SUBJECT: Export Control Option

During the October 2013 Board of Regents meeting in Spearfish, the Business Affairs Council convened to discuss the recommendations from RAC regarding the shared Export Control position. While there was lengthy discussion, the council requested a more comprehensive understanding of the structures in place at similar institutions around the region. Specifically, the System Vice President for Research was tasked with researching/contacting representatives from North Dakota, Iowa and Nebraska and providing additional background to help make an informed decision.

Following RAC discussion in August 2013, SDSU moved forward with the approval of their institutional policy on Export Control (see Attachment I). SDSM&T faced similar questions in October and is currently considering the creation of a similar policy. In early December USD forwarded along copies of five documents which reflect current activity at that institution to respond to export control issues. These include:

- Export Control Regulations Policy – Attachment II
- Export Control Officer Research Review – Attachment III
- Export Control Officer Review of I-129 – Attachment IV
- Fundamental Research Questionnaire – Attachment V
- International Travel Checklist – Attachment VI

RAC representatives are encouraged to review these materials and be prepared to discuss options similar to those being undertaken in North Dakota (detailed below) to conduct an assessment of our export control activities.

North Dakota State University.

At this time NDSU has no formal export control coordinator. Currently Kristi Biewer (RCATT Safety & Facilities Coordinator with the NDSU Research Park) serves as the lead for responding to questions that emerge. She has had some formal training but would not classify herself as an expert on the range of issues that fall under export control regulations. NDSU worked with a private firm called Fischer & Associates who specializes in export control. They conducted an Export Compliance Awareness Training.
at the institution for research faculty and administrators in October. This included a
series of small group meetings with individuals in the various areas to assess the need for
training, an overview for a larger audience about export controls, and then individual
interviews with specific faculty/administrators in designated research areas.

After the visit, Don Fischer prepared an assessment/analysis of where NDSU was in
regards to their ability to comply with export control based on their current research
activity. He provided the institution with a draft policy which they are currently working
to implement. They worked with Fischer & Associates after USD initiated a preliminary
visit from the firm, and they were willing to do a joint agreement if NDSU had been
ready to move forward at the same pace with the University of North Dakota. Based on
their assessment through Fischer & Associates, UND has hired an export control
coordinator who works half-time under VP for Finance, and the remainder under the VP
for Research. The service agreement was for roughly $30,000 for a wide range of
services, two site visits, assessment to minimize exposure, and the formation of
recommendations for future training; the fee did not cover travel expenses.

Currently they are working with a company called Visual Compliance to provide services
at the state level and Valrey Kettner (Associate Vice President for Sponsored Programs
Administration at NDSU) is leading efforts to develop the appropriate position to serve
this function for the institution. She has been promoting the need for better export
control compliance for a number of years, and through support from the new VP for
Research they are moving forward with the development of a position. UND will likely
request a full time position within their Research Department based on their work in
aerial reconnaissance research.

**Iowa State University**

ISU has reasonable coverage on their Vice President for Research website and makes
reference to an Export Control Coordinator, but it is not possible to identify the specific
individual responsible for this activity. A web search does not allow one to locate an
individual who holds that position, but when directed to complete the “Export Control
Worksheet” personnel are directed to Brooke Langlitz (Export Control and Conflict of
Interest Administrator) to respond to questions.

http://www.compliance.iastate.edu/control.html

They do have a form available on their website that must be completed and submitted
through the grants management office which outlines the expected Export Control
Management Plan

**University of Nebraska – Lincoln**

Requires that a Technology Control Plan be in place, but no specific individual that
provides the guidance or oversight.

http://research.unl.edu/researchresponsibility/export-control/
Office/Contact: Research and Sponsored Programs


Link: (Insert Appropriate Weblink)

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SOUTH DAKOTA STATE UNIVERSITY
Policy and Procedure Manual

SUBJECT: Export Controls - Interim
NUMBER: ____________ (Assigned by Policy Manual Editor)

1. Purpose

This interim policy and its procedures support compliance with federal laws and regulations concerning export controls and a permanent policy will be developed and approved in accordance with University Policy 1.2. The University’s export controls policy and procedures are designed to assure compliance with regulations in those activities of the University to which the regulations may apply, which helps protect the University and its personnel from the consequences of non-compliance.

2. Definitions

a. 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. [Link]

b. 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. [Link]

c. 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.

d. 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.


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

f. 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.

g. 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.

h. 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.

i. Technology Control Plan (TCP): A formal, written plan, approved by the University Research Compliance Coordinator and the Vice President for Research. Legal review will be provided by University Counsel, SDBOR General Counsel, or their 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:

i. An affirmation of compliance with export control regulations;

ii. Identification of the applicable export controls and items or technologies subject to the controls;

iii. A description of the security measures that will be implemented to control the item/technology including as appropriate:

1. Laboratory compartmentalization
2. Time blocking
3. Marking
4. Locked storage
5. Electronic security
6. Confidential communications;

iv. Identification and nationality of each individual who will have access to the controlled item or technology;
v. personnel screening measures for granting access to the controlled item/technology;
vi. appropriate security measures for disposal of the item/technology when use is complete.

3. Policy
a. It is University policy that no University employee, including members of the faculty, or student may engage in any activity, or commit the University to engage in any activity that is prohibited by export control regulations, or requires a license or other agency approval under these regulations, until such license or approval has been obtained.
b. Employees and students who participate in projects that involve export controls must acquire a level of understanding of the requirements appropriate for their role through education, information, and support resources.
c. Departments and employees who work with employees, visiting faculty, scholars, or students from foreign countries and foreign boycotted countries are required to be aware of the export control regulations that relate to those countries and related compliance requirements. Individuals may not share, not even in informal social interaction, export controlled information or items with foreign nationals without prior export control review and approval of the Research Compliance Officer, and if appropriate, the Vice President for Research, University Counsel, SDBOR General Counsel, or their designees, and any other protocols required at law or herein, in accordance with this policy and its procedures.
d. Employees who engage in International Travel within the scope of employment are responsible for understanding export laws and regulations and how they apply to their respective situations, including the impact on any students, employees, collaborators, consultants, or other personnel who they ask to accompany them or attend on their behalf. If any controlled information, technology, software, or equipment will be transferred to a foreign party overseas, a license may be required prior to the transfer unless a valid licensing exception or exclusion applies. Individuals must seek export control review from the Research Compliance Officer prior to travel that has such impacts.
e. To implement this policy, University individuals who are involved in activities subject to export controls, are required to engage the export control review assistance of the Research Compliance Coordinator and, as appropriate, the University Counsel, SDBOR General Counsel, or their designee, to determine the applicability of export control regulations, the exemptions thereto, and compliance requirements.
f. Violations of export control laws discovered at the University should be reported to the Research Compliance Officer or to the University Counsel or as appropriate the SDBOR General Counsel.
g. Training and resources related to export controls will be coordinated by the Research Compliance Office.

4. Procedures
a. 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 Research Compliance Officer for review.
b. The information will be reviewed by the Research Compliance Officer, and if needed, the University Counsel 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 Research Compliance Coordinator will work with the Principal Investigator or other applicable individuals and the sponsoring entity to determine as soon as possible the nature and impact of such restrictions.

c. In instances where it is anticipated that a foreign national may be hired and immigration petitions supported for the purposes of employment, an export control review will be performed by the Research Compliance Officer in consultation with the direct supervisor and an export control determination will be provided to SDBOR Shared Immigration Services. 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.

d. The Research Compliance Officer will perform an initial review of the requested proposal, award, or change in scope of an existing project or activity.

e. When export controlled equipment, data, or technology is identified for a project or activity, the Research Compliance Officer will work with the PI or individual to develop and implement a TCP to appropriately secure the equipment, data, or technology from access by unlicensed non-U.S. persons. Before any individual may have access to export controlled items or technology, he or she must be informed of the conditions of the TCP and agree to comply with the security measures outlined in the TCP.

f. If a Department of State or Department of Commerce license is required in support of export controlled international University activities, a request will need to be approved in the following order: the Research Compliance Officer, the Vice President for Research, the University President, and the SDBOR or their designees, upon the advice and support of University Counsel and SDBOR General Counsel respectively. Activities that require a license will not occur without appropriate license.

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

h. In order to maintain the University’s export compliance program and to ensure consistent adherence to U.S. export laws, the Research Compliance Officer 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.

i. If the results of such reviews indicate that an exemption from the export control regulations may not be available, the Research Compliance Coordinator will forward the documentation to the University Counsel, who will then confirm the review of Research Compliance Coordinator and if the research contract or grant contains terms or conditions that affect the University’s exemption from export control regulations, the matter will then be referred to the Vice President for Research.

5. Responsible Administrator

The Vice President for Research or designee is responsible for ad hoc review of this policy and its procedures. The University President is responsible for approval of this policy and its procedures.

SOURCE: Approved by President on (date) __________.
NOTE: The signatures below are required for policy and procedure approval; however, signatures will not be included in the published version of the Policy and Procedure Manual.

Recommended by:  
Norman Braaten  
Research Compliance Officer  
South Dakota State University  
8/30/13

Tracy A. Greene  
University Counsel  
South Dakota State University  
8/30/13

Attested by:  
Kevin D. Kephart  
Vice President for Research  
South Dakota State University  
August 30, 2013

Approved by:  
David L. Chicoine, PhD.  
President  
South Dakota State University  
8-30-2013
I. REASON FOR THIS POLICY

The U.S. export control laws govern: 1) the release of technology, technical data, software, and information to foreign nationals within or outside the United States; 2) the furnishing of defense services to foreign persons whether in the United States or abroad; 3) the shipment or other transmission of items or defense articles outside the United States; and 4) the ability to export or otherwise transact with certain individuals, entities and countries. Certain export transactions require a license or other written approval from the U.S. government prior to export. Some transactions are prohibited due to the end-use, end-user, or country involved. These requirements are in place for national security, nuclear non-proliferation, regional stability, prevention of chemical and biological weapon proliferation and other foreign policy reasons. These export control laws have been in existence since the 1940s but have impacted universities to a greater extent since September 11, 2001. The export control laws are implemented through Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR) and through the Office of Foreign Assets Control (OFAC).
II. STATEMENT OF POLICY

The University of South Dakota (USD) is committed to compliance with federal laws and regulations governing exports – concomitant with the goal of fostering an academic environment of intellectual creativity, freedom to conduct ethical research, and the open dissemination of research results. All activities undertaken by the USD community, including research activities, must comply with the export control regulations as well as other university policies. A university faculty or staff member who violates export control laws, whether willfully, knowingly, or accidentally, may face internal university disciplinary consequences in addition to possible civil and criminal penalties, fines, and imprisonment.

The University of South Dakota does not engage in classified research of any nature.

III. DEFINITIONS

*These are operating definitions for the purpose of this policy. Please refer to laws and regulations for definitions therein. In case of conflict between these definitions and definitions in legal documents, the legal definitions will hold.*

**CLASSIFIED:** Deemed to be important to the national security interests of the United States. Classification is the means by which the government restricts information. The standard categories of classification include confidential, secret, and top secret.

**DEFENSE ARTICLE:** An inherently military article as determined by the Department of State and listed on the United States Munitions List, including technical data.

**DEFENSE SERVICE:** The furnishing of assistance, including training, to foreign persons, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a defense article.

**DEEMED EXPORT:** An export of technology or source code (except encryption source code) that is "deemed" to take place when it is released to a foreign national within the U.S.

**DUAL-USE ITEM:** Items having both a civil and military or weapon proliferation application as determined by the Department of Commerce and are subject to the Export Administration Regulations (EAR).

**EXCLUSION:** Information that is specifically excluded from export licensing requirements for policy or practical reasons. Such information includes technology, some software, and technical data that is the result of fundamental research, is within the public domain, or is taught within classrooms and teaching laboratories. See Related Documents, Forms, and Tools for a list of exclusions and other essential information.

**EXPORT (INCLUDING DEEMED EXPORT):**

1. Sending, taking or shipping an item or defense article outside the United States.
2. The furnishing of any technical data to foreign persons or performing a defense service on behalf of or for the benefit of a foreign person within the United States or abroad.

3. The release of technology or software to a foreign national within the United States or abroad through the visual inspection by foreign nationals of U.S.-origin equipment and facilities and oral exchanges of information.

4. The release of technology or software through the application to situations abroad of personal knowledge or technical experience acquired in the United States.

**Exporter:** For purposes of this document, individual at USD who will carry out the export. For instance, if a material transfer, the individual shipping or transmitting the material is the exporter. If sharing information with a foreign national, it is the individual sharing the information that is the exporter.

**Foreign National/Person:** Persons who are not U.S. citizens, are not lawfully admitted for permanent residence in the United States, or are not persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Foreign national includes individuals with study and work visas.

**Proprietary Research:** Privately funded research activity undertaken pursuant to a contract between USD and an outside sponsor with commercial interests where the information shared by the outside sponsor and the research results is restricted contractually.

**Restricted Research:** University research, development, or testing subject to (i) publication restrictions, (ii) access and dissemination controls, (iii) federally funded research with contract-specific national security restrictions; (iv) accepting third party controlled items or information, or (v) providing access to, or defense services on, a defense article.

**Software:** A collection of computer programs fixed in any tangible medium of expression. This includes system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test, operation, diagnosis, and repair of defense articles.

**Sponsored Project:** Any project receiving external support that has defined performance requirements or conditions as set out in Office of Research and Sponsored Programs Policy.

**Technology:** Specific information necessary for the "development", "production", or "use" of a product. May take forms such as instruction, skills training, working knowledge, consulting services.

**Technical Data:** Examples include blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories. Also information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. All classified information relating to defense articles and services is technical data. In addition, all information covered by an invention secrecy order is considered technical data under ITAR. Technical data does not include basic marketing information on function or purpose or general system descriptions.
IV. PROCEDURES

RESPONSIBILITIES OF PARTIES:

1. If the export activity (including a deemed export) is a sponsored project, it is the responsibility of the Principal Investigator to ensure that the sponsored project is consistent with the export control regulations and this policy.

2. If the export activity is not a sponsored project, it is the responsibility of the exporter to ensure the export is consistent with the export control regulations and this policy.

3. It is the responsibility of other university officers, staff, and administration to be aware of the export control requirements under the regulations and this policy. Examples of units that may encounter export control issues include: academic colleges and schools, Environmental Health & Safety, the technology transfer office, shipping centers, and those handling travel.

ROLE OF PRINCIPAL INVESTIGATORS:

1. Participate in export control training, as part of the university’s annual Responsible Conduct of Research Workshop. Encourage junior colleagues and students to receive this training.

2. Determine license requirements for all planned export activity (including international travel, and deemed exports) subject to this policy and request license determination assistance from the Office of Research and Sponsored Programs well in advance of planned export.

3. Understand that providing technology to a foreign national within the United States is considered to be a “deemed export” and Export Control laws and regulations must be followed.

4. Provide all non-disclosure or confidentiality agreements pertaining to the Office of Research and Sponsored Programs for review and approval.

5. If export-controlled information or technology is received from an outside party or may be generated under a classified, restricted, proprietary project or project that is otherwise not considered fundamental research, contact your dean and the Office of Research and Sponsored Programs.

6. Contact the Office of Research and Sponsored Programs of any changes in scope or staffing that could alter the initial export control determination for a research project.

7. Contact the Office of Research and Sponsored Programs if violation of export control regulations may have occurred.

8. Document and retain all export control license determinations that are relied on for exporting items, information, technology, technical data or software for a period of five years.
ROLE OF THE OFFICE OF RESEARCH AND SPONSORED PROGRAMS:

1. Conducts export control training within the Responsible Conduct of Research Workshop, and as applicable, in seminars and with on-line training modules.

2. Responds to export compliance questions, determination requests, and interprets federal laws and regulations regarding export controls.

3. Reviews proposed research for export control issues.
   a. Compliance Question forms completed for externally funded research proposals determine if proposed research is eligible for the “fundamental research exemption.” If the research is not fundamental research, then the research will be subjected to further evaluation by the Office of Research and Sponsored Programs for export control issues.
   b. Annually, Department Chairs will be queried if any research is being conducted within their Department that does not qualify for the fundamental research exemption. If any research is identified as being other than fundamental research, then the research will be subjected to further evaluation by the ORSP for export control issues.

4. Applies for all export control licenses on behalf of the University of South Dakota and is the designated authorized office for certification of compliance with export control laws and regulations.

5. Negotiates and approves language in non-disclosure agreements and confidentiality agreements pertaining to sponsored research, sponsored research agreements, grants, contracts and other binding documents regarding export control responsibilities of the university.

6. Documents export-control compliance for the university and retains records of all export activity that is reviewed by the Office of Research and Sponsored Programs.

7. Reviews export control measures taken by personnel at the university on a periodic basis.

8. Reports any violations.

EXCLUSIONS RELEVANT TO THE UNIVERSITY SETTING:

1. Fundamental Research Exclusion: information arising from basic and applied research in science and engineering at an accredited institute of higher learning within the U.S., where the resulting information is ordinarily published and shared broadly with the scientific community, is excluded from the scope of the ITAR and EAR.

2. Public Domain/Publicly Available:
   ITAR: information which is already published and generally accessible to the public is not subject to ITAR. Information that is available through books, periodicals, patents, open conferences in the United States, websites accessible to the
public with no access controls, or other public release authorized by the U.S. government, is considered in the public domain.

**EAR:** publicly available technology and non-encryption software, such as information that is the subject of an open patent application, published in a book or periodical, released at an open conference anywhere, available on a website accessible by the public with no access controls or information that will be published is not subject to the EAR. This includes submission of manuscripts to journals for consideration with the understanding that the article will be published if favorably received.

3. Educational Instruction:

   **EAR:** information that is released by instruction in catalog courses and associated teaching laboratories is not subject to the EAR.

   **ITAR:** information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities is not controlled by ITAR.

4. Bona fide/full time employee: disclosure of technical data (as defined by ITAR) in the United States to a university bona fide and full-time regular employee, whose permanent abode is in the U.S., the employee is not a national of an embargoed country, and the university informs the employee in writing that the technical data may not be transferred to other foreign nationals without approval, is excluded from ITAR.

**EXCLUSIONS THAT DO NOT APPLY TO ALL UNIVERSITY ACTIVITIES AND REQUIRE A REVIEW FOR EXPORT COMPLIANCE:**

- Export of tangible items outside the United States
- Working with proprietary, restricted or classified information
- Projects performed abroad by university personnel
- Furnishing defense services to a foreign person within the United States
- Transacting with embargoed or sanctioned countries or parties
- Creating, receiving or working with encryption software
- Providing use technology regarding controlled equipment to a foreign national

**V. RELATED DOCUMENTS, FORMS AND TOOLS**

USD International Travel Checklist ([insert link here])
University of Washington Export Controls Regulations:


Council on Governmental Relations, publications on export controls:

http://www.cogr.edu/Pubs_ExportControls.cfm

The three main sets of export control regulations:

1. The Export Administration Regulations (EAR) as administered by the U.S. Department of Commerce, Bureau of Industry and Security:

2. The International Traffic in Arms Regulations (ITAR) as administered by the U.S. Department of State, Directorate of Defense Trade Controls:
   http://www.pmddtc.state.gov/regulations_laws/itar_official.html

3. U.S. trade embargoes, sanctions, and other restrictions as administered by the U.S. Department of Treasury, Office of Financial Asset Control (OFAC):
   http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx

See the University of Washington website for export control scenarios:

Export Control Officer Review of Research

Name of Research Project _________________________

PI _________________________________________

Project Sponsor _____________________________

School/Department: _________________________

Date of review ______________

Does this project or agreement:

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<tr>
<th>Does this project or agreement</th>
<th>Yes</th>
<th>No</th>
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<tr>
<td>Involves encryption software?</td>
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<tr>
<td>Involves any of the following countries: Afghanistan, Belarus, Burma, China, Cote d’Ivoire, Cuba, Cyprus, Democratic Republic of Congo, Eritrea, Fiji, Republic of Guinea, Haiti, Iran, Iraq, Kyrgyzstan, Lebanon, Liberia, Libya, North Korea, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, or Zimbabwe?</td>
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<tr>
<td>Involves or include specific access and dissemination restrictions (e.g. restriction of participation by foreign nationals imposed by a government agency) or restrictions on publication (including reporting of research results) or presentation at conferences?</td>
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<tr>
<td>Involves participation of any foreign nationals?</td>
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<tr>
<td>Involves research, information, or software that could be used in the development of weapons of mass destruction (nuclear, biological, chemical) or their delivery systems?</td>
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<tr>
<td>Require international travel? Is so, list country or countries: ___________________________</td>
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Involve equipment, software, services, information, or technology on this list:

- Firearms
- Artillery Projectors
- Ammunition
- Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- Explosives, Propellants, Incendiary Agents, and Their Constituents
- Vessels of War and Special Naval Equipment
- Tanks and Military Vehicles
- Aircraft, [Spacecraft] and Associated Equipment
- Military Training Equipment
- Protective Personnel Equipment
- Military [and Space] Electronics
- Fire Control, Range Finder, Optical and Guidance and Control Equipment
- Auxiliary Military Equipment
- Toxicological Agents and Equipment and Radiological Equipment
- Spacecraft Systems and Associated Equipment
- Nuclear Weapons Design and Test Equipment
- Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- Submersible Vessels, Oceanographic and Associated Equipment
- Miscellaneous Articles (anything not listed, with substantial military applicability)
### Does this project or agreement:

<table>
<thead>
<tr>
<th>Involve equipment, software, services, information, or technology on this list:</th>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td>Nuclear</td>
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<tr>
<td>Materials, Chemicals, Microorganisms, and Toxins</td>
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<td>Materials Processing</td>
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<td>Electronics</td>
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<td>Computers</td>
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<td>Telecommunications</td>
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<td>Information Security</td>
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<td>Sensors and Lasers</td>
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<td>Navigation and Avionics</td>
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<td>Marine</td>
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<tr>
<td>Aerospace and Propulsion</td>
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</table>

If you have answered yes to any of the questions above, your responses to the next questions will assist the Office of Research and Sponsored Programs in determining whether an Export Control Exclusion applies.

Does this project or agreement involve or include specific access and dissemination restrictions (e.g. restriction of participation by foreign nationals) or restrictions on publication (including reporting of research results) or presentation at conferences?

| Yes | No |

Is all the information or software involved in your research published and generally accessible to the public through at least one of the following?

- Publication for distribution;
- Subscriptions available without military or national security restrictions;
- Website available free of charge;
- Libraries open to the public;
- Patents and published patent applications;
- Instruction in commonly taught course; or
- Presentation at an open conference or seminar?

  - If the presentation occurs outside of the U.S. please indicate location here:

| Yes | No |

PI Signature

Export Control Officer Signature
Export Control Officer review of I-129 application

Name of Foreign National _________________________

Date of review ______________

Based on the information received, and by interviews with interested parties as appropriate, answer the following questions.

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<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
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<tr>
<td>Will the applicant be involved with research that has restrictions on the release of certain project information?</td>
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<td>Will the applicant be involved with research that has restrictions on publication, access, or dissemination?</td>
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<td>Will the applicant be involved with research that has a military connotation or end-use?</td>
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<td>Will the applicant be involved with research that is sponsored by a defense agency?</td>
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<td>Will the applicant be involved with research that is related to space, missile technology, or biological/chemical weapons?</td>
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<td>Will the applicant be involved with research that requires approval of foreign nationals, or that disallows involvement of foreign nationals?</td>
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<td>Will the applicant be involved with research that requires travel to other countries?</td>
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<tr>
<td>Will the applicant have access to ITAR controlled data, technology, information, software, or equipment?</td>
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<td>Will the applicant have access to EAR controlled technology or encryption software code?</td>
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<td>Will the applicant be involved with research that already has a Technology Control Plan in place?</td>
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<td>Is there a reason to believe that the applicant will need an export license?</td>
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Thank you for participating in USD’s federally mandated compliance with export controls.

Is there any research being conducted by faculty of your department which does not meet the definition of “fundamental research: below? Please respond for each faculty member, and return this document to the Office of Research and Sponsored Programs by January 31, 2014.

Fundamental research, as used in the export control regulations, includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the U.S. where the resulting information either is ordinarily published and shared broadly in the scientific community or where the resulting information has been or is about to be published. University research will not qualify as fundamental research if (1) the institution accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information or to insure that publication will not compromise patent rights of the sponsor; or (2) the research is federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the university or the researcher.

Export control laws are federal regulations that control the conditions under which certain information, technologies, and commodities can be transmitted overseas to anyone, including U.S. citizens, or to a foreign national on U.S. soil. The laws are implemented by both the Department of Commerce through its Export Administration Regulations (EAR) and the Department of State through its International Traffic in Arms Regulations (ITAR).

If research involves specified technologies, the EAR and/or ITAR may require the campus to obtain prior federal approval (licensure) before allowing foreign nationals to participate in the research, before partnering with a foreign company, or before sharing research results in any manner (including by publication or presentation at conferences) with persons who are not U.S. citizens or permanent resident aliens. The Office of Research and Sponsored Programs will assist your faculty member(s) in obtaining such licenses as needed.
When on a trip abroad, individuals occasionally take information, technology and equipment with them. However, faculty, staff and students need to be aware of the impact of export control regulations when traveling internationally. Export control regulations affect:

- Items you take with you on a trip
  - Laptops (both personal and USD-owned)
  - Encryption items
  - Data and technology
  - Blueprints, drawings, and schematics
  - Chemicals, biological materials, and scientific equipment

- Supplying certain technologies or data at a “closed” conference or meeting (a meeting that is not open to all technically qualified members of the public and attendees are not permitted to take notes)

- Restricted information (in print and electronic format or discussed verbally while abroad)

- Travel to sanctioned or embargoed countries

- Doing business with, or providing services to, certain people or entities (including human subjects and collaborative research)

You must ensure that any information you discuss or items you take are either not controlled or if controlled, proper licenses are in place. A license may be required from the Departments of Commerce, State, or Treasury depending on the items you are taking, the country you are traveling to, and the individuals you will be interacting with.

Fortunately, travel to most countries oftentimes does not raise any export control concerns. In some cases, an exclusion or exception to the license requirements is available. In order to assess any export control restrictions associated with your upcoming international trip, please answer the questions on the following page carefully. Note: Individuals can be held personally liable for exporting items, technical data, or software without a license or license exception.

If you respond ‘yes’ to any of the questions in the International Travel Checklist, please forward your checklist to the Office of Research & Sponsored Programs (ORSP) staff for review and approval at least 30 days prior to trip commencement. The Office of Research and Sponsored Programs staff may contact you to get additional information to complete the export review process. In the event a license is required, staff will submit a license application to the appropriate government agency.

If all responses are ‘no’, please sign the bottom of the checklist and maintain a copy for your records. If any responses are “yes” please forward the document to ORSP at orsp@usd.edu. If you have any questions, feel free to contact ORSP staff at (605) 677-5370.
International Travel Checklist

1. Do you plan to travel to an embargoed destination? **Note:** Certain countries such as Burma, Cuba, Iran, Ivory Coast, Libya, Liberia, North Korea, Syria and Zimbabwe face increased restriction. For an up-to-date list of embargoes countries, please visit: www.treasury.gov/offices/enforcement/ofac/programs

2. Will you be taking any information or technology that is not widely available in the public domain, is classified, or is subject to export control regulations? **Note:** Export controlled materials includes technology, software, and information related to the design, production, testing, maintenance, operation, modification, or use of controlled items or items with military applications. It does not include basic marketing information on function or purpose; information regarding general scientific, mathematical, or engineering principles commonly taught in universities; or information that is generally accessible in the public domain. (Includes print and electronic versions.)

3. Are you taking any hazardous biological or chemical materials abroad?

4. Will you be attending a “closed” conference or meeting? **Note:** A closed meeting is not open to all technically qualified members of the public.

5. If you will be presenting at a conference or meeting, will you be presenting information that is not available in the public domain or is not fundamental research?

6. Will you be providing a service or financial assistance to a foreign entity while traveling internationally? **Note:** “Financial assistance” includes hiring of project personnel. “Services” include providing medical assistance, assisting in data analysis, etc.

7. Will you receive compensation for your travel or other compensation from a foreign sponsor or government?

8. Will you be sharing non-commercial encryption software in source code or object code?

9. Do you know or have any reason to believe that the information you will be sharing or the activities you will engage in while traveling will have a military use or will provide a military service?

I hereby certify that I have read and understand the information provided regarding compliance with export laws and regulations. I understand that I could be personally liable if I unlawfully export or disclose export controlled information or technology to foreign nationals without prior approval. I have provided complete information in responding to the questions listed above.

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<th>Traveler Name</th>
<th>Signature</th>
<th>Date</th>
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If you answered ‘yes’ to any of the above questions, please submit this form to the ORSP staff at:
Office of Research and Sponsored Programs
414 E. Clark Street
Vermillion, SD 57069

**Note:** If you plan to take any USD owned materials or equipment with you, including a laptop, software, GPS, or other scientific equipment, please complete the Temporary Export Exception Checklist on the following page.
A license exception to U.S. export control regulations will apply to the USD owned laptop, PDA, Digital Storage Device and/or GPS equipment and its operating software if the software or technology comes within the TEMPORARY EXPORT EXCEPTION because:

A. ☐ The software does not contain source code for 64-bit or higher encryption software or mass market encryption products, AND

B. ☐ The device, equipment, software and/or technology is not on the United States Munitions List (“USML”) under the International Traffic in Arms Regulations ("ITAR") (See http://www.fas.org/spp/starwars/offdocs/itar/p121.htm for a list of items on the USML — please carefully review Category XV if you are exporting GPS equipment.), AND

C. ☐ The device, equipment, software and/or technology will not be put to a military use OR used in outer space, AND

D. ☐ There is no reason to believe that your research could be used in the development of weapons of mass destruction, AND

E. ☐ Transfer of your laptop, PDA, Digital Storage Device, or GPS and its operating software to a foreign country falls under the TEMPORARY EXPORT EXCEPTION - TOOLS OF THE TRADE because:

1. ☐ The item(s) will be returned to the U.S. within one year of the export date, AND

2. ☐ The item(s) is a “tool of the trade” because it is a usual and reasonable type of tool of trade for use in lawful research, AND

3. ☐ You will retain effective control over the equipment while abroad by retaining physical possession of the item or securing the item in a secure environment such as a hotel safe, AND

4. ☐ You will accompany the item abroad, or it will be shipped within one month before your departure, or at any time after your departure, AND

5. ☐ You are not exporting the item to Cuba, Iran, North Korea, Syria or North Sudan, AND

6. ☐ You are not and will not be using this item in relation to any type of nuclear research.

All items must be checked in order for the Temporary Export Exception (TMP) TOOLS OF THE TRADE to apply. If one or more are not checked, please submit this form to the ORSP at:

Office of Research and Sponsored Programs
414 E. Clark Street
Vermillion SD 57069