be aware of, and must ensure that their activities conform to, export control laws and regulations. Non-compliance carries severe institutional and individual consequences, including the loss of research funding, loss of export privileges, and/or criminal and civil penalties.

This project/activity involves or has the potential to involve the receipt and/or use of export-controlled information, items, technology and/or software. As a result, the project/activity comes under the purview of either the State Department's International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130) or the Department of Commerce's Export Administration Regulations (EAR) (15 CFR Parts 730 -774).

It is unlawful under the EAR or ITAR to send or take export-controlled items (including technical information, data, products, software, hardware, biological and chemical materials) out of the United States without proper authorization. This includes disclosing information orally or visually, or transferring export-controlled items or information to a foreign person inside or outside the U.S. without proper authorization. Under the ITAR or the EAR, an export license may be required for foreign nationals to access export-controlled information, items, technology, or software. A foreign person is a person who is not a U.S. citizen, a U.S. permanent resident or a person who is protected under the U.S. refugee and asylum status. The law makes no exceptions for foreign graduate students.

A Technology Control Plan (TCP) is essential in preventing unauthorized access and/or use of export-controlled information, items, technology, or software. This document serves as a template for the elements of a TCP and the safeguard mechanisms to protect against unauthorized access or use. In some cases, additional security measures and safeguards may be necessary depending on specific circumstances. Contact the University Research Compliance Office (URCO) at 785-532-3224 or comply@k-state.edu for assistance in completing this form.

Steps for establishing a Technology Control Plan:

- **Step 1**: The Principal Investigator or Responsible Individual (PI/RI) develops a TCP in coordination with the University Research Compliance Office (URCO). URCO will conduct restricted party screening of all proposed participants and advise the PI/RI as necessary.

- **Step 2**: PI/RI seeks the approval of the plan by the department head and the URCO.

- **Step 3**: PI/RI reviews the TCP with all participants who will access export-controlled information, items, technology, or software. All participants must clearly be identified in the TCP. Each participant must execute the *Technology Control Plan Briefing and Certification*[1]. The PI/RI will submit all signed documents (TCP and Briefing and Certification) to URCO and retain a copy in their file.

- **Step 4**: PI/RI must periodically review the TCP as per the Self Evaluation Program stipulated in this TCP. It is the responsibility of the PI/RI to notify URCO of any anticipated changes to the TCP (e.g., personnel, scope of work, safeguards, etc.).

- **Step 5**: Record keeping – all records relating to the TCP must be retained for at least five (5) years from the date this TCP is no longer necessary to protect the information. Records will be maintained in accordance with K-State record retention policy , and 15 C.F.R., Part 762 (EAR); 22 C.F.R. §§122.5, 123.22, and 123.26 (ITAR); and 31 C.F.R. §501.601 (OFAC)**.**

---

[1] Technology Control Briefing and Certification is attached to this template.

Technology Control Plan (TCP)

Title of Sponsored Project/Activity:

Principal Investigator/Responsible Individual (PI/RI): _____

Work Address: _____

Phone: _____   E-mail: _____

---

1. Describe project, activity or equipment subject to TCP:

   Identified Export Controls Classification Number (ECCN) or ITAR Category if known or applicable:

   Reason(s) for Control:

2. **Briefing Requirement:** The Principal Investigator/Responsible Individual is required to brief all participants on the requirements of this TCP.

3. **Authorized Personnel:** Clearly identify every person who may have authorized access to the controlled information, item, technology, or software by giving their full legal name and citizenship(s). Attach additional sheets if necessary.

Full name	Citizenship(s)	Date of Export Control Training

4. Any change in personnel will require an amendment of this TCP as described in section 8. On departure of any of the Authorized Personnel listed above, the Responsible Individual must implement appropriate measures to secure the subject matter of the TCP, including promptly collecting all keys and updating access controls.

5. **Physical Security Plan:** *(Project data and/or materials must be physically shielded from observation by unauthorized individuals by operating in secured laboratory spaces, or during secure time blocks when observation by unauthorized persons is prevented. This would pertain to laboratory management of "work-in-progress")*

    a. Location (describe the physical location of **each** sensitive technology /item to include building and room numbers. A schematic of the immediate location is highly recommended):

b. Physical Security (provide a detailed description of your physical security plan designed to protect your item/technology form unauthorized access, i.e., secure doors, limited access, security badges, CCTV, etc.):

c. Item Marking (Export controlled information must be clearly identified and marked as such)

d. Item Storage: Explain how the item will be secured. Soft and hard copy data, notebooks, reports and research materials must be secured by, for example, storing in locked cabinets in rooms with key-controlled access. Equipment or internal components and associated operating manuals and schematic diagrams containing "export-controlled" technology must be physically secured from unauthorized access

6. **Information Security Plan:** *(Appropriate measures must be taken to secure controlled electronic information, including User ID's, password control, SSL, or other approved encryption technology.*

Database access must be managed via a Virtual Private Network (VPN) or stand-alone computer as appropriate, allowing only authorized persons to access and transmit data over the internet, using 128-bit Secure Sockets Layer (SSL) or other advanced, federally approved encryption technology).

a. Structure of IT security: Describe the information technology setup/system at each technology/item location:

b. IT Security Plan: Describe in detail your security plan, i.e., password access, firewall protection plans, encryption, etc.

c. Verification of Technology/Item Authorization: Describe how you are going to manage security on export controlled materials in the case of terminated employees, individuals working on new projects, etc.:

d. Conversation Security: Discussions about the project or work product are limited to the identified contributing investigators and are held only in areas where unauthorized personnel are not present. Discussions with third party subcontractors are only to be conducted under signed agreements that fully respect the non-U.S. citizen limitations for such disclosures. Describe your plan for protecting export controlled information in conversations:

```



```

7. Personnel Screening Procedures

All personnel who may have access to export-controlled items, information and/or technology must be listed on the TCP as Authorized Personnel and undergo Restricted Party Screening using export control screening software licensed by K-State. Screening Results will be maintained as part of this TCP.

8. Amendment to the TCP: Any changes to the approved TCP, including personnel changes, must be made in writing and approved by the URCO.

9. Training/Awareness Program
All Authorized Personnel listed on a TCP must complete export control training, *Introduction to Export Compliance*, available on www.CITIProgram.org. Training is required every three years. In addition PI/RI must brief participating personnel as to the provisions of this TCP before they sign the Certification for Safeguarding Export Controlled Technology, Information or Items. If additional training is desired, please contact URCO at comply@k-state.edu

10. Self-Evaluation Program

a. Self-Evaluation Schedule: It is recommended that the TCP be reviewed/evaluated at least once every year. Describe how often you plan to review / evaluate your TCP :

```



```

b. Audit Checklist (provide a checklist for items reviewed during self-evaluation audits):

```




```

 c.   Action Item and Corrective Procedures (describe your process to address findings in your self-evaluation audits):

```




```

The PI/RI will submit a report on the findings of the self-evaluation to URCO via email on comply@k-stake.edu promptly.

11. Monitoring and evaluation by URCO
URCO will conduct periodic monitoring and evaluation of activities covered by this TCP and make a report. URCO will provide the PI/RI and the department/unit head with a copy of the monitoring and evaluation report, for information and action as appropriate.

12. Certification by Principal Investigator/Responsible Individual

By signing this TCP, I certify that I have read and understand all clauses found in this TCP. I certify that all information found in this TCP is accurate and complete to the best of my knowledge.

Principal Investigator / Responsible Individual

_____ _____ _____
Signature   Date: Printed Name

Department/Unit Head

_____ _____ _____
Signature   Date: Printed Name

University Research Compliance Office Approval

_____ _____ _____
Signature   Date: Printed Name

Title: Associate Vice President for Research Compliance

Technology Control Plan Briefing and Certification
Handling of Export-Controlled Information, Items, Technology and Software

BACKGROUND

The subject matter of the Technology Control Plan (TCP) identified below may involve the use of export-controlled information, technology, items or software. The International Traffic in Arms Regulations (ITAR), enforced by the Department of State, and the Export Administration Regulations (EAR), enforced by the Department of Commerce, prohibit sending or taking export-controlled information, items, technology or software out of the U.S. and disclosing or transferring export-controlled information to a Foreign Person inside or outside the U.S. Verbal and visual disclosures are equally prohibited.

A Foreign Person is defined as any person who is not a U.S. citizen or legal permanent resident of the U.S. There are no exceptions for foreign graduate students or visiting scholars.

Generally, export-controlled means that the information, item, technology, and/or software related to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, modification, demilitarization, destruction, processing, or use items with a capacity for substantial military application utility requires an export license, or license exception, before it may be physically exported or discussed or disclosed to a Foreign Person. Export-controlled information does not include basic marketing information about function or purpose, general system descriptions, or information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities or information in the public domain. It does not matter whether the actual intended use of export-controlled information is military or civil in nature.

PARTICIPANTS RESPONSIBILITIES

Participants may be held personally liable for violations of the EAR and the ITAR, with significant financial and criminal penalties as a result. It is extremely important that participants exercise care and caution in using, disclosing or transferring export-controlled information, items, technology, or software with others inside and outside the U.S. Export controlled information, items, technology, and/or software cannot be transferred without prior authorization from the appropriate federal agency. For example, participants must know who among proposed research project personnel and collaborators is authorized under the TCP to have access to technology-controlled information, items, technology, and/or software. Participants must secure access to export-controlled information, items, technology, or software to prevent unauthorized access or use. They must clearly identify export-controlled information, items, technology, or software. Participants must securely store export-controlled information in locked filing cabinets, locked drawers, or under password-protected computer files. Participants shall avoid moving export-controlled information from one location to another, if at all possible.

CRIMINAL/CIVIL LIABILITY AND PENALTIES

The penalty for unlawful export and disclosure of export-controlled information under the ITAR is up to two (2) years imprisonment and/or a fine of one hundred thousand dollars ($100,000). The penalty for unlawful export and disclosure of information controlled under the EAR is the greater of either a fine of up to one million dollars ($1,000,000) or five (5) times the value of the exports for a corporation and imprisonment of up to ten (10) years and/or a fine of up to two hundred fifty thousand dollars ($250,000) for an individual. *It is very important to remember that individuals may be held personally liable for export control violations even when performing a project that is funded through the University.*

Principal Investigator/Responsible Individual: _____

Department: _____

Sponsor Name: _____

Project Title/Activity: _____

Proposal/Agreement Number: _____

CERTIFICATION

- I hereby certify that I have read and understand the *Technology Control Plan Briefing and Certification on the Handling of Export-Controlled Information, Items, Technology and Software*. I understand that I could be held personally liable if I unlawfully allow access to or disclose, regardless of form or format, export-controlled information, items, technology, or software to unauthorized persons.

- I understand that the law makes no specific exceptions for non-US students, visitors, staff, postdocs or any other person not pre-authorized under a TCP to access export controlled information, items, technology or software.

- I also acknowledge that I have read the Technology Control Plan for this project/activity and have been briefed by my supervisor or by the Principal Investigator/Responsible Individual and that I agree to comply with the requirements in the TCP.

- I have taken the required export control training *Introduction to Export Compliance*, available at www.CITIProgram.org. I agree to immediately contact the Principal Investigator/Responsible Individual or University Research Compliance Office (URCO) at comply@k-state.edu with any questions I may have regarding the designation, protection, or use of export-controlled information, technology, software, or items.

Participant Name (Print): _____

Signature: _____   Date: _____

*Print and execute this **CERTIFICATION** for each person who will have access to the export controlled subject matter.

Appendix V

Export Control Review
Information for Hiring/Hosting Departments and Supervisors

Introduction

The export control regulations define a foreign national as a person who is not a citizen of the United States, a permanent resident of United States (green card holder), or any other protected individual (legal asylee or refugee). An Export refers to actual shipment or transmission of items out of the U.S. It also refers to the release of technology or source code ("technology") to a foreign national within the U.S. or abroad, commonly referred to as deemed export. When technology is released to a foreign national, it is 'deemed' to have been exported to the person's country or countries of origin. Technology is released when it is made available to a foreign person in form of visual inspection such as reading technical specifications, plans, blue prints, etc., verbal or oral exchange, or by practice or application under guidance of a person with knowledge of the technology.

Visiting Scholars

As a research and education institution, K-State routinely receives visitors who come to collaborate on research areas of mutual interest or conduct research in the University's research facilities. Hosting department and faculty need to be aware of how export control regulations may affect research and other activities conducted with visiting scholars. Examples of when export control regulations may apply include:

- When the activities that the visitor will engage in include research that cannot be categorized as fundamental research.
- When the visitor will have access to export controlled information or technology or the visit includes access to secure facilities.
- When the visitor is a national of a sanctioned or embargoed country.
- When the visitor or the institution they are affiliated appears in any of the restricted/prohibited parties lists.

Non-Immigrant Employee

Prior to extending an offer for employment, the hiring supervisor must carefully consider if the proposed employment will involve deemed exports. An export license may be required if the technology to be released to the foreign national would not be exported to their country of citizenship without authorization. The University Research Compliance Office (URCO) will support the hiring supervisor and Department with making that determination. If an export license is required, it must be obtained **before** controlled technology is released to the foreign national. URCO will assist the hiring Department in filing a request for an export license with the relevant federal agency. The Processing time for export licenses can take several weeks or months, depending on the facts of each case; therefore, Departments should plan for possible delays in employment start dates. The hiring supervisor and the Department must ensure that no export-controlled technology is released to the foreign national until a license is obtained.

Export Controls Compliance Review

The hiring supervisor or host knows the details of an employee's job duties and responsibilities or the activities in which a vising scholar will participate, including equipment, methods, or technology employed to conduct research. The supervisor or host is also aware whether the visitor or employee will have access to information or technology that is restricted to foreign nationals. To determine whether export control restrictions apply to a proposed visit or hiring, the hiring/hosting department and host/supervisor must:

- Review the activities or the job description/duties.
- Review the Export Administration Regulations control list EAR/Commerce Control List and the International Traffic in Arms Regulations munitions list ITAR/U.S. Munitions List.   (A summary of the lists is attached to the review form.)
- Review any technology and/or technical data that will be released to the visiting scholar or prospective employee to determine if it is controlled under EAR and/or ITAR.

- Review sponsored research funding contracts or research agreements for export control concerns, such as restrictions on participation of foreign nationals in research ,or restrictions on publication of research results. (If unsure, please contact the Office of Pre-Award Services 785-532-6804).

- Complete attached Form – *Export Control Compliance Review – Visiting Scholar and Non-immigrant Employee* and submit it to the office responsible for processing new hires in the Department.

Questions: Please contact the University Research Compliance Office (URCO) with any questions.
comply@ksu.edu; 785-532-3224

Export Controls Compliance Review
International Visitors and Non-immigrant Employees

All fields must be completed as appropriate. The University Research Compliance Office (URCO) will rely on the information provided by the department, the supervisor, or host in conducting an export control review including in determining whether an export license is required. If you have any questions about this form, please contact URCO at comply@k-state.edu phone # 785-532-3224

Section I: Host or Supervisor

_____   _____ _____
Name   Email   Phone

_____   _____
College   Department

Section II: Non-immigrant Employee or Vising Scholar Details

_____   _____   _____
Full Name: Last   First   Middle

_____   _____
          Citizenship   Previous Citizenship (if applicable)

_____   _____
          Country of Official Permanent Residence   Foreign Institution Affiliation/Employer

_____   _____
          Visitation Period (Visiting Scholar)   Proposed Date of Hire (employee)

Detailed Resumé or Curriculum Vitae (CV) is Attached (check) ☐
This person is a Visiting Scholar ☐   Complete Section III and the rest of the Form
This person is a Non-immigrant Employee ☐   Complete Section IV and the rest of the Form

Section III: Nature and Purpose of Visit (For Visiting Scholars Only)

Provide a description of purpose of visit, specifying the activities that the visitor will engage in.

+--+
| |
| |
| |
| |
| |
| |
| |
| |
+--+

1

Key words related to work to be performed: _____

How will the visit be funded? (Please include funding source for any research activities that visitor will participate in, financial support from home government or institution, etc.)

```



```

Section IV: Non-Immigrant Employee (Employees Only)

Provide scope of work or job description (Job description may be attached)

```



```

List sponsored research grants in which the non-immigrant employee will be involved

```



```

2

37 KSU Export Controls Compliance Program

Section V: Export Controls Review Checklist

	No	Yes	Unknown
Activities or job duties involve access or use of items/articles, software, or technology listed on the Export Administration Regulations (EAR) Commerce Control List or International Traffic in Arms Regulations (ITAR) U.S. Munitions List			
The research or activity has restrictions on participation of foreign nationals			
The research or activity references export control clauses or references to EAR or ITAR			
Activities will involve the use or access to encryption software			
Activities will be related to the spread or increase of nuclear, chemical, biological weapons, or missiles			
Activities will involve access to any research, resources, or facilities subject to a Technology Control Plan (TCP)			
Activities involve work with or in any embargoes or sanctioned country (currently Cuba, Crimea Region, Iran, North Korea, Sudan and Syria)			
The research or activity is classified			
The research or activity will yield results for military or use in outer space			
The research or activity is fundamental research (*Fundamental research is defined as basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community. It is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons. Fundamental Research applies only to the dissemination of technical data and information, not to the transmission of material goods*)			
Visitor or Employee will access technical specifications of equipment, which are **not** available through published materials such as commercially available manuals, documentation in libraries or the World Wide Web, information from teaching laboratories or information available to interested communities for either free or where the price does not exceed the cost of production			

Important: URCO may request host or hiring supervisor for additional information or explanation based on responses to the checklist

Certification by Hiring Supervisor or Host:

I have completed CITI Program's export control training, *Introduction to Export Compliance*. I have read the attached information sheet, *Export Control Review - Information for Hiring/Hosting Departments and Supervisors.* I have knowledge of the nature of the proposed visit/ employment, and the answers I have provided are true and correct to the best of my knowledge and belief.

_____   _____   _____
Hiring Supervisor or Host PI (Print Name)   Signature   Date

38 KSU Export Controls Compliance Program

For Department Business Office Use Only

National of Sanctioned/Embargoed Country   __No   __Yes
Restricted or prohibited parties screening OK   __No   __Yes

Comments: _____

Signature_____ Date _____ Name _____

- Submit a copy of this form and related documentation to URCO comply@k-state.edu . URCO will work with hiring department and supervisor to address outstanding export controls concern. URCO will notify hiring department once the issue is resolved.
- Retain a copy of this form as part of hiring paperwork. All documents must be retained for a period of 5 years from the date of termination of employment.

For URCO Use Only

Export Controls Review: Notes/ Comments

_____
Name

_____
Title

_____
Signature

_____
Date

EXPORT CONTROL ATTESTATION (For H-1B Petitions)
With respect to the position responsibilities/duties and the proposed technology or technical data that the employee (Beneficiary) will be granted access to in the fulfillment of their official responsibilities, all of which as described herein, it is determined that:

☐A license is not required from either the U.S. Departments of Commerce or State to release the herein described technology or technical data to the foreign person; or

☐A license is required from the U.S. Department of Commerce and/or the U.S. Department of State prior to release of controlled technology or technical data to the employee (Beneficiary) named in this form and the Kansas State University department and/or assigned employee supervisor is required to take proactive steps to prevent access to such controlled technology or technical data by employee (Beneficiary) until and unless Kansas State University has received the required license or other authorization to release and/or allow access to such technology or technical data to employee (Beneficiary).

_____
Name

_____
Title

_____
Signature

_____
Date

39 KSU Export Controls Compliance Program

Appendix – EAR and ITAR Categories

Export Administration Regulations (EAR) Commerce Control List (CCL)

Category 0 - Nuclear Materials Facilities & Equipment [and Miscellaneous Items]
Category 1 - Materials Chemicals Microorganisms and Toxins
Category 2 - Materials Processing
Category 3 - Electronics Design Development and Production
Category 4 - Computers
Category 5 Part 1 - Telecommunications
Category 5 Part 2 - Information Security
Category 6 - Sensors and Lasers
Category 7 - Navigation and Avionics
Category 8 - Marine
Category 9 - Aerospace and Propulsion

International Traffic in Arms Regulations (ITAR) U.S. Munitions List (USML)

Category I—Firearms, Close Assault Weapons and Combat Shotguns
Category II—Guns and Armament
Category III—Ammunition/Ordnance
Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents
Category VI—Surface Vessels of War and Special Naval Equipment
Category VII—Ground Vehicles
Category VIII—Aircraft and Related Articles
Category IX—Military Training Equipment and Training
Category X—Personal Protective Equipment
Category XI—Military Electronics
Category XII—Fire Control, Laser, Imaging, and Guidance Equipment
Category XIII— Materials and Miscellaneous Articles
Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
Category XV— Spacecraft and Related Articles
Category XVI—Nuclear Weapons Related Articles
Category XVII—Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated
Category XVIII—Directed Energy Weapons
Category XIX—Gas Turbine Engines and Associated Equipment
Category XX—Submersible Vessels and Related Articles
Category XXI—Articles, Technical Data, and Defense Services Not Otherwise Enumerated

40 KSU Export Controls Compliance Program

Kansas State University
Standard Operating Procedures

Export Control Compliance Review for International Visitors and Non-immigrant Employees

Purpose

The Export Administration Regulations (EAR)[1] (15 CFR Parts 770-774) and the International Traffic in Arms Regulations (ITAR)[2] (22 CFR Parts 120-130) require U.S. persons to seek and receive authorization from the U.S. Government before releasing to foreign persons or foreign nationals (hereafter referred to as Foreign Nationals) located in the United States, controlled technology or technical data. Release of controlled technology or technical data to a Foreign National in the United States, even by an employer, is deemed an export to that person's country or countries of nationality. Foreign National is defined as a person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual[3]. The purpose of this SOP is to outline the export control compliance review procedures to be followed when hiring non-immigrant employees or hosting international visitors, to ensure compliance with U.S. export control laws and regulations.

1. **International Visitors Review**: International Visitors are Foreign Nationals who are not employed or enrolled as students or staff of K-State, and who come to the University on a temporary basis as a result of a verbal or written invitation made by a K-State faculty member, researcher, or administrator (hereafter referred to as Host). The purpose of such visits include, but are not limited to, collaboration on research areas of mutual interest, conducting research in K-State facilities, and participating in general academic and scientific meetings or presentations.

   The hosting department (Department) and Host need to be aware of how export control regulations may apply to activities conducted with International Visitors. The following are examples of when export control regulations may apply:

   - When activities that the visitor will engage in include research that cannot be categorized as fundamental research.
   - When the visitor will have access to export controlled information or technology or will have access to secure facilities.
   - When the visitor is a national of a sanctioned or embargoed country.[4]
   - When the visitor and/or the institution they are affiliated with appears in any of the restricted/prohibited parties lists.

---

[1] https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear
[2] https://www.pmddtc.state.gov/regulations_laws/itar.html
[3] As defined by 8 U.S.C. 1324b(a)(3), protected individual includes a person admitted as a refugee or one granted asylum.
[4] Comprehensively embargoed countries include Cuba, Crimea Region, Iran, North Korea, Sudan, and Syria. List of sanction programs and country information is available on OFAC's website https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx

1.1. Export Controls Review must be conducted for all International Visitors, whether or not present in the United States, when the visitor will:

    1.1.1.   Be involved in research projects or any type of collaboration or will have access to laboratories or other research facilities to observe or conduct research.

    1.1.2.   Be issued a K-State identity card and/or keys to offices, labs, or given access to the K-State computing system.

    1.1.3.   Receive payment, including honorarium, or reimbursement of expenses.

1.2. In addition to other visitor approval process that may be required by the Department, the Host must complete Form *EC-001 Export Controls Compliance Review for International Visitors and Non-immigrant Employees (Form EC-001)*. The Host will submit Form EC-001 to the Department's Business Office. In this SOP, Business Office refers to the office(s) in the Department that is responsible for approval of visiting scholar requests or for personnel actions related to employment.

1.3. The Business Office will review the paperwork for completeness, and, using the information provided in Form EC-001, conduct preliminary export control review.

    1.3.1.   The Business Office will conduct a restricted party screening (RPS) by screening the name, institutional affiliation where applicable, and the country of citizenship of the proposed visitor. The results of the screening must be maintained as part of the approval of visit paperwork. The Business Office will note the RPS results on Form EC-001. System alerts that cannot be discounted based on available information will noted on the Form and referred to the University Research Compliance Office (URCO) for further review and resolution.

    1.3.2. The Business Office will submit Form EC-001, RPS results and related documentation to URCO for secondary review and approval. URCO will work with the Host, Department, and other units as appropriate to address and resolve any outstanding export controls concern.

    1.3.3.   Once the review process is completed, URCO will forward a copy of the signed Form EC-001 to both the Business Office and to the International Scholars and Student Services (ISSS) for processing as appropriate. The review process must be completed before the International Visitor may access K-State facilities or otherwise engage in the anticipated activities.

1.4. Export control review is NOT required if no honorarium or reimbursement of expenses will occur AND if one or more of the following conditions exists with respect to the anticipated visit. Specifically when the International Visitor will:

    1.4.1.   Meet with colleagues to discuss a research project or collaboration where no export controlled information or technology is exchanged.

    1.4.2.   Tour labs or research facilities that are not otherwise restricted.

    1.4.3.   Participate in general academic or scientific meetings or presentations (seminar visits).

2. **Non-Immigrant Employees Review**
   2.1. In addition to other hiring processes that may be required by the hiring department, the hiring supervisor must complete Form EC-001 *Export Controls Compliance Review for International Visitors and Non-immigrant Employees.* The information required in the form will be used in determining whether an export license is required for a Foreign National to access export controlled technology or software. The hiring supervisor will submit the complete package to the department's Business Office. The review process must be completed before the proposed employee is hired.

   2.2. The Business Office will review the form for completeness, and using the information provided in the export control form, conduct preliminary export control review as detailed in 1.3 above.
      2.2.1. URCO will work with the Department, hiring supervisor, and Pre-Award Services as appropriate to address and resolve outstanding export controls issues.
      2.2.2. If a license is required, URCO will notify the Department and hiring supervisor. URCO is responsible for requesting a license from the relevant federal agency.
      2.2.3. URCO will notify the Business Office and ISSS once the secondary review is complete. The Associate Vice President for Research, Compliance, or designee, will sign the Export Control Attestation required for H-1B Visa petitions, indicating whether a license is required, and will submit a signed copy to ISSS for processing as appropriate.
      2.2.4. The Department and hiring supervisor must ensure that controlled technology or technical data is not released or otherwise provided to a proposed employee until K-State has received the required authorization from the relevant U.S. federal agency.
      2.2.5. Where appropriate, URCO will assist the Department/Supervisor in developing a Technology Control Plan (TCP) to safeguard controlled technology or technical data.

3. **Graduate Research Assistants (GRAs), Graduate Teaching Assistants(GTAs), Graduate Assistants (GAs) and Student Workers**
   3.1. These types of employment will be subject to export controls compliance review when:
      3.1.1. A proposed employee student worker will perform research or work with equipment or in a facility that is subject to a Technology Control Plan (TCP) or a license.
      3.1.2. The employee will be involved in sponsored research that restricts participation of foreign nationals.
      3.1.3. The employee will have access to controlled technology or technical data.
      3.1.4. The employee is a national of an embargoed country.
      3.1.5. The employee will participate in research that cannot be categorized as fundamental research.
   3.2. The hiring supervisor will complete Form EC-001 and submit it to the Business Office. The review process shall follow a similar process as review of non-immigrant employee.

4. The Department and the Host/Supervisor are responsible for notifying the Business Office, URCO and ISSS, as appropriate, of any anticipated change in job duties or purpose of the visit that might give rise to an export control concern before such changes are implemented. Changes in job responsibilities or in nature and purpose of a visit may trigger a need for a new license, and therefore could require a fresh export controls compliance review.

5. Record retention: Records must be maintained consistent with K-State record retention policy and retained for no less than five years after termination of employment or completion of all activities related to the visit.

Contact Office
University Research Compliance Office (URCO)
comply@k-state.edu
785-532-3224

EXPORT CONTROL BASICS
INTERNATIONAL TRAVEL

Individuals traveling internationally on university business or with university property are responsible for complying with export control laws and regulations. Export control regulations may restrict or prohibit some travel related activities or destinations, and/or may require licenses for others. The University Research Compliance Office (URCO) can help travelers in assessing what export control requirements apply to ensure institutional and individual compliance.

Conferences: Most travel for conferences will fall under exclusions to the export control regulations such as the Publicly Available and Public Domain exclusions (see 22 C.F.R. 120.11 and 15 C.F.R. 734.3). In general, information that is published and is generally accessible to the public through publication in books or periodicals available in a public library or in bookstores or information that is presented at a conference, meeting, seminar, trade show, or other open gathering, is usually considered to be in the public domain. To reduce the risk of potential export control violations, travelers should limit the information and technology they share to information that is published, and/or publicly available. Travelers should not share or take information, software, or technology that is proprietary, or designated for military, space, encryption software, or nuclear related applications; or may have been received under a nondisclosure agreement, or otherwise subject to contractual restraints. URCO should also be contacted prior to travel to a sanctioned country such as Iran, Cuba, Syria, Sudan, North Korea, and Crimea to conduct any university-related business or activity.

Research, Fieldwork, Course Instruction, or Related Activities: Activities such as engaging in research, field work or course instruction abroad may be restricted based on content and export control restrictions applicable to the country of destination. Public domain carve-out is available for research as long as it meets certain criteria. Generally speaking, research activities meeting the definition of fundamental research and resulting information is not subject to export controls. Activities that do not meet the criteria for fundamental research may or may not be subject to export controls and an export control review is necessary. In addition, research activity in embargoed or sanctioned countries is severely limited.   URCO should be contacted prior to travel to a sanctioned country such as Iran, Cuba, Syria, Sudan, North Korea, and Crimea to conduct any university-related business or activity.

Travel with Laptops, PDAs, Cellphones, and Other Data Storage Devices: University employees and students traveling with laptops, PDAs, cell phones, or other data storage devices and encrypted software must ensure that there is no export controlled information on such devices unless there is a specific license or other authorization in place for the information for that destination. Anyone intending to travel with or transmit export controlled information outside the U.S. should first consult with the URCO. There are a number of exceptions and exclusions which may apply depending upon the facts and circumstances of each case. As best practice, a traveler should travel with a 'sanitized' laptop to reduce risk of unauthorized access to information. Contact your IT unit for guidance or URCO if you have any questions.

Travel with Equipment
Many items including laptops, tablets, cell phones, and commercial software may be taken out of the country temporarily under a license exception, "*Temporary Imports, Exports, Reexports, and Transfers (In-Country) ("TMP")*. TMP license exception allows the traveler to take university property out of the U.S. provided the item is kept under the traveler's effective control and brought back to the U.S. *within a year* of the departure date. Travelers should complete a TMP Certification, available on URCO website, to document application of the TMP license exception. It is important for travelers to keep in mind that the TMP license exception may not apply in all cases. Some equipment (e.g., global positioning systems (GPS), thermal imaging cameras, inertial measurement units, and specialty software) is highly restricted and may require an export license, even if it is hand carried. TMP does not apply to items or technical data controlled under International Traffic in Arms Regulations (ITAR). Individuals intending to take university equipment other than a laptop computer, PDA, cell phone, or data storage devices,

abroad should contact URCO to determine if an export license or other government approval is required prior to taking the equipment out of the country.

For personal laptops, tablets, cell phones and commercial software, the Baggage ("BAG") license exception may apply. Like the TMP license exception, the BAG license exception allows travelers to take certain personal items out of the U.S. provided the item is kept under the traveler's control and brought back to the U.S. within a year of the departure date. Travelers should document application of the BAG exception, available on the URCO website.

For more information or any questions, please contact URCO via email: comply@k-state.edu or via phone: 785 532 3224.

Appendix VIII

TEMPORARY IMPORTS, EXPORTS, and REEXPORTS (TMP) CERTIFICATION

The export of items, technology, commercial software, and encryption code is subject to export control regulations. The Department of Commerce's Export Administration Regulations (EAR) makes an exception to licensing requirements for the temporary export or re-export of certain items, technology, or software for professional use as long as the criteria to which you are certifying below are met.

The exception does not apply to any EAR satellite or space-related equipment, components, or software, or to any technology associated with high-level encryption products. In addition, this exception does not apply to items, technology, data, or software regulated by the Department of State 's International Traffic in Arms Regulations (ITAR), or when traveling to embargoed or sanctioned countries such as Iran, Syria, Cuba, North Korea, Sudan and Crimea.

Please provide a detailed description of items, Technology or Software to which this Certification applies. Be sure to list the common name of the item, the model, and the manufacturer. Please contact URCO with any questions.

Item Name / Description	Manufacturer	Model Number	Amount Taken

By my signature below, I certify that:

1. I will ship or hand-carry the items, technology, or software to *(destination)*_____ as a "tool of the trade" to conduct university business only.

2. I will return the items, technology, or software to the US on *(date)* _____ which is no later than 12 months from the date of leaving the US unless the items, technology, or software are certified by me to have been consumed or destroyed abroad during this 12 month period.

3. I will not ship or hand-carry the items, technology or software to embargoed or sanctioned countries including Iran, Syria, Cuba, North Korea, Sudan and Crimea.

4. I will keep the items, technology, or software under my "effective control" while abroad (defined as retaining physical possession of item or keeping it secured in a place such as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility).

5. I will take security precautions to protect against unauthorized release of the technology while the technology is being shipped or transmitted and used abroad such as:
   a. use of secure connections when accessing e-mail and other business activities that involve the transmission and use of the technology,
   b. use of password systems on electronic devices that store technology, and
   c. use of personal firewalls on electronic devices that store the technology

Travelers signature: _____   Date: _____

*Keep a signed copy of this document with you when traveling abroad and provide a copy to the University Research Compliance Office, comply@k-state.edu, **prior to travelling**.

Appendix IX

BAGGAGE (BAG) EXPORT LICENSE EXEMPTION CERTIFICATION
for Export Administration Regulations Controlled Items, Technology, and Software

The export of items, technology, commercial software, and encryption code, including tablets, laptops, PDAs, digital storage devices, and smart phones, is subject to U.S. export control laws and regulations. The Export Administration Regulations (EAR) allow for an exception to licensing requirements for the temporary export or reexport of certain items, technology, or software for personal use, as long as the following the criteria, to which you are certifying, are met (21 CFR 740.14).

Note: The BAG exception does not apply to:
- Satellite or space-related equipment, components, or software regulated by the EAR
- Technology associated with high-level encryption products
- Items, technology, data, or software regulated by the International Traffic in Arms Regulations

Detailed description of items, technology or software to be exported or reported for which this certification applies:

Item Name / Description	Manufacturer	Model Number	Amount Taken

Please keep a signed copy of this document with you when travelling abroad and retain this BAG Certification in your records for five years after your return to the U.S.

By my signature below, I certify that:
1. I own the items, technology, or software I am taking abroad to *(destination(s))* _____
2. The items, technology, or software are only intended for necessary and appropriate personal use or use by a member of my immediate family travelling with me;
3. The items, technology, or software are not intended for sale or other disposal;
4. I am not shipping the items as unaccompanied baggage;
5. I will return the items, technology, or software to the U.S.;
6. I will keep the items, technology, or software under my "effective control" while abroad. "Effective control" is defined by the EAR to mean either retaining physical possession of the item, or securing the item in such an environment as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility;
7. I will take security precautions to protect against unauthorized access or release of the technology while the technology is being shipped or transmitted and used abroad.
   (Examples include: use of secure connections when accessing e-mail and other business activities that involve the transmission and use of the technology, use of password systems on electronic devices that store technology, and use of personal firewalls on electronic devices that store the technology);

8. The items, technology or software described above are not defense articles or technical data controlled under the ITAR and will not be used for nuclear research, military purposes, or the development of weapons of mass destruction;
9. The technology will not be used for foreign production purposes or for technical assistance unless authorized by the Bureau of Industry and Security; and
10. I will not take the items, software, and/or technology to sanctioned or embargoed countries such as Cuba, Iran, North Korea, Syria, Sudan, or Crimea.

Date: _____

Signature: _____

Name: _____

Title: _____

*Keep a signed copy of this document with you when traveling abroad and provide a copy to the University Research Compliance Office, comply@k-state.edu, prior to travelling.

Appendix X

Export Controls Training Plan

The Export Controls Compliance Program at K-State is designed to support K-State employees, students, and departmental units in complying with the export controls laws and regulations of the U.S. Federal Government. They include the [International Traffic in Arms Regulations (ITAR)](#) administered by the Department of State, the [Export Administration Regulation (EAR)](#) administered by the Department of Commerce, and economic and trade sanctions implemented through the [Office of Foreign Assets Controls (OFAC)](#) of the Treasury Department.

Export controls regulations can affect several research, academic, and business activities, including, but not limited to, conducting research, hosting international visitors, international collaboration, international travel, hiring, procurement and purchasing, international shipments, and other financial related transactions. All K-State faculty, staff, and students must be aware of how export controls relate to their work, so as to minimize the risk of noncompliance. Without training individuals would likely not recognize how activities they engage in may result in violations.

Training is a key part in creating and maintaining a culture of compliance. K-State maintains a subscription to online export controls training courses offered through CITIProgram (citiprogram.org). To minimize the risk for our faculty, students, and staff, export control training will be required for the following categories of employees:

- All staff in the Office of Vice President for Research
- All grant recipients
- All persons identified in proposed Technology Control Plans (TCPs)
- All supervisors submitting requests to hire foreign nationals (non-immigrant employees)
- All employees submitting requests to host an international visitor
- All units and department heads
- All employees in the units under Office of International Programs including Education Abroad, ISSS, and International admissions
- Study abroad organizers submitting a request for study abroad programs
- All employees identified on a protocol – IRB, IBC, and IACUC
- Other university employees may be required by supervisor and/or VPR/URCO to take export control training depending on the nature of their responsibilities

Training Modules:

> The basic training module is required for all groups. However, the URCO may assign another module based on an employee's activities or responsibilities. URCO will be happy to deliver additional customized training for certain groups or individuals, as appropriate.

Training Assignment and Frequency: For new employees, training will be assigned by the supervisor/department at the time of employment. For existing employees, training will be required as soon as this Training Plan is approved and adopted.

URCO will be responsible for ensuring that TCP participants have taken the training, prior to approval of a Technology Control Plan.

Training shall be renewed every three years. A supervisor or URCO may require additional training based on an individual's responsibilities.

Monitoring: The following offices will be responsible for verification of training:

- Staff in the Office of Vice President for Research – *Office of VPR*
- Grant recipients - *Office of Pre-Award Services*
- Persons identified in Technology Control Plan (TCP) - *URCO*
- Supervisors submitting requests to hire foreign nationals (non-immigrant employee) - *Department head (or designee) and/or URCO*
- Employees submitting requests to host an international visitor - *Department head or designee and/or URCO to verify*
- All units and department heads – *Associate Deans for Research*
- All employees in the units under Office of International Programs including Education Abroad, ISSS, International admissions - *Associate Vice Provost, Office of International Programs*
- Study abroad organizers - *Associate Vice Provost, Office of International Programs*
- Employees identified on a protocol – IRB, IBC, and IACUC - *URCO*
- Other university employees as may be required by supervisor and/or VPR/URCO - *URCO*

* Access to the URCO training database will be provided to a POC for each Department to verify training records.

_____

Originally adopted 8/27/2017

Appendix XI

<div align="center">

Standard Operating Procedures

Export Controls Compliance Review for Activities Related to Innovations' Disclosure and Commercialization

</div>

1. **Purpose**

   United States federal government regulates export of certain items (commodities, technology, technical data, and software) through export control laws and regulations.[1] These regulations can impact Kansas State University's commercialization activities, including the ability to market certain technology to prospective licensees and to export technical data, software, source code, or technical services.

   Commercialization of innovations is a multistep process involving disclosure of innovations; evaluation of innovations to determine patentability, marketability and intellectual property (IP) protection strategy; IP protection; marketing, and commercialization. Kansas State University Research Foundation (KSURF) helps researchers protect and promote intellectual property. Kansas State University-Institute of Commercialization (KSU-IC) is responsible the marketing and commercialization of intellectual property

   The purpose of this SOP is to establish procedures for identifying and evaluating potential export compliance issues that may be associated with innovations disclosed to KSURF, or that may arise during licensing and commercialization activities.

2. **Innovation Disclosures**
   2.1 K-State researchers disclose innovations using the Disclosure Form ("Disclosure.") The Disclosure can relate to an invention, creative works (copyright or software), or tangible property such as biological materials or plant variety. When a Disclosure is submitted, KSURF will review the Disclosure for export controls 'triggers' including:
   - 2.1.1 The innovation arises from export controlled research.
   - 2.1.2 There is a technology control plan (TCP) associated with the innovation or research.
   - 2.1.3 The innovation includes biological or other tangible material that is export controlled.
   - 2.1.4 The innovation has direct military application.
   - 2.1.5 The innovation is a product of otherwise restricted research.
   2.2 If a trigger is positive, KSURF will:
   - 2.2.1 Provide a copy of the Disclosure Form and any related documentation to URCO for review.

---

[1] International Traffic in Arms Regulations (ITAR) administered by the Department of State, the Export Administration Regulations (EAR) administered by the Department of Commerce, and economic and trade sanctions implemented through the Office of Foreign Assets Controls (OFAC), the Department of the Treasury.

2.2.2 URCO will review the Disclosure to determine if it is export controlled, and what steps, if any, should be taken to comply with export control regulations.

2.2.3 URCO will provide KSURF with a written determination following the review.

3. **Agreements - License Agreements, Confidentiality Agreements, Non-disclosure Agreements, and Material Transfer Agreements**

3.1 KSURF routinely executes license agreements to commercialize or protect innovations generated by K-State researchers. Each license agreements is associated with one or more Disclosures. If a Disclosure is identified as containing an export control trigger, KSURF will prescreen the license agreement with URCO.

3.2 Some KSURF agreements are routed through Pre-Award Services (PAS). PAS prescreens Material Transfer Agreements (MTAs), Confidentiality Agreements, and Non-disclosure agreements, to identify export controls related concerns.

3.3 If an export compliance concern is identified, the agreement is referred to URCO for review and resolution as appropriate. The agreement is finalized only after all export control concerns have been resolved.

3.4 PAS and KSU-IC also conduct Restricted Party Screening of all parties to an agreement because licensing activities can be affected by regulations under OFAC that prohibit transactions involving embargoed countries/entities.

4. **Prohibited End User and/or End Use**

Export controls regulations prohibit participating in activities with persons or entities on U.S. federal government prohibited parties list. Examples include:

- Denied Persons List, Entity List and Unverified List, maintained by the Department of Commerce, Bureau of Industry and Security (BIS).
- Nonproliferation Sanctions and Debarred List maintained by the Department of State.
- Specially Designated Nationals List and Foreign Sanctions Evaders List, maintained by the Treasury Department, Office of Trade Assets Control (OFAC).

The regulations also prohibit exporting items when the exporter knows or has reason to know that the items will be used in proliferation activities related to chemical or biological weapons, missiles, nuclear weapons and nuclear related activities. To avoid non-compliance, KSU-IC will follow the following procedure:

4.1 As good practice, KSU-IC will conduct restricted party screening prior to engaging potential licensees in material discussions. If there is a match, all transactions with the person or the entity must be halted immediately. KSU-IC will refer the case to URCO for review and determination whether the reason for listing poses an export

compliance problem. KSU-IC will also refer to URCO all 'hits' that cannot be discounted for resolution.

4.2 If a proposed transaction or activity will involve entities or nationals of embargoed countries, KSU-IC will refer the matter to URCO for review and resolution as appropriate prior to commencement of the transaction or activity.

4.3 KSU-IC will analyze what it knows about a potential licensee and their activities to avoid dealing with persons or entities that engage in prohibited end use activities.

5. Red Flags

The BIS has a checklist that exporters can use to discover possible export controls concerns. The list can be found here BIS Red Flag Indications. KSU-IC may find the checklist useful in evaluating potential licensees or other commercialization related activities.

Appendix XII

Export Controls Compliance Program Monitoring Plan

The Export Controls Compliance Program at K-State takes the form of a hybrid system, with certain compliance activities and review processes centralized under the University Research Compliance Office (URCO), while others are performed by other offices in coordination with URCO. To ensure compliance, URCO will conduct or coordinate the following monitoring activities:

1. Risk Assessment and Gap Analysis of ECCP
   a. Every two years, URCO will conduct a risk assessment and analysis by identifying and analyzing compliance related events that can negatively impact K-State's research enterprise, and recommend the best processes to mitigate the risks.
   b. Simultaneous with the risk assessment, URCO will conduct a gap analysis of the ECCP to identify any compliance gaps and recommend stop-gap measures as appropriate.

2. Technology Control Plans: A Technology Control Plan (TCP) documents how an unauthorized access to controlled information, items, technology, or software will be prevented. If URCO determines that a TCP is necessary for research or research related activities, URCO works with the PI and the relevant department to develop the TCP. The TCP is a dynamic document that is continually updated to reflect changes in research programs such as personnel changes, inclusion of new export controlled technology, change in location, etc.
   a. URCO will annually review the activities covered by existing TCPs. The review includes, but is not limited to, reviewing activities and/or items covered by the TCP; reviewing physical and information security plans; personnel review to ensure that all persons involved in the research are listed in the TCP as participants; and, review of training completions. URCO will create a report of the review and provide a copy to the Principal Investigator/Responsible Person (PI/RI) and/or department as appropriate. In case of any deficiencies, URCO will work with PI/RI and/or department to address the deficiencies
   b. In addition to the annual review, the PI/RI is responsible for conducting periodic self-audit and evaluations throughout the life of a TCP and informing the URCO of any change in the research project. The specifics of PI/RI led self-audits are detailed in each TCP.
3. Export Licenses and other Authorizations.
   Export licenses come with provisos that the exporter have to comply and flow down to end users or recipients.
   a. URCO will review existing licenses on an annual basis to ensure compliance with license terms and conditions, and note down any concerns.
   b. Where a license relates to an ongoing activity (e.g., deemed export license) URCO will notify PI, supervisor or other concerned person of the expiry date of the license. URCO will work with concerned person(s) to apply for renewal of license when necessary.

4. Restricted Party Screening (RPS) Related Activities

   K-State uses Visual Compliance®, a third party cloud based screening software to perform restricted party screenings. RPS is conducted by the URCO as well as by other offices/units whose functions include performing restricted party screening for various reasons. URCO is responsible for registering account for each individual user.

     a. Once a year, URCO will request Visual Compliance for a list of registered users and compare it against the actual users. Accounts that are no longer active will be expired/deactivated.

     b. Twice a year, URCO will contact active users to remind them of RPS procedures, including how to review 'hits' and dynamic screening alerts. This is will ensure that screening is done consistently across the University

5. Training is a key part in creating and maintaining a culture of compliance. K-State maintains a subscription to online export controls training courses offered through CITIProgram (citiprogram.org). To minimize the risk for our faculty, students, and staff, export control training is required for certain categories of employees as detailed in the Training Plan

     a. Training is monitored on an ongoing basis as specified in the Training Plan

     b. URCO will periodically review training needs to determine if or when additional training may be necessary.

_____

May 14, 2019