

# **EXPORT CONTROLS COMPLIANCE MANUAL Digital Version**

*Outlining an Export Management and Compliance Program (EMCP) at NDSU*  
Office of the Vice President for Research and Creative Activity

Implemented 04/26/17; 5<sup>th</sup> Revision: Summer 2022 Sharon May, NDSU Export Control Admin.

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[https://www.ndsu.edu/research/for\\_researchers/research\\_integrity\\_and\\_compliance/export\\_controls/](https://www.ndsu.edu/research/for_researchers/research_integrity_and_compliance/export_controls/)

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## **SECTION I: Export Control Policy**

### **1.1 NDSU Policy 722**

*North Dakota State University is committed to acting in accordance with all applicable U.S. Government export regulations and sanctions programs. NDSU requires ALL faculty, staff, students, and other University personnel to be aware of, and comply with, U.S. export control laws and sanctions laws and regulations, and NDSU's policy and procedures thereto.*

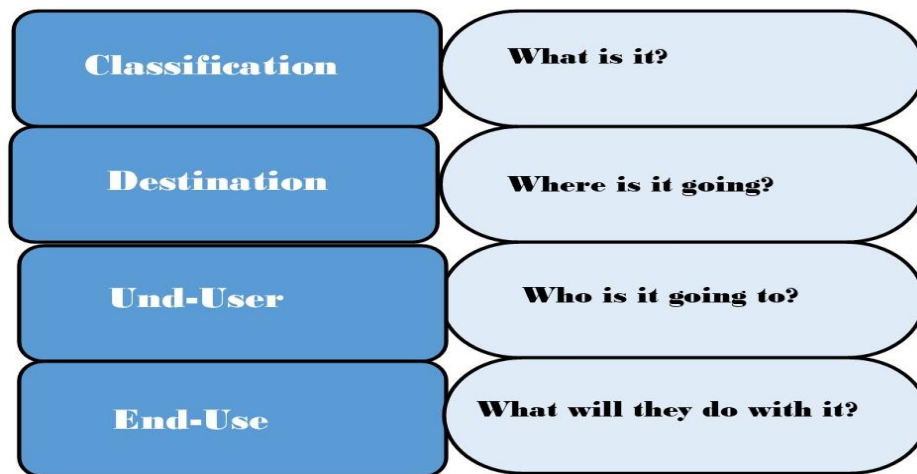
## SECTION II: Overview of U.S. Export Control Regulations

### 2.1 Introduction

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Export Controls are laws and regulations that govern the transfer of goods, technologies, services, data and money to non-US persons in the United States and abroad. Export controls are designed to protect the national security, economic interests, and foreign policy of the United States. They prevent the proliferation of weapons of mass destruction, protect human rights, support regional stability, and implement anti-terrorism and crime controls.

The main concerns of U.S. export controls are classification, destination, end-use and end-user.



Several federal agencies have jurisdiction over the control of exports, including the Department of Commerce, the Department of Energy, the Department of State, the Department of Treasury, the Nuclear Regulatory Commission, and the U.S. Department of Agriculture. The three principal agencies are:



### 2.2 Export Administration Regulations - EAR

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The U.S. Department of Commerce's, Bureau of Industry and Security (BIS) issues the Export Administration Regulations (EAR), to implement the Export Administration Act (EEA) and other statutory requirements.

Items subject to the EAR include civilian (everyday items), "dual-use" items (having both civilian and military applications), terrorism or potential WMD (weapons of mass destruction)-related applications, and some exclusively military items but that do not warrant control under the International Traffic in Arms Regulations (ITAR). Examples of items at NDSU include: certain chemicals, microorganisms, vectors, and toxins; laboratory equipment (such as centrifuges, analyzers); fabrication equipment, (such as milling machines and etching equipment for electronics); and thermal imaging cameras.

BIS maintains the Commerce Control List (CCL), Items included on the CCL are assigned an export control classification number (ECCN) based on a category and product group. There are 10 broad categories, each is further subdivided into five product groups. If an item is not listed on the CCL and falls under U.S. Department of Commerce jurisdiction it is designated as EAR99 (generally low technology consumer goods). Most items do not require an export license. The CCL may reference controls from other U.S. government agencies.

### Commerce Control List Categories

|          |   |
|----------|---|
| 0        | Nuclear & Miscellaneous                         |
| 1        | Materials, Chemicals, Microorganisms and Toxins |
| 2        | Materials Processing                            |
| 3        | Electronics                                     |
| 4        | Computers                                       |
| 5 Part 1 | Telecommunications                              |
| 5 Part 2 | Information Security                            |
| 6        | Sensors and Lasers                              |
| 7        | Navigation and Avionics                         |
| 8        | Marine  |
| 9        | Aerospace and Propulsion                        |

### Five Product Groups

|   |   |
|---|---|
| A | Systems, Equipment and Components         |
| B | Test, Inspection and Production Equipment |
| C | Material                                  |
| D | Software                                  |
| E | Technology                                |

## 2.3 Department of State Regulations - ITAR

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The U.S. Department of State's, Directorate of Defense Trade Controls (DDTC) administers the ITAR, to implement the Arms Control Act (AECA).

The U.S. State Department (DDTC) maintains the United States Munitions List (USML) which controls exports and temporary imports of defense articles and defense services (providing assistance, including training to a foreign person) on the USML. For example, military aircraft are listed on the USML, as are their engines, electronic controls, and inertial navigation systems, even though such components may have other applications or be available for purchase by the general public. As an example, an autopilot system used in basic robotics research at NDSU may be controlled under the ITAR.

### U.S. Munitions List

|                |  |
|----------------|--|
| Category I     | Firearms, Close Assault Weapons and Combat Shotguns  |
| Category II    | Guns and Armament  |
| Category III   | Ammunition/Ordinance   |
| 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 Elsewhere 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                       |

Other items designed for military use are also used in commercial research, unrelated to military use. An NDSU example is thermal imaging cameras, used in cattle research. The cameras are ITAR controlled even though they are not being used in a military activity.



## 2.4 Office of Foreign Assets Control (OFAC) Regulations

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OFAC is one of the oldest law enforcement agencies in the U.S., OFAC is a law enforcement agency, not a regulator. Comprehensive sanctions are applied to whole countries. Selective sanctions are targeted to certain industries, entities, or individuals. Economic sanctions have been used throughout history as a valuable tool to accomplish foreign policy and national security goals with non-violent means.

Sanctions impose a broad range of transactional prohibitions. Prohibited transactions can consist of nearly all commercial or financial transactions with targeted countries. Prohibited transactions can also include nearly all commercial or financial transactions with particular persons, individuals, and entities identified by OFAC. Furthermore, the sanctions can prohibit other dealings in which U.S. persons may not engage unless authorized by OFAC or expressly exempted by statute. Because each sanctions program is based on different foreign policy and national security goals, specific prohibitions often may vary between programs.

Federal statutes and presidential executive orders serve as the basis for OFAC administered sanctions programs. The three most prominent federal statutes that empower the president to designate targets of economic sanctions are the International Emergency Economic Powers Act, the Trading with the Enemy Act and the Antiterrorism and Effective Death Penalty Act. Under these statutes and related executive orders, sanctions programs may be either unilateral (administered only by the US) or multilateral (administered in coordination with other countries).

It is important to note that prohibited transactions vary by sanctions program. OFAC's list of Specially Designated Nationals and Blocked Persons ("SDN List") which includes over 6,000 names of companies and individuals who are connected with the sanctions targets. A General License authorizes transactions otherwise prohibited and is documented by the ECO. A Specific License authorizes a transaction otherwise prohibited and must be requested (by the ECO) filing an application. OFAC's 50% rule applies when a blocked person owns (in aggregate ownership interest of 50% or more). OFAC's programs are dynamic and constantly changing. OFAC's website is checked on a regular basis to ensure NDSU has complete information regarding current restrictions affecting countries and parties the university may do business with.

The most recent Sanction Country list is in Appendix 3.

## 2.5 Other Regulations

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The following are some of the other regulations are applicable to the NDSU and other universities. For example:

- U.S. Department of Energy
- The Nuclear Regulatory Commission

- U.S. Department of Agriculture
- U.S. Customs and Border Protection (CBP)
- U.S. Fish and Wildlife
- U.S. Bureau of Census

## 2.6 Penalties

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Export of a controlled item without authorization (license or license exception) may result in criminal and/or civil penalties for NDSU and/or the responsible individual (such as the PI). This includes exports that violate the terms of the export license. In some cases, multiple violations of related restrictions may apply to a single export, resulting in very large fines. Penalties may include: seizure of the item, denial of export privileges, debarment from future federal contracts, and/or jail time. Deemed export violations are subject to the same penalties as physical exports.

|             | <b>Criminal Penalties</b>                                       | <b>Civil Penalties</b>        |
|-------------|---|-------------------------------|
| <b>OFAC</b> | Up to \$1,000,000 per violation and up to 20 years imprisonment | Up to \$250,000 per violation |
| <b>EAR</b>  | Up to \$1,000,000 per violation and up to 20 years imprisonment | Up to \$250,000 per violation |
| <b>ITAR</b> | Up to \$1,000,000 per violation and up to 20 years imprisonment | Up to \$500,000 per violation |

## SECTION III Definitions

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A Glossary of terms related to export controls can be found on the Export Controls website.

## **SECTION IV Export Controls at North Dakota State University**

### **4.1 Commitment to Export Control Compliance**

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NDSU is committed to acting in accordance with all applicable U.S. Government export regulations and sanctions programs. NDSU requires ALL faculty, staff, students, and other University personnel to be aware of, and comply with, U.S. export control laws, regulations and sanctions programs, and NDSU's policy and procedures thereto. (NDSU Policy 722)

NDSU is committed to the preservation of academic freedom. Recognizing its obligation to comply with U.S. export control regulations, each activity is considered on an individual basis. The majority of teaching and research activity at NDSU falls within one or more exemptions and exclusions from licensing requirements.

### **4.2 Export Control Oversight: Roles & Responsibilities at NDSU**

#### **4.2.1 Empowered Official**

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The Vice President for Research and Creative Activity is NDSU's Empowered Official. The Empowered Official has authority to represent the university before export control regulators. While certain oversight may be delegated, the Empowered Official has authority to delegate responsibility to sign paperwork and bind the university in any proceeding before DDTC, BIS, OFAC and any other government agency with export control responsibilities.

#### **4.2.2 The Export Controls Office (ECO)**

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The NDSU Export Controls office, opened in 2014, works with other offices on campus to protect NDSU's open research policy and the free interchange of information among scholars within the boundaries of U.S. export control laws, regulations and sanctions.

The Export Controls office has responsibility to direct and monitor NDSU's export control compliance program, including implementing procedures and guidelines to comply with federal export control laws and regulations (such as developing, implementing and updating this manual).

The ECO, when requested, assists other university offices and employees in export control assessments and determination of compliance obligations with respect to university activities involving foreign persons or international activities under applicable export control laws and regulations. The ECO assists in creating technology control plans, export control training, restricted party screening, technology control planning, and on other export matters as appropriate.

### **4.2.3 The Export Control Administrator**

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NDSU's Export Control Administrator reports to the Empowered Official and to the Executive Director, Industry Engagement and Intellectual Property. Responsibilities include:

- Serves as the liaison between NDSU and any U.S. Government agency
- Preparation and submission of license applications and other requests for approval on behalf of the university
- Preparing, reviewing, and implementing Technology Control plans
- Screening against the U.S. Government's published Denied Parties/Restricted Entities Lists
- Training
- Oversee export control recordkeeping processes
- Other related activities to ensure NDSU's export control compliance

### **4.2.4 The Export Control Team**

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Information Technology  
Immigration Office  
Purchasing  
Human Resources  
Accounting

International programs  
Principal Investigators (PIs)  
Safety Department  
Sponsored Projects  
And others

## **4.3 Impact of Export Controls at NDSU**

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The burden of understanding and complying with export control regulations falls on NDSU to determine which research and activities may trigger export control issues.

- Foreign visitors and hiring of foreign nationals
- Sponsored or non-sponsored research;
- Contracts and agreements;
- Business and service transactions with certain countries
- End-uses or end-users;
- International travel and shipping items into or out of the U.S.
- Research that involves defense, military, weapons, or space technologies

## **4.4 Export Control Exclusions for Universities**

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Most of the work done at NDSU is excluded or exempted from export controls under the Educational Information, Fundamental Research or Public Domain exclusions. If work meets the criteria for one of these exclusions, then it is NOT subject to export controls.

## 4.4.1 Educational Information Exclusion

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**Educational information** is information normally taught or released in academic catalog-listed courses or in teaching labs associated with those courses. (15 CFR 734.9(b)(iii))

## 4.4.2 Public Domain / Publicly Available Exclusion

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Information that is already published or is in the public domain is considered public information and is NOT subject to export controls (15 CFR 734.7). Examples include:

- Books, newspapers, pamphlets
- Publically available software and technology
- Information presented at conferences, meetings and seminars open to the public
- Information included in published patents
- Websites freely accessible to the public

This exclusion does not apply to encrypted software, to information if there is reason to believe it may be used for weapons of mass destruction or where the U.S. government has imposed access or dissemination controls as a condition of funding.

## 4.4.3 Fundamental Research Exclusion (FRE)

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**Fundamental research** is any basic or applied research in science, engineering, or mathematics, the results of which are ordinarily published and shared broadly within the scientific community and for which researchers have not accepted restrictions for proprietary or national security reasons. The Fundamental Research Exclusion (FRE) allows university based research that might otherwise be controlled for export by either EAR or ITAR to be excluded (15 CFR 734.8 and 22 CFR 120.11).

Because there is generally an *intent* and *ability* to publish research results or make available in the public domain, most university research is considered to be fundamental and is excluded from export controls under FRE. However, not everything qualifies for the FRE.

| Does NOT Qualify for FRE            | Does Qualify for FRE      |
|-------------------------------------|---------------------------|
| Tangible (physical) items           | Research results and data |
| Input information (work done prior) | Software                  |
| ITAR defense services               |                           |
| International shipments             |                           |
| Research conducted outside U.S.     |                           |

Note: Specifically under ITAR, the FRE can only be utilized at an accredited institution of higher learning in the U.S.

#### **4.4.4 Fundamental Research Disqualifiers**

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The following negate the ability to use the FRE. The research becomes subject to export control regulations.

- Contractual restrictions on
  - Publication (requires sponsors approval)
  - Participation based on nationality
  - Dissemination (limits on who can access)
- If the PI has made a “side deal” with the sponsor
- Activity with an embargoed or sanctioned country
- Activity with restricted or denied parties

#### **4.4.5 Export Controlled Research**

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Research becomes Export Controlled when it does not meet the criteria for FRE; if it involves the actual export or “deemed” export of any goods or technology; is related to data that is either (1) “dual-use” (commercial in nature with possible military application) or (2) inherently military in nature; or when the terms of the agreement identify it as export controlled.

Export controlled research on campus requires that the ECO work with the PI and Co-PI(s). A list of everyone working on the project; vetting through Visual Compliance; a non-disclosure agreement; export control training; a technology control plan.

### **SECTION V Impact on NDSU Activities**

#### **5.1 Export Control Laws at NDSU**

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Most research conducted on campus qualifies for the FRE, however, some activity and research requires further review.

#### **5.2 OFAC and EAR/ITAR Embargoes**

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The countries subject to OFAC sanctions programs include Cuba, Iran, Sudan, Syria, and North Korea, though the complete list may be found here: <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

Country specific restrictions apply to these countries. Interactions with persons and organizations located in OFAC-sanctioned countries come with a great degree of risk and require careful analysis. Some of the sanctions apply to the import of goods and services from OFAC countries as well. Detailed country-by-country information about these trade sanctions is available at the OFAC website noted above. The analysis of whether a proposed activity would be allowed must be made at the outset because, in the absence of an exception or exclusion, an OFAC license MUST be secured from the Treasury Department before initiating any transactions or dealings with those persons (including negotiations for a proposed activity). Only a handful of license exceptions and general licenses are available. Special licenses are seldom issued because there is a general policy of denial of license requests. Further, it may take many months to receive a determination. Cuba, Iran, and Sudan Comprehensive sanctions are in place against Cuba, Iran, and Sudan. Three exceptions which are helpful for researchers, however, do apply.

First, activities which are incident to publishing research articles are permitted with persons in Cuba, Iran, or Sudan and the academic and research institutions which employ them (but no other segment of the Government or other entities). See 31 CFR § 515.577 (Cuba), 31 CFR § 560.538 (Iran), 31 CFR § 538.529 (Sudan).

Second, the export of information available in the mass market and which are fully created and in existence as of the date of the transaction, such as published research articles, may also be exported. See 31 CFR § 515.206(a)(2) (Cuba), 31 CFR § 560.210(c)(2) (Iran), 31 CFR § 538.212(c)(2) (Sudan).

Third, some exceptions apply to travel. Travel to Iran and Sudan is generally permitted, including payments for expenses ordinarily incident to such travel, including living expenses and buying goods or services for personal use. The project proposed to be undertaken while in the country, however, may require a license.

Travel to Cuba remains highly regulated (other than the rules for travel to visit family in Cuba, which were modified in 2009). Several general licenses, however, are available. One allows travel to Cuba to conduct professional research and/or attend international conferences that are regularly held in other countries. See 31 CFR § 515.564. Another OFAC general license allows for travel to Cuba for educational activities. See 31 CFR § 515.565. Detailed guidelines for travel to Cuba are available at: <http://www.treasury.gov/resourcecenter/sanctions/Programs/Pages/cuba.aspx>.

Syria, North Korea, and Other OFAC-sanctioned Countries The trade sanctions against Syria and North Korea are narrower in scope (however, as discussed below, they are treated as embargoed countries for export-control purposes). Other countries subject to lesser OFAC trade sanctions include, for example, Belarus, Burundi, and Zimbabwe. The sanction programs are described on OFAC's website at: <https://www.treasury.gov/resourcecenter/sanctions/Programs/Pages/Programs.aspx>.

### **5.3 Risk Assessment**

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Annually, the ECO conducts a risk assessment at NDSU to review and identify areas with a high risk of non-compliance to the export control laws and regulations. The goal of our risk assessment is to

identify preventable risks the university may face and build safeguards to control these risks. NDSU has the following four (4) areas with the highest risk of non-compliance on campus:

1. Collaboration with foreign nationals
2. International travel
3. Doing business with people or entities without screening
4. Shipping or transporting items out of the U.S.

### **5.3.1 Collaborations with foreign nationals**

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Collaboration with foreign nationals has the potential to cause the unauthorized release of sensitive or controlled technology, known as a deemed export. Deemed exports are particularly relevant whenever teaching or research are related to controlled equipment or technology. Foreign students' or foreign researchers' involvement may trigger export control compliance issues. While exports commonly are associated with the shipment of a tangible item across the U.S. border, export controls have a much broader application. International collaborations or discussions with foreign nationals, including students, could be deemed exports. By definition, an export includes the transfer of controlled information or services to foreign nationals even when the transfer takes place within the territory of the United States. When the transfer takes place inside the U.S., the transfer is "deemed" to be an export to the home country of the foreign national.

A deemed export may occur through:

- A demonstration or visual inspection
- An oral briefing, telephone call, message or electronic communication
- A laboratory visit
- Faxes or letters
- Discussion involving unpublished research at conferences and meetings
- Hand-carried documents, hardware, or drawings
- Design reviews
- Carrying a laptop with controlled technical information/software overseas
- Posting non-public data on the Internet or the Intranet or
- Research collaboration with other universities/research centers

### **5.3.2 International Travel**

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When a researcher leaves the United States, everything taken out of the U.S. is an export including devices, software, and data. Most items are subject to the Export Administration Regulations (EAR).

- Personal items: clothes, toiletries, articles of adornment, medicine, etc.
- Personal electronic devices: laptop, tablet, PDA, flash drive, smartphone and software on them such as Windows, Adobe, etc.



- Information: documents, drawings, data, software and software on laptops
- Tangible research items and materials, such as equipment, may appear ‘more interesting’ and more likely to draw attention from Customs or security officials.

When traveling internationally:

- Document your items, origin, ownership and value: If you take a personal item of value, to avoid duty upon your return to the U.S., Customs and Border Protection form CBP 4457 (available in the Export Control office) can help. The form needs to be signed by CBP before you depart.
- Device inspection: US Customs officials (and Customs in other countries) are authorized to search and retain electronic devices including digital cameras, cell phones, media players, disk drives and others even without probable cause to look for violations of export controls as well as other laws and regulations. To prepare for this:
  - Don’t carry data you don’t want others to see
  - Don’t carry the only copy of anything you cannot afford to lose
  - Have a Plan B
  - Consider taking a clean laptop furnished by NDSU IT

The DUO mobile app and hardware tokens used by NDSU as part of its 2 factor authentication process are encryption items that are subject to export control regulations and controlled to certain countries. Check with the ECO and NDSU IT Department prior to travel.

### **5.3.2.1 Travel to Embargoed Countries**

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OFAC broadly regulates and restricts interactions with embargoed countries. These restrictions vary depending on the country and change frequently depending on economic and political relations. OFAC sanctions of embargoed countries prohibit the transfer of assets. The countries with the most comprehensive sanctions and most all activity will require a license: Cuba, Iran, North Korea, Sudan, Syria and Venezuela.

### **5.3.3 Doing Business with People or Entities without Screening**

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NDSU faculty and staff members often host international delegations or individual colleagues for short-term campus visits to develop educational partnerships, explore research collaborations or simply provide an introduction to NDSU. Interaction and collaboration with scholars from around the world is a critical component of a globally engaged university. NDSU encourages open dialogue and the exchange of ideas between faculty and staff and their international colleagues, at the same time, an increased federal government focus and mandates on export controls regarding protected research and knowledge have resulted in closer scrutiny of campus visits by international scholars and other individuals.

In order to facilitate global engagement while maintaining university compliance with federal laws, NDSU screens international students and visitors against restricted and denied party government watch lists. Screening is not just for safety and security purposes, screening visitors also helps to

prevent sensitive and controlled information or simply unpublished research from being disseminated unintentionally which could result in an export control violation.

### **5.3.4 Shipping or transporting out of the United States**

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*What is it? Where is it going? Who is it going to? What will they do with it?*

Export control regulations apply when the item is shipped or taken out of the U.S. Licenses may be required even when the item or equipment is used in or results from fundamental research. Whether a license is required also depends upon the country where the item is going. In many cases, a license exemption may be used instead, such as TMP (Tools of the Trade 740.9(a)(1), Exhibition 740.9(a)(5), or Inspection, test, calibration, and repair 740.9(a)).

If the commodity is controlled under ITAR, a license is always required before it can be shipped out of the United States.

Work with the Export Controls Office is recommended whenever shipping internationally. Exports may require pre-departure filing in the Automated Export System (AES). This system is used by exporters to electronically declare their international exports, known as Electronic Export information (EEI) to the Bureau of Census to compile trade statistics. This information is shared with BIS, DDTC and other federal agencies involved in monitoring and validating exports. An EEI is required when an exported commodity exceeds the \$2500 value. AES has some exemptions which may apply: items valued under \$2500 and temporary exports don't require filing.

### **5.4 Export Control Analysis**

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The ECO should perform export control analysis of the activity, visit or travel before it occurs. Some examples of when an export control analysis should occur are:

- Visiting scholars, H1-B's, and any foreign national
- Visitors on the NDSU campus will be touring or presenting on campus
- Submission of a proposal, receipt of an award, or changes the scope of work of a project
- An award, contract or document references U.S. export control regulations (ITAR, EAR, OFAC), beyond a mere/general statement to comply
- Access or participation is restricted based on country of origin (e.g., participants limited to U.S. citizens only)
- Export-controlled information, technology, or equipment (if stated) is known, or suspected
- Limitations or restrictions on publication, including granting the sponsor pre-publication review and approval (other than the inclusion of patent or sponsor proprietary/confidential information) or allowing the sponsor to claim the results or data generated in the agreement as proprietary or trade secret or confidential

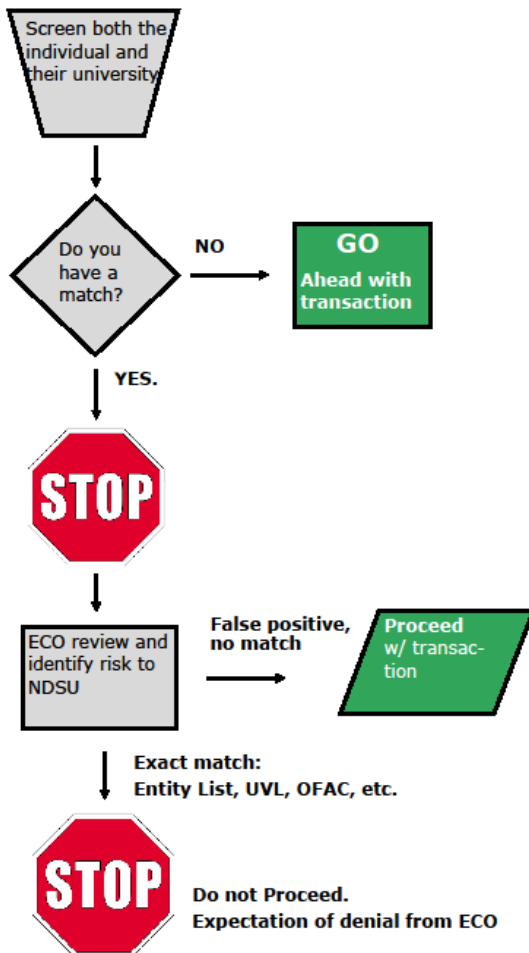
- Involves, in any way, certain countries/foreign nationals, including (but not limited to) Afghanistan, China, Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, etc.
- International travel, shipping of equipment or research materials, or work performed outside of the United States
- Includes or involves foreign sponsors or collaborators
- Funded by the Department of Defense, the Department of Energy, the Army, the Air Force, the Naval Office, NASA, the National Reconnaissance Office, or other U.S. Government agencies

## 5.5. Screening Against U.S. Government Watch Lists

The Departments of State, Treasury, and Commerce separately maintain lists collectively referred to as “watch lists.” Screening is conducted through Visual Compliance by the ECO for VSVR’s, H-1B’s, foreign visitors, guests, collaborations, MOU’s, and related areas. The NDSU screening process is included here.

### NDSU SCREENING PROCESS

#### Government Watch Lists and Denied Parties



If a name or entity on an NDSU transaction matches to a name of a person or entity appearing on any U.S. government watch list, the transaction must be evaluated by the ECO prior to moving forward to either (a) clear the match or (b) confirm the match in order to avoid export violations.

## **5.6 Technology Control Plans (TCP)**

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When export controlled equipment, data, or technology is identified the Export Controls office will work with the PI to develop and implement a TCP to appropriately secure the equipment, data or technology from access by unlicensed non-US persons.

The TCP (see Appendix 2 Template) documents a set of procedures that includes:

1. a commitment to export control compliance
2. identification of the applicable export controls and items or technology subject to the controls
3. project overview
4. a description of the agreed upon security measures to control the item/technology. Including as appropriate:
  - a. lab compartmentalization
  - b. time blocking
  - c. marking
  - d. locked storage
  - e. electronic security
  - f. confidential communications
5. identification and nationality of each individual who will have access to the controlled item or technology
6. personal screening measures for granting access to the controlled item or technology
7. appropriate security measures for disposal of the item or technology when use is complete
8. deemed export license requirements (applicable to foreign nationals who NDSU believes should have authorized access but for whom the items are restricted)

Prior to any individual having access to export-controlled items or technology, an individual must be informed of the conditions of the TCP and agree in writing to comply with the security measures outlined in the TCP.

**Note: ITAR-controlled items at NDSU are required to have a TCP.**

## **5.7 Export Licenses**

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Export licenses, whether from OFAC, Department of Commerce or Department of State may be required in support of university activities. The ECO or EO are authorized to apply for licenses. If a license is required, the ECO will complete, submit and retain records of the license application with necessary attachments.

## **5.8 Training**

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Export Control Awareness Training is an important aspect of NDSU's export compliance program. Informed and knowledgeable researchers minimize the likelihood that inadvertent violations of export control law will occur. The ECO implements awareness activities and provides training sessions, one-on-one, small group, departmental and on-line through CITI. The ECO has new short training that can be delivered in 15 minutes during departmental staff meetings.

Examples of Training available:

- Introduction to Export Compliance
- What Researchers Need to Know
- When to contact the Export Controls Office
- Technology Control Plan Briefing
- International Shipping
- Insider Threat Training

## **5.9 Recordkeeping**

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Records related to an export or import are required to be maintained for five (5) years from the date of export (EAR Part 762), import (19 CFR) or date of license expiration. In some cases, records will require restricted access where they contain controlled technical data.

Records to retain include:

- E-mails and correspondence related to the export, import or license
- Screening records
- Proof of payments
- Original documentation
- License exclusion or exemption used
- Date/time of export
- Contracts/MOUs
- Training logs
- TCP's

NDSU personnel responsible for maintaining records will depend on the project and may include: Shipping, Export Controls, the PI, Immigration office, Accounting, Purchasing, etc.

## **5.10 Monitoring and Auditing**

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NDSU's Export Assessments identify and address export compliance gaps and weaknesses. Assessments are conducted on a priority basis, annually, or every three to five years depending on the risk level determined in the risk assessment. If a compliance gap is identified, corrective action procedures are implemented promptly. In general, monitoring on campus means the ECO will meet

with university faculty and staff who are knowledgeable about the technology or equipment in use in their area. Potential export control issues are evaluated to determine if a TCP, export license, training gaps, or clarity on procedures is needed.

## 5.11 Issue Reporting and Notification

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Anyone who suspects a violation has occurred or may occur should immediately notify the NDSU ECO by phone (701-231-6455) or email ([ndsu.exportcontrols@ndsu.edu](mailto:ndsu.exportcontrols@ndsu.edu)). All reports will be reviewed timely. If further investigation is warranted, the ECO will lead the investigation with the involvement of and advisement from the EO, Office of General Council, NDSU Internal Auditors office, and/or others as needed. The internal review will include gathering of information, items and communications. Voluntary self-disclosure to the U.S. government may be required.

## SECTION VI

### Appendix 1 Revision Record

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|                |                                   |   |
|----------------|-----------------------------------|---|
| June 2014      | Manual Drafted                    | By AnnaLisa Nash, Export Control Officer (ECO)    |
| December 2014  | Final Manual Implementation       | Approved by Vice President Dr. Kelly Rusch, RCA   |
| May 2015       | Updates                           | By AnnaLisa Nash, Export Control Officer (ECO)    |
| April 2017     | Manual Revision<br>Manual Updates | By Dr. Jolynne Tschetter and Lynn Titus Jr. (ECA) |
| September 2019 | Manual Revision<br>Manual Updates | By Sharon May, Export Control Officer             |
| July 2022      | Manual Revision<br>Manual Updates | By Sharon May, Export Control Officer             |
| Jan 2023       | Manual Revisions                  | By Sharon May, Export Control Administrator       |

## **Appendix 2 TCP Template**

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TCP Template attached as addendum

## **Appendix 3 Sanctions Programs**

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### Comprehensive Sanctions

Cuba

Iran

North Korea

Sudan

Syria

Venezuela

### Limited Sanctions

W. Balkans

Belarus

Burma (Myanmar)

Crimea

Cote D'Ivoire

Democratic Republic of Congo

Iraq

Lebanon

Liberia

Libya

Russia

Somalia

Yemen

Zimbabwe