

BOSTON UNIVERSITY EXPORT CONTROL MANUAL

List of Abbreviations

AVPRC	Associate Vice President for Research Compliance
BIS	Department of Commerce Bureau of Industry and Security
BU	Boston University
BMC	Boston Medical Campus
BUMC	Boston University Medical Campus
CCL	Commerce Control List
CJ	Commodity Jurisdiction
CRC	Boston University Charles River Campus
DDTC	Department of State Directorate of Defense Trade Controls
EAR	Export Administration Regulations
ECCN	Export Control Classification Number
ECO	Export Control Officer
EMO	Empowered Official
FRE	Fundamental Research Exclusion
ITAR	International Traffic in Arms Regulations
OFAC	Department of the Treasury Office of Foreign Assets Control
OGC	Office of the General Counsel
ORI	Office of Research Integrity
SP	Sponsored Programs
PI	Principal Investigator
RPS	Restricted Parties Screening
SDN List	Specially Designated Nationals and Blocked Persons List
TAA	Technical Assistance Agreement
TCP	Technology Control Plan
USML	United States Munitions List

REVISION HISTORY

This document will be updated periodically and undergo regular review to ensure that the policies and procedures are current and consistent with export control laws and BU's policies and procedures.

Date	Section	Changes
11/27/2012	Updated the Key University Issues and University Policies	Updated the Key University Issues and University Policies
2/4/2012	Updated SP Procedures Section	Deleted Awards Notification Memorandum
7/16/2013	Updated Sections with contact information for the Associate VP of Research Compliance & Empowered Officials	Updated Contact Information for Associated VP of Research Compliance
10/21/2013	Export Control Policy Statement	Updated the Export Control Policy Statement
11/22/2013	Technology Control Plan Template	Updated the Template and included the new Export Control Policy and enhances some regulatory sections
6/23/2014	Updated Sections with information for the Associate VP for Research Compliance and Empowered Officials	Updated Contact Information for the Associate VP for Research Compliance
11/09/2015	Updated the entire document, deleted appendix since forms have dedicated space on the export compliance website	Entire document updated.
6/20/2019	Updated entire manual	Entire document updated.

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I. Policy Statement

It is the policy of Boston University (“BU” or “University”) to comply with U.S. export control laws. The U.S. export control agencies place responsibility on the University to understand and ensure compliance with export control laws and regulations¹, it is therefore the responsibility of faculty, staff and students to be aware of and comply with U.S. export control laws, as well as the University’s policies and procedures.

II. Purpose

This Export Control Manual (the “manual”) is intended to provide guidance on U.S. export controls laws and regulations, identify key export compliance issues related to activities conducted within the University, and to describe how BU implements its export control policies and procedures. The policies and procedures outlined in this manual serve as BU’s standard for conducting research and international activities, and provides a comprehensive program of internal controls, safeguards and measures to minimize risk of potential violations of applicable export control regulations and institutional policies.

This manual is not intended to serve as, and should not be considered formal legal advice. Specific questions about export control compliance should be directed to the BU Export Control Officer (“ECO”) at export@bu.edu.

III. Scope of Manual

This manual applies to all persons (e.g., faculty, staff, students, employees and contract personnel) responsible for conducting research, teaching, training and related activities at or under the jurisdiction of Boston University. This manual provides an overview of U.S. export controls, key issues related to universities, and outlines BU policies and procedures.

IV. Introduction to Export Control Laws

Export control laws are a complex set of federal government regulations designed to protect U.S. national security, prevent the proliferation of weapons of mass destruction, advance U.S. foreign policy, support regional stability, protect human rights, maintain U.S. economic competitiveness, and implement anti-terrorism and crime controls. To understand export control regulations, it is important to understand what is considered an export. An export is any transfer of an item or information to anyone, including U.S. citizens, in a foreign country or to a foreign national located within the United States

Export control laws govern how information, technologies, software, technical data and commodities may be transferred abroad to anyone or to foreign nationals *within* the United States. Export controls restrict the export of products and technology based on the type of product, the party that will use it, the destination of the export, and the end use. Technology includes technical data, such as blueprints and manuals, as well as services (including the transfer of knowledge) and training.

Although the vast majority of activities at Boston University are exempt from export control laws, export controls do apply to the following areas:

¹ See GAO Report “Export Controls: Agencies Should Assess Vulnerabilities and Improve Guidance for Protecting Export-Controlled Information at Universities,” December 2006, available at <http://www.gao.gov/new.items/d0770.pdf>.

- Research with controlled technologies, software, data or equipment
- International Travel
- International Shipping
- Financial Transactions
- Educational Classes

The three principal government agencies that regulate exports are:

1. The U.S. Department of the Treasury, which administers exports to embargoed countries through its Office of Foreign Assets Control (“OFAC”). The OFAC regulations govern travel and transactions (e.g., financial, collaborations, research, and shipping) related to countries where the U.S. maintains economic and trade sanctions. Trade sanction programs exist 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 U.S. The level of restriction or prohibition of an existing sanction program is influenced by foreign relations and national security. The majority of activities with these countries require an authorization. More details are provided in Appendix A of this manual.
2. The U.S. Department of State, which administers the International Traffic in Arms Regulations (ITAR) through its Directorate of Defense Trade Controls (DDTC). ITAR regulations control the export and temporary import of defense articles, data and services. A defense article is any item or technical data that is specifically designed, developed, configured, adapted, or modified for military or space use. Defense services are services provided to foreign persons, whether in the U.S. or abroad, in the design or development of defense articles. This service may be in the form of providing training, engineering, production, testing, repair, maintenance, operation, destruction, or processing of a defense article.

ITAR regulations apply to any item, service, or technical data that is listed on the United State Munitions List (USML). The definition of technical data is 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 detail in Appendix B of this manual.

3. The U.S. Department of Commerce, which administers the Export Administration Regulations (EAR) through its Bureau of Industry and Security (BIS). EAR regulations are designed to control items, technologies, materials or software that are considered to be “dual use,” that is, as having both civil and military uses. Examples of covered technologies include global positioning systems, pathogens, toxins, explosives, propulsion systems, space vehicles, telecommunication, and information security. In general, any physical item made in the U.S. will be subject to the EAR unless the item qualifies for an exemption or is under another jurisdiction, such as ITAR. While almost every item located within the U.S. is controlled on the EAR, most do not require an export license. Items and technical data that are subject to the EAR are listed on the Commerce Control List (CCL). EAR regulations are discussed in more detail in Appendix C of this manual.

The ITAR and EAR regulations subject to export control laws and regulations apply to University activities that involve:

- The transfer of specific physical items, information, 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”).
- 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”).

While these are the three main agencies that regulate exports, other agencies also have jurisdiction over certain items and activities subject to export controls (e.g., Department of Energy, Drug Enforcement Administration, Nuclear Regulatory Commission, U.S. Census Bureau, and U.S. Customs and Border Protection). Export requirements for these other agencies must also be met to ensure compliance with U.S. export control regulations.

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 discovered by U.S. citizens and foreign nationals in U.S. university research and university-affiliated laboratories. U.S. policymakers recognize that foreign nationals 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 responsibility on the University to understand and comply with export control laws and regulations.²

Export controls present unique challenges to the University 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, and that they might be personally liable for any violations.

Export of a controlled item without proper authorization (e.g., license or license exception) may result in criminal and civil penalties for the university and the responsible individual. This includes deemed export violations, which are subject to the same federal penalties as physical exports. Penalties may include seizure of items, loss of export privileges, debarment from participating in future federal contracts, fines, or jail time.

VI. Roles and Responsibilities

A. Empowered Officials

The Associate Vice President of Research Compliance (“AVPRC”) is the University’s Empowered Official (“EMO”) for export control matters. In this capacity, the EMO has the authority to represent the University to export control regulators in matters related to registration, licensing, commodity jurisdiction and classification requests and voluntary or directed disclosures. Certain oversight functions may be delegated, but only the EMO is

² See GAO Report “Export Controls: Agencies Should Assess Vulnerabilities and Improve Guidance for Protecting Export-Controlled Information at Universities,” December 2006, available at <http://www.gao.gov/new.items/d0770.pdf>.

authorized to sign documents on behalf of the University in any proceedings before DDTC, BIS, OFAC or other agencies. The EMO also has independent authority to inquire into any aspect of a proposed export or temporary import by the University, verify the legality of the transaction and the accuracy of the information and deny any license application or other request for approval.

B. Export Control Officer

The University's ECO is appointed by the AVPRC and reports to the Executive Director of Research Integrity. The ECO is responsible for leading and managing the export control program to ensure compliance with all applicable export control laws, regulations and institutional policy. The ECO directs and delegates the day-to-day operational management of BU's export control program. The ECO has the authority and the responsibility to implement the procedures set forth in this Export Control Manual and should be consulted when questions related to export compliance or international shipping arise.

The ECO has the delegated authority to apply for export control licenses on behalf of the University and to represent the University to regulatory authorities in all matters pertaining to export control compliance. The ECO is responsible for developing and implementing procedures set forth in this Manual.

ECO responsibilities include:

- Identifies areas at BU relative to research that are impacted by export control regulations.
- Develops control procedures to ensure research remains in compliance.
- Recommends procedures to senior administration to strengthen BU's overall compliance.
- Monitors, interprets, and implements regulatory changes and recommend policies and procedures accordingly.
- Reviews terms of sponsored program agreements, material transfer agreements, and other non-monetary agreements
- Provides assistance to PIs in identifying international components of sponsored program agreements, identifying potential export control issues in the proposed international component and verifying that the international entities and individuals are not restricted parties or specially designated nationals.
- Conducts restricted parties screening
- Determine licensing requirements or exceptions as applicable.
- Submits license applications, classification requests, and advisory opinions.
- Maintains the export controls website.
- Maintains transactional databases and record-keeping.
- Assists PIs in developing a Technology Control Plan (TCP), in consultation with Information Security, for research involving export-controlled items or information to ensure compliance with export control regulations;
- Educates principal investigators, centers, and academic units about export control regulations and procedures followed at BU to facilitate understanding and compliance with export controls.
- Assists investigators, researchers, and offices within BU when research or research results are export-controlled.
- Provides export control support to other units within BU such as Purchasing, Travel, Global Programs, IRB, Human Resources, Financial Affairs, Office of the General Counsel and Technology Development.
- Conducts focused training and outreach on export controls.
- Manages the University laptop loaner program.

C. Office of Research Integrity

The Office of Research Integrity (ORI), in cooperation with other offices, is responsible for developing and implementing the procedures outlined in this manual. The ECO within the ORI has direct day-to-day responsibility for administering the University's export control program.

C. University Export Controls Advisory Committee

The Export Control Advisory Committee (ECAC) is appointed by the AVPRC and provides guidance regarding export control issues at Boston University. The Export Control Advisory Committee meets on annual basis, and more frequently if necessary.

ECAC responsibilities include:

- Advising the EMO
- Advising the ECO
- Monitoring the Export Control program
- Reviewing, prioritizing, and advising on identified areas of export control compliance risk
- Developing mechanisms to mitigate or eliminate unacceptable risk
- Assisting in development of policies, guidelines, record keeping requirements, and training materials pertaining to Export Control issues
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- 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 at least every 3 years and recommending changes 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

E. University Personnel

University personnel are responsible for complying with export controls as well as applicable University policies and procedures. The ECO assists University personnel in assessing export control requirements on a case-by-case basis. If a license is required for a proposed export related to University responsibilities or to the University's business, the ECO facilitates coordination of the license application process. If a license is required, no export or deemed export can take place until a license is obtained.

F. 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 ECO in implementing procedures as deemed necessary by the EC 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 ECO in implementing procedures as deemed necessary by the ECO for export control compliance.

G. Principal Investigator (PI)

PIs have expert knowledge of the type of information and technology involved in a research project or other University activity (e.g., 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.

PI responsibilities included:

- Understanding their obligations under the export controls laws, and participating in regular trainings to help identify export control issues.
- Identifying research activities in which export control issues might exist.
- Notifying the ECO of identified export control issues.
- Providing the ECO with all required documentation and guidelines provided by the contracting agency to ensure compliance with export controls.
- Assisting the ECO with classifying technology involved in the research or other university activity.
- Informing the ECO that a TCP is required, and in consultation with the ECO and Information Security, developing the TCP for any activity, data, or equipment where the need for such a plan is required;
- Identifying foreign nationals that may be involved and, if the research is subject to export restrictions, initiating the process of clearing foreign national participation well in advance to ensure that a license is obtained in a timely manner, or implementing proper measures to isolate foreign nationals from participation.
- Coordinating with the ECO to ensure that foreign nationals will be isolated from participation in an export-controlled project in accordance with the TCPs, unless the University applies for and obtains an export license from the relevant agency.
- If undertaking an export-controlled project, briefing the students and other researchers involved in the project of their obligations under export controls or requesting assistance from the ECO.
- Ensuring that all physical exports comply with export 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.

H. Central Offices

Many central offices provide assistance with export controls and work closely with the ECO and ORI in identifying export control issues and providing support for their solution. It is each individual central office's responsibility to communicate and consult with the ECO.

These offices and their responsibilities include:

- BU Information Security (InfoSec) within Information Services & Technology (IS&T)
 - Manages risks to the security of BU data whether in paper or electronic form, including research data.
 - Assists with the developing TCPs for research subject to Export Controls

- Sponsored Programs (SP)
 - Sending a comprehensive report listing all awards received and proposals submitted by BU to ORI on a weekly basis.
 - Assisting PIs in reviewing the terms of a sponsorship agreement or grant to identify restrictions on publication and dissemination of the research results, and negotiating out such restrictions.
 - Notifying the ECO when export controls issues are flagged.
 - Maintaining a centralized database of all documentation relating to sponsored projects.
 - Providing any additional application, award and supporting documents to the ECO during their review of export control issues
- Office of Technology Development (OTD)
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 - Contacting the ECO if export control issue are identified in CDAs, NDAs, Patent applications or other OTD documents.
 - Forwarding outgoing Material Transfer Agreements (MTAs) to the ECO for RPS
- Global Programs
 - Providing strategic program support to international activities, including the University Cuba Travel Program (<http://www.bu.edu/globalprograms/manage/planning-your-activity-abroad/travel-to-cuba/>).
 - Authorizing travelers to carry a General License letter to ensure full compliance with the law. The VP and Associate Provost for Global Programs and Associate General Counsel is BU's authorized signatory for the letter.
 - Providing export control assistance and training on international research and travel activities.
- Sourcing & Procurement
 - Managing transfer of equipment. BU requires that suppliers provide notice before transferring controlled equipment, technology or software to the University (<http://www.bu.edu/sourcing/suppliercenter/terms-and-conditions-goods/>).
 - Notifying the ECO of any purchases involving controlled equipment, technology or software.
 - Notifying the ECO of sourcing requests for ECCN/USML equipment or software valued >\$10,000. If equipment requested is restricted, the ECO provides advice to the purchasing lab on export compliance.
- Charles River Campus (CRC) Institutional Review Board (IRB)
 - Forwarding international requests to the ECO for review. The ECO will coordinate export compliance with researchers, when applicable.
- International Student & Scholars Office (ISSO)
 - Strategizes and provides nonimmigrant visa sponsorship to all international students, scholars, faculty, employees and visitors at Boston University (<http://www.bu.edu/isso/administrators/>)
 - Notifies the ECO prior to providing H-1b, O-1 or TN sponsorship for an employee working with controlled technology to ensure license has been obtained to comply with USCIS Form I-129 requirements
 - Forwarding applications with export control issues to the ECO for review.

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- Office of the General Counsel
 - Providing support to the ECO with export control issues and Boston University relationship's with outside counsel.
 - Assisting the ECO, upon request, with reviews of export control issues related to agreements, licenses, MOUs and sponsored contracts.
- Environmental Health & Safety
 - Providing training on biological shipments to laboratory personnel. Training includes information on international shipments and export control.
 - Ensuring requirements related to importing and exporting shipments comply with regulatory requirements
 - Assisting the ECO and PIs determine shipping licensing requirements, classification and documents.

VII. KEY ISSUES IN UNIVERSITY RESEARCH

A. 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 U.S.

Under the ITAR and EAR a transfer of 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 within the U.S.

Defined differently, if an export license is required to export a controlled item, technology or software to a foreign national's country, then export license is required 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 U.S. 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:

- A demonstration
- Oral briefing
- Telephone call or message
- Laboratory or plant visit
- Presenting at conferences and meetings
- Faxes or letters

- Hand-carried documents, hardware, or drawings
- Design reviews
- The exchange of electronic communication
- Posting non-public data on the Internet or the Intranet
- Carrying a laptop with controlled technical information or software to an overseas destination
- Collaborating with other universities / research centres through research efforts

Items classified as EAR99 are subject to the Export Administration Regulations (EAR) but are not listed with a specific Export Control Classification Number (ECCN) on the Commodity Control List (CCL). EAR99 items are generally low-technology consumer goods that do not require a license, however there are some exceptions. An export license may be required if an item is being sent to an embargoed country or end-user of concern, or if it will be used in support of a prohibited end-use.

When working with EAR99 technology, an export license may also be required for any foreign nationals or institutions included on the “restricted persons lists” or when transferring the technology to embargoed destinations.

B. 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).³ 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 DDTC looks at the person’s country of origin (i.e., country of birth) and all current citizenships. The BIS looks at the person’s most recent citizenship and permanent residence.

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

C. Fundamental Research

It is important to note that most of the research activities that Boston University engages in are *fundamental research*. 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.) Use of equipment, technology or software subject to the ITAR or EAR may require export licenses under certain circumstances even if the research is fundamental. Shipments and transport of equipment, technology or software abroad is ALWAYS subject to export regulations and may require certain pre-departure notifications and filings.

³ 22 C.F.R. § 120.15; 15 C.F.R § 734.2(b).

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.⁴

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

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

The Fundamental Research Exclusion is nullified by any clause, regardless of sponsorship, (e.g., 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

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.

D. 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 organizations 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*.⁵ The information in the public domain may be obtained through:

- Sales at newsstands and bookstores

⁴ 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.)

⁵ 22 C.F.R. §§ 120.10(a)(5) and 120.11.

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

EAR provision: The EAR does not control publicly available technology if it is already published or will be published.⁶ 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 U.S. Presentations of materials other than those covered as “fundamental research” at foreign countries has restriction and may require approval from the government; consult the ECO for additional guidance.

E. Education Information

Both the ITAR and the EAR address the issue of general educational information that is typically taught in schools and universities.

- **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.⁷
- **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.⁸

⁶ 15 C.F.R. §§ 734.3(b)(3) and 734.7.

⁷ 22 C.F.R. § 120.10(a)(5).

⁸ 15 C.F.R. §§ 734.3(b)(3) and 734.9.

- **Online education:** Provision of online education falls within the scope of OFAC restrictions. With some limited exceptions, online classes, including Massive Open Online Courses, require licenses for countries where the U.S. maintains comprehensive economic and trade sanctions. This area is evolving and OFAC issued several general licenses for number of courses, as a result, it is advisable to consult the ECO prior to offering an online course.

F. Full-Time University Employees

Under a specific employment 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. Similarly, the EAR allows universities to transfer EAR controlled technology and source code to their bona fide and full-time regular employees under 15 CFR §740.13 (Technology and Software- unrestricted). Requirements to use either of these exceptions include:

- The employee's permanent abode throughout the period of employment is in the U.S.
- The employee is not a national of a country to which exports are prohibited pursuant to ITAR or EAR
- 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 or BIS
- The university documents the disclosure of technical data under the exemption.

These exemptions only apply 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 (e.g., 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).

G. Graduate Thesis/Dissertation

Any graduate student that is working on ITAR controlled research to fulfill their thesis requirement must be a US Person, otherwise, the University is required to submit an export license for them 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 or dissertation advisory committee and defense committee must only include U.S. Persons unless an export license has been secured prior to their participation.

J. International Students, Scholars and Employees

BU proudly hosts over 1,300 foreign national scholars and visitors from 91 countries to conduct research, teach and work in a variety of capacities throughout the institution. The international scholar population varies from short-term visitors who conduct research on unpaid appointments to permanent, tenure-track professors and full time employees. BU also proudly hosts nearly 11,000 international students from more than 130 countries. The International Student and Scholar's Office (ISSO) is responsible for all immigration and employment processing to assist

the university and continue the diverse scholar population to achieve their academic and employment goals.

H. 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 requires institutions receiving NASA funding to complete an Assurance which represents the University's acceptance of the restriction.

Therefore, the University is restricted from collaborating with, or issuing a sub-award 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 the People's Republic 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, scholars who retain their affiliation with a 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.

VIII. EXPORT CONTROL PROCEDURES AT BOSTON UNIVERSITY

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: Sponsored Programs

Sponsored Programs (SP) Pre-Award Services performs the initial review of proposals and awards submitted by and awarded to Boston University. SP provides the ECO with a listing of all proposals submitted on a weekly basis. The ECO also has access to all awards accepted by SP. In some instances, SP Pre-Award Services & Outgoing Subawards will contact the ECO when any of the following possible export control issues are identified during award or proposal review:

- References to U.S. export regulations (beyond a mere statement to comply with the law)
- Indication from the sponsor that export control information will be provided for the research
- Restriction of access or participation to U.S. Persons only

SP Industry Contracting manages the negotiation, execution of agreements for industry-sponsored research projects, clinical trials, including industry-sponsored or investigator-initiated protocols as well as trials initiated by non-industry entities (e.g., universities), *incoming* Material Transfer Agreements (MTAs), Confidential Disclosure Agreements (CDAs), Data Use Agreements (DUAs), (Unfunded) Research Collaboration Agreements (CRAs) and Equipment Lease Agreements. SP Industry Contracting will forward all incoming MTAs, CDAs, DUAs and international transfer requests to the ECO for RPS. SP Industry Contracting will contact the ECO when any of the following possible export control issues are identified in contracts:

- References to U.S. export regulations (beyond a mere statement to comply with the law)
- Indication from the sponsor that export control information will be provided by the sponsor for the conduct of the research

B. Initial Review: Office of Research Integrity

The ORI reviews the weekly report listing all proposals submitted by BU and identifies any projects based on sponsor or title that may be subject to export controls. For project identified, the “Request for Proposal” is reviewed to determine if it may be subject to export controls. The ORI also reviews all awards received by BU and identifies any projects based on sponsor or title that may be subject to export controls. For project identified, the “Notice of Award” is reviewed to determine if it may be subject to export controls. Any projects that may be subject to export controls are referred to the ECO for review.

C. Final Review

If the initial review identifies a possible export controls issue, the project will be referred to the ECO for final review. Upon completing the final review, the ECO 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. If PI accepts export control restrictions, the ECO coordinates final approvals with the AVPRC.

D. Technology Control Plan

If the ECO determines a project falls under export controls, the ECO will work closely with the PI to develop and implement a Technology Control Plan (TCP) to secure the controlled technology from access by unlicensed non-U.S. citizens.

The TCP will include:

- A commitment to export controls compliance
- Purpose and scope of the plan
- Identification of the relevant export control categories and controlled technologies
- Overview of applicable regulations
- Application of export regulations to the project
- Identification of the project's sponsors
- Non-disclosure/FERPA statement/waiver from each research project participant
- List of export licenses and license exceptions applied to the project
- Appropriate physical and informational security measures
- Personnel screening measures
- Research lab visitor's policy
- Record keeping policy
- Export compliance training and training logs
- Statement on Reporting violations
- Review statement

E. 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 controlled services are provided abroad. Boston University faculty, researchers, students and staff should review the [International Travel Risk Policy](#) and comply with its requirements.

Most travelers travel with electronic devices. Laptops, cellphones, GPS, other electronic devices, and software contain encryption and may be controlled for U.S. export purposes. If planning 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 provides the reasons for control to be able to check the Country Chart and determine if a 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 it may be possible 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/researchsupport/files/2016/11/Export-Control-Laptop-GPS-Checklist.pdf>.

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

Apple: <http://www.apple.com/legal/export.html>
BlackBerry: http://us.blackberry.com/legal/ECCN_statement.pdf
Microsoft: <http://www.microsoft.com/exportinG/termsmx.htm>
IBM: <http://www-03.ibm.com/products/exporting/>

When taking equipment or instruments to a research site abroad, it is highly advisable to carry a commercial invoice indicating what it is being hand-carrying in luggage, and applying for a carnet to avoid paying import duties or other charges abroad. Moreover, if planning to attend a conference in an embargo destination, a license may be required by the Office of Foreign Assets Control. Contact the ECO well in advance of any planned travel to help define the requirements for the particular trip.

A *License Exception*⁹ may be available for EAR controlled items, technology, or software if the individual travelling outside the U.S. can certify that they:

- Will ship or hand-carry the items, technology, or software for BU business only
- Will return or certify the destruction of the items, technology, or software within 12 months of leaving the U.S.
- Will keep the items, technology, or software within his or her effective control
- Will take necessary security precautions to protect against the unauthorized export of the technology
- Will not ship or hand-carry the items, technology, or software to Iran, Syria, Cuba, North Korea, Russia/Ukraine or Sudan¹⁰ or any other country subject to OFAC sanctions without first consulting with the Export Control Officer.

A *License Exemption*¹¹ may be available to ITAR controlled technical data transmitted outside the U.S. if the individual transmitting the technical data can certify that:

- The technical data is to be used overseas solely by a U.S. person(s)
- 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
- No export will be made to countries listed by 22 C.F.R. § 126.1.¹² (ITAR prohibited destinations)
- BU must maintain its registration with DDTC

All exemptions should be first verified with the ECO. The Office of Research Integrity has laptops (Lenovo and Apple) available to researchers needing to take a “clean laptop” on an international trip.

F. Training and Education Outreach

Training and educational outreach is the foundation of a successful Export Control Program. Well-informed employees minimize the likelihood that 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. The ECO and the ORI are responsible for developing research compliance training guidelines for Boston University. Only researchers

⁹ See 15 C.F.R. § 740.1.

¹⁰ This list is subject to change. For most current list, see 15 C.F.R. § 742.1.

¹¹ See 22 C.F.R. § 125.4.

¹² The full list of proscribed countries may be found at:

http://www.pmdtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf.

working on controlled projects require training on export controls. For all other researchers working on fundamental research, training is optional. The ECO will provide customized training upon request to all departments at the University.

Boston University Training and Education Outreach includes the following elements:

- *Basic and 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 available upon request.
- *Customized training for 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).
- *Government and industry conferences and training:* The Empowered Official is 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.
- *Senior administration briefing:* The University Provosts will receive briefings on export controls as necessary.
- *Export compliance website:* The ORI developed a comprehensive website to provide guidance to researchers and administrators on export compliance issues.

G. 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 on fairly short notice. 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 check list, export shipping checklist, and any other special document received from the University's broker.

Those records include:

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

H. Monitoring And Auditing

In order to maintain BU's Export Control Program and to ensure consistent adherence to U.S. export laws, the ECO may periodically conduct internal reviews of TCPs and certain projects. The purpose of the reviews is to identify possible violations or deficiencies in training, or procedures, that can be rectified.

The Executive Director of Research Integrity will receive a briefing on review results. If a violation or non-compliance is detected, the ECO and the ORI will develop a plan to follow up and implement corrective actions. After the corrective plan is implemented, the ECO will provide a report on corrective action to the AVPRC and the ECAC.

I. Detecting And Reporting Violations

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 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 the ECO, ORI or OGC. 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.

J. Subpoenas and Enforcement Visits

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) 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. A 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).

K. 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.

L. Employee Protection

In accordance with the BU Policies, no individual shall be punished solely because they 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>

IX. EXPORT LOGISTICS AND SHIPMENT PROCESSING

- **Export Shipment Processing**

The fundamental research exception does not apply to physical shipments from the U.S. When exporting samples, equipment, or instruments abroad or taking equipment or instruments on an airplane to attend a conference or conduct research internationally, this is considered exporting and is subject to certain restrictions and procedures.

Violations can cause delays in customs clearance and can ultimately cost hundreds of thousands of dollars 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 U.S., 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. 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 exporting from the U.S., make sure to allow sufficient time for export processing and license determination. Start by determining whether an export license is required to export the equipment/instrument/materials from the U.S. and contact the appropriate University resource to assist in securing 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. Always know what it is that is being exported and determine whether an export license is required. When unsure, contact the ECO at export@bu.edu for assistance with export license requirements or shipping procedures.

If planning to export an item that is subject to an export license, please contact the ECO at export@bu.edu for assistance in securing a license.

- **Special Classes of Exports**

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

If there are plans to export any of the following materials, contact the ECO and other appropriate University departments to ensure that the required export licenses are in place and the shipment is properly labeled and packaged for transportation:

Select Agents: Boston University's Select Agent Program follows guidelines set forth under the 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 planning to export or import select agents, contact the Office of Environmental Health and Safety: <http://www.bu.edu/ehs/>.

Hazardous Chemicals: Hazardous chemicals are substances (e.g., liquid, solid, and gas) that have hazardous characteristics. They can be flammable, corrosive, reactive, toxic, radioactive, poisonous, or carcinogenic. In a general sense, these materials are considered hazardous because they present a potential risk to humans 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/>.

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 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 Integrity* for assistance: ibc@bu.edu.

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 export of radioactive components is planned: <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 617-358-8301/8302.

- **Small Size, Low Value Shipments, and FedEx**

If a shipment is valued at less than \$2,500 and weighs less than 25 lbs. it is recommended that FedEx (<http://www.fedex.com/us/>) be used to ship the goods. With FedEx International Priority

service, smaller shipments often receive door-to-door, customs-cleared delivery in 24 to 48 hours.

Contact University Mail Services at 617-353-6680 to set up a University FedEx account. The information required to set up an account:

- Department name and address
- Unit and department chargeback information and source code, if any

The University enjoys a beneficial pricing agreement with FedEx and the pricing will be available upon account set-up through Mail Services.

- **Customs Brokerage and Freight Forwarding Services from FedEx Trade Networks**

For shipments of all values that require special import customs clearances services (Customs Brokerage) or export-related freight forwarding, the University's preferred service provider is FedEx Trade Networks (FTN) that operates as a separate business unit within the greater FedEx brand of services.

FTN offers import Customs Brokerage services even if FTN is not the primary carrier of the shipment. For example, a shipment managed by DHL can be cleared through US Customs at the port of entry by FTN. DHL, as a non-preferred supplier does not have the required allowances from the University to provide these services.

FTN can also manage export shipments and acts as a logistics hub to coordinate in-country shipment internationally through their vast network. When engaging with FTN for a quotation request, prior to initiating a shipment or requesting customs clearance services, please provide at least the following information to the FTN Primary Contact Listed below:

- Origin and destination addresses
- Detailed description of Product(s) (including part number(s)) being transported\
- Quantity, dimensions, and weight(s) of shipment
- Estimated timeline requirement for delivery (this allows FTN to provide options such as sea, air, or ground)
- Carrier of shipment (if not FTN for customs clearance)
 - Identification information for shipment (if not FTN)

FTN Primary Contact:

Maria Sampson
Email: maria_sampson@ftn.fedex.com
Phone: (781) 258-7947

FTN may require additional information than listed above and will request this prior to issuing a quotation. When ready to proceed with the shipment, a department should accept the quotation by email confirmation and authorize the start of services. Payment can be completed by P-Card on the final invoice provided to the relevant department contact at the completion of the shipment. Any questions about engaging with or completing payment for FTN should be directed to BU Sourcing & Procurement at sourcing@bu.edu.

NOTE: FTN does not directly integrate with FedEx freight services' local account numbers and FTN will establish different account numbers to conduct business with a department. FTN also does not specialize in transport of biological agents or tissue samples, but upon request is able to provide cold-chain shipments.

- **Advisory Services from FedEx Trade Services (FTS)**

FedEx's Trade Services (FTS) unit specializes in international trade and customs advisory services and is able to provide the University with international trade regulatory assistance and is able to provide the University with the following information for a shipment as needed:

- 10 digit fully qualified HTS/Schedule B Number;
- ECCN Determination;
- Export License Requirements;
- SNAP-R request if requested;
- Other destination country HS numbers if requested;
- Destination Duty and tax rates if requested;
- Other General Export Advisory services

In order for Trade Services to provide the above services, Boston University is required to supply the following:

- Product Number
- Product Description
- Technical information if applicable
- Responses to additional requests for information from personnel to be designated by Boston University

FTS should be engaged separately then FTN or other units of FedEx services and will provide information and advisory services on a hourly-fee basis. A quotation first, prior to starting services, is recommended if seeking to engage with FTS.

FTS Primary Contact:

Evan Falconer
Trade and Customs Advisory Services Advisor
FedEx Logistics
Phone: (404) 772-4995
Email: evan_falconer@ftn.fedex.com

APPENDIX A: OFAC: ECONOMIC SANCTIONS AND EMBARGOES

A. 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.¹³

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 but not limited to Cuba, Iran, North Korea, Syria, Sudan and Russia/Ukraine.¹⁴ 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.

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, Iraq, Lebanon, Libya, Somalia, Sudan, South Sudan, Russia/Ukraine, Yemen, Venezuela and Zimbabwe.¹⁵ Because this list is subject to change, please visit the OFAC [website](#) 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 with the Export Control Officer.

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

B. “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 the [lists](#) be screened prior to any export shipment or collaboration to ensure that the University does not engage in a transaction with a debarred entity or individual. Each employee engaging in international collaborations or shipping is responsible for having foreign collaborators screened.

¹³ Office of Foreign Assets Control: <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

¹⁴ 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).

¹⁵ See <http://www.treas.gov/offices/enforcement/ofac/> for a full list of U.S. sanction programs.

Records must be kept for at least five (5) years after the transaction. Please contact the Export Control Officer for assistance with the screening process.

Link to the consolidated lists: <https://www.export.gov/article?id=Consolidated-Screening-List>

APPENDIX B: INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)

A. ITAR Overview

The International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130,¹⁶ govern the export, re-export and temporary import of defense articles, services, and related technical data from the United States, abroad, and/or to any foreign person, whether located within the United States or abroad. The ITAR controls not only end-use items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that are incorporated into the end-use item. The Directorate of Defense Trade Controls (DDTC) administers and enforces these regulations.

An article or service may be designated or determined in the future to be a defense article or defense service if it:

- Is specially designed, developed, configured, adapted, or modified for a military application;
- Does not have predominant civil applications; or
- Does not have performance equivalent (defined by form, fit, and function) to those of an article or service used for civil applications.

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.

B. ITAR Definitions

Defense Article: Means any item or technical data that is designated on the U.S. Munitions List.¹⁷ Defense article also includes models, mock-ups, or other items that reveal technical data relating to items designated on the USML.

Defense Service: Means providing assistance, including training, to a foreign person within 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.¹⁸

Fundamental Research: Means 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 in which the results 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; or
- The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

¹⁶ The ITAR are promulgated pursuant to Section 38 of the Arms Export Control Act, 22 U.S.C. §§ 2778 *et seq.*

¹⁷ 22 C.F.R. § 120.6.

¹⁸ 22 C.F.R. § 120.9.

Public Domain: means information that is published and generally accessible or available to the public via measures such as:

- 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; or
- 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.

Under the ITAR, certain data that is considered as being in the “public domain” may be exempt.

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.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.¹⁹

C. Definition Of 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 to a foreign person of any aircraft, vessel, or satellite covered by the US Munitions List, whether within 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:

Exports of Articles from the U.S. Territory

¹⁹ 22 C.F.R. § 120.15.

- 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).

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 of any aircraft, vessel, or satellite covered by the USML, to a foreign person, whether the transfer occurs in the United States or abroad.

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.

D. Authorization to Export

Generally, any U.S. person or entity that manufactures, brokers, or exports defense articles or services must be registered with the DDTC.²⁰ Registration is required prior to applying for a license or taking advantage of some license exemptions.²¹

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. 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.

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 DDTC and as such has the ability to submit license applications and to use ITAR exemptions. ITAR has a strict documentation requirement and all exemptions must be documented and signed by Boston University's Empowered Official who will ensure that the University does not exceeds the authorization or scope of the exemption.

E. The U.S. Munitions List

The first step to determine whether research falls under the ITAR is to review the U.S. Munitions List, section 121.1 of the ITAR. The USML designates particular categories and types of equipment as defense articles and associated technical data and defense services.²² In general

²⁰ 22 C.F.R. § 122.1.

²¹ 22 C.F.R. §§ 120.1(c) and (d); 122.1(c).

²² See 22 C.F.R. § 121.1.

terms, any items specifically designed, modified, adapted, or configured for military use will fall under the ITAR.

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

An electronic version of the USML is available on the Department of State [website](#)

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
XI	Military Electronics
XII	Fire Control, Range Finder, Optical and Guidance and Control Equipment
XIII	Auxiliary Military Equipment
XIV	Toxicological Agents and Equipment and Radiological Equipment
XV	Spacecraft Systems and Associated Equipment
XVI	Nuclear Weapons, Design and Testing Related Items
XVII	Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
XVIII	Directed Energy Weapons
XIX	[Reserved]
XX	Submersible Vessels, Oceanographic and Associated Equipment
XXI	Miscellaneous Articles

F. Classification

While the DDTC has jurisdiction over deciding whether an item is controlled under the ITAR or EAR, universities may self-classify the item. If doubt exists as to whether an article or service is covered by the USML, the DDTC will make a determination whether a particular article is a defense article subject to the ITAR upon written request in the form of a Commodity Jurisdiction (CJ). A CJ may also be requested for technical data which is subject to the DDTC jurisdiction.

University faculty, students and staff should contact the Export Control Officer when classifying items, technology or software/data. If it is determined that it is necessary to obtain a CJ, the Export Control Officer will file the request with DDTC.²³

G. Embargoed Countries under the ITAR

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:

https://www.pmddtc.state.gov/ddtc_public?id=ddtc_public_portal_country_landing

²³ Instructions on the content of a CJ and the filing procedure are available at https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=249f7c0adb6cf7007ede365e7c9619fd

Boston University is under a mandatory self-disclosure for exports or transfers to these countries.

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 (5) 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 was previously exported from the U.S. is 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 and Border Protection.

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 §447.21.²⁴ This list mostly governs critical military items and very few space related items and equipment.

²⁴ <http://www.gpo.gov/fdsys/pkg/CFR-2011-title27-vol3/pdf/CFR-2011-title27-vol3-sec447-21.pdf>

APPENDIX C: 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).²⁵ While there are some parallels to the ITAR, there also are some major differences in how the regulations and the relevant agencies function.

B. The Commerce Control List

The 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 divided into nine categories and available at <https://www.bis.doc.gov/index.php/documents/regulations-docs/2329-commerce-control-list-index-3>

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
5. Part-2: Information security (encryption)
6. Sensors & lasers
7. Navigation & avionics
8. Marine (vessels, propulsion, & equipment)
9. Propulsion systems, space vehicles (includes aircraft & aircraft engines)

C. 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.

²⁵ 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.

Under the EAR, items with potential “dual” commercial and military use, 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. The Commerce Control List also contains items that have been transferred from the U.S. Munitions list and these items require licenses to most countries and have enhanced technical data transfer requirements. These are often referred to as 500 and 600 series.

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.

D. Definitions under the EAR

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.

Deemed Export

The release of technology or source code to a foreign national within 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.

Re-export

Similar 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).

Deemed Re-export

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-export license authorization before being released to a Russian foreign national student or employee of that university in Ireland.

E. Classification

The initial jurisdiction determination is key because only ITAR or EAR regulations will apply to a particular activity. Only the DDTC has jurisdiction and authority to decide whether an item is ITAR or EAR controlled.²⁶

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.

²⁶ For a complete discussion, see *Overview of Export Controls*, Appendices

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).

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.

What is the difference between EAR99 and NLR?

EAR99 is a classification for an item. It indicates that a particular item is subject to the Export Administration Regulations (EAR), but not listed with a specific Export Control Classification Number (ECCN) on the Commerce Control List (CCL). While the classification describes the item, the authorization for shipment of that item may change, depending on the transaction. NLR is the designator of a transaction that stands for the “No License Required” authorization. NLR may be used for either EAR99 items, or items on the CCL that do not require a license for the destination in question, provided no General Prohibitions apply.

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.²⁷

G. Authorization to Export

Once it is determined that a license is required, an exporter may 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 applications 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. License exceptions must also be carefully documented. Note that altering a particular transaction to “fit” the scope of a license exception is prohibited. Each transaction/export is taken “as is” before the license exception is applied.

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

²⁷ <https://www.bis.doc.gov/index.php/documents/bis-annual-conference-2019/2421-encryption-breakout-session-slides-aa-ous-edits>

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.

i. 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.

ii. 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.

iii. 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:

<https://www.bis.doc.gov/index.php/enforcement/oac>.

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: <https://www.irs.gov/forms-pubs/about-form-5713>

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.

Contact the Export Control Officer at export@bu.edu 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 (5) years from the date of the export.

APPENDIX D: 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.²⁸ 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. Similar to the OFAC, ITAR and EAR regulations, these regulations are mandatory and impose penalties for violations.

B. Definitions

1. 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.

2. 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.

²⁸ <http://www.census.gov/foreign-trade/regulations/regs/regulations20080602-federalregister.pdf>.

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:²⁹

- 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:

²⁹ <http://www.census.gov/foreign-trade/regulations/regs/regulations20080602-federalregister.html#AppendixC>

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 truck 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, an “Internal Transmission Number (ITN)” will be issued and which must be reported on the shipping document and commercial invoice.

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 (5) 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 for providing the broker with the required information to submit the AES. It is not the broker’s job, for example, to determine a 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.

APPENDIX E: PENALTIES FOR EXPORT VIOLATIONS

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.

A. 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, twenty years of imprisonment, or both.³⁰ In addition, the Secretary of State may assess civil penalties, which may not exceed \$500,000 per violation.³¹ 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.³² Finally, the Assistant Secretary for Political-Military Affairs may order debarment of the violator, (i.e., prohibit the violator from participating in the export of defense items or in federal government contracting opportunities).³³

While imposing criminal liability is fairly rare, many major U.S. companies have been assessed significant civil penalties in the millions of dollars.³⁴ 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 ITAR violations.³⁵ In brief, Professor Roth accepted an Air Force research contract that was subject to the ITAR and allowed Chinese and Iranian students to 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 a four-year prison term.³⁶ 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 an 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.

³⁰ 22 U.S.C. § 2778(c) and 22 C.F.R. § 127.3.

³¹ 22 U.S.C. § 2778(e) and 22 C.F.R. § 127.10.

³² 22 C.F.R. § 127.6.

³³ 22 U.S.C. § 2778(g) and 22 C.F.R. § 127.7.

³⁴ For a thorough discussion of penalties imposed under the ITAR, see John C. Pisa-Relli, "Monograph on U.S. Defense Trade Enforcement" (Revised May 24, 2011).

³⁵ <http://www.fbi.gov/knoxville/press-releases/2012/former-university-of-tennessee-professor-john-reece-roth-begins-serving-four-year-prison-sentence-on-convictions-of-illegally-exporting-military-research-data>

³⁶ <https://archives.fbi.gov/archives/knoxville/press-releases/2012/former-university-of-tennessee-professor-john-reece-roth-begins-serving-four-year-prison-sentence-on-convictions-of-illegally-exporting-military-research-data>

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.³⁷

Pratt & Whitney Canada Corp. (PWC), a Canadian subsidiary of the Connecticut-based defense contractor United Technologies Corporation (UTC), pleaded guilty to violating the Arms Export Control Act and making false statements in connection with its illegal export to China of U.S.-origin military software used in the development of China's first modern military attack helicopter. In addition, UTC, its U.S.-based subsidiary Hamilton Sundstrand Corporation (HSC) and PWC have all agreed to pay more than \$75 million as part of a global settlement with the Justice Department and State Department in connection with the China arms export violations and for making false and belated disclosures to the U.S. government about these illegal exports³⁸.

B. Violations of the EAR

Similar 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 or five times the value of the exports for each violation in criminal cases, and \$250,000 or twice the amount of the underlying transaction (whichever is greater) 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.³⁹ 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.⁴⁰

³⁷ See Bureau of Political-Military Affairs; Statutory Debarment of ITT Corporation Pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations, 72 Fed. Reg. 18310 (Apr. 11, 2007). For a detailed account of the ITT Corporation investigation, see the U.S. Department of Justice press release "ITT Corporation to Pay \$100 Million Penalty and Plead Guilty to Illegally Exporting Secret Military Data Overseas" (March 27, 2007), available at: <https://www.justice.gov/opa/pr/itt-cannon-pay-11-million-settle-false-claims-allegations-untested-electrical-connectors>.

³⁸ <https://www.justice.gov/opa/pr/united-technologies-subsiary-pleads-guilty-criminal-charges-helping-china-develop-new>

³⁹ 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 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. 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.

⁴⁰ 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>.

C. Exports to a Sanctioned Country

Persons who willfully violate any provision of Trading With the Enemy Act (TWEA) or any license, rule, or regulation issued thereunder, and persons who willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of TWEA shall, upon conviction, be fined not more than \$1,000,000 or, if an individual, be imprisoned for not more than 20 years, or both. The Secretary of the Treasury may impose a civil penalty of not more than \$89,170 per violation on any person who violates any license, order, or regulation issued under TWEA. The criminal penalties provided in TWEA are subject to increase pursuant to 18 U.S.C. 3571 which, when read in conjunction with section 16 of TWEA, provides that persons convicted of violating TWEA may be fined up to the greater of either \$250,000 for individuals and \$1,000,000 for organizations or twice the pecuniary gain or loss from the violation. 6For apparent violations identified in the Cuba Penalty Schedule, 68 Fed. Reg. 4429 (Jan. 29, 2003), for which a civil monetary penalty has been deemed appropriate, the base penalty amount shall equal the amount set forth in the Schedule for such violation, except that the base penalty amount shall be reduced by 50% in cases of voluntary self-disclosure.

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.

D. Violations of Foreign Trade Regulations

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, and broker, among others.⁴¹

In assessing the violations CBP will focus 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

⁴¹ <https://www.cbp.gov/trade/programs-administration/penalties>

- **Failure to annotate the manifest with the appropriate proof of filing citation or exemption legend⁴²**

⁴² <http://www.census.gov/foreign-trade/aes/aesnewsletter072009.pdf>