

SOUTH DAKOTA SCHOOL OF MINES AND TECHNOLOGY

Procedure: Export Control

This procedure is in accordance with the SDBOR (4:48) and SDSM&T (IX-21) policies.

I. General Provisions:

The University must comply with all applicable U.S. government export regulations. When activities, including but not limited to contracts, research projects, hire or visit of foreign national, foreign travel, or other proposed activity involves export controls or sharing of export controlled information, the employees, including Principal Investigators, as part of the initial planning for the activities, and before any commitments, however tentative, have been made, will disclose necessary information to the Export Control Officer (ECO) for review.

The information will be reviewed by the ECO, and if needed, the Vice President for Research or SDBOR General Counsel, or their designee, prior to disclosure of any export controlled information to a foreign national. Awareness of restrictions will not result in immediate disapproval, and the ECO will work with the Principal Investigator or other applicable individuals, departments, or centers and the sponsoring entity to determine as soon as possible the nature and impact of such restrictions.

II. Hiring Practices:

Full and Part Time Employees: An export control review will be performed by the Human Resources Office in all instances of full and part-time employment. Human Resources will consult with the ECO and the ECO will consult with the direct supervisor if any concerns are raised through the review. Recommendations will be submitted to the ECO for final review. The export control determination will be provided to SDBOR Shared Immigration Services by the ECO. There may be instances where the SDBOR and University would be required to obtain a license before allowing the individual to work with export controlled items or when the SDBOR and University is unable to support an immigration petition based on this determination. The Human Resources Office and the ECO will be jointly responsible in coordinating this effort.

International Students: The Ivanhoe International Center will perform an export control review on all new international students when the I-20 or DS-2019 form is issued. The Ivanhoe International Center will consult with the ECO, and ECO will consult with the direct supervisor if any concerns are raised through the review. Recommendations will be submitted to the ECO for final review. Should it be required, the export control determination will be provided to the SDBOR Shared Immigration Services by the ECO. There may be instances where the SDBOR and University would be required to obtain a license before allowing the individual to work with export controlled items based on this determination. The Ivanhoe International Center and the ECO will be jointly responsible in coordinating this effort.

A differentiation will be made between an “international student” in F or J status and a “foreign national” in a different status. A foreign national student will be identified as such based on information provided on the I-9 Form.

Undergraduate/Graduate Student Employees: In instances where it is anticipated that a foreign national student (not in F or J status) may be hired for the purposes of full-time student employment during the summer or semester breaks, or part-time employment during the academic year, an export control review will be performed by the Human Resources Office. Human Resources will consult with the ECO and the ECO will consult with the direct supervisor if any concerns are raised through the review. Recommendations will be submitted to the ECO for final review. Should it be required, the export control determination will be provided to SDBOR Shared Immigration Services by the ECO. There may be instances where the SDBOR and University would be required to obtain a license before allowing the individual to work with export controlled items based on this determination. Human Resources and the ECO will be jointly responsible in coordinating this effort.

International Student Interns: In instances where it is anticipated that an international student may be hired or may volunteer as a student intern (J program specific) for the purposes of full-time undergraduate or graduate student employment, an export control review will be performed by the Ivanhoe International Center when the DS-2019 is issued. The Ivanhoe International Center will consult with the ECO and the ECO will consult with the direct supervisor if any concerns are raised through the review. Recommendations will be submitted to the ECO for final review. Should it be required, the export control determination will be provided to the SDBOR Shared Immigration Services by the ECO. There may be instances where the SDBOR and University would be required to obtain a license before allowing the individual to work with export controlled items based on this determination. The Ivanhoe International Center and the ECO will be jointly responsible in coordinating this effort.

International Visiting Scholars: In instances where it is anticipated that a foreign national may be hired or may volunteer as a visiting scholar (J program specific) for the purposes of full-time research and/or teaching, an export control review will be performed by the Ivanhoe International Center when the DS-2019 is issued. The Ivanhoe International Center will consult with the ECO and the ECO will consult with the direct supervisor if any concerns are raised through the review. Recommendations will be submitted to the ECO for final review. Should it be required, the export control determination will be provided to the SDBOR Shared Immigration Services by the ECO. There may be instances where the SDBOR and University would be required to obtain a license before allowing the individual to work with export controlled items based on this determination. The Ivanhoe International Center and the ECO will be jointly responsible in coordinating this effort.

III. Research Activities:

Grants & Contracts: The ECO will perform a review of any research grant or contract prior to acceptance and any change in scope of an existing project or activity. The ECO will coordinate with the primary researcher of a specific export restricted research project to develop specific

research related Technology Control Plans (TCPs). It is the responsibility of the primary investigator to ensure that all research is conducted within the TCP.

License: If the Department of State or the Department of Commerce license is required in support of export controlled international University activities-which may include activities sponsored by the Ivanhoe International Center; foreign travel; collaboration of faculty and students with foreign colleagues, etc.-a request will need to be approved in the following order the ECO, the Vice President for Research, the University President, and the SDBOR or their designees, upon the advice and support of SDBOR General Counsel, respectively. Activities that require a license will not occur without appropriate license. It is the responsibility of the sponsoring campus entity or the individual collaborator to seek approval of all foreign activities requiring an export control license.

Records: The University will maintain export-related records based on individual controlled items or activities. Unless otherwise provided for or instructed by the Vice President for Research, the President or SDBOR General Counsel, all records shall be maintained consistent with the SDBOR record retention policy, as modified by federal law.

Internal Reviews: In order to maintain the University's export compliance program and to ensure consistent adherence to U.S. export laws, the ECO may conduct internal reviews of TCPs and export records. The purpose of the reviews is: (i) to identify possible violations; and (ii) to identify deficiencies in training, procedures, etc. that can be rectified. If the results of such reviews indicate that an exemption from the export control regulations may not be available, the ECO will forward the documentation to the Vice President for Research, who will make the final decision.

Research Equipment Acquisition: Any new purchase of equipment or instrumentation should be screened for ITAR restrictions and in the case of any ITAR restriction, the plan for equipment/instrumentation installation and operation has to be submitted by the Principle Investigator or the Purchasing Department or Facilities personnel directing installation to the ECO for review and must be approved by the Vice President for Research and the Vice President for Finance and Administration before the purchase or installation can be completed.

Training: Training and resources related to export controls are coordinated by the Research Affairs Office in cooperation with the Vice President for Human Resources.

IV. Theses and Dissertations:

The Office of Graduate Education will establish procedures for closed defenses of export-controlled theses and dissertations, and for controlling the dissemination of such theses and dissertations. The Office of Graduate Education will also act to implement and enforce these export-control procedures.

V. Definitions:

- Blanket restrictions, Boycotts, Anti-terrorism: A boycott is limitation or prohibition of exports, including services, or purchases from countries or individuals that have been identified by the U.S. government, except for public information.
<http://www.treasury.gov/offices/enforcement/ofac/programs/>
- International Traffic in Arms Regulations (ITAR): Laws (22 C.F.R. parts 120 – 130) relating to items and associated software or technology of primarily military significance, chemical agents, imaging systems, software or technology intended for space launch, and satellite instrumentation of a non-military, scientific nature administered by the State Department. An item subject to ITAR generally requires a license for export to any country.
http://pmdtc.state.gov/regulations_laws/itar_official.html
- Educational Information: Information released as part of a course listed in the University's course catalog, and through instruction in the classroom or teaching laboratory. Participation in the course should be open to any qualified student enrolled at the academic institution. Educational information is not subject to the EAR, even if the faculty member is teaching the class at an institution outside the U.S.
- Export: Generally, an export includes any: (1) actual shipment of any covered goods or items; (2) the electronic or digital transmission of any covered goods, items or related goods or items; (3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any foreign national; or (4) actual use or application of covered technology on behalf of or for the benefit of a foreign entity or person anywhere. The term "export" can mean not only technology leaving the shores of the United States (including transfer to a U.S. citizen abroad whether or not it is pursuant to a research agreement with the U.S. government), but also transmitting the technology to an individual other than a U.S. citizen or permanent resident within the United States (a "deemed export"). Even a discussion with a foreign researcher or student in a campus laboratory is considered a "deemed export." Export controls preclude the participation of all foreign nationals in research that involves covered technology without first obtaining a license from the appropriate government agency.
- Export Administration Regulations (EAR): Laws (15 C.F.R. parts 730 – 799) relating to the control of certain exports, re-exports, and activities that are administered by the Commerce Department. <http://www.bis.doc.gov/policiesandregulations/ear/index.htm> The EAR contains some blanket restrictions, but also contains a detailed list of "dual use" items (i.e., materials and technology that have both military uses and significant civilian uses). Nonexclusive examples are composite materials, pathogens, and accelerometers. This is known as the Commerce Control List (CCL).
<http://beta-www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>
- Export Controls: U.S. federal government laws and regulations that require federal agency approval before the export of controlled items, commodities, technology, software or information to restricted foreign countries, persons and entities (including universities). Export controls establish legal prohibitions against exporting certain materials, software or technology without a license.
- Foreign National: Any person who is not a U.S. citizen or permanent resident of the U.S., or who has not been granted asylum.
- Fundamental Research: Basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial

development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons. The complete definition and discussion of fundamental research, including University based research is found at 15 C.F.R. § 734.8. University research is considered to be fundamental to the extent that researchers do not accept restrictions on the publication of scientific and technical information resulting from the research. Temporary delays in publication for the protection of sponsor proprietary information do not remove research from the fundamental domain. However, if that sponsor's proprietary information is subject to the export controls, then that information remains subject in the conduct of the research.

- Technology Control Plan (TCP): A formal, written plan, approved by the Export Control Officer and the Vice President for Research. Legal review will be provided by SDBOR General Counsel, or its designee, describing what measures will be taken to secure export controlled equipment, data, or technology from access by unlicensed Foreign Nationals. The TCP will include:
 - An affirmation of compliance with export control regulations;
 - identification of the applicable export controls and items or technologies subject to the controls;
 - a description of the security measures that will be implemented to control the item/technology including as appropriate: (i) laboratory compartmentalization, (ii) time blocking, (iii) marking, (iv) locked storage, (v) electronic security, (vi) confidential communications;
 - identification and nationality of each individual who will have access to the controlled item or technology;
 - personnel screening measures for granting access to the controlled item/technology;
 - appropriate security measures for disposal of the item/technology when use is complete.

Sources

U.S. Department of State, International Traffic in Arms Regulations (ITAR), 22 C.F.R. parts 120 – 130, U.S. Department of Commerce, Export Administration Regulations (EAR), 15 C.F.R. parts 730 – 799, and the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), 31 C.F.R. parts 500 – 599.