

UNIVERSITY OF HAWAI'I

EXPORT CONTROL PROGRAM
GUIDELINES

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I. Purpose

The University of Hawai'i (UH) Executive Policy EP 12.218, "Compliance with United States Export Control Laws and Regulations" establishes that all employees will comply with federal laws and regulations on export controls. This guide details the steps necessary to maintain export control compliance at UH. This guide applies to RCUH personnel and their activities as well, and the term "UH" will apply to both UH and RCUH personnel. The UH Office of Export Controls (UH OEC) is responsible for the administration of this guide.

II. Glossary

Bona Fide Full-Time University Employees Exemption – The US export regulations (22 CFR § 125.4(b)(10)(i-iii) and 15 CFR § 740.13(f)), for releases of ITAR-controlled Technical Data or EAR-controlled technology or source code to bona fide full-time regular employees of UH. Under this exemption, UH is authorized to release technical data, technology or source code to Foreign Nationals who are employees of UH within the US, provided that:

- A. The employees' permanent abode is in the US throughout the period of employment;
- B. The employees are full-time, regular employees of UH;
- C. The employees are not nationals of a sanctioned country;
- D. The university complies with certain additional legal requirements set forth in the ITAR/EAR; and
- E. The transfer does not involve encryption or source code controlled by EAR for Missile Technology reasons.

It is important to note that this exemption is generally not available to graduate or undergraduate students. Also, this exemption does not authorize exports of items, software, or technical data outside the US.

Commerce Control List – The Commerce Control List, or CCL, is a list of commodities identified by Export Administration Regulations as being controlled for export purposes. The CCL contains "dual-use" commodities and technology, meaning those that have both military and civilian applications, and other restricted commodities and technology.

Deemed Export – EAR defines *deemed export* as, "...any release of technology or source code subject to the EAR to a foreign national. Such release shall be deemed to be an export to the home country or countries of the foreign national."¹ Technology or source code is "released for export through:

- A. Visual inspection by foreign nationals of US origin equipment and facilities;
- B. Oral exchanges of information in the US or abroad; or
- C. The application to the situations abroad of personal knowledge or technical experience acquired in the US."

¹ EAR, 15 CFR § 734.2(b)(ii)

ITAR does not expressly define *deemed export* however 22 CFR § 120.17(4) & (5) are roughly analogous to EAR definitions of *deemed export* in that exports can occur in the US.

To summarize, a *deemed export* is the transfer, release, or disclosure to foreign nationals in the US of technical data about controlled commodities. A transfer of [Technology \(EAR\) or Technical Data \(ITAR\)](#) to the foreign person is *deemed* to be an export to the home country of the foreign national.

Defense Article – Per [ITAR](#), “...this term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data... It also includes forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles. It does not include basic marketing information on function or purpose or general system descriptions.”² A defense article is any commodity or technical data designated on the US Munitions List. This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated on the US Munitions List. It does not include basic marketing information on function or purpose or general system descriptions.

Defense Service – Per [ITAR](#), this term means “the furnishing of assistance (including training) whether in the US or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a [Defense Article](#).” A defense service also includes the furnishing to [Foreign Persons](#) any [Technical Data](#) which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance and modification of defense articles.³

Educational Information – In defining [Technical Data](#) for the purposes of establishing export controls, ITAR exempts “information concerning general scientific, mathematical or engineering principals commonly taught in schools, colleges and universities.”⁴

EAR defines *educational information* as information released “in catalog courses and associated teaching laboratories of academic institutions.”⁵

NOTE: This provision does not apply to encryption software classified under ECCN 5D002 on the [Commerce Control List](#), except publicly available encryption object code software classified under ECCN 5D002 when the corresponding source code meets the criteria specified in § 740.13(e) of the EAR.

² ITAR, 22 CFR § 120.6

³ ITAR, 22 CFR § 120.9 and 120.10

⁴ ITAR, 22 CFR § 120.10

⁵ EAR, 15 CFR § 734.9

In the absence of the above described exception, under export control regulations, the release of *educational information* is allowed without an export license.

Export – (See also definition of [Deemed Export](#).) ITAR⁶ defines *export* as:

- A. Sending or taking a [Defense Article](#) out of the US in any manner, except by mere travel outside the US by a person whose personal knowledge includes technical data; or
- B. Transferring registration or control to a [Foreign Person](#) of any aircraft, vessel, or satellite covered by the US Munitions List, whether in the US or abroad; or
- C. Disclosing (including oral or visual disclosure) or transferring controlled technical data to a foreign person, whether in the US or abroad; or
- D. Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the US or abroad.

EAR defines *export* as, “An actual shipment or transmission of items subject to the EAR out of the US, or release of technology or software subject to the EAR to a foreign national in the US, as described in paragraph (b)(2)(ii) of this section.”⁷

Export Administration Regulations (EAR) - These regulations are issued by the US Department of Commerce, Bureau of Industry and Security (BIS) under laws relating to the control of certain exports, re-exports, and activities.

The export control provisions of the EAR are intended to serve the national security, foreign policy, non-proliferation, and short supply interests of the US and, in some cases, to carry out its international obligations. Some controls are designed to restrict access to dual use items by countries or persons that might apply such items to uses inimical to US interests. The EAR also includes some export controls to protect the US from the adverse impact of the unrestricted export of commodities in short supply.

Export Control Classification Number (ECCN) - The five character alpha-numeric ECCN identifies the technology level and the capabilities of certain commodities and technology which, in combination with the country of destination, entity, and the intended application, determine if an export license is required for a specific transaction or whether an item can be exported without a license. The ECCN must be determined prior to shipment. ECCNs are assigned to commodities and technology regulated by EAR and on the US BIS’s (of the US Department of Commerce) [Commerce Control List](#), available at: <http://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>. Commodities or technology not regulated by EAR, are designated by ECCN “EAR99.”

Commodities, technical data, and services regulated by ITAR and on the US Department of State’s [US Munitions List](#) (available at: http://www.pmdtc.state.gov/regulations_laws/documents/consolidated_itar/2013/ITAR_Part

⁶ ITAR, 22 CFR § 120.17, reference c

⁷ EAR, 15 CFR § 734.2(b)(1)

[121.pdf](#)) are not assigned an ECCN, but rather, are identified by a munitions category number ranging from I to XXI (one to twenty-one).

Export License – An export license is a document stating that the relevant government agency has granted the licensee the right to export a specified commodity or technology to a specific country.

Foreign Persons/Foreign Nationals -- ITAR defines a *Foreign Person* as any person who is not a citizen or national of the US unless that person has been lawfully admitted for permanent residence, (i.e., a US national under immigrant visa status, or an individual referred to as “immigrant aliens” under previous laws), in the US under the Immigration and Naturalization Act⁸ and “Protected Individuals” under the Immigration and Naturalization Act⁹ designated as aslyee or refugee or a temporary resident under amnesty provisions. The definition includes foreign corporations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).

EAR defines a foreign national as any person who is not a citizen or national of the US.¹⁰ For the purposes of this guide, *foreign person* and *foreign national* are used interchangeably.

Fundamental Research – In ITAR, *Fundamental Research* is defined as basic and applied research in science and engineering conducted at an accredited US institution of higher education where the resulting information is ordinarily published and shared broadly within the scientific community.¹¹ Such research is termed *fundamental research* and is not subject to security classification or export control procedures. However, sponsored research conducted by a university is not considered *fundamental research* if:

- A. UH or its researchers accept sponsor’s restrictions on publication of scientific and technical information resulting from the project; or
- B. The research is funded by the US Government and specific access and dissemination controls protecting information resulting from the research are applicable.

In EAR, fundamental research is research conducted by scientists, engineers, or students at a university normally will be considered fundamental research. (University means any accredited institution of higher education located in the US.)¹² Prepublication review by a sponsor of university research solely to insure that the publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers does not change the status of fundamental research, so long as the review causes no more than a temporary delay in publication of the research results.

⁸ 8 U.S.C. 1101, section 101(a) 20, 60 State. 163

⁹ 8 USC 1324b(a)(3)

¹⁰ Note: same as “alien” pursuant to 8 U.S.C. 1101

¹¹ ITAR, 22 CFR § 120.11(a)(8)

¹² EAR 15 CFR § 734.11

NOTE: If research is funded by the US Government¹³ and specific national security control or foreign policy controls are agreed on to protect information resulting from the research, the fundamental research exclusion is not applicable and exports are subject to license requirements¹⁴.

NOTE: This provision does not apply to encryption software classified under ECCN 5D002 on the [Commerce Control List](#), except publicly available encryption object code software classified under ECCN 5D002 when the corresponding source code meets the criteria specified in § 740.13(e) of the EAR.

In the absence of the above described exceptions, under the export control regulations, US universities performing *fundamental research* may allow foreign members of their communities (e.g., students, faculty, and visitors) to participate in research projects involving export-controlled technical information on campus in the US without a deemed export license, as long as the technical information used in the project is publicly available. Further, technical information resulting from fundamental research may be shared with foreign colleagues abroad and shipped out of the US without securing a license.

International Traffic in Arms Regulations (ITAR)- These regulations are issued by the US Department of State, Directorate of Defense Trade Controls. ITAR regulates commodities and technical data “specifically designed, developed, configured adapted, or modified” for a military, spacecraft, or intelligence application, or services for the aforementioned. These regulated commodities and technical data are identified on the ITAR’s [US Munitions List](#). ITAR-listed commodities and technical data that are not the tangible products of UH [Fundamental Research](#) generally require a license for access and use by all [Foreign Persons](#), as well as for physical exports from the US.

Published Information in the Public Domain – Information is “published” (and therefore not subject to export controls) when it becomes generally accessible to the interested public in any form, including:

- A. Publication in periodicals, books, print, electronic, or other media available for general distribution (including websites that provide free uncontrolled access) or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline;
- B. Readily available at libraries open to the public or at university libraries;
- C. Patents and published patent applications available at any patent office; and
- D. Releases at an open conference, meeting, seminar, trade show, or other open gathering held in the US (ITAR) or anywhere (EAR).

¹³ EAR 15 CFR § 734.11

¹⁴ EAR, 15 CFR § 734.3(b)

NOTE: This provision does not apply to encryption software classified under ECCN 5D002 on the [Commerce Control List](#), except publicly available encryption object code software classified under ECCN 5D002 when the corresponding source code meets the criteria specified in § 740.13(e) of the EAR.

Technology or Technical Data – These terms refer to technical information beyond general and basic marketing materials about a controlled commodity. The terms do not refer to the controlled equipment or commodity itself, or to the type of information contained in publicly available user manuals. Rather, the terms technology and technical data mean **specific** information **necessary** for the development, production, or use of a commodity. This information usually takes the form of blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering specifications, and documentation. It is important to note that the [Deemed Export](#) rules apply to transfer of such technical information to foreign nationals inside the US.

- A. According to ITAR, “Information...required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of [Defense Articles](#).¹⁵” (Note that “defense articles” includes essentially all space-based research.)
- B. According to EAR, specific information necessary for the "development," "production," or "use" of a product on the [Commerce Control List](#) and may 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.”¹⁶

US Munitions List – The United States Munitions List, or USML, is a list of commodities identified by the [International Traffic in Arms Regulations](#) as being controlled for export purposes.

III. Guidelines

A. Identification of Export Control Issues

Principal Investigators (PIs) must identify export control issues that may arise in various situations such as purchasing, hiring, traveling, shipping, hosting visitors, providing technical assistance, engaging in international collaborations, and performing research regardless of whether or not the research is extramurally funded. The situations described below are intended to serve as “red-flags” for potential export control issues however, this list may not be exhaustive.

1. Purchasing

¹⁵ ITAR, 22 CFR § 120.10

¹⁶ EAR, 15 CFR § 772

When purchasing manufactured goods, the PI should review the manufacturer's sales information to determine if the goods are subject to either ITAR or EAR. If so, have the manufacturer identify an [ECCN](#) number for the goods and contact UH OEC so that it can be determined if licenses are necessary should the goods be physically exported, or accessed by foreign nationals in the US.

2. Hiring of [Foreign Nationals](#)/Visiting Faculty and Scholars

When hiring a UH or RCUH employee of a foreign nationality, determine if the employee will be working on an export controlled project or have access or exposure to any export controlled commodities or technology, regardless of whether or not access to such commodities or technology are within the scope of their duties. If so, notice should be given to the UH OEC prior to hiring. At the time of hire, an RCUH or UH "Export Compliance Certification" is necessary for the new hire. If after the Export Compliance Certification is filed with the UH OEC and any information provided on the form changes, a revised form must be sent to the UH OEC.

When hosting a visiting scholar of a foreign nationality, determine if the scholar will be working on an export controlled project or have access or exposure to any export controlled commodities or technology. This determination should be made **independent** of whether or not access to such items or technology is within the scope of their duties. If it is positively identified that the scholar will have access to export controlled items or technology, notice must be given to the UH OEC prior to scholar's arrival so that a screening may be conducted. An Export Control Agreement for Visiting Scholars must be completed and submitted to UH OEC. Download a copy of the Visiting Scholar Export Control Agreement at <http://www.hawaii.edu/offices/export/requirements.html> (see Forms section).

3. International Travel

When traveling to a foreign country, determine if the destination is one that is listed on the US Treasury's sanctioned country list, available at: <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>, or the US Department of State's list, available at: http://www.pmddtc.state.gov/embargoed_countries/

Early notice should be given to the UH OEC if travel is planned to any country on these lists.

Areas of concern with regard to export controls and travel might include:

- a. Taking items with you on a trip in support of your work or conference such as:
 - i. Laptops, or other memory devices with EAR or ITAR controlled software
 - ii. Encryption products
 - iii. Data/technology
 - iv. Blueprints, drawings, schematics

- v. Supplying certain technologies/data at a "closed" conference or meeting (not open to all technically qualified members of the public, and attendees are not permitted to take notes)
- b. Money transactions and the exchange of goods and services in [certain countries](#)
- c. Doing business with certain [people or entities](#) identified by the Bureau of Industry and Security and the Office of Foreign Assets Controls
- d. Providing a [Defense service](#) to a [Foreign person](#)
- e. Ship operations with other entities or foreign persons

Hand carrying commodities or technology subject to EAR or ITAR, even if contained on a computer device, is generally discouraged. The transport of those items, even when under the control of the traveler, is still considered an export. The process of ensuring safe passage through a foreign customs office and declaring the value of the items for tax and duty purposes is potentially risky. If transporting items or technology subject to EAR or ITAR abroad, UH personnel must contact the UH OEC well in advance.

4. Shipping

When Shipping commodities or technology abroad, determine if the commodities or technology are subject to either ITAR or EAR. If they have been procured, have the manufacturer identify an [ECCN](#) number (EAR) or munitions category number (ITAR) for the goods so that the UH OEC may determine if licenses are necessary. If the items have been created by UH or RCUH personnel, identify an [ECCN](#) (EAR) or munitions category number (ITAR) for the items, and contact UH OEC for license determination.

It is highly recommended that anyone preparing a shipment for export utilize experienced professionals. Couriers (FedEx, DHL, etc.) or international freight forwarders, and licensed customs brokers are all highly recommended. The UH OEC should be contacted for advice on specific shipments of export-controlled commodities, but the guidance below may serve as general assistance.

The following Destination Control Statement is required on the shipping documents, **“These commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to United States law is prohibited.”** For shipments of commodities or technology involving a US State Department export license, the following Destination Control Statement is required on shipping documents in lieu of the one listed above, **“These commodities are authorized by the United States Government for export only to [country of ultimate destination] for use by [end-user] under [license or other approval number or exemption citation]. They may not be resold, diverted, transferred, or otherwise be disposed of, to any other country or to any person other than the authorized end-user or consignee(s), either in their original form or after being incorporated into other end-items, without first obtaining approval from the United States Department of State or use of an applicable exemption.”**

The shipment of commodities or technology subject to export controls will invoke additional requirements. Commodities or technology shipping on a US export license from either the State or Commerce Department must be identified to US Customs and Border Protection as a licensed export prior to export, and reported in the US Census Bureau's Automated Export System (AES). Shipments of commodities or technology utilizing a US Commerce Department export license exception must be reported in the US Census Bureau's AES system at the time of export, noting the specific abbreviation for the export license exception. The use of such export license exceptions must be approved by UH OEC.

Additionally, the following information is necessary for any shipment leaving the US with a value under \$2,500 USD and should be furnished to an international courier or freight forwarder:

- a. List of contents - include product descriptions and model numbers, where possible
- b. Declared value of each item and total value of shipment
- c. Reason for export (i.e. – for repair and warranty work, return to manufacturer, or export for research to be returned). Such descriptions may lessen or eliminate import duties or taxes.
- d. Insurance value, if requested
- e. [ECCN](#)
- f. Export license information, i.e. license number

For shipments valued over \$2,500 USD, include all the information listed above as well as the following:

- a. List export statistics codes for each item. Export statistics codes can be found at the US Census Bureau's schedule B website:
<http://www.census.gov/foreign-trade/schedules/b/>

5. Hosting Visitors

Visitors refer to any non-UH employee or student. Common examples of visitors include visiting scholars, company representatives, representatives of foreign governments, or members of the media. This guidance is primarily targeted towards short-term visitors, and projects involving export-controlled technology.

When hosting a visitor, determine if the visitor will have access or exposure to any export controlled commodities or technology subject to the EAR or ITAR. If so, notice must be given to UH OEC prior to scheduling the visit so that it may be determined if a license is required.

UH employees who have access to export-controlled commodities or technology are responsible for ensuring that export-controlled [Technology/Technical Data](#) are not released to [Foreign Nationals](#) during their visits.

Export-controlled technology or technical data does NOT include:

- a. Information concerning general scientific, mathematical or engineering principles;
- b. Information already in the [Public Domain](#), such as that available through unrestricted publications, unlimited distribution at conferences, or libraries; or
- c. [Fundamental Research](#) where the resulting information is ordinarily published and shared broadly in the scientific community. However, equipment used to produce the fundamental research may nonetheless be controlled.

Technology is “released” to a [Foreign National](#) when:

- a. It is available to foreign nationals for visual inspection, such as reading technical specifications, plans, blueprints, etc.
- b. It is exchanged verbally, including by correspondence; or
- c. It is made available by practice or application under the guidance of persons with knowledge of the technology. (See 15 CFR §734.2(b)(3) of the EAR.)

Requirements for visitors to access export-controlled areas of UH:

- a. Well in advance of a visit, complete a Visitor Screening Form at <http://www.hawaii.edu/offices/export/requirements.html> (see Forms section), to have UH OEC screen the foreign visitor against Denied Parties Lists and other US export control requirements.
- b. If a release of [Technology or Technical data](#) to a foreign visitor is intended, contact UH OEC to ensure a US State or Commerce Department license is obtained prior to the visit.
- c. Once the visitor is screened and approved by UH OEC and prior to their visit, execute a Visitor Export Control Agreement with the visitor and UH OEC. Download the form at <http://www.hawaii.edu/offices/export/requirements.html> (see Forms section).
- d. Once the visitor is screened and approved by UH OEC, the person in charge of the visit should ensure that the visitor is escorted through facilities with controlled technologies, and are not given keys/keycards, combinations, passwords or other access to research facilities in which export-controlled research is being performed. Escorts are responsible for ensuring that no technical data or controlled commodities are present when non-US visitors are in the area. A check of the visitor’s identity must take place to ensure that the person actually visiting has the same identity as the person screened and approved by UH OEC.

6. Providing Technical Assistance

If providing technical assistance ([Defense Services](#)), goods or know-how to a foreign person or entity that may be used to create an item or technology subject to the EAR or ITAR, UH must first obtain approval from the federal government vis-à-vis an export license or other government authorization.

If the item or technology is subject to ITAR, UH must also codify the arrangement in a Technical Assistance Agreement (TAA) after obtaining approval from the US Department of State. Contact UH OEC for this. A detailed questionnaire must be completed for the preparation of the Technical Assistance Agreement and its accompanying application to the US Department of State.

7. Engaging in International Collaborations

If an international collaboration is proposed and will involve the exchange of commodities or [Technology/Technical Data](#) subject to EAR or ITAR to foreign persons, UH OEC must be notified so that it can be determined if licenses are required.

8. Performing Research

If, during the course of conducting research, commodities or technology subject to EAR or ITAR are used, obtained or created, or items or technology are altered in such a way that they become subject to the EAR or ITAR, UH OEC must be notified.

Special restrictions on encryption technology:

The sharing, shipping, transmission, or transfer of all encryption software in either source code or object code that is specifically designed or developed for a military, intelligence, or space application is subject to ITAR. ITAR-related encryption software is controlled for export and cannot be shared with a foreign person unless the code is already published or otherwise in the public domain.

However, before “strong dual-use encryption code” (ECCN 5D002) is made publicly available via the internet or otherwise placed electronically in the public domain, exporters must provide the US Government with either a copy of the strong dual-use encryption code or a one-time notification of the internet location (URL) of the code. This must be done before making the software publically available. Notification after transmission or transfer of the software outside the US is an export control violation. Principal Investigators must notify UH OEC prior to posting strong dual-use encryption so that notification can be made to the US Government.

9. Disposing of Export-Controlled Commodities or Technology

The possession of export-controlled commodities or technology, such as software, hardware, and/or [Technology/Technical Data](#) subject to EAR or ITAR requires secure storage as well as secure disposal to ensure inadvertent release to foreign

nationals does not take place. Plans for destruction, transfer, donation, or sale of such materials must be shared with UH OEC, so that UH personnel may be advised on the proper handling procedures. It should be noted that export-controlled materials licensed for export by the US Government may never be diverted by the foreign end-user to another user or country, without notice to the US Government and subsequent approvals. Such activities trigger new US export license requirements.

B. Notice to UH OEC

1. UH personnel, upon identification of an export controls scenario are required to notify UH OEC promptly. Many scenarios such as hiring, visits and travel may be time sensitive and therefore as much advance notice as possible is important. Information that should be furnished includes, but is not limited to, the following:
 - a. Names of any involved [Foreign Nationals](#), their citizenship, and countries of birth;
 - b. [ECCN](#) numbers or munitions category numbers of any items or technology subject to the EAR or ITAR, if known (or if not known, the UH OEC may be consulted for a classification determination);
 - c. A description of the technical data/technology or defense service being exported;
 - d. Destination of export, whether permanent or transitory; and
 - e. Any other pertinent information involving the export.
2. Upon notification of an export control scenario, the UH OEC will make a determination as to the course of action required under the applicable regulations. The UH OEC may require more information in order to make a determination.

C. Determination of Restrictions

1. Screening of Persons and Entities

Any involved [Foreign Persons](#) or entities in an export control scenario will be screened by UH OEC against the applicable US Department of Treasury lists of restricted parties, specially designated nationals, and entities to ensure UH is not engaging any “blacklisted” person or entity. Engagement of any persons or entities positively identified in the screening will not be allowed.

2. Screening of Exports

Any [Export](#) or [Deemed Export](#) must be screened by the UH OEC against ITAR and/or EAR regulations, and by country of destination, and a license determination will be made. If no license is required, UH OEC will inform the UH personnel and discuss any additional requirements. If a license is required and the activities are conducted under the direction of a PI, UH OEC will inform the PI and the PI must delay any planned activities until such time as a license is obtained by UH.

D. Master Technology Control Plan (Master TCP), Project-Specific Technology Control Plans (PSTCP), and Site-Specific Technology Control Plans (SSTCP)

To comply with requirements set forth in the NISPOM and ITAR, UH maintains a Master TCP at <http://www.hawaii.edu/offices/export/requirements.php> that describes general requirements for conduct on export-controlled projects and other university activities restricted by export controls. PIs are required to abide by the Master TCP for all scenarios described in its “Scope and Approach” section, and when there is NO expectation of exporting data, technology, equipment, information or materials to a non-US person, company or government.

When there IS an expectation of exporting data, technology, equipment, information or materials to a non-US person, company or government, a PSTCP or SSTCP may be executed to describe the specific protection measures a PI will take. A PSTCP is to be used for specific protection measures related to a project, and an SSTCP is to be used for specific protection measures related to an entire site (i.e. a physical location), such as a telescope, vessel, laboratory, or other type of facility.

Any PI in possession of an item or technology controlled by EAR or ITAR must develop a PSTCP or SSTCP to describe the items or technology subject to export controls, and the detailed plans for keeping it protected from unauthorized access by foreign nationals or foreign governments. PSTCPs/SSTCPs must be signed by the PI and their Dean/Director. (The PI is encouraged to contact UH OEC with a draft PSTCP/SSTCP prior to signing the document.) The UH OEC will review, make any necessary corrections prior to approval, and sign the PSTCP/SSTCP. Any approved PSTCP/SSTCP should be shared by a PI with his/her research team for their awareness. The PSTCP/SSTCP must be kept in the PI’s research project files and an original signed PSTCP/SSTCP will be kept on file at UH OEC for permanent record retention and audit purposes. Any deviation from a previously approved PSTCP/SSTCP is not allowed. Any changes to a previously approved PSTCP/SSTCP must result in a new PSTCP/SSTCP being reviewed and executed prior to implementation.

Download a template for the PSTCP/SSTCP at <http://www.hawaii.edu/offices/export/requirements.html>, under the Forms section.

When implementing a PSTCP or SSTCP, the following are some highly recommended practices:

1. A laboratory space (as minimal as possible to accomplish the aspect of research that is export-controlled) should be designated as an area in which special procedures must be followed. To that end, the research project as a whole should be reviewed to isolate those individual tasks within the research project that need to be subject to control.

2. Logs should be maintained for managing access into and movement out of this designated laboratory space.
3. Locks on any entry into this designated laboratory space should be installed or changed so that only personnel permitted on a project can gain access.
4. If it is determined that the above measures are required, it is imperative to assure that janitorial, maintenance, locksmiths, and delivery/courier individuals with access to the space are included in this process.
5. Computers must be secured and/or monitored so that export-controlled information is not inadvertently made available to individuals not permitted to receive it. The information systems staff should be engaged to identify the least burdensome but most effective use of passwords, certificates, or other means of securing computers used in a project that may contain export-controlled material, particularly when they are networked into the institution.
6. Where students are engaged in a project, their identity, nationality, and level of access must be continually monitored during the course of the project, as the needs for these management measures may change when individuals they are intended to cover for compliance with the export control laws either leave or join the project.
7. Photographs for export controlled items should be prohibited and all cell phones should remain off and stored while in the room.
8. After being approved to work on the project and *before* they have the export controlled software installed, all personnel (including investigators, staff, and students) must take security precautions with export controlled information, equipment, and computers with export controlled information and/or software.
9. The department network must have up-to-date firewall protection and anti-virus software, and all computers with export-controlled software must have PGP (Pretty Good Privacy) encryption software or better, and require a password as well. Any laptops that are authorized to have copies of the export- controlled software should be checked for security.

E. Submission of License Applications

UH OEC, after making a determination that a license is necessary, will submit to the appropriate federal authority an application for an export license:

1. US Department of State, Directorate of Defense Trade Controls via the D-TRADE on-line system.
2. US Department of Commerce, Bureau of Industry and Security via the SNAP-R on-line system.
3. US Department of Treasury, Office of Foreign Assets Control via their on-line system.

It should be noted that export licenses normally take 2-6 months to obtain.

F. Conduct Under an Export License

1. Export licenses issued by federal agencies authorize an export by a specific exporter, to a specific end-user, for a specific purpose, etc., and cannot be used for any other purpose.
2. Once approved by the applicable federal agency, UH OEC will retain one original of an approved license, and furnish one copy of an approved license to the PI for their records.
3. PIs will be responsible for reviewing their license and in particular, any conditions or provisos contained therein, and adherence with the same. PIs must complete the intended export or deemed export prior to the license's expiration date. If additional time is necessary, another license application is required.
4. PIs will report to UH OEC any export activity that takes place, such as a physical shipment or transmission to a foreign national. In the case of a physical shipment, PIs are encouraged to contact the UH OEC for assistance with shipping requirements such as the diversion control statement, reporting the US Census Bureau, and decrement of their export license by US Customs and Border Protection.
5. Once all export activities are complete, or if an intended export did not take place, PIs are required to inform UH OEC.
6. At the expiration of an export license, UH OEC will return the original license to the federal agency if required to do so by regulation.

G. License Exemptions and Exceptions

1. Although, primary responsibility for license determination rests with UH OEC, a PI may determine that a license exemption or exception is applicable to a particular export scenario. In such circumstances, confirmation should be sought from UH OEC that the license exemption or exception is appropriate and the PI must document how the exemption/exception was applicable for federal audit purposes. A copy of the documentation justifying the applicability of an exemption/exception must be furnished to UH OEC for official record-keeping purposes.
2. License exemptions:
The following general license exemptions are provided for in the ITAR and EAR, and may be applicable to UH export scenarios:
 - a. [Fundamental Research](#)
 - b. [Educational Information](#)
 - c. [Published Information in the Public Domain](#)
 - d. [Bona Fide Full-Time University Employees](#)
3. License exceptions:
License exceptions provided for in the EAR may be used if an evaluation is first conducted by UH OEC and the use of such a license exception is deemed appropriate. UH OEC will inform the PI of restrictions and requirements that may be applicable to the particular license exception.

H. Disclosure to Federal Agencies

In cases of willful or unintentional violations of export control regulations, UH OEC will be responsible for the self-disclosure of such activities to the appropriate federal agency. The UH Office of General Counsel will be consulted, if appropriate.

Inquiries by any federal agency regarding export controls will be responded to by UH OEC.

Revision History

Version	Date of Issue	Description
1	1/15/2014	As Issued.
2	1/29/2014	Updated URL to USML after federal website change.
3	7/8/2014	Updated URL to Visitor Agreement form.
4	10/14/14	Updated definition of "Defense Article"
5	11/7/14	Updated section III.D regarding Technology Control Plans