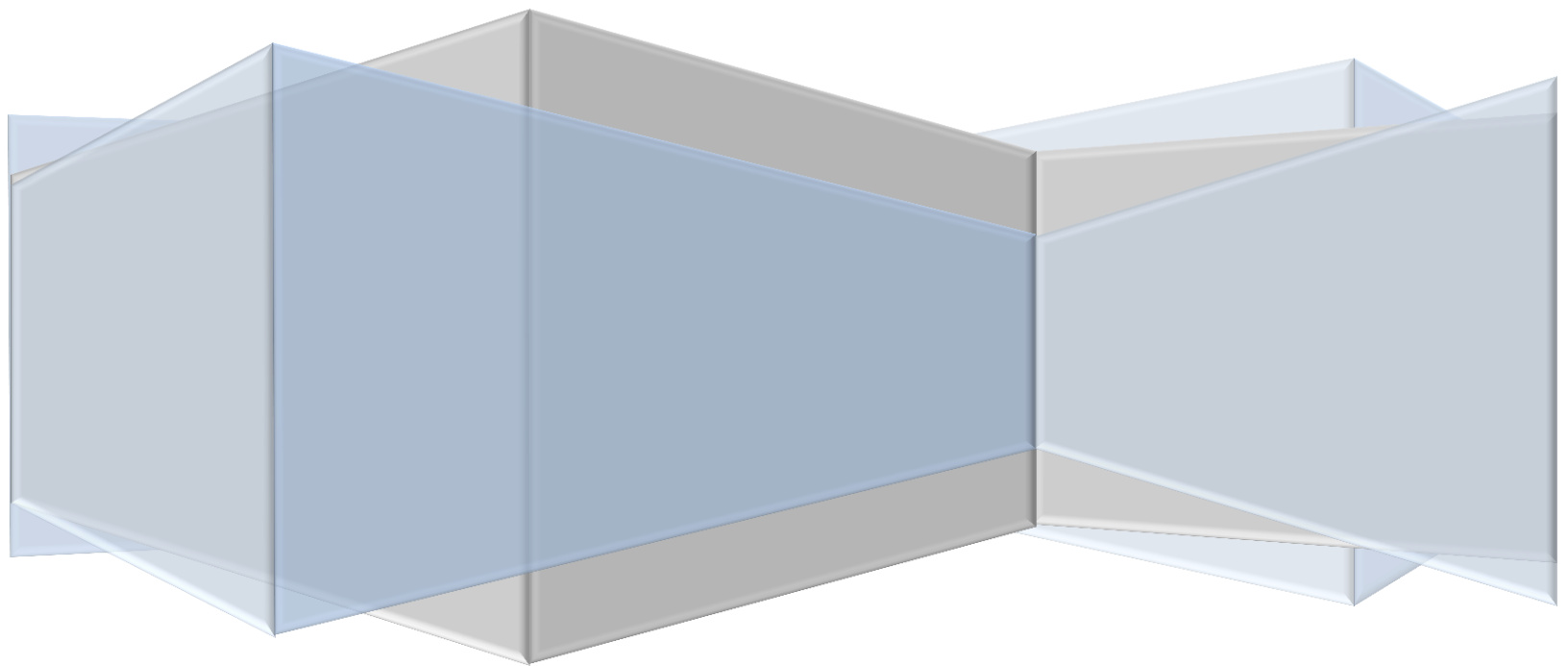


The University of Kansas

# KU Export Compliance Manual



**The University of Kansas | Office of Export Compliance**

**EXPORT COMPLIANCE MANUAL**

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## List of Abbreviations

ACF	Advanced Computing Facility
AES	Automated Export System
BIS	Department of Commerce Bureau of Industry and Security
CBP	U.S. Customs and Border Protection
CCATS	Commodity Classification Automated Tracking System
CCL	Commerce Control List
CJ	Commodity Jurisdiction
DDTC	Department of State Directorate of Defense Trade Controls
DEQ	Deemed Export Questionnaire
DFAR	Defense Federal Acquisition Regulation
EAR	Export Administration Regulations
ECM	Export Compliance Manual
ECO	Export Compliance Officer/Export Control Officer
ECT	Export Control Team
EI	Electronic Export Information
EHS	Environmental, Health & Safety
FAR	Federal Acquisition Regulation
FRE	Fundamental Research Exclusion
ECCN	Export Control Classification Number
ITAR	International Traffic in Arms Regulations
KU	University of Kansas (Lawrence, Kansas City, Edward, Wichita, Salina Campuses)
KUCR	University of Kansas Center for Research
KUIC	University of Kansas Office for Innovation and Collaboration
KU LC	University of Kansas Lawrence Campus
KUMC	University of Kansas Medical Center
MTA	Material Transfer Agreement
NDA	Non-Disclosure Agreement
OEC	Office of Export Compliance
OFAC	Department of the Treasury Office of Foreign Assets Control
OGC	Office of General Counsel, the University of Kansas
OR	Office of Research
PDA	Personal Digital Assistant
PI	Principal Investigator
RPS	Restricted Party Screening
SDN	List Specially Designated Nationals and Blocked Persons List
SMO	Security Management Office
TAA	Technical Assistance Agreement
TCP	Technology Control Plan
UECO	University Export Control Officer
USML	United States Munitions List

## **I. Introduction**

U.S. export laws and regulations control the export of certain information, technology, hardware and services to foreign countries, as well as to foreign nationals located in the United States. These controls present unique challenges for universities, requiring a careful balance between maintaining the mission of academic freedom, publication and dissemination of information, and protecting U.S. security and economic interests. Export laws and regulations include a number of provisions that exclude or exempt most university activities in the United States from export licensing requirements. When applicable, however, these laws and regulations can impose access, dissemination, and participation restrictions on University of Kansas (“KU”) activities beyond sponsored research, including collaboration with foreign nationals, travel and shipping.

Export laws and regulations are complex, and the civil and criminal penalties for violating them can be severe. Therefore, it is critical for members of the KU community to understand the scope of these provisions and adhere to policies and procedures in place to help ensure full compliance with U.S. export laws and regulations.

## **II. KU’s Policy and Commitment to Export Compliance**

As noted in the Chancellor's Letter of Commitment to Export Compliance, it is KU's policy to abide fully by federal laws and regulations, including the Export Administration Regulations (“EAR”), the International Traffic in Arms Regulations (“ITAR”), Office of Foreign Assets and Control (“OFAC”), and all other applicable export and import regulations, including those in the U.S. and abroad.

In the interests of national security, the economy, and foreign policy, the United States regulates the transfer of certain controlled information, materials, software, technology and commodities. The Department of Commerce, Department of State, Treasury Department and other federal agencies regulate these items, which may require university personnel to secure authorization (a license) before the items or information can be exported to another country or shared with foreign nationals working on or visiting our campus.

With the full cooperation of all faculty and staff in support of these policies and programs, KU will manage and minimize risks associated with our international mission.

As part of our strategic vision to increase international collaboration, KU has implemented export and import internal controls that improve compliance and better support our international mission. Specifically, the University of Kansas has:

established an Office of Export Compliance (“OEC”). The OEC reports to the Office of the General Counsel, and will advise KU faculty and staff on international export/import controls, provide procedural guidance, and implement training to support international activity.

appointed Empowered Officials pursuant to the International Traffic in Arms Regulations. These Empowered Officials will act to ensure proper controls are in place for protection of exports in accordance with all applicable regulations and laws. The Vice Chancellor, Office of Research will serve as the senior Empowered Official.

implemented policies and procedures for international shipping and receiving of material and technical information. Such policies and procedures will assist the university in complying with regulations on the transfer of technology and materials, including the transfer to foreign parties in the United States.

developed roles and responsibilities for export control on all campuses.

KU will utilize an Export Control Team to include stakeholders in areas such as IT, Human Resources, Security, International Programs, Research and Administration, Finance, Procurement, and Compliance.

### **III. Scope and Objectives of KU's Export Compliance Manual**

This Export Compliance Manual ("Manual") and the policies and procedures contained herein, are designed to ensure that KU complies fully with all applicable U.S. export control laws and regulations. The Manual applies to the KU community, including its faculty, staff, students, affiliates, visitors, vendors and contractors. The Manual contains procedures applicable to KU's operations and may be updated, as appropriate, to reflect changes in the law or to KU's policies and procedures.

The objectives of this Manual are as follows:

- Help to ensure that all of KU's activities comply with applicable U.S. export control laws and regulations by setting forth relevant policies and procedures;
- Identify compliance officials and communicate responsibilities to individuals within the KU community;
- Provide the necessary information to assist with licensing determinations, screening and other licensing issues; and
- Establish recordkeeping, training, and auditing procedures in support of KU's export compliance obligations and objectives.

### **IV. Responsibilities of Key Personnel and Departments**

#### **A. Office of Export Compliance**

The Office of Export Compliance ("OEC") is responsible for directing and monitoring the University's export control compliance program and implementing procedures and guidelines to comply with federal export control laws and regulations, including developing, implementing, and updating this Manual.

When requested or needed, the OEC will assist other offices and employees in export control assessments and determine compliance obligations with respect to University activities involving foreign persons or international activities under applicable export control laws and regulations, and to determine the applicability of the Fundamental Research Exclusion ("FRE") or other exclusions provided by law. The OEC will also assist with Training, Restricted Party Screening (RPS), Technology Control Planning and consult with KU's Office of General Counsel ("OGC") on export control matters as appropriate. The OEC will conduct periodic self-assessments of the University's compliance with export control laws.

B. Export Compliance Officer

The Export Compliance Officer (“ECO”) serves as the Director of the OEC and as an Empowered Official for KU. The ECO reports to the General Counsel and has the authority and the responsibility for the implementation of the procedures set forth in this Export Compliance Manual, including:

- Serving as a principal point of contact for agencies with regulatory or enforcement authority under the export control regulations;
- Signing and submitting license applications and other requests for approval on behalf of the University;
- Reviewing and approving technology control plans
- Managing the University’s registrations and online accounts with regulatory agencies and determine user access.

C. Empowered Officials

Empowered Officials are responsible for authorizing license applications and other approvals required for compliance with export control laws and regulations, and they serve as KU’s representatives and points of contact with federal agencies having export control jurisdiction.

The Vice Chancellor, Office of Research, the Associate Vice Chancellor for Compliance at the KU Medical Center, and the University Export Compliance Officer serve as Empowered Officials.

D. Export Control Team (“ECT”)

The ECT facilitates regulatory compliance and developing and implementing procedures to screen proposals and projects for compliance with export control laws and regulations. The ECT consists of Director-level positions and technical expertise from the following areas:

- Research Administration
- Internal Audit
- IT Security
- Compliance
- Purchasing
- Human Resources
- Edwards, Salina, and Wichita campus POCs



- International Programs
- Shared Services Centers
- KU Security Management Office (SMO)
- Environmental, Health & Safety (EHS)

The ECT members work closely with the OEC, PIs, contract administration, and others in identifying export control issues and providing support for their resolution. The ECT works with faculty, staff and assists project teams as appropriate in their area of responsibility in order to identify and resolve export control issues and by providing:

- Assistance in reviewing the terms of proposals and agreements, and in determining whether the international activity is export controlled;
- Assistance in identifying factors that can negate the FRE and in negotiating the deletion of such restrictions, if possible;
- Coordination with PIs and the OEC on export controlled activity to ensure that export controlled material and information are secured, that export licenses and other export authorizations are obtained when necessary, and that export controlled technology is safeguarded by using a Technology Control Plan (TCP);
- Coordination with OEC to ensure that all export control determinations related to international work is communicated to all stakeholders who include PIs, project negotiators and administrators assigned to the research, and project team members, as appropriate. The OEC website provides a listing of current ECT members and contact information.

#### E. Export Operations Group

All PIs, administrators, supervisors, coordinators and others involved in export regulated activities or with authority over foreign persons or projects involving export controlled information or hardware should view export control compliance as an important part of their day- to-day responsibilities. These individuals are responsible for overseeing export control compliance in their areas of administrative responsibility and for partnering with the OEC, ECT, and Empowered Officials in implementing the procedures set forth in this Manual.

To meet his or her obligations, each person must:

- understand his or her export control obligations and participate in regular training in order to be able to identify and assess export control issues;
- determine, prior to initiation of research or exporting information or material, whether the activities are subject to export control laws or regulations;
- be aware of red flags and other export control indicators, including noting such information on any internal compliance or assurance forms;
- periodically review his or her international activities (travel, communication, shipping, etc.) to

make sure that export control laws and regulations are complied with;

- ensure the researchers, staff, and students involved in the project are briefed on their export control obligations and applicable Technology Control Plans; and
- understand that any informal agreements or understandings entered into with a sponsor may negate the Fundamental Research Exclusion or other key exclusions and impose export control obligations on the project team.

#### F. Individual Responsibility

All KU faculty, staff, and students, visiting faculty and scientists, postdoctoral fellows, affiliates, contractors, and volunteers working at or for KU must conduct their affairs in accordance with United States export control laws and regulations. While compliance with all applicable legal requirements is imperative, it is equally important to maintain an open research environment that welcomes the participation of researchers from around the world as part of KU's mission.

To maintain this balance, KU personnel must be familiar with the United States export control laws and regulations, including applicable exclusions and exemptions, as they relate to their responsibilities. Depending upon the nature of their activities and/or job functions, KU personnel may participate in formal training identified by KU Empowered Officials, employees' supervisors or export control team members.

### V. Overview of U.S. Export Laws

#### A. Government Departments and Agencies

For national security and foreign policy reasons, the U.S. maintains comprehensive controls and sanctions on the export and re-export of U.S.-origin goods and technology to certain countries. The legal authority for these controls is authorized by a variety of laws, and administered by several different government agencies, depending on the nature of the goods to be exported or the country of ultimate destination. Each administering agency maintains its own regulations.

The following is a summary of the primary U.S. Government agencies that govern the export and re-export of products from the United States and related transactions subject to U.S. jurisdiction:

- U.S. Department of Commerce's Bureau of Industry and Security ("BIS") ([www.bis.doc.gov](http://www.bis.doc.gov)) administers the Export Administration Regulations ("EAR") that govern the export of commercial and dual-use goods, software and technology, including hardware and software containing certain encryption algorithms. BIS also controls certain defense-related items, including certain parts and components for military aircraft and other military end-uses. BIS also controls commercial space-related hardware, including commercial satellites.
- U.S. Department of State's Directorate of Defense Trade Controls ("DDTC") ([www.pmddtc.state.gov](http://www.pmddtc.state.gov)) – Administers and enforces the International Traffic and Arms Regulations ("ITAR") that govern the export of defense articles, defense services and ITAR-controlled technical data.
- The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") ([www.treas.gov/ofac](http://www.treas.gov/ofac)) – Administers and enforces country-specific economic and trade sanctions that often include restrictions on most or all transactions with and exports to targeted countries and persons.
- U.S. Census Bureau – While not a formal export control agency, the Census Bureau's Foreign Trade Division ([www.census.gov/foreign-trade/regulations/index.html](http://www.census.gov/foreign-trade/regulations/index.html)) is responsible for

maintaining and implementing the Foreign Trade Regulations (15 CFR Part 30) that govern the preparation and submission of Electronic Export Information (“EEI”) submitted prior to most exports from the United States. The Census Bureau shares this export data with BIS, OFAC, DDTC, U.S. Customs and Border Protection and other regulatory and law enforcement agencies.

- U.S. Customs and Border Protection ([www.cbp.gov](http://www.cbp.gov)) – While primarily responsible for imports into the United States, CBP officers at various U.S. ports oversee a wide variety of export-related activities and have the authority to inspect, detain and seize export shipments if they are not in compliance with the laws and regulations issued by BIS, DDTC and OFAC.
- Both the Treasury and Commerce Departments administer and enforce the U.S. Anti-boycott laws and regulations, which are designed principally to counteract Arab country boycotts of Israel and Israeli goods.

Depending on the nature of the products or information being exported, other U.S. Government agencies involved in export control-related issues include:

- Drug Enforcement Agency
- Environmental Protection Agency
- Department of Energy
- Nuclear Regulatory Commission
- Patent and Trademark Office
- Food and Drug Administration
- Maritime Administration
- Agriculture Department
- Fish and Wildlife Service

## B. What Is An Export?

For purposes of U.S. export control laws, the term “export” covers a broad range of activities that include the “export” of products, software, services or information. In general, an export occurs when there is any transfer to any non-U.S. person, either within or outside of the U.S., of controlled commodities, technology, or software, by physical, electronic, oral, or visual means, with the knowledge or intent that the items will be shipped, transferred, or transmitted outside of the U.S. Under U.S. export laws, KU is considered to be an “exporter” when the following occurs:

- Sending or carrying items out of the U.S. For example, shipping a part or sample by U.S. mail, via an express courier (such as FedEx or), using a freight forwarder to handle a shipment out of the U.S. or carrying an item in carry-on luggage; or
- Transferring export controlled technical data or disclosing technology to a non-U.S. citizen in the U.S.; Disclosing export controlled technology (including oral or visual disclosure) or transferring controlled technical data, *to a non-U.S. person*<sup>1</sup>, whether in the United States or abroad. Such

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<sup>1</sup> While the ITAR and EAR have slightly different definitions, foreign nationals/persons include persons that are not U.S. citizens, Permanent Residents (Green Card holders) or other “Protected Individuals.” It also means any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do business in the U.S.

disclosures can occur with virtually any exchange of information – including telephone conversations, technical proposals, e-mails and other electronic communications, the sharing of computer databases, briefings, or training sessions. Under the EAR, this type of disclosure to a non-U.S. person is commonly referred to as a "deemed export." (see section [734.2\(b\)\(2\)](#) of the EAR).

- Providing a [Defense Service](#): Section 120.9 of the ITAR states that 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" is a "Defense Service."
- Re-Export items/information: A re-export occurs when an item or information is transferred to a foreign person who then "re-exports" the item/information to another country. Note: U.S. regulations apply to the exported item/information wherever it is located, unless the item has been incorporated into a non-U.S. product that contains less than a specified level of U.S. controlled content (*de minimis level*)

#### C. Examples of How KU Exports

Below are some specific ways in which the KU community may "export":

- Shipping equipment or material to a foreign country
- Collaborating with foreign colleagues on campus or abroad
- Providing foreign nationals access to export controlled information or equipment
- Including export controlled technology in RFPs and proposals that are sent to foreign nationals
- Working with a foreign country/foreign national subject to a U.S. embargo (i.e., Cuba, Iran, North Korea, North Sudan or Syria)
- Presenting export controlled information at a conference
- Traveling with a laptop overseas

#### D. Key Export Regulations

##### ***1. The International Traffic in Arms Regulations ("ITAR")***

The International Traffic in Arms Regulations ([\("ITAR"\)](#)), 22 C.F.R. §§ 120-130, governs the export and re-export of defense articles, defense services and related technical data from the United States to any foreign destination, or to any foreign person, whether located in the United States or abroad.

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a. Items Controlled Under the ITAR

The ITAR controls defense articles, technical data, and defense services.

- Defense Articles include any item that is listed on the USML (see below) or otherwise determined subject to the jurisdiction of the ITAR. In addition to hardware, defense articles also include models, mock-ups, or other items that reveal technical data relating to items designated in the USML. It is important to note that under DDTC "see through rule" if an end-item contains *any* components that are controlled under the ITAR, the entire item is controlled under the ITAR. For example, if an instrument contains a focal plane array which is subject to the ITAR, then the entire instrument would be considered subject to the ITAR.

- Technical Data means any information for the design, development, assembly, production, operation, repair, testing, maintenance, or modification of a defense article. Technical Data may include drawings or assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed. Sometimes it is easier to define Technical Data by what it is not: Technical Data does not include general scientific, mathematical, or engineering principles commonly taught in schools, information present in the public domain, general system descriptions, or basic marketing information on function or purpose.

- Defense Service means providing assistance, including training, to a foreign person in the United States or abroad in the design, manufacture, repair, or operation of a defense article, as well as providing Technical Data to foreign persons. Defense services also include informal collaboration, conversations, or interchanges concerning Technical Data.

b. The United States Munitions List (“USML”)

I	FIREARMS CLOSE ASSAULT WEAPONS AND SHOTGUNS
II	GUNS AND ARMAMENT
III	AMMUNITION/ORDNANCE
IV	LAUNCH VEHICLES, GUIDED MISSILES, BALLISTIC MISSILES, ROCKETS, TORPEDOES, BOMBS AND MINES
V	EXPLOSIVES AND ENERGETIC MATERIALS, PROPELLANTS, INCENDIARY AGENTS AND THEIR CONSTITUENTS
VI	VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT
VII	GROUND VEHICLES
VIII	AIRCRAFT AND ASSOC. EQUIPMENT
IX	MILITARY TRAINING EQUIPMENT AND TRAINING
X	PROTECTIVE PERSONAL EQUIPMENT AND SHELTERS
XI	MILITARY ELECTRONICS
XII	FIRE CONTROL, RANGE FINDER, OPTICAL AND GUIDANCE AND CONTROL EQUIPMENT
XIII	MATERIALS AND MISCELLANEOUS ARTICLES
XIV	TOXICOLOGICAL AGENTS, INCLUDING CHEMICAL AGENTS, BIOLOGICAL AGENTS AND ASSOCIATED EQUIPMENT
XV	SPACECRAFT SYSTEMS AND ASSOCIATED EQUIPMENT
XVI	NUCLEAR WEAPONS, DESIGN AND TESTING RELATED ITEMS
XVII	CLASSIFIED ARTICLES, TECHNICAL DATA AND DEFENSE SERVICES NOT ELSEWHERE ENUMERATED

XVIII	DIRECTED ENERGY WEAPONS
XIX	GAS TURBINE ENGINES AND ASSOC. EQUIPMENT
XX	SUBMERSIBLE VESSELS, OCEANOGRAPHIC AND ASSOCIATED EQUIPMENT
XXI	TECHNICAL DATA AND DEFENSE SERVICES

Section 121.1 of the ITAR contains the [United States Munitions List \(“USML”\)](#), consists of 21 categories and lists commodities and related Technical Data, and Defense Services that are controlled for export purposes.

**IMPORTANT NOTE:** As a result of the Administration’s Export Control Reform efforts, the ITAR and USML, as well as the EAR (discussed below) are being frequently updated. It is important to always check the latest version of the USML and ITAR on DDTC’s or BIS websites at: [www.pmdotc.state.gov](http://www.pmdotc.state.gov) or [www.bis.doc.gov](http://www.bis.doc.gov).

## 2. *The Export Administration Regulations (“EAR”)*

The Department of Commerce Bureau of Industry and Security (“BIS”) regulates and enforces the export of commercial products and technology that are subject to the [Export Administration Regulations \(“EAR”\)](#). Articles, information and software, that are not subject to ITAR control are subject to the jurisdiction of the EAR. Unlike the ITAR, however, the EAR does not control services.

### a. Items Controlled Under the EAR

Generally, all items of U.S.-origin, or that are physically located in the United States, are subject to the EAR. The EAR also restricts the re-export of U.S.-origin goods, software and technology as well as direct exports from the United States. Foreign manufactured goods are generally exempt from the EAR re-export requirements if they contain less than a specified percentage of U.S. controlled content by value (“*de minimis level*”).

### b. Technology Controlled Under the EAR


The EAR controls apply to exports and re-exports of U.S.-origin technology and technical data. Under the EAR, the term “technology,” which can take the form of either technical data or technical assistance, is broadly defined to include “specific information necessary for the ‘development’, ‘production’, or ‘use’ of a product.” “technical data” includes “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.” For purposes of the national security controls, “technology” is generally controlled if it is related to the development, production, or use of items that are themselves subject to a license requirement.

### c. The Commerce Control List (“CCL”)

Within the EAR is a large list of export controlled commodities, technology, and software known as the [Commerce Control List \(“CCL”\)](#). The CCL includes not only a list of items and related technology that are controlled multilaterally for national security, nuclear non-proliferation, chemical and biological weapons and missile technology reasons, but also a host of items and related technology that are controlled unilaterally by the U.S. for foreign policy, nonproliferation, anti-terrorism, or short supply reasons. Every item that is controlled under the EAR has an Export Control Classification Number (“ECCN”). An ECCN is an alphanumeric code, such as

3A001, which describes the item and indicates licensing requirements. If an item is not listed on the CCL, it is designated as EAR99. EAR99 items generally consist of low-technology consumer goods and do not require a license in most situations.

The following is an overview of the structure of the CCL:

CCL Categories		5 Product Groups	
0	Nuclear & Miscellaneous	A	Systems, Equipment and Components
1	Materials, Chemicals, Microorganisms and Toxins	B	Test, Inspection and Production Equipment
2	Materials Processing	C	Material
3	Electronics	D	Software
4	Computers	E	Technology
5 Part 1	Telecommunications	<p>Example of ECCN</p> 	
5 Part 2	Information Security		
6	Sensors and Lasers		
7	Navigation and Avionics		
8	Marine		
9	Aerospace and Propulsion		

## VI. Jurisdiction and Classification

The pivotal step for understanding what types of restrictions apply to a product/service or technology under U.S. export controls is determining how it is “classified” for export purposes. Classification is essentially a two-step process.

The first step is determining whether the item is subject to the “jurisdiction” of the State Department’s ITAR or the Commerce Department’s EAR. Second, the item must be properly classified under either the ITAR’s USML (such as Cat. VIII) or the EAR’s CCL such as 3A001 or EAR99.

For items, technology, or services that do not fall squarely into an established regulatory category, it may be prudent to obtain a written determination of the jurisdiction (whether it is subject to ITAR or EAR) and its classification from DDTC. This is known as a “Commodity Jurisdiction” or “CJ.” If the item or technology is definitively not subject to ITAR (and is instead subject to the jurisdiction of the EAR) KU may obtain a “CCATS” from BIS to determine its classification.

KU employees must contact the Export Compliance Officer at the Office of Export Compliance when classifying any items for export. CJ and CCATS requests must be handled by the ECO, with assistance from counsel, as necessary. Such requests are submitted on KU letterhead and must be signed by the ECO or other authorized individual.

## VII. Exclusions from ITAR and EAR

Both the ITAR and the EAR have special provisions relating to *information* that is not subject to export controls—meaning it is not classified as either ITAR or EAR controlled, but rather is excluded because it is considered “public domain” under ITAR or “publicly available” under EAR.

### A. “Publicly Available” under EAR

Under EAR 15 C.F.R. 734.3(b)(3), “publicly available” means that except with respect to certain encryption technology and software, publicly available technology and software is not subject to any restriction or licensing requirement under the EAR.<sup>2</sup> This includes information that has been or will be made publicly available by:

- Publication in periodicals, books, print, electronic, or other media available for general distribution to a member of the public or to a community of persons interested in the subject matter;
- Release or dissemination at open seminars, trade shows, conferences, or other open gatherings in the United States;
- Ready availability at public or university libraries; or
- Patents and patent applications available at any patent office.
- Information resulting from “fundamental research,” where the resulting information is ordinarily published and shared broadly within the scientific community.

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<sup>2</sup> Software is generally considered public when it is available for general distribution either for free or at a price that does not exceed the cost of reproduction or distribution. Please note that when information or software is sold at a price that *exceeds* the cost of reproduction and distribution, it is generally not considered “publicly available”, and would thus be subject to licensing and other restrictions under the EAR.



B. “Public domain” under ITAR

Under ITAR §120.11, “Public domain” information is not considered “technical data” under the ITAR, and is therefore not subject to any restriction or licensing requirement. The ITAR defines information in the public domain as information which is published and which is generally accessible to the public:

- through sales at newsstands and bookstores;
- through subscriptions that are available without restriction to any individual who wishes to obtain or purchase the published information;
- at libraries open to the public or from which the public can obtain documents;
- through patents available at any patent office;
- through unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, in the United States;
- through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the information is ordinarily published and shared broadly in the scientific community; through public release after approval by the relevant U.S. Government agency or department; or
- through second class mailing privileges granted by the U.S. Government;
- through publication on a public internet site

C. Fundamental Research

During the Reagan administration, several universities worked with the Federal government to establish national policy for controlling the flow of information produced in federally funded research at colleges, universities and laboratories resulting in the issuance of the National Security Decision Directive 189 (“NSDD”), National Policy on the Transfer of Scientific, Technical and Engineering Information on September 21, 1985. In a letter dated November 1, 2001, President George W. Bush’s administration reaffirmed NSDD 189. NSDD 189 provided the following definition of *fundamental research* that has guided universities in making licensing decisions relative to fundamental research exclusions provided under both the EAR and ITAR:

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

1. Parameters of Fundamental Research

Most activities *on KU campuses* that involve the transfer of Technical Data under ITAR and Deemed Exports under EAR will fall under the “Fundamental Research Exclusion.” However, there

are certain key restrictions which must be strictly followed. University activities or research will NOT be considered fundamental research, and therefore subject to the EAR, if:

- publication of research results is subject to restriction or withholding of research results, or substantial prepublication review, by a sponsor (other than for the protection of patents and/or sponsor's confidential proprietary information); or
- the research is funded by the U.S. Government and is subject to specific access (such as restricting work by foreign nationals) and dissemination controls.

Similarly, under the ITAR, university activities/research in science and engineering at accredited institutions of higher learning in the U.S. will NOT be considered fundamental research, and is therefore subject to the ITAR if:

- publication of scientific and technical information resulting from the activity is restricted; or
- the research is funded by the U.S. Government and is subject to specific access and dissemination controls.

## 2. Educational Information

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

ITAR: Information in the public domain, or information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities, is not considered "technical data" under the ITAR, and is therefore not subject to any restriction or licensing requirement. TECHNICAL DATA means: information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blueprints, drawings, plans, instructions, diagrams, photographs, etc. (ITAR 120.10(5)).

EAR: The EAR provides that publicly available "educational information" is not subject to the EAR if it is released by instruction in catalogue courses and associated teaching laboratories of academic institutions. For example, a university catalogue course will not be subject to export controls (and foreign students may attend) even though the technology is listed on the CCL or the course contains unpublished results from laboratory research, so long as the university did not accepted separate obligations with respect to publication or dissemination.

## VIII. License Determinations

Once the classification has been determined (and it is not excluded from the regulations) the next step is determining whether a license is required, or whether there is a license exception that can be used. Under the ITAR, there are generally two ways to export an item, transfer technical data or provide a defense service: under a license or under an exemption. Under the EAR, an item or technology can be exported under a license, under a license exception or No License Required ("NLR").

## A. ITAR Licenses

Generally, any U.S. person or entity that manufactures, brokers, or exports defense articles or services must be registered with DDTC for ITAR related export. Registration is required prior to applying for a license or taking advantage of most license exemptions. Once registration is complete, an exporter may apply for an authorization to export by submitting a license application for the export of defense articles or technical data; or a more complex application, such as a Technical Assistance Agreement (“TAA”). Once a license has been issued, KU must to adhere to all limitations and provisos contained in the license. Documentation regarding compliance with license provisos must be kept and any deviations during execution of the license must be authorized in advance by the U.S. government in coordination with the OEC.

U.S. law requires prior DDTC approval for the following transfers of ITAR-controlled items:

- Export of defense articles (Form DSP-5)<sup>3</sup>;
- Export of technical data for marketing and visits by foreign persons (Form DSP-5);
- Export of Defense Services and technical data (Manufacturing License Agreements, Technical Assistance Agreements);
- Temporary import for repair/modification (DSP-61 for other than routine transactions; routine shipments may require special import procedures);
- Classified defense articles/technical data (Form DSP-85);
- Minor amendments to licenses (Form DSP-119);
- Temporary export for marketing demonstrations (Form DSP-73);
- Re-export Authorizations (Submit on letterhead as “General Correspondence”).

## B. ITAR Exemptions

There are numerous license exemptions authorized under various parts of the ITAR. These exemptions can be complicated, construed narrowly, require specific record keeping and must be approved by the ECO prior to use. Below are several key exemptions for KU.

### 1. Full-Time University Employees

Under ITAR § 125.4(b)(10), the ITAR allows KU to disclose unclassified technical data as defined in ITAR 120.10(5) in the U.S. to a foreign person who is the university’s *bona fide* and full time regular employee. The exemption is available only if:

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<sup>3</sup> DSP-5 licenses for the export of hardware are issued for only one country of ultimate destination. However, DSP-5 licenses for the export of technical data or DSP-73 licenses for the temporary export of equipment for demonstration can be obtained for multiple countries and multiple consignees in each country.

- The employee's permanent abode throughout the period of employment is in the United States;
- The employee is not a national of a country to which exports are prohibited pursuant to ITAR § 126.1 [http://www.pmddtc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_126.pdf](http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf));
- The university informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of DDTC; and the university documents the disclosure of technical data under the exemption providing:
  - a description of the technical data;
  - the name of the recipient /end-user;
  - the date and time of export;
  - the method of transmission (*e.g.*, e-mail, fax, FedEx);

## 2. EAR Licenses and Exceptions

If an item is listed on the CCL, it may require a license or a license exception may be available. Items not listed on the CCL and designated as EAR99, can generally be exported without a license, unless the export is to an embargoed country, or to a prohibited person or end-use. There is a three-step process for determining what controls apply, to which country, and whether a license exception may be available.

- *Determine Reason for Controls.* The "License Requirements" section provides reasons for control. These reasons include:

AT	Anti-Terrorism	CB	Chemical & Biological Weapons
CC	Crime Control	CW	Chemical Weapons Convention
EI	Encryption Items	FC	Firearms Convention
MT	Missile Technology	NS	National Security
NP	Nuclear Nonproliferation	RS	Regional Security
SS	Short Supply	XP	Computers
SI	Significant Items		

- *Apply Country Chart.* Once an item is identified as meeting the criteria for a particular ECCN, the user should refer to the Country Chart found at 15 C.F.R. § 738, Supp. 1. If the particular control applies to that country, a license is required. For example, Iran has an "X" under AT Column 1, therefore a license would be required unless an exception applies.

- *Identify Exceptions.* The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 C.F.R. § 740, as well as review of the notes on applicable license exceptions following the ECCN entry. These exceptions include:

LVS	Items of limited value (value is set under each ECCN).
GBS	Items controlled for national security reasons to Group B countries.
CIV	Items controlled for national security reasons to particular countries where end-user is civilian.
TSR	Certain technology and software to certain countries.
APP	Computer exports to certain countries.
STA	Strategic Trade Authorization.
TMP	Certain temporary exports, re-exports, or imports, including items moving through the U.S. in transit.
RPL	Certain repair and replacement parts for items already exported.
GFT	Certain gifts and humanitarian donations.
GOV	Exports to certain government entities.
TSU	Certain mass-market technology and software.
BAG	Baggage exception.
AVS	Aircraft and vessels stopping in the U.S. and most exports of spare parts associated with aircraft and vessels.
APR	Allows re-export from certain countries.
ENC	Certain encryption devices and software.
AGR	Agricultural commodities.
CCD	Authorization of certain consumer communication devices to Cuba.

Use of EAR exceptions must be reviewed by the ECO or a designated member of the ECT.

## IX. Screening Procedures

The final step in the export process following classification and license determination is screening. All shipments (including temporary shipments, repairs, and shipments of test equipment or software) or transfers of technology to foreign persons must be screened before they are shipped/released. The screens that must be performed—at both the contract-formation stage and/or immediately before export are described below. In addition to list-driven requirements based on the USML or CCL, a range of other factors, including the country of destination, the identity of the end-user, and the proposed end-use, must be examined to determine whether a license is required. KU utilizes *Visual Compliance*, an online database, to conduct these checks. The OEC will provide access and training on using *Visual Compliance* for personnel needing to conduct screening. . The OEC website provides guidance on conducting Restricted Party Screening using *Visual Compliance*.

A. Screening Based on Export Classification

PIs or assigned department personnel must check the classification of the product, software, or technology to be shipped to determine if it requires a license. If the item has not yet been previously classified and reviewed by OEC, the ECO must be contacted. If the product or technology falls under a classification requiring a license, the ECO will determine whether a license exemption or exception is available. If not, OEC will apply for the required license. Export of a licensable product, software or technology may not take place until the license has been granted. Controlled technical data may not be released until a license is obtained. In particular, foreign nationals may not have access to controlled Technical Data until a license and Technology Control Plan is in place. OEC can provide additional information and assist in technology control planning.

B. Screening for Embargoed Countries

If screening results using Visual Compliance identifies embargoes, sanctions, other alerts, the ECO must be contacted in order to conduct an export analysis and seek the appropriate US government authorization.

C. Screening for Prohibited Individuals or Entities

To ensure that KU does not engage with unauthorized parties, personnel must conduct export screening to include all entities involved in the transaction against the Denied Persons List (“DPL”), the Entity List, Unverified Parties List, the List of Specially Designated Nationals List (“SDN List”), and the State Department’s list of debarred parties, before KU enters into a contract; relationship or effects a transaction with that party. These lists are collectively referred to in this Manual as the “Restricted Parties Lists.” In addition, freight forwarders, vendors, banks and issuers of letters of credit, foreign visitors, and consultants must be screened against the Restricted Parties Lists.

If a party’s name is found on one of the Restricted Parties Lists at any point, the OEC must be notified immediately. Any order or further action with respect to that party must be suspended pending the outcome of consultations with the ECO and legal counsel, if required.

D. Screening for Diversion Risks

The export or re-export of U.S. origin products to unauthorized destinations, end-users, or end-uses may trigger licensing requirements (even for EAR99 items). Therefore, all transactions are subject to diversion risk screening. To assist in determining when a transaction may not be authorized or may lead to an illegal diversion, the Department of Commerce has published a list of red flags (Export Administration Regulations, Supplement 3 to Part 732), listed below. The screener must check potential customers/transactions against the red flags described below. While this list is not all-inclusive, these indicators should be used as a guide for identifying suspicious or unusual transactions that warrant further scrutiny before going forward. The following are red flags:

- The recipient or end user is reluctant to offer information about the end-use of material being transferred.
- The item or material being transferred does not fit the recipient’s end use. For example, shipment of a toxic reagent being sent to a liberal arts department.

- The material being transferred is incompatible with the technical level of the recipient to which the material is being shipped. For example, semiconductor material, prototypes would be of little use if the recipient is involved in sociology.
- The recipient is unknown to KU researchers.
- The recipient does not want to document the material or information transfer.
- The recipient is a middle person for the end user of the material or information to be transferred.
- Installation, training, or maintenance services are declined by the end user.
- Delivery addresses are not associated with the end user, or deliveries are planned for out-of-the-way destinations.
- A freight-forwarding firm or post office box is listed as the product's final destination.
- A requested shipping route is abnormal for the material and destination.
- Packaging requirements are inconsistent with the stated method of shipment or destination.

KU personnel will review the terms and conditions and all other pertinent information when planning an export and take note of these or any other abnormal circumstances that indicate the export is intended for an inappropriate end-use, end-user, or destination. If the planned export raises any red flags, the ECO must be notified immediately.

E. Screening for Proliferation Activities

U.S. law prohibits the export and re-export of items or technology if they are destined for certain activities or projects in countries of concern. Proliferation concerns include activities involving nuclear production or technology, missile technology, and chemical and biological weapons.

If there is doubt as to whether or not proliferation concerns exist, the OEC or ECT should be contacted. If any KU employee has any reason to suspect that a recipient is involved in a prohibited end-use, the employee must notify the ECO immediately. No export or re-exports to the recipient should occur unless and until the ECO obtains a license or determines that a license is not required.

F. Screening for Anti-boycott Language

The anti-boycott rules were implemented to prevent U.S. business from participating directly or indirectly in the Arab League's boycott of Israel. The laws prevent U.S. persons from doing business under terms that would restrict that person's ability to do business with other countries under a boycott not recognized by the U.S. The Arab League's boycott has lessened over the years, but still remains in effect in some countries. These restrictions are enforced by BIS and OFAC. The applicable regulations are at 15 C.F.R. § 760.

Anti-boycott restrictions are most likely to appear in dealings with entities in certain Arab League countries. As of this writing, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab

Emirates, and Yemen continue to impose boycott restrictions on Israel and companies that do business with Israel. Iraq is not included in this list, but its status with respect to the future lists remains under review by the Department of Treasury. Egypt and Jordan have ceased participating in the boycott. There are strict reporting requirements even where the U.S. person refuses to participate in a requested boycott action. U.S. law prohibits KU from complying with certain foreign boycotts, most notably the Arab League's economic boycott of Israel. Prohibited activities include refusing to do business with a boycotted country, responding to boycott questionnaires, and providing negative certificates of origin.

Contracts and Purchasing personnel must screen letters of credit, purchase orders, and all other documentation for boycott language. If a potential boycott request is discovered, the Department should contact the ECO regarding the request, and provide the ECO with a copy of the document(s) in question. No action should be taken on the request until the ECO has reviewed the language in question and a determination is made with assistance from the Office of the General Counsel.

#### G. Re-screening for Prohibited Entities

If the planned export was initially screened more than 30 days before it is ready to be shipped, the shipper must ensure the recipient and or end user is re-screened against the SDN list and the Restricted Parties Lists prior to the shipment/release.

#### H. Screening of International Visitors

Screening of international visitors includes the screening of the foreign institution or company where the international visitor is employed. Screening is needed whenever a written or verbal invitation to visit KU is made to an international visitor regardless of whether the international visitor is present or not in the United States. Additionally, screening will occur when KU needs to sponsor a foreign national for immigration purposes (H-1B, J-1, B-1/B-2 visa, nonimmigrant visa status, etc.).

### **X. Shipping and Transfer Compliance**

It is the responsibility of KU employees who are transferring items outside the United States, including hand-carrying items such as research equipment, materials, data, or biological materials, to be knowledgeable of and comply with export control laws and regulations. Any transfer of information, equipment, materials, or technology out of the U.S. by any method may be subject to export control restrictions and require an export license or be prohibited depending on the item, destination, recipient, and end-use. Even if an item is cleared through Customs, it may still require an export control license.

The simple act of sending a package to a foreign collaborator can result in a violation of export control regulations if a license is required. Also, shipping to countries subject to embargoes must first be cleared by the OEC and OGC. KU personnel who are responsible for shipping packages out of the country should obtain a list of contents before shipping in order to evaluate export restrictions and contact OEC with any questions. Shipping regulated items out of the U.S. without a license can result in sanctions against the university and significant individual fines.

Mislabeling the package or misrepresenting the classification of the item is illegal. Violations may result in civil penalties of up to \$32,500 per violation, and deliberate violations may result in



criminal prosecution of up to \$500,000 and five (5) years in prison. Under-invoicing or undervaluing an exported item is also against the law. Reporting an incorrect export value on a Shippers Export Declaration is a violation of export regulations. Additional shipping guidance can be found on the OEC website. Any potential export control issues regarding shipping should be referred to your shipping coordinator, purchasing department, or OEC.

## **XI. Foreign Travel**

KU employees and students traveling on University business or traveling with KU property are responsible for complying with export control laws and regulations when traveling outside the U.S. A license may be required depending on which items are taken, which countries are visited, or whether defense services are provided to a foreign person.

When planning a trip abroad, travelers should review applicable export control regulations, OFAC sanctions and embargoes. Individuals should ensure that any information that will be discussed or any items that will be taken are not controlled, or, if controlled, that appropriate licenses are in place. Not only could KU be held liable, but individuals may also be held liable for improperly transferring controlled information or materials.

The traveler or the traveler's supervisor should contact OEC with any potential export control concerns or to request an export review and ensure all Restricted Party and Commodity Screenings associated with the planned travel are completed.

### **A. Travelling with Mobile Data Storage Devices**

When traveling outside the U.S. with any laptops, PDAs, cell phones, or other data storage devices it is important to determine if there is authorization for exporting Controlled Information as well as encrypted software on such devices for the intended destination. Any individual traveling with or transmitting Controlled Information outside the U.S. should first consult with the OEC to verify export restrictions and to determine if there are exceptions or exclusions which may apply depending upon the facts and circumstances of each case.

### **B. Traveling with Equipment**

Researchers frequently need to take other equipment temporarily outside of the United States for use in University research. Often, but not always, the tools of trade license exception applies. Some equipment (e.g., global positioning systems (GPS), thermal imaging cameras, inertial measurement units, and specialty software) is highly restricted and may require an export license, even if one hand carries it. If taking KU equipment to a foreign destination, contact an ECT member or the OEC to determine if an export license or other government approval is required prior to taking the equipment out of the country. It is important to note that activities involving teaching or training foreign persons on how to use equipment may require a license.

## **XII. Recordkeeping**

All KU personnel involved in export, import, shipping transactions must maintain accurate, complete, and consistent records of all exports for at least five years, as required by U.S. law. Records relating to individual exports should be organized and maintained in international shipping files for quick retrieval during audits. The following records must be retained:

Licenses, including any riders, terms and conditions, narrative statements, license applications, and

letters of explanation will be maintained by the ECO and department. Shipments made under a license including all associated provisos, re-export authorization or license exceptions are monitored by the OEC and appropriate member of the ECT;

Records of transactions regarding any exported items, software, or technology shipped under any license or license exception, including memorandums, contracts, invitations to bid, notes, correspondence, books of account, and financial records, will be maintained by the department for five years following the transaction. Records include:

- The full name and address of the recipient;
- A full description of each item, units of quantity and value of each item, and the date of shipment or re-export;
- Export control documents relating to these transactions, including license amendments, applications for international import certificates and supporting documents, and delivery verification certificates will be maintained by the OEC;
- AES confirmations, SEDs, dock receipts or bills of lading, Air Waybills, commercial invoices, packing lists, shipping documents, including printed copies of email shipments, and customs documents will be maintained by the department. For ITAR shipments, the ECO receives a copy of all shipping documents; Customer destination control certificates maintained by the ECO; All boycott related requests maintained by the ECO. All required written assurances for foreign national employees and other parties are retained in the individual employee's personnel file and a copy retained by the OEC.

### **XIII. Training**

The Office of Export Compliance, in cooperation with other appropriate offices such as International Programs, HR, Compliance, etc. will maintain an appropriate University training program. University employees with managerial or supervisory authority over foreign nationals or international projects involving controlled information or controlled material are required to take OEC's basic export control online training course at least once every two (2) years. Depending on the nature of an individual's activities and or job functions, a University employee may be required to take OEC's basic export control online training course and more frequent supplemental export control training as deemed appropriate by the individual's supervisor or the appropriate Vice Chancellor in consultation with the OEC. To ensure that the KU community members involved in export-related activities are familiar with export controls and compliance procedures, the OEC will:

- Maintain an export compliance website that provides information on this manual and other resources (<https://export-compliance.ku.edu/>):
- Ensure orientation training to all relevant KU employees and retain all records for this training such as course materials and attendance lists;
- Provide customized training sessions or refresher courses to relevant personnel and project teams as required;
- Conduct detailed training, as needed, for new KU employees assigned to export-related areas. Training sessions will be recorded online or by manual means that provides date of training, instructor's name, training topic, attendees name and department.

## **XIV. Penalties for Export Violations**

### **A. General Overview**

Generally, any person or entity that brokers, exports, or attempts to export a controlled item without prior authorization, or in violation of the terms of a license, are subject to penalties. Violators may incur both criminal and civil penalties.

### **B. ITAR Violations**

The Arms Export Controls Act (“AECA”) and the ITAR provide that willful violations of the defense controls can be fined up to \$1,000,000 per violation, or ten years of imprisonment, or both. In addition, the Secretary of State may assess civil penalties, which may not exceed \$500,000 per violation. The civil penalties may be imposed either in addition to, or in lieu of, any other liability or penalty.

### **C. EAR and Anti-Boycott Violations**

Similar to the ITAR, violations of the EAR are subject to both criminal and administrative penalties. Fines for export violations, including anti-boycott violations, can reach up to \$1,000,000 per violation in criminal cases, and \$250,000 per violation in most administrative cases. In addition, criminal violators may be sentenced to prison time up to 20 years, and administrative penalties may include the denial of export privileges.

### **D. OFAC Violations**

Although potential penalties for violations of U.S. export laws vary depending on the country and material involved, an exporter may be subject to a maximum civil penalty of \$250,000 per violation under OFAC regulations.

### **E. Detecting and reporting violations**

Each KU employee has the responsibility to report possible violations of United States export control laws or regulations. Suspected violations should be reported by one of the following methods:

- Contact OEC at [ueco@ku.edu](mailto:ueco@ku.edu) or (785) 864-3276/(913) 588-7281; or
- Use KU/KUMC compliance hotline at <https://secure.ethicspoint.com/domain/media/en/gui/41078/index.html>.

Possible violations of United States export control laws or regulations will be investigated by an Empowered Official, or designee, to the extent deemed necessary. The Empowered Official or designee, will collaborate with appropriate parties to determine reporting requirements and corrective actions needed for noncompliance with export control laws and regulations.

### **F. Disciplinary Actions**

There are severe institutional and individual sanctions for violations of export controls laws,

including the loss of research funding, loss of export privileges, and civil and criminal penalties, including imprisonment. Additionally, employees and students may be subject to disciplinary action, up to and including termination.

## **XV. Compliance Reviews/Audits**

In order to maintain KU export compliance program and ensure consistent adherence to U.S. export control laws, the ECT, OEC, Empowered Officials, and KU Internal Audit may conduct reviews and audits of all aspects of the University's Export Control Program, including, but not limited to, RPS, TCPs, recordkeeping, and projects with export controls. The purpose of the review is to identify non-compliance with KU policies and procedures, possible violations and identify deficiencies in training, procedures, etc., for corrective action. Findings will be reported to the senior Empowered Official and other leadership as appropriate.

The ECO will coordinate and conduct periodic reviews to ensure that the KU community understands the export compliance program outlined in this Manual and that all procedures contained in the program are being implemented. The ECO will document the results of such reviews.

The University's Office of Internal Audit will conduct a limited review of the export control program on an annual basis with a detailed review conducted every 3 to 4 years to ensure that KU is in compliance with the Federal rules and regulations related to export controls. Furthermore, the Office of Internal Audit will assist the OEC the OGC, upon request, in investigations related to potential export control violations.

KU internal audits should include, but is not limited to, the following:

- Interviews with export-related personnel and management;
- Analysis of export control checks especially screening practices and internal controls for compliance;
- Comparison of operational practices to written procedures;
- Review of management commitment;
- Review of current policies and procedures including all written guidelines;
- Review of training and education programs;
- Review of the order processing system;
- Analysis of the export authorization process;
- Analysis of the implementation of export licenses including adherence to and tracking of license conditions;
- Review of internal assessments;
- Review of notifications of noncompliance;
- Review of procedures for corrective action and follow-up;
- Review of procedures related to visits or employment of foreign nationals;
- Review of technology controls and technology transfers, including via e-mails;
- Review of procedural checklists for travel abroad, including for hand carried items like laptop computers;
- Review of recordkeeping practices;
- Sample review of export-related documents;
- Analysis of sample transactions.