

## **Kansas State University** Standard Operating Procedures

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

#### **Purpose**

The Export Administration Regulations (EAR)<sup>1</sup> (15 CFR Parts 770-774) and the International Traffic in Arms Regulations (ITAR)<sup>2</sup> (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<sup>3</sup>. 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.<sup>4</sup>
- When the visitor and/or the institution they are affiliated with appears in any of the restricted/prohibited parties lists.

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<sup>1</sup> <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

<sup>2</sup> [https://www.pmddtc.state.gov/regulations\\_laws/itar.html](https://www.pmddtc.state.gov/regulations_laws/itar.html)

<sup>3</sup> As defined by 8 U.S.C. 1324b(a)(3), protected individual includes a person admitted as a refugee or one granted asylum.

<sup>4</sup> 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 be 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.
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Contact Office

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