POLICY TITLE: EXPORT CONTROLS

POLICY PURPOSE: This policy provides guidance for compliance with Export Control Regulations

BACKGROUND:

APPLIES TO:

DEFINITIONS:

Deemed Export – a deemed export is the transfer, release, or disclosure to foreign persons in the United States 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 person.

Defense Article - is any item or technical data on the U.S. Munitions List, which covers satellites and spacecraft as well as items specially designed, developed, configured, adapted or modified for a military application. Defense articles include: (a) technical data recorded or stored in any physical form, (b) models, (c) mockups or (d) other items that reveal technical data directly relating to items on the U.S. Munitions List. Defense articles do not include: (a) basic marketing information on function or purpose, or (b) general system descriptions of defense articles.

Defense Service - refers to:

- The furnishing of assistance (including training) to foreign persons in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a defense article on the U.S. Munitions List; or
- The furnishing to foreign persons of any technical data on the U.S. Munitions List.

Educational Information – Whether in the U.S. or abroad, the educational exclusions in EAR and ITAR cover instruction in science, math, and engineering taught in courses listed in catalogues and associated teaching laboratories of academic institutions, even if the information concerns controlled commodities or items. Dissertation research must meet the standards for "fundamental research" to qualify as "publicly available."

Educational Information Exclusion - covers information that might otherwise be controlled by the U.S. Munitions List is excluded from export controls if it concerns general scientific, mathematical or engineering principles commonly taught in universities, colleges or schools. This type of educational information is treated differently from information in the "public domain."

Export – an export is an actual shipment or transmission of any commodity (equipment or hardware) out of the United States, or the release of technology (technical data or information) about controlled commodities, or software

(commercial or custom-made) to a foreign national in the United States.

Export Administrative Regulations (EAR) - govern the export of all items in the United States or of U.S. origin, unless an exclusion from export controls applies or the items are exclusively controlled for export or re-export under other federal regulations. The Export Administration Regulations (EAR), Title 15, sections 730-774 of the Code of Federal Regulations (CFR) are promulgated and implemented by the Department of Commerce. The EAR regulate the export of goods and services identified on the Commodity Control List (CCL), Title 15 CFR 774, Supp. 1.

Export Controls - apply to transactions involving certain types of information, items or services, namely, those classified on the Commerce Control List or the U.S. Munitions List, if they are in the United States or of U.S. origin.

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, technology, or software to a specific country.

Foreign National - is a foreign citizen, other than one who is:

- A U.S. citizen,
- A U.S. national,
- A lawful permanent resident alien of the United States (i.e., a foreign national with a Green Card, a.k.a., a Permanent Resident Card), Lawfully admitted to the United States as a refugee,
- Granted asylum by the United States or
- Lawfully admitted to the United States as a special temporary agricultural worker.

Fundamental Research – Fundamental research is defined as basic and applied research in science and engineering conducted at an accredited U.S. institution of higher education where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research the results of which ordinarily are restricted for proprietary reasons or specific national security reasons. Under the export control regulations, U.S. 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 U.S. 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 United States without securing a license.

Fundamental Research Exclusion - includes the conduct of and information resulting from fundamental research. This is generally EXCLUDED from U.S. export controls, including deemed export controls (i.e., disclosure of information to foreign nationals on U.S. soil) — in accordance with National Security Decision Directive 189 (AAU site). Because fundamental research is not generally subject to deemed export controls, no export license or other authorization is needed to involve foreign nationals in fundamental research activity. The general rule does not, however, apply to fundamental research on encryption software.

International Traffic in Arms Regulations (ITAR), - 22 CFR §§ 120-130 are promulgated and implemented by the Department of State and regulate defense articles and services and related technical data that are identified on the Munitions

Control List (MCL), 22 CFR § 121.

Public Domain (22 CFR § 120.11) - means information that is published and that is 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.

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

- 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;
- readily available at libraries open to the public or at university libraries;
- patents and published patent applications available at any patent office; and
- release at an open conference, meeting, seminar, trade show, or other open gathering held in the U.S. (ITAR) or anywhere (EAR).
- Technology and 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. The "deemed export" rules apply to transfer of such technical information to foreign nationals inside the United States.

Technology or Source Code software - is released for export through:

1. Visual inspection by foreign nationals of U.S.-origin equipment and facilities,
2. Oral exchanges of information, or
3. The application to situations abroad of personal knowledge or technical experience acquired in the United States. ***CFR § 734.2(b)(3)***

Technical Data (ITAR TERM) - is a defense article covered by the U.S. Munitions List. Technical data means:

- Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of a

defense article;

U.S. Munitions List - is a list of defense articles (including satellites and spacecraft), technical data and defense services controlled for export and re-export by the U.S. State Department. The U.S. Munitions List is located in the International Traffic in Arms Regulations at 22 CFR § 121.1 (2004).

CONTENTS:

Responsibility for assuring the University acts in compliance with Federal Export Control Regulations is assigned to the President. The President has delegated authority to implement and enforce this policy to the Dean of the Graduate School (the "Institutional Official").

Responsibilities of the Institutional Official shall include:

- Assuring that University personnel are aware of and comply with the Export Control Regulations;
- Establishing and implementing a Standard Operating Procedure for identifying University activities that are within the purview of the Export Control Regulations;
- Determining the validity of allegations of violations of these regulations and University policy;
- Reporting violations of these regulations to the appropriate federal offices;
- Directing the application for licenses as needed to enable allowable access by foreign nationals to export control materials, or for shipping of such materials to foreign countries;
- Submitting reports as required under these regulations.

The Institutional Official has designated the Office of Scholarship and Sponsored Projects as the Compliance Office responsible for assisting the Institutional Official in assuring compliance with the Export Control regulations and the University policy and Standard Operating Procedures:

Responsibilities of the Compliance Office include:

- Assisting the Institutional Official in implementing the Standard Operating Procedure;
- At the request of the Institutional Official, investigating allegations of violations of Export Control regulations and the University policy;
- Assisting the Principal Investigators (PIs) in review of current and planned projects to determine the applicability of these regulations;
- Determining with a PI whether the technology or other material to be used in a research project is included on the Commerce Control List (CCL) or the U.S. Munitions List and, if applicable, initiating the application for a license.
- Coordinating the investigation of alleged violations, and presenting results to the Institutional Official;
- Maintaining a centralized database of projects within the University's responsibility that fall within the purview of EC regulations;
- Conducting an annual review of projects that fall within the purview of EC regulations and reporting results to the Institutional Official;
- Preparing reports as required under these regulations;
- Maintaining awareness of and disseminating current information on Export Control Regulations and this policy throughout the University community; and
- Reviewing research agreements and contracts for export control language and for terms or provisions that restrict accessibility or prohibit publication of

research results, limit the participation of foreign nationals on the research or otherwise render the fundamental research exclusion inapplicable.

The University General Counsel is responsible for providing assistance to the University with regard to legal interpretation of the regulations as related to University activities.

The Personnel Office responsibilities include assuring that information provided by PIs regarding applicability of Export Control regulations are incorporated into announcements for hiring personnel.

Faculty and professional staff who serve as a Principal Investigator (PI) on projects involving University personnel, facilities and other resources are responsible for

- Identifying the potential applicability Export Control Regulations to current and planned projects;
- If found to be applicable, identifying all personnel involved or to be involved in the project, including names and country of origin;
- Assuring that information about EC regulations, where applicable, are included in announcements for hiring of personnel who would be involved in covered projects;
- Assuring that access to and distribution of technologies and information related to EC covered projects are restricted to those persons and destinations that are not subject to these regulations;
- Understanding that acquiring a license for actions required by EC regulations may take 4 to 6 months; and
- Reporting any suspected violations of these regulations to the Institutional Official or OSSP.

Suspected violations of the Export Control Regulations and this policy will be reported to the Institutional Official. Results of an investigation will be reviewed with the input from the University Counsel and the Provost.

Actions to be taken in cases of documented or validated violations of Export Control Regulations include:

- Reporting validated violations to the applicable federal agency;
- Cooperating in the imposition of penalties as directed by federal agencies; and
- Sanctions to be determined based on the Faculty, Employees or student status.

POLICY STATEMENT:

It is the policy of FHSU that, absent extraordinary circumstances, teaching, research, and service will be accomplished openly and without prohibitions or restrictions on the publication and dissemination of the results of academic and research activities. However, certain federal regulations may require the University to obtain licenses from the U.S. Departments of State, Commerce, or Treasury before allowing foreign nationals to access research involving specific technologies or before sharing research information with persons who are not citizens of the United States or permanent resident aliens.

It is the policy of FHSU to pursue teaching, research, and service in a manner that is consistent with the Export Control regulations while making reasonable efforts to maximize the situations in which the University may claim the benefit of applicable exclusions to the regulations.

EXCLUSIONS OR SPECIAL CIRCUMSTANCES:	
RELATED DOCUMENTS:	**Policies:** **Forms:** **Other:**
KEYWORDS:	Export Controls, ITAR, Fundamental Research, Foreign National, Public Domain, Educational Information, Exclusions, Compliance Office, Institutional Official,
RESPONSIBLE OFFICE:	Office of Scholarship and Sponsored Projects
RESPONSIBLE UNIVERSITY OFFICIAL:	Dean of the Graduate School
ORIGINATION DATE:	2/5/2014
REVIEW CYCLE:	Every 3 Years

POLICY ADDRESS:	
LAST APPROVED ON:	Adopted by President's Cabinet 2/5/2014
REVIEW/CHANGE HISTORY:	
NEXT REVIEW DATE:	2/2017