Export control involves the federal regulation of how certain information, technologies and commodities can be transferred to other countries and foreign nationals. The academic community must take specific steps to protect their research involving military and dual use application. In addition, financial and other transactions with certain countries, companies and individuals fall under export control laws. Failure to comply with export control laws may have serious consequences for both the institution and the personnel involved.

The purpose of this policy is to set forth Southern Illinois University Carbondale’s (SIUC) responsibilities and procedures for compliance with federal export control regulations under the jurisdiction of the U.S. Department of State and Department of Commerce. SIUC promotes, through its policies, free, open, and unrestricted inquiry and dissemination of information in teaching, research, and service, to the extent allowable by regulation or law. SIUC does not accept classified research grants, contracts, or agreements. Nor will SIUC enter into or renew any research grant, contract, or agreement that prohibits disclosure of the existence of the award document, the identity of any sponsor of the proposed research, or
the nature and potential contribution of the proposed research. (Sec. 10.19 of the Sponsored Project Guide, http://www.OSPA.siuc.edu/guide/chap10.html#classified)

At the same time, SIUC complies with all applicable federal and state laws and regulations. Export control regulations impose controls on the distribution or "export" of certain information, data, materials, items, and services from the U.S. to foreign nationals and countries as a means of protecting U.S. national security or national economic interests. With respect to the former, exports with capacity for military applications are especially sensitive. Such distribution requires that SIUC obtain federal permission and/or a license.

For SIUC, as for most research universities, greatest concern centers on the actual physical export or the "deemed export" of information, data, materials, items, and services having combined civilian and military uses, so-called "dual uses." Controlled information, data, materials, items, and services may be "deemed" to be "exported" in two ways, both of which are common activities of faculty and graduate students at research universities:

- Inside the U.S.: Oral or visual communications with non-U.S. citizens through collaborative research, teaching or training, lab tours, and related activities.
- Outside the U.S.: Unauthorized presentation of controlled articles, data, etc. or simply carrying such information electronically to and inside a restricted country.

The Office of Sponsored Projects Administration (OSPA) is responsible for coordinating SIUC's export control compliance. It is the responsibility of the Principal Investigator/Project Director (PI/PD) on any project or contract to be aware of this policy and to notify OSPA of potential export control issues.

Exemptions: What is not Controlled?

Many classes of articles and data are exempt from federal export controls, and these embargoes and licensing requirements do not apply to them.

**Public Domain:** Most exemptions refer to information, articles, and knowledge in the "public domain": that is, they are already published and widely available to or accessible by the general public. This includes:

- non-encrypted software;
- unrestricted publications (journals, magazines, and books available for public sale, through subscription, or in public libraries);
- information on publicly accessible websites;
- information and skills presented to attendees at conferences, meetings, seminars, exhibitions, or trade shows in the U.S.; and
- published patents.

**Educational Materials:** The "educational exemption" includes technical information commonly presented in schools, colleges, and universities concerning general scientific, mathematical, or engineering principles, and also educational software and technologies.

**Fundamental Research:** A third category of exemption is information produced through fundamental (basic and applied) research in science and engineering at accredited institutions.
of higher learning in the U.S., the results of which are ordinarily published and shared broadly in the scientific community. This includes pending patent applications.

**Note:** The fundamental research exemption does *not* include research carried out under contracts or award terms that restrict the participation by foreign nationals, or clauses that restrict that publication of the results of the research, such as national security (classified federal research) and proprietary concerns (such as industrial research, development, production, and product use or testing). The latter commonly appear in confidentiality and non-disclosure agreements, which may have more stringent restrictions on disclosure and export of information. *Such restrictions can invalidate the fundamental research exemption, meaning that the data, knowledge, skills, etc. developed from such research are subject to export controls.*

### Definitions and Explanations

**Commerce Control List (CCL):** This is a list of items under the export control jurisdiction of the Bureau of Industry and Security, U.S. Department of Commerce. The CCL is found in Supplement 1 to Part 774 of the EAR.

The CCL is divided into ten numbered categories: (0) nuclear materials, facilities and equipment, and miscellaneous; (1) materials, chemicals, microorganisms, and toxins; (2) materials processing; (3) electronics design, development, and production; (4) computers; (5) telecommunications; (6) sensors; (7) navigation and avionics; (8) marine; (9) propulsion systems, space vehicles, and related equipment.

The categories are subdivided into five groups, designated by letters: (A) equipment, assemblies, and components; (B) test, inspection, and production equipment; (C) materials; (D) software; and (E) technology.

Each item on the CCL is given an Export Control Classification Number (ECCN).

**Controlled Articles, Data, etc.:** any good, item, technology, data, assistance, software, knowledge, service, article, etc. included in or covered by federal export control regulations such as the CCL, USML, EAR, ITAR, and OFAC Regulations, as well as in this SIUC policy.

Most of the export control regulations pertain to various kinds of arms, munitions, and specialized goods and technologies that are clearly military in their use and nature: guided missiles, tanks, nuclear weapons, etc. Export-controlled information includes technical data and technical assistance: activities, tangible items, and data related to the design, development, assembly, engineering, manufacture, production, testing, repair, maintenance, operation, modification, demilitarization, destruction, processing, or use of items with a capacity for military application.

However, many other items are “dual use” and commonly found at universities and used by their employee and students: computers, lasers, sensors, pathogens, etc. Controlled articles may include software, technologies, computers, or equipment taken out of the U.S. for research purposes or samples of various kinds sent to colleagues in other countries. Thus it is important for faculty to be aware of what constitute controlled articles, because some may require export licenses.
Deemed Export: This refers to a disclosure or transfer of export-controlled goods, technologies, data, information, services, etc. to a foreign individual (no green card) or entity that occurs while inside the United States. Such transfers or disclosures are “deemed” or adjudged to be exports to the home country of the foreign individual or entity and thus are subject to the same penalties as actual controlled articles exported without license. These disclosures might occur during normal collegial interactions, such as research with a student or colleague, laboratory tours, or visits of international students and scientists.

Defense Article (ITAR 120.6): any item designated in the Munitions List, such as specified chemical agents, cameras designed for military purposes, certain lasers, and certain GPS equipment. It also includes any technical data recorded or stored in any physical form, models, mock-ups, or other items that reveal technical data directly relating to the particular item or defense article listed in the USML.

Defense Service (ITAR 120.9): the furnishing of assistance (including training) anywhere (inside the United States or abroad) to foreign nationals in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles, and the furnishing of any controlled technical data to foreign nationals anywhere.

Denied Persons List: a list, referenced in Suppl. 2 to part 764 of the EAR, of specific persons who have been denied export privileges, in whole or in part. The full text of each order denying export privileges is published in the Federal Register.

Dual Use: items having both commercial and military capabilities. These items fall under the Bureau of Industry and Security (BIS), Department of Commerce.

EAR (Export Administration Regulations): pertain to the export of items listed on the Commerce Control List. (http://www.access.gpo.gov/bis/ear/ear_data.html; see Bureau of Industry and Security, Department of Commerce; 15 CFR §§ 730-774). These regulate the export of goods, technologies, and services, including “dual use” (having both military and civilian uses), that are commercial or potentially commercial, identified on the Commerce Control List. These are the regulations that most closely pertain to university research and other activities.

End-use: a detailed description of how the ultimate consignee intends to use the commodity being shipped.

End-user: the person abroad that receives and ultimately uses the exported or re-exported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

Export: “Export” includes physically carrying, sending, sharing, shipping, taking, transferring, and transmitting, as well as disclosing by oral, visual, or written means, including electronically, to a non-U.S. person, entity, or country. In the export control regulations there are several meanings, including the following examples: (1) Actual shipment of any goods or items covered by the regulations; (2) The electronic or digital transmission (e.g., fax, email, etc.) 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; (4) Actual use or application of covered technology on behalf of or for the benefit of any foreign entity or person(s) anywhere.

**Export Control:** the set of laws, policies, and regulations that govern the export of sensitive items for a country or company.

**Export License:** the approval documentation issued by an export agency authority authorizing the recipient to proceed with the export, re-export, or other regulated activity as specified on the application.

**ECCN (Export Control Classification Number):** identifies items on the Commerce Control List (CCL) subject to the export licensing authority of the Bureau of Industry and Security.

**Foreign National:** any person who is not a citizen or Legal Permanent Resident (LPR) Alien of the United States (does not hold a green card). Under the EAR, the term applies to “persons lawfully admitted for permanent residence in the United States” and does not apply to persons who are protected individuals (i.e., admitted as a refugee or granted asylum). See Immigration and Naturalization Act 8 U.S.C. 1324b (a) (3).

**Fundamental Research:** basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the U.S., where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons (EAR) or pursuant to specific U.S. Government access and dissemination controls (ITAR). See “Exemptions” above for more information on Fundamental Research.

**ITAR (International Traffic in Arms Regulations):** pertain to the movement of items on the USML [see Department of State (22 CFR §§ 120-130). These regulate the movement of defense articles, services, and related technical data identified on the U.S. Munitions List (USML 22 CFR 121.1), pursuant to the Arms Export Control Act. [see Department of State (22 CFR §§ 120-130).]

**LPR:** Legal Permanent Resident in the United States; someone who holds a “green card.”

**Munitions List:** see USML.

**OFAC (Office of Foreign Assets Control Regulations, Department of the Treasury (31 CFR §§ 500-597; see also 50 U.S.C. §§ 1-44 and 1701-1706). These regulate trade with foreign countries and administer statutory economic trade sanctions imposed against several foreign countries (e.g., embargoes, penalties, etc.).**

[http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx](http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx)

**Technical Assistance, Data, and Technology:** “Technical assistance” may take the form of instruction, skills training, working knowledge, and consulting services, and may also involve the transfer of technical data.
“Technical data” means information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes but is not limited to information in the form of blueprints, drawings, plans, instructions, diagrams, photographs, diagrams, models, formulae, tables, engineering designs and specifications, manuals, and instructions written or recorded on other media or devices such as disk, tape, or read-only memories. Technical data do not include information in the public domain (above).

“Technology” refers to any specific information and know-how (whether in tangible form, such as “technical data,” or in intangible form, such as “technical assistance” or services) required for the development, production, or use of a good, but not the good itself.

USML (United States Munitions List; USML 22 CFR 121.1): articles, services, and related technical data designated as defense articles and defense services pursuant to the U.S. Arms Export Control Act.

Responsibilities and Procedures

SIUC’s export compliance efforts are coordinated through the Office of Sponsored Projects Administration (OSPA), including seeking permission or licenses for legally exporting controlled technologies, articles, data, etc. by the U.S. Departments of State and/or Commerce.

It is the responsibility of the Principal Investigator/Project Director (PI/PD) on any project or contract to be aware of this policy and to notify OSPA of potential export control issues on the proposal checklist.

(1) Proposal and Contract Review

OSPA reviews all proposals and sponsored research contracts to ensure compliance with SIUC’s Export Control Policy. If it is determined that foreign nationals cannot have access to the project or any equipment, technical information, data, materials, items, or results, OSPA will inform the Principal Investigator in writing.

(2) Export Control Lab Procedures

SIUC has the responsibility for preventing the “deemed” export of any equipment, controlled information, data, or technology from projects carried out in SIUC facilities.

(3) Travel and Dissemination of Data

“Deemed” export provisions mean that violations of export controls can occur by unauthorized presentation of controlled articles, data, equipment, controlled information, or technology orally or in writing in meetings, lectures, training activities, etc., or simply carrying such information on laptop computers or other electronic storage devices to and within a foreign country. (See Definition)

The following methods are used, as appropriate, to restrict the dissemination of such information or technology to foreign nationals on campus:
• **Access restriction:** Restrict access to labs by key coding so as to allow only authorized personnel, in this case U.S. citizens or permanent residents. If this is not feasible, secure time blocks in which access is restricted and secured to non-authorized personnel.

• **Blacking out windows:** A deemed export can include an oral or visual disclosure of controlled information or technology. Visual disclosure could be prevented by darkening transparent glass windows or doors.

• **Electronic communications and access:** Electronic information may be controlled by password control, User ID, or fire-walling network access. Printers and faxes should be secured and not in open spaces. All pertinent faxes sent or received should be shredded after use.

• **Meetings and conversations:** Discussions about the project or work products should be limited to the U.S.-authorized personnel. Discussions with third-party subcontractors must be conducted under signed agreements that reflect the export control considerations.

• **Work products:** Soft- and hard-copy data such as reports, lab notebooks, and other research materials must be stored in locked cabinets preferably in lock-and-key-access labs or offices.

### Reporting Incidents and Events

The following situations must be reported immediately to the Director of OSPA:

- Any contact, by phone, letter, or in person, by a U.S. Government official or agency concerning exports or imports, including any request to review or discuss a previously issued export license or past export shipment.
- A shipment from or to the university is detained or seized by U.S. Customs.
- Receipt of a subpoena or other criminal procedure notification related to U.S. export or import laws.
- A suspected violation of export control laws or the university guidelines regarding exports.
- Any reporting requirements under the anti-boycott and restricted trade practices regulation.
- Any requirement for U.S. Government export approvals

Any unauthorized or illegal activities, whenever discovered, must immediately be reported to OSPA for review and evaluation per this policy. Sufficient information must be provided to allow the university to pursue an appropriate course of action. If a potential violation has been reported, the matter will be handled by OSPA in consultation with the Office of General Counsel.

### Appendix 1: Foreign Countries with U.S. Trade Restrictions

http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx


(NOTE: U.S. foreign policy may result in some countries being added to or dropped from this list, so researchers should check this website for the latest information)
Countries with restricted entities on EAR list 15 CFR 744, Supp. 4:

China, India, Israel, Pakistan, Russia

OFAC Embargoed Countries:

Afghanistan
Angola
Cuba#
Iran#‡
Iraq‡
Libya
North Korea#‡
former Republic of Yugoslavia (Serbia, Montenegro)
the Balkans (Macedonia, S. Serbia, W. Balkans)
Burma*
Liberia*‡
Sudan*‡
Sierra Leone‡

Other Embargoed Countries:

Rwanda*
Serbia
Kosovo
Montenegro

Other countries:

Armenia
Azerbaijan
Belarus
Syria#
Vietnam
China*
Haiti*
Somalia* ‡
Zaire (Congo)* ‡

# State Department-identified “State Sponsor of Terrorism” countries
* U.S. Arms Embargo countries
‡ U. N. Arms Embargo countries