**OREGON HEALTH & SCIENCE UNIVERISTY**

**EXPORT MANAGEMENT AND**

**COMPLIANCE PROGRAM**

**Version 3.0**

**Original Issue Date: (06/27/2011)**

**Revision History**

Revisions to this program will be documented in the following table, and saved with each copy of the program for reference.

Description of Change

**(mm/dd/yyyy) Action**

|  |  |
| --- | --- |
| 06/27/2011 | 1.0 Initial program issued |
| 01/10/2012 | 2.0 Updates and additions |
| 07/25/2014 | 3.0 Updates and additions |
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**EXPORT MANAGEMENT AND COMPLIANCE PROGRAM**

**1.0 Management Policy Statement & Introduction**

**INTRODUCTION**

As a major center of research and learning, Oregon Health & Sciences University strives to maintain a community in which faculty; researchers and students may freely explore their research interests and disseminate their research results. Our community also seeks opportunities to collaborate with international colleagues and welcomes the participation of foreign researchers and students in the conduct of university research projects. As the volume of University research activities expands at a rapid pace, the necessity to exchange technical data and ideas with foreign colleagues, both abroad and in the United States, will continue to grow.

Although we must never lose sight of our University’s mission to encourage the free and full exchange of information and ideas, it is also incumbent upon all members of the University community to understand the possible impact of laws regulating the export to foreign destinations and to foreign persons of U.S. technologies, technical data and technical services.

Although the majority of University activities fall within exceptions to the export control laws (such as for fundamental research), it is possible that some technologies, technical data and technical services either received or created by the University personnel may not be freely shared with all foreign persons, whether they are graduate students, teaching assistants, research assistants, post-doctorate scholars, visiting faculty, colleagues at meetings and symposia, contractors, subcontractors, or partners in research projects.

Therefore, all University personnel are responsible for complying with the University’s export control guidelines, a copy of which is attached as Appendix A to this manual. This manual does not replace U.S. export regulations and is by no means exhaustive. Instead, it is designed to provide University personnel with assistance in dealing with export-related issues.

**Management Policy Statement**

**CHAPTER 1 - ADMINISTRATION**

**EXPORT COMPLIANCE       No. 01-05-006**

**Effective Date: November 21, 2011**

1. **GENERAL POLICY**

All OHSU Members including visiting scientists, postdoctoral fellows, and other persons retained by or working at or for OHSU shall conduct their affairs in accordance with U.S. laws and regulations, including compliance with U.S. export control laws and regulations applicable to its operations.

2. **DESIGNATED OFFICIAL**

The Provost shall designate an individual to serve as OHSU's Designated Official for purposes of export compliance. The Designated Official shall be supported by the Export Compliance Officer.

3. **AUTHORITY AND COMPLIANCE**

The Provost has the responsibility to adopt and amend policies and procedures (consistent with applicable OHSU policies and procedures) deemed advisable or necessary for OHSU to comply with export control laws and regulations and shall appoint individuals to assist the Export Compliance Officer in adopting and amending such policies and procedures as necessary (collectively "OHSU Export Control Policies and Procedures").

All OHSU Members must comply with the Export Control Policies and Procedures, which include a number of screening steps that must be followed prior to exporting any items or technology. OHSU Members are prohibited from transferring any items (e.g., select agents), intellectual property (e.g., medical research findings) or technology contrary to U.S. export control laws and regulations or OHSU Export Control Policies and Procedures.

4. **TRAINING**

All OHSU employees with managerial or supervisory authority over foreign nationals or projects involving materials or technology subject to export controls are required to complete formal training on U.S. Export Control laws and regulations and view export-control compliance as an important part of their day-to-day responsibilities.

OHSU shall offer training on U.S. export control laws and regulations to all OHSU Members.

5. **COMPLIANCE ASSISTANCE**

For assistance in understanding the responsibilities related to export controls, OHSU has established the Provost Office of Export Controls to guide and assist OHSU personnel with compliance.

Export compliance is a daily exercise. Noncompliance is very costly. All OHSU employees are required to comply with the policies and procedures outlined in this Export Management and Compliance Program. **Any employee who has knowledge of facts or incidents, which he or she believes may violate U.S. export regulations or this program, whether intentional or accidental, is required to report the matter promptly to the Export Compliance Officer.**

Violations of U.S. export laws can subject OHSU and its employees to severe penalties, including fines, loss of federal funding, and even imprisonment. Any employee who violates such laws, or who knowingly permits a subordinate to violate such laws, will be subject to appropriate disciplinary action, up to and including termination.

All questions regarding export compliance and how it impacts your job, as well as any question concerning the legitimacy of any situation, violation, or potential violation should be immediately referred to:

Name: Mark Peters

Title: Export Compliance Officer

Location: Gaines Hall 136

Phone: (503) 494-0137

E-Mail: [petemark@ohsu.edu](mailto:petemark@ohsu.edu)

Web: [www.ohsu.edu/export](http://www.ohsu.edu/export)

**2.0 Program Organization, Personnel and Responsibilities**

2.1 Personnel who are responsible for the development, maintenance, and compliance of this program are:

**Empowered Official:**

**Name: David Robinson**

**Title: Executive Vice Provost**

**Location: Baird Hall 1028**

**Phone: (503) 494-4460**

**E-mail: robinsonda@ohsu.edu**

**Export Compliance Officer (ECO):**

Name: Mark Peters

Title: Export Compliance Officer

Location: Gaines Hall 136

Phone: (503) 494-0137

E-Mail: [petemark@ohsu.edu](mailto:petemark@ohsu.edu)

Web: [www.ohsu.edu/export](http://www.ohsu.edu/export)

**Export Compliance Leaders** will assist the ECO in the day-to-day direction of employees. These leaders will report to the ECO for direction and decisions on all matters relating to export compliance. The ECO will make final determinations, in consultation with the General Counsel’s office, on all questions or matters relating to this program, specifically, and export compliance, in general.

**3.0 University Compliance Structure and Responsibilities**

The University’s export compliance efforts will be coordinated through the Provost Office of Export Controls with the assistance of The Provost Office of Export Controls. However, much of the responsibility for export compliance lies with individual University personnel. The purpose of this section is to outline the University’s export compliance structure.

**I.** **Responsible Officials**

A. The Export Compliance Officer

Coordination of export compliance procedures is done through the Export Compliance Officer and the Provost Office of Export Controls. These efforts will be supported by the General Counsel’s office and external counsel who will assist in making the legal assessments necessary to ensure that compliance responsibilities are met.

**II. Duties of Responsible University Officials**

A. Provost

The Provost will guide implementation of the University's efforts in a variety of ways:

1. Assist in structuring the University's overall export compliance policy, drawing on the support and expertise of the University administration and Provost Office of Export Controls.

2. Establish, in conjunction with the Provost Office of Export Controls, guidelines regarding compliance responsibilities for of the University as a whole.

3. In conjunction with the Provost Office of Export Controls, oversee any export compliance issue that arises.

4. In conjunction with the Provost Office of Export Controls, oversee the coordination of official University responses to United States Government inquiries or requests for information.

5. In conjunction with the Provost Office of Export Controls, provide guidance and advice on export policies and University compliance procedures.

6. Manage the University review, submission and tracking of any export license applications.

7. Assist in monitoring the effectiveness of the export compliance program.

8. In conjunction with appropriate legal support, monitor the laws and regulations affecting export compliance and disseminate information regarding export control changes.

9. At the direction of the Provost Office of Export Controls, assist in addressing instances of suspected non-compliance and with internal assessments as required.

B. Office of Export Controls

The Export Compliance Officer will draw primary support from the Provost Office of Export Controls, whose responsibilities will include the following:

1. Assist the Export Compliance Officer in establishing export compliance guidelines at the University level.

2. Oversee internal self-assessments.

3. Oversee and coordinate any disclosures or provision of information to the U.S. Government, whether in response to informational requests or self-initiated submissions.

4. Oversee the development of guidelines related to University personnel who violate the University’s export policies, procedures and the law.

5. Coordinate the University’s export compliance-training program.

6. Assist the Export Compliance Officer and the Provost Office of Export Controls in providing guidance and advice on export policies and University compliance procedures.

C. Director, Human Resources

1. Maintain information regarding foreign national employees.

2. Assist in any internal assessment relating to foreign national employees.

***Please refer questions about this structure to the Export Compliance Officer.***

**4.0 Foreign National Technical data transfers to REsearchers/**

**sponsors/ contractors/Visitors**

The export of technology, technical data, information and software ("technical data") which is controlled by the ITAR or the EAR deserves special attention because the exchange of these items is often perceived as intangible and therefore not subject to export controls. Contrary to this perception, technical data is controlled just as other commodities and products. The purpose of this procedure is to provide guidance regarding technical data controlled by either the Department of State or the Department of Commerce and to highlight special areas of concern regarding its transfer to foreign national researchers, contractors and visitors.

**I. Technical Data Defined**

Technical data must be handled similarly to other commodities and products controlled on the CCL or USML. Any release of technical data related to items controlled by the CCL or the USML to a foreign national is considered an export. Thus, the release of technical data may require a license or approval prior to export, or if a transfer -- as with a product -- would otherwise be subject to special restrictions under the regulations (*e.g*., transfers to proscribed destinations and end-users, embargoed countries, denied parties). Though it is anticipated that the majority of technical data created or received by University personnel either will not be controlled or will fall under an exception to the export control laws, University personnel need to be aware of potential problems in the event controlled technical data is involved in a particular activity.

A. Technical data includes:

1. Technology, or information required to design, develop, produce, manufacture, assemble, operate, repair, maintain, modify or test controlled items;

2. Blueprints, drawings, photographs, plans, instructions and other documentation relating to controlled items;

3. Classified information relating to dual-use items or defense articles, services;

4. Software; and

5. Technical assistance, including instruction, skills building, training, and working knowledge relating to controlled items.

B. Technical data typically excludes:

1. General scientific, mathematical or engineering principles; and

2. Basic marketing information regarding function or purpose or general system descriptions of defense articles or dual-use goods or technology;

3. Information in the Public Domain; and

4. Standard tours of facilities offered to the general public.

C. Exports of technical data may occur by:

1. Sending or taking technical data abroad in any form;

2. Disclosing or transferring technical data to a foreign national whether in the United States or abroad (*i.e.* the "deemed export");

3. Performing services for or on behalf of a foreign national;

4. During any conversation or meeting with a foreign national;

5. During employment of a foreign national; and

6. During visual inspection of U.S.-origin equipment and facilities by foreign nationals.

The same export analyses that apply to tangible exports must be followed by University personnel regarding controlled technical data and information, or for the transfer of technical data or information to otherwise restricted end-users, end-uses, destinations and countries.

**II. Areas of Concern**

Technical data and its management for export compliance purposes represent an area of special concern to the University because of the varied and intangible ways of transferring information. It is expected that the majority of technical data generated by University personnel will fall within an export control exception. However, in the event the University either generates controlled technical data or receives it from a third party, ways in which such technical data could be improperly transferred include:

A. Presentations at conferences;

B. Submission of articles for outside publication;

C. Brochures and displays;

D. Placing controlled information on the internet;

E. Exchanges by mail, e-mail or fax to foreign destinations or individuals;

F. Certain foreign national researchers, graduate students, or others in the University community who are not bona fide employees; and;

G. Foreign national visitors, including contractors.

Additional guidance regarding these areas of concern is provided.

**III. Foreign National University Personnel**

1. Any University personnel, not a bona fide employee, who is not a citizen or national of the United States, and does not have permanent resident status, is a foreign national under the export laws of both the Department of State and Department of Commerce and may require prior U.S. Government approval before controlled technical data can be released in any way to that employee. Foreign nationals ***shall not*** be provided with access to controlled technical data until the University has obtained the necessary approvals.
2. Once the necessary approvals have been obtained, the foreign national employee may have access to unclassified technical data to the extent requested in the license application and approved by the Commerce or State Department. All foreign national employees to whom technical data will be released under such approval must first sign a University Foreign National Non-disclosure Agreement. In addition, the University may be required by the Department of State to implement a Technology Transfer Control Plan ("**TTCP**"). Such foreign national personnel must be informed of the proprietary and controlled nature of technical data obtained during their employment.

**IV. Foreign National Visitors**

A. University personnel who host or participate in visits involving foreign nationals should be aware that controlled technical data disclosed in any manner during such a visit constitutes an export that must meet applicable regulatory requirements.

B. If a foreign national visitor will receive data that requires an export license for transmission to that individual’s home country, such a license must be obtained prior to the disclosure. If an export license has been denied or has not been obtained, then the visit may not occur unless only publicly available material will be discussed.

C. To prevent the unauthorized export of technical data to foreign nationals, sufficient information must be gathered regarding the identity of the foreign visitors, the nature of the visit and the kind of information to be released. University personnel hosting a foreign visitor should coordinate with the Export Compliance Officer to determine whether an export license is required, and any restrictions that may apply.

**V. Foreign National Sponsors or Contractors**

A. Approval/Notification Requirement for Proposals and Presentations

Prior to submitting any proposal to a foreign person (whether or not it contains technical data) you must be aware of any applicable export regulations. In addition to the requirements set forth in the ITAR and the EAR for the transfer of technical data/technology, if your proposal involves Significant Military Equipment ("SME"), as defined in 22 C.F.R. §120.7, you must comply with 22 C.F.R. §126.8 regarding proposals or presentations "designed to constitute a basis for a decision to purchase and enter into any Agreement."

B. Prior Approval of the Department of State is required if:

1. Hardware

a. The proposal involves sale of SME valued at $14 million or more;

b. The equipment is intended for use by armed forces of a non‑NATO country or Australia, New Zealand or Japan; and

c. The sale would involve the export of any defense article or defense service (including technical data); and

d. The identical SME has not been previously licensed for export or sold under the Foreign Military Sales Program ("FMS").

2. Technical Data

a. The proposal will result in a MLA or TAA; and

b. The agreement is for the production or assembly of SME (regardless of dollar value) in any foreign country; and

c. The equipment is for use by the armed forces of any foreign country; and

d. The agreement would involve the export of any defense article or service, including technical data.

C. Prior Notification, in writing, at least thirty (30) days in advance of any proposal or presentation concerning the sale of SME, is required if:

1. The proposal is for sale of SME valued at $14 million or more; and

2. The equipment is intended for use by armed forces of a non‑NATO country or Australia, New Zealand or Japan; and

3. The sale would involve the export of any defense article or defense service (including technical data); and

4. The identical SME ***has*** been previously licensed for export or sold under the Foreign Military Sales Program.

D. Prior approval may take one of three forms:

1. A written statement from the Office of Defense Trade Controls approving the proposed sale or agreement or approving the making of a proposal or presentation;

2. Technical Data License;

3. Temporary Export License (for demonstration). With respect to MLAs and TAAs, the license must state that they are related to possible agreements of this kind.

**EXCEPT AS MAY BE PERMITTED BY THE FUNDAMENTAL RESEARCH AND OTHER PUBLIC DOMAIN EXEMPTIONS, UNIVERSITY PERSONNEL MAY NOT DISCLOSE ANY TECHNICAL INFORMATION RELATING TO UNPUBLISHED INFORMATION ON SELECT AGENTS WITHOUT AN EXPORT LICENSE OR THE EXPRESS WRITTEN CONFIRMATION OF THE PROVOST OFFICE OF EXPORT CONTROLS INDICATING THAT NO LICENSE IS REQUIRED.**

***Please refer questions about these requirements to the Provost Office of Export Controls.***

**5.0 Internet Use**

The Departments of State and Commerce have determined that placing controlled data onto the Internet is an export and must be treated as such.

The "publishing" of data on the Internet is treated in the same manner as the publishing of data in any other forum. The data must fall into one of the following criteria prior to publication or release:

1. The data are subject to the ITAR and are "Public Domain" as defined in §120.11 of the ITAR, or are subject to the EAR and are "Publicly Available" under Part 772 of the EAR; or

2. Pursuant to §125.4(b)(13) of the ITAR the data are subject to the ITAR and have been cleared for release by either the Directorate for Freedom of Information and Security Review (DFOISR) or the cognizant U.S. Government Department or Agency; or

3. Any necessary export approvals to publish the data have been obtained. (This third option is the most unlikely, as data placed onto the Internet is available around the world and a license is unlikely to be approved for such a broad end‑user base.)

***Please refer questions about these requirements to the Provost Office of Export Controls.***

**6.0 FOREIGN TRAVEL**

If you are conducting international travel for the University, you should be aware of the export compliance responsibilities you may have in connection with your trip.

**Things You Should Know About Export Controls Before Traveling:**

1. Defense articles, services, and related technical data are "controlled" from unauthorized export by the Department of State. Other "dual use" items and technology are controlled by the Department of Commerce.

2. Items subject to control include technical services and technical information relating to controlled items.

3. Any item subject to control may not be exported prior to the receipt of United States Government authorization. Similarly, services and technical information related to the item may also require prior authorization.

4. An export occurs when a transfer is made to a foreign person or to a foreign destination. Thus, carrying technical data overseas may be prohibited without prior approval, and providing technical data to a foreign person also may be prohibited without prior approval. Transfers may occur during conversations with foreign persons, by giving presentations to foreign persons, or by providing access to information to a foreign person.

5. Certain exemptions may apply which allow an export to occur without prior United States Government authorization. However, in cooperation with the Export Compliance Officer, University personnel need to assess whether an exception applies prior to traveling.

6. To the extent that any item, data or information is being carried overseas, or is being transferred to a foreign person during your travel, you must coordinate with the University’s Export Compliance Officer prior to the trip to ascertain whether an export is occurring and what exemptions or approvals may apply.

7. If you are carrying equipment or material with you overseas or for a demonstration or trade show, even if the equipment will remain in your possession, you may need an export license. If it is determined that a license is needed, then delivery of the data or equipment must wait until the necessary approvals have been granted by the government.

8. When hand carrying hardware and/or technical data (whether under an approved license or an exemption) you may need a Shipper's Export Declaration ("**SED**") to clear Customs.

9. In the event that you intend to perform research while outside of the U.S., any material generated by that research probably would not fall within the definition of “Fundamental Research.”

If you travel outside the United States and transmit technical data or equipment without an export license when one is required, you may place yourself and the University in serious jeopardy. You could personally be subject to civil and/or criminal penalties.

***Please refer questions about these requirements to the Provost Office of Export Controls.***

**7.0 SCREENING**

Whether controlled by the Department of Commerce or the Department of State, an export may be prohibited because of the destination, end-use, or end-user. The United States Government maintains a series of lists and publishes notices of parties, countries, and activities for which exports are strictly prohibited, or otherwise restricted.

Screening is an integral part of complying with export control laws and essentially serves three functions:

1. To detect potentially unlawful exports;

2. To prevent unlawful exports; and

3. To provide justification and documentation for export decisions.

**I. Screening Lists**

Screening must be conducted by appropriate University Personnel best suited to ensure that restricted transfers do not occur. Generally, screening should be performed at initial and/or interim functional control points that are likely to detect restricted transfers before an export occurs. The employee performing the screening should record that the screening was done, the date it was completed, and the employee's name.

The University intends to develop procedures to implement a screening process in a verifiable form, which will consider the following:

A. Denied Persons List

The denial or limitation of the privilege of exporting is one of many sanctions authorized under United States Export laws and regulations. Parties denied exporting privileges by the Commerce Department are generally precluded from participating in any manner in any export-related transaction subject to the EAR. Sanctions can be imposed for engaging in export transactions with such "Denied Parties". United States exporters must therefore ensure that all parties to their export activities (including freight forwarders, intermediate consignees, end-users, and others) are not on the Table of Denial orders, which is list is published by the Department of Commerce of persons that have been denied export privileges, in whole or in part. (*See* Supplement No. 2 of Part 764 of the EAR). Most transactions, including exports to, exports for, reexports, and intra-country transfers abroad, with denied persons are prohibited without prior authorization from the United States Government.

B. Specially Designated Nationals List

The Department of Treasury's OFAC publishes a list of entities with whom any transactions are restricted. Exports to countries or entities on the list may not be conducted without prior authorization from OFAC.

C. Debarred and Suspended Parties Lists

The Department of State publishes in the Federal Register a list of parties whose export privileges have been revoked or suspended. Exports to these parties are prohibited. In rare circumstances, the Department of State may authorize an export to a debarred or suspended party when it is in the national interest.

D. Proscribed Missile Technology Lists

The Department of Commerce prohibits the export or reexport to any destination without a license of items subject to the EAR, if the exporter knows or has reason to know that the export is destined for specific missile projects, or will be used in the design, development, production or use of missiles in or by certain countries. The Department of State may also control certain missile-related items that are concurrently found on the CCL. Prior approval may be required from both the Department of State and the Department of Commerce prior to the export of these items. The EAR contains a list of missile-related facilities and technologies controlled for these purposes.

E. Proscribed Chemical and Biological Weapons List

The Department of Commerce maintains a list of chemical and biological weapons ("**CBW**"), end-uses, and end-users, for which the export of any item subject to the EAR requires a license, including items for which no license is required. Exports for the designated end-uses and end-users may not be conducted without prior authorization from the Department of Commerce.

F. Proscribed Destination Restrictions/Entities List

Exports to destinations or entities under sanctions are strictly controlled. The Departments of Commerce and State publish lists of destinations and entities sanctioned pursuant to United States law. Exports of defense articles and defense services to these countries are strictly prohibited. Exports of dual-use commodities and technology require screening against the Entities List published by the Department of Commerce.

G. Embargoed Countries

OFAC administers embargoes that the United States maintains against other countries. Exports to these countries are prohibited absent special authorization from OFAC.

**II. Diversion Avoidance and Red Flags**

In addition to the lists of proscribed destinations, end-users, end-uses, and countries, the University will consider high-risk diversion issues. A baseline checklist is published by the Department of Commerce and provides several "red flags" that indicate that a transfer may violate export control policies or laws.

The following guidance is based on Department of Commerce and Department of State “Red Flag” indicators but is adapted to the University environment.

A. Know your Sponsor Guidance

1. *Decide whether there are "red flags.”* Take into account any abnormal circumstances in a transaction that indicate that the export may be destined for an inappropriate end‑use, end‑user, or destination. Such circumstances are referred to as "red flags." Included among examples of red flags are contracts involving materials that are inconsistent with the needs of the sponsor/customer, or requests for equipment configurations that are incompatible with the stated destination (*e.g.*, 120 volts in, a country with 220 volts). Commerce has developed lists of such red flags that are not all‑inclusive but are intended to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate the EAR or the ITAR.

2. If *there are "red flags," inquire.* Ifthere are no "red flags" in the information that comes to you, you should be able to proceed with a transaction in reliance on information you have received. That is, absent "red flags" (or an express requirement in the ITAR or EAR), there is no affirmative duty upon exporters to inquire, verify, or otherwise "go behind" the sponsor’s representations.

However, when "red flags" are raised in information that comes to you, you should follow up regarding suspicious circumstances and inquire about the end‑use, end‑user, or ultimate country of destination.

3. *Do not self‑blind*. Do not cut off the flow ofinformation that comes to you in the normal course. Do not put on blinders that prevent the learning of relevant information. An affirmative policy of steps to avoid "bad" information would not insulate the University from liability, and it would usually be considered an aggravating factor in an enforcement proceeding.

4. K*now how to handle "red* flags." Knowledge possessed by University personnel can be imputed to the University so as to make it liable for a violation. The University will emphasize in its education and training sessions the need for University personnel to be forthcoming with all relevant information so that knowledge about University activities can be evaluated by the appropriate University personnel.

5. *Reevaluate all the information after the inquiry.* The purpose of this inquiry and reevaluation is to determine whether the "red flags" can be explained or justified. If they can, you may proceed with the transaction. If the "red flags" cannot be explained or justified and you proceed, you run the risk of having had "knowledge" that would make your action a violation of the EAR or the ITAR.

6. *Refrain from the transaction and wait.* If you continue to have reasons for concern after your inquiry, then you should refrain from the transaction and submit all relevant information to the Export Compliance Officer and to The Provost Office of Export Controls.

B. Red Flags

Possible indicators that an unlawful diversion might be planned by your sponsor include the following:

1. The transferee is reluctant to offer information about the end‑use of the items to be received.

2. The technical data or services do not fit the transferee’s line of business; for example, a small bakery company is involved in research regarding sophisticated lasers.

3. The items transferred are incompatible with the technical capability of the transferee. For example, semiconductor manufacturing equipment would be of little use in a country without an electronics industry.

4. The transferee has little or no relevant background.

5. The transferee is unfamiliar with the technology or technical data.

Delivery dates are vague, or deliveries are planned for out‑of‑the‑way destinations.

Performance/design requirements are incompatible with the foreign end-user’s resources or environment.

Stated end-use is incompatible with the customary or known applications for the technology or technical data.

The transferee responds evasively to questions regarding any of the above.

***Please refer questions about screening to the Export Compliance Officer or the Provost Office of Export Controls.***

**8.0 Classification and Control of Restricted Items**

**9.0 Licensing, Agreements and Other Approvals**

**10.0 Employee Status, Training and Communication**

**11.0 Visitors and Meetings**

**12.0 International Collaboration**

**13.0 Sourcing and Purchasing**

**14.0 Shipping and Receiving**

**15.0 Technology Transfer**

**16.0 INTERNAL NOTIFICATION REQUIREMENTS**

Effective implementation and administration of the University’s export compliance guidelines requires ongoing and consistent cooperation between the University and its personnel to ensure compliance with all requirements relating to United States export control regulations and laws. Certain events require University personnel to notify the Provost Office of Export Controls ***immediately***.

If *any* of the following events occur, you must ***immediately*** contact Provost Office of Export Controls or the Export Compliance Officer:

1. Any non-routine contact, by phone, letter or in person, by a United States Government official or agency concerning exports or imports, including any request to review or discuss a previously issued export license or past export shipment.

2. A shipment from or to the University is detained or seized by United States Customs.

3. Receipt of a subpoena or other criminal procedure notification related to United States export or import laws.

4. A suspected violation of export control laws or the University guidelines regarding exports.

5. Any reporting requirements under the anti-boycott and restricted trade practices regulations.

Any requirement for United States Government export approvals.

Notification shall occur as soon as possible after any of the foregoing events.

Please refer questions about these requirements to the Provost Office of Export Controls.

**17.0 RECORDKEEPING**

The University is subject to several regulatory recordkeeping requirements related to its export activities. The ITAR and the EAR require that records be kept reflecting the export and temporary import of defense articles, defense services, dual-use commodities and related technologies. This procedure outlines requirements for complying with the recordkeeping regulations.

**I.** **Transactions Subject to Recordkeeping Requirements**

The following types of transactions are subject to recordkeeping requirements:

1. Exports of controlled commodities, software or technical data from the United States or by U.S. persons;
2. Reexports or transshipments of controlled products or technical data originally exported from the United States or by U.S. persons;
3. Any other transaction subject to export control, whether the export or reexport actually occurs;
4. Exports, where it appears that a person in another foreign country has an interest in the transaction or that the commodity or technical data will be exported, transshipped, or diverted.
5. Negotiations in connection with an export; and
6. Transactions involving restrictive trade practices or boycott requirements.

**II. Records Required to be Kept**

All documents related to export activities should be retained, whether they involve the administrative processes associated with obtaining licenses or other approvals, or the implementation of a license or approval, which has already been approved. It is the University's policy that the following export documents and related supporting materials be retained by the University:

Any paperwork detailing internal export control assessments, including any documentation regarding the applicability of any licensing exemptions (such as public domain or fundamental research).

Classification decisions issued by the cognizant government agency;

License applications, and all supporting documents;

Issued licenses with limitations or provisos, if any;

International Import Certificates and applications therefor;

Delivery Verification or similar evidence of delivery;

Shipper's Export Declarations ("SED");

Receipts, bills of lading and other documents related to export clearance;

Reports of boycott requests, and all documents relating to the requests;

Any other document issued by the U.S. Government that demonstrates that an export occurred;

Applications for registration;

Purchase orders;

Foreign import certificates;

Airway bills;

Non-transfer and use certificates;

Memoranda, notes, correspondence, contracts, invitations to bid, books of account, financial records, and any other written matter pertaining to an export;

Records concerning the manufacture, acquisition and disposition of defense articles and services; and

Any other records required under *any* provisions of the EAR, the ITAR, the BATF regulations, or the OFAC regulations.

**III. Period of Retention**

Export documents must be retained for a minimum period of five (5) years, calculated from one of the following points in time:

1. Export records under the EAR (*See* §762.6) must be retained for five (5) years from the *latest* of the following times:

a. The date the export from the U.S. occurs;

b. The date of any known reexport, transshipment, or diversion of such item;

c. The date of any termination of the transaction, whether contractual, legal, formally in writing or by any other means, or;

d. In the case of records of or pertaining to transactions involving restrictive trade practices or boycotts, the date the regulated person receives the boycott-related request.

2. Records relating to exports under the ITAR must be maintained for five (5) years from:

a. The expiration of the license or other approval to which the documentation relates;

b. The date the license or other authorization is exhausted or used completely; or

c. The date the license or other authorization is suspended, revoked, or no longer valid.

**IV. Identifying Responsible Recordkeeping Functions**

The University will maintain the following records, either originals or back-ups, through the Provost Office of Export Controls:

The University’s Department of State registration;

Copies of any license applications with supporting documentation;

Copies of any issued export authorizations, including provisos or limitations;

Copies of any U.S. Government requests for University’s documents related to particular transactions;

Copies of any notices of suspension, revocation or other similar action taken against specific authorizations;

Copies of any notices of suspension or debarment against the University; and

Copies of any official correspondence between the University and the United States Government related to export activity.

**V. Accessibility**

Records must be kept in a manner which facilitates the ability to retrieve the records for any purpose and to review the records during internal or U.S. Government audits. ***In the event any request for documents is received from a United States Government agency or representative, immediately contact the Provost Office of Export Controls. Take no further action.***

***In the event that United States Government authorities appear at any University facility, immediately contact the Provost Office of Export Controls. Collect and retain any official United States Government documents, whether subpoenas or other access requests and forward them immediately to the University's Counsel. Take no further action until you receive instructions from counsel.***

**University Personnel may not, under any circumstances, interfere with or impede any federal law enforcement officer performing his/her official duties.**

Please refer questions about these requirements to the Provost Office of Export Controls.

**18.0 INVESTIGATING SUSPECTED VIOLATIONS**

The failure of the University to comply with applicable United States export laws and regulations could result in substantial penalties, including suspension of the University’s export privileges, fines, and imprisonment for personnel found to be in violation of these laws. University personnel shall not willfully ignore information that comes to them in the normal course of University activities to avoid potential compliance issues. Knowledge possessed by University personnel can be imputed to the University and render the University liable for violations. Therefore, any questionable, unauthorized, or illegal activities, whenever discovered by any employee, must immediately be reported to the Provost Office of Export Controls for review and evaluation.

Sufficient information must be provided to allow the University to pursue an appropriate course of action in the event of an actual or potential violation. Accordingly, University personnel are encouraged to provide as much detail as available when reporting possible violations.

Once a violation has been reported, and the Provost Office of Export Controls has determined that further review is necessary, the Provost Office of Export Controls will arrange to investigate the matter. Initial fact finding and legal assessments may occur within the affected departments. All information obtained during the course of such investigations shall be forwarded promptly to the Provost Office of Export Controls or its designated representative.

Please refer questions about these requirements to the Provost Office of Export Controls.

**19.0 VOLUNTARY DISCLOSURES**

**I. Department of State**

The Department of State strongly encourages the disclosure of information to the Office of Defense Trade Controls ("**ODTC**") by persons, firms, or any organization that believes they may have violated any export provision of the Arms Export Control Act ("**AECA**"). Voluntary self‑disclosure may be considered a mitigating factor in determining the administrative penalties, if any, that can be imposed by the Department of State. Failure to report such violation(s) may result in circumstances detrimental to United States national security and foreign policy interests.

Violations of the ITAR may result in criminal or civil prosecutions. Any license or other approval can be suspended, revoked, denied or amended without prior notice. Enforcement actions can include detention and seizure of suspect shipments. An entity or individual indicted for, or convicted of, violating the ITAR or other export control laws can lose security clearances, be suspended from participating in the export of defense articles, services and/or technical data, and may be subject to criminal fines and imprisonment.

Under the ITAR, it is unlawful:

To export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required by the ITAR without first obtaining the required license or written approval from the ODTC;

To import or attempt to import any defense article whenever a license is required by the ITAR without first obtaining the required license or written approval from the ODTC;

To conspire to export, import, reexport or cause to be exported, imported or reexported, any defense article or to furnish any defense service for which a license or written approval is required by the ITAR without first obtaining the required license or written approval from the ODTC;

To violate any of the terms or conditions of licenses or approvals granted pursuant to the ITAR;

To willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by The Arms Export Control Act or any regulation, license or approval issued thereunder;

To use false or misleading statements or omit a material fact on any export or import control document.

**II. Department of Commerce**

The Department of Commerce encourages the disclosure of any violation of the EAR. Voluntary Disclosure procedures can be found in Section 764.5 of the EAR. Self Disclosure to the Office of Export Enforcement ("**OEE**") prior to the time that OEE, or any other agency of the U.S. Government, has learned the same, or substantially similar information, is considered a mitigating factor in determining what administrative sanctions, if any, will be sought by the OEE. A voluntary disclosure, however, does not absolve a company from wrongdoing.

Violations of the EAR may result in criminal or civil prosecutions, the imposition of fines, forfeiture of the property (or any interest therein) or denial of export privileges.

The following actions violate the EAR:

Aiding, abetting, counseling, commanding, inducing, procuring or permitting the doing of any act prohibited, or the omission of any act required by the EAR or any license or authorization issued thereunder;

An attempt or conspiracy to violate or willfully evade compliance with the EAA or the EAR;

Possession of goods or technology with the intent to violate export restrictions or with the knowledge or reason to believe the goods will be exported illegally;

Misrepresenting or concealing facts to BIS or Customs;

Failure to report a violation;

Failure to comply with recordkeeping requirements.

**VOLUNTARY DISCLOSURES ON BEHALF OF THE UNIVERSITY MUST IN ALL INSTANCES BE AUTHORIZED AND COORDINATED BY THE PROVOST OFFICE OF EXPORT CONTROLS.**

Please refer questions about these requirements to The Provost Office of Export Controls.

**20.0 INTERNAL ASSESSMENTS**

The University is committed to ensuring that its efforts to comply with United States export and import laws and regulations are successful and effective throughout the University. Every compliance program must include an internal assessment function designed to objectively and independently review all aspects of the program. The University will conduct internal assessments as required.

**I. Types of Assessments**

The University will conduct the following types of assessments:

Policies and Procedures Assessment

A review of policies and procedures will be conducted to assess whether the University effectively maintains export policies and procedures. This review is designed to identify whether applicable legal obligations are addressed throughout the University.

Compliance Assessment

A review of select contracts, activities, practices and procedures will be conducted to assess whether the University is successfully implementing the policies and procedures of the compliance program. These reviews may be used as a precursor to investigating potential violations.

**II. Responsibilities for Internal Assessments**

Responsibility for assessments vests in the Provost Office of Export Controls. Any situation requiring investigation shall be handled by the Provost Office of Export Controls.

**III. Frequency of Internal Assessments**

Policies and procedures assessments and compliance assessments will be conducted on a periodic basis, and will consist of random and scheduled reviews.

The level of risk posed by particular activities, technologies, and compliance record may warrant more frequent reviews of that department’s export activities.

**IV. Corrective Actions and Training**

Findings and recommendations will be developed following each assessment and shared with appropriate personnel. In addition, training will be provided following each assessment which focuses on the findings and recommendations, as well as any identified weaknesses. The Provost Office of Export Controls will be responsible for developing and managing any necessary corrective actions to address the findings and recommendations of any assessment. If an assessment’s findings raise serious concerns about export compliance risks, a follow-up assessment or investigation may be conducted.

Please refer questions about these requirements to the Provost Office of Export Controls.

**21.0 DEFINITIONS**

The definitions provided herein are designed to give University personnel a general reference to use when confronted with export related issues. They are by no means exhaustive. University personnel are encouraged to refer directly to the ITAR for items controlled by the Department of State, to the EAR for items controlled by the Department of Commerce, and to the OFAC Regulations for transactions controlled by the Department of Treasury.

**I. Terms**

A. Department of State

Part 120 of the ITAR contains the majority of the definitions applicable to exports of defense articles and services. However, other sections of the ITAR also contain relevant definitions. Following are definitions that may be relevant to the University’s activities.

1. Accessories and attachments § 121.8(c)
2. Broker § 129.2
3. Brokering Activities §129.3
4. Build to Print § 124.13
5. Component § 121.8(b)
6. Defense Article § 120.6
7. Defense Service § 120.9
8. Empowered Official § 120.25
9. End‑Item § 121.8(a)
10. Export §120.17
11. Firmware § 121.8(e)
12. Foreign Person § 120.16
13. Major Defense Equipment § 120.8
14. Manufacturing License Agreement § 120.21
15. Part §121.8(d)
16. Person § 120.14
17. Public Domain (Including Fundamental Research) §120.11
18. Reexport and Retransfer § 120.19
19. Significant Military Equipment § 120.7
20. Software § 121.8(f)
21. System § 121.8(g)
22. Technical Assistance Agreement § 120.22
23. Technical Data § 120.10
24. U. S. Person § 120.15

B. Department of Commerce

Part 772 of the EAR contains the majority of the definitions applicable to dual-use exports. Definitions for all of the terms below are found at Part 772.1 of the EAR. Some, but by no means all, of the definitions relevant to the University’s activities follow.

1. Applicant
2. Category
3. Commerce Control List Group
4. Commodity
5. Countries Supporting International Terrorism
6. Country Chart
7. Country Groups
8. Designed or Modified
9. Development
10. Discrete Component
11. Dual Use
12. Encryption Component
13. Encryption Items
14. Encryption Licensing Arrangement
15. Encryption Object Code
16. Encryption Software
17. Encryption Source Code
18. End-User
19. Export
20. Export Control Classification Number ("ECCN")
21. Exporter
22. Firm
23. Foreign Government Agency
24. Fundamental Research
25. General Prohibitions
26. Intermediate Consignee
27. Item
28. Knowledge
29. License
30. Licensee
31. License Exception
32. Object Code -- or Object Language
33. Open Cryptographic Interface
34. Person
35. Production
36. Production Equipment
37. Publicly Available Information (Including Fundamental Research and Educational Information)
38. Publicly Available Technology and Software
39. Purchaser
40. Reasons for Control
41. Reexport
42. Required
43. Return Without Action ("RWA")
44. Robot
45. Schedule B Numbers
46. Software
47. Source Code -- or Source Language
48. Space Qualified
49. Specially Designed
50. Subject to the EAR
51. Technical Assistance
52. Technical Data
53. Technology
54. Transfer
55. Ultimate Consignee
56. United States
57. U.S. Person
58. Use

C. Department of Treasury

Part 500, Subpart C, contains the general definitions under the OFAC regulations. The general definitions of possible relevance to the University are set forth below. Each embargo regime, however, may contain unique definitions in addition to these general definitions.

1. Foreign Country
2. National
3. Nationals of More than One Country
4. Specially Designated National
5. Person
6. Transactions
7. Transfer
8. Property – Property Interests
9. Interest
10. Persons Subject to the Jurisdiction of the U.S.
11. Person within the U.S.

**II Definitions**

A. Department of State--ITAR

1. Accessories and attachments § 121.8(c)

Accessories and attachments are associated equipment for any component, end‑item or system, and which are not necessary for their operation, but which enhance their usefulness or effectiveness (*e.g.*, military riflescopes, special paints, etc.).

2. Broker § 129.2

Broker means any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or defense services in return for a fee, commission, or other consideration.

3. Brokering Activities § 129.3

Brokering Activities mean acting as a broker (as defined above), and include the financing, transportation, freight forwarding, or taking of a defense article or defense service, irrespective of its origin (including foreign defense articles or services).

4. Build to Print § 124.13

Build to Print means producing an end‑item (*e.g*., system, subsystem, component or part) from technical drawings and specifications (which contain no process or know‑how information) without the need for additional technical assistance.

Build to Print does not include any information which discloses design methodology, engineering analysis, detailed process information or manufacturing know‑how.

5. Component § 121.8(b)

A component is an item, which is useful only when used in conjunction with an end‑item. A major component includes any assembled element, which forms a portion of an end‑item without which the end-item is inoperable. (*e.g*., airframes, tail sections, transmissions, tank treads, hulls, etc.). A minor component includes any assembled element of a major component.

6. Defense Article § 120.6

Defense Article refers to any item or technical data designated in the USML (22 C.F.R. § 121.1). This term includes technical data recorded or stored in any physical form, models, mock‑ups or other items that reveal technical data directly relating to items designated in the USML. It does not include basic marketing information on function or purpose or general system descriptions.

7. Defense Service § 120.9

* The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; or
* The furnishing to foreign persons of any technical data controlled under the ITAR, whether in the United States or abroad.
* Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation training exercise, and military advice.

8. Empowered Official § 120.25

Empowered official means a U.S. person who:

a. Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and

b. Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and

c. Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and

d. Has the independent authority to:

• Inquire into any aspect of a proposed export or temporary import by the applicant, and

• Verify the legality of the transaction and the accuracy of the information to be submitted; and

• Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

9. End‑Item § 121.8(a)

An end‑item is an assembled article ready for its intended use. Only ammunition, fuel or another energy source is required to place it in an operating state.

10. Export § 120.17

• Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a 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 USML, whether in the United States or abroad; or

• Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (*e.g*., diplomatic missions); or

• Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad; or

• Performing a defense service on behalf of, or for the benefit of a foreign person, whether in the United States or abroad.

• A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes . . . the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.

11. Firmware § 121.8(e)

Firmware and any related unique support tools (such as computers, linkers, editors, test case generators, diagnostic checkers, library of functions and system test diagnostics) specifically designed for equipment or systems covered under any category of the USML are considered as part of the end‑item or component. Firmware includes but is not limited to circuits into which software has been programmed.

12. Foreign Person § 120.16

Foreign person means any natural person who is not a lawful permanent resident as defined by 8 U.S.C § 1101 (a)(20) or who is not a protected individual as defined by 8 U.S.C. § 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (*e.g*., diplomatic missions).

13. Major Defense Equipment § 120.8

Major defense equipment means any item of significant military equipment (as defined in 22 C.F.R. §120.7) on the USML having a nonrecurring research and development cost of more than $50,000,000 or a total production cost of more than $200,000,000.

14. Manufacturing License Agreement § 120.21

An agreement (*e.g.*, contract) whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:

• The export of technical data (as defined in 22 C.F.R. §120.10) or defense articles or the performance of a defense service; or

• The use by the foreign person of technical data or defense articles previously exported by the U.S. person.

15. Part § 121.8(d)

A part is any single unassembled element of a major or a minor component, accessory, or attachment which is not normally subject to disassembly without the destruction or the impairment of design use (*e.g*., rivets, wire, bolts, etc.).

16. Person § 120.14

Person means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision in the ITAR does not refer exclusively to a "foreign person" or a "U.S. person" then it refers to both.

17. Public Domain (Including Fundamental Research) § 120.11

Information which is published and which is generally accessible or available to the public:

a. Through sales at newsstands and bookstores;

b. Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;

c. Through second class mailing privileges granted by the United States Government;

d. At libraries open to the public or from which the public can obtain documents;

e. Through patents available at any patent office;

f. Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition generally accessible to the public, in the United States;

g. Through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant United States Government department or agency;

h. Through fundamental research in science and engineering at accredited institutions of higher learning in the United States where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific United States Government access and dissemination controls. University research will not be considered fundamental research if (i) the university or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or (ii) the research is funded by the United States Government and specific access and dissemination controls protecting information resulting from the research are applicable.

18. Reexport and Retransfer § 120.19

Reexport and retransfer means the transfer of defense articles or defense services to an end use, end user or destination not previously authorized.

19. Significant Military Equipment § 120.7

Significant military equipment means articles for which special export controls are warranted because of their capacity for substantial military utility or capability.

Significant military equipment includes:

• Items in the USML which are preceded by an asterisk; and

• All classified articles enumerated on the USML.

20. Software § 121.8(f)

Software includes, but is not limited to, the system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test operation, diagnosis and repair.

21. System § 121.8(g)

A system is a combination of end‑items, components, parts, accessories, attachments, firmware or software, specifically designed, modified or adapted to operate together to perform a specialized military function.

22. Technical Assistance Agreement § 120.22

An agreement (*e.g*., contract) for the performance of a defense services(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing know‑how are not conveyed. Should such rights be transferred, 22 C.F.R. § 120.21 (requiring a Manufacturing License Agreement) is applicable.

23. Technical Data § 120.10

Technical Data refers to information, other than software as defined in 22 C.F.R. § 120.10(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles.

This includes:

* information in the form of blueprints, drawings, photographs, plans, instructions and documentation.
* Classified information relating to defense articles and services.
* Information covered by an invention secrecy order.
* Software as defined in 22 C.F.R. § 121.8(f) directly related to defense articles.

This definition does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in § 120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

24. U.S. Person § 120.15

U.S. person means a person (as defined in 22 C.F.R. § 120.14) who is 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. It does not include any foreign person (as defined in 22 C.F.R. § 120.16 of the ITAR).

B. Department of Commerce--EAR

1. Applicant

Applicant means the person who applies for an export or reexport license, and who has the authority of a principal party in interest to determine and control the export or reexport of items.

2. Category

The CCL is divided into ten (10) categories: (0) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Chemicals, "Microorganisms," and Toxins; (2) Materials Processing; (3) Electronics Design, Development and Production; (4) Computers; (5) Telecommunications and Information Security; (6) Sensors; (7) Navigation and Avionics; (8) Marine; and (9) Propulsion Systems, Space Vehicles and Related Equipment.

3. Commerce Control List Group

The Commerce Control List Group is a list of items under the export control jurisdiction of the Bureau of Export Administration, United States Department of Commerce.

4. Commodity

Commodity refers to any article, material, or supply except technology and software. Note that the provisions of the EAR applicable to the control of software (*e.g.* publicly available provisions) are not applicable to encryption software. Encryption software is controlled because, like the items controlled under ECCN 5A002, it has a functional capacity to encrypt information on a computer system, and not because of any informational or theoretical value that such software may reflect, contain or represent, or that its export may convey to others abroad.

5. Countries Supporting International Terrorism

The Secretary of State has determined that the following countries' governments have repeatedly provided support for acts of international terrorism: Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria.

6. Country Chart

A chart, found in Supplement No. 1 to part 738 of the EAR, that contains certain licensing requirements based on destination and reason for control. In combination with the CCL, the Country Chart indicates when a license is required for any item on the CCL to any country in the world under General Prohibition One (Exports and Reexports in the Form Received), General Prohibition Two (Parts and Components Reexports), and General Prohibition Three (Foreign Produced Direct Product Reexports).

7. Country Groups

For export control purposes, foreign countries are separated into five country groups designated by the symbols A, B, C, D, and E. (*See* Supplement No. 1 to Part 740 of the EAR for a list of countries in each Country Group).

8. Designed or Modified

Equipment, parts, components, or "software" that, as a result of "development," or modification, have specified properties that make them fit for a particular application. "Designed or modified" equipment, parts, components or "software" can be used for other applications. Used in the Missile Technology Control Regime (MTCR) context.

9. Development

"Development" is related to all stages prior to serial production, such as: design, design research, design analysis, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design and layouts. (Relates to the General Technology Note)

10. Dual Use

Dual Use refers to items that have both commercial and military or proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also subject to the EAR (*See* § 734.2(a) of the EAR).

11. Encryption Component

Encryption Component refers to any encryption commodity or software (except source code), including encryption chips, integrated circuits, application specific encryption toolkits, or executable or linkable modules that alone are incapable of performing complete cryptographic functions, and is designed or intended for use in or the production of another encryption item.

12. Encryption Items

The phrase encryption items include all encryption commodities, software, and technology that contain encryption features and are subject to the EAR. This does not include encryption items specifically designed, developed, configured, adapted or modified for military applications (including command, control and intelligence applications) which are controlled by the Department of State on the USML.

13. Encryption Licensing Arrangement

Encryption Licensing Arrangement is a license that allows the export of specified products to specified destinations in unlimited quantities. In certain cases, exports are limited to specified end-users. Generally requires the exporter to meet certain reporting requirements.

14. Encryption Object Code

Encryption Object Codes are computer programs containing an encryption source code that has been compiled into a form of code that can be directly executed by a computer to perform an encryption function.

15. Encryption Software

Encryption Software refers to computer programs that provide capability of encryption functions or confidentiality of information or information systems. Such software includes source code, object code, applications software, or system software.

16. Encryption Source Code

Encryption Source Code is a precise set of operating instructions to a computer that, when compiled, allows for the execution of an encryption function on a computer.

17. End-User

End-User refers to the person abroad that receives and ultimately uses the exported or reexported items. The end‑user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.

18. Export

Export means an actual shipment or transmission of items out of the United States. (*See* § 734.2(b) of the EAR.)

19. Export Control Classification Number ("ECCN”)

Export Control Classification Number refers to the numbers used in Supplement No. 1 to part 774 of the EAR and throughout the EAR. The Export Control Classification Number consists of a set of digits and a letter. Refer to § 738.2(c) of the EAR for a complete description of each ECCN's composition.

20. Exporter

Exporter means the person in the United States who has the authority of a principal party in interest to determine and control the sending of items out of the United States. Note that the Foreign Trade Statistics Regulations (“**FTSR**”) have a different definition for the term "exporter." Under the FTSR, the "exporter" is the U.S. principal party in interest (*See* Foreign Trade Statistics Regulations, Title 15 part 30).

21. Firm

Firm means a corporation, partnership, limited partnership, association, company, trust, or any other kind of organization or body corporate, situated, residing, or doing business in the United States or any foreign country, including any government or agency thereof.

22. Foreign Government Agency

For the purposes of exemption from support documentation (*See* § 748.9 of the EAR), a foreign government agency is defined as follows: (a) National governmental departments operated by government‑paid personnel performing governmental administrative functions; *e.g.* Finance Ministry, Ministry of Defense, Ministry of Health, etc. (municipal or other local government entities must submit required support documentation); or (b) National government‑owned public service entities; *e.g.*, nationally owned railway, postal, telephone, telegraph, broadcasting, and power systems, etc. The term "foreign government agency" does not include government corporations, quasi‑government agencies, and state enterprises engaged in commercial, industrial, and manufacturing activities, such as petroleum refineries, mines, steel mills, retail stores, automobile manufacturing plants, airlines, or steamship lines that operate between two or more countries, etc.

23. Fundamental Research

Under Section 734.8 of the EAR, “Fundamental Research” is defined as basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research is distinguished from proprietary research and from industrial development, design, production and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons as defined in § 734.11(b). It does not include encryption software controlled under ECCN 5D002 for “EI” reasons on the Commerce Control List or to mass market encryption software with symmetric key length exceeding 64-bits controlled under ECCN 5D992.

*Fundamental Research at Universities.* Research conducted by scientists, engineers, or students at any accredited institution of higher learning in the U.S. normally will be considered fundamental research under the EAR. Prepublication review by a sponsor is permitted, provided it is (i) solely to insure that the publication will not inadvertently divulge proprietary information that the sponsor has furnished to researchers, or (ii) to ensure that the publication would not compromise patent rights as long as the review causes no more than a temporary delay. Research will be excluded from “fundamental research” if the university or its researchers accept other restrictions on the publication of scientific and technical information resulting from the research. However, such information will nonetheless qualify as fundamental research once such restrictions have expired or have been removed.

*Fundamental Research at Federal Agencies or FFRDC’s*. Research conducted by scientists or engineers working for a federal agency or Federally Funded Research and Development Center (FFRDC) may be designated as “fundamental research” within any appropriate system devised by the agency or the FFRDC to control the release of information by such scientists and engineers.

*Fundamental Research by Corporations*. Research conducted by scientists or engineers working for a business entity will be “fundamental research” at such time and to the extent that the researchers are free to make scientific and technical information resulting from the research publicly available without restriction or delay based on proprietary concerns or national security interests as defined in § 734.11(b). Prepublication review by the company is permitted for limited purposes relating to proprietary data and patent concerns, though it does not authorize the release of information to university researchers where the research results are subject to prepublication review.

24. General Prohibitions

The ten (10) prohibitions found in part 734 of the EAR that prohibit certain exports, reexports, and other conduct, subject to the EAR, absent a license, License Exception, or determination that no license is required ("**NLR**").

25. Intermediate Consignee

Intermediate Consignee means the person that acts as an agent for a principal party in interest for the purpose of effecting delivery of items to the ultimate consignee. The intermediate consignee may be a bank, forwarding agent, or other person who acts as an agent for a principal party in interest.

26. Item

Item means commodities, software, and technology.

27. Knowledge

Knowledge of a circumstance includes “reason to know” or “reason to believe.” Knowledge includes not only positive knowledge that a circumstance exists or is substantially certain to occur, but also an awareness of a high probability of its existence or future occurrence. Such awareness can be inferred from evidence of the conscious disregard of facts known to a person and a person’s willful avoidance of facts. This definition does not apply to EAR Part 760 (Restrictive Trade Practices or Boycotts).

28. License

License refers to the authority issued by the Bureau of Industry and Security authorizing an export, re-export, or other regulated activity. The term "license" does not include authority represented by a "License Exception."

29. Licensee

Licensee means the person to whom a license has been issued by the Bureau of Industry and Security.

30. License Exception

License Exception is an authorization described in Part 740 of the EAR that allows you to export or reexport, under stated conditions, items subject to the EAR that otherwise would require a license. Unless otherwise indicated, these License Exceptions are not applicable to exports under the licensing jurisdiction of agencies other than the Department of Commerce.

31. Object Code -- or Object Language

Object Code or Object Language refers to an equipment executable form of a convenient expression of one or more processes (source code or source language) that has been converted by a programming system. (*See also* "source code") (Applies to ECCN Category 4 items)

32. Open Cryptographic Interface

Open Cryptographic Interface refers to a mechanism which is designed to allow a customer or other party to insert cryptographic functionality without the intervention, help or assistance of the manufacturer or its agents, *e.g*., manufacturer's signing of cryptographic code or proprietary interfaces. If the cryptographic algorithms, key lengths or key exchange management systems, that cannot be changed, it will not be considered an "open" cryptographic interface. All general application programming interfaces (*e.g*., those that accept either a cryptographic or non-cryptographic interface but do not themselves maintain any cryptographic functionality) will not be considered "open" cryptographic interfaces.

33. Person

Person means a natural person, including a citizen or national of the United States or of any foreign country; any firm; any government, government agency, government department, or government commission; any labor union; and fraternal or social organization; and any other association or organization whether or not organized for profit. This definition does not apply to Part 760 of the EAR (Restrictive Trade Practices or Boycotts).

34. Production

Production means all production stages such as product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance. (Applies to General Technology Note, ECCN Categories 1 and 7)

35. Production Equipment

Production Equipment means tooling, templates, jigs, mandrels, moulds, dies, fixtures, alignment mechanisms, test equipment, other machinery and components therefor, limited to those specially designed or modified for "development" or for one or more phases of "production." (Applies in MTCR context)

36. Publicly Available Information (Including Fundamental Research and Educational Information)

Publicly Available Information refers to information that is generally accessible to the interested public in any form and, therefore, not subject to the EAR. (*See* Part 732 of the EAR) Publicly available information includes fundamental research, as defined in EAR Part 734.8, and educational information, as defined in EAR Part 734.9.

37. Publicly Available Technology and Software

Publicly Available Technology and Software refers to technology and software that are already published or will be published; arise during, or result from fundamental research; are educational; or are included in certain patent applications. (*See* § 734.3(b)(3) of the EAR).

38. Purchaser

Purchaser means the person abroad who has entered into a transaction to purchase an item for delivery to the ultimate consignee. In most cases, the purchaser is not a bank, forwarding agent, or intermediary. The purchaser and ultimate consignee may be the same entity.

39. Reasons for Control

The reasons for control are: Anti-Terrorism (AT); Chemical and Biological Weapons (CB); Crime Control (CC); High Performance Computer (XP); Missile Technology (MT); National Security (NS); Nuclear Nonproliferation (NP); Regional Stability (RS); Short Supply (SS); and United Nations Sanctions (UN). Items controlled within a particular ECCN may be controlled for more than one reason.

40. Reexport

Reexport means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country. For purposes of the EAR, the export or reexport of items subject to the EAR that will transit through a country or countries, or be transshipped in a country or countries to a new country, or are intended for reexport to the new country, are deemed to be exports to the new country. (*See* § 734.2(b) of the EAR.) In addition, for purposes of satellites controlled by the Department of Commerce, the term reexport also includes the transfer of registration of a satellite or operational control over a satellite from a party resident in one country to a party resident in another country.

41. Required

As applied to technology or software, refers to only that portion of technology or software which is peculiarly responsible for achieving or extending the controlled performance levels, characteristics or functions. Such required technology or software may be shared by different products.

42. Return Without Action ("**RWA**")

An application may be RWA'd for one of the following reasons: (a) the applicant has requested the application be returned; (b) a License Exception applies; (c) the items are not under Department of Commerce jurisdiction; (d) required documentation has not been submitted with the application; or (e) the applicant cannot be reached after several attempts to request additional information necessary for processing of the application.

43. Robot

Robot means a manipulation mechanism which may be of the continuous path or of the point-to-point variety, may use “sensors”, and has all the characteristics specified in ECCN Categories 2 and 8.

44. Schedule B Numbers

Schedule B Numbers refer to the commodity numbers appearing in the current edition of the Bureau of Census publication, Schedule B Statistical Classification of Domestic and Foreign Commodities Exported from the United States.

45. Software

Software means a collection of one or more programs or microprograms fixed in any tangible medium of expression.

46. Source Code – or Source Language

Source Code or Source Language refers to a convenient expression of one or more processes that may be turned by a programming system into equipment executable form (object code or object language).

47. Space Qualified

Products designed, manufactured, and tested to meet the special electrical, mechanical or environmental requirements for use in the launch and deployment of satellites or high-altitude flight systems operating at altitudes of 100 Km or higher.

48. Specially Designed

Equipment, parts, components or software that, as a result of development, have unique properties that distinguish them for certain predetermined purposes. For example, a piece of equipment that is specially designed for use in a missile will only be considered so if it has no other function or use. Similarly, a piece of manufacturing equipment that is specially designed to produce a certain type of component will only be considered such if it is not capable of producing other types of components. (Applies to a MTCR context)

49. Subject to the EAR

A term used in the EAR to describe those commodities, software, technology, and activities over which the Bureau of Export Administration exercises regulatory jurisdiction under the EAR. (*See* § 734.2(a) of the EAR).

50. Technical Assistance

May take forms such as instruction, skills training, working knowledge, consulting services. Technical assistance may involve transfer of technical data.

51. Technical Data

May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

52. Technology

Technology means specific information necessary for the development, production, or use of a product. The information takes the form of technical data or technical assistance. Controlled technology is defined in the General Technology Note and in the CCL. (*See* Supplement No. 1 to Part 774 of the EAR).

53. Transfer

A transfer to any person of items subject to the EAR either within the United States or outside of the United States with the knowledge or intent that the items will be shipped, transferred, or transmitted to an unauthorized recipient.

54. Ultimate Consignee

Ultimate Consignee refers to the principal party in interest located abroad who receives the exported or reexported items. The ultimate consignee is not a forwarding agent or other intermediary, but may be the end‑user.

55. United States

Unless otherwise stated, the 50 States, including offshore areas within their jurisdiction pursuant to section 3 of the Submerged Lands Act (43 U.S.C. 1311), the District of Columbia, Puerto Rico, and all territories, dependencies, and possessions of the United States, including foreign trade zones established pursuant to 19 U.S.C. 81A‑81U, and also including the outer continental shelf, as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)).

56. U.S. Person

For purposes of § 744.6, 744.10 and 744.11 of the EAR, the term U.S. person includes:

a. Any individual who is a citizen of the United States, a permanent resident alien of the United States, or a protected individual as defined by 8 U.S.C. § 1324b(a)(3);

b. Any juridical person organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; and

c. Any person in the United States. *See* also Parts 740.9 and 740.14 and Parts 746 and 760 of the EAR for definitions of U.S. Person that are specific to those parts.

57. Use

Use refers to the operation, installation (including on‑site installation), maintenance (checking), repair, overhaul and refurbishing.

C. Department of Treasury--OFAC

Foreign Country

Foreign country includes the state and government of any such territory, as well as any political subdivision, agency, instrumentality, or other entity having or claiming control, authority, jurisdiction or sovereignty over the territory, or any person acting or purporting to act directly or indirectly for the benefit or on behalf of the foregoing.

National

The term “national” includes a subject or citizen of a country or any person domiciled in or a permanent resident of a country (except persons resident or domiciled there in the service of the U.S.); any partnership, association corporation or other organization organized under the laws of, or having its principal place of business in, a country, or which is owned or controlled directly or indirectly by the government of a country; and, any person acting or purporting to act directly or indirectly for the benefit or on behalf of a national of a country.

Nationals of more than one Foreign Country

Any person who is a national of more than one foreign country shall be deemed to be a national of each of such foreign countries.

Specially Designated National

A specially designated national means a person determined by the Secretary of Treasury to be a specially designated national, any person acting for or on behalf of a designated foreign country; and any partnership, association, corporation or other organization owned or controlled directly or indirectly by the Government of a designated foreign country or of a designated foreign national.

Person

A person means an individual, partnership, association, corporation, or other organization.

Transactions

Transactions means any payment or transfer to any designated foreign country or national, the export or withdrawal from the U.S. to such designated foreign country, and any transfer of credit or payment of an obligation in the currency of such designated foreign country.

Transfer

Transfer means any actual or purported act or transaction, whether or not in writing and whether or not performed within the U.S., which has the purpose, intent or effect of creating, surrendering, releasing, transferring, or altering rights or possession of property.

Property

Property means any real, personal, tangible or intangible property, or interest or interests therein, whether present, future, or contingent.

Interest

The term “interest” when used with respect to property means an interest of any nature whatsoever, direct or indirect.

Person Subject to the Jurisdiction of the U.S.

A person subject to the jurisdiction of the U.S. includes any individual, wherever located, who is a citizen or resident of the U.S.; any person within the U.S.; any corporation organized under the laws of the U.S. or of any state, territory, possession, or district of the U.S.; and any corporation, partnership, or association, wherever organized or doing business, that is owned or controlled by the aforementioned persons.

Person Within the U.S.

A person within the U.S. includes any person, wherever located, who is a resident of the U.S.; any person actually within the U.S.; any corporation organized under the laws of the U.S. or of any state, territory, possession, or district of the U.S.; and any partnership, association, corporation, or other organization, wherever organized or doing business, which is owned or controlled by any of the aforementioned persons.

Please refer questions regarding these definitions to the Export Compliance Officer or the Provost Office of Export Controls.

**International Traffic In Arms Regulations**

Under the Arms Export Control Act ("**AECA**"), 22 U.S.C. § 2778(1994), the United States Department of State, Directorate of Defense Trade Controls (“**DDTC**”), implements the International Traffic In Arms Regulations ("**ITAR**"), 22 C.F.R. §§ 120-130, which control the export of defense articles and services from the United States to foreign destinations and persons.

**I. Defense Articles and Services**

***Defense Articles*.** A “**defense article**” is defined as “any item or technical data designated in § 121.1 of this subchapter [ITAR].” ITAR § 120.6. Section 121.1 is the United States Munitions List (“**USML**”) and includes the commodities, related technical data and defense services controlled for export purposes. A copy of the USML is appended to this manual as Appendix B. The ITAR control, for example, military equipment. To the extent University personnel develop or transfer technologies related to these types of equipment, or other equipment on the USML, those activities are subject to the ITAR.

***Defense Services.*** As noted, the ITAR control not only the export of defense articles, but also defense services and technical data directly related to articles enumerated in the USML. “**Defense services**” are defined as “[t]he furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles,” or “the furnishing to foreign persons of any technical data controlled under this subchapter . . . whether in the United States or abroad.” ITAR § 120.9.

***Technical Data.*** “**Technical data**” is similarly broadly defined and includes:

“(1) Information, other than software. . . which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles . . . [including] blueprints, drawings, photographs, plans, instructions and documentation.

(2) Classified information relating to defense articles and defense services.

(3) Information covered by an invention secrecy order.

(4) Software. . .directly related to defense articles.”

***Exclusions: Information Taught By Educational Institutions Or In Public Domain***. Excluded from control under the ITAR is information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities, and general system descriptions of defense items. Similarly, **“public domain”** information (information published and generally accessible or available to the public) is not controlled technical data under the ITAR. Information is considered in the public domain when it is generally accessible or available to the public through (a) sales at newsstands and bookstores, subscriptions available without restriction, distribution at conferences open to the public, any patent office, and libraries accessible by the public; (b) public release or unlimited distribution, following approval of a sponsoring U.S. Government agency or department; or (c) fundamental research. ITAR § 120.10 and 120.11.

**II. Fundamental Research**

***Fundamental Research Defined***. Fundamental research refers to basic and applied research in science and engineering at accredited institutions of higher learning in the U.S. (which would exclude any research performed by University personnel outside of the U.S.), ***but only*** where the resulting information is ordinarily published and shared broadly in the scientific community. ITAR § 120.11(8). Fundamental research is considered to be in the public domain and exempt from ITAR export controls.

***Exclusions.*** The fundamental research exemption under the ITAR ***does not include*** research the results of which are subject to any restrictions placed on access or dissemination, whether as a result of proprietary rights restrictions or specific U.S. government controls. Access or dissemination restrictions may deprive information of fundamental research status under the ITAR which would otherwise be eligible for that status if controlled under the Commerce Department’s Export Administration Regulations.

Information released to the University by a third party, such as a government or commercial sponsor, ***is not*** within the fundamental research exemption because it does not arise during or as the result of fundamental research. Unless exempt from controls for some other reason, third party information related to a defense article is ITAR-controlled information. If released to a foreign person within or acting for the University, both the sponsor and the University are at risk of violating ITAR prohibitions against unauthorized exports, unless the dissemination to the University personnel falls within the *bona fide employee* exception discussed in Section III below.

Even where technical data is protected by the ITAR fundamental research exemption, that exemption does not cover related technical assistance or services provided to a foreign person. The exemption protects only the act of furnishing the technical data to that person. A license must be obtained from DDTC before rendering any assistance or service related to the fundamental research provided to a foreign person.

**III. Foreign National Employees of the University**

The ITAR permit the release of controlled technical data or provision of technical services to foreign nationals who are “regular” and “bona fide” employees of the University if the employee’s “permanent abode” is in the U.S. during the period of employment, the University informs the employee in writing that the information may not be transferred to other foreign persons without DDTC’s prior written approval, the employee is not a national of an embargoed country, and the information is not classified.

**IV. ITAR Requirements**

The ITAR require exporters to comply with registration, licensing, recordkeeping, and reporting provisions of this U.S. export control regime. DDTC is vested with broad discretion to determine, under subjective standards, whether ITAR compliance requirements are satisfied.

Any exporter subject to the ITAR must register and obtain license approval for the export of articles, technology, technical data, or technical services controlled on the USML prior to shipment or transfer. DDTC will issue a license, with any limitations appended (“**provisos**”), valid for a specified period of time (*e.g.*, 24 months, 48 months). An exporter must maintain export records for a minimum of five years in a manner readily accessible to the U.S. Government for review.

The Department of State and the Department of Justice view compliance with U.S. export control laws seriously. Violations of the ITAR – as well as EAR, antiboycott, and embargoed countries/persons prohibitions described later in this manual – may result in the imposition of criminal or civil penalties, in addition to the suspension or denial of exporting privileges. Recent cases indicate that the conviction rate under these laws and regulations remains high, and that judges comply strictly with the Federal Sentencing Guidelines in imposing sentences against individuals and entities convicted of violations.

Please refer questions about these requirements to the Provost Office of Export Controls.

**Export Administration Regulations**

The Export Administration Regulations ("**EAR**"), 15 C.F.R. §§ 730-774, promulgated under the authority of the Export Administration Act ("**EAA**"), 50 U.S.C. App. §§ 2401-2420, control the export of commodities which have both military and commercial applications (*i.e.* dual-use items) and strictly commercial items.[[1]](#footnote-1) The Department of Commerce administers the EAR through the Bureau of Industry and Security ("**BIS**").

**I. Reasons for Control**

The EAR subject controlled commodities identified in the Commerce Control List ("**CCL**") to licensing requirements and proscribe other conduct related to export activities. A copy of the CCL is appended to this manual as Appendix C. Reasons for control are:

A. National Security

To restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or countries and which would prove detrimental to the national security of the United States.

B. Foreign Policy and Nonproliferation

To restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill it’s declared international obligations.

**Note:** Under this policy, controls are implemented for nuclear, chemical and biological weapons and missile proliferation. For this reason, foreign policy concerns have been increasingly important in recent years.

C. Short Supply

To restrict the export of goods where necessary to protect the domestic economy from excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

**II. ECCNs**

The CCL is divided into Export Classification Numbers ("**ECCNs**") which are a five-character code. There are ten (10) industry category groups on the CCL: (0) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Chemicals, "Microorganisms," and Toxins; (2) Materials Processing; (3) Electronics Design, Development and Production; (4) Computers; (5) Telecommunications and Information Security; (6) Sensors; (7) Navigation and Avionics; (8) Marine; and, (9) Propulsion Systems, Space Vehicles, and Related Equipment.

**III. Subject to the EAR**

The threshold duty of an exporter under the EAR is to determine whether an article or technology, or technical data is “subject to the EAR.” The term "subject to the EAR" means those commodities, software, technology, and activities over which BIS exercises regulatory jurisdiction under the EAR. Items not on the CCL may also be "subject to the EAR."

Certain items and technologies are not “subject to the EAR”, and these are set forth in Part 734 of the EAR. Most importantly for the University, EAR controls do not apply to publicly available software and technology that (a) have been or will be published; (b) arise from fundamental research; (c) are educational; or (d) are included in certain patent applications.

**IV. Fundamental Research**

***Definition.*** Like the ITAR, the EAR do not impose export controls on fundamental research, which means basic and applied research in science and engineering conducted by scientist, engineers, or students at a university, where the resulting information is ordinarily published and shared broadly within the scientific community.

***Exclusions***. However, the fundamental research exemption does not apply to research the results of which are (a) subject to publication restrictions imposed by a sponsor, (b) subject to substantial prepublication review by a sponsor, or (c) subject to the sponsor withholding results from publication. Likewise, research resulting from U.S. Government-sponsored projects which are subject to specific national security controls are not considered fundamental and are subject to EAR controls. EAR §§ 734.8 – 11.

Similar to the ITAR fundamental research exemption, information released to the University by a third party, such as a government or commercial sponsor, ***is not*** within the EAR fundamental research exemption because it does not arise during or as the result of fundamental research.

Moreover, the fundamental research exemption under the EAR, like the ITAR, ***does not include*** research the results of which are subject to any restrictions placed on access or dissemination, whether as a result of proprietary rights restrictions or specific U.S. government controls. However, unlike the ITAR, the EAR fundamental research exemption allows prepublication review by sponsors solely to insure that proprietary information is not inadvertently divulged and to ensure that publication does not compromise patent rights so long as the review causes only a temporary delay in publication.

**V. The General Prohibitions**

Items on the CCL require export licenses unless license exceptions apply. License exceptions are pre-approved authorizations to export based on established criteria, all of which must be satisfied to use the exception. If the commodity or technology is subject to the EAR, an exporter must establish whether any of the Ten (10) General Prohibitions apply to the export. These prohibitions require exporters to obtain a license unless the regulations state that a license exception overrides the license requirements. If one or more of the prohibitions applies, and no license exceptions may be used, then the exporter must seek a license from the Commerce Department. Only four of the General Prohibitions currently may be overcome by license exceptions.

Prohibitions One (1) through Three (3) relate to product controls and can be used to exempt controlled products from the export license requirements:

Prohibition One: Exports and Reexports

Prohibition Two: Parts and Components Reexports

Prohibition Three: Foreign-Produced Direct Product Reexports

General Prohibitions Four (4) through Ten (10) relate to activities that are prohibited without the express written permission of the BIS. Except for Prohibition Eight, these controls are ***not*** subject to license exceptions and therefore, require export licenses in ***all*** circumstances:

Prohibition Four: Denial Orders

Prohibition Five: End-Use/End-User

Prohibition Six: Embargo

Prohibition Seven: U.S. Person Proliferation Activity

Prohibition Eight: Intransit

Prohibition Nine: Orders, Terms and Conditions

Prohibition Ten: Knowledge Violation [is] to Occur

To the extent the University transfers items on the CCL, those activities are subject to licensing and other requirements identified in Prohibitions 1-3.

Every U.S. Person, including the University, is subject to the EAR restrictions identified at Prohibitions 4-10. These Prohibitions are general in nature and are not limited to exports of items on the CCL. They prohibit, for example, *all* exports under a denial order (Prohibition 4), those destined for embargoed destinations (Prohibition 6), and exports that support certain proliferation activities (Prohibition 7).

**A. General Prohibition One: Exports and Reexports**

This Prohibition provides that you may not, without a license or license exception, export any item subject to the EAR to another country or reexport any item of United States origin if each of the following is true:

1. The item is controlled for a reason indicated in the applicable ECCN; *and*

2. Export to the destination requires a license for the control reason as indicated on the Country Chart.

How to Apply Prohibition One

* In assessing your transaction under this Prohibition, classify your commodity/technology on the Commerce Control List (“CCL”). If you are not personally familiar with the technology, request the assistance of someone currently familiar with the technology and its uses.

Record the results of the classification analysis review in a written document and retain it in your files. If you do not personally make the classification, ask the person who did to write the document for the files. It is very important to keep a record that explains your thinking when you classified the item/technology.

Does the ECCN entry show a license requirement? If yes, look up your destination country on the EAR's Country Chart (Part 738) and see if a license is required for ***each*** Reason for Control listed (an “X” will appear in the column under the Reason for Control).

Record whether a license is required and any license exceptions that may apply and continue your review of the other Prohibitions.

**B. General Prohibition Two: Parts and Components Reexports**

This Prohibition provides that you may not, without a license or license exception, export, reexport or export from abroad, any foreign-made commodity, software, or technology incorporating U.S. - origin commodities, software or technology respectively that is controlled to the country of ultimate destination if the foreign-made item *meets all three* of the following conditions:

1. It incorporates more than a *de minimis* amount of controlled U.S. content (refer to §734.4 of the EAR to determine *de minimis* content); *and*

2. It is controlled for a reason indicated in the applicable ECCN; *and*

3. It’s export to the ultimate destination requires a license for that control reason, as indicated on the Country Chart.

How to Apply Prohibition Two

In assessing your transaction under this Prohibition, determine if your item is foreign-made. Review the EAR to determine the appropriate standard for determining “foreign made.” If your item is not “foreign made,” record this result for your files and continue with your examination of the other Prohibitions.

Is your item a foreign made computer exceeding 20,000 MTOPS? If yes, does it contain U.S. - origin controlled semiconductors (other than memory circuits) that are classified under ECCN 3A001 or high speed interconnect devices (ECCN 4A003.g)? If you are not sure, request the assistance of an engineer or other technically qualified employee who is currently familiar with the item and technology. Document the results of the review in written form and retain it in your files. If you do not personally make the classification, ask the person who did to write the document for your files. You should already have determined the ECCN of the item itself in your consideration of Prohibition One.

If yes, is it destined for any countries described in Computer Tier 3 and 4 countries in Part 742.12 of the EAR.

Is your item a foreign-made item that includes U.S. - origin components? If yes, then you must determine if the U.S. - origin content is more than *de minimis*, or, in other words, a small enough part of the whole that its export/reexport may not be prohibited by this Prohibition. The procedure for calculating the value of the U.S.-origin parts for this purpose is found at Supplement 2 of Part 734 of the EAR.

Keep a record of your calculations for your file. If this calculation shows that the U.S. - origin content is *de minimis*, then this Prohibition does not apply. Make a record of this result and continue your consideration of the other Prohibitions.

If the U.S. - origin content is more than *de minimis*, then look at the ECCN of the item you wish to export/reexport.

* Does the ECCN entry show a license requirement? If so, look up your destination country on the Country Chart and see if a license is required for each Reason for Control listed (an “X” will appear in the column under the Reason for Control).
* Record whether a license is required and any possible license exceptions. Continue your review of the other Prohibitions.

**C. General Prohibition Three: Foreign-Produced Direct Product Reexports**

This Prohibition provides that you may not export, reexport, or export from abroad foreign-made items subject to the scope of this General Prohibition to Cuba, Libya, or any country in Country Group D:1 (*See* Supplement No. 1 to Part 740 of the EAR). Foreign-made items are subject to this prohibition if they meet *either of the following conditions*:

1. Direct Product of Technology. Foreign-made items are subject to this prohibition if they meet both of the following criteria:

#### They are the direct product of technology/software that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR (Technology and Software under Restriction—EAR 740.6); and

#### They are subject to national security controls as designated on the applicable ECCN.

2. Direct Product of a Plant. Foreign-made items are subject to this prohibition if they are the direct product of a complete plant or any major component of a plant if both of the following criteria are present:

#### The plant or component is the direct product of technology that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR; *and*

#### The foreign-made products of the plant or component are subject to national security controls as designated on the applicable ECCN.

How To Apply Prohibition Three

* In assessing your transaction under this Prohibition, determine if your item is foreign-produced. If not, then record this result and continue your consideration of the rest of the other Prohibitions.
* Is your foreign-made item the direct product of technology or software that requires a written assurance as a supporting document for a license or as a precondition for use of License Exception TSR?
* Look up your item on the CCL. Does the ECCN for the item show that it is controlled for national security reasons? If the answer to this and the preceding question is “yes,” then this prohibition applies. Record this result and continue with your consideration of the other Prohibitions.
* Is your foreign-made item the direct product of a complete plant or major component of a plant?
* If not, then record this result and continue your consideration of the remaining prohibitions.
* If yes, is the plant or component the direct product of technology that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR?
* Look up your item on the CCL. Does the ECCN for the item show that it is controlled for national security reasons?

If the answer to both of these preceding questions is yes, then this prohibition applies and you will be prohibited from transmitting the foreign-produced item to Cuba, or any country listed in Country Group D:1 (*See* Supplement No. 1 to Part 740 of the EAR), unless a license is obtained (unlikely for Cuba under current U.S. government policy).

* Record this result and continue with your consideration of the prohibitions.

**D. General Prohibition Four: Denial Orders**

This Prohibition provides that you may not take any action that is prohibited by a denial order issued under Part 766 of the EAR (Administrative Enforcement Proceedings).

1. These orders prohibit many actions in addition to direct exports by the person denied export privileges, including some transfers within a single country either in the United States or abroad by other persons.

2. You are responsible for ensuring that none of your transactions in which a person who is subject to a denial order involved violates the terms of the order.

3. Names of persons denied export privileges are published in the Federal Register and are also included on the Denied Persons List, located in Supplement 2 of Part 734 of the EAR.

4. There are ***no*** license exceptions that authorize conduct prohibited by this Prohibition.

How To Apply Prohibition Four

The terms of this Prohibition mean that it is *your* responsibility to ensure that you do not involve any party in your activity who has been denied privileges by the Department of Commerce or other government agency. The names of those persons denied privileges are published in the Federal Register as each denial occurs. Additionally, the Denied Persons List—a complete list of all denied persons—is available on line at http://www.bis.doc.gov/. While the Denied Persons List will provide a summary of the terms of the order, you must check the actual order to determine precisely what, *if any*, involvement the named person may have in your activity.

Check each person, company or entity involved in your activity against the denied persons list.

If the name appears, check the actual order and determine if its terms allow this party to be involved in your proposed activity, and how. Consult with University Counsel or the Export Compliance Officer when reviewing the order.

Record this result and continue your consideration of the other Prohibitions.

**E. General Prohibition Five: End-Use/End-User**

This Prohibition provides that you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by Part 744 of the EAR.

Part 744 of the EAR places restrictions on: certain nuclear end-uses, certain missile, chemical and biological weapons, and maritime nuclear propulsion end uses. The Part also restricts certain activities by U.S. persons and certain exports to and for the use of certain foreign vessels or aircraft.

How To Apply Prohibition Five

Regardless of any other Prohibitions that may or may not apply, if your end-user is prohibited or the end-use of the item is against the nonproliferation policies of the United States, you may not complete your activity. Therefore, you must review each end-use and end-user prohibition and determine if they are applicable to your activity.

Review the BIS’s “Know Your Customer” Guidance and Red Flags, which are found at Supplement 2 to Part 732 of the EAR and which are discussed in the “SCREENING” Section of this manual.

If this Prohibition applies, record this result and continue your review of the other Prohibitions.

**F. General Prohibition Six: Embargo**

This Prohibition provides that you may not, without a license or license exception authorized under Part 746 of the EAR, export or reexport any item subject to the EAR to a country that is embargoed by the United States or otherwise made subject to controls, as described in Part 746.

Part 746 of the EAR addresses Embargoes and Other Special Controls. The two categories of controls in Part 746 are Comprehensive Controls and Controls Related to Rwanda, and UNITA (Angola).

1. Comprehensive controls: Countries subject to general embargoes are currently **Cuba, Iran, and Sudan**.

***All*** the items on the CCL require a license to **Cuba**. Most other items subject to the EAR, but not on the CCL, (EAR99) also require licenses to these countries.

Comprehensive embargoes to **Cuba, Iran, and Sudan** are administered by the Department of Treasury’s Office of Foreign Assets Control. Licenses or other authorizations may also be required from Treasury in addition to any Commerce Department authorization.

2. Controls related to Rwanda, and UNITA (Angola): This section includes controls that are in addition to those shown on the Country Chart.

How to Apply Prohibition Six

* Because these controls extend to virtually all exports, they do not appear in the Country Chart or on the CCL.
* If your destination is Cuba or Libya, you will almost definitely need a license and you will probably be denied.
* If your destination is Cuba, Libya, Iran, or UNITA (Angola), consult the Provost Office of Export Controls.
* If Prohibition Six applies, record this result and continue your consideration of the other Prohibitions.

**G. General Prohibition Seven: U.S. Person Proliferation Activity**

This Prohibition provides that if you are a United States Person, you may not, without a license, engage in certain financing, contracting, service, support, transportation, freight forwarding or employment that you know will assist in certain proliferation activities described in Part 744 of the EAR.

Sections 744.6(a) and (b) of the EAR prohibit you from exporting, reexporting, or transferring without a license any item where you know that the item:

1. Will be used in the design, development, production or use of nuclear explosive devises in or by a country listed in Country Group D:4. (*See* Supplement No. 1 to Part 740 of the EAR).

2. Will be used in the design, development, production, or use of missiles in or by a country in Country Group D: (*See* Supplement No. 1 to Part 740 of the EAR).

3. Will be used in the design, development, production, stockpiling or use of chemical or biological weapons in or by a country in Country Group D:3 (*See* Supplement No. 1 to Part 740 of the EAR).

How to Apply Prohibition Seven

Do you have *any* reason to believe that the item you wish to transmit will be used in any of the above three activities? This prohibition is not limited to items listed on the CCL or those that are designated as EAR99. If yes, you must apply for a license.

* You must also apply for a license if you wish to support such a transaction, which includes financing, transportation, and freight forwarding (*i.e.,* facilitating the export, reexport, or transfer without being the actual exporter/reexporter).
* You are also prohibited from a variety of activities *that do not relate to exports*:
* You may not perform any contract, service or employment that you know will directly assist in the design, development, production or use of missiles in or by a country listed in Country Group D:4;
* You may not perform any contract, service or employment that you know will directly assist in the design, development, production, stockpiling or use of chemical or biological weapons in or by a country in Country Group D:3; and
* You may not, without a license, participate in the design, construction, export, or reexport of a whole plant to make chemical weapons precursors identified in ECCN 1C350, in countries other than those listed in Country Group A:3).
* You may also be informed by BIS, either personally or by amendment of the EAR, that a license is required because an activity could involve the types of participation and support described above anywhere in the world. If you are “informed” that a license is needed, you may not proceed with your transaction without obtaining appropriate licenses from Commerce. Even if applied for, it is likely that the license request will be denied.
* If this Prohibition applies, record this result and continue your consideration of the other Prohibitions.

**H. General Prohibition Eight: Intransit**

This Prohibition provides that you may not export an item through or transit through the following countries unless a license exception or license authorizes an export directly to such a country:

Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Cambodia, Cuba, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Laos, Latvia, Lithuania, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam.

How to Apply Prohibition Eight

* When assessing your transaction against this Prohibition, determine the route your shipment will take to its ultimate destination.
* If it is scheduled to pass through any of the above countries you must either (1) reroute it or (2) determine if a license would be needed if you were exporting your item/data to the intermediate country, and if a license exception would apply.

If you would require a license to send the item to an end-user in the intermediate country, you must obtain the license before you ship.

If this Prohibition applies and you do not elect to have the shipment re-routed, you must repeat the analysis of your item under all 10 Prohibitions using the intermediate country as the end destination.

Record whether this Prohibition applies and what decision you have made.

If you do not re-route, recommence the analysis after you have finished your consideration of the rest of the Prohibitions.

Keep a record of what the subsequent analysis reveals for your files.

**I. General Prohibition Nine: Orders, Terms and Conditions**

This Prohibition provides that you may not violate terms or conditions of a license or of a license exception issued under or made a part of the EAR. You also may not violate any order issued under or made part of the EAR.

How to Apply Prohibition Nine

* This Prohibition is self-explanatory. When you operate under a license, you are obligated to operate under ***all*** of its terms. When you use a license exception to obviate the need to apply for a license, you must qualify under ***all*** terms of the exception and you may not violate any of its conditions. You also may not violate any terms of any order.

**J. General Prohibition Ten: Knowledge Violation to Occur**

This Prohibition provides that you may not:

1. Sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transfer, transport, forward or otherwise service, in whole or in part, any item subject to the EAR, exported or to be exported, with knowledge that a violation of the EAA, EAR or any order, any license, license exception, or other authorization issued thereunder, has occurred, is about to occur, or is intended to occur in connection with the item.

You may not rely on any license or license exception after notice to you of the suspension or revocation of that license or exception.

How to Apply Prohibition Ten

This Prohibition is also self-explanatory. You may not “blind” yourself to the reality that a violation is to occur. If you have *any* reason to know that a violation is to occur, you must not become involved in any aspect of the transaction. You also may not rely on a license or license exception after you have been notified that the license or the Exception is no longer available for use.

**VI.** **License Exceptions**

Part 740 of the EAR sets forth various license exceptions, which authorize exports or reexports under specific conditions when the item or technology would otherwise require a license under General Prohibitions One, Two, Three, or Eight as indicated under the applicable ECCNs in the CCL. The University’s Provost Office of Export Controls and/or Provost Office of Export Controls can assist you in determining whether you may use any of the license exceptions.

**VII. The Antiboycott Regulations**

**A. Commerce Department**

The EAR (Part 760) also prohibit participation in boycotts or restrictive trade practices that are not supported by the United States. The regulations impose reporting requirements on entities who receive any requests by third parties to participate in such activities. Reports must be filed with BIS detailing the request received. Details must include the nature of the request, the entity or person requesting participation in boycotting activities, the type of documents in which the request was received, and the response, if any, provided by the company receiving the request. U.S. entities or persons subject to the jurisdiction of the United States may not actively or passively respond to any request to participate in boycotting activities. The regulations also require companies to maintain records related to antiboycott activities for a period of five (5) years. Violations of the antiboycott regulations are punishable by substantial civil penalties.

The antiboycott regulations identify specific actions which U.S. entities subject to U.S. jurisdiction may not pursue. No licenses may be obtained to participate in any of the prohibited activities. The regulations specifically prohibit:

1. Agreements to refuse or actual refusals to do business with or in a boycotted or blacklisted country or with nationals or residents of a boycotted country;

2. Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin or nationality;

3. Agreements to furnish or actually furnishing information about business relationships with or in boycotted countries or blacklisted companies;

4. Agreements to furnish or actually furnishing information about the race, religion, sex, or national origin of another person (when such activities are undertaken [in furtherance of] a boycott);

5. Agreements to furnish or actually furnishing information about business relationships with blacklisted companies or with blacklisted persons;

6. Agreements to furnish or actually furnishing information about associations with charitable and fraternal organizations which support a boycotted country; and

7. Implementing letters of credit containing prohibited boycott terms or conditions.

Countries currently participating in prohibited boycotts include:

Bahrain, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Republic of Yemen. Boycott requests, however, sometimes emanate from other countries as well.

Inquiries or other activities related to these prohibitions may arise in numerous situations, and may seem innocuous. For example, requests could occur during negotiations, in contract language, under letters of credit, in financial arrangements, and in a foreign country's import documentation. ***No matter how or when the issue arises, responding to such requests, or agreeing to further the proscribed boycotting activities, is strictly prohibited. There are a few, very narrow exceptions, none of which should be employed without clearance from the Provost Office of Export Controls.***

**B. Treasury Department**

In addition to the EAR’s antiboycott provisions, Section 999 of the Internal Revenue Code imposes federal income tax penalties for certain activities that support foreign boycotts (called “participation in or cooperation with an unsanctioned boycott” or “PCIB”), requires reporting of requests for PCIB, and requires reporting of all operations in or relating to boycotting countries.[[2]](#footnote-2) Because the University does not pay federal income taxes, the tax penalties for PCIB do not affect us. The University nevertheless is required to report its operations in boycotting countries and all requests for PCIB. The report is made annually, as part of the University’s federal income tax return, on Form 5713.

**VIII. Multilateral International Controls**

The U.S. Government participates in international export control regimes which impose specific responsibilities on exporters of U.S.-origin goods and technology. These international obligations are incorporated into the EAR in Part 742.

A. The Wassenaar Arrangement

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (the “**Wassenaar Arrangement**”) is the successor to the Coordinating Committee on Multilateral Export Controls (“**COCOM**”). The Wassenaar Arrangement requires members to obtain international approvals for specified, primarily dual-use items and technology. These items are normally governed by the Department of Commerce under the EAA and EAR.

The current Wassenaar Arrangement members include:

Argentina, Australia, Belgium, Bulgaria, Canada, The Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovakia, Spain, South Korea, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, and the United States.

Since one of the stated purposes of the Wassenaar Arrangement is to complement and reinforce, but not duplicate, members’ existing control regimes, extensive additional licensing obligations are not anticipated, although the Arrangement may create additional recordkeeping and reporting requirements.

B. Missile Technology Control Regime

The Missile Technology Control Regime (“**MTCR**”) was established in 1987 to control proliferation of missile delivery systems which can be used for nuclear, chemical, and biological weapons. The following countries are signatories to the MTCR:

Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Russia, South Africa, Spain, Sweden, Switzerland, the United Kingdom, and the United States.

The following is the definition of “missile” as used in these proliferation controls:

Rocket systems (including ballistic missile systems, space launch vehicles, and sounding rockets) and unmanned air vehicle systems (including cruise missile systems, target drones, and reconnaissance drones); capable of delivering at least 6500 kilograms (kg) payload to a range of at least 300 kilometers (km).

Items controlled under the MTCR are divided into Category I, Systems and Subsystems and Category II, Other Components. U.S. regulations implementing the MTCR are divided between the EAR and the International Traffic in Arms Regulations.

C. Australia Group

The Australia Group is an international organization which has established multilateral controls over chemical precursors, chemical precursor production equipment, biological processing equipment and related technical data. The membership of the Australia Group includes:

Argentina, Australia, Austria, Belgium, Canada, The Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Spain, South Korea, Sweden, Switzerland, the United Kingdom and the United States.

D. The Nuclear Suppliers Group

Nuclear proliferation is multilaterally controlled by the Nuclear Suppliers Group (“**NSG**”). The NSG coordinates multilateral export controls on dual-use items having applications in nuclear weapons design and development, and is comprised of the following countries:

Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovakia, Spain, South Africa, Sweden, Switzerland, the United Kingdom, and the United States.

In the United States, nuclear-related, dual-use controls are implemented by Section 309 of the Nuclear Non-Proliferation Act, which requires the President to publish procedures for the Department of Commerce to control nuclear-related dual-use items.

Please refer questions about these requirements to The Provost Office of Export Controls.

**Foreign Assets Control Regulations**

The U.S. Department of the Treasury, through the Office of Foreign Assets Control (“**OFAC**”), regulates economic trade with foreign countries. The Foreign Assets Control Regulations (hereafter “**OFAC Regulations**”), 31 C.F.R. Parts 500-597, implemented pursuant to the Trading with the Enemy Act (“**TWEA**”), 50 U.S.C. §§ 1-44 and the International Emergency Economic Powers Act (“**IEEPA**”), 50 U.S.C. §§ 1701-1706, administer the statutory economic trade sanctions imposed against several foreign countries. The sanctions range from partial to full trade embargoes and are imposed *in addition to* other U. S. export control law penalties. Information regarding sanctions in effect can be found at the OFAC web site (<http://www.ustreas.gov/offices/eotffc/ofac/>).

**I. Persons Subject to U.S. Jurisdiction**

OFAC regulations apply to all persons subject to U.S. jurisdiction. This includes American citizens and permanent resident aliens wherever they are located; any individual or entity located in the U.S.; corporations organized under U.S. laws, including foreign branches; and—solely in the case of Cuba—entities owned or controlled by any of the above (including foreign-organized subsidiaries of U.S. corporations).

**II. Prohibited Transactions**

The regulations define prohibited transactions with foreign countries and set forth sanctions for engaging in such conduct. In this context, a transaction involves “any payment or transfer to any such designated foreign country or national, . . . any export or withdrawal from the United States to such designated foreign country, . . . and any transfer of credit, or payment of an obligation, expressed in terms of the currency of such designated foreign country.” The regulations state that a person subject to U.S. jurisdiction may not participate in:

1. Transactions involving designated foreign countries or their nationals;
2. Transactions with respect to securities registered or inscribed in the name of a designated national;
3. Importation of and dealings in certain merchandise; and
4. Holding certain types of blocked property in interest-bearing accounts.

Persons subject to U.S. jurisdiction are also prohibited from dealing with specific entities or individuals known as “specially designated nationals,” found in the Specially Designated Nationals List ("**SDNL**"), appended to the OFAC regulations and available at <http://www.ustreas.gov/offices/eotffc/ofac/sdn/index.html> . No one subject to U.S. jurisdiction may participate in ***any*** activity with ***anyone*** on the SDNL.

The regulations also allow for "blocking" or "freezing" assets of designated nationals. The term “blocking” or “freezing” is used to describe a form of controlling assets under U.S. jurisdiction. While title to blocked property remains with the designated country or national, the exercise of the powers and privileges normally associated with ownership is prohibited without authorization from OFAC. Blocking immediately imposes an across-the-board prohibition against transfers or transactions of any kind with regard to any property. Anyone subject to the regulations may not be involved with any account payments, transfers, withdrawals, or other dealings with those accounts unless such action is authorized by an OFAC license. U.S. individuals or organizations who violate the regulations by transacting business with designated nationals, specially designated nationals, or blocked accounts, may be subject to civil penalties or criminal prosecution.

OFAC regulations also define the type of property that is subject to control. Property is broadly defined to include: money, checks, drafts, debts, indebtedness, obligations, notes, warehouse receipts, bills of sale, negotiable instruments, contracts, goods, wares, merchandise, ships, goods on ships, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

**III. Requirements**

U.S. persons must obtain licenses before they may engage in activities prohibited by the OFAC regulations. In limited cases, OFAC will provide general and special licenses to permit a U.S. person to engage in otherwise prohibited activities. The regulations provide for “general licenses,” which are similar to the license exceptions of the EAR. Specific licenses, which are permits issued by OFAC on a case-by-case basis, authorize particular individuals or entities to participate in an activity that would otherwise be prohibited by the embargo or sanctions programs. Specific licenses are granted sparingly and, if granted, are valid only for the *specific activity* proposed on the application.

The OFAC regulations impose both civil and criminal penalties for violations of TWEA, the IEEPA, and the regulations. Criminal convictions include prison sentences ranging from five (5) to twelve (12) years and fines which could exceed $250,000 for individuals and $1,000,000 for organizations. OFAC has independent authority to impose civil penalties for violations.

Please refer questions about these requirements to the Provost Office of Export Controls.

1. Although the EAA expired in 1994, the EAA and the EAR remain in effect through annual executive orders issued pursuant to the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1706. [↑](#footnote-ref-1)
2. The Treasury Department publishes a list of boycotting countries quarterly, *see, e.g.*, 69 Fed. Reg. 19617 (Apr. 13, 2004), though activities in or relating to other countries also may be covered if those countries conduct unsanctioned boycotts. The most recent list comprises Bahrain, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Republic of Yemen. *Id.* [↑](#footnote-ref-2)