



**EXPORT CONTROL
MANAGEMENT PLAN**

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For guidance on creating an export management plan, we consulted the websites and export control management plans of the following institutions: Case Western Reserve University, Georgia Tech, North Carolina State University, Texas State University at San Marcos, University of California at Berkeley, University of Chicago, Wayne State University, Winston-Salem State University, and Yale University.

APPALACHIAN STATE UNIVERSITY EXPORT CONTROL MANAGEMENT PLAN

STATEMENT OF COMPLIANCE

Appalachian State University will comply with all United States export control laws and regulations, including those implemented by the United States Department of Commerce (DOC) through its Export Administration Regulations (EAR) and the United States Department of State through its International Traffic in Arms Regulations (ITAR) and the United States Treasury Department's Office of Foreign Assets Control (OFAC) through its travel embargo regulations.¹

In the interest of fostering and maintaining an open and robust teaching and research environment while complying with all federal laws and regulations, the University has developed and will enforce the export control management plan described in this document.

An Export Control website has been developed with links on the University's Research webpage and the websites of the Office of Research and Sponsored Programs and the Graduate School.

Appalachian State University will ensure that its export activities are legally conducted by utilizing the Visual Compliance II (visual compliance) system, a standard in export control compliance software solutions that provides the necessary documentation and online tools to help the University remain in compliance with U.S. export control regulations.

BACKGROUND

For several decades, federal laws restricting export of *sensitive* or *controlled* goods and materials, technologies and related technical information that might harm the interests of the United States or contribute to the military capabilities of countries whose policies conflict with U.S. policies have been implemented by three agencies: the Department of Commerce through the Export Administration Regulations (EAR); the Department of State through the International Traffic in Arms Regulations (ITAR); and the Department

¹ Attached to this Export Control Management Plan are seven Appendices: Appendix 1 – Definitions and Essential Terms; Appendix 2 – Exemptions and Exclusions; Appendix 3 – Technology/Data Control Plan; Appendix 4 – Essential Information about Laptops and GPS Equipment; Appendix 5 –Export Control Briefing; and Appendix 6 – Export Control Checklist.

of Treasury's Office of Foreign Assets Control (OFAC) through its travel embargo regulations.

These laws and regulations, which also cover the sharing or transfer of items, materials, software or technologies with individuals on restricted party lists and embargoed countries, are the law of the land. After 11 September 2001, export control regulations have become more prominent, resulting in heightened scrutiny concerning the level of compliance. Appalachian State University and its employees and students are required to comply with these regulations and laws. Civil and/or criminal penalties—including fines and/or prison sentences for individuals—apply in cases of violations.

Export control laws and regulations can have significant implications for scholarly activities and research but these implications are often not fully recognized or understood by a university community accustomed to the free dissemination of knowledge.

OVERVIEW AND BASIC INFORMATION

Export controls and embargo regulations prohibit—under certain conditions—the export without a license of certain technologies, goods, software and information for reasons of national security or the protection of trade. In addition, these regulations cover other University activities including:

- Sharing of information with foreign nationals
- Publishing of research results
- Management of intellectual property
- Hiring of foreign nationals
- International faculty and student exchanges
- Purchasing and dealing with foreign/international vendors
- Delivery to and utilization of scientific equipment by foreign nationals
- Working with international colleagues within and outside of the United States
- Travel outside the United States

An understanding of certain basic concepts is crucial for compliance:

- What is an export?
- What is a deemed export?
- What types of information are not subject to export control regulations?
- When does an export require an export license?

An **export** is a transfer of an item, information or software to a foreign person, foreign entity or foreign destination. A **deemed export** is a transfer or release of technology or source code to a foreign national in the United States. Deemed exports, like exports, are subject to all applicable export control regulations.

Examples of exports and deemed exports include: 1) actual shipment of controlled items outside the United States, 2) sharing source code, technical data or technical assistance with a foreign national inside or outside of the U.S. by verbal, written, electronic or visual disclosure, and 3) carrying export controlled items abroad.

Some types of information and software are not subject to export control regulations. Published information and software that is generally accessible to the interested public is not subject to export controls unless it is used in the provision of a defense service or is associated with encryption software. Similarly, instruction in courses and teaching laboratories listed in a course catalog are also exempt from export control regulations. The results of fundamental research are also usually excluded from export controls. As defined in National Security Decision Directive 189:

'Fundamental research' means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

Information and software, generated by fundamental research, are not subject to export controls as long as the information or software is made public or is intended to be made public. Typically, this is called the fundamental research exclusion to export control regulations. If there are restrictions on publication of the research or restrictions on the participation of foreign persons in the research, the fundamental research exclusion does not apply and the research will probably be subject to export control regulations.

It is important to note that the fundamental research exclusion to export control regulations does not include the transfer of material goods or equipment to a foreign national or country. Furthermore, the disclosure of controlled technology to a foreign national during the course of fundamental research is subject to export controls.

Although exports may be subject to export regulations, most exports do not require export licenses. In order to determine if an export requires an export license, the technical specifications, destination, end user and end use of the export must be reviewed. The following exports will likely require an export license:

- The materials, technology or data have real or potential military applications or economic protection issues.
- There are government concerns about the country of destination or about the host organization or individual(s).
- There are government concerns about the declared or suspected final use or final user of the export.

In particular, travel to embargoed countries, as well as shipment, transport, or provision of equipment, goods, services, or information to embargoed countries and individuals—if permitted—requires an OFAC license. In some cases, it may take 4 to 6 months to secure an export license from the federal government.

UNIVERSITY POLICY

Appalachian State University will fulfill its mission of teaching, research, and service in a manner that complies with federal export control and embargo regulations, while also striving to maintain a free and open academic environment.

Failure to comply with federal export control laws and regulations, or failure to comply with the University's export control policy and procedures will result in disciplinary action. Failure to comply also will result in loss to the employee of institutional legal support, and may bar the University from receiving federal funding.

CAMPUS PROCEDURES

Empowered Official

The Chief Research Officer is the empowered official for all export control and embargo compliance at Appalachian and the official contact for governmental agencies with respect to export control and embargo issues. The Chief Research Officer will seek advice from the General Counsel and—when appropriate—external legal counsel for export controls issues. The General Counsel will facilitate Appalachian support to address export control and license issues, and will coordinate the approval by the Chancellor or other governing authorities of exceptions to related policies in order to comply with export regulations.

Duties of the empowered official include the following:

- Authority to sign and process license applications on behalf of the University;
- Understand the provisions of EAR and ITAR;
- Authority to inquire into any aspect of a proposed export and to verify the legality and accuracy of the information submitted for a transaction;
- Authority to refuse to sign any license application without retribution from the University.

Campus-wide Education and Training

Workshops on export control regulations and the University's Export Control Management Plan will be offered through the standard faculty and staff development mechanisms, with online options to administrators, faculty, staff, and students. A

minimum of one workshop—with both classroom and online options—covering export control regulations and the Export Control Management Plan will be conducted during each semester. Attendance by Deans and Chairs is mandatory. Colleges/schools and/or departments will be required to invite the Office of Research Protections to discuss export control compliance at their school/college or departmental meetings at least annually. All Appalachian faculty, staff, and students who plan to travel on University business outside the United States will be required to read the Export Controls Briefing.

Research

Primary compliance responsibility rests with the principal investigator (PI) or Project Director (PD) of any research project. Under this policy, the PI/PD may be a faculty or staff member, a graduate student, or an undergraduate student. The PI/PD must contact the Office of Research and Sponsored Programs before beginning a project in order to get a determination of the potential impact of federal regulations on the planned research.

PIs and PDs are expected to:

- Review the export controls website and attend a training session on export controls or complete the online training module developed by the Office of Research Protections;
- Work with Office of Research Protections to determine the applicability of export control requirements *before* beginning any research project;
- Review a set of compliance questions at the beginning of a research project;
- Immediately notify Office of Research Protections of all changes in scope of the project or staffing of research projects that might alter an initial determination of applicability of export control regulations;
- Notify Office of Research Protections at least six (6) months prior to shipping or transporting scientific or technical equipment, including GPS equipment and encryption software, out of the United States and its territories in order to determine whether a government license is required;
- Provide all nondisclosure agreements and materials transfer agreements to the Office of Research and Sponsored Programs and the General Counsel to review; and
- Not sign any agreements to collaborate in research, instruction, or service activities with debarred persons or countries sanctioned by the U.S. government.

Research activity may be subject to export controls and embargoes if it involves the actual export or “deemed” export of goods, technology, or software. The Science, Technology, Engineering and Mathematics (STEM) disciplines are considered high risk areas. Research-related activities that may require a determination of export controls applicability include the following:

- Presentation or discussion of unpublished research at conventions, conferences, symposia and meetings attended by foreign nationals, including visiting or exchange scholars and undergraduate and graduate students
- Research collaborations with foreign nationals
- Technical exchange programs
- Transfers of research equipment, data, and/or technology abroad
- Visits to laboratories on campus by foreign scholars

Faculty and Staff PIs

Researchers will be required to include the following statement in an award contract for both internal and external funding.

This project is fundamental research and the University shall be free to publish or disseminate the results of this research or otherwise treat such results as being in the public domain. The research will be conducted in compliance with National Security Decision Directive 189 and the applicable export control regulations.

Principal investigators must be aware that any arrangements, agreements, memoranda of understanding, contracts, terms, or clauses negotiated with the sponsor but without the express written approval of the Chief Research Officer, the General Counsel, and the Provost are not authorized, and may be export controlled. Appalachian State University will not honor, recognize or be bound by any such “rogue” arrangements, contracts, terms, or clauses.

Pre-award staff in the Office of Research and Sponsored Programs (ORSP) staff will review contracts or grants for provisions restricting access to, or publication of, research and technical data, and/or limiting the participation of foreign nationals in the research effort, or otherwise rendering the fundamental research exclusion from export control regulations inapplicable. If the review indicates that export control regulations are applicable, the grant or contract and supporting documentation will be forwarded to the Office of Research Protections and General Counsel for confirmation.

If the research contract or grant falls under the terms of export control regulations, the General Counsel and ORSP staff assigned to the research contract or grant will contact the research sponsor and attempt to negotiate removal or modification of the provisions in the contract or grant that negate the fundamental research exclusion from export control regulations. If negotiations are unsuccessful, the Chief Research Officer and the Provost will determine whether the University will apply for an export control license, or conduct the research under export control restrictions, or abandon the research effort entirely.

If the Provost and Chief Research Officer determine that the research is important to the University's strategic directions and that the University will apply for an export control license, the General Counsel will proceed to apply for the appropriate license. Work cannot begin on the contract or grant, or proposed contract or grant, until this process is complete and any required export control license has been issued.

All PIs whose research is subject to export controls may be required by ORSP and/or the licensing agency to develop a Technology/Data Control Plan outlining procedures for dealing with and safeguarding export-controlled information and technology. Although Office of Research Protections staff may provide examples, templates and other assistance, the PI bears primary responsibility for developing an acceptable technology control plan. Refer questions to the Office of Research Protections.

ORSP and the Office of Research Protections will document and keep in a permanent file all correspondence, communications and decisions involved in the review of a project for applicability of export control regulations. The principal investigator may be required to sign forms, certifications, technology control plans, and/or other relevant documentation for the permanent file. The principal investigator must ensure that signed documents are returned promptly to ORSP to prevent any delay in the processing of contracts, proposals, and account set-up.

In addition, ORSP staff will review all research funded through the internal research grants programs. For international projects, all of which require an export control briefing, ORSP staff will refer the PI to the Office of Research Protections.

Graduate Student Research

All research conducted by graduate students completing a thesis or research project must be cleared of any applicable export control regulations by the research mentor and the chairperson of the department in which the student is enrolled. Refer questions to the Office of Research Protections. The thesis committee appointment document will be revised to include appropriate questions on export controls clearance.

If the graduate student is the PI on funding from an external sponsor, all of the procedures outlined above for faculty and staff will apply.

Undergraduate Student Research

All research conducted by undergraduate students must be cleared of any possible export control regulations by the research mentor and the chairperson of the department in which the student is enrolled. Questions can be referred to the Office of Research Protections. The online thesis handbook will be revised to include specific instructions about export controls.

If the undergraduate student is the PI on funding from an external sponsor, all of the procedures outlined above for faculty and staff will apply.

Foreign Travel

Faculty, staff, and students who plan to travel out of the country on University business must have written approval of the appropriate department chairperson and college dean. At least 4 weeks prior to departure, travelers must notify the Office of International Education and Development and the Office of Research Protections of their travel and destination.

For faculty and staff foreign travel involving instruction or educational exchanges, the Office of International Education and Development will evaluate foreign destination points through the visual compliance system to ensure that travel is not planned to a sanctioned country.

The foreign destination points of faculty traveling on University Research Council grants, Research Development grants, and/or Board of Trustees Research Grants, and graduate students traveling on graduate research grants will be evaluated through the visual compliance system by the Office of Research Protections.

The Office of Student Research will be responsible for evaluating the destination points for students traveling on International Student Research Grants. The Office of Student Research will refer students traveling on other grants funded by that office to the Office of Research Protections for evaluation. The ACT Office will be responsible for evaluating the destination points of service learning projects outside the U.S.

If faculty and staff intend to travel to a sanctioned country, they must meet with the Office of Research Protections for a briefing and to obtain a list of persons and organizations that they should not contact while traveling abroad.

Overseas Goods and Services Authorization

Before any university official enters into a contractual obligation with a foreign entity or individual on behalf of the university, the Office of Research Protections will review and approve the transaction to ensure that the goods or services are not provided to a sanctioned country or an individual/entity on a government restricted party list. The Office of Research Protections will review all agreements that involve 1) support for foreign collaborations; 2) a foreign entity providing goods or services to the University; or 3) the University providing goods or services to a foreign person or entity for compliance with export controls. Contracts and agreements will be referred to the General Counsel for review and approval.

Employment of Foreign Nationals and Visiting Foreign Nationals

The Office of International Education and Development (OIED) is responsible for Appalachian's compliance with federal regulations regarding employment of foreign nationals in certain visa classifications. OIED handles immigration matters for all international scholars and employees. The term "international scholar" includes Appalachian employees in a broad range of positions, primarily in teaching and research, but also in professional, administrative, or technical positions. The term also includes short-term visiting and exchange scholars, who may be on sabbatical leave from their institutions, self-funded, home-government-funded, or receiving financial support from Appalachian and/or other United States sources. OIED will use the Visual Compliance system to screen international scholars, including faculty, staff and postdoctoral fellows, through the visual compliance system.

Faculty and staff members who invite foreign nationals to visit Appalachian are responsible for contacting the Office of Research Protections to ensure that foreign nationals visiting Appalachian are not on a government restricted party list.

Admission and Enrollment of Foreign Nationals

The Admissions Office, Graduate School and Office of International Education and Development are responsible for review and clearance of foreign national undergraduate, graduate student applications and international exchange students, respectively.

- Degree seeking undergraduate students entering Appalachian for the first time: The Admissions Office will use the visual compliance system to certify that a newly admitted undergraduate foreign national is not on any government sponsored restricted party lists.
- Undergraduate students declaring majors: The Office of Advising will use the visual compliance system to certify that an undergraduate foreign national who declares a major in a high-risk discipline is not from an embargoed country or on an excluded persons list. The Office of Advising will contact the appropriate department chairperson if a student is from an embargoed country.
- Graduate students: The Graduate School will use the visual compliance system to certify that a newly admitted graduate foreign national is not on an excluded persons list and—in the case of admission to a high-risk discipline—is not from an embargoed country. The appropriate department chairperson will be contacted by the Graduate School with information on technology or information embargoes that may apply in a specific case.
- International exchange students: Office of International Education and Development will use the visual compliance system to certify that a student is not on any government sponsored restricted party list.

Purchasing

The Purchasing Department or the requisitioning department will notify the Office of Research Protections of purchases from foreign entities or payments to foreign nationals for services conducted at Appalachian. The Office of Research Protections will screen foreign entities and foreign nationals with visual compliance. If a purchase from a foreign entity is associated with a sponsored project, the PI will notify the Office of Research and Sponsored Programs.

Shipping and Receiving

Nothing can be transported out of the United States without approval of the Director of Research Protections and Chief Research Officer. In some cases, information regarding an international shipment must be entered in the Department of the Census' Automated Export System. If an export requires an export license, the Office of Research Protections will coordinate, with the PI, the development of the appropriate documentation to apply for a license. The General Counsel will serve as the official office for submitting the license application.

RECORDKEEPING

Per EAR §762.2, export control and embargo records will be retained for five years. The Office of Research Protections and Graduate School is responsible for maintaining records of all export control transactions and investigations. The records should include the following:

- Export control documents as defined in part 772 of the EAR
- Certifications of any export license exceptions
- Financial records
- Memoranda, notes, and correspondence
- Agreements, contracts, subcontracts
- Visual compliance searches for items, technology and software for export
- EAR, ITAR, OFAC license applications and licenses
- Automated Export System records
- Documents and reports on restrictive trade practice or boycott
- Other records pertaining to transactions involving exports, re-exports, trans-shipment or diversions from the United States of commodities, software, or technology
- Documentation of visual compliance checks on
 - international undergraduate students, graduate students and postdocs
 - international exchange students, faculty and visiting scholars
- Documentation of education on export controls for
 - Study abroad faculty leaders and student participants
 - Appalachian faculty and staff

System Reviews (Internal Auditor)

Appalachian's Internal Audit Department will assist with the analysis of the efficacy of the system. Review areas may include, but are not limited to the following:

- Awareness and training programs;
- Appropriate policies and procedures;
- Compliance with policies and procedures;
- Foreign travel and goods/services authorization documentation; and
- Records of all education and compliance related activities and briefings.

APPENDIX 1

DEFINITIONS OF ESSENTIAL TERMS

Actual Export

Goods, technology and software leaving the shores of the United States.

Bureau of Industry and Security (BIS)

An agency of the Department of Commerce that is responsible for administering and enforcing export controls on “dual use” items. BIS administers the Export Administration Act (EAA) by developing export control policies, issuing export licenses, prosecuting violators, and implementing the EAA’s anti boycott provisions.

Commerce Control List (CCL)

A list of items subject to Bureau of Industry and Security export license. The CCL is found in Supplement No. 1 to Part 774 of the Export Administration Regulations (EAR).

Commerce Control List Category

The CCL is divided into ten categories: (0) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Mechanicals, Chemicals, Microorganisms, and Toxins; (2) Materials Processing; (3) Electronics Design, Development and Production; (4) Computers; (5) Telecommunications and Information Security; (6) Sensors and Lasers; (7) Navigation and Avionics; (8) Marine; and (9) Propulsion Systems, Space Vehicles, and Related Equipment.

Commerce Control List Category Group

Each CCL category is subdivided into five groups, designated by the letters A through E: (A) Equipment, assemblies, and components; (B) Test, inspection and production equipment; (C) Materials; (D) Software; and (E) Technology.

Commodity Jurisdiction Ruling

A request of the State Department Directorate of Defense Trade Controls for its determination whether a thing, service, or information falls under the EAR and the Commerce Department or the ITAR and the State Department.

Controlled Country

A list of countries designated controlled for national security purposes found in Country Group D:1, including: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, the People's Republic of China, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Moldova, Mongolia, Romania, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam. Cuba and North Korea are controlled countries, but they are listed in Country Group E:2 (unilateral embargoes) rather than Country Group D:1. Note: These lists may change over time.

Deemed Export

Transmission of technology, information or source code to an individual within the United States other than a U.S. citizen or permanent resident.

Defense Article (ITAR 120.6)

Any item designated in the USML (see ITAR). Examples include specified chemical agents, cameras designated for military purposes, specified lasers, and GPS equipment that exceed certain specifications. It also means 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)

Furnishing 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” (see definition below) to foreign nationals anywhere.

Denied Persons List

A list of specific persons denied export privileges in Supplement No. 2, Part 764 of the EAR.

Directorate of Defense Trade Controls (DDTC)

Department of State agency which licenses defense services and defense (munitions) articles.

Dual Use

Items that have both commercial and military/proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also subject to the EAR (see §734.2(a) of the EAR).

Empowered Official

A U.S. person who is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and has the independent authority to: 1) Enquire into any aspect of a proposed export or temporary import by the applicant, 2) Verify the legality of the transaction and the accuracy of the information to be submitted; and 3) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse. (22 C.F.R. § 120.25)

End use

A detailed description of how the end user intends to use the commodities being exported.

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 one who incorporates the export into other commodities.

Export

An export is a transfer or transmission of a commodity, technology (information, technical data, or assistance) or software outside the U.S. Exports also include deemed exports. An export may be actual shipment of any covered goods or items; the electronic or digital transmission of any covered goods, items or related goods or items; any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any foreign national; or actual use or application of covered technology on behalf of or for the benefit of any foreign entity or person anywhere.

Export Administration Regulations (EAR)

Title 15, sections 730-774 of the Code of Federal Regulations (CFR) promulgated and enforced by the Bureau of Industry and Security in the Department of Commerce. Technologies and products that are controlled under the EAR serve primarily civil purposes, but may also have military applications.

EAR 99

Any item or technology subject to the EAR that does not fall under one of the ten specific CCL categories falls into EAR 99.

Export Classification Control Number (ECCN)

Classification of items covered by the Export Administration Regulations (EAR) based on the type of equipment, technology or software and ultimate destination. If an export falls under the controls of the EAR for the country of ultimate destination, an Individual Export License will be required.

Export Control

The set of laws, regulations and policies that govern the export of certain items, software and technology.

Exporter

The person who has authority of a principal party in interest to determine and control the sending of items out of the country.

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.

Foreign Person

Any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions), and any natural person who is not a citizen or lawful permanent resident of the United States or who does not qualify as a protected individual.

Fundamental Research

Basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from proprietary research and from research related to industrial development, design, and production the results of which ordinarily are restricted for proprietary reasons or specific national security reasons.

Fundamental Research Exclusion

Section 734.8 of the EAR states that information resulting from fundamental research is usually not subject to the EAR if the intent is to make the information publicly available. University research normally will be considered fundamental research unless the University or its

researchers accept sponsor restrictions on publication of scientific and technical information resulting from the project or activity. The EAR specifically permits limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to ensure that publication will not compromise patent rights of the sponsor.

The ITAR states that university research will not qualify as fundamental research if: (1) the University or its researchers accept any restrictions on publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the University or the researcher. The ITAR citation is 22 CFR § 120.11(8).

Good

Any article, natural or man-made substance, material, supply, or manufactured product, including inspection and test equipment, and excluding technology.

International Traffic in Arms Regulations (ITAR)

The ITAR regulations ([22 CFR §§ 120-130](#)) restrict the transfer of technologies, products, and information with primarily military purposes and are promulgated and enforced by the Office of Defense Trade Controls in the Department of State. Technologies, products, and software controlled by the ITAR are on the United States Munitions List (USML), [22 CFR § 121.1](#).

Munitions List

Articles, services, and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act.

No License Required (NLR)

Certifies that no BIS export license is required.

Office of Foreign Assets Control (OFAC)

Department of the U.S. Treasury that enforces economic and trade sanctions against countries and groups of individuals involved in terrorism, narcotics, and other disreputable activities. OFAC enforces economic and trade sanctions based on U.S. foreign policy and national security goals and targets foreign countries, terrorists, international narcotics traffickers, and those involved in the proliferation of weapons of mass destruction. OFAC also prohibits transactions with Specially Designated Nationals and Blocked Persons and Sanctioned Countries.

Public Domain

In ITAR (22 CFR 120.11), defined as information that is published and generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information; (3) through second class mailing privileges granted by the U.S. Government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States; (7) through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency; and (8) through fundamental research in science and engineering at accredited

institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.

The EAR does not include the term “public domain,” but does recognize “publicly available technology and software” as outside the scope of the EAR. The EAR defines information as “published” when it becomes generally accessible to the interested public in any form, including periodicals, books, print, electronic, or other media available for general distribution to the public or a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution. It also includes information readily available at public or university libraries, patents and patent applications, or used at an open conference, meeting, or seminar ([EAR 734.7](#)).

Re-Export

An actual shipment or transmission of items subject to export regulations from one foreign country to another foreign country.

Technical Assistance

Instruction, advice, skills training, seminars, troubleshooting, working knowledge, consulting services, and possibly transfer of technical data.

Technical Data

Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blueprints, drawings, plans, instructions, diagrams, photographs, etc. The ITAR definition does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain (ITAR 120.10(5)).

Technology

Any specific information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, manuals, software, or in intangible form, such as training or technical services) that is required for the development, production, or use of a good, but not the good itself.

U.S. Person

An individual who is a citizen of the United States or a foreign national with a visa status of Legal Permanent Resident (LPR). An LPR is also known as a Permanent Resident Alien (PRA).

APPENDIX 2

EXCLUSIONS AND EXEMPTIONS

EAR Exclusions:

Fundamental Research –Information resulting from basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community is excluded from the EAR (EAR 734.8). 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. Under the fundamental research exclusion, the EAR permits limited prepublication reviews by research sponsors to prevent the inadvertent revelation of proprietary information or to ensure that publication will not compromise the patent rights of the sponsor.

Published Information and Software - The EAR defines information as “published” when that information becomes generally accessible to the interested public in any form, including periodicals, books, print, electronic, or other media available for open distribution to the public or a community of persons interested in the subject matter, such as those in a specific discipline, either free or at a price that does not exceed the cost of reproduction and distribution. Published material also includes patents and patent applications, and information readily available at public or university and college libraries or used at an open conference, meeting, or seminar (EAR 734.7).

Educational/Teaching Exemption –This exemption authorizes the disclosure, without a license from the Departments of Commerce, of educational information through instruction in catalog courses, or general scientific, mathematical, or engineering principles commonly taught in colleges and universities. (EAR 734.9: 120.10(5)).

ITAR Exemptions/Exclusions:

Fundamental Research - The fundamental research exemption under the ITAR is more limited than under the EAR. The ITAR states that university research **does not** qualify as fundamental research if:

- The University or its researchers accept any restrictions on publication of scientific and technical information resulting from the project or activity; or
- The research is federally funded, and the University or researcher has accepted specific access and dissemination controls protecting information resulting from the research.
- Information is restricted for proprietary reasons (22 CFR 120.11(8)).

Public Domain (ITAR; 22 CFR § 120.11) - Information or software that might otherwise be considered technical data covered by the U.S. Munitions List is in the “public

domain” if it is published and generally accessible or available to the public through any of the following ways:

- through sales at newsstands and bookstores;
- through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;
- through second class mailing privileges granted by the UNITED STATES government;
- at libraries open to the public or from which the public can obtain documents;
- through patents available at any patent office;
- through unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, in the United States;
- through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant UNITED STATES government department or agency; and
- through fundamental research in science and engineering at accredited institutions of higher learning in the UNITED STATES where the resulting information is ordinarily published and shared broadly in the scientific community.

IMPORTANT NOTE: Even if information and software is publicly available or in the public domain, it would be subject to U.S. export controls if it involved the provision of a defense service. (22 CFR 120.11).

Bona Fide Employee Exemption - An additional ITAR exemption (see ITAR 125.4(10)) also is relevant to Appalachian. Disclosures of unclassified technical data within the borders of the United States by U.S. institutions of higher learning to foreign persons who are their bona fide and full time regular employees are exempt from the licensing requirements. The term “bona fide and full time regular employee” for the exemption does not include students.

The employee exemption is available only if:

- The employee’s permanent domicile throughout the entire period of employment is physically in the United States;
- The employee is not a national of a country to which exports are expressly prohibited in ITAR, 22 CFR 126.1; and
- The institution informs the employee in writing that technical data may not be transferred to foreign persons without the prior written permission of the [Directorate of Defense Trade Controls](#).

Educational exclusions - Information about general scientific, mathematical, and engineering principles that are commonly taught at schools, colleges and universities is excluded from export controls. (ITAR, 22 CFR 120.10(5))

APPENDIX 3

TECHNOLOGY/DATA CONTROL PLAN

It is unlawful under the EAR and/or ITAR to transfer export-controlled items, information, or software out of the United States or to a foreign national in the U.S. This includes disclosing technology or source code visually or orally to a foreign national within the United States or elsewhere without proper federal authorization. Under the EAR and ITAR, an export license may be necessary for foreign nationals to access any export-controlled information or source code.

For a project or activity that involves any export-controlled items or information, all relevant materials, items, software or hardware, data, or technical information must be secured from the use and/or observation by foreign nationals without a license. When any research is identified as subject to export control regulations, PI/PD will work with the Chief Research Officer and Office of Research Protections to develop a technology/data control plan (faculty, staff, and/or administrators) to address compliance with the export control regulations. Elements of a control plan may include:

- A laboratory space (appropriate to accomplish the elements of the research that are export-controlled) designated as an area requiring special procedures. The research project will be reviewed to isolate individual tasks subject to export control.
- Logs will be maintained to monitor access and movement in and out of the designated laboratory space.
- The designated laboratory space will have locks. Only faculty, staff, and students authorized for the project will have access. For a laboratory that must be locked for controlled research, the University will ensure that janitorial, maintenance, locksmiths, police, and delivery/courier individuals with access to the space are included in the approval process, or given time-limited monitored access.
- Computers will be secured and monitored to prevent transmission of export-controlled information to individuals not permitted to receive it. The Information Technology staff will be engaged to provide education on most effective use of passwords, certificates, or other means of securing computers that are used in a project and may contain export-controlled material, particularly when those computers or other data storage and retrieval technology are networked into the institution's servers.
- Identity, nationality, and level of access for students will be continually monitored during the course of the project. Management measures may change as students either leave or join the project.
- Education will be provided to project teams (faculty and students) on export control regulations and the relevance of those regulations to a particular project. Such education will be provided by appropriate personnel of the Office of General Counsel, the Office of Research Protections and Graduate Studies and, as appropriate, faculty members who are knowledgeable concerning the application of export control regulations to the project.

APPENDIX 4

LAPTOP BRIEFING

ESSENTIAL EXPORT CONTROL INFORMATION ABOUT LAPTOPS AND GPS EQUIPMENT

An export of a laptop, software and technical information loaded on the laptop occurs when the laptop is taken out of the U.S. An export also occurs when a foreign national, an individual who is neither a citizen nor a permanent resident of the U.S., uses the laptop and accesses software code or technical information on the laptop within the borders of the United States. Exports are regulated by a set of federal laws, policies and regulations known as export controls. Export controls may require an export license for the export of certain software, technologies and commodities.

The requirements for an export license vary according to the general characteristics of the item or technology, the destination country and the intended use of the export. Even if an export license is required, a license exception *may* apply to an export of a laptop, GPS and the loaded software and technical information.

If a license exception applies, the equipment and technology may be taken abroad without an export license.

- If the laptop or GPS equipment is owned by Appalachian, a Temporary Export License Exception may apply.
- If the laptop or GPS equipment is personally owned, a Baggage License Exception may apply.
- Please consult the Export Controls webpage, <http://www.orsp.appstate.edu/compliance/export-controls> to determine if a Temporary Export License Exception or a Baggage License Exception applies to an export of a laptop.

For further information, contact the Office of Research Protections, at compliance@appstate.edu or 262-2692.

Important Note: The purpose of this briefing is to increase awareness of federal laws and regulations, including 15 CFR Parts 730-774 and 22 CFR Parts 120-130. The information provided is not complete and should not be considered legal advice. It is the responsibility of each individual to comply with existing laws and export control regulations.

APPENDIX 5

EXPORT CONTROL BRIEFING

What are export controls?

Export controls are the set of laws, policies and regulations that restrict the export of certain goods, software and technology for reasons of national security and foreign policy.

What is an export?

A transfer of goods, software or technology to a foreign national (a person who is not a U.S. citizen or a green card holder) or a foreign destination. The transfer of technology or source code to a foreign national in the U.S. or abroad is deemed to be an export to that individual's country of citizenship. The definition of technology includes information that can be used or adopted for the development, production or use of a good. Information includes both technical data and technical assistance. Examples of exports include:

- sharing source code, technical data or technical assistance with a foreign national inside or outside of the U.S. by verbal, written, electronic and/or visual disclosure;
- shipping of physical items abroad; and
- carrying export controlled items abroad.

What activities are not subject to export controls?

Many of the teaching, research and service activities at Appalachian are not subject to export controls. In particular,

- published information and software (except some encryption software);
- information generated through fundamental research where the resulting information is ordinarily published and shared broadly in the scientific community; and
- instruction in courses listed in course catalogues are not subject to export controls.

Even if an export is subject to export controls, the export may not require an export license.

Consult the **Exports Controls webpage** for more information on export controls:

www.orsp.appstate.edu/compliance/export-controls

Restricted Parties and Sanction Programs

It is illegal to conduct business (including the exchange of information, items, services or monies) with any entity or individual that is on a restricted party list or a country under sanctions. In order to determine if an individual or entity is on a restricted party list or a country is under a sanctions program, please request a restricted party screening from compliance@appstate.edu.

Violations of export controls laws carry monetary and/or criminal penalties, for both the individual committing the violation and for the University. For additional information, contact the Office of Research Protections at 262-2692 or compliance@appstate.edu.

Important Note: The purpose of this briefing is to increase awareness of federal laws and regulations, including 15 CFR Parts 730-774 and 22 CFR Parts 120-130. The information provided is not complete and should not be considered legal advice. It is the responsibility of each individual to comply with existing laws and export control regulations.

APPENDIX 6

**APPALACHIAN STATE UNIVERSITY
EXPORT CONTROL CHECKLIST**

PI/PD: _____

Proposal #: _____

Department: _____

Date: _____

Compliance Questions	YES	NO
Does the project include foreign travel? If so, provide the names of Appalachian employees and students traveling.	<input type="checkbox"/>	<input type="checkbox"/>
Does the project require the delivery of a prototype, object, article or tangible item (this does not include technical report)?	<input type="checkbox"/>	<input type="checkbox"/>
Does the project include shipping anything overseas? If so, submit a Request to Export Goods or Technology.	<input type="checkbox"/>	<input type="checkbox"/>
Does the project entail sharing scientific or technical information with a foreign national? If so, request a restricted party screening for the person receiving information or visiting Appalachian.	<input type="checkbox"/>	<input type="checkbox"/>
Do you provide payments or have transactions in/with sanctioned countries or barred nationals/entities? Request restricted party screening for any person or entity involved in a transaction.	<input type="checkbox"/>	<input type="checkbox"/>
Are you sharing, shipping, transmitting or transferring encryption software in source code or object code to a foreign national? Request restricted party screening for any person or entity that will receive source code or object code.	<input type="checkbox"/>	<input type="checkbox"/>

Please consult the Export Controls website www.orsp.appstate.edu/compliance/export-controls or contact Julie Taubman (compliance@appstate.edu, 262-7981) for assistance.

Principal Investigator/Project Director

Date