BOSTON UNIVERSITY

EXPORT COMPLIANCE PROGRAM MANUAL
## List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>AVPRC</td>
<td>Associate Vice President for Research Compliance</td>
</tr>
<tr>
<td>BIS</td>
<td>Department of Commerce Bureau of Industry and Security</td>
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<tr>
<td>BU</td>
<td>Boston University</td>
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<tr>
<td>BMC</td>
<td>Boston Medical Campus</td>
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<tr>
<td>BUMC</td>
<td>Boston University Medical Campus</td>
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<tr>
<td>CCL</td>
<td>Commerce Control List</td>
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<tr>
<td>CJ</td>
<td>Commodity Jurisdiction</td>
</tr>
<tr>
<td>CRC</td>
<td>Boston University Charles River Campus</td>
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<tr>
<td>DDTC</td>
<td>Department of State Directorate of Defense Trade Controls</td>
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<tr>
<td>EAR</td>
<td>Export Administration Regulations</td>
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<tr>
<td>ECCN</td>
<td>Export Control Classification Number</td>
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<td>ITAR</td>
<td>International Traffic in Arms Regulations</td>
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<tr>
<td>OFAC</td>
<td>Department of the Treasury Office of Foreign Assets Control</td>
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<td>OGC</td>
<td>Office of the General Counsel</td>
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<tr>
<td>OSP</td>
<td>Office of Sponsored Programs</td>
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<tr>
<td>PI</td>
<td>Principal Investigator</td>
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<tr>
<td>SDN List</td>
<td>Specially Designated Nationals and Blocked Persons List</td>
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<tr>
<td>TAA</td>
<td>Technical Assistance Agreement</td>
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<tr>
<td>TCP</td>
<td>Technology Control Plan</td>
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<tr>
<td>USML</td>
<td>United States Munitions List</td>
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<td>UECD</td>
<td>University Export Controls Director</td>
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## REVISIONS

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TO:    Deans, Department Chairs, Laboratory & Center Directors, and Administrators

FROM:  Jean Morrison, University Provost and Chief Academic Officer
        Karen Antman, Provost, Medical Campus

DATE:  October 7, 2013

SUBJECT: Export Policy Statement

Boston University conducts focused research to advance knowledge, enhance student learning experiences, and build its reputation in the scientific and technical communities while providing positive returns on sponsoring partners’ investments. While Boston University endorses the principles of freedom of inquiry and open exchange of knowledge, we must be mindful of the federal laws and regulations governing the exchange of research materials and results that are subject to export controls.

The export of certain technologies, software, and hardware is regulated and controlled by Federal law for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction, and for competitive trade reasons.

Boston University and all its faculty, students and employees are required to comply with the laws and implementing regulations issued by the Department of State, through its International Traffic in Arms Regulations (ITAR), the Department of Commerce, through its Export Administration Regulations (EAR) and the Department of the Treasury through its Office of Foreign Assets Control (OFAC) and other applicable regulations. Export regulations apply regardless of the source of funding, both external and internal.

While most research conducted on our campuses is excluded from these regulations under the Fundamental Research Exclusion, university research involving specified technologies controlled under the EAR and/or ITAR, or transactions and exchanges with designated countries, individuals, and entities may require Boston University to obtain prior approval from the appropriate agency before allowing international students and scholars to participate in controlled research, collaborating with a foreign company and/or sharing research—verbally or in writing—with persons who are not United States citizens or permanent residents. The consequences of violating these regulations can be severe, ranging from loss of research contracts and exporting privileges to monetary penalties and jail time for the individual violating these regulations.
The export control regulations affect not only research conducted on campus, but also travel and shipping items abroad. Simply traveling to certain sanctioned countries could require a license from OFAC. As a result, this policy is applicable to all departments of the University. OFAC sanctions prohibit transactions and exchange of goods and services in certain countries and with designated persons and entities. Multiple lists of denied individuals and parties are maintained and enforced by federal agencies including the Departments of State, Commerce, and the Department of Treasury. Shipping items/data outside the U.S. as well as taking items or data on a flight, even if shipping or traveling in the conduct of research, could require a license from these agencies.

While Boston University is committed to export controls compliance, it also recognizes the complex nature of export control laws. Therefore, Boston University established an export compliance program in the Office of Associate Vice President for Research Compliance. We strongly encourage all of you to contact the University Export Control Director if you are planning to export materials/data abroad, to engage in controlled research, work with a university or company abroad, travel internationally, or if you have any questions related to export controls and the projects that you are currently involved in. Marie Hladikova is our Export Control Director and can be reached at 617-353-6753, or by email at mhladik@bu.edu.

In addition, we created a website where you can find more information and resources regarding these and other regulations that impact university research activities: http://www.bu.edu/orc/export/.

We ask each of you to take this matter very seriously and to support us in this effort. Any member of the BU community having any questions concerning this policy, its application to a specific situation, or suspecting violations of U.S. export controls should contact the Export Control Director, the Associate Vice President for Research Compliance or the Office of the General Counsel.
OVERVIEW OF EXPORT CONTROLS

I. INTRODUCTION

The U.S. export control system generally requires export licensing for defense articles, technical data or services, items that have both commercial and military applications, exports to sanctioned persons and destinations, and items with restricted end use. U.S. national security, economic interests, and foreign policy shape the U.S. export control regime. The export laws and regulations aim at achieving various objectives, such as preventing the proliferation of weapons of mass destruction, advancing the U.S. economic interests at home and abroad, aiding regional stability, implementing anti-terrorism and crime controls, and protecting human rights.

These controls restrict the export of products and services based on the type of product, the party that will use it, the destination of the export, and in some cases, the end use. In both the defense and high technology sectors, the U.S. Government tightly regulates the export not only of equipment and components, but also of technology. Technology includes technical data, such as blueprints and manuals, as well as design services (including the transfer of “knowledge”) and training. U.S. laws assert jurisdiction over U.S.-origin equipment and technology even after it is exported (i.e., restricting the re-export or re-transfer to third parties). In addition to general export licensing for items, technology or software, the United States maintains economic embargoes against a number of countries whose governments consistently violate human rights or act in support of global terrorism. Such embargoes bar most transactions by U.S. persons with these countries. Moreover, scientific collaboration and transactions with certain entities, universities and individuals overseas may be prohibited or may require an export license.

Three principal agencies regulate exports from the United States: the U.S. Department of State, Directorate of Defense Trade Controls (DDTC) administers the International Traffic in Arms Regulations (ITAR); the U.S. Department of Commerce Bureau of Industry and Security (BIS) administers the Export Administration Regulations (EAR); and the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) administers economic sanctions and embargoes. The initial jurisdiction determination is important because only ITAR or EAR will govern a particular export transaction/technology transfer. OFAC regulations govern all export transactions.

ITAR regulations control import and export of defense related articles and services. ITAR regulations apply to any item, services, or technical data that is on the United States Munitions List (USML). The definition of technical data is somewhat broad and includes technical data recorded or kept in physical form (e.g. notebooks, computer disks), models, mock-ups, blueprints, photographs, plans, instructions, software, etc. Technical data does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges, and universities or information in the public domain. The ITAR regulations are covered in more details in Section III of this manual.

EAR regulations are designed to control technologies that are considered as “dual use,” that is, the technology has both civilian and military uses and convers most of the other non-defense items. Examples of covered technologies include global positioning systems, explosives, propulsion systems, space vehicles, telecommunication, and information security, etc. EAR regulations are discussed in more details in Section XX of this manual.

The EAR and ITAR regulations apply to the transfer of specific physical items (e.g. components), and information (e.g. technical specifications, data) and the provision of specific services (e.g. Consulting on ITAR controlled technology) to persons and entities outside the United States (these are referred to as “exports”) and to the disclosure of specific information (e.g. technical specification or data) and the provision of specific types of services to foreign nationals inside the United States (termed as “deemed exports”). When the activities of institutions of higher education involve the export of those specified things, information, or services outside the United States and the
disclosure or transmission of those specified things, information, or services to foreign nationals (e.g. students, visiting scholars) inside the United States, the activities become subject to export control laws and regulations.

There are additional agencies that regulate exports including but not limited to the Department of Energy, Drug Enforcement Administration, Nuclear Regulatory Commission, Defense Technology Security Administration, U.S. Census Bureau and U.S. Customs and Border Protection.

II. PURPOSE

The purpose of this Export Compliance Manual is to provide guidance to the Boston University community on the importance for U.S. export controls and to outline the policies, procedures, and key administrators who are responsible for ensuring compliance with U.S. export controls laws and regulations for the research and global activities conducted by Boston University. The policies and procedures in this manual serve as our standard for conducting research and international activities. Moreover, this manual provides a comprehensive program of safeguards and measures to minimize risk of potential violations of applicable export control policies.

III. SCOPE

This manual applies to both campuses and to all departments, divisions, centers, and contract personnel of Boston University. This handbook provides an overview of U.S. export controls, key issues related to Universities, outlines university policies and procedures, and provides a sample of a technology control plan for research projects that are controlled for U.S. export purposes.

IV. MANAGEMENT OF THE EXPORT COMPLIANCE

This document will be updated periodically and undergo an annual review to ensure that the policies and procedures are current and consistent with export control laws and the BU’s policies and procedures. Marie Hladikova, University Export Control Director, has been designated the lead responsible official for overseeing the day-to-day operational management of BU’s export compliance program and ensuring that this document is kept up to date.

If an error is found during the review of this document or a procedural update is required, all employees should immediately forward the edit to Ms. Hladikova via email (mhladiko@bu.edu) or telephone at 617-353-6753. In her absence, employees should contact the Associate Vice President for Research Compliance, Kathryn Mellouk (kateski@bu.edu) or telephone at (617) 638-7198. This document will be posted on the Office of Research Compliance website at: http://www.bu.edu/orc/export/.

V. EXPORT CONTROLS AND UNIVERSITY RESEARCH

U.S. national security and economic interests are heavily dependent on technological innovation and advantage. Many of the nation’s leading-edge technologies, including defense-related technologies, are being discovered by U.S. and foreign national students and scholars in U.S. university research and university-affiliated laboratories. U.S. policymakers recognize that foreign students and researchers have made substantial contributions to U.S. research efforts, but the potential transfer of controlled defense or dual-use technologies to their home countries could have significant consequences for U.S. national interests. The U.S. export control agencies place the onus on universities to understand and comply with the regulations.¹

Export controls present unique challenges to universities and colleges because they require balancing concerns about national security and U.S. economic vitality with traditional concepts of unrestricted academic freedom, and publication and dissemination of research findings and results. University researchers and administrators need to be aware that these laws may apply to research, whether sponsored or not. They also need to be aware that they might be personally liable for violations. However, it also is important to understand the extent to which the regulations do not affect normal university activities.

VI. INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)

A. ITAR OVERVIEW

The International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130,² govern the export, re-export and import of classified and unclassified defense articles, defense services, and related technical data from the United States, abroad, and/or to any foreign person, whether located in the United States or abroad. The ITAR controls not only end items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that are incorporated into the end item. Certain non-military items, such as commercial satellites, and certain chemical precursors, toxins, and biological agents, are also controlled. With rare exceptions, if an item contains any components that are controlled under the ITAR, the entire item is controlled under the ITAR. For example, a commercial radio that would normally not be controlled under the ITAR becomes a controlled defense article if it contains an ITAR-controlled microchip. The Directorate of Defense Trade Controls (DDTC) administers and enforces the regulations. An article or service may be designated or determined in the future to be a defense article or defense service if it:

- Is specifically designed, developed, configured, adapted, or modified for a military application
- Does not have predominant civil applications
- Does not have performance equivalent (defined by form, fit, and function) to those of an article or service used for civil applications
- Is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability such that control under this subchapter is necessary

The intended use of the article or service after its export (i.e., for a military or civilian purpose) is not relevant in determining whether the article or service is subject to the controls of this subchapter. Any item covered by the U.S. Munitions List (USML) must be within the categories of the U.S. Munitions List.

² The ITAR are promulgated pursuant to Section 38 of the Arms Export Control Act, 22 U.S.C. §§ 2778 et seq.
B. ITAR DEFINITIONS

1. Defense Article

Means any item or technical data that is specifically designed, developed, configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the USML. Defense article also includes models, mock-ups, or other items that reveal technical data relating to items designated in the USML.

2. Technical Data

Means any information which is required for the design, development, assembly, production, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings or assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed. However, technical data does not include general scientific, mathematical, or engineering principles commonly taught in schools, information present in the public domain, general system descriptions, or basic marketing information on function or purpose.

Under ITAR certain data that are considered as being in “public domain” are exempted. Public domain means information that is published and generally accessible or available to the public:

- Through sales at newsstands and bookstores
- Through subscriptions available without restriction to any individual who desires to obtain or purchase the published information
- Through second class mailing privileges granted by the U.S. 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 U.S. Government department or agency
- 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.

Fundamental Research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

- The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity
- The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable

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3 22 C.F.R. § 120.6.
3. **Defense Service**

Means providing assistance—including training—to a foreign person in the United States or abroad in the design, manufacture, repair, or operation of a defense article, as well as providing technical data to foreign persons. Defense services also include informal collaboration, conversations, or interchanges concerning technical data.\(^4\)

4. **U.S. Person**

U.S. person means a person who is U.S. citizen, or a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state, or local) entity.\(^5\)

C. **THE U.S. MUNITIONS LIST**

The first step to determine whether your research falls under the ITAR is to review the U.S. Munitions List (USML), section 121.1 of the ITAR. The ITAR controls not only end items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that are incorporated into the end item. Certain non-military items, such as commercial satellites, and certain chemical precursors, toxins, and biological agents, are also controlled.

The USML designates particular categories and types of equipment as defense articles and associated technical data and defense services.\(^6\) In general terms, any items specifically designed, modified, adapted, configured for military use will fall under the ITAR. It is very important to understand that the modification may be minor and relatively insignificant. Even if the modification or adaptation is insignificant from a scientific or engineering perspective, the item/technology may fall under the ITAR if the modification was requested in relations with a defense article or research project funded by a defense contractor, Department of Defense agency, Department of Energy, or NASA, among other agencies.

The USML divides defense items into 21 categories, listed below.


| I | Firearms, Close Assault Weapons and Combat Shotguns |
| II | Guns and Armament |
| III | Ammunition/Ordnance |
| IV | Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines |
| V | Explosives, Propellants, Incendiary Agents, and their Constituents |
| VI | Vessels of War and Special Naval Equipment |
| VII | Tanks and Military Vehicles |
| VIII | Aircraft and Associated Equipment |
| IX | Military Training Equipment |
| X | Protective Personnel Equipment |

\(^4\) 22 C.F.R. § 120.9.  
\(^5\) 22 C.F.R. § 120.15.  
\(^6\) See 22 C.F.R. § 121.1.
When classifying an item on the U.S. Munitions List, it is important to note that some items are considered Significant Military Equipment (SME) items and they are flagged with an asterisk on the USML (§ 120.7). All technical data associated with these items is considered significant military equipment and may require additional documentation for export license applications.

D. CLASSIFICATION

While DDTC has jurisdiction over deciding whether an item is ITAR- or EAR-controlled, companies may self-classify the item. If doubt exists as to whether an article or service is covered by the USML, upon written request in the form of a Commodity Jurisdiction (CJ) request, DDTC will determine whether a particular article is a defense article subject to the ITAR, or a dual-use item subject to Commerce Department licensing.\(^7\)

These requirements also apply to technical data (described in Section VI.B.2 above) which are subject to the DDTC jurisdiction.

Determinations are based on the origin of the technology (i.e., as a civil or military article), and whether it is predominantly used in civil or military applications. University employees should contact the University Export Control Director (UECD) in the Office of Associate Vice President for Research Compliance (AVPRC) when classifying an item. If the UECD and AVPRC determine that it is necessary to obtain a CJ, the UECD in conjunction with the AVP-RC will file the request with DDTC.\(^8\)

*Note: Classification is a complicated process with many nuances that requires expertise that might not be readily obvious to the researchers. The Export Control Director is available to help with the process and should be contacted for assistance.*

E. DEFINITION OF THE EXPORT UNDER THE ITAR

Export means sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by person whose personal knowledge includes technical data; or transferring

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\(^7\) See 22 C.F.R. § 120.4. Note that DDTC has jurisdiction over determining whether an item is ITAR- or EAR-controlled. While BIS at Commerce provides assistance with determining the specific ECCN of a dual-use item listed on the CCL, if doubt exists as to whether an item is ITAR- or EAR-controlled, BIS will stay its classification proceeding and forward the issue to DDTC for jurisdiction determination.

\(^8\) Instructions on the content of a CJ and the filing procedure are available at [http://www.pmddtc.state.gov/commodity_jurisdiction/index.html](http://www.pmddtc.state.gov/commodity_jurisdiction/index.html)
registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the US Munitions List, whether in the United States or abroad; or disclosing (including oral and visual disclosure) or transferring technical data to a foreign person whether in the United States or abroad; or performing defense services on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.

The following are examples of exports:

1. Exports of Articles from the U.S. Territory
   - Shipping or taking a defense article out of the United States.
   - Transferring title or ownership of a defense article to a foreign person, in or outside the United States.
   - Transfer of technical data (e.g. taking a laptop which contains technical data to another country constitutes export of the data).

2. Extra-Territorial Transfers
   - The re-export or re-transfer of defense articles from one foreign person to another, not previously authorized (i.e., transferring an article that has been exported to a foreign country from that country to a third country). For example, if a research project is shared with an authorized collaborator in Country-X, the individual may not share the information with another individual without prior approval.
   - Transferring the registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite covered by the USML, whether the transfer occurs in the United States or abroad.

3. Export of Intangibles
   - Disclosing technical data to a foreign person, whether in the United States or abroad, through oral, visual, or other means.
   - Performing a defense service for a foreign person, whether in the United States or abroad.

F. AUTHORIZATION TO EXPORT

Generally, any U.S. person or entity that manufactures, brokers, or exports defense articles or services must be registered with DDTC.\(^9\) Registration is required prior to applying for a license or taking advantage of some license exemptions.\(^10\)

Once the registration is complete, an exporter may apply for an export authorization by submitting a license application for the export of defense articles or technical data. For complex transactions that will require the U.S. person/entity to provide defense services or where the U.S. person will be collaborating on a defense project with a foreign person, a more complex license application is used, usually in the form of a Technical Assistance Agreement (TAA).

Most types of applications also contain additional certifications/transmittal letters, supporting documentation, and in some cases, non-transfer and use certification from the licensee and/or the foreign government of the licensee.

\(^9\) 22 C.F.R. § 122.1.
\(^10\) 22 C.F.R. §§ 120.1(c) and (d); 122.1(c).
License exemptions specific to universities, as well as licensing procedures, are described in detail in the *Key Issues in University Research* section. Boston University is registered with the Directorate of Defense Trade Controls and as such has the ability of submitting license applications and use ITAR exemptions. ITAR has a strict documentation requirement and all exemptions must be documented and signed by the University Export Control Director who will ensure that Boston University does not exceed the authorization or scope of the exemption.

**G. EMBARGOED COUNTRIES UNDER THE ITAR**

Currently, the list of countries includes: Afghanistan, Belarus, Burma, China (PR), Côte d'Ivoire, Cuba, Cyprus, Democratic Republic of the Congo, Eritrea, Fiji, Republic of Guinea, Haiti, Iran, Iraq, Kyrgyzstan, Lebanon, Liberia, Libya, North Korea, Pakistan, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, and Zimbabwe.

*ITAR Prohibitions*: No ITAR exports may be made either under a license or license exemption to countries proscribed in 22 C.F.R. § 126.1. Moreover, no foreign nationals from these countries shall have access to ITAR related research, technical data, or services.

*Note: These lists are regularly updated. It is essential that the list be consulted prior to any transaction.*

For the most updated list please refer to: [http://www.pmddtc.state.gov/embargoed_countries/index.html](http://www.pmddtc.state.gov/embargoed_countries/index.html).

Boston University is under a mandatory self-disclosure if any exports or transfers to these countries are made.

**H. RECORD KEEPING**

All records related to export or import shipments, research projects, licenses, agreements and/or license exceptions must be kept on file for five years after the shipment/project is finalized or the export license expired whichever is longer.

**I. IMPORTING**

There are two primary regimes that govern the import of ITAR articles into the U.S. Temporary imports or imports of U.S. origin items. ITAR hardware that were previously exported from the U.S. are subject to DDTC’s jurisdiction and importers can either apply for a temporary import license or apply for a very narrow license exception claimed with U.S. Customs.

The permanent import of ITAR articles listed on the U.S. Munitions Import List requires an import license from the Bureau of Alcohol, Tobacco, and Firearms (ATF) and importers must be registered with the ATF. The U.S. Munitions Import List is not as comprehensive as the USML and doesn’t include all ITAR items so it is important to carefully review its applicability prior to the import. It is located at 27 CFR §447.21.11 This list mostly governs critical military items and very few space related items and equipment.

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VII. **Export Administration Regulations (EAR)**

A. **EAR Overview**

Exports and re-exports of commercial and dual-use items, technology, and software are regulated and enforced by the Bureau of Industry and Security (BIS) under the Export Administration Regulations, 15 C.F.R. §§ 730-774 (EAR).\(^\text{12}\) While there are some parallels to the ITAR, there also are some major differences in how the regulations and the relevant agencies function. They are similar in that both agencies focus on “technology transfer” and have been increasingly focused on enforcement. They differ in that the EAR covers a wider range of products and technology, the product classification process is highly technical, and the need for a license depends not only on the type of product but also on its final destination, the person who will receive it and in some cases the end use of the item.

B. **Items Controlled Under the EAR**

Generally, all items of U.S.-origin or foreign origin items located in the United States are subject to the EAR. An item manufactured or technology developed abroad using components of U.S. origin is generally exempt from the EAR re-export requirements if it contains less than a _de minimis_ level of U.S. origin content by value. Such _de minimis_ levels are set in the regulations relative to the ultimate destination of the export or re-export.

Under the EAR, items with potential “dual” commercial and military use (not manufactured to a military specification), or otherwise of strategic value to the United States may require an export license. Items listed on the Commerce Control List (CCL) may require a license to certain countries or to certain entities prior to exportation. Items not listed on the CCL are designated as EAR99 and generally can be exported without a license, unless the export is to an embargoed country, to a prohibited person or entity, and/or an end use that is subject to licensing.

In broad terms it is important to remember that there are distinctions between ITAR and EAR as summarized below:

**ITAR**
- Covers military items or defense articles
- Regulates goods and technology designed to kill or defend against death in a military setting
- Includes space related technology because of application to missile technology
- Includes technical data related to defense articles and services
- Ensures U.S. security by imposing a strict regulatory regime
- Does not balance commercial or research objectives

**EAR**
- Covers commercial and dual use items
- Some items that were previously controlled under the ITAR have been moved to the Commerce Control List under the 500 & 600 series

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\(^{12}\) The EAR are promulgated under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420). From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (IEEPA)). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001, which has been extended by successive Presidential Notices, has continued the EAR in effect under IEEPA.
• Regulates items designed for commercial purposes but which could have military applications (computers, civilian aircraft, and pathogens)
• Covers both goods, software and the technology
• Encourages balancing competing interests through licensing regime
• Balances foreign availability, commercial, and research objectives with national security

The following summarizes the types of items controlled under the EAR:

**Commodities:** Finished or unfinished goods ranging from high-end microprocessors to airplanes or ball bearings.

**Manufacturing Equipment:** Equipment specifically for manufacturing or testing controlled commodities, as well as certain generic machines, such as computer numerically controlled (CNC) manufacturing and test equipment.

**Materials:** Certain alloys and chemical compounds.

**Software:** Software specifically associated with particular commodities or manufacturing equipment, as well as any software containing encryption and the applicable source code.

**Technology:** Specific information necessary for the “development,” “production,” or “use” of a product.

### C. DEFINITION OF EXPORT AND RE-EXPORT UNDER THE EAR

1. **Export**

   Export is defined as the actual shipment or transmission of items subject to the EAR out of the United States. The EAR is similar to the ITAR in that it covers intangible exports of “technology,” including source code, as well as physical exports of items.

2. **Deemed Export**

   The release of technology or source code to a foreign national in the United States is “deemed” to be an export to that national’s country, even though the release took place within the United States. Deemed exports may occur through such means as a demonstration, oral briefing, or plant visit, as well as the electronic transmission of non-public data that will be received abroad.

3. **Re-export**

   Similarly to the ITAR, the EAR imposes restrictions on the re-export of U.S. goods, (i.e., the shipment or transfer to a third country of goods or technology originally exported from the United States).

4. **Deemed Re-export**

   Finally, the EAR defines “deemed” re-exports as the release of technology by a foreign national who has been licensed to receive it to the national of another foreign country who has not been licensed to receive the technology. For example, ECCN 5E001 technology may be exported to a university in Ireland under the license exception for technology and software, but might require a deemed re-
D. THE COMMERCE CONTROL LIST

Commerce Control List (CCL) is published by the U.S. Commerce Department under the Export Administration Regulations (EAR) which addresses “dual-use” items, or information and software that are primarily commercial in nature but also have potential military applications. A key in determining whether an export license is needed from the Department of Commerce is whether the item intended for export has a specific Export Control Classification Number (ECCN). The ECCN is an alpha-numeric code (e.g., 3A001), that describes the item and indicates licensing requirements.

The CCL provides a list of specific items that are controlled. The CCL is similar to the “dual-use” list adopted by other countries under the Wassenaar Arrangement. The CCL is divided into the nine categories below. The CCL is available online at:

http://www.bis.doc.gov/policiesandregulations/ear/ccl_index.pdf (alphabetical index),
Commerce Control List, Supplement 1 to part 774 or
http://www.bis.doc.gov/policiesandregulations/ear/index.htm (CCL list including descriptions).

CCL CATEGORIES

0. Nuclear related items & miscellaneous items
1. Chemical compounds, microorganisms, and toxins
2. Materials processing
3. Electronics
4. Computers
5. Part-1: Telecommunications
6. Part-2: Information security (encryption)
7. Sensors & lasers
8. Navigation & avionics
9. Marine (vessels, propulsion, & equipment)
9. Propulsion systems, space vehicles (includes aircraft & aircraft engines)

E. CLASSIFICATION

The initial jurisdiction determination is a key because only EAR or ITAR regulations will apply to a particular transaction or research. Only the DDTC has jurisdiction and authority to decide whether an item is ITAR- or EAR-controlled.14

Once it is determined that an item is EAR-controlled, the exporter must determine its Export Control Classification Number (ECCN). The BIS encourages self-classification, however, the categories listed on the Commerce Control List are highly technical and only a person with sufficient technical expertise should make an attempt to classify dual-use items/technology or software under the EAR.

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14 For a complete discussion, see Overview of Export Controls, Section III.C above.
Each category of the CCL contains ECCNs for specific items divided into five categories, A through E: (A) specific systems or equipment (and components); (B) test, inspection and production equipment; (C) materials; (D) software; and (E) technology related to that specific equipment. For example, most civil computers would be classified under ECCN 4A994. The “4” refers to Category 4, *Computers*, and the “A” refers to the subcategory (i.e., equipment).

Once an item has been classified under a particular ECCN, a person can determine whether a license is required for export to a particular country. The starting place is the information following the ECCN heading. The “List of Items Controlled” describes the specific items covered or not covered by the ECCN.

**Determine Reason for Controls:** The “License Requirements” section provides notations as to the reasons for control. These reasons include:

<table>
<thead>
<tr>
<th>AT</th>
<th>Anti-Terrorism</th>
<th>CB</th>
<th>Chemical &amp; Biological Weapons</th>
</tr>
</thead>
<tbody>
<tr>
<td>CC</td>
<td>Crime Control</td>
<td>CW</td>
<td>Chemical Weapons Convention</td>
</tr>
<tr>
<td>EI</td>
<td>Encryption Items</td>
<td>FC</td>
<td>Firearms Convention</td>
</tr>
<tr>
<td>MT</td>
<td>Missile Technology</td>
<td>NS</td>
<td>National Security</td>
</tr>
<tr>
<td>NP</td>
<td>Nuclear Nonproliferation</td>
<td>RS</td>
<td>Regional Security</td>
</tr>
<tr>
<td>SS</td>
<td>Short Supply</td>
<td>XP</td>
<td>Computers</td>
</tr>
<tr>
<td>SI</td>
<td>Significant Items</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The most commonly used controls are Anti-Terrorism and National Security, while other controls only apply to limited types of articles. For example, ECCN 4A994 lists “License Requirements: Reason for Control: AT” (i.e., anti-terrorism) and the following:

<table>
<thead>
<tr>
<th>Control(s)</th>
<th>Country Chart</th>
</tr>
</thead>
<tbody>
<tr>
<td>AT applies to entire entry</td>
<td>AT Column 1</td>
</tr>
</tbody>
</table>

**Apply Country Chart:** Once an item is identified as meeting the criteria for a particular ECCN, the user can refer to the chart found at 15 C.F.R. § 738, Supp. 1 ([http://www.bis.doc.gov/policiesandregulations/ear/738.pdf](http://www.bis.doc.gov/policiesandregulations/ear/738.pdf)). If the particular control applies to that country, a license is required. For example, Syria has an “X” under AT Column 1; therefore a license would be required unless an exception is applied. In some circumstances an ECCN number may be controlled for multiple reasons, for example, AT Column 1 and NS Column 1; the item will be subject to an export license if there is an “X” in either one of these columns.

BIS has two assistance procedures for when the proper ECCN classification or licensing requirements are uncertain. To determine the appropriate ECCN for a particular item, a party can submit a “Commodity Classification Request” to the BIS. To determine whether a license is required or would be granted for a particular transaction, a party can request the BIS provide a non-binding “Advisory Opinion.”

It is imperative to know the jurisdiction at the outset and disclose all relevant technical and funding information about a research project to BIS to expedite the request. This is also specifically noted in the regulations: “those who request commodity classifications and advisory opinions should have determined

\[15 \text{ See } 15 \text{ C.F.R. } \S 748.3.\]
that the items at issue are not subject to the exclusive export control jurisdiction of one of the other
governmental agencies such as the Directorate of Defense Trade Controls in this context.\(^{16}\)

*The Export Control Director should be consulted for guidance on all classification matters.*

Unlike the ITAR, for classification purposes the BIS generally considers the classification of the
complete product being exported rather than at the classification of each subcomponent of the item (i.e.,
“black box” treatment), as opposed to the “see through” treatment under the ITAR.

**F. ENCRYPTION**

Encryption regulations are also administered by the Bureau of Industry and Security and add
another layer to export controls for certain products and software. Encryption regulations are complex and
any party who exports certain U.S.-origin encryption products may be required to submit an encryption
registration, classification request and/or self-classification report to the BIS. In addition, registration is
required in order to take advantage of a license exception.\(^{17}\)

**G. AUTHORIZATION TO EXPORT**

Once it is determined that a license is required, an exporter shall apply for export authorization
from the BIS, unless a license exception applies. Unlike the ITAR, there is no requirement for formal
registration prior to applying for an export license. All license application can be submitted online via the
SNAP-R system and first time users must apply for Company Identification Number. It may take several
weeks or months to obtain an export license so researchers should allow sufficient time for these
applications.

*Exceptions:* The EAR contains a number of useful license exceptions. Determining whether a
particular exception applies requires review of the specific application as detailed in 15 C.F.R. § 740
(http://www.bis.doc.gov/policiesandregulations/ear/740.pdf), as well as review of the notes on applicable
license exceptions following the ECCN entry. License exceptions must also be carefully documented.
Note that you cannot alter a particular transaction to “fit” the scope of a license exception. Each
transaction/export is taken “as is” before the license exception is applied.

These exceptions include:

- **LVS** Items of limited value (value is set under each ECCN).
- **GBS** Items controlled for national security reasons
to Group B countries.
- **CIV** Items controlled for national security reasons to
particular countries where end-user is civilian.
- **TSR** Certain technology and software to certain countries.
- **APP** Computer exports to certain countries.

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\(^{16}\) See 15 C.F.R. §748.3 (a)

\(^{17}\) [http://www.bis.doc.gov/encryption/default.htm](http://www.bis.doc.gov/encryption/default.htm)
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCD</td>
<td>Authorization of certain consumer communication devices to Cuba.</td>
</tr>
<tr>
<td>TMP</td>
<td>Certain temporary exports, re-exports.</td>
</tr>
<tr>
<td>RPL</td>
<td>Certain repair and replacement parts for items already exported.</td>
</tr>
<tr>
<td>GFT</td>
<td>Certain gifts and humanitarian donations.</td>
</tr>
<tr>
<td>GOV</td>
<td>Exports to certain government entities.</td>
</tr>
<tr>
<td>TSU</td>
<td>Certain mass-market technology and software.</td>
</tr>
<tr>
<td>BAG</td>
<td>Baggage exception.</td>
</tr>
<tr>
<td>AVS</td>
<td>Aircraft and vessels stopping in the U.S. and most exports of spare parts associated with aircraft and vessels.</td>
</tr>
<tr>
<td>APR</td>
<td>Allows re-export from certain countries.</td>
</tr>
<tr>
<td>ENC</td>
<td>Certain encryption devices and software.</td>
</tr>
<tr>
<td>AGR</td>
<td>Agricultural commodities.</td>
</tr>
<tr>
<td>STA</td>
<td>Strategic Trade Authorization.</td>
</tr>
</tbody>
</table>

License exceptions specific to universities, as well as licensing procedures, are described in detail in *Key Issues in University Research*, below.

**H. RESTRICTIVE TRADE PRACTICES AND BOYCOTTS**

The anti-boycott regulations were implemented to prevent U.S. persons from participating directly or indirectly in the Arab League’s boycott of Israel. However, the rules are not limited to that particular boycott and also cover the refusal to do business with an individual on the basis of national origin, sex, race and religious affiliations. The laws prevent U.S. persons from doing business under terms that would restrict that person’s ability to do business with other countries under a boycott not recognized by the United States. The Arab League’s boycott has lessened over the years, but still remains in effect in some countries. These restrictions are enforced by the BIS and the applicable regulations are at 15 C.F.R. § 760.

1. **Jurisdiction**

These laws generally apply to any person or entity in the U.S., and to U.S. persons or entities abroad. As examples, the laws apply to:

- A foreign company’s affiliate or permanent office in the U.S.
- A foreign affiliate’s transaction with a third-party if that affiliate is controlled by a U.S. company and involves shipment of goods to or from the U.S.
2. **Red Flags** The Commerce Department has set forth the following red flags to look for as signs of anti-boycott requests:

- Agreements to refuse or actual refusals to do business with Israel or with blacklisted companies.
- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality.
- Furnishing information about business relationships with Israel or with blacklisted companies.
- Furnishing information about the race, religion, sex, or national origin of another person.
- Paying or otherwise implementing letters of credit that include requirements to take boycott-related actions prohibited by the anti-boycott regulations.

These restrictions may appear on pre-printed portions of agreements, in purchase orders, on letters of credit, may come up in oral communication, in correspondence, etc. U.S. persons are prohibited from responding to these types of requests.

3. **Exception** A major exception to the anti-boycott rules is the provision that permits compliance with the import requirements of a boycotting country. This exception permits firms to comply with import restrictions that prohibit imports from Israel or Israeli firms. The exception does not permit compliance with a boycott of blacklisted firms outside of Israel, nor does it allow for the issuance of a negative certificate-of-origin of any type. Other exceptions allow firms to provide country-of-origin information on the shipping documents, or information required for immigration or employment purposes. The exceptions can be found at 15 C.F.R. § 760.3.

4. **Reporting** Any U.S. person or entity who is asked to enter into an agreement or provide information that would violate anti-boycott laws must report this to the BIS using a form BIS-621-P in accordance with 15 C.F.R. § 760.5. Information regarding the reporting of suspected anti-boycott activities can be found at: [http://www.bis.doc.gov/ComplianceAndEnforcement/index.htm](http://www.bis.doc.gov/ComplianceAndEnforcement/index.htm). In addition, the U.S. Internal Revenue Service (IRS) requires U.S. taxpayers to report operations in or relating to boycotting countries and nationals and request to cooperate with boycott activities. See IRS Form 5713, located online at: [http://www.irs.gov/pub/irs-pdf/f5713.pdf](http://www.irs.gov/pub/irs-pdf/f5713.pdf).

*These reporting requirements apply even where the U.S. person or entity refuses to participate.* Crossing out the boycott language in a proposed contract does not end the matter. The duty to report remains even where the requesting foreign entity accepts the redaction of the boycott language.

For more information on anti-boycott rules see: [http://www.bis.doc.gov/complianceandenforcement/antiboycottcompliance.htm](http://www.bis.doc.gov/complianceandenforcement/antiboycottcompliance.htm).

Contact the Export Control Director if you receive an anti-boycott request.

### I. RECORD KEEPING

All records related to an export shipment, data transfer, export license, or license exception must be kept on file for five years from the date of the export.
ECONOMIC SANCTIONS AND EMBARGOES
Office of Foreign Assets Control

I. SANCTIONS OVERVIEW

The Office of Foreign Assets Control (OFAC) is part of the U.S. Department of the Treasury and administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals. These sanctions are against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.  

All export transactions whether under the ITAR or EAR are subject to the U.S. economic sanctions, which broadly prohibit most transactions between a U.S. person and persons or entities in an embargoed country including Cuba, Iran, North Korea, Syria, and Sudan (some regions). These prohibitions include importation and exportation of goods and services, whether direct or indirect, as well as “facilitation” by a U.S. person of transactions between foreign parties and a sanctioned country. For example, sending a check to an individual in Iran or speaking at a conference could require an OFAC license or be prohibited.

More limited sanctions may block particular transactions or require licenses under certain circumstances for exports to a number of countries, including but not limited to the Balkans, Belarus, Burma, Côte d'Ivoire, Iraq, Lebanon, Liberia, Libya, Somalia, Yemen, and Zimbabwe. Because this list is subject to change, please visit http://www.treas.gov/offices/enforcement/ofac/ for up-to-date information.

Economic sanctions and embargo programs are country-specific and very detailed in the specific prohibitions. There are certain exemptions for university travel under some of the OFAC programs, however, the scope is very limited, individuals intending to travel to a conference or a university in an embargo destination should consult the Export Control Director.

Note: These lists are updated regularly and should be consulted prior to each transaction/travel.

VIII. “Restricted Party Lists” Prohibited Entities, Individuals and Debarments

TERRORIST AND OTHER BARRED ENTITY LISTS

Various U.S. Government agencies maintain a number of lists of individuals or entities barred or otherwise restricted from entering into certain types of transactions with U.S. persons. Particularly since 9/11, U.S. companies are becoming more assertive in attempting to place contractual terms with foreign companies related to these lists.

Because the University has an extensive international collaborative program, it is important that these lists be screened prior to any export shipment or collaboration to ensure that the university does not engage in a transaction with a barred entity or individual. Each PI is responsible to screen foreign collaborators and must keep records that screenings were performed for at least 5 years. See Denied Party Screening form in Appendix H.

18 Office of Foreign Assets Control: http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx
19 With the exception of the sanctions on Cuba and North Korea, OFAC sanctions are promulgated under the International Emergency Economic Powers Act of 1977, 50 U.S.C. §§ 1701-1706 (IEEPA). The embargoes on Cuba and North Korea are promulgated under the Trading with the Enemy Act of 1917, 12 U.S.C. § 95a (TWEA).
• **Specially Designated Nationals and Blocked Persons List (SDN List):** A list compiled by the Treasury Department, Office of Foreign Assets Control (OFAC). OFAC’s regulations may prohibit a transaction if a party on this list is involved. In addition, the Export Administration Regulations require a license for exports or re-exports to any party in any entry on this list that contains any of the suffixes “SDGT,” “SDT,” “FTO,” “IRAQ,” or “NPWMD.”

• **Denied Persons List:** Individuals and entities that have had their export privileges revoked or suspended by the BIS. No exports to entities and individuals on these lists are allowed for the period of the denial.

• **Entity List:** Entities identified as being involved in proliferation of missile technology, weapons of mass destruction, and related technologies and their participation may trigger a licensing requirement. This list includes number of universities and research institutions.

• **Unverified List:** Foreign persons and entities for which the BIS has been unable to verify the nature of their operations. While transactions with these entities are not barred, special due diligence is required.

• **Debarred List:** A list compiled by the State Department of parties who are barred by §127.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR §127.7) from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by the ITAR.

• **Nonproliferation Sanctions:** Several lists compiled by the State Department of parties that have been sanctioned under various statutes.

*Here is a link with consolidated lists: [http://export.gov/ecr/eg_main_023148.asp](http://export.gov/ecr/eg_main_023148.asp).*

### III. FOREIGN TRADE REGULATIONS

*Title 15 CFR, Part 30 (Export Shipments Reporting)*

**A. OVERVIEW**

The foreign trade regulations Title 15 CFR, part 30, govern reporting requirements for physical export shipments from the United States. The regulations are administered by the U.S. Census Bureau, Division of Foreign Trade Statistics and enforced by U.S. Customs and Border Protection. The regulations replaced the Shipper’s Export Declaration (SED) form and have been enacted since 2008. All export information that was previously listed on the SED form is now submitted electronically via the Automated Export System (AES) prior to the export for certain types of export shipments.

The main purpose of the regulations is to track export statistics. However, it is also used as an enforcement tool by the Bureau of Industry and Security, Directorate of Defense Trade Controls, Office of Foreign Asset Controls and other agencies. Similarly to the AES, ITAR, OFAC regulations, these regulations are mandatory and impose penalties for violations. *Each employee of BU is responsible for complying with these regulations when shipping instruments/equipment abroad.*

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21 BIS, Lists to Check: [http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm](http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm)

B. DEFINITIONS

Parties involved in an export transaction (FTR § 30.3(b)):

**U.S. Principal Party in Interest (USPPI):** The person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person is the U.S. seller, manufacturer or order party, or the foreign entity while in the U.S. when purchasing or obtaining the goods for export.

**Authorized U.S. Agent:** An individual or legal entity physically located in or otherwise under the jurisdiction of the U.S. that has obtained power of attorney or written authorization from a USPPI or Foreign Principal Party in Interest (FPPI) to act on its behalf.

**Foreign Principal Party in Interest (FPPI):** The party shown on the transportation document to whom final delivery or end-use of the goods will be made. This party may be the ultimate consignee.

Foreign Trade Regulations Terminology:

**Export Shipment (FTR § 30.1):** An export shipment is defined as merchandise shipped from one USPPI to one consignee, on the same flight/vessel, to the same country, on the same day, valued over $2,500 per Schedule B/Harmonized Tariff Schedule number or (any value) where a license is required.

**Automated Export System (AES):** An electronic export information gathering and processing system. The AES collects export information electronically from participants approved to use the system and replaced the SED form.

**Electronic Export Information (EEI § 30.6):** The export data as filed in the AES.

**Routed Export Transaction (§30.3 (e)):** A transaction in which the FPPI authorizes a U.S. agent to prepare and file the EEI. While the FPPI will select the U.S. agent, it may give authorization to the USPPI to file the EEI.

**Tools of Trade (§ 30.37 (b)):** Tools of trade are exempt from filing requirements if the item is owned by the individual U.S. Principal Party in Interest; accompanying the individual USPPI, employee, or representative of the exporting company; necessary, appropriate, and intended for personal use; not for sale; returned to the U.S. within one year from the date of export; and not shipped under a bill of lading or airway bill.

**Internal Transaction Number (ITN):** The AES generated number assigned to a shipment confirming that the EEI was accepted in the AES.

**Schedule B Number:** The statistical classification of commodities that are exported from the United States. It is a 10 digit code unique to the particular products or technology. The schedule B system is administered by the U.S. Census Bureau and each exporter is required to report the code in the AES system.

The Electronic Export Information (EEI) must be filed when shipped as follows:
- All commodities over $2,500 per schedule B number
- From U.S. to foreign countries
- Between the U.S. and Puerto Rico
- Between Puerto Rico and U.S. Virgin Islands
- From U.S. to the U.S. Virgin Islands
- Between U.S. and Embargo destinations
- All exports from the U.S. subject to an export license (regardless of value)
- All exports subject to the ITAR (including license exceptions)
- Rough diamonds

There are several useful filing exemptions, here is a list of the most commonly used:

- Canada (except for licensable exports, exports subject to the ITAR, rough diamond exports, transshipments)—§30.36
- Low value shipments—§ 30.37 (a)
- Tools of trade—§ 30.37 (b)
- Technology and software (not subject to an export license)—§ 30.37 (f)—EEI is required for mass market software
- Baggage and personal effects (unless license is required)—§ 30.37(q)

All exemptions must be included on the shipping and transportation documentation (airway bill or bill of lading and commercial invoice) in the following format: “No EEI Required...[exemption code]”

There are very strict filing timelines for filing via the AES and these are as follows:

Non-U.S. Munitions List shipments:

- Vessel Cargo: 24 hours prior to loading cargo on a vessel at the U.S. port
- Air Cargo: Two hours prior to the scheduled departure time of the aircraft
- Truck Cargo: One hour prior to the arrival of the track at U.S. border
- Rail Cargo: Two hours prior to the time the train arrived at the U.S. border
- Mail: Two hours prior to departure of export carrier
- Pipeline: Within four calendar days following the end of the month

U. S. Munitions List shipments:

- Vessel Cargo: 24 hours prior to loading cargo on the vessel at the U.S. port
- Rail Cargo: 24 hours prior to the time the train arrives at U.S. border
- Truck Cargo: Eight hours prior to the arrival of the truck at U.S. border
- Air Cargo: Eight hours prior to the scheduled time departure of the aircraft

After filing the EEI via AES, you will receive an “Internal Transmission Number (ITN)” which must be reported on the shipping document and commercial invoice.

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23 [http://www.census.gov/foreign-trade/regulations/regs/regulations20080602-federalregister.html#AppendixC](http://www.census.gov/foreign-trade/regulations/regs/regulations20080602-federalregister.html#AppendixC)
C. RECORD KEEPING

The U.S. Census Bureau requires that all parties to the export transaction retain documents on records pertaining to the export shipment five years from the date of export including the ITN number.

Boston University’s Customs Broker/Freight Forwarder can assist with the actual filing for a fee, provided they have a valid Power of Attorney form or other form of written authorization on file. Please keep in mind that University employees are responsible to provide the broker with the required information to submit the AES. It is not the broker’s job, for example, to determine your schedule B code. Moreover, the exporter of record may be held ultimately responsible for any mistakes that the designated agent makes on his/her behalf.

Contact the Export Control Director if you have any questions or need assistance with the AES filing.

IV. PENALTIES FOR EXPORT VIOLATIONS

A. OVERVIEW

Any person or entity that brokers, exports/transfers, or attempts to export/transfer a controlled item without prior authorization or in violation of the terms of a license is subject to penalties. Violators may incur both criminal and civil penalties. Although there is a maximum amount for a civil or criminal penalty, the actual penalty imposed is often multiplied. For instance, each shipment/transfer might be considered a separate violation, and the enforcement agencies will often find multiple violations of related restrictions in connection to each shipment (e.g., export without a license, false representation, actions with knowledge of a violation, etc.). A series of violations occurring over a period of time may result in hundreds of thousand or even millions of dollars of penalties.

Moreover, violation of U.S. export control may impact the University’s ability to conduct research, lead to negative publicity for the researcher and the University, denial of export or research privileges and high legal fees.

B. VIOLATIONS OF THE ITAR

The Arms Export Controls Act and the ITAR provide that willful violations of the defense controls can be fined up to $1 million per violation, ten years of imprisonment, or both. In addition, the Secretary of State may assess civil penalties, which may not exceed $500,000 per violation. The civil penalties may be imposed either in addition to, or in lieu of, any other liability or penalty. The articles exported or imported in violation, and any vessel, vehicle, or aircraft involved in such attempt is subject to seizure, forfeiture, and disposition. Finally, the Assistant Secretary for Political-Military Affairs may order debarment of the violator, (i.e., prohibit the violator from participating in export of defense items or in federal government contracting opportunities).

While imposing criminal liability is fairly rare, many major U.S. companies have been assessed significant civil penalties in the millions of dollars. The enforcement of export controls has increased over the past several years and a good example of a violation in a university setting is the case of Professor Roth from the University of Tennessee who was sentenced to four years in prison in 2008 for

22 U.S.C. § 2778(c) and 22 C.F.R. § 127.3.
23 U.S.C. § 2778(e) and 22 C.F.R. § 127.10.
24 22 C.F.R. § 127.6.
25 22 U.S.C. § 2778(g) and 22 C.F.R. § 127.7.
26 For a thorough discussion of penalties imposed under the ITAR, see John C. Pisa-Relli, “Monograph on U.S. Defense Trade Enforcement” (February 2007).
ITAR violations. In brief, Professor Roth accepted Air Force research contract that was subject to the ITAR and allowed Chinese and Iranian students participate in the research and also took some of the controlled data to China, which is prohibited under the ITAR. As a result, he was sentenced to four-year prison term. It is often forgotten that ITAR attaches strict liability for export violations, therefore, not only can a university be charged with high penalties, but the individual researchers can be prosecuted for ITAR violations. Moreover, any person that has a knowledge that an export of ITAR article or data to an embargo destination (such as China) occurred is under an obligation to report it to the Directorate of Defense Trade Controls.

Another example of a severe export penalty is the investigation into the export practices of ITT Corporation, the leading manufacturer of military night vision equipment for the U.S. Armed Forces. ITT’s violations resulted in the company’s Night Vision Division being debarred from export of defense items for three years. In addition, pursuant to a plea agreement ITT agreed to pay a total of $100 million for its violations of defense export laws, one of the largest penalties ever paid in a criminal or civil case.

Note: Both the DDTC and the BIS have stated that they believe that many universities are in violation of the regulations based on the low number of licenses received in relation to the number of foreign students enrolled.

C. VIOLATIONS OF THE EAR

Similarly to the ITAR, violations of the EAR are subject to both criminal and administrative penalties. Fines for export violations, including anti-boycott violations, can reach up to $1 million per violation in criminal cases, and $250,000 per violation in most administrative cases. In addition, criminal violators may be sentenced to prison for up to 20 years, and administrative penalties may include the denial of export privileges. A denial order is probably the most serious sanction because such order would bar a U.S. company from exporting for a period of years or bar a foreign entity from buying U.S. origin products for such period.

In most instances, the BIS reaches negotiated settlements in its administrative cases, as a result of voluntary self-disclosures of violations by companies and individuals. Voluntary disclosures constitute a major mitigating factor in determining penalties and would lead to reduction of export penalties, provided certain conditions are met, such as the implementing of a comprehensive compliance program.


These violations are based on the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420), and inflation adjustments made in 15 C.F.R. § 6.4. From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (IEEPA)). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in effect and the President, through Executive Order 13222 of August 17, 2001, which has been extended by successive Presidential Notices, has continued the EAR in effect under IEEPA. The USA PATRIOT Improvement and Reauthorization Act of 2005, signed into law on March 9, 2006 (Pub. L. No. 109-177, 120 Stat. 192 (2006)), increased the limit of civil penalties available under IEEPA to $50,000. On October 16, 2007, President Bush signed the International Emergency Economic Powers Enhancement Act, Pub. Law No. 110-96, which amends IEEPA by increasing civil penalties up to $250,000 per violation, and criminal penalties up to $1 million per violation.

33 For a review of the BIS investigations and penalties, see “Don’t Let This Happen to You! Actual Investigations of Export Control and Anti-boycott Violations” at: http://www.bis.doc.gov/complianceandenforcement/dontletthishappentoyou-2008.pdf.
D. EXPORTS TO A SACTIONED COUNTRY

Although potential penalties for violations of U.S. export laws vary depending on the country and product/transaction involved, an exporter may be subject to a maximum civil penalty of $250,000 per violation under OFAC regulations or an amount that is twice the amount of the transaction that is the basis for the violation, with the exception of exports to Cuba. Violations of the Cuban sanctions are subject to a maximum penalty of $65,000 per violation.

The U.S. Government can also seek to criminally prosecute conduct where violations are willful and knowing. Such violations may reach $1 million per violation and imprisonment of up to 20 years. In addition, where there is egregious conduct by the offender, the BIS (which assists the OFAC in enforcing sanctions) may suspend the export privileges of a company or a university.

In assessing penalties, the DDTC, BIS, and OFAC will consider a number of factors, both aggravating and mitigating. Mitigating factors include (1) whether the disclosure was made voluntarily; (2) whether this was a first offense; (3) whether the company had compliance procedures; (4) whether steps were taken to improve compliance after discovery of violations; and (5) whether the incident was due to inadvertence, mistake of fact, or good faith misapplication of the laws. Aggravating factors include: (1) willful or intentional violations; (2) failure to take remedial action after discovery; (3) lack of a compliance program; and (4) deliberate efforts to hide or conceal a violation.

E. FOREIGN TRADE REGULATIONS VIOLATIONS

Violations of the foreign trade regulations are enforced by U.S. Customs and Border Protection (CBP) and the maximum penalty for a violation is $10,000 and each party to the transaction is subject to fine. That includes the exporter, manufacturer, freight forwarder, broker among others.

In assessing the violations CBP will focuses on the following types of inaccuracies in filing the EEI or recording the exemptions:

- Failure to file the EEI
- Late filing of the EEI
- Incorrect data on the EEI, such as port of exit, value, commodity description
- Failure to provide the carrier with the appropriate proof of filing citation or exemption legend
- Failure to retain records for the required five year period
- Loading of cargo without the appropriate proof of filing citation or exemption legend
- Failure to annotate the manifest with the appropriate proof of filing citation or exemption legend

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34 Violations of most of the Economic Sanction Regulations are set under the IEEPA. See supra note 30.
35 The OFAC embargo of Cuba was promulgated under the Trading with the Enemy Act (TWEA).
36 http://www.cbp.gov/linkhandler/cgov/trade/legal/bulletins_decisions/bulletins_2009/vol43_01022009_no2/43genno2.ctl/43genno2.pdf (pages 4-10)
37 http://www.census.gov/foreign-trade/aes/aesnewsletter072009.pdf
KEY ISSUES IN UNIVERSITY RESEARCH

I. Deemed Exports

While exports are commonly associated with the shipment of a tangible item across the U.S. border, export controls have a much broader application. One of the most difficult issues with respect to export controls is the fact that an export is defined to include the transfer of controlled information or services to foreign nationals even when the transfer takes place within the territory of the United States.

Under the EAR and ITAR a transfer or controlled technology, source code, technical data, or defense services to a foreign national is deemed to be an export to the national’s country even if the transfer takes place in the United States.

Defined differently, if you need an export license to export a controlled item/technology/software to the national’s country, you need an export license to release the technical data about the item (ITAR) or to transfer the technology required for development, production, or use of the item to the person or entity in the United States. Technical assistance related to a development of a controlled item is also subject to this rule. The “Deemed Exports Rule” has been in place for decades and is most applicable in a university environment.

While a university may be involved in the shipment abroad of equipment or machinery to participate in a conference, a joint project, or equipment loan programs, most often faculty and students are engaged in teaching and research. Whenever teaching or research is related to controlled equipment or technology, the involvement of foreign students or researchers may trigger export control compliance issues.

The export may occur in several ways through:

1. A demonstration
2. Oral briefing
3. Telephone call or message
4. Laboratory or plant visit
5. Presenting at conferences and meetings
6. Faxes or letters
7. Hand-carried documents, hardware, or drawings
8. Design reviews
9. The exchange of electronic communication
10. Posting non-public data on the Internet or the Intranet
11. Carrying a laptop with controlled technical information or software to an overseas destination
12. Collaborating with other universities / research centres through research efforts

Keep in mind that if you are working with EAR99 technology, you may be required to obtain export licenses for foreign nationals/institutions that are on any of the “restricted persons lists” or when you are transferring the technology to embargo destinations.

II. U.S. and Foreign Persons

For purposes of defense and dual-use exports, a U.S. person is defined as a U.S. entity or a U.S. citizen, a person lawfully admitted for permanent residence in the United States (i.e., a green card holder), or a person who
is a protected individual under the Immigration and Naturalization Act (8 U.S.C. § 1324b(a)(3) (i.e., certain classes of asylees)).\(^38\) A U.S. person may be engaged in activities that are export-controlled, unless there are some additional restrictions that limit participation to U.S. citizens (such as classified research).

The regulations define a foreign person as anyone who is not a U.S. person. The BIS looks at the person’s most recent citizenship and permanent residence. The DDTC looks at the person’s country of origin (i.e., country of birth) and all current citizenships.

Note that the definitions for a U.S. and a foreign person may differ for purposes of the OFAC sanctions. Contact the UECD for clarification or review the particular OFAC sanction.

III. Information Not Subject to or Excluded from Export Controls

It is important to note that most of the activities that Boston University engages in are fundamental research. As such, most activities are not subject to export controls, or even if controlled, do not require licensing. Both the ITAR and the EAR have special provisions relating to information that is not subject to export controls, including limited exclusions regarding the release of information in the context of university research and educational activities. Additionally, the embargo regulations have exceptions for certain information and informational materials.

The term “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. (National Security Decision Directive 189 establishes the basis for the fundamental research exemption; see Appendix E for the text of NSDD-189.)

The Fundamental Research Exclusion is nullified by any clause (regardless of sponsorship—federal, state, private, nonprofit, etc.) that:

- Gives the sponsor the right to approve publications
- Restricts participation of foreign nationals in conduct of research by precluding access to research results
- Otherwise operates to restrict participation in research and/or access to and disclosure of research results

A. PUBLICLY AVAILABLE

The ITAR and the EAR do not control information which has already been lawfully published and is accessible or available to the public. Note that even though the two regimes have similar scope, the ITAR and the EAR vary in the specific information that qualifies as publicly available.

**ITAR provision:** The ITAR describes such information as information in the public domain.\(^{39}\) The information in the public domain may be obtained through:

- Sales at newsstands and bookstores
- Subscription or purchase without restriction to any individual
- Second class mailing privileges granted by the U.S. Government

\(^38\) 22 C.F.R. § 120.15; 15 C.F.R § 734.2(b).

\(^39\) 22 C.F.R. §§ 120.10(a)(5) and 120.11.
• At libraries open to the public
• Patents available at any patent office
• Unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States
• Public release in any form after approval of the cognizant U.S. Government agency
• Fundamental research in the U.S. (See Key Issues in University Research, Fundamental Research, below.)

**EAR provision:** The EAR does not control publicly available technology if it is already published or will be published. Information is published when it becomes generally accessible to the interested public in any form, including:

• Publication in periodicals, books, print, etc., available for general distribution free or at cost
• Readily available at libraries open to the public or university libraries
• Patents and open patents applications available at any patent office
• Release at an open conference, meeting, seminar, trade show, or other gathering open to the public

The EAR requires that the publication is available for distribution free or at price not to exceed the cost of reproduction and distribution; however, the ITAR does not have such a requirement.

Note also that the EAR does not specify where an open conference, meeting, seminar, or trade show must take place, and thus allows for participation at a foreign conference so long as the conference is open to all technically qualified members of the public, and attendees are permitted to take notes. Unlike the EAR, the ITAR limits participation in conferences and similar events to those that are taking place in the United States. Presentations of materials other than those covered as “fundamental research” at foreign countries has restriction and may require approval from the government; please consult with the UECD for advice.

**B. EDUCATIONAL INFORMATION**

Both the ITAR and the EAR address the issue of general educational information that is typically taught in schools and universities. Such information, even if it relates to items included on the USML or the CCL, does not fall under the application of export controls.

• **ITAR provision:** The ITAR specifically provides that the definition of “technical data” does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities.41

• **EAR provision:** The EAR provides that publicly available “educational information” is not subject to the EAR if it is released by instruction in catalogue courses and associated teaching laboratories of academic institutions.42

Therefore, a university graduate course on design and manufacture of high-speed integrated circuitry will not be subject to export controls, even though the technology is on the CCL. The key factor is the fact that the information is provided by instruction in a catalogue course. Foreign students from any country may attend this course because the information is not controlled.

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40 15 C.F.R. §§ 734.3(b)(3) and 734.7.
41 22 C.F.R. § 120.10(a)(5).
42 15 C.F.R. §§ 734.3(b)(3) and 734.9.
Under EAR, the information will not be controlled even if the course contains recent and unpublished results from laboratory research, so long as the university did not accept separate obligations with respect to publication or dissemination, (e.g., a publication or foreign national participation restriction under a federal funding). The more sensitive area includes courses that could include an ITAR controlled research. You may need an approval by DDTC to include an ITAR controlled research project in a classroom. Contact the University Export Controlled Director if you plan to include a sponsored research project subject to the ITAR into a University course.

C. FUNDAMENTAL RESEARCH

During the Reagan administration, several universities worked with the federal government to establish national policy for controlling the flow of information produced in federally funded fundamental research at colleges, universities, and laboratories resulting in the issuance of the National Security Decision Directive 189 (NSDD), National Policy on the Transfer of Scientific, Technical and Engineering Information on September 21, 1985. NSDD 189 provided the following definition of fundamental research that has guided universities in making licensing decisions relative to fundamental research exclusions provided under both the EAR and ITAR.

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.

The Obama Administration has reaffirmed that NSDD189 remains the controlling document.

Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research unless it is related to ITAR controlled hardware, software, technologies or encryption software. University-based research is not considered fundamental research if the university or its researchers accept (at the request, for example, of an industrial sponsor) other restrictions on publication of scientific and technical information resulting from the project or activity.

Both the ITAR and EAR provide that information published and generally accessible to the public through fundamental research is not subject to export controls.

It is essential to distinguish the information or product that results from the fundamental research from the conduct that occurs within the context of the fundamental research. While the results of the fundamental research are not subject to export controls (unless it is ITAR controlled research), an export license may be required if during the conduct of the research export-controlled technology is to be released to a foreign national. Such export-controlled technology may come from the research sponsor, from a research partner institution, or from a previous research project.

One major difference is that the ITAR requires that, to qualify as fundamental research, research must be performed at accredited institutions of higher learning in the United States. Under the EAR, fundamental research may occur at other facilities.

Under both the ITAR and EAR, research performed at universities will not qualify as fundamental if the university (or the primary investigator) has accepted publication or other dissemination restrictions.

43 15 C.F.R. § 734, Supp. No. 1, Questions C(1) to C(6).
44 See BIS Revisions and Clarification of Deemed Export Related Regulatory Requirements, 71 Fed. Reg. 30840, 30844 (May 31, 2006). (This interpretation of fundamental research by the BIS, while not binding, is instructive as to how the DDTC might interpret its regulations.)
• **ITAR provision:** The fundamental research exception does not apply to research the results of which are restricted for proprietary reasons, or specific U.S. Government access and dissemination controls.\(^{45}\)

• **EAR provision:** The fundamental research is 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.\(^{46}\) Under the EAR, university-based research is not considered fundamental research if the university or its researchers accept restrictions (other than review to ensure no release of sponsor-provided proprietary or patent information) on publication of scientific and technical information resulting from the project.\(^{47}\)

According to the EAR, prepublication review by a sponsor of university research solely to ensure that the publication would not inadvertently divulge proprietary information that the sponsor has initially furnished or compromise patent rights does not constitute restriction on publication for proprietary reasons.

The EAR also has provided examples of “specific national security controls” which will trigger export controls. These include requirements for prepublication review and approval by the government, with right to withhold permission for publication; restriction on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research.\(^{48}\) The ITAR does not contain such descriptive provisions.

The application of the fundamental research exemption is limited; it is important to understand when it does not apply. Here are the cases where the fundamental research exemption will not be applicable:

- Physical exports
- A sponsor’s technical data/technology
- ITAR controlled research
- Some encrypted software
- Research conducted abroad
- Classified information
- Research with no intention to be published

\(^{45}\) 22 C.F.R. §§ 120.11(a)(8) and 120.10(a)(5).

\(^{46}\) EAR § 734.8(a).

\(^{47}\) EAR § 734.8(b)(5). However, once the sponsor has reviewed and approved the release, the results may be published as fundamental research.

\(^{48}\) EAR § 734.11(b).
1. Example of the Fundamental Research Exemption

Export Administration Regulations—Commercial and Dual-Use Research

The Bureau of Industry and Security provides helpful guidelines on the application of the fundamental research exclusion under the Export Administration Regulations.49

When do you need an authorization for a foreign graduate student or researcher to work in your laboratory?

a) You do not need a license or authorization for the mere presence of a foreign graduate student in your laboratory. You do need a license if you plan to transfer controlled technology to a foreign national and the export of that technology is restricted to the foreign national’s home country.

b) The EAR license requirements apply to the transfer of controlled technology for “development,” “production,” or “use” of certain equipment. See EAR, Part 772 for definitions of all three terms.

c) If the graduate student is receiving technology that has already been published, then that technology is not subject to the EAR and no license is required for the release of that technology. See §734.3(b)(3) and §734.7 (defining published technology). BIS considers user manuals for equipment to be “published” when they are available from the manufacturer, either for purchase at a price that does not exceed the cost of distribution, or as part of the normal materials that accompany the equipment when sold to the public and without restrictions on further distribution.

d) If the graduate student is receiving technology in the context of instruction in a catalog course (or associated teaching laboratories) of an academic institution, then that technology is not subject to the EAR and no license is required for the release of that technology. See §734.3(b)(3)(iii) and §734.9.

e) If the graduate student is receiving technology that arises during, or results from, “fundamental research,” then that technology is not subject to the EAR and no license is required for the release of that technology. See §734.3(b)(3)(ii) and §734.8.

f) But if you plan to release technology that is subject to the EAR and that is, according to the CCL and Country Chart, restricted for export to the home country of the foreign graduate student, then you will need a deemed export license.

Can I release EAR99 technology to any foreign national?

The release of EAR99 technology will require an export license under the following circumstances:

a) When transferred to Cuban nationals. See §746.2 of the EAR.

b) When released to foreign persons on the “restricted party lists.”

c) When released to the government of Iran.50

d) When you know that the technology will be used in activities related to nuclear, chemical or biological weapons or missiles, UAV.

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49 http://www.bis.doc.gov/deemedexports/deemedexportssupplementqa.html
50 See 31 C.F.R. §560.418.
2. Example of Fundamental Research Exemption

International Traffic in Arms Regulation—Military and Space-based research

Do I need an export license for foreign nationals working in my lab even if I accepted no publication restrictions?

It depends. Under the ITAR, conduct of the research is controlled and foreign nationals may be subject to export licensing if they are participating on research subject to the ITAR. There are few exemptions for satellites and space related research for certain countries, so each project that is subject to the ITAR has to be reviewed by the UECD and the principle investigator (PI) separately to outline the specific restrictions. This exemption is very narrow so it is important to carefully review each research project. Foreign nationals will typically be licensed under DSP-5 license. In addition, foreign persons from countries that are subject to ITAR embargoes are prohibited from participating on ITAR research projects if they will receive ITAR controlled technical data or defense services.

There are no publication restrictions for the ITAR research. Can I publish all information related to my experiment?

It depends. You are not required to obtain an export license or prior governmental approval for publishing the results of the fundamental research (provided that there are no publication restrictions in your contract/grant/award). However, if you developed a hardware that is subject to the ITAR and you intend to publish the technical data about the hardware, you will need a formal approval by the contracting government agency such as the DOD, NASA or the Office of the Security Review. You should contact the UECD to help you determine how to proceed in this situation.

I am collaborating with an industry partner on a research project. Does the fundamental research exception still apply?

No. Under the ITAR the fundamental research exemption only applies to accredited universities in the U.S., so you will have to ensure that your industry partner is compliant with the ITAR (for instance, is registered with the Directorate of Defense Trade Controls) and secures export licenses for foreign nationals when they receive ITAR controlled data. Moreover, each PI should mark the technical data transferred to an industry partner as “ITAR Controlled.”

I determined that I need an export license for some of the graduate students that I would like to involve with the research experiment. How quickly can I obtain the license?

First, it is important to understand that it is not guaranteed that the students will be granted an export license to participate in your research experiment. Boston University is registered with the DDTC and the Export Control Director will help you submit license application or verify an ITAR exemption.

D. FULL-TIME UNIVERSITY EMPLOYEES

Under a specific exemption, the ITAR allows a university to disclose unclassified technical data in the U.S. to a foreign person who is the university’s bona fide and full time regular employee. The EAR allows Universities to transfer EAR controlled technology and source code to their bona fide and full time regular employees under the TSU – §740.13.

The EAR and ITAR exemptions are identical and available under the following circumstances:
• The employee’s permanent abode throughout the period of employment is in the United States.
• The employee is not a national of a country to which exports are prohibited pursuant to ITAR § 126.1 (See current list of countries at [http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf](http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf)).
• The university informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of the DDTC.
• The university documents the disclosure of technical data under the exemption providing:
  o A description of the technical data
  o The name of the recipient/end-user
  o The date of export
  o The method of transmission (e.g., email, fax, FedEx)
  o The ITAR reference (i.e., ITAR § 125.4(b)(10), *Full-Time University Employee*).

Note that the “full-time *bona fide* employee” requirement will preclude foreign students and postdoctoral researchers from qualifying for access to technical data under this exemption. Generally, a H1B work visa would be required.

This exemption only applies to the transfer of technical data and discussions related to the data. Discussions may occur between the foreign full-time employee and other university employees working on the project. Additionally, the outside company (sponsor of the research) would have to apply for a DSP-5 license to provide technical data directly to the foreign national employee, and if the outside party and the employee are to engage in discussions and interchange concerning the data, then the proper authorization may be a Technical Assistance Agreement (TAA).

Contact the UECD to help you determine if the exemption applies and document the exemption.

**IV. GRADUATE THESIS**

Any graduate student that is working on ITAR controlled research to fulfill his or her thesis requirement must be a US Person, otherwise, the University will be required to submit an export license for him/her to work on the controlled research. If the student includes technical data in the graduate thesis, the publication must be approved by either the Cognizant Government Agency or Office of the Security Review prior to the publication as required by the regulations. It is important to recognize that the publication approval might be delayed and ultimately, publication of certain data may be denied for national security reasons. Moreover, the thesis advisory committee and defense committee must only include US Persons unless an export license has been secured prior to their participation.
V. INTERNATIONAL SCHOLARS AND VISITORS

Boston University proudly hosts over 1000 foreign nationals from 91 countries to conduct research, teach and work in a variety of capacities throughout the institution. Our international scholar population varies from short-term visitors who conduct research on unpaid appointments to permanent, tenure-track professors. The International Student and Scholar’s Office (ISSO) is responsible for all of the immigration and employment processing to assist the university and our diverse scholar population in achieving its academic goals.

A. EXPORT CONTROL CERTIFICATION ON CERTAIN VISA APPLICATIONS

In 2010, the Department of Homeland Security, U.S. Citizenship and Immigration Services issued new requirements in connection with obtaining certain visas for faculty and staff. Specifically, the I-129 Form (used in connection with H-1B visas for temporary workers, O-1 visas for persons of extraordinary ability, and TN (Trade NAFTA) visas) includes a certification concerning export controls. For the first time, the applicant (the University) must certify whether the potential employee will be given access to export-controlled technology and/or technical data. The certification is included in the new version of the ISSO intake form available at http://www.bu.edu/issso/forms/form_a.pdf.

I. In order to submit visa applications that are subject to this requirement, the University must rely on those in the academic department to assess the incoming researcher’s work. Specifically, the revised Request for Visa-Related Documents for an International Scholar (Form A) includes three new paragraphs concerning export controls. In addition, the revised Scholar Information (Form B) includes one new paragraph concerning export controls. Those additional certifications are included in the forms available at http://www.bu.edu/isson/administrators/checklist/index.html.

II. In addition, some colleges and departments within the University are, by the nature of their work, more likely than other departments to engage in research that involves export-controlled technology or technical data. Those colleges or departments include Engineering, Earth Science, Computer Science, Computational Science, Cognitive and Neural Systems, Math, Physics, the Center for Remote Sensing, the Center for Space Physics and the Photonics Center. The Departmental Host from those departments are required to provide an additional certification as the individual who is most likely to anticipate the particulars of the international scholar’s work. That certification is included in paragraph 14 of Form A, which is available at http://www.bu.edu/issso/forms/form_a.pdf.

III. Each department at the University should review the materials concerning export controls on the Office of Research Compliance website (http://www.bu.edu/orc/export/) for additional information or contact the UECD for assistance with determining whether or not particular research falls under the fundamental research exclusion.

It is important to understand that this relatively new requirement does not preclude visa application for foreign national. If the work of particular scholar or researcher involves access to technology controlled under the EAR, the UECD will determine whether an export license is required (based on the nationality/residency of the foreign national and the classification of the technology) and will submit license application to BIS (if necessary). In that particular case, the University will inform the Department of Homeland Security that the particular scholar or researcher will have access to controlled technology on the I-129 form. Boston University is not registered with the Directorate of Defense Trade Controls and is, therefore, ineligible to submit license applications for access to ITAR controlled data and items. As such,
no foreign national will be given access to ITAR controlled data or will receive services controlled under the ITAR.

The list of activities that may be controlled under EAR or ITAR includes the following:

a. Research with restrictions on publication or foreign national participation
b. Research subject to the ITAR regulations
c. Transfer of Technology subject to the EAR
d. Defense Services and Use of ITAR controlled equipment
e. Development or research with certain level of encryption

B. SANCTIONS ON VISAS FROM IRAN

In August, 2012, the President signed the Iran Sanctions, Accountability, and Human Rights Act of 2012 which instructs the Department of State to deny visas for Iranian nationals seeking education in the U.S. in energy, nuclear and related fields? Given this recent development, it is important to understand that some students, researchers and scholars from Iran may not be able to secure US visas if their education and research is related to these fields.

C. NASA RESTRICTION ON FUNDING ACTIVITY WITH CHINA

In February 2012, NASA issued guidance documents addressing NASA implementation of the restrictions included in their FY 2011 continuing resolution and FY 2012 funding Appropriations Acts (document sources referenced below). Per the Acts, NASA is restricted from using funds appropriated on or after April 25, 2011 to enter into or fund any grant, cooperative agreement or contract of any kind to participate, collaborate, or coordinate bilaterally in any way with China or any Chinese-owned company. To ensure compliance with the restriction, NASA is now requiring institutions receiving NASA funding to complete an Assurance which represents the University’s acceptance of the restriction.

The University is, therefore, restricted from collaborating with, or issuing a subaward to China or a Chinese-owned Company, whether the collaboration is funded or performed under a no-exchange of funds arrangement. “China or a Chinese-owned Company” is defined in the NASA guidance documents as “the People’s Republic of China, any company owned by the People’s Republic of China, or any company incorporated under the laws of China”.

Per NASA’s interpretation; the statute does not restrict individual involvement based on citizenship or nationality. Individuals are subject to the restriction if they are affiliated with institutions of the People’s Republic of China or Chinese-owned companies incorporated under the laws of China. Therefore, scholar who retains his or her affiliation with Chinese University may not work on NASA funded research. A student that receives scholarship from a Chinese-owned company may not work on NASA funded research.

More information on the NASA restriction is available on the export control website (news and additional resources sections): www.bu.edu/orc/export
VI. EXPORT LOGISTICS AND SHIPMENT PROCESSING

I. EXPORT SHIPMENT PROCESSING

The fundamental research exception does not apply to physical shipments from the United States. When you export samples, equipment, or instruments abroad or take equipment or instruments with you on an airplane to attend a conference or conduct research internationally, you are effectively exporting and are subject to certain restrictions and procedures.

It is typically not what you know but what you don’t know that will delay customs clearance and can ultimately cost hundreds of thousands in export fines and penalties. In addition, most export violations or customs delays are unnecessary and caused by lack of information.

When exporting from the United States, make sure to verify the import and paperwork requirements in the destination country to ensure smooth customs clearance. There are several ways to find the import requirements of the destination country. You can start with the receiving party who should be able to contact their local customs authorities or a customs broker to verify what documents will be needed to clear the shipment through customs. The University customs broker should be able to assist with the specific requirements. In addition, FedEx has a list of country import requirements on their website which can be helpful in determining import restrictions abroad: http://www.fedex.com/us/international-resource-center/profiles.html.

When you export from the United States, you need to allow sufficient time for export processing and license determination. You should start by determining whether you need an export license to export your equipment/instrument/materials from the United States and help the University secure such license. It may take several months to process a license application.

Exercise judgment when delegating any of the shipping and classification duties to a freight forwarder. Their business is to move freight and not to classify products and determine export license requirements. You should always know what it is that you export and determine whether you need an export license. If you are unsure, contact the UECD, Marie Hladikova, (tel: 617-353-6753; email: mhladiko@bu.edu) for assistance with export license requirements or shipping procedures.

II. EXPORT LICENSE DETERMINATION

A. WHAT IS IT THAT YOU ARE EXPORTING?

Export Administration Regulations (EAR)

If you are exporting commercial or dual-use items, you are subject to the Export Administration Regulations (EAR) and your export is subject to the jurisdiction of the Bureau of Industry and Security (BIS): http://www.bis.doc.gov/licensing/exportingbasics.htm.

Each item/technology/software that is controlled for U.S. export purposes is listed on the Commerce Control List (CCL). The easiest way to read the CCL is to look at the alphabetical index to check if your product is controlled: http://www.bis.doc.gov/policiesandregulations/ear/ccl_index.pdf.

If you find your product listed, write down the corresponding Export Control Classification Number (ECCN). For example, you are exporting marine acoustic system, review the CCL and you will see that the system is classified as 6A001. This tells you that marine acoustic systems are classified in category 6 of the CCL. You should carefully review the chapter and section to make sure that your system
is actually controlled. If after your review of the applicable category you determined that your product is controlled, look at the reasons for control, license exceptions, and the destination country to see if you need an export license for the particular country.

The other approach to the CCL is to select the appropriate category where your item may fall and read the entire category to see if your item/technology is listed. The BIS website lists the categories subject to export controls (Category 0 to 9): [http://www.bis.doc.gov/policiesandregulations/ear/index.htm](http://www.bis.doc.gov/policiesandregulations/ear/index.htm).

An abbreviated copy of the entry on the CCL for 6A001 classification:

6A001 Acoustic systems, equipment and components, as follows (see List of Items Controlled).

**License Requirements**

**Reason for Control:** NS, AT

**Control(s) Country Chart**
NS applies to entire entry NS Column 2
AT applies to entire entry AT Column 1

**License Exceptions:**

**LVS:** $3000; N/A for 6A001.a.1.b.1 object detection and location systems having a transmitting frequency below 5 kHz or a sound pressure level exceeding 210 dB (reference 1μPa at 1 m) for equipment with an operating frequency in the band from 30 kHz to 2 kHz inclusive.

**GBS:** Yes, for 6A001.a.1.b.4.

**CIV:** Yes, for 6A001.a.1.b.4.

**STA:** License Exception STA may not be used to ship commodities in 6A001.a.1.b, 6A001.a.1.e or 6A001.a.2 (except .a.2.a.4) to any of the eight destinations listed in § 740.20(c)(2) of the EAR.

The classification description will outline the reasons for control and any potential license exceptions. In this case, the reasons for control are NS (national security) and AT (anti-terrorism). Once you know the reasons for control—in this example, NS, Column 2; and AT, Column 1—look at the Commerce Country Chart ([http://www.bis.doc.gov/policiesandregulations/ear/738_supp1.pdf](http://www.bis.doc.gov/policiesandregulations/ear/738_supp1.pdf)) to determine which countries require a license. If you find an “X” in in NS, Column 2 or AT, Column 1 next to a country, that country requires an export license.

See the Commerce Country Chart below for illustration. If you wanted to export this marine acoustic system to Argentina, you would need an export license from the BIS (unless exception applies) because there is an “X” in the NS, Column 2 field. However, if you want to export the same system to Austria, you won’t need a license because there is no “X” in either NS, Column 2 or AT, Column 1.
This particular ECCN code has a handful of useful license exceptions, so if this system fits any of the parameters, you may be able to ship without an export license under a license exception.

Items/technology/software that are not on the CCL and are not controlled for U.S. export are designated as EAR99. When you export, make sure to properly document the ECCN/EAR99 on your export documentation and in the Automated Export System (AES).

If you are planning to export an item that is subject to an export license, please contact the UECD for assistance in securing a license.

*International Traffic in Arms Regulations (ITAR)*

All items and components that fall on the U.S. Munitions List (USML) are subject to an export license unless a license exception applies. If you are exporting an article, demo, sample, equipment or components on the USML, you must secure an export license. Technical specs and blueprints that are transferred to a foreign national or entity are subject to export licensing as well. The exporter must also determine whether the item is considered Significant Military Equipment (SME) or if it is classified. All items flagged with an “*” on the USML are considered SME. Physical exports of SMEs and classified items are subject to additional documentation.

Additionally, you are required to secure an import license or apply a very narrow license exception if you import defense article that was previously exported from the United States. For instance, you may be importing an article that was previously exported from the U.S. to a conference. If this article is ITAR controlled, you need an import license or carefully document a license exception that will notify U.S. Customs and Border Protection prior to the import that you are importing an ITAR item subject to an
import exemption. Similarly, all export licenses must be lodged with U.S. Customs and Border Protection prior to the export.

Most applicable ITAR export/import licenses:

- DSP-5: Permanent export of unclassified articles
- DSP-61: Temporary import of unclassified articles
- DSP-73: Temporary export of unclassified articles
- TAA: Technical Assistance Agreement

Once you secure an export license, you are required to carefully document all shipments made or all technical data transfers to ensure that you don’t inadvertently exceed the allowed amount of export or the period for which the license was issued. The DDTC charges fees for export licenses in excess of 10 per year so if the University applies for more than 10 ITAR licenses, there will be additional fees attached on top of the registration fee.

If you intend to import or export any items on the USML, contact the UECD for assistance.

B. WHERE IS THE ITEM GOING?

The next step in license determination is to verify that the destination country is not subject to an embargo or any other economic sanction. These sanctions are administered by the Office of Foreign Assets Control and each exporter should check their website prior to making any export shipment: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx.

In general, the United States maintains general embargoes with North Korea, Syria, Sudan (Republic of South Sudan is excluded), Cuba (medical and food items are eligible for an export license), and Iran (medical and food items are eligible for an export license). Several countries are known as illegal diversion hubs: Canada, United Arab Emirates, Netherlands, UK and other countries. Keep in mind when you are receiving requests for equipment, samples or instruments from embargo destinations suggesting that you use a distributor or a broker in a third country that it is illegal for a U.S. person or entity to export these items to an embargo destination through a third country.

Moreover, when you send the equipment or travel with the equipment to multiple destinations, be sure to check each country against the embargo list.

Shipments of ITAR articles are subject to additional sanctions and embargoes: http://www.pmdtce.state.gov/embargoed_countries/index.html.

C. WHO WILL RECEIVE THE ITEM?

The next step in determining the export license requirements is to screen the end user against all of the “Restricted Party Lists” that the federal government compiles. Even if you don’t need an export license for the product itself, and the destination country is not subject to an embargo, you may still need an export license for the individual or entity that will receive this item. There are several lists compiled by difference agencies so be sure to screen all of them before making any export shipments. The U.S. Department of Commerce maintains all of these lists on its website: http://www.bis.doc.gov/complianceandenforcement/liststocache.htm.
If you are not sure who the end user is, it is a good practice to ask your buyer to complete the BIS Form 711 as a verification of the ultimate consignee. The form is used as a supporting documentation for certain license application and can be used as a verification of the end user: [http://www.bis.doc.gov/licensing/bis711.pdf](http://www.bis.doc.gov/licensing/bis711.pdf).

If you are asking your buyer to complete the form, please keep it on record for export compliance purposes for five years from the date of export.

**D. WHAT WILL THEY DO WITH THE ITEM?**

Finally, even if you are exporting a commercial or dual-use item that is not subject to a license for the export transaction, you will very likely need to apply for an export license if the product will be used for certain nuclear application, rocket systems and unmanned air vehicles, chemical and biological weapons, maritime nuclear propulsion, foreign vessels or aircraft or military end use. See section 744 of the EAR. Contact the UECD for assistance in these cases.

**III. SPECIAL CLASSES OF EXPORTS**

In addition to a licensing requirement by the BIS or DDTC, you may be required to secure additional licenses and comply with special labeling and packaging requirements if you export any of the following materials: hazardous materials, toxins and biological agents, nuclear materials, controlled substances, or live animals.

If you are exporting any of the following materials, you should contact the UECD and the appropriate University departments to ensure that you have the required export licenses in place and your shipment is properly labeled and packaged for transportation:

**Select Agents:** Boston University’s Select Agent Program follows guidelines set forth under the newest Department of Health and Human Services Centers for Disease Control and Prevention regulations. The Centers for Disease Control and Prevention regulate the possession of biological agents and toxins that have the potential to pose a severe threat to public health and safety. All principal investigators wishing to work with any select agents are required to be registered through the Centers for Disease Control and Prevention. The Office of Environment Health and Safety manages the registration program for the University. If you are planning to export or import select agents, contact the Office of Environmental Health and Safety: [http://www.bu.edu/ehs/](http://www.bu.edu/ehs/).

**Hazardous Chemicals:** Hazardous chemicals are substances (liquid, solid, and gas) that have hazardous characteristics. They can be flammable, corrosive, reactive, toxic, radioactive, poisonous, and/or carcinogenic. In a general sense, these materials are considered hazardous because they present a potential risk to humans and/or the environment. These materials are regulated by a number of federal, state, and local agencies. Contact the Office of Environmental Health and Safety for assistance with chemicals: [http://www.bu.edu/ehs/](http://www.bu.edu/ehs/).

**Infectious and Diagnostic Specimens, Biological Material or Animal Products:** It is the researcher’s responsibility to have knowledge of the contents of the shipment to determine if it falls within the definition of being an infectious substance, biological product, or diagnostic specimen. Approval is required by the Boston University Institutional Biosafety Committee (IBC) before ordering recombinant DNA and biohazardous materials. The IBC is a University/Hospital-wide committee responsible for reviewing and approving recombinant DNA research and biohazard projects. The committee sets
containment levels in accordance with the National Institutes of Health (NIH) Guidelines and the Center for Disease Control and Prevention. Additional information is available at: http://www.cdc.gov/od/eaipp. Contact the Office of Research Compliance for assistance.

**Radioactive Materials:** Only those individuals authorized by the University’s Radiation Safety Officer may use, bring into, or remove from the University any radioisotopes. Radioactive materials are regulated by the Massachusetts Department of Public Health and the United States Nuclear Regulatory Commission. Every individual working at Boston University with radioisotopes must be registered with the Office of Medical Physics and Radiation Safety. The office should also be consulted when you intend to export radioactive components: http://www.bu.edu/ehs/contact-us/.

**Controlled Substances:** Persons working at Boston University who need to use controlled substances (scheduled drugs) must be licensed by both the Commonwealth of Massachusetts and the U.S. Drug Enforcement Agency, and authorized by Boston University. All exports of controlled substances are subject to an export license by the U.S. Drug Enforcement Agency. For more information regarding requirements, contact the Office of Environmental Health and Safety prior to arranging shipments: http://www.bu.edu/ehs/.

**Laboratory Animals:** Airlines, shippers, and freight forwarders involved in the transport of live animals must ensure that animals arrive at their destinations in good health. The International Air Transport Association (IATA) Live Animals Regulations (LAR) describes the containers that should be used for each species, and the safeguards required during transport by air, sea, or land. Boston University requires all arrangements for the transport of live animals to be made through the laboratory animal facilities on campus. Do not contact the customs broker for animal shipments. For the Charles River Campus, contact the Laboratory Animal Care Facility at 617-353-5415. For the Medical Campus, contact the Laboratory Animal Science Center at 617-638-4086.

**IV. PRODUCT CLASSIFICATION FOR DUTY AND REPORTING PURPOSES**

After you determine whether you need an export license for the item that you are exporting, you should determine the Harmonized Tariff Schedule number (HTS) if you import into the U.S., and the Schedule B number for the equipment or product that you are exporting. These two codes are used in international commerce for duty determination purposes (HTS) and export tracking (Schedule B) and it is the duty of the exporter to determine the codes. Freight forwarders and custom brokers are not obligated to provide these codes and it is not their job to classify merchandise. Many of them will provide classification services but they are not experts in the equipment that you export. The exporter of record (BU) will be held liable for mistakes that the freight forwarder or broker makes while classifying an item, so be sure to provide the University Broker with sufficient information to classify your items.

**A. HARMONIZED TARIFF SCHEDULE NUMBER**

Each item in international commerce is classified under a harmonized system for duty determination purposes and has a unique 10-digit code. The World Customs Organization manages the system and around 170 countries are part of the harmonized nomenclature including the United States. The first six digits are harmonized across the world and the last four digits differ by each country. The Harmonized Tariff Schedule of the U.S., administered by the International Trade Commission, can be found at: http://hts.usitc.gov/.
The HTS code is used for import purposes only; you will be required to provide it to U.S. Customs when you import into the United States. There might be instances where the importer abroad will ask you for the HTS code because they need it to process the shipment through their Customs Office. When you export an item that you did not develop or manufacture you can ask the manufacturer to provide the HTS number, classify the product yourself, send a classification request to U.S. Customs, or ask the University customs broker to classify the product for you. In any case, the importer will need it when the product is imported into the destination country and you will need the code if you are carrying the item with you to attend a conference or conduct research abroad.

The U.S. is party to a Florence Convention that enables movement of scientific equipment across borders without the need to pay for import duties, taxes, and other charges. Check with the University Customs Broker to make sure that they properly classify the equipment and include all relevant customs forms with the shipment to take advantage of the convention when you import into the United States.

Below are the conditions under which you may be eligible to import into the U.S. Duty Fee:

- The scientific instrument and apparatus must be used exclusively for educational purposes and scientific research, and
- The scientific instrument or apparatus, or its equivalent, is not manufactured in the United States

A request form for duty-free entry must be completed by the researcher and submitted to the Customs Broker well in advance of making the purchase. The Customs Broker will submit the request to the Department of Commerce for approval. Once approved, the Customs Broker will file the request with U.S. Customs. This form is known as ITA 338P (Request for Duty-free Entry) and may be obtained on this website: http://ia.ita.doc.gov/sips/appform.html

Duty on scientific equipment is usually substantial. For more information about duty-free entry please see The Florence Agreement Program. http://ia.ita.doc.gov/sips/15cfr301.html

B. SCHEDULE B NUMBER

The Schedule B number is a classification system for U.S. export purposes; the number is reported in the AES system and managed by the U.S. Census Bureau Division of Foreign Trade Statistics to track export statistics. The Schedule B is a 10-digit number that may be similar and sometimes identical to the HTS. The Schedule B coding system can be found at: http://www.census.gov/foreign-trade/schedules/b/. The exporter of record is required to report this number via the Automated Export System for required transactions (see section on Foreign Trade Regulations).

Both codes should be kept on file for five years after the export is completed.

C. AUTOMATED EXPORT SYSTEM REPORTING (AES)

Under the foreign trade regulations, the U.S. Principal Party of Interest is required to report information for certain types of shipments to the U.S. Census Bureau. The requirements are discussed in the section on Foreign Trade Regulations.

The Electronic Export Information (EEI) must be filed when shipped as follows:

- All commodities over $2,500 per schedule B number
From U.S. to foreign countries
Between the U.S. and Puerto Rico
Between Puerto Rico and U.S. Virgin Islands
From U.S. to the U.S. Virgin Islands
Between U.S. and Embargo destinations
All exports from the U.S. subject to an export license (regardless of value)
All exports subject to the ITAR (including license exceptions)
Rough diamonds

There are several useful filing exemptions, the most commonly used exemptions are as follows:\footnote{http://www.census.gov/foreign-trade/regulations/regs/regulations20080602-federalregister.html#AppendixC}

- Canada (except for licensable exports, exports subject to the ITAR, transshipments)—§30.36
- Low value shipments—§ 30.37 (a)
- Tools of trade—§ 30.37 (b)
- Technology and software (not subject to an export license)—§ 30.37 (f)—EEI is required for mass market software
- Baggage and personal effects (unless license is required)—§ 30.37(q)

All exemptions must be included on the shipping and transportation documentation (airway bill or bill of lading and commercial invoice) in the following format: “No EEI Required... [exemption code].” Omitting the filing exemption is technically a violation under the regulations.

Please be sure to bring properly completed documentation when you travel abroad on temporary basis and bring samples/instruments with you as carry-on items. You should at least have a Commercial Invoice (with the AES filing exemption) and Carnet if appropriate for U.S. Customs Purposes. If you need any assistance, contact the UECD.

The University Freight Forwarder/Customs Broker can help with the AES filing. Please be sure to retain a copy of the AES printout, or at minimum the ITN number, the Internal Transmission Number that the party that is submitting the request receives from Census AES system. The shipper is required to keep the ITN on file for a minimum of five years. If the customs broker enters the EEI into the AES system on your behalf, the number is typically placed on the airway bill and commercial invoice.

Contact information for the University Freight Forwarder and Customs Broker can be found on the Office of Sourcing and Procurement’s website: \url{http://www.bu.edu/sourcing/preferred_suppliers2/services/}

V. SMALL SIZE, LOW VALUE SHIPMENTS, AND FedEx

If your shipment is valued at less than $2,500 and weighs less than 25 lbs. it is recommended that you use FedEx (\url{http://www.fedex.com/us/}) to ship your goods. With FedEx International Priority service, your smaller shipments will get door-to-door, customs-cleared delivery in just 24 to 48 hours.

FedEx makes international shipping easy and convenient for small simple shipments with online resources like FedEx Global Trade Manager, which provides the international documentation, United States Custom’s clearance guidelines, and support you’ll need to help keep your package moving on time worldwide.

If you do not have an existing FedEx University account, please contact University Mail Services at 617-353-6680. The information required to set up an account:

\footnote{http://www.census.gov/foreign-trade/regulations/regs/regulations20080602-federalregister.html#AppendixC}
The University enjoys a beneficial pricing agreement with FedEx and the pricing will be available to you upon account set-up through Mail Services.

*If you have any questions of shipping procedures or processes, contact the UECD for assistance.*

**VI. INCOTERMS® 2010**

Incoterms are internationally recognized commercial terms that are published by the International Chamber of Commerce and set forth the responsibilities of buyers and sellers in international trade transactions. The terms are updated every 10 years; the latest update to the rules was in 2010. The terms very frequently become part of a contract and determine how risk, costs, and responsibilities are allocated between the parties in cross border transactions. The terms are voluntary; however, once included in a contract or on shipping documentation, they govern the transaction. It is also important to understand that the Incoterms do not determine when title to the products passes between the parties. That is the biggest misunderstanding in the international trade community. Your contract determines when title to the merchandise transfers. Incoterms determine who is required to pay for cargo, purchase insurance, clear goods through Customs, pay import duties, charges, taxes, and other related fees.

There are 11 terms that are separated into two groups, one for ocean shipments only, and one for multiple modes of transportation. Each term should be used in conjunction with a place such as *EXW, Boston* if we export from the University. Below are the Incoterms defined in more detail:

*Any mode of transportation:*

**EXW (Ex Works):** Seller delivers without loading the goods at the disposal of the buyer at the seller’s premises. EXW represents the least obligations for the seller/exporter.

**FCA (Free Carrier):** Seller delivers the goods to the carrier at the seller’s premises. FCA requires the seller to clear the goods for export. However, the seller has no obligation to clear the goods for import, pay any import duties, or carry out any import customs formalities.

**CPT (Carriage Paid To):** Seller delivers the goods to the carrier at an agreed place and the seller must contract for and pay the costs of carriage necessary to bring the goods to the names place of destination.

**CIP (Carriage & Insurance Paid To):** Seller delivers the goods to the carrier at an agreed place and the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination. The seller also contracts for insurance to cover the buyer’s risk of loss or damage to the goods during carriage.

**DAT (Delivered At Terminal):** Seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the disposal of the buyer at the named terminal at the named port or place of destination.

**DAP (Delivered at Place):** Seller delivers when the goods are place at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place.
DDP (Delivered Duty Paid): Seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay the duty, and carry out all customs formalities.

Sea and inland waterway transportation:

FAS (Free Along-side Ship): Seller delivers when the goods are placed alongside the vessel nominated by the buyer at the named port of shipment. The risk of loss or damage to the goods passes to the buyer when the goods are alongside the ship.

FOB (Free On Board): Seller delivers the good on board the vessel nominated by the buyer at the named port of shipment or procures the good already so delivered. The risk of loss of damage to the goods passes to the buyer when the goods are on board the vessel.

CFR (Cost and Freight): Seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the cost and freight necessary to bring the goods to the names port of destination.

CIF (Cost Insurance and Freight): Seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight as well as insurance cover against the buyer’s risk of loss or damage to the goods during the carriage.\(^{52}\)

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\(^{52}\) Incoterms & Chart provided by the Massachusetts Export Center: [www.mass.gov/export](http://www.mass.gov/export).

\(^{53}\) Chart provided by the Massachusetts Export Center: [www.mass.gov/export](http://www.mass.gov/export).

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52 Incoterms & Chart provided by the Massachusetts Export Center: [www.mass.gov/export](http://www.mass.gov/export).

53 Chart provided by the Massachusetts Export Center: [www.mass.gov/export](http://www.mass.gov/export).
VII. **Export Documentation**

1. **Commercial Invoice**

   A commercial invoice is a basic document required for all export/import shipments. See Appendix O for sample. There is no standard form, so you can create your own form as long as the correct elements are included. Be sure to include accurate information such as the value (every product in commerce has a value—never put $0 on commercial invoice), HTS number, and country of origin/ manufacture. A destination control statement must be included on the commercial invoice when you are exporting controlled items. A destination control statement is not required for EAR99 items, however, it is a good practice to do include it.

   The destination control statement under EAR:

   “These commodities, technology, or software were exported from the United States in accordance with Export Administration Regulations. Diversion contrary to U.S. law prohibited.”

   The destination control statement under ITAR:

   “These commodities are authorized by the U. S. Government for export only to [insert country of ultimate destination], for use by [insert end-user]. They may not be transferred, transshipped on a non-continuous voyage or be otherwise disposed of in any other country, either in their original form or after being incorporated into other end items, without the prior written approval of the U. S. Department of State.”

   Elements of the Commercial Invoice:

   - Exporter’s and Importer’s contact information and location
   - Destination port of entry
   - Detailed description of the item: Non-scientific, so Customs can easily understand what it is that you are shipping. The description should include name, grade, marking, HTS code, brief description.
   - ECCN number of EAR99 designation
   - Quantity
   - Origin Marking: Take care when marking equipment as U.S. origin. Most products that are located in the U.S. do not originate in the U.S.; there are very specific rules on determining origin of a product. In general, the manufacturer of the product will be able to determine the origin or an item, or alternatively, you can contact the UECD.
   - Value: Consult the Encyclopedia of Valuation published by U. S. Customs and Border Protection when determining the correct value.\(^{54}\) Value is the sales price or fair market value if there is no sale. When you export samples that have no value, you would include the cost of the sample with the following statement: “Sample. No Commercial Value. Value for Customs Purposes Only.” The value on your commercial invoice becomes the value for import duty determination. As mentioned, there is an international convention on importing educational, scientific, and cultural products where the importer may be relieved of import duties when these products are imported.

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for non-commercial use. Each country that is part of the convention implements these rules differently and the import tariff schedule of each country will most likely reflect this agreement. Taking advantage of this convention may also require additional paperwork or advance notice to the Customs office in the importer’s country. If you are the importer of record in the destination country, you should give the Customs Broker an advanced notice that you are importing scientific equipment/instruments or materials in order to secure the proper paperwork.

2. **Airway Bill**

   A contract of carriage issued by the carrier either directly or indirectly through a freight forwarder. It is a transportation document necessary for clearing customs in the destination country. This document is completed by the carrier or freight forwarder and it is used for air shipments only.

3. **Bill of Lading**

   A transportation document that is evidence of a contract between the carrier and the shipper, receipt for delivery of the goods by the carrier, and title document. It is a necessary document for clearing customs in the importing country. It can be negotiable (title document) or non-negotiable and has many forms. The document is completed by the carrier or freight forwarder.

4. **Certificate of Origin**

   This document certifies the origin of the product and is used for duty assessment purposes. Some countries in the Middle East may require you to have the document authenticated by a Chamber of Commerce in the United States. Our Customs Broker will be able to assist with the request or contact the Export Control Director. Take care to correctly report the origin of the item—there are very specific requirements of what constitutes U.S.-origin, so if uncertain of the origin of the item that you are exporting, contact the manufacturer or the Export Control Director. See Appendix P for Sample Certificate of Origin.

5. **Packing List**

   This is a detailed document that itemizes quantity and lists the following elements: seller, buyer, shipper, invoice number, date of shipment, mode of transport, carrier, description, type of package (e.g., a box, crate, drum, or carton), quantity of packages, total net and gross weight (in kilograms), package marks, and (if appropriate) dimensions. This document may be required by customs abroad to verify the contents of a cargo. Each freight forwarder will be able to supply you with a copy of the document.

6. **A.T.A. Carnet/Temporary Shipment Certificate**

   Often referred to as a “merchandise passport;” used for temporary shipments that will be returned to the U.S. within a specific period of time, typically one year. It facilitates movement of merchandise between countries without paying import duties or taxes such as the V.A.T. It is very frequently used for demos, equipment loans, samples, professional equipment, equipment sent to

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55 [http://export.gov/logistics/eg_main_018121.asp](http://export.gov/logistics/eg_main_018121.asp)
conferences, etc. There are around 70 signatory countries to the Carnet convention; the full list is located at: http://www.atacarnet.com/carnet-countries.

7. **Certificate of Free Sale**

   A document occasionally requested by the destination country to certify that a particular product is sold in the U.S. It is typically requested for products such as biologics, food, drugs, medical devices, and veterinary medicine. The document can be issued by the FDA and in Massachusetts by the Department of Public Health or the Massachusetts Department of Agriculture. Contact the University Export Control Director if you need this document.

8. **Dangerous Goods Certificate**

   Exports submitted for handling by air carriers and air freight forwarders classified as dangerous goods need to be accompanied by the Shipper’s Declaration for Dangerous Goods required by the International Air Transport Association (IATA). The exporter is responsible for accuracy of the form and ensuring that requirements related to packaging, marking, and other required information by IATA have been met. For shipment of dangerous goods it is critical to identify goods by proper name, comply with packaging and labeling requirements, which vary depending upon the type of product shipper and the country shipped to. Ocean shipments of dangerous goods must comply with the International Maritime Dangerous Goods regulations. Contact the Office of Environmental Health and Safety if you are planning to export hazardous materials: http://www.bu.edu/ehs/.

9. **Pro Forma Invoice**

   Essentially a price quote, a pro forma invoice may occasionally be required by the importing country. It is very similar to a commercial invoice and can also be used to open up a Letter of Credit.

   The U.S. Commercial Service has a comprehensive website of shipping documents: http://export.gov/logistics/eg_main_018121.asp.

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56 http://export.gov/logistics/eg_main_018121.asp
BOSTON UNIVERSITY EXPORT CONTROL PROCEDURES

I. OFFICE OF THE ASSOCIATE VICE PRESIDENT FOR RESEARCH COMPLIANCE

Academic and medical research is subject to a myriad of laws, regulations, and/or other binding agreements both challenging and complex. Oversight of these activities, including export regulatory compliance, is provided by the Office of the Associate Vice President for Research Compliance.

II. UNIVERSITY EXPORT CONTROLS ADVISORY COMMITTEE

The Export Control Advisory Committee (ECAC) provides guidance regarding export control issues at Boston University, including:

- Advising the Empowered Officials
- Overseeing the Export Control program
- Assisting in development of policies, guidelines, record keeping requirements, and training materials pertaining to Export Control issues
- Facilitating training and disseminating information within its units
- Assisting with periodic program reviews and development of any corrective action plans required
- Reviewing the Export Control Manual and the Export Control Program annually and recommending changes and/or improvements
- Facilitating communication about the importance of export regulatory compliance and policies among the University community, including provosts, deans, associate deans for research, center directors, administrative offices, global operations, and principal investigators

The Associate Vice President for Research Compliance (the Empowered Official, or EO), in consultation with University leadership appoints the members of the Committee. Membership is comprised of representatives from the Boston University research community, The Office of General Counsel (OGC), Export Control Program, Office of Sponsored Programs (OSP), Sourcing and Procurement, Global Operations, Environmental Health and Safety, and other administrative units, as appropriate. For the current membership of the Committee please see http://www.bu.edu/orc/export/.

The Export Control Advisory Committee meets on quarterly basis, more frequently if necessary.

III. KEY ACTORS RESPONSIBLE FOR EXPORT CONTROL COMPLIANCE

A. EMPOWERED OFFICIALS

The Associate Vice President for Research Compliance and the Export Control Director are BU’s Empowered Officials for export control matters. In this capacity, the Empowered Officials have the authority to represent the University before the export control regulators in matters related to registration, licensing, commodity jurisdiction requests, or voluntary disclosures. While certain oversight functions may be delegated, only the Empowered Officials have the power to sign such paperwork and bind the University in any proceeding before the DDTC, BIS, OFAC, or any other government agency with export control responsibilities.
B. UNIVERSITY EXPORT CONTROLS DIRECTOR—OFFICE OF RESEARCH COMPLIANCE

The University Export Controls Director (UECD) reports to the AVPRC. The UECD has the authority and the responsibility to implement the procedures set forth in this Export Compliance Program and should be consulted when questions related to export compliance or international shipping arise.

The UECD works closely with the AVPRC, the academic units, and the OSP in performing his or her responsibilities.

The UECD:

1. Identifies areas at BU relative to research and other activities that are impacted by export control regulations.
2. Develops control procedures to ensure the University remains in compliance.
3. Recommends procedures to senior BU administration to strengthen BU’s compliance.
4. Educates inventors, principal investigators, centers, and academic units about export control regulations and procedures followed at BU.
5. Educates other units within BU such as Accounting, Purchasing, Travel, International Programs, Human Resources, and Office of Technology Development about export control regulations and procedures followed at BU.
7. Works with others on campus to facilitate understanding and compliance with export controls.
8. Conducts training and outreach on export controls.
9. Maintains the export controls website.
10. Assists investigators, researchers, and offices within BU when research or research results are export-controlled.
11. Seeks legal assistance when uncertain about classification and in filing license applications.
12. Develops a Technology Control Plan (TCP) for each export-controlled project consistent with these procedures to aid the principal investigator (PI) in meeting his or her export control responsibilities.

C. OFFICE OF SPONSORED PROGRAMS (OSP)

The OSP provides assistance and with export controls by working closely with the UECD and AVPRC in identifying export control issues and providing support for their solution.

The OSP:
1. Provides assistance to PIs in reviewing the terms of a sponsorship agreement or grant to identify restrictions on publication and dissemination of the research results, and to help PIs negotiate out such restrictions.

2. Ensures that the Export Control Checklists are completed as required on the CRC and sends them to the UECD for review if export controls issues are flagged.

3. Maintains a centralized database of all documentation relating to a research project or education activity.

4. Coordinates with the PIs and the UECD to ensure that foreign nationals will be isolated from participation in an export-controlled project in accordance with the Technology Control Plan, unless the university applies for and obtains an export license from the relevant agency.

D. KEY UNIVERSITY MANAGERS

Academic deans, directors, and department heads share the responsibility of overseeing export control compliance in their respective schools, departments, centers, or institutes and supporting the UECD in implementing procedures as deemed necessary by the UECD for export control compliance.

In addition, the directors of other offices or units on campus including, but not limited to: Accounting, Environmental Health and Safety, Human Resources, Global Programs, and Technology Development share the responsibility of overseeing export control compliance in their units and supporting the UECD in implementing procedures as deemed necessary by the UECD for export control compliance.

E. PRINCIPAL INVESTIGATOR (PI)

PIs have expert knowledge of the type of information and technology involved in a research project or other University activity, such as presenting at conferences and discussing research findings in class with fellow researchers or collaborators. PIs must ensure that they do not disclose controlled information or transfer-controlled articles or services to a foreign national without prior authorization as required.

To meet his or her obligations, each PI must:

1. Understand his or her obligations under export controls, and participate in regular trainings to help him or her identify export control issues.

2. Provide the UECD with all required documentation and guidelines provided by the contracting agency to ensure compliance with export controls.

3. Assist the UECD to classify the technology involved in the research or other university activity.

4. Identify foreign nationals that may be involved and, if the research is subject to export restrictions, initiate the process of clearing foreign national participation well in advance to ensure that a license is obtained in a timely manner, or implement proper measures to isolate foreign nationals from participation.

5. If undertaking an export-controlled project, brief the students and other researchers involved in the project of their obligations under export controls or ask the UECO to do so.

6. Assist the UECD in developing the TCP; the UECD will take the lead, however, as the PI has the knowledge of the research, individuals involved and the facilities. The TCP template is located in Appendix C.
7. Ensure that all physical exports comply with the foreign trade regulations, import requirements in the destination country, and that all shipping paperwork is accurate and records of all shipments are kept on file for at least five years from the date of export.

IV. Export Control Analysis

An export control analysis should be performed when a PI submits a proposal, receives an award, or changes the scope of an existing project.

A. Initial Review—Office of Sponsored Programs

The Office of Sponsored Programs (OSP) performs the initial review. The OSP will look for the following red flags indicating possible export control issues:

1. References to U.S. export regulations (beyond a mere statement to comply with the law)
2. Restrictions on publication or dissemination of the research results
3. Pre-publication approval from sponsor
4. Indication from the sponsor that export control information will be provided for the research
5. Proprietary or trade secret claims on project results
6. Restriction of access or participation to U.S. citizens only
7. Involvement of foreign sponsors or collaborators
8. Travel, shipping, or work performed outside the U.S.
9. Military applications of the project results
10. Research conducted by high risk areas such as space physics, engineering, computing, chemistry, microbiology
11. Research involves spacecraft systems and equipment, unmanned air vehicles, nuclear design, toxins, computers, electronics, encrypted software, lasers and sensors, chemicals, microorganisms
12. Reference to the words “sensitive but unclassified” in the proposal or award
13. Funding from the Department of Defense, the Department of Energy, the Army, the Air Force, the Naval Office, NASA, the National Reconnaissance Office, or other U.S. government agencies

B. Final Review

If the initial review flags a possible export controls issue, the project will be referred to the UECD for final review. Upon completing the final review, the UECD will advise the PI concerning the export controls that apply to the project, the restrictions on access by foreign persons, and any other relevant requirements pursuant to ITAR and EAR, OFAC, and other regulations.

V. Technology Control Plan

A. Development

If the UECD determines a project is export controlled, the UECD will take the lead and work closely with the PI to develop and implement a TCP to secure the controlled technology from access by unlicensed non-U.S. citizens.

The TCP will include:
1. A commitment to export controls compliance
2. Purpose and scope of the plan
3. Identification of the relevant export control categories and controlled technologies
4. Overview of applicable regulations
5. Application of export regulations to the project
6. Identification of the project’s sponsors
7. Non-disclosure statement from each research project participant
8. List of export licenses and license exceptions applied to the project
9. Appropriate physical and informational security measures
10. Personnel screening measures
11. Research lab visitor’s policy
12. Record keeping policy
13. Export compliance training and training logs
14. Appropriate security measures for and following project termination
15. Statement on Reporting violations
16. Annual audit record

B. APPROPRIATE SECURITY MEASURES

The TCP will include physical and informational security measures appropriate to the export control categories involved in the project. Examples of security measures include, but are not limited to:

- **Laboratory Compartmentalization**: Project operation may be limited to secured laboratory areas physically shielded from access or observation by unauthorized individuals. These areas must remain locked at all times.
- **Time Blocking**: Project operation may be restricted to secure time blocks when unauthorized individuals cannot observe or access.
- **Marking**: Export controlled information must be clearly identified and marked as export-controlled (either “ITAR controlled” or “Controlled under EAR”).
- **Personnel Identification**: Individuals participating in the project will be listed in the TCP and only authorized personnel will have access to controlled laboratories.
- **Locked Storage**: Tangible items such as equipment, associated operating manuals, and schematic diagrams should be stored in rooms with key-controlled access. Soft and hardcopy data, lab notebooks, reports, and other research materials should be stored in locked cabinets.
- **Electronic Security**: Project computers, networks, and electronic transmissions should be secured and monitored through User IDs, password controls, Secure Sockets Layer encryption or other federally approved encryption technology. Database access should be managed via a Virtual Private Network.
- **Confidential Communications**: Discussions about the project must be limited to the identified and authorized project participants, and only in areas where unauthorized individuals are not present. Discussions with third party subcontractors must occur only under signed agreements which fully respect the non-U.S. citizen limitations for such disclosures.

C. TRAINING & CERTIFICATION

Before any individual may observe or access the controlled technology, he or she must be briefed on the procedures authorized under the TCP, certify his or her agreement to comply with all security measures outlined in the TCP, and have his or her certification authorized by the UECD or AVPRC. Appendix C provides BU’s template for TCP briefing and certifications.
If the project is awarded, regardless the project’s nature, the UECD will issue a PI Memo describing export controls to each PI. Principal Investigator Memo is in Appendix D.

VI. LICENSING

If a project is export-controlled and a license is needed to involve a foreign national, only an Empowered Official may apply for an export license to allow the disclosure of information to foreign students and researchers. Note that each foreign student must be specifically licensed for each controlled project. Also note that a TCP, as described in Section IV above, must be implemented. The UECD, in coordination with the AVPRC and OGC, will prepare and sign the necessary documentation for obtaining a license.

VII. INTERNATIONAL SCHOLARS AND VISITORS

International Student and Scholars Office (ISSO) processes visa applications for international scholars and visitor at Boston University. Hiring/host departments wishing to invite and/or employ international scholars must familiarize themselves with Boston University sponsorship policies, procedures and timelines for the various immigration classifications on ISSO’s website: http://www.bu.edu/isso/administrators/index.html

Hiring/host departments are encouraged to consult with an ISSO staff member regarding the possibility of sponsorship and processing requirements before extending a formal invitation or offer of employment to an international scholar.

Boston University policy generally limits immigration sponsorship to research and teaching positions, as some classifications require a substantial commitment of institutional resources. Many administrative and support staff positions do not meet minimum eligibility requirements for immigration sponsorship. On occasion, some professional staff positions in specialized fields may meet minimum federal requirements and thus warrant consideration for institutional sponsorship. Departments wishing to hire an international employee for a professional staff position are advised to consult with the ISSO Scholar Services Team to determine which immigration sponsorship alternatives might be available. If the position and the candidate appear to qualify for immigration sponsorship, approval from the hiring authority and the Office of the Provost may also be required.

When determining the most appropriate immigration sponsorship category, ISSO staff will evaluate the needs of the hiring/host department and the principal objective of the prospective scholar in the US (study, research, employment, etc). The length of time required to process a request for sponsorship can vary according to immigration classification and individual circumstances.

All requests for the employment of foreign nationals must be processed through the ISSO. Only the ISSO staff is authorized to sign the legal documents and forms required to sponsor international scholars. The ISSO processes most nonimmigrant employment-based petitions in-house. Therefore, neither prospective employees nor university departments are authorized to retain outside immigration counsel to represent the international employment needs of the university. If you receive any forms requiring an authorized signature, please forward them to the ISSO.

ISSO works with the UECD (as appropriate) to determine the immigration status of foreign nationals working on research subject to export controls.

Contact ISSO with any questions regarding the international scholars and visitors requirements – web: http://www.bu.edu/isso/ or Tel: (617) 353-3565.
VIII. INTERNATIONAL TRAVEL

Travel or transmissions to destinations outside the U.S. can also trigger the applicability of export control regulations. A license may be required depending on which items are taken, which countries are visited, or whether defense services are provided to a foreign person.

Laptops, cellphones, GPS, other electronic devices, and software contain encryption and may be controlled for U.S. export purposes. If you plan to take a laptop, cellphone, or GPS overseas, check with the manufacturer of the device and obtain the ECCN (export control classification number) to determine the level of encryption and controls. The applicable ECCN will give you the reasons for control so you can check the Country Chart and determine if license is required to a particular destination. Most consumer electronic items contain a low level encryption and can be taken out of the U.S. without an export license and you may be able to apply a license exception for items taken out of the US on a temporary basis. Refer to the laptop/GPS checklist on the following website: http://www.bu.edu/orc/export/compliance/laptop-gps-checklist/. Do keep in mind that U.S. Customs may seize your laptop or cellphone and inspect it so it is advisable that you don’t take that into account when travelling. Do not take export controlled data or information out of the country without proper licensing determinations.

It is highly advisable that you print the laptop/GPS checklist when you travel with University owned equipment or contact the UECD to draft a simple memo for your international travel indicating to US Customs what type of information is on your computer and the license exception that you are applying to take the devices out of the US on a temporary basis to ensure smooth travel.

Most manufactures of electronic devices list the ECCN codes for their devices and software on their websites so it is relatively easy to check the requirements.

Links to common consumer technology export compliance information:

Microsoft: http://www.microsoft.com/exporting/termsmx.htm
IBM: http://www-03.ibm.com/products/exporting/
Adobe: http://www.adobe.com/support/exportcompliance.html
Dell: http://www.dell.com/content/topics/global.aspx/about_dell/values/regulatory_compliance/eccn_hts_ccats_information?c=us&l=en

The Office of Research Compliance established guidance on temporary travel abroad and it is located on this website: http://www.bu.edu/orc/export/compliance/travel-abroad/

If you are working on an ITAR controlled project all travel to proscribed countries (section 126.1 of the ITAR) must be vetted by the UECD and no technical data may be taken out of the country to these destinations. Moreover, if you plan to travel to destinations not outlined in section 126.1, you are required to work with the UECD to obtain travel authorization if you travel abroad with technical data, information, software or hardware.
If you are taking equipment or instruments to a research site abroad, it is highly advisable that you carry a commercial invoice with you indicating what it is that you are hand-carrying in your luggage and applying for a CARNET to avoid paying import duties or other charges abroad. Moreover, if you plan to attend a conference in an embargo destination, you may be required to obtain a license by the Office of Foreign Assets Control so contact the UECD well in advance to help you define the requirements for the particular trip.

IX. TECHNICAL DATA CONTROLS & LICENSE EXCEPTIONS & TRAVEL

Special Note: the Empowered Official must authorize and sign all license exceptions/exemptions in order to maintain full compliance.

Most of the research that is conducted on BU campuses qualifies under the fundamental research exception and is excluded from export controls. However, there are a few instances where research is controlled under either EAR or ITAR and it is, therefore, important to check the regulations before traveling outside of the U.S. with technical data/technology subject to export controls. Researchers involved with controlled research may be required to secure export licenses when traveling abroad with laptops that contain controlled data or information. No ITAR data can be exported on permanent or temporary basis outside of the US without valid government authorization.

Keep in mind that U.S. Customs officials have the authority to search and seize any devices that you take with you when travelling internationally to look for export violations, among other reasons. Make sure that your devices don’t include controlled data or that you have secured the appropriate licenses or well documented a license exception. The best way to document a license exception is to bring a commercial or pro forma invoice with you so you can show customs officers what it is that you are exporting under the particular license exception.

When you carry items outside of the U.S. for research purposes, you should always count on the possibility that your laptop or other device will be inspected by U.S. or foreign Customs officials. Here are few tips on travel with your research:

- Don’t carry data that you don’t want to be released to others such as technical data from your research financial information, private information
- Have an alternative plan if you need your research and your computer is seized
- Don’t take the only copy of your paper with you
- Consider taking a “clean” laptop with minimum software and data when you travel

A License Exception\textsuperscript{57} may be available for EAR controlled items, technology, or software if the individual travelling outside the U.S. can certify that he or she:

1. Will ship or hand-carry the items, technology, or software for BU business only
2. Will return or certify the destruction of the items, technology, or software within 12 months of leaving the U.S.
3. Will keep the items, technology, or software within his or her effective control
4. Will take necessary security precautions to protect against the unauthorized export of the technology
5. Will not ship or hand-carry the items, technology, or software to Iran, Syria, Cuba, North Korea, or Sudan\textsuperscript{58} or any other country subject to OFAC sanctions without first consulting with the UECD

\textsuperscript{57} See 15 C.F.R. § 740.1.
\textsuperscript{58} This list is subject to change. For most current list, see 15 C.F.R. § 742.1.
A License Exemption\textsuperscript{59} may be available to ITAR controlled technical data transmitted outside the U.S. if the individual transmitting the technical data can certify that:

1. The technical data is to be used overseas solely by a U.S. person(s)
2. The U.S. person overseas is an employee of US corporation or the U.S. Government and is not an employee of a foreign subsidiary
3. No export will be made to countries listed by 22 C.F.R. § 126.1.\textsuperscript{60} (ITAR prohibited destinations)

Any researcher intending to travel or transmit controlled data outside the U.S. should first consult with the UECD to determine licensing requirements. All exceptions or exemptions must be documented and the record maintained for at least five years after the termination of the project or the travel return date.

X. Training and Education Outreach

Training and educational outreach is the foundation of a successful export compliance program. Well-informed employees minimize the likelihood that inadvertent violations of the law will occur. The greatest risk of non-compliance of export laws and regulations occurs during casual conversations in person, on the telephone, or via email. The way to prevent these types of violations is through awareness and training.

Boston University Training and Education Outreach includes the following elements:

- \textit{Basic export compliance training} (departments that may occasionally encounter export issues): Annual training to raise awareness of export compliance issues and discuss policies and procedures as they relate to their departments and activities.

- \textit{Advanced export compliance training for research departments that conduct research in high risk areas (space physics, chemistry, toxins, microorganisms, engineering, computing, biomedical research, etc.):} This training will be conducted on an annual basis to raise export compliance awareness and discuss specific policies and procedures related to export compliance. Additional training will be provided as needed.

- \textit{Customized training for all researchers that work on a particular controlled research project:} On a project by project basis, and as needed (for instance when new researchers are added to the research project).

- \textit{Government and industry conferences and training:} The Empowered Officials are required to take eight hours of annual export control and compliance training. This training may be in the form of online training, in-house seminars, or external seminars and conferences.

- \textit{Senior administration briefing:} The University Provosts will receive annual briefing which will include an overview of the University’s export management and compliance program and potential liabilities for non-compliance. The briefing will be delivered during the regular research compliance briefing by the Associate Vice President of Research Compliance.

- \textit{Export compliance website:} The Office of Research Compliance developed a comprehensive website to provide guidance to researchers and administrators on export compliance issues. The website includes the following elements:

\textsuperscript{59} See 22 C.F.R. § 125.4.

\textsuperscript{60} The full list of proscribed countries may be found at: \url{http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf}. 

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XI. RECORD KEEPING

BU’s policy is to maintain export-related records on a project basis. Unless otherwise provided for, all records shall be maintained consistent with the BU record retention policy, and shall be retained no less than five years after the project’s TCP termination date or license expiration date, whichever is later.

Moreover, all records related to physical shipments of goods or small packages will be kept on record for at least five years from the date of export. Each employee or researcher is required to keep documents on file either in the physical form or electronically. In the event of an audit, the University will be required to reproduce these documents within 72 hours. Therefore, each department’s record keeping practices shall ensure that records can be reproduced within 24 hours of the request by UECD. The required documents include but are not limited to commercial invoice, airway bill, bill of lading, packing list, certificate of origin, carnets, shipper’s letter of instructions, AES submission printout or the ITN code, denied party screening checklist, export shipping checklist, and any other special document received from the University’s broker.

If ITAR-controlled technical data is exported under an exemption, certain records of the transaction must be kept even beyond BU’s five year retention period.61

Those records include:

1. A description of the unclassified technical data
2. The name of the recipient/end-user
3. The date/time of export
4. The method of transmission (e.g., email, fax, telephone, FedEx
5. The exemption under which the export took place

When applying an exemption under the ITAR, complete the ITAR exemption form in the Appendix G. and include in the technology control plan. When applying an exemption under the EAR, complete the EAR exemption form.

XII. MONITORING AND AUDITING

In order to maintain BU’s export compliance program and ensure consistent adherence to U.S. export laws, the UECD may periodically conduct internal reviews of TCPs and certain projects. The purpose of the reviews is to identify possible violations and/or deficiencies in training, procedures, etc., that can be rectified.

The UECD will conduct an annual report for all controlled areas using the Export Audit Checklist in the appendix. The Associate Vice President of Research Compliance will receive a briefing on the audit results. If a violation or non-compliance is detected, the UECD and the AVPRC will develop a plan to follow up and implement corrective actions. After the corrective plan is implemented, the UECD will provide a report on corrective action to the AVPRC who will provide a briefing to the Dean of the respective department and the Vice President of Research.

XIII. DETECTING AND REPORTING VIOLATIONS

It is the policy of BU to voluntarily self-disclose violations as required by law. Since September 11, 2001, government agencies have dramatically increased the investigation in and successful prosecution of export regulation violations. The penalties for these violations can be very severe, including personal liability, monetary fines, and imprisonment. However, government agencies assign great weight to voluntary self-disclosures as a mitigating factor.

Any individual who suspects a violation has occurred must immediately notify an Empowered Official who will notify the Office of the General Counsel. The Office of the General Counsel (after notification and approval of the University President; Provost or other senior administrator) will then send an initial notification about the suspected violation to the appropriate government agency. The UECD will conduct an internal review of the suspected violation by gathering information about the circumstances, personnel, items, and communications involved. Once the review is complete, the UECD and the OGC will provide the government agency with a supplementary letter with a thorough narrative account of:

1. The project’s description and background
2. A description of the suspected violation
3. Which items and controlled categories were involved
4. Which dates the violations occurred on
5. Which countries were involved
6. Who was involved and their citizenships
7. An explanation of why the violation occurred
8. Any corrective actions taken
9. BU’s commitment to export controls compliance

Once the initial notification and supplementary letter have been sent, UECD will follow the government agency’s instructions.

Note: under BU policies there are no restrictions on who may report an alleged incident. Anyone who has knowledge of such a deficiency is obligated to report it to BU officials. Under no circumstances will reporting such incidences in good faith be detrimental to an individual’s standing within the organization. No person will be discriminated against or be subject to any reprisal for reporting, in good faith, a concern or violation of any export control regulations.

XIV. SUBPOENAS AND ENFORCEMENT VISIT

If at any time a researcher or University administrator receives a visit from an enforcement agent or receives government subpoena, the individual is required to contact the Office of the General Counsel (Tel: (617)

62 For EAR violations, see 15 C.F.R. § 764.5. For ITAR violations, see 22 C.F.R. § 127.12(c).
353-2326) immediately to verify the legitimacy of the request. The individual should also contact the Boston University Police Department (Tel: 617-353-2121) to verify the identity of the agents. Number of agencies have jurisdiction over export enforcement and some of the agencies include Bureau of Industry and Security (BIS), FBI, CIA, Immigration and Customs Enforcement (ICE), Directorate of Defense Trade Controls (DDTC).

XV. DISCIPLINARY ACTIONS

In recognition of the seriousness of non-compliance with export controls, BU will address non-compliance in accordance with the BU policies and procedures. Further, all BU employees responsible for export controls compliance or participating in export-controlled projects must be aware of the substantial criminal and civil penalties imposed for violation of the export regulations including personal liability, monetary fines, and imprisonment.

XVI. EMPLOYEE PROTECTION

In accordance with the BU Policies, no individual shall be punished solely because he or she reported what was reasonably believed to be an act of wrongdoing or export control violation. However, a BU employee may be subject to disciplinary action if the employee knowingly fabricated, knowingly distorted, or knowingly exaggerated the report. Refer to the University's Code of Ethical Conduct available at: http://www.bu.edu/ethics/ethical-conduct.pdf
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1) COMMITMENT

Boston University is committed to export controls compliance. Link here for University’s Export Control Policy. The Office of Research Compliance is responsible for implementation of technology control plans as applicable. The Empowered Officials for export controls are Kathryn Mellouk, Associate Vice President for Research Compliance and Marie Hladikova, Export Control Director. Marie Hladikova is the main contact for export control issues. The individuals responsible for and committed to ensuring compliance with this TCP is

2) SCOPE

The procedures contained in this plan apply to all individuals involved in the …………………….. project at Boston University that work on this research which is controlled for US export purposes.

Export of controlled data abroad or to a foreign national who is a visitor, researcher, student or employee of Boston University may require an export license by federal government.

3) PURPOSE

The purpose of this plan is to inform the Boston University researchers, employees, Students and visitors of the controls that are in place to protect inadvertent release or export of controlled data under the International Traffic in Arms Regulations.

4) PROJECT DESCRIPTION

(This section will include the description of each controlled project).
XVII. 5) EXPORT CONTROL CLASSIFICATION

1. List the funding agency …………………………………………………………………………………………………………

2. Description of the research project ……………………………………………………………………………………………
   ………………………………………………………………………………………………………………………………………
   ………………………………………………………………………………………………………………………………………
   ………………………………………………………………………………………………………………………………………

3. Does the data/hardware/software fall on the USML? Yes…… No………………
   List the USML category ……………………………
   Reason for selecting the above category ……………………………………………………………………………………………
   ………………………………………………………………………………………………………………………………………

4. Are you unsure about the classification? Yes…… No………………
   If yes, Jurisdiction Classification Request (CJ) is required.

5. Classification request submitted to …………………………… (list the agency)
   …………………… (date)

6. List the result of the Jurisdiction request or classification request …………………………………
   Attach the appropriate documentation
ITAR OVERVIEW

The International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130, govern the export, re-export and import of classified and unclassified defense articles, defense services, and related technical data from the United States, abroad, and/or to any foreign person, whether located in the United States or abroad. The ITAR controls not only end items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that are incorporated into the end item. Certain non-military items, such as commercial satellites, and certain chemical precursors, toxins, and biological agents, are also controlled.

With rare exceptions, if an item contains any components that are controlled under the ITAR, the entire item is controlled under the ITAR. For example, a commercial radio that would normally not be controlled under the ITAR becomes a controlled defense article if it contains an ITAR-controlled microchip. The Directorate of Defense Trade Controls (DDTC) administers and enforces the regulations. An article or service may be designated or determined in the future to be a defense article or defense service if it:

- Is specifically designed, developed, configured, adapted, or modified for a military application
- Does not have predominant civil applications
- Does not have performance equivalent (defined by form, fit, and function) to those of an article or service used for civil applications
- Is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability such that control under this subchapter is necessary

The intended use of the article or service after its export (i.e., for a military or civilian purpose) is not relevant in determining whether the article or service is subject to the controls of this subchapter. Any item covered by the U.S. Munitions List (USML) must be within the categories of the U.S. Munitions List.

ITAR DEFINITIONS

Defense Article

Means any item or technical data that is specifically designed, developed, configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the USML. Defense article also includes models, mock-ups, or other items that reveal technical data relating to items designated in the USML.

Technical Data

Means any information which is required for the design, development, assembly, production, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings or assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed. However, technical data does not include general scientific, mathematical, or engineering principles commonly taught in universities, information present in the public domain, general system descriptions, or basic marketing information on function or purpose.
Under ITAR certain data that are considered as being in "public domain" are exempted (provided that the publication of the data was authorized). Exercise diligence when using information that you find on the internet. It occasionally happens that individuals inadvertently place ITAR information in the public domain without the required approval. If you find data that would not normally be published, contact the University Export Control Director to provide assistance whether you can use it without a license in your research.

Public domain means information that is published and generally accessible or available to the public:

- Through sales at newsstands and bookstores
- Through subscriptions available without restriction to any individual who desires to obtain or purchase the published information
- Through second class mailing privileges granted by the U.S. 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 U.S. Government department or agency
- 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.

Defense Service

Means providing assistance—including training—to a foreign person in the United States or abroad in the design, manufacture, repair, or operation of a defense article, as well as providing technical data to foreign persons. Defense services also include informal collaboration, conversations, or interchanges concerning technical data.

U.S. Person

U.S. person means a person who is U.S. citizen, or a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state, or local) entity.

DEFINITION OF THE EXPORT UNDER THE ITAR

Export means sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by person whose personal knowledge includes technical data; or transferring registration, control or ownership of a foreign person of any aircraft, vessel, or satellite covered by the US Munitions List, whether in the United States or abroad; or disclosing (including oral and visual disclosure) or transferring technical data to a foreign person whether in the United States or abroad; or performing defense services on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.
AUTHORIZATION TO EXPORT

Any export or transfer of ITAR article, technical data or software to foreign national at or outside of Boston University is subject to an authorization by the Directorate of Defense Trade Controls. Exemptions must be approved by the University Export Control Director prior to the export/transfer. In addition, travel abroad with technical data (on a laptop, in an email, presentation or research paper), software or hardware is subject to ITAR authorization and must be authorized by the Directorate of Defense Trade Controls. Exemptions must be approved by the University Export Control Director prior to the travel.

Boston University is registered with the Directorate of Defense Trade Controls and as such, we have the ability to submit license applications and take advantage of certain exemptions.

EMBARGOED COUNTRIES UNDER THE ITAR

Currently, the list of countries includes: Afghanistan, Belarus, Burma, China (PR), Côte d'Ivoire, Cuba, Cyprus, Democratic Republic of the Congo, Eritrea, Fiji, Republic of Guinea, Haiti, Iran, Iraq, Kyrgyzstan, Lebanon, Liberia, Libya, North Korea, Pakistan, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, and Zimbabwe.

ITAR Prohibitions: No ITAR exports may be made either under a license or license exemption to countries proscribed in 22 C.F.R. § 126.1. Moreover, no foreign students, scholars, collaborators, companies from these countries shall have access to ITAR controlled research, technical data, or services. Note: These lists are regularly updated. It is essential that the list be consulted prior to any transaction. For the most updated list please refer to: http://www.pmddtc.state.gov/embargoed_countries/index.html.

The University is under a mandatory disclosure requirement for any disclosures to these countries.

RECORD KEEPING

All records related to export or import shipments, research projects, licenses, agreements and/or license exceptions must be kept on file for five years after the shipment/project is finalized or the export license expired whichever is longer.

IMPORTING

There are two primary regimes that govern the import of ITAR articles into the U.S. Temporary imports or imports of U.S. origin items. ITAR hardware that were previously exported from the U.S. are subject to DDTC's jurisdiction and importers can either apply for a temporary import license or apply for a very narrow license exception claimed with U.S. Customs.

The permanent import of defense articles listed on the U.S. Munitions Import List requires an import license from the Bureau of Alcohol, Tobacco, and Firearms (ATF) and importers must be registered with the ATF. The U.S. Munitions Import List is not as comprehensive as the USML and doesn't include all ITAR items so it is important to carefully review its applicability prior to the import. It is located at 27 CFR §447.21. This list mostly governs critical military items and few space related items and equipment.
7) PROJECT SPONSORS AND MAJOR VENDORS

List all major vendors, sponsors, sub-contractors and include the Vendor Verification form on the following page for any specially designed/custom components, software or services.
Dear ………………

The purpose of this letter is to inform you that the Boston University project ……………. is subject to the International Traffic in Arms Regulations (ITAR) as administered by the Directorate of Defense Trade Control. As such, we ask you to certify to us that you are compliance with 22 CFR Parts 120-130.

The minimum requirements of ITAR compliance include registration with the Directorate of Defense Trade Controls (unless you only engage in manufacturing articles for experimental and scientific purposes, including research and development). Please refer to 22 CFR section 122 to determine whether you are required to be registered. Additionally, each company or organization working on ITAR controlled data must ensure that such data is not released to foreign nationals as defined in 22 CFR section 120.16 without the authorization from the Directorate of Defense Trade Controls.

Please certify by signing this document that you are compliant with the International Traffic in Arms Regulations.

If you have any questions regarding this request, feel free to contact our University Export Control Director, Marie Hladikova at 617-353-6753 or via email at mhladiko@bu.edu.

Name, Title, Company Name

Signature

Date
8) PERSONNEL SCREENING

All participants will be screened using the Citizenship Verification Form or via ISSO prior to their involvement and only eligible individuals will be allowed to work on controlled research.

The list of individuals who are eligible to participate in the research is included in the Project Employee List.

The University Export Control Director will manage student/scholar screening and the Principal Investigator is required to report any new student/faculty participants to the Export Control Director prior to their involvement in the project.

All individuals will be screened against the denied party lists using the Denied Party Screening Form.
COUNTRY OF CITIZENSHIP VERIFICATION FORM

PRINT NAME
LAST…………………………FIRST……………..…… MI

ADDRESS (CURRENT) ……………………………………………………………………………………

CONTACT INFORMATION
TELEPHONE ……………………………………………………………………………………………

EMAIL ………………………………………………………………………………………………………

COUNTRY/COUNTRIES OF CITIZENSHIP (IF DUAL CITIZEN, INCLUDE WHICH COUNTRY
IS YOUR MOST RECENT COUNTRY OF CITIZENSHIP)

ARE YOU A PERMANENT RESIDENT OF ANY OTHER COUNTRY? Yes .... No ......

IF YES, LIST THE COUNTRY OF YOUR PERMANENT RESIDENCY

U.S. IMMIGRATION STATUS/VISA TYPE (IF APPLICABLE) …………………………………

COUNTRY OF BIRTH ………………………………………………………………………………………

DENIED PARTY SCREENING PERFORMED? Yes ...... No ........

If the individual is identified on any of the lists, contact the UECD.

IS PROOF OF CITIZENSHIP ATTACHED? Yes .......... No ..........

If no, attach copy of passport, birth certificate or other document to authenticate the country of citizenship.

PRINT NAME AND SIGNATURE, DATE
I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with establishing my eligibility to work on controlled research. Moreover, I understand that I am obligated to notify Boston University of any changes that established my eligibility to work on controlled research such as changes in Country of Citizenship.

APPROVED ........................  DISAPPROVED  .....................

........................................................................................................

PRINT NAME AND SIGNATURE OF PREPARER, DATE
## PROJECT EMPLOYEE LIST

Project Name:

Principal Investigator:

Project/Laboratory Manager:

Department:

<table>
<thead>
<tr>
<th>Name</th>
<th>U.S. Person Yes/No</th>
<th>Project Role</th>
<th>Access to ITAR</th>
<th>Email</th>
<th>License/Exemption</th>
<th>BUID</th>
</tr>
</thead>
</table>
RESTRICTED PARTY SCREENING FORM

Are any of the parties to this research or transaction on any of the following lists?
Web: http://export.gov/ecr/ecr_main_023148.asp

<table>
<thead>
<tr>
<th>List</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denied Person List</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Entity List</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unverified List</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Specially Designated Nationals List</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Debarred List</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nonproliferation Sanctions</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Denied Party Screening Performed by ........................................................................

Date of the Screening ................................................................................................

Signature ....................................................................................................................

If Yes is checked for any of the lists, notify the UECD immediately for further determination of licensing requirements or project participation eligibility.
9) Technology Control Plan Acknowledgment

All individuals working on the project shall sign a non-disclosure statement that acknowledges that the controlled information will not be disclosed, exported or transmitted to any foreign national or foreign country unless the respective federal government agency authorizes such a disclosure and the receiving party is appropriately screened to receive export controlled data. This form will be signed prior to their involvement in the project.

The team will use the TCP Acknowledgement Form for that purpose.

Students will sign the Acknowledgment Form for FERPA purposes.
ACKNOWLEDGEMENT OF TECHNOLOGY CONTROL PLAN
U. S. PERSON

This is to acknowledge that I, ................................................................., understand that any technical data related to the ............ project covered by the U.S. Munitions List to which I have access as a U.S. Person and disclosed to me in the course of my research and/or employment at Boston University is subject to the International Traffic in Arms Regulations.

As such, none of the technical data, software or hardware can be exported/transferred to foreign national or abroad without an authorization by the Directorate of Defense Trade Controls. I further agree that I will not travel abroad with technical data, hardware or software without the authorization by the Directorate of Defense Trace Controls.

I acknowledge and understand that should I inadvertently receive defense articles or technical data related to defense articles for which I do not have an authorized access; I will report such unauthorized access to the University Export Control Director or the Associate Vice President of Research Compliances within 24 hours of such receipt. Additionally, I will notify the Principal Investigator.

I acknowledge and understand that violations of the International Traffic in Arms Regulations carry significant penalties and imprisonment and I can be held personally responsible for unlawful transfer or export of ITAR articles and data.

I acknowledge that I have read this Technology Control Plan and discussed the procedures with ....................................................... and that I understand the procedures and agree to comply with its requirements. I also understand that this commitment extends beyond my employment/tenure with Boston University.

........................................................
DATE

........................................................
SIGNATURE

........................................................
DATE

........................................................
EMPOWERED OFFICIAL SIGNATURE
This is to acknowledge that I, .................................................................................................................., understand that any technical data related to the ............ project covered by the U.S. Munitions List to which I have access per authorization by the Directorate of Defense Trade Controls License/Exemption .............................................. and disclosed to me in the course of my research and/or employment at Boston University is subject to the International Traffic in Arms Regulations.

As such, none of the technical data, software or hardware can be exported/transferred to foreign national or abroad without an authorization by the Directorate of Defense Trade Controls. I further agree that I will not travel abroad with technical data, hardware or software without the authorization by the Directorate of Defense Trace Controls.

I acknowledge and understand that should I inadvertently receive defense articles or technical data related to defense articles for which I do not have an authorized access; I will report such unauthorized access to the University Export Control Director or the Associate Vice President of Research Compliances within 24 hours of such receipt. Additionally, I will notify the Principal Investigator.

I acknowledge and understand that violations of the International Traffic in Arms Regulations carry significant penalties and imprisonment and I can be held personally responsible for unlawful transfer or export of ITAR articles and data.

I acknowledge that I have read this Technology Control Plan and discussed the procedures with ................................................................. and that I understand the procedures and agree to comply with its requirements. I also understand that this commitment extends beyond my employment/tenure with Boston University.

................................................................................
DATE

................................................................................
SIGNATURE

................................................................................
DATE

.................................................................
EMPOWERED OFFICIAL SIGNATURE
Name of Student: ___________________________ BU ID: ___________________________

Project / Program / Course:

I, the undersigned, hereby authorize Boston University to release information concerning my participation in the project, program or course identified above or related work to governmental authorities or regulators as necessary to meet the University’s obligations under export control laws.

I understand further that (1) I have the right not to consent to the release of my education or financial records; (2) I have the right to receive a copy of such records upon request; and (3) that this consent shall remain in effect until revoked by me, in writing, and delivered to Boston University, but that any such revocation shall not affect disclosures previously made by Boston University prior to the receipt of any such written revocation.

__________________________________________  ____________________________
Student’s Signature                        Date

__________________________________________
Signature of Parent or Guardian
if student is under 18

THIS INFORMATION IS RELEASED SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF APPROPRIATE STATE AND FEDERAL LAWS AND REGULATIONS WHICH PROHIBIT ANY FURTHER DISCLOSURE OF THIS INFORMATION WITHOUT THE SPECIFIC WRITTEN CONSENT OF THE PERSON TO WHOM IT PERTAINS, OR AS OTHERWISE PERMITTED BY SUCH REGULATIONS.
DSP-5 CHECKLIST—TECHNICAL DATA

Name of the Project ……………………………………………………………………………………………

Principal Investigator ………………………………………………………………………………………

Department ………………………………………………………………………………………………..

License Number …………………………………………………………………………………………….

List the terms of the license:

a. ……………………………………………………………………………………………………………

b. ……………………………………………………………………………………………………………

c. ……………………………………………………………………………………………………………

Date of Transfer ……………………………………………………………………………………………

Copy of the Data Transferred on File and Included in the TCP? Yes………No………………

Data within the scope of the DSP-5? Yes…………… No…………………………

Has the DSP-5 license been decremented? Yes ……….. No………………

License returned to DDTC (if required)? Yes………. No……………..

Completed by ……………………………………………………………………………………………...

Signature …………………………………………………………………………………………………

Date ………………………………………………………………………………………………………
ITAR EXEMPTION FORM

Applicable ITAR Exemption  

USML Category ..................... SME Yes ................. No .................

Classification - Hardware .................. Technical Data .....................

Description  

End User and Country ..................................................

Date of Export/Transfer ..................................................

Method of Transmission ..................................................

Principal Investigator ..................................................

Project Name & Grant Number ..........................................

I certify that the technical data or hardware on this form meets the requirements of the license exemption.

.................................................................  .................................................................

Signature  Date
11) PHYSICAL SECURITY

Location

This room will remain under lock and key at all times.

All ITAR controlled materials, samples, measurements; data etc. will remain in this room at all times. In addition, this room will be the physical location of all the ITAR controlled IT assets such as laptops, PC’s, etc.

If an ITAR controlled device, hardware, component, software or IT hardware has to be moved out of the lab for any reason (upgrade, repair, move to a new location etc.) the University Export Control Director will be notified in writing or by email 72 hours in advance and the team will wait for a confirmation that the item can be removed to another research laboratory.

Access Controls

All foreign nationals must be pre-authorized by the University Export Control Director prior to the visit to the ITAR controlled laboratory. The Principal Investigator or other personnel working on the project will inform the University Export Control Director if a visit by foreign national is desired so that appropriate security procedures can be implemented to prevent unauthorized access to ITAR data, hardware or software by the foreign visitor.

No foreign visitor may access the laboratory when the research takes place without proper licensing authorization by the Directorate of Defense Trade Controls.

All other US Person visitors will be escorted in the laboratory at all times by one of the persons authorized to work on the LCI project and will not be given access to ITAR controlled data.

Only individuals that have been authorized by the Principal Investigator and the University Export Control Director will have access to the laboratory where controlled research takes place, unless they are University Officials and Administrators with a valid reason for access such as a compliance audit.

The University understands that the janitorial staff are US Persons as defined by ITAR. EHS laboratory inspectors are US Persons as well.

Prior to any visit by maintenance personnel or anyone coming to the research lab to conduct repair, equipment replacement or any other valid reason, the University Export Control Director must be notified ahead of time to assess what security procedures must be in place to prevent incidental access to ITAR data.

In the event of an accident beyond the reasonable expectation of anyone which may require emergency response by law enforcement or medical professionals, the University Export Control Director will be notified as soon as practical.

Physical Security for Export Controlled Data and Technical Information

Document Control
All documents that are subject to the ITAR will be labeled with an appropriate language such as "ITAR Controlled."

All documents containing controlled information or data should be shredded when it is no longer needed. Only U.S. persons are allowed to dispose controlled information.

All documents that contain controlled information or data should be locked in secure lockable cabinets to prevent unauthorized access. The Principal Investigator will ensure that only individuals that have been pre-screened have access to the information. If any information is stored on shared network, the area of the network will be secured with a password that will be given to individuals that have been approved to have access to ITAR information. All ITAR controlled documents will be encrypted if the Principal Investigator cannot ensure secure environment.

All research labs will employ a “clean desk” procedure which means that no controlled information will be left unattended. Computer screen will be closed when the researcher is not at his or her desk. Blueprints, technical data and information will be securely locked in a cabinet or a desk when it is not used to prevent unauthorized access.

**Copy machine usage** – no copies of ITAR data will be left unattended on a copy machine.

**Fax usage** – fax dissemination of controlled information should be avoided if at all possible and if a fax machine has to be used, the person transmitting the information should ensure that only approved individual will receive the data.

**Printers** – all controlled information should be immediately picked up from the printers to prevent unauthorized access.

**Website** – no ITAR controlled data/information shall be posted on any public website (including personal Facebook, MySpace and other social media sites) without prior written approval of the Principal Investigator and the University Export Control Director.
12) INFORMATION SECURITY

(Project specific IT&S controls will be included in this section)

The Boston University System rules require all researchers to ensure that sensitive digital research data is appropriately protected. ITAR controlled data have been labeled as “restricted use” and has to be protected in accordance to Boston University Data Security policy: http://www.bu.edu/tech/about/policies/info-security/1-2-a-data-classification-guide/#Restricted Use

In accordance with those rules, Boston University provides guidance on procedures for Protecting Sensitive Digital Research Data found at http://www.bu.edu/tech/policies/info-security/ that will be followed for protection of controlled information under this TCP.

All of the following data/documents be restricted from disclosure to foreign nationals and shall be protected as Restricted Use data:

1) Critical Program Information (designated as Critical Program Information by the Department of Defense and its agencies; NASA; Department of Homeland Security; Department of Energy; NOAA or any other agency)
2) Designated for withholding from public release under DOD Directive 5400.07 (Freedom of Information Act)
3) Containing designations indicating access control (e.g., For Official Use Only, Sensitive but Unclassified, Limited Distribution, Distribution to Department of Defense and its Contractors Only, Proprietary, Originator Controlled, Law Enforcement Sensitive)
4) ITAR Technical Data received from the sponsor or generated during the effort.


ITAR controlled data will not be stored on the cloud unless the University Export Control Director can confirm with the cloud service provider that the cloud is an ITAR secure environment.

It is recommended that researchers use Boston University enterprise encryption solution to secure ITAR controlled data on portable devices such as laptop, thumb drive, CD etc. http://www.bu.edu/tech/security/data-protection/drive-encryption/

Computers - when a computer has reached its usable life or is used for another project, the hard drive will be forensically erased or destroyed using University hard drive destruction services http://www.bu.edu/tech/security/data-protection/media-destruction/.

Communication

Voicemail – Voicemail shall not be used to transmit ITAR technical data to prevent unauthorized access. Voicemail should be used only to relay informational messages such as – scheduling meetings related to ITAR research, schedule visits etc.

Instant Messaging – Instant messaging shall not be used to transmit ITAR data and information.
**Telephone** – ITAR information can be transmitted via phone if previously authorized and if the other party on the call has been pre-screened and has been authorized to receive controlled information.

**Teleconference/Netmeetings** – ITAR information can be transmitted via netmeetings, provided that you pre-screened all of the parties on the call and have a password to protect unauthorized access.

**Email** - All individuals working on the ITAR controlled project will use BU exchange or secure email only. Emails containing ITAR information should be send only to individuals that are authorized to have access to the materials. BU Google Apps shall not be used to store, maintain or transmit export controlled information. All students participating in the project are required to use the exchange email service provided by IS&T. All students will follow the guidelines on IS&T’s website and will obtain a secure email to transmit data: [http://www.bu.edu/tech/accounts/special/datamotion-securemail/](http://www.bu.edu/tech/accounts/special/datamotion-securemail/)

To have a student moved to Exchange, submit a service request by hitting the Help icon anywhere on the IS&T web site.

All communication via email that contains ITAR/EAR data should have the following disclaimer: “This email contains information/data that is controlled under the International Traffic in Arms Regulations (ITAR) and is intended for the recipient only. No unauthorized transfer/export/release/sale or other disposition of this information is permitted without an export license from the U.S. Department of State, Directorate of Defense Trade Controls. If you received this email in error, notify the sender identified in this email immediately.”

**Online Activity** - All individuals working on ITAR controlled research are prohibited form posting technical data or information online without prior authorization by the cognizant governmental agency and the University Export Control Director.

**Conversations** – Technical discussions related to controlled projects will be limited to the individuals identified in this Technology Control Plan. All project participants are prohibited from discussing the technical details with individuals not authorized to work on the project.

**Unsolicited Emails from Researchers at Other Departments or Institutions Outside of BU** - Conduct due diligence in communicating with researchers from other departments or institutions seeking information about your research projects. You should always screen all requests for assistance or collaboration to ensure that these are legitimate requests and not “phishing expeditions.” You may meet other researchers at meetings, conferences, seminars, other professional or social networking events. Sharing “too much” information about your research could not only jeopardize your research efforts, it could also violate export regulations.
13) CONFERENCE/MEETING PARTICIPATION

(This section will include a list of conferences and specific controls that will be in place to avoid disclosure of controlled information without an export license).

All papers, presentations or other materials including technical data must be approved prior to the public release by either the cognizant governmental agency or the Office of the Security Review.
14) INTERNATIONAL TRAVEL

(This section will include information related to international travel and PI plan to avoid taking export controlled information abroad without government approval).

Travel abroad with ITAR data, software or hardware requires an authorization by the Directorate of Defense Trade Controls. Principal Investigator will inform the University Export Control Director well in advance to secure ITAR authorizations or "clean" laptop in advance of the travel.
15) PUBLICATIONS

All publications that contain technical data must be submitted for publication approval to the cognizant governmental agency or the Office of the Security Review.

**Graduate Thesis** - Any graduate student that is working on ITAR controlled research to fulfill his or her thesis requirement must be a US Person, otherwise, the University will be required to submit an export license for him/her to work on the controlled research.

If the student includes technical data in the graduate thesis, the publication must be approved by either the Cognizant Government Agency or Office of the Security Review prior to the publication as required by the regulations. It is important to recognize that the publication approval might be delayed and ultimately, publication of certain data may be denied for national security reasons. Moreover, the thesis advisory committee and defense committee must only include US Persons unless they have been authorized by the Directorate of Defense Trade Controls to participate on the committee.
OFFICE OF SECURITY REVIEW REQUEST FORM

Date: .................................. Requester’s Name ..................................................

Department .............................. Tel:.................................. Email: ..........................

Completion of this form will enable the University Export Control Director to submit information to the Office of Security Review for its determination whether the information is cleared for public release. Please complete this form and review the section on Request for Office of Security Review (OSR) to ensure that your request can be submitted.

1. Briefly describe the information that will be submitted to the OSR and provide the actual information on this form.

2. State the purpose of requesting OSR review.

3. Was any of the research funded by DOD/DHS/NASA/DOE/NOAA contract?
   Yes…… No……

4. Was the research funded or co-sponsored by another governmental agency? If yes, provide details.
   Yes…… No……

5. Were there any restrictions on publication in the grant documents? If yes, provide details.
   Yes…… No……

For Export Compliance Use Only

Date Request was Received .................................

OSP Review Required Yes.......... No .....................

Date Submitted to OSR .................................

Submitted by ...........................................
16) TRAINING AND AWARENESS

All project participants will receive ITAR training and will be briefed on the procedures set forth in this Technology Control Plan prior to their involvement. The Principal Investigator and University Export Control Director will maintain a training log for the participants.
TRAINING RECORD

TRAINING SESSION SUBJECT: …………………………………………………………………………………

DATE: ………………………………………………………………………………………………………

PRESENTER: ……………………………………………………………………………………………

DEPARTMENT: ……………………………………………………………………………………………

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17) COMPLIANCE ASSESSMENT

As a critical component to the University’s ongoing compliance monitoring, self-evaluation is an internal assessment process whereby procedures are reviewed and any findings reported to the Export Controls Director, Marie Hladikova at mhladiko@bu.edu (617-353-6753) or Kathryn Mellouk, Interim Associate Vice President of Research Compliance at kateski@bu.edu (617-358-4730).

There are no restrictions on who may report an alleged incident. Anyone who has knowledge of such a deficiency is obligated to report it to BU officials. Under no circumstances will reporting such incidences in good faith be detrimental to an individual’s standing within the organization. No person will be discriminated against or be subject to any reprisal for reporting, in good faith, a concern or violation of any export control regulations. Refer to Boston University’s policy on reporting violations http://www.bu.edu/ethics/ethical-conduct.pdf

If the institutional officials determine that ITAR violation has occurred, the University will file a self-disclosure with the appropriate government agency.
18) PROJECT TERMINATION

Security measures, as deemed appropriate, will remain in effect after the project has ended in order to protect the export-controlled information unless earlier terminated when the information has been destroyed or determined to be no longer export-controlled. All documents related to the project will be kept on file 5 years after the termination of the project.
19) AGENCY COMMUNICATION/MISCELENIOUS DOCUMENTS

This section of the Technology Control Plan will include relevant communication with the funding agency and other pertinent materials.
TEXT OF NSDD-189

THE WHITE HOUSE
Washington, D.C.
National Security Decision, Directive 189

NATIONAL POLICY ON THE TRANSFER OF SCIENTIFIC, TECHNICAL AND
ENGINEERING INFORMATION

September 21, 1985

I. PURPOSE

This directive establishes national policy for controlling the flow of science, technology, and engineering information produced in federally funded fundamental research at colleges, universities, and laboratories.

Fundamental research is defined as follows:

“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.

II. BACKGROUND

The acquisition of advanced technology from the United States by the Eastern Bloc nations for the purpose of enhancing their military capabilities poses a significant threat to our national security. Intelligence studies indicate a small but significant target of the Eastern Bloc intelligence gathering effort is science and engineering research performed at universities and federal laboratories. At the same time, our leadership position in science and technology is an essential element in our economic and physical security.

The strength of American science requires a research environment conducive to creativity, an environment in which the free exchange of ideas is a vital component. In 1982, the Department of Defense and National Science Foundation sponsored a National Academy of Sciences study of the need for controls on scientific information.

This study was chaired by Dr. Dale Corson, President Emeritus of Cornell University. It concluded that, while there has been a significant transfer of U.S. technology to the Soviet Union, the transfer has occurred through many routes with universities and open scientific communication of fundamental research being a minor contributor. Yet as the emerging government-university-industry partnership in research activities continues to grow, a more significant problem may well develop.

III. POLICY
It is the policy of this administration that, to the maximum extent possible, the products of fundamental research remain unrestricted. It is also the policy of this administration that, where the national security requires control, the mechanism for control of information generated during federally funded fundamental research in science, technology, and engineering at colleges, universities, and laboratories is classification.

Each federal government agency is responsible for: a) determining whether classification is appropriate prior to the award of a research grant, contract, or cooperative agreement and, if so, controlling the research results through standard classification procedures; b) periodically reviewing all research grants, contracts, or cooperative agreements for potential classification. No restriction may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. Statutes.
APPENDIX F: COMPLIANCE FORMS

A. FOREIGN NATIONAL—COUNTRY OF CITIZENSHIP VERIFICATION FORM

PRINT NAME: LAST…………………………………FIRST……………..…… MIDDLE NAME……………………..

ADDRESS: ……………………………………………………………………………………………………………………

CONTACT INFORMATION:

TELEPHONE ………………………………………… EMAIL ………………………………………………………………………

COUNTRY/COUNTRIES OF CITIZENSHIP (IF DUAL CITIZEN, INCLUDE WHICH COUNTRY IS YOUR MOST
RECENT COUNTRY OF CITIZENSHIP)

……………………………………………………………………………………………………………………………………

ARE YOU A PERMANENT RESIDENT OF ANY OTHER COUNTRY? Yes …… No ……..

IF YES, LIST THE COUNTRY OF YOUR PERMANENT RESIDENCY …………………………………………………

U.S. IMMIGRATION STATUS/VISA TYPE …………………………………………………………………………………

COUNTRY OF BIRTH ………………………………………………………………………………………………………

(ITAR CONTROLED RESEARCH)

IS THE EMPLOYEE VERIFICATION FORM I-9 ATTACHED? Yes ……… No ………

DENIED PARTY SCREENING PERFORMED? Yes …. No ……

If the individual is identified on any of the lists, contact the UECD for further verification.

PRINT NAME AND SIGNATURE, DATE

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in
connection with establishing my eligibility to work on controlled research. Moreover, I understand that I am obligated to
notify Boston University of any changes that established my eligibility to work on controlled research such as changes in
Country of Citizenship.

APPROVED …………………… DISAPPROVED …………………

PRINT NAME AND SIGNATURE OF PREPARER, DATE
B. RESEARCH PROJECT EMPLOYEE LIST

Project Name: .....................................................................................................................

Principal Investigator: .........................................................................................................

Department: .............................................................................................................................

<table>
<thead>
<tr>
<th>Name</th>
<th>U.S. Person Yes/No</th>
<th>Project Role</th>
<th>Access to ITAR</th>
<th>Email</th>
<th>License/Exemption</th>
<th>BUID</th>
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C. TRAINING RECORD

TRAINING SESSION SUBJECT: .................................................................

DATE: .................................................................................................

PRESENTER: ........................................................................................

DEPARTMENT: ....................................................................................

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D. VENDOR VERIFICATION LETTER

Vendor’s Address

Dear …………..

The purpose of this letter is to inform you that the Boston University project ………….. is subject to the International Traffic in Arms Regulations (ITAR) as administered by the Directorate of Defense Trade Control. As such, we ask you to certify to us that you are compliant with 22 CFR Parts 120-130.

The minimum requirements of ITAR compliance include registration with the Directorate of Defense Trade Controls (unless you only engage in manufacturing articles for experimental and scientific purposes, including research and development). Please refer to 22 CFR section 122 to determine whether you are required to be registered. Additionally, each company or organization working on ITAR controlled data must ensure that such data is not released to foreign nationals as defined in 22 CFR section 120.16 without the authorization from the Directorate of Defense Trade Controls.

Please certify by signing this document that you are compliant with the International Traffic in Arms Regulations.

If you have any questions regarding this request, feel free to contact our University Export Control Director, Marie Hladikova at 617-353-6753 or via email at mhladiko@bu.edu.

Name, Title, Company Name

Signature

Date
E. UNSOLICITED REQUESTS FOR COLLABORATION/INFORMATION

1. Does the request come from a researcher at a known university/institution?

2. Does the university/institution have a website?

3. Does the researcher use an organizational email or did he/she use a private email?

4. Does the researcher have a website where you can verify his/her area of expertise?

5. Is the request consistent with his/her area of expertise?

6. Does the researcher have sufficient level of scientific expertise for the questions asked?

7. Did you call the individual and his department head to verify his/her affiliation with particular institution?

8. Is the request consistent with the type of questions/requests that you would receive from your colleagues at other known institutions?

9. Did you try to locate information about this individual online?

10. Did you try to perform online search for his/her email to see if there are any online activity consistent with this email?

11. Have any of your colleagues ever met/collaborated with the individual?

12. Are there any papers that he/she published in scientific journals?

13. Is he or she asking questions related to your “unpublished” research, security procedures at your Center/Lab, or whether you work on military or controlled technology/experiments?

14. Did you screen the foreign researcher against all of the “denied lists?”
F. OFFICE OF SECURITY REVIEW REQUEST FORM

Date: ........................ Requester’s Name ..........................................................

Department .............................. Tel:................................ Email: ......................

Completion of this form will enable the University Export Control Director to submit information to the Office of Security Review for its determination whether the information is cleared for public release. Please complete this form and review the section on Request for Office of Security Review (OSR) to ensure that your request can be submitted.

1. Briefly describe the information that will be submitted to the OSR and provide the actual information on this form.

2. State the purpose of requesting OSR review.

3. Was any of the research funded by Department of Defense/DHS/NASA/NOAA contract?
   Yes...... No........

4. Was the research funded or co-sponsored by another governmental agency? If yes, provide details.
   Yes..... No......

5. Were there any restrictions on publication in the grant documents? If yes, provide details.
   Yes...... No......

For Export Compliance Use Only

Date Request was Received ..........................

OSP Review Required Yes ............ No ..............

Date Submitted to OSR ..........................

Submitted by .....................................
G. ITAR EXEMPTION FORM

Applicable ITAR Exemption .................................................................

USML Category ........................................ SME Yes............. No...........

Classification - Hardware ................................. Technical Data ....................

Description ........................................................................................

..............................................................................................................

End User and Country ...............................................................

Date of Export/Transfer .................................................................

Method of Transmission .................................................................

Principal Investigator ........................................................................

Project Name & Grant Number ...........................................................


I certify that the technical data or hardware on this form meets the requirements of the license exemption.

................................................................. ........................................ Date
H. DENIED PARTY SCREENING FORM

Are any of the parties to this research or transaction on any of the following lists?

Denied Person List Yes……. No…….

Entity List Yes …….. No ……….

Unverified List Yes ……. No ……….

Specially Designated Nationals List Yes…….. No………

Debarred List Yes…………. No…………

Nonproliferation Sanctions Yes ……. No…………


Denied Party Screening Performed by ……………………………………….

Date of the Screening ………………………………………………………..

Signature ………………………………………………………………………


If Yes is checked for any of the lists, notify the UECD immediately for further determination of licensing requirements or project participation eligibility.
DSP-5 CHECKLIST—TECHNICAL DATA

Name of the Project ……………………………………………………………………………………………………………………

Principal Investigator …………………………………………………………………………………………………………………

Department …………………………………………………………………………………………………………………………………

License Number …………………………………………………………………………………………………………………………………

List the terms of the license:

a. …………………………………………………………………………

b. …………………………………………………………………………

c. …………………………………………………………………………

Date of Transfer …………………………………………………………………………………………………………………………………

Copy of the Data Transferred on File and Included in the TCP? Yes…….. No………………

Data within the scope of the DSP-5? Yes………… No………………

Has the DSP-5 license been decremented? Yes ……….. No………………

License returned to DDTC if required? Yes…….. No………………

________________________________________________________

Completed by ………………………………………………………………

Signature ………………………………………………………………………

Date ………………………………………………………………………
I. EXPORT SHIPPING CHECKLIST UNDER THE EAR

To be completed for permanent shipments abroad

1. Is this a commercial/dual-use item/technology? Yes……. No……….  
If no, contact the UECD to provide guidance on ITAR shipments

Are you exporting select agents? Yes ........... No ............  
If yes, contact the Office of Environmental Health & Safety

Are you exporting hazardous chemicals? Yes........ No............  
If yes, contact the Office of Environmental Health & Safety

Are you exporting Infectious & Diagnostic Specimens, Biological Material, or Animal Products?  
Yes…. No….  
If yes, contact the Office of Research Compliance

Are you exporting radioactive materials? Yes......... No............  
If yes, contact the Office of Medical Physics and Radiation Safety

Are you exporting controlled substances? Yes........ No............  
If yes, contact the Office of Environmental Health & Safety

Are you exporting laboratory animals? Yes........ No............  
If yes, contact the Laboratory Animal Care Facility at 617-353-5415 (CRC) or the Laboratory Animal  
Science Center at 617-638-4086 (MC)

2. Is the item EAR99? Yes........ No.............  
If yes, skip steps 3 & 4.

3. List your ECCN and reasons for control ...........................................................................................................  
If unsure, review product classification section.

4. After reviewing the Country Chart, did you determine that you need an export license to the destination  
country? Yes .................. No ....................  
If unsure or selected yes, contact the UECD.

5. Is the country on any of the OFAC sanctions list? Yes......... No.............  
If yes, contact the UECD, export is likely prohibited.

6. Is this item for a military end use, nuclear proliferation or biological weapons purpose?  
Yes........ No............  
If yes, contact the UECD, the export is likely prohibited.

7. Did you complete the Denied Party Screening form? Yes........ No.............  
If no, perform the denied party screening to determine licensing requirements for the receiving party/entity.

8. Did any party ask you to participate in any boycott such as the Arab boycott of Israel? Yes..... No.......  
If yes, contact the UECD for determining reporting requirements.

8. Did you or the University Freight Forwarder complete the AES (if required)? Yes...... No......
If no, file the AES if required.

Not Required ..... List the filing exemption code here ..................................

9. Do you have all export paperwork completed? Yes....... No.......... For assistance contact the Freight Forwarder/Customs Broker or UECD.

10. Do you understand the import requirements of the destination country? Yes........ No........ If no, contact the receiving party to provide assistance.
J. EXPORT CHECKLIST FOR TEMPORARY EXPORTS

Laptop-GPS Checklist

DOES AN EXCLUSION OR EXEMPTION FROM U.S. EXPORT CONTROL REGULATIONS APPLY TO MY LAPTOP, GPS, OR ITS OPERATING SOFTWARE?

A. YES, an exclusion from U.S. export control regulations applies to my laptop, GPS and its operating software if:

1. My software or technology falls under the PUBLIC DOMAIN EXCLUSION because:
   a. _____ It does not contain source code for >64-bit encryption software or mass market encryption products (see http://www.bis.doc.gov/Encryption/Default.htm); AND
   b. _____ There is no reason to believe that the software or technology will be used in the development of a weapon of mass destruction; AND
   c. _____ The underlying source code for the software or the schematics of the technology is already published via one or more of the following:
      • Books, print, electronic or other media available for general distribution to any member of public
      • Libraries open to the public, unrestricted subscriptions, news-stands or book stores;
      • Published patents
      • Conferences, meetings, seminars or trade shows in the U.S. that are generally accessible to the public (even for a fee) and where attendees may take notes
      • Websites available to the public free of charge or at a cost that does not exceed the cost of reproduction and distribution
      • General science, math or engineering courses commonly taught at a university and offered in course catalogues

   Items a. through c. must be checked in order for the PUBLIC DOMAIN EXCLUSION to apply.

2. My software or technology falls under the FUNDAMENTAL RESEARCH EXCLUSION because:
   a. _____ It does not contain source code for >64-bit encryption software or mass market encryption products (see http://www.bis.doc.gov/Encryption/Default.htm); AND
   b. _____ There is no reason to believe that the software or technology will be used in the development of a weapon of mass destruction; AND
   c. _____ The software or technology is the subject of basic or applied research in science and/or engineering at an accredited institution of higher learning in the United States; AND
d. _____ If my research is funded by the U.S. government, I have complied with specific national security controls agreed to, which may include prepublication review (Note: University policy generally prohibits such national security controls); AND

e. _____ No other restriction applies to the publication of underlying source code or technology schematics, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information or to insure that publication will not compromise patent rights of the sponsor; AND

f. _____ The underlying source code or technology are ordinarily published and shared broadly in the scientific community, have been published, or are about to be published (please see part A.1.e. above for list of the accepted means of publication).

Items a. through f. must be checked in order for the FUNDAMENTAL RESEARCH EXCLUSION to apply.

B. YES, an exemption from U.S. export control licensing requirements applies to my laptop, GPS, and their operating software if:

1. _____ My software does not contain source code for >64-bit encryption software or mass market encryption products (see http://www.bis.doc.gov/Encryption/Default.htm); AND

2. _____ The equipment, software and technology is not on the United States Munitions List (USML) under the International Traffic in Arms Regulations (See http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf for a list of items on the USML. Please carefully review Category XV if you are exporting GPS equipment.); AND

3. _____ The equipment, software and technology will not be put to a military use OR used in outer space; AND

4. _____ There is no reason to believe that my research could be used in the development of weapons of mass destruction; AND

5. _____ EITHER 5a. or 5b. below applies:

a. _____ Transfer of my laptop, GPS and its operating software to a foreign country or person falls under the BAGGAGE EXCEPTION because:

   (i) _____ I am leaving the United States temporarily (i.e., traveling) or longer-term (i.e., moving); AND

   (ii) _____ I, or a member of my immediate family, will use the item for personal use; AND

   (iii) _____ I plan to return to the United States with the item; AND
(iv) _____ The item is a usual and reasonable kind and quantity of tool, instrument, or equipment for use in my trade, occupation, employment or vocation

AND

(v) _____ I own the item.

**Items 1–4 plus all items in 5a. must be checked in order for the BAGGAGE EXCEPTION to apply.**

b. _____ Transfer of my laptop or GPS to a foreign country or person falls under the TEMPORARY EXPORT EXCEPTION because:

(i) _____ It will be returned to the U.S. within one year of its export date;

AND

(ii) _____ It is a “tool of the trade” because it is a usual and reasonable type of tool of trade for use in lawful research; AND

(iii) _____ I will retain effective control over the laptop or GPS while abroad by retaining physical possession of the item or securing the item in an environment such as a hotel safe; AND

(iv) _____ I will accompany the item abroad, or it will be shipped within one month before my departure, or at any time after my departure; AND

(v) _____ I am not exporting the item to Cuba, Syria, Sudan, North Korea, or Iran [These are the EAR “E2” countries under Supplement No. 1 to Part 740.]; AND

(vi) _____ I am not using this item in relation with any nuclear research.

**Items 1-4 plus all items in 5.b must be checked in order for the TEMPORARY EXPORT EXCEPTION to apply.**

C. MAYBE, U.S. export control licensing requirements may apply to export of my laptop, GPS, or their operating software if neither part A nor part B above applies. I should seek more information.

D. NO, I likely must seek an export control license if the laptop, GPS or their associated software is designed or modified for:

1. A military use; OR
2. Use in outer space; OR
3. There is reason to believe that my research could be used in the development of weapons of mass destruction.

If any of these statements applies, please contact UECD immediately for an analysis of whether an export license is required.
K. PRODUCT/TECHNOLOGY/SOFTWARE CLASSIFICATION FORM

1. List the funding agency ...........................................................................................................................................

2. Description of the research project ......................................................................................................................
...........................................................................................................................................................................
...........................................................................................................................................................................
...........................................................................................................................................................................

3. Does the research fall on the USML? Yes........ No..............

   If yes, list the USML category .................................................

   Reason for selecting the above category ...............................................................
...........................................................................................................................................................................
...........................................................................................................................................................................
...........................................................................................................................................................................

   If no, check the CCL

4. Does the research fall on the CCL? Yes........ No..............

   If yes, list the ECCN ...............................................................  

   List the reasons for selecting the above ECCN ...............................................................
...........................................................................................................................................................................
...........................................................................................................................................................................
...........................................................................................................................................................................
...........................................................................................................................................................................

5. Are you unsure about the classification? Yes....... No..............

   If yes, contact the UECD. Jurisdiction classification request (CJ) or commodity classification request may be required.

6. Classification request submitted to ........................................... (list the agency) ......................... (date)

7. List the result of the Jurisdiction request or classification request................................................................. 
...........................................................................................................................................................................

Attach the appropriate documentation
L. PRODUCT/TECHNOLOGY/SOFTWARE CONTROLS

EXPORT ADMINISTRATION REGULATIONS (EAR)

1. Is this EAR99 item/technology/software? Yes………. No……………….. 

   If no, provide details of the Export Control Classification Number

2. ECCN category .......................... .......................... .......................... ..........................

Category Description .......................... .......................... .......................... ..........................

3. If ECCN, list reasons for controls .......................... .......................... ..........................

4. Does this fall within the fundamental research exception? Yes …… No……………….. 

   If yes, and there are no restrictions on publication or proprietary data, your research is not subject to EAR.

   If no, check availability of license exceptions.

5. Are license exceptions available? Yes ……… No …………  

List the license exceptions .......................... .......................... ..........................

6. Are any of the exceptions applicable? Yes……… No………  

List the applicable license exceptions .......................... .......................... ..........................

7. List the countries where license is required:
8. Are you planning to involve Foreign Person in your research? Yes…… No…..

*If yes, complete the FOREIGN NATIONAL—COUNTRY OF CITIZENSHIP VERIFICATION FORM and forward to the UECD for license application.*
## Commercial Invoice

**INTERNATIONAL AIR WAYBILL NO.**

**DATE OF EXPORTATION**

**NOTE:** All shipments must be accompanied by a FedEx International Air waybill.

**EXPORT REFERENCES (i.e. order no., invoice no., etc.)**

**SHIPPER/EXPORTER (complete name and address)**

**CONSIGNEE (complete name and address)**

**COUNTRY OF EXPORT**

**IMPORTER - IF OTHER THAN CONSIGNEE (complete name and address)**

**COUNTRY OF MANUFACTURE**

**COUNTRY OF ULTIMATE DESTINATION**

<table>
<thead>
<tr>
<th>NO. OF PKGS.</th>
<th>TYPE OF PKG.</th>
<th>FULL DESCRIPTION OF GOODS</th>
<th>QTY.</th>
<th>UNIT OF MEASURE</th>
<th>WEIGHT</th>
<th>UNIT VALUE</th>
<th>TOTAL VALUE</th>
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<td></td>
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</tbody>
</table>

**TOTAL PKGS.**

**TOTAL WEIGHT**

**TOTAL INVOICE VALUE**

**CHECK ONE**

- F.O.B.
- C & F
- C.I.F.

**THESE COMMODITIES, TECHNOLOGY, OR SOFTWARE WERE EXPORTED FROM THE UNITED STATES IN ACCORDANCE WITH THE EXPORT ADMINISTRATION REGULATIONS. DIVERSION CONTRARY TO U.S. LAW PROHIBITED.**

**I DECLARE ALL THE INFORMATION CONTAINED IN THIS INVOICE TO BE TRUE AND CORRECT.**

**SIGNATURE OF SHIPPER/EXPORTER**

**DATE**

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US Certificate of Origin

The undersigned Hadleigh Frank

(Owner or Agent)

Cash & Long Power Supplies, 915 Doncaster Drive, PAULSBORO, NJ 08066, US

(Name and Address of Shipper)

declares that the following mentioned goods shipped on United Parcel Service on the date 07/19/00 consigned to:

Perkins Import, 4220 Rue de la Paix, Paris 75001, FR

are the product of the United States of America.

<table>
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<tr>
<th>MARKS AND NUMBERS</th>
<th>NO. OF PKGS BOXES OR CASES</th>
<th>WEIGHT IN KILOS GROSS</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
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<td>1</td>
<td>22.7</td>
<td>Aluminium Windshield Wiper Assemblies for Automobiles</td>
</tr>
</tbody>
</table>

Sworn to before me this 19 day of July 2000

Hadleigh Frank

Signature of Owner or Agent

The Louisville Chamber of Commerce

a recognized Chamber of Commerce under the laws of the State of Kentucky, has examined the manufacturer’s invoice or shipper’s affidavit concerning the origin of the merchandise and according to the best of its knowledge and belief, finds that the products named originated in the United States of North America.

Secretary

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