

# BOSTON COLLEGE

## EXPORT CONTROL COMPLIANCE MANUAL



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## **BOSTON COLLEGE EXPORT CONTROL POLICY**

The Boston College Export Control Policy is the cornerstone of the University's export control compliance program and requires all members of the BC community to make themselves aware of their own export control compliance obligations and comply with applicable federal laws and relevant University policies and procedures. BC's export control policy is as follows:

### **Boston College Export Control Policy**

Boston College is subject to federal export control laws and regulations, and all members of the Boston College community must comply with export control laws, regulations, and all related University guidance and procedures. The Office of Research Security, Integrity and Compliance is responsible for establishing such guidance and procedures and overseeing compliance with this policy. Compliance is required of all Boston College faculty, staff, and students, as well as any other person or entity conducting research or providing services at or under the auspices of the University (e.g., visiting scholars, contractors, and volunteers).

Export control laws and regulations apply to the oral, written, electronic, or visual transfer of certain items, technology, software, services, and information outside the United States, or any such transfer of an export-controlled item or technology to a non-U.S. entity or individual (a "deemed export" if such transfer is to a non-U.S. entity or individual located in the U.S.). In addition, certain individuals and entities are subject to U.S. government sanctions and U.S. persons are generally prohibited from dealing with such designated individuals and entities.

Export regulations include (i) the International Traffic in Arms Regulations ("ITAR") implemented by the U.S. Department of State to regulate the export of military and space-related items, technologies and services; (ii) the Export Administration Regulations ("EAR") implemented by the U.S. Department of Commerce to regulate the export of dual use (civilian and military) items and technologies; and (iii) the Office of Foreign Assets Control regulations ("OFAC") implemented by the U.S. Department of the Treasury to regulate transactions with nations and entities subject to embargoes, boycotts, and trade sanctions.

Export control regulations are applicable to Boston College in a variety of research and administrative activities, including, but not limited to, international shipments, international travel, interactions with restricted or sanctioned individuals and entities, financial transactions with sanctioned persons or entities, international research and academic collaborations, and dissemination of proprietary technologies.

For University research activities, the "fundamental research" exemption may be applicable. Fundamental research refers to basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community. In cases where the results of fundamental research may be exempt from export control, the application of the exemption can be limited and/or be nullified if the research is subject to publication or participation restrictions. Furthermore, the fundamental research exemption does not apply to the export of licensed controlled tangible items or if the export is to an embargoed country or to a

sanctioned individual. Before relying on the fundamental research exemption, researchers should consult with the Office of Research Security, Integrity and Compliance.

Violation of export control laws can lead to significant criminal, civil, and administrative sanctions and penalties for Boston College as well as the individuals involved in the violation. Questions about the applicability of export control regulations should be directed to the Boston College Office of Research Security, Integrity and Compliance, which maintains training resources and other guidance materials, including the Boston College Export Control Compliance Manual.

Approved: William P. Leahy, S.J.

Date: April 4, 2022

## SECTION I: INTRODUCTION AND KEY DEFINITIONS

### A. Purpose

The U.S. export control regime is made up of federal laws and regulations that impact certain activities undertaken by members of the Boston College community. Export control laws and regulations are complex, rapidly evolving, and not always intuitive. This manual is designed to assist members of the BC community in understanding their export control compliance obligations, and the approach and procedures that BC has adopted to ensure full compliance across the University.

Any inconsistency between the content of this manual and U.S. laws or regulations, or guidance provided by relevant U.S. Government (USG) agencies is unintentional; in all cases the applicable law, regulation, or USG guidance shall take precedence over the information provided in this manual. This manual is provided for informational purposes only and is not intended to serve as, nor should it be considered, legal advice.

Questions pertaining to this manual or export control compliance should be directed to the Office of Research Security, Integrity, and Compliance (RSIC), which is part of the University's Office of the Vice Provost for Research (VPR).

### B. BC Approach to Export Control Compliance: A Shared Responsibility

RSIC oversees the Export Control and Sanctions Compliance Program at Boston College. RSIC provides support and guidance to members of the BC community and ensures that the University's research, academic, and administrative activities comply with applicable U.S. export control laws and regulations. In addition, RSIC helps to interpret this complex set of laws and regulations and works to find solutions that enable the research and work of the BC community.

While RSIC oversees export control compliance at the University, it is important to note that each member of the BC community is responsible for ensuring their own activities comply with existing export control laws and regulations. Violations of U.S. export laws and regulations may result in administrative, civil, and/or criminal penalties levied against the University and/or the individual responsible for the violation.<sup>1</sup>

All University faculty, staff, and students should read and understand the Boston College Export Control Policy;<sup>2</sup> familiarize themselves with the BC Export Control Compliance Manual and related BC export control guides; determine when and how export control laws and regulations apply to their activities; and coordinate with RSIC when potential export control issues arise. Additional resources, including, but not limited to, relevant forms and guides, can be found on

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<sup>1</sup> See section VI, paragraph A for more information on penalties.

<sup>2</sup> The Boston College Export Control Policy can be found on page one of this manual.

the RSIC website.<sup>3</sup> The RSIC export control team exists to assist and provide guidance on export control matters, but every member of the BC Community is responsible for their own export control compliance.

### **C. U.S. Persons and Foreign Persons**

Understanding how the USG defines U.S. persons and foreign persons is key to understanding and complying with U.S. export laws and regulations. In most, but not all, cases, the USG defines U.S. persons as U.S. citizens; lawful permanent residents (LPRs) (i.e. “green card holders”); refugees, asylees, or other protected individuals;<sup>4</sup> or entities incorporated under the laws of the United States.<sup>5</sup> In contrast, foreign persons are those individuals and entities that do not meet the criteria of U.S. persons.

When determining the citizenship/permanent residency of a foreign person, the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR) use different criteria, which is explained in reference to deemed exports in sub-section four of the next paragraph.

### **D. Exports, Deemed Exports, Reexports, and Deemed Reexports**

Export control laws and regulations rely on a broad definition of exports, which includes more than the physical shipment of items from the U.S. to foreign jurisdictions. Under U.S. export control regulations, any transfer of technology, technical data, or source code outside of the U.S., or to a foreign person within the U.S., regardless of the method of transfer, likely constitutes an export.

Consequently, export control requirements and responsibilities apply to a wide range of activities at BC, including some which may not intuitively raise export control concerns for those involved. Therefore, it is important that all members of the BC community develop an understanding of when export control restrictions could apply to their activities and seek guidance from RSIC. Special attention should be directed to the following activities, which in almost all cases, constitute exports under U.S. law:

1. Physical shipments – The physical shipment of goods from the U.S. to another country via a commercial carrier (e.g., USPS, FedEx, DHL), freight forwarder, courier service, etc.
2. Hand-carried items – Anything carried by a traveler, on their person or in carry-on/checked luggage, when traveling to a foreign country, is considered an export, under U.S. law. This includes information, technology, software, and source code stored on

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<sup>3</sup> <https://www.bc.edu/content/bc-web/research/sites/vice-provost-for-research/integrity-and-compliance.html>

<sup>4</sup> See 8 USC § 1324b(a)(3) for more on protected individuals.

<sup>5</sup> 22 USC § 6010



electronic devices or external drives that are carried during international travel, even when there is no intent to access the material abroad.<sup>6</sup>

3. Communications and electronic data transfer/storage – Transferring export-controlled information to a foreign country, or to a foreign national in the U.S., by any method and in any format, constitutes an export. Methods of export include, but are not limited to: email, shared files, downloads from cloud storage, video or telephone calls, and storage on devices hand-carried during travel.<sup>7</sup>
4. Deemed exports – Deemed exports occurs when technical information (ITAR), technology (EAR), or source code (EAR) is transferred to a foreign person who is physically located within the U.S. Deemed exports can occur in many ways, including, but not limited to: in-person communications, emails, phone or video calls, presentations, on site observation, and exposure to items with certain export control restrictions. Universities are prone to deemed export scenarios, because of the prevalence of foreign persons (students, postdocs, and visiting scholars, among others) on campuses where items, technology, and data, restricted for export control reasons, are present. Under the ITAR, deemed exports are considered exports to all countries in which the foreign person has held or holds citizenship or holds permanent residency.<sup>8,9</sup> Under the EAR, deemed exports are considered exports to the foreign person’s most recent country of citizenship or permanent residency only.<sup>10,11</sup>
5. Reexports and deemed reexports – A reexport occurs when an item, technical data, or technology is exported to a foreign country, and then subsequently exported to another foreign country.<sup>12,13</sup> Similarly, a deemed reexport occurs when technical data, technology, or source code is released to a foreign country/foreign person, and then subsequently released to another foreign person with citizenship/foreign residency that differs from that of the foreign country to which the original release took place.<sup>14,15</sup>

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<sup>6</sup> See section IV, paragraph H, and section V, paragraph D, for more information on exports during international travel.

<sup>7</sup> See section I, paragraphs D.4 and D.5 for more information on deemed exports and deemed reexports.

<sup>8</sup> 22 CFR § 120.50(b)

<sup>9</sup> A proposed change would amend this to include only the foreign person’s current citizenship or permanent residency. See <https://public-inspection.federalregister.gov/2022-01889.pdf>.

<sup>10</sup> 15 CFR § 734.13(b)

<sup>11</sup> See section IV, paragraph A for more information on deemed exports.

<sup>12</sup> 15 CFR § 734.14(a)(1)

<sup>13</sup> 22 CFR § 120.51(a)(1)

<sup>14</sup> 15 CFR § 734.14(a)(2)

<sup>15</sup> 22 CFR § 120.51(a)(2)

## SECTION II: FEDERAL EXPORT CONTROL LAWS AND REGULATIONS

U.S. export controls are comprised of a complex set of federal laws and regulations designed to protect U.S. national security; prevent the proliferation of weapons of mass destruction; advance U.S. foreign policy, including the support of international agreements, human rights and regional stability; and maintain U.S. economic competitiveness.<sup>16,17</sup>

The BC community must comply with all export control laws and regulations, many of which apply to non-obvious situations that encompass more than the physical export of goods from the U.S. to a foreign country. Some examples of situations where export controls could apply, beyond physical international shipments, include, but are not limited to: foreign persons in the U.S. accessing or receiving export-controlled technology or information (deemed exports); international travel; and the electronic transfer or storage of export-controlled information.<sup>18</sup> When members of the BC community encounter an activity with a foreign nexus, it is important to consider possible export control implications, and contact RSIC for guidance, as appropriate.

The U.S. Government (USG) restricts the export of defense articles, technical data, and services; dual-use items and technology;<sup>19,20</sup> space related items and technology; nuclear materials and technology; and items that would assist in the development of nuclear, chemical, and biological weapons or the missile technology used to deliver them.<sup>21,22,23</sup>

The U.S. export control regime is primarily administered and enforced by three federal agencies. Defense articles, technical data, and services are licensed by the U.S. Department of State, Directorate of Defense Trade Controls (DDTC); exports of dual-use goods and technologies, as well as some military items, are licensed by the U.S. Department of Commerce, Bureau of Industry and Security (BIS); and export restrictions based on U.S. sanctions are administered by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC). Alleged violations of export laws are investigated by several federal law enforcement agencies, including, but not limited to: the BIS Office of Export Enforcement (OEE); Homeland Security Investigations (HSI); the Federal Bureau of Investigation (FBI); and the Defense Criminal Investigative Service (DCIS).<sup>24</sup>

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<sup>16</sup> 15 CFR § 730.6

<sup>17</sup> <https://www.trade.gov/us-export-controls>

<sup>18</sup> See section I, paragraph D for more information on different export scenarios.

<sup>19</sup> Dual-use items are those with a civil application as well as a terrorism, military, or weapons of mass destruction (WMD) application; 15 CFR § 730.3.

<sup>20</sup> <https://www.bis.doc.gov/index.php/all-articles/2-uncategorized/91-dual-use-export-licenses>

<sup>21</sup> 22 CFR § 120.2

<sup>22</sup> 22 CFR § 120.5

<sup>23</sup> 15 CFR § 730.6

<sup>24</sup> See section V, paragraph I, regarding contact with law enforcement and government officials, and section VI, paragraph A, regarding penalties for violations of export control laws and regulations.

## A. International Traffic in Arms Regulations (ITAR)<sup>25</sup>

The International Traffic in Arms Regulations (ITAR) are promulgated pursuant to the Arms Export Control Act (AECA), which provides the President of the United States with the statutory authority to control the export of defense articles, technical data, and defense services, enumerated (or described) on the U.S. Munitions List (USML). This authority has been delegated, within the executive branch, to DDTC.

The ITAR establishes licensing policies for exports, re-exports, and temporary imports of items on the USML. A license is almost always required for the export of defense articles, technical data, and defense services.

### *Defense Articles, Technical Data, and Defense Services*

The ITAR applies export control restrictions to defense articles, technical data, and defense services. With limited exceptions, if an item contains any part or component controlled by the ITAR, the entire item is controlled by the ITAR.

- Defense Article – any item or technical data that is specifically designed, developed, configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the USML. This includes, forgings, castings, and unfinished products that have reached a stage of production where they are identifiable as defense articles. Defense articles also include technical data stored in any physical form, models, mock-ups, or other items that reveal technical data related to an item enumerated on the USML. The ITAR definition of defense articles does not include basic marketing information on function or purpose, and general system descriptions.<sup>26</sup>
- Technical Data – any information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. Technical data may include blueprints, drawings, photographs, plans, instructions or documentation. Technical data also includes classified information related to defense articles and defense services listed on the USML or Commerce Control List (CCL) 600 series items; information covered by an invention secrecy order; and software related to defense articles. 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.<sup>27</sup>
- Defense Service – the furnishing of assistance (including training) to a foreign person in the U.S. or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles. The furnishing to any foreign person, whether in the U.S. or abroad, of any technical data (as defined in the previous

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<sup>25</sup> The ITAR can be found at 22 CFR §§ 120-230.

<sup>26</sup> 22 CFR § 120.31

<sup>27</sup> 22 CFR § 120.33

paragraph) also constitutes a defense service. Defense services also include military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign person in the U.S. or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice. Importantly, a defense service can occur even if the information provided to foreign military personnel is limited to published or publicly available information.<sup>28</sup>

### ***Items Controlled Under the ITAR***

The USML is divided into the following 21 categories:<sup>29</sup>

- I Firearms and Related Articles
- II Guns and Armament
- III Ammunition and 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 Surface Vessels of War and Special Naval Equipment
- VII Ground Vehicles
- VIII Aircraft and Related Articles
- IX Military Training Equipment and Training
- X Personal Protective Equipment
- XI Military Electronics
- XII Fire Control, Laser, Imaging, and Guidance Equipment
- XIII Materials and Miscellaneous Articles
- XIV Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- XV Spacecraft and Related Articles
- XVI Nuclear Weapons Related Articles
- XVII Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated
- XVIII *Directed Energy Weapons*
- XIX Gas Turbine Engines and Associated Equipment
- XX Submersible Vessels and Related Articles
- XXI Articles, Technical Data, and Defense Services Not Otherwise Enumerated

\*Category XXI is one of the broadest categories on the USML. It is a catch-all category which includes items and technical data “not enumerated on the USML...until such time as the appropriate USML is amended.” Importantly, this category is used to control new items and technologies under the ITAR, and could be applicable to items and technology developed through academic research at Boston College.

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<sup>28</sup> 22 CFR § 120.32

<sup>29</sup> 22 CFR § 121.1

### ***Commodity Jurisdiction and Self-classification***

DDTC maintains jurisdiction over determining whether an item, technology, or service is controlled by the USML.<sup>30</sup> The ITAR always takes precedence when an item, technology, or activity appears to fall under the ITAR and another export control statute (e.g. the EAR).<sup>31</sup> If doubt exists as to which US Government agency maintains jurisdiction over a given item, technology, or service, the University's Empowered Official (EO), and only the EO, can submit a request to the US Government for a commodity jurisdiction (CJ) determination.<sup>32</sup>

Boston College is able to self-classify items, technology, and services, pursuant to the federal regulations that align with the jurisdiction of the item, technology, or service. Self-classification of items by Boston College, must be done by RSIC and not independently, by members of the BC community.

### ***Temporary Import of Defense Articles***

The ITAR also regulates the temporary import of defense articles into the U.S., but does not define temporary in this context, therefore, any import that will subsequently be exported, regardless of the duration of time, constitutes a temporary import.

The authority to regulate the permanent import of defense articles into the U.S. falls under the jurisdiction of the Department of Justice – Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF).<sup>33</sup> The list of items subject to import regulation is called the U.S. Munitions Import List (USMIL), which should not be confused with the USML.<sup>34</sup>

### ***ITAR Prohibited Destinations***

The ITAR specifically prohibits issuance of a license or use of a license exception for the export or temporary import of defense articles or services destined for or originating from proscribed countries (known as 126.1 countries); this prohibition also includes transfers to nationals of proscribed countries, wherever located, and items that are conveyed by a means owned, operated, or leased by any of the proscribed countries or a national thereof.<sup>35,36</sup>

There are two lists of proscribed countries, one with a presumption of denial for license applications, and the second, also with a presumption of denial for license applications, but with limited available exceptions.<sup>37</sup> These lists are modified periodically, and will be used by the University's Empowered Official to determine whether to proceed with a license application

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<sup>30</sup> 22 CFR § 120.4

<sup>31</sup> 22 CFR § 120.11

<sup>32</sup> See section III, paragraph A for more information on Empowered Officials.

<sup>33</sup> 22 CFR § 123.2

<sup>34</sup> 27 CFR § 447, Subpart C

<sup>35</sup> 22 CFR § 126.1

<sup>36</sup> The proscribed country lists are updated periodically by DDTC and can be found at 22 CFR § 126.1(d), Table 1 and Table 2.

<sup>37</sup> 22 CFR § 126.1(d)(1), Table 1 and Table 2

involving a proscribed country.<sup>38</sup> In some cases, the likelihood of denial by DDTC, is such that attempting to gain that approval is not warranted. All decisions of the Empowered Official, including, but not limited to, license applications are final, and in those instances when a decision is made not to submit an application, it will not be possible to proceed with the export, temporary import, or provision of a defense service.

## **B. Export Administration Regulations (EAR)<sup>39</sup>**

The Export Control Reform Act (ECRA) of 2018 provides broad legislative authority for the President of the United States to implement export controls on dual-use items and technology.<sup>40</sup> The ECRA requires the President to control “the export, reexport, and in-country transfer of items subject to the jurisdiction of the United States, whether by United States persons or by foreign persons,” as well as “the activities of United States persons, wherever located, relating to specific (A) nuclear explosive devices; (B) missiles; (C) chemical or biological weapons; (D) whole plants for chemical weapons precursors; (E) foreign maritime nuclear projects; and (F) foreign military intelligence services.”<sup>41</sup>

The ECRA requires the Secretary of Commerce to “establish and maintain a list” of controlled items and “foreign persons and end-uses that are determined to be a threat to the national security and foreign policy of the United States;” require export licenses; “prohibit unauthorized exports, reexports, and in-country transfers of controlled items;” and “monitor shipments and other means of transfer.”<sup>42</sup>

The U.S. Department of Commerce has charged BIS with administering the export licensing and enforcement functions of the dual-use export control system. The EAR and the Commerce Control List (CCL) are the respective counterparts to the ITAR and USML, and serve as the foundation for these export control regulations, which govern most items and technology.

### ***The Commerce Control List (CCL) and Export Control Classification Numbers (ECCNs)***

The CCL is maintained by BIS, and is the EAR equivalent to the USML.<sup>43</sup> The CCL is organized based on categories, numbered 0-9, and defined by the properties and use of the items and technology they contain. The categories of the CCL are as follows:

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<sup>38</sup> See section III, paragraph A for more on Empowered Officials.

<sup>39</sup> The EAR can be found at 15 CFR §§ 730-774.

<sup>40</sup> Dual-use items are those with a civil application as well as a terrorism, military, or weapons of mass destruction (WMD) application; 15 CFR § 730.3.

<sup>41</sup> 50 USC § 4813(a)

<sup>42</sup> 50 USC § 4813(a)

<sup>43</sup> The CCL can be found at Supplement No. 1 to 15 CFR § 774.

- 0 Nuclear and Miscellaneous Items
- 1 Materials, Chemicals, Microorganisms, and Toxins
- 2 Materials Processing
- 3 Electronics
- 4 Computers
- 5 (1) Telecommunications
- 5 (2) Information Security
- 6 Sensors and Lasers
- 7 Navigation and Avionics
- 8 Marine
- 9 Aerospace and Propulsion

Within those categories, the CCL uses five product groups, lettered A-E, to further organize items based on their function. The five product groups of the CCL are as follows:

- A End Items, Equipment, Accessories, Attachments, Parts, Components & Systems
- B Test, Inspection and Production Equipment
- C Materials
- D Software
- E Technology

Each item or technology on the CCL is assigned an Export Control Classification Number (ECCN) with an accompanying designated reason for control. The ECCN and reason for control are used in combination with the BIS Country Chart<sup>44</sup> to determine list-based export restrictions on the item. Each ECCN is a five-character, alpha-numeric designation (e.g., 1A123). The first character coincides with the item's category, the second character coincides with the item's product group, and the last three characters are used to identify the specific item.<sup>45</sup>

**Note: This explanation of the CCL and ECCNs is intended for informational purposes only. Members of the BC community who need to classify an item or technology should contact RSIC, which will assist with the classification. Many details can impact the classification and USG agency with jurisdiction over an item or technology, even if those details seem inconsequential. Therefore, proper training is required and classification should not be attempted by those who are not trained and familiar with the regulations.**  
***EAR99***

The majority of items and technology subject to the EAR, are not listed or described on the CCL, and therefore do not have an assigned ECCN. Instead, these items are designated as EAR99, a catch-all category for items or technology subject to the EAR, but not listed or described on the

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<sup>44</sup> <https://www.bis.doc.gov/index.php/documents/regulations-docs/federal-register-notice/federal-register-2014/1033-738-supp-1/file>

<sup>45</sup> <https://www.bis.doc.gov/index.php/licensing/commerce-control-list-classification/export-control-classification-number-eccn>

CCL. Like items and technology with designated ECCNs, EAR99 items and technology may require an export license, depending on the circumstances.<sup>46</sup>

### ***Antiboycott Provisions of the EAR***

The EAR includes anti-boycott provisions designed and implemented to address boycotts, imposed by foreign governments, which the U.S. does not support. Initially these provisions were established in response to the Arab League boycott of Israel, but the provisions are written broadly to encompass other scenarios where foreign governments may impose boycotts on U.S. allies. The anti-boycott provisions of the EAR apply to U.S. persons, at home or abroad, as well as any person located in the U.S. The anti-boycott provisions apply to the following activities, when conducted in furtherance of a foreign boycott:

1. Agreement to refuse or actual refusal to do business with a boycotted country or with an individual or entity that appears on a boycott-based “blacklist.”
2. Agreement to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality.
3. Providing information about race, religion, sex, or national origin of another person.
4. Furnishing information about business relationships with boycotted countries or blacklisted persons.
5. Furnishing information about membership concerning associations with charitable and fraternal organizations.
6. Paying or otherwise implementing letters of credit containing prohibited conditions or requirements.<sup>47</sup>

U.S. persons asked to engage in any of the activities prohibited under the EAR’s anti-boycott provisions are **required by law to report those requests to BIS**.<sup>48</sup> RSIC will assist with determining whether requests constitute a violation of the EARs anti-boycott regulations and whether applicable exceptions to the anti-boycott regulations exist. RSIC, and the University’s Empowered Official, will assist in reporting any prohibited activities as required by law.

### **C. U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC)<sup>49</sup>**

OFAC administers and enforces economic and trade sanctions and embargoes based on U.S. foreign policy and national security goals. These sanctions and embargoes target foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States.<sup>50</sup> OFAC sanctions vary in scope, with some sanctions targeting entire countries, and others focused on specific entities and individuals.

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<sup>46</sup> <https://www.bis.doc.gov/index.php/licensing/commerce-control-list-classification/export-control-classification-number-eccn>

<sup>47</sup> 15 CFR § 760.2

<sup>48</sup> 15 CFR § 760.5

<sup>49</sup> The regulations for OFAC sanctions are found at 31 CFR §§ 500-590.

<sup>50</sup> <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>



OFAC sanctions are always applicable, even when a proposed activity is also subject to the jurisdiction of another USG entity or set of regulations (e.g., the ITAR or EAR). OFAC sanctions vary, but can prohibit most transactions between U.S. persons, wherever located, and individuals or entities in or from a sanctioned or embargoed country, or individuals or entities that are designated by the USG. These prohibitions generally include importing or exporting goods and services, engaging in or facilitating financial transactions or other business activities, and traveling to embargoed destinations. Importantly, some sanctions prohibit the export of “services,” which OFAC deems anything of value, even if no money is exchanged. This could include, but is not limited to: teaching or lecturing, providing any form of assistance, or participating in any type of business activity. Sanctions lists frequently change and should be consulted prior to commencing any activity with a foreign nexus, including, but not limited to: shipments, travel, conferences, collaborations, fieldwork, and financial transactions.<sup>51,52</sup>

It is important to review specific sanctions programs before conducting activities that involve an OFAC sanctioned country, entity, or person. The individual sanctions specifically describe what activities may be permitted under an applicable license or exception. Activities permitted under a general license do not require specific permission from OFAC. However, RSIC must approve the activity, in writing, following a careful review of the conditions set forth in the general license, **and the use of the general license must be documented by all parties.**<sup>53</sup> Activities that do not fall under an available general license may be eligible for a specific license from OFAC. Specific license requests are submitted by the University’s Empowered Official and must be approved by OFAC prior to commencing the sanctioned activity. When activities are conducted under either a general or specific license, OFAC regulations require that records pertaining to the activity and license are maintained for a period of five years after the conclusion of the activity. Contacting RSIC early in the process, when considering OFAC sanctioned activities, is essential to ensuring compliance and a timely resolution of issues that arise as a result of the proposed activity.

Note: In addition to OFAC, other USG agencies, including, but not limited to, the Department of Commerce and the Department of State, maintain lists of restricted and denied parties. Upon request, RSIC is able to conduct Restricted Party Screening (RPS), which can help mitigate risk by identifying individuals and entities that appear on these various USG lists.

#### **D. Other U.S. Government Agencies with Export (and Import) Control Oversight**

Most activities of the BC community fall under the jurisdiction of the ITAR, EAR, and/or OFAC. However, other USG entities maintain equities and authorities pertaining to export controls, licensing, and/or the movement of certain items. Below is a non-exhaustive list of USG entities with possible equities. If members of the BC community intend to engage in the export of the items described below, they must contact RSIC for guidance well in advance. While the import of items to the U.S. falls outside of RSIC’s purview, the below information may serve as a useful starting point for those seeking guidance on imports to the U.S.

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<sup>51</sup> <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>

<sup>52</sup> Current information on OFAC sanctions programs can be found on the OFAC website at <https://ofac.treasury.gov>.

<sup>53</sup> 31 CFR § 501.601

- **Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)** – ATF administers the permanent importation provisions in section 38 of the Arms Export Control Act (AECA).<sup>54</sup> Individuals engaged in the business of importing articles on the U.S. Munitions Import List (USMIL) for commercial purposes must register with the ATF as an importer under the AECA.<sup>55</sup> Furthermore, any individual who wishes to export a firearm subject to the National Firearms Act must submit an application and obtain approval from ATF in advance.<sup>56,57</sup>
- **Bureau of the Census (Department of Commerce)** – Foreign Trade Regulations require the filing of Electronic Export Information (EEI) through the Automated Export System (AES) when items are exported outside of the United States.<sup>58</sup> There are several exemptions available, and RSIC will help exporters determine whether an exemption is applicable or an EEI submission is required for their export.<sup>59</sup>
- **Centers for Disease Control and Prevention (CDC)** – The CDC Import Permit Program regulates the importation of infectious biological materials that could cause disease in humans. Individuals wishing to import infectious biological agents capable of causing illness in humans, materials known or reasonably expected to contain an infectious biological agent, or vectors of human disease (such as insects or bats) must first obtain a permit issued by the CDC. Additionally, an inspection may be conducted before a permit is issued to ensure the applicant’s facility has appropriate measures in place to minimize the accidental release of biological agents capable of causing human disease.<sup>60,61</sup> Contact the BC Office of Environmental Health and Safety (EHS) for assistance with this type of import.
- **Department of Agriculture (USDA)** – The USDA’s Animal and Plant Health Inspection Service (APHIS) regulates the export of plants and animals that are listed as endangered species under the Endangered Species Act and the Convention on International Trade of Endangered Species of Wild Fauna and Flora.<sup>62,63</sup> These regulations prohibit the export and import of listed species, and authorizes exceptions, which include some research purposes.<sup>64</sup> APHIS also provides certifications for the export of plants and animals outside of the U.S. to help facilitate their import to foreign countries where

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<sup>54</sup> Permanent and temporary export, as was as the temporary import provisions of the AECA are administered by the Department of State.

<sup>55</sup> Note that despite the similar name and acronym, ATF’s U.S. Munitions Import List (USMIL) is distinct from DDTC’s U.S. Munitions List (USML).

<sup>56</sup> For a complete list of the weapons regulated under the National Firearms Act see 26 USC § 5845; 27 CFR § 479.11.

<sup>57</sup> 27 CFR §§ 479.114 – 479.121

<sup>58</sup> 15 CFR § 30.2

<sup>59</sup> 15 CFR § 30.37

<sup>60</sup> <https://www.cdc.gov/orr/ipp/index.htm>

<sup>61</sup> 42 CFR § 71.54

<sup>62</sup> 50 CFR § 23.13

<sup>63</sup> The listed species can be found in the CITES Appendices at <https://cites.org/eng/app/appendices.php>.

<sup>64</sup> 16 USC § 1538

documentation is required. APHIS also lists select biological agents and toxins deemed to pose a threat to plant health, for which transfers are restricted.<sup>65,66</sup>

- **Department of Energy (DOE)** – The DOE has statutory responsibility for authorizing the transfer of unclassified nuclear technology, and assistance to foreign atomic energy activities within the U.S. or abroad. DOE implements the Atomic Energy Act of 1954 (AEA), and controls on nuclear technology and assistance are analogous to the EAR controls on technology and ITAR controls on technical data and defense services.<sup>67</sup>
- **Department of Transportation (DOT)** – The DOT maintains requirements for the shipment of certain items and materials, particularly those that are hazardous. In some instances, these requirements could impact the export (or import) of shipments.<sup>68</sup> BC’s Office of Environmental Health and Safety (EHS) should be contacted when shipping hazardous materials.
- **Drug Enforcement Administration (DEA)** – The DEA implements and enforces Titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended.<sup>69</sup> Titles II and III are known as the “Controlled Substances Act” and the “Controlled Substances Import and Export Act,” respectively, and are collectively referred to as the “Controlled Substances Act” or “CSA.” Regulated transactions involving controlled substances and List I chemicals are subject to specific recordkeeping and reporting requirements.<sup>70,71,72</sup>
- **Food and Drug Administration (FDA)** – The FDA is responsible for enforcing the Federal Food, Drug, and Cosmetic Act (FDCA), which has jurisdiction over biological products for human use, drugs for human use, medical devices, food for human consumption, cosmetics, veterinary medicine, and animal food. The FDCA prohibits the interstate shipment, which includes importation and exportation, of new drugs that lack FDA approval, and foreign-made versions of U.S. approved drugs that have not been manufactured in accordance with FDA approval. Recipients/foreign governments may request that the exporter provide written export certification for products regulated by the FDA. To satisfy this requirement, the FDA provides written certification for regulated exports in the form of certificates and lists of eligible exporters for specific products or destinations.<sup>73</sup>

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<sup>65</sup> 7 CFR § 331.3(b)

<sup>66</sup> 7 CFR § 331.16

<sup>67</sup> 10 CFR § 810

<sup>68</sup> 49 CFR § 173

<sup>69</sup> 21 USC §§ 801–97

<sup>70</sup> 21 USC §§ 830, 97

<sup>71</sup> 21 CFR § 1310

<sup>72</sup> "CBP and Trade Automated Interface Requirements: Implementation Guide for the Customs and Trade Automated Interface Requirements (CATAIR) in Support of the Automated Commercial Environment (ACE)", Department of Justice and Drug Enforcement Administration, V2.6, March 23, 2017; <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/Implementation%20Guide%20for%20DEA%20V2.6%2003-23-2017%20-%20Master.pdf>.

<sup>73</sup> <https://www.fda.gov/international-programs/imports-and-exports>

- **Nuclear Regulatory Commission (NRC) Office of International Programs** – The NRC regulates exports of listed radioactive materials and listed nuclear facilities/equipment.<sup>74,75</sup> Such export must be authorized by NRC under a general or specific license issued in accordance with NRC regulations.

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<sup>74</sup> 10 CFR § 110.9

<sup>75</sup> 10 CFR § 110.8

## SECTION III: ROLES AND RESPONSIBILITIES

Export control compliance is the responsibility of everyone at Boston College. The entire BC community works together to ensure that University activities remain compliant with U.S. export control laws and regulations, and in doing so prevents violations that could result in penalties enforced against individuals and/or the University, in addition to the reputational risk associated with such violations.

The following is a list of key individuals and offices with responsibilities, equities, and involvement in the University's export control compliance program, and associated activities:

### A. Empowered Official (EO)

An Empowered Official (EO) is a designation created under the International Traffic in Arms Regulations (ITAR). Boston College's designated EO, is a member of the Office of Research Security, Integrity, and Compliance (RSIC) staff. The EO will represent BC with the U.S. Government (USG) on all matters related to export controls and sanctions, including, but not limited to: registrations, licenses, classification and commodity jurisdiction requests, and violation disclosures. The EO also maintains the independent authority to inquire into any export or temporary import matter at Boston College, and will be the final authority at the University on such matters.

The ITAR clearly defines the roles and responsibilities of an EO, and states that an EO:

1. Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization;
2. Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant;
3. 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
4. Has the independent authority to:
  - i. Inquire into any aspect of a proposed export, temporary import, or brokering activity by the applicant;
  - ii. Verify the legality of the transaction and the accuracy of the information to be submitted; and
  - iii. Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.<sup>76</sup>

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<sup>76</sup> CFR 22 § 120.67

## **B. Office of Research Security, Integrity, and Compliance (RSIC)**

RSIC is part of the Office of the Vice Provost for Research (VPR) and is responsible for several of BC's compliance programs, including oversight of the University's Export Controls and Sanctions Compliance Program. RSIC develops policies and procedures to ensure Boston College meets its export control compliance obligations under federal law. RSIC serves as the primary POC for the BC community with regard to export control compliance issues. RSIC is responsible for a wide range of export control compliance activities, including but not limited to: screening individuals and institutions against government lists, classifying items and technology under the appropriate authority, reviewing all international shipments, reviewing international travel that meets specified criteria, and assisting with the creation and implementation of technology control plans (TCPs).

All export control concerns should be directed to the RSIC export compliance team via email at [exportcontrol@bc.edu](mailto:exportcontrol@bc.edu). The RSIC Export Control & Sanctions website also provides valuable resources on export control matters.<sup>77</sup>

## **C. Boston College Community**

In accordance with the Boston College Export Control Policy,<sup>78</sup> the BC Community is comprised of faculty, staff, and students, as well as any other person or entity conducting research or providing services at or under the auspices of the University (e.g., visiting scholars, contractors, and volunteers), all of whom are required to follow the University's export control policies and procedures.

## **D. Office of Research Infrastructure and Operations (RIO)**

The Office of Research Infrastructure and Operations (RIO) is part of the VPR, and is led by the Executive Director, Research Infrastructure and Operations. RIO's Research Operations Team serves as "export liaisons" who act as POCs within the facilities they oversee, and refer export control issues to RSIC as appropriate. RIO oversees the BC core facility program and provides operational support with issues, such as shipping and receiving, safety and security, lab moves and renovations, and other lab and equipment related needs.

## **E. Export Control Subcommittee**

A working level committee of the Boston College Foreign Influence Working Group, established to develop and manage export control compliance policies and procedures at the University.

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<sup>77</sup> The RSIC Export Controls & Sanctions website can be found at <https://www.bc.edu/content/bc-web/research/sites/vice-provost-for-research/integrity-and-compliance/export-controls1.html>.

<sup>78</sup> The Boston College Export Control Policy can be found on page one of this manual.

## **F. Foreign Influence Working Group (FIWG)**

The Boston College Foreign Influence Working Group (FIWG) is comprised of staff and faculty representatives from several key University functional areas, and is chaired by the Director of Research Security, Integrity, and Compliance. FIWG's mission is to proactively implement best practices to address policy gaps, ensure compliance with federal laws, and mitigate risks and threats to the University's research enterprise and academic programs, while simultaneously protecting the University's core values and its commitment to academic freedom, open research, diversity, and global engagement. The Working Group's multiple subcommittees include the Export Control Subcommittee.

## **G. Global Travel Advisory Committee (GTAC)**

The Global Travel Advisory Committee (GTAC) considers the implications of international travel, advises University officials, and coordinates emergency response. RSIC participates in this committee, in part to address export control and sanctions compliance issues associated with high-risk travel. The GTAC is chaired by the Associate Director of Global Safety and Security, who works in the Office of Global Engagement.

## **H. Office of Environmental Health and Safety (EHS)**

The Office of Environmental Health and Safety (EHS) implements environmental and occupational health and safety programs and ensures compliance with relevant federal, state and local laws and regulations. EHS does not have a direct export control function, but coordinates with RSIC when the export of hazardous materials arises, to ensure that all government compliance obligations are met.

## **I. Office of the General Counsel (OGC)**

The Office of the General Counsel (OGC) provides legal guidance covering various areas of the law, including export control compliance, and oversees the University's Compliance Program.

## **J. Office of Global Engagement**

The Office of Global Engagement manages relationships and interactions with partners and institutions around the world, including international agreements. It is the primary contact for issues related to international travel and the International Travel Policy through its Office of Global Safety and Security; as such, it oversees the Global Travel Advisory Committee (GTAC). The Office of Global Engagement's *Global Engagement Gateway* website serves as the University's primary resource for those engaging or traveling internationally.<sup>79</sup>

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<sup>79</sup> <https://www.bc.edu/bc-web/sites/global-engagement/expand-your-world/Global-Engagement-Gateway.html>

## **K. Office for Research Protections (ORP)**

The Office for Research Protections (ORP) is part of the VPR, and has compliance responsibilities with BC's Institutional Review Board (IRB) and Institutional Animal Care and Use Committee (IACUC). ORP coordinates with RSIC when export control compliance issues arise, and notably ORP oversees BC's Responsible Conduct in Research (RCR) training, which includes an export control compliance component.

## **L. Office of Sponsored Programs (OSP)**

The Office of Sponsored Programs (OSP) provides comprehensive support to members of the Boston College research community engaged in the preparation and submission of proposals and the management of funded projects. OSP is responsible for ensuring that all research proposals and projects adhere to BC's academic and research policies, and that BC meets its obligations to external sponsors.

## **M. Office of Technology Transfer and Licensing (OTTL)**

The Office of Technology Transfer and Licensing (OTTL) manages BC's intellectual property (IP) portfolio and assists the BC community in identifying, protecting, and disseminating intellectual property according to the principles of the University Intellectual Property Policy.<sup>80</sup> Of importance for export control compliance, certain language in IP agreements (e.g., certain publication restrictions and confidentiality clauses), could impact the applicability of the fundamental research exclusion (FRE).<sup>81,82</sup> All agreements regarding IP and technology transfer (e.g., collaboration, material transfer, or sponsored research agreements), must be reviewed by OTTL prior to their signing and execution.

## **N. Office of the Vice Provost for Research (VPR)**

The Office of the Vice Provost for Research (VPR) supports and enhances research, education, and design-driven innovation at Boston College. As part of this endeavor, the VPR oversees RSIC, ORP, OSP, OTTL, and other offices within the University's research infrastructure.

## **O. Principal Investigator (PI) / Lab Head**

Principal Investigators (PIs), typically synonymous with a Lab Head, are the individuals responsible for the preparation, conduct, and administration of a lab and/or sponsored project, as

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<sup>80</sup> Boston College's Intellectual Property Policy can be found at <https://www.bc.edu/content/dam/bc1/sites/policies/IP%20Policy%20Revised%2001-27-22.pdf>.

<sup>81</sup> More information can be found on the OTTL website at <https://www.bc.edu/content/bc-web/research/sites/vice-provost-for-research/tech-transfer.html>.

<sup>82</sup> See section IV, paragraph B for more information on the FRE.



well as the associated research. PIs/Lab Heads perform an important function with regard to export control compliance, because they possess scientific expertise and knowledge of the day-to-day work and collaborations that occur as part of the research taking place at BC. PIs/Lab Heads are called upon to assist with item classification, refer potential export control issues to RSIC, and provide oversight of the students and researchers working in their facilities. PIs/Lab Heads are responsible for the scientific equipment and data in their labs; lab visitors; administration of technology control plans (TCPs); and international collaborations and shipments related to their projects. Therefore, it is important that PIs/Lab Heads maintain awareness of these activities, and contact RSIC with any relevant concerns.

## SECTION IV: EXPORT CONTROLS IN ACADEMIA

This section highlights export control issues that frequently arise in higher education. As emphasized throughout this manual, members of the BC community should contact the Office of Research Security, Integrity, and Compliance (RSIC), and not attempt to independently interpret and/or apply this information to possible export control situations that arise. Each situation is unique, and different circumstances could impact the relevant guidance, particularly with regard to exclusions, exemptions, and exceptions to export control regulations.

### A. Deemed Exports

The release of technical data (ITAR), technology (EAR), or source code (EAR) to a foreign person located in the United States, constitutes a deemed export that may require a license from the U.S. Government (USG), or the use of a specific exemption/exception under the ITAR or EAR, even though the data, technology, or code may never leave the U.S. The export control classification of the technical data, technology, or source code and the relevant country-specific restrictions determine whether a license or exemption/exception is required prior to release to the foreign person located in the U.S.

The ITAR and EAR differ with respect to the application of deemed exports and how they are applied to foreign persons in the U.S.:

- ITAR: A release of **technical data** is considered a deemed export to all countries in which the foreign person has held or holds citizenship or holds permanent residency.<sup>83</sup>
- EAR: The release of **technology or source code** is considered a deemed export to the foreign person's most recent country of citizenship or permanent residency.<sup>84</sup>

In most cases, the mere use of items that are restricted for export control reasons, does not confer enough knowledge about their underlying technology to constitute a deemed export. However, there are certain circumstances in which deemed exports can occur through the use of or exposure to an item, and this is most likely to occur with items that have a military, outer space, or intelligence application,<sup>85</sup> specifically, defense articles controlled by the ITAR's U.S Munitions List (USML) and items that appear in the 600 and 9X515 series of the EAR's Commerce Control List (CCL).

In circumstances where exposure to items, technical data, technology, or source code could result in an unauthorized deemed export, it may be necessary to create and implement a technology

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<sup>83</sup> 22 CFR § 120.50(b)

<sup>84</sup> 15 CFR § 734.13(b)

<sup>85</sup> Intelligence in this context refers to the collection of information of political or military value, typically by an established intelligence entity of a country or organization (e.g., the Central Intelligence Agency). This is not a reference to Artificial Intelligence (AI).

control plan (TCP) that prevents a deemed export from occurring. RSIC will assist to ensure the appropriate steps are taken and the TCP is properly designed, implemented, and followed.

## **B. Fundamental Research Exclusion (FRE)**

Fundamental research is defined differently, and in a slightly different context, under the ITAR and EAR, resulting in differences in the applicability of the fundamental research exclusion (FRE) under each set of regulations. While most research at Boston College is considered fundamental research, members of the BC community should not attempt to independently classify their research as such and, or apply the FRE to their work. Instead, contact RSIC for a consultation and final determination, regarding the applicability of the FRE to a specific situation.

Note: The FRE does not apply to federal requirements for “research security” (e.g. the CHIPS & Science Act of 2022 and NSPM-33), which cover fundamental research. The U.S. Government defines “research security” as “safeguarding the research enterprise against the misappropriation of research and development to the detriment of national or economic security, related violations of research integrity, and foreign government interference.” Consequently, research activities that fall under the FRE for export control purposes, could still have restrictions under federal research security requirements. RSIC can assist members of the BC community with navigating research activities that fall under either or both export controls and research security compliance requirements, including those that involve fundamental research.

### ***Fundamental Research Under the ITAR***

The ITAR defines fundamental research as “basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls.” Under the ITAR, fundamental research must take place at an accredited institution of higher education in the U.S.<sup>86</sup>

Importantly, the fundamental research only applies to the results of the research, and even then, does not apply to defense articles or defense services that arise from the research.

- An item generated from or used to conduct fundamental research remains controlled under the ITAR, if it is classified as a defense article on the USML. The classification of research as fundamental research, does not impact the classification of the item itself or the controls placed upon the item as a defense article.
- Fundamental research and availability in the “public domain” do not exempt an activity from control under the ITAR, if the activity in question constitutes a defense service (e.g., demonstrating or providing instruction in the operation of a defense article or providing instruction to foreign military personnel).<sup>87</sup> This holds true even if the entire defense

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<sup>86</sup> 22 CFR § 120.34(a)(8)

<sup>87</sup> 22 CFR § 124.1

service is comprised of publicly available information, or information that is derived from fundamental research.

Under the ITAR, the fundamental research distinction is negated when:

- The university or its researchers accept restrictions on publication of scientific and technical information resulting from the project or activity, or
- The research is funded by the USG and specific access and dissemination controls protecting information resulting from the research are applicable.<sup>88</sup>

### ***Fundamental Research Under the EAR***

The EAR defines fundamental research as “research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which researchers have not accepted restrictions for proprietary or national security reasons.”<sup>89</sup>

Technology and software that arise during, or result from, fundamental research and are intended to be published are not subject to the EAR.<sup>90</sup> In contrast to technology and software, physical items remain subject to the export controls under the EAR, even when derived from fundamental research. Items enumerated or described on the CCL are subject to the EAR and the resulting export controls.

Importantly, existing export controls on items, technology, and software that are used as inputs in the conduct of fundamental research remain in place. Existing export controls are not negated by the inclusion of items, technology, or software in fundamental research, and all applicable laws and regulations must be followed. This is particularly important to consider when working with foreign collaborators.

To qualify as fundamental research, the research must not include any publication, access, or dissemination restrictions (including restrictions based on nationality or citizenship). The FRE may be nullified by any clause, regardless of sponsorship, that gives the sponsor the right to approve publications, restricts participation (e.g., based on nationality) in the conduct of research for national security reasons, or otherwise restricts participation or disclosure of research results.<sup>91</sup>

While restrictions on research publication can negate the applicability of the FRE, the following limited restrictions are permissible without compromising the FRE:

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<sup>88</sup> 22 CFR § 120.34(a)(8)

<sup>89</sup> 15 CFR § 734.8(c)

<sup>90</sup> 15 CFR § 734.8(a)

<sup>91</sup> 15 CFR § 734.8

- Prepublication review is conducted solely to ensure that publication would not compromise patent rights, so long as the review causes no more than a temporary delay in publication of research results.<sup>92</sup>
- Prepublication review is conducted by a sponsor of research solely to ensure that publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers or compromise patent rights.<sup>93</sup>
- USG-funded research subject to government-imposed access and dissemination or other specific national security controls qualifies as fundamental research, once all government-imposed national security controls have been satisfied and the researchers are free to publish without restriction.<sup>94</sup>

Research agreements (and post-implementation changes to agreements), including, but not limited to: material transfer agreements (MTAs), intellectual property (IP) agreements, and sponsored awards (e.g., grants and contracts) may contain language that could impact the applicability of the FRE or raise other concerns. RSIC is available to consult and provide guidance regarding the applicability of the FRE, based on the details of an agreement.

### C. Public Domain and Published Information Exclusions

In most cases, information that is in the “public domain” (ITAR) or “published” (EAR) is excluded from export controls that would otherwise exist under the ITAR or EAR. However, the ITAR and EAR differ in how they define this excluded information, including when and where the information is made public.

#### *ITAR - Public Domain Information*

Under the ITAR, “technical data” does not include information in the public domain, and therefore, public domain information is not subject to regulation under the ITAR.<sup>95</sup> Public domain refers to “information which is published and which is generally accessible or available to the public:”

- Through sales at newsstands and bookstores;
- Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;
- Through second class mailing privileges granted by the USG;
- 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;**

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<sup>92</sup> 15 CFR § 734.8(b)(1)

<sup>93</sup> 15 CFR § 734.8(b)(2)

<sup>94</sup> 15 CFR § 734.8(b)(3)

<sup>95</sup> 22 CFR § 120.33(b)

- Through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant USG department or agency; or
- Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.<sup>96,97</sup>

Importantly, defense services remain controlled under the ITAR, even if the assistance to a foreign person in relation to a defense article, or training to foreign military personnel, is limited to public domain information.<sup>98</sup> Therefore, it is important to consult RSIC and consider the context in which public domain information will be used, prior to applying the public domain exclusion.

### ***EAR – Published Information***

The EAR states that technology and non-encryption software, which is published and available to the public, is excluded from control under the EAR. The EAR sets parameters for what constitutes published information and confers no geographic constraints on where the information is published/made public. For technology and non-encryption software to be published under the EAR, it must meet one of the following criteria:

- Subscriptions available without restriction to any individual who desires to obtain or purchase the published information;
- Libraries or other public collections that are open and available to the public, and from which the public can obtain tangible or intangible documents;
- Unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the interested public;
- Public dissemination (i.e., unlimited distribution) in any form (e.g., not necessarily in published form), including posting on the Internet on sites available to the public; or
- Submission of a written composition, manuscript, presentation, computer-readable dataset, formula, imagery, algorithms, or some other representation of knowledge with the intention that such information will be made publicly available if accepted for publication or presentation.<sup>99</sup>

### **D. Educational Information and General Principles in Science, Math, and Engineering**

Both the ITAR and EAR provide exclusions for general educational information that is commonly taught at academic institutions; however, the ITAR and EAR differ on how this information is defined, and thus, excluded from control.

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<sup>96</sup> See section IV, paragraph B for more information on fundamental research under the ITAR.

<sup>97</sup> 22 CFR § 120.34

<sup>98</sup> See section II, paragraph A for more on defense services.

<sup>99</sup> 15 CFR § 734.7

Despite the following ITAR and EAR exclusions on educational information, restrictions may still apply, depending on the recipient and country, as a result of sanctions imposed by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC).

### ***ITAR exclusion for General Principles in Science, Math, and Engineering***

The ITAR excludes “information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities” from its definition of technical data, and therefore, this information is not controlled by the ITAR.<sup>100</sup>

### ***EAR Exclusion for Educational Information***

The EAR excludes from its control, information and software that are “released by instruction in a catalog course or associated teaching laboratory of an academic institution.”<sup>101</sup>

## **E. Online Activities Involving Comprehensively Sanctioned Countries**

Regardless of the applicability of any ITAR or EAR exclusions, online activity (e.g. educational courses, communications, presentations) may be restricted or prohibited by OFAC sanctions, when the participants involved are located in a country subject to embargoes/comprehensive sanctions or are located in another foreign country, but normally reside in a country subject to embargoes/comprehensive sanctions. Depending on the circumstances, it may be possible to utilize a general license or obtain a specific license authorizing the online activity, when it would otherwise be restricted or prohibited under U.S. sanctions.<sup>102,103</sup>

Members of the BC community who wish to conduct online activity involving OFAC embargoed/comprehensively sanctioned countries, or nationals of those countries, should contact RSIC to review the details of the situation and discuss possible solutions. When an activity is conducted under the authority of a specific or general license, the details of the activity and license used must be documented and retained for a period of at least five years.<sup>104,105</sup>

## **F. Bona Fide and Full-Time Employees**

Under a specific employment exemption, the ITAR allows “disclosures of unclassified technical data in the U.S. by U.S. institutions of higher learning to foreign persons who are their bona fide and full time regular employees.”<sup>106</sup> Similarly, the EAR includes an exception that “authorizes

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<sup>100</sup> 22 CFR § 120.33(b)

<sup>101</sup> 15 CFR § 734.3(3)(iii)

<sup>102</sup> 31 CFR §§ 510, 515, 560, 569, 589, 591.

<sup>103</sup> Obtaining a license from OFAC, or another USG agency, is a process that can take months, and there is no guarantee that RSIC will be successful in obtaining the license on behalf of a member of the BC community. In some cases, USG agencies work under a presumption of denial, making it all but impossible to obtain a license.

<sup>104</sup> 31 CFR § 501.601

<sup>105</sup> See section V, paragraph G for more on record retention and export controls.

<sup>106</sup> 22 CFR § 125.4(b)(10)

the release in the United States of ‘technology’ and source code that is subject to the EAR by U.S. universities to foreign nationals who are their bona fide and full time regular employees.”<sup>107</sup> **In both cases, country-based restrictions may apply and documentation of adherence to the requirements and use of the exemption/exception is required.** Requirements to use the bona fide and full-time employee exemption/exception include:

- The employee’s permanent residence/abode throughout the period of employment is in the U.S.<sup>108,109</sup>
- The employee is not a national of a country to which exports are prohibited pursuant to 22 CFR § 126.1 (ITAR).<sup>110</sup>
- The employee is not a national of a country listed in Country Group D:5 of Supplement No. 1 to 15 CFR § 740 (EAR).<sup>111,112</sup>
- The university informs the individual in writing that the technical data (ITAR), technology (EAR), or source code (EAR) may not be transferred to other foreign persons without the prior written approval of the DDTTC or BIS, respectively.<sup>113,114</sup>
- The University documents the disclosure of technology or source code under the exemption.<sup>115</sup>

This exemption/exception only applies to the transfer of technical data (ITAR), technology (EAR), and source code (EAR) and related discussions. These transfers and discussions may only occur between/among the foreign, bona fide and full-time employee and other university employees working on the project, not external parties, even those involved in the relevant project.

RSIC will assist in determining whether the employee is considered a bona fide and full-time employee for the purpose of this exemption/exception. In most cases, the criteria to satisfy the definition of a bona fide and full-time employee would be met by permanent employees of the university who work in a full-time, twelve-month position that is benefits eligible.

## G. International Shipments

**All international shipments that meet BC’s International Shipping Export Control Screening Criteria must be reviewed and cleared by RSIC prior to shipment, so that the item(s) can be properly classified and a determination made as to whether a license is required for the shipment.** International shipments are integral to much of the work done by faculty, staff, and students at Boston College, but also raise export control concerns that must be

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<sup>107</sup> 15 CFR § 740.13(f)(1)

<sup>108</sup> 22 CFR § 125.4(b)(10)

<sup>109</sup> 15 CFR § 740.13(f)(2)

<sup>110</sup> 22 CFR § 125.4(b)(10)

<sup>111</sup> 15 CFR § 740.13(f)(2)

<sup>112</sup> Country Group D:5, and all Country Group designations, are subject to change by BIS. See 15 CFR § 740 Supplement No. 1 for current Country Group designations.

<sup>113</sup> 22 CFR § 125.4(b)(10)

<sup>114</sup> 15 CFR § 740.13(f)(2)

<sup>115</sup> 15 CFR § 740.13(h)



addressed during the shipping process. It is important that all members of the BC community are aware of these issues and adhere to the proper procedures when making shipments of any kind to a location outside the U.S., including the completion of an International Shipping Form when required.<sup>116,117</sup>

## **H. International Travel, Research, and Conferences**

International travel, research, conferences, and presentations provide an opportunity to advance work through collaboration and discussion with foreign partners. Importantly, traveling and interacting with foreign colleagues (even in a virtual setting) also present opportunities for the inadvertent transfer of information restricted for export control reasons, in violation of U.S. laws and regulations. To prevent such an occurrence, members of the BC community are encouraged to consult with RSIC prior to participating in international conferences, whether in-person or virtual. RSIC staff are available to assess your unique situation and discuss potential issues that may arise.

**Pursuant to the Boston College International Travel Policy, all BC faculty, staff, and students are required to register international travel that is funded or administered by BC, or, in the case of faculty and staff, when the travel relates to their role at Boston College.**<sup>118</sup>

International travel is registered using the BC Travel Registry, which is managed by the Office of Global Engagement.<sup>119</sup> During the registration process, faculty, staff, and students will be presented with a short list of export control screening questions designed to identify those travelers most likely to encounter export control concerns during their travel. Those travelers determined to be in high-risk categories will be prompted to complete the Research Security and Export Control Form within the registry, and the travel will be reviewed and assessed by RSIC staff prior to travel, provided that the travel registration is submitted with sufficient lead time.

Important considerations for travelers:

- All items carried by a traveler, either on their person or in checked/carry-on luggage, are considered exports to all destination and transit countries.
- All information stored on electronic devices or accessed abroad constitutes an export. This includes information, technical data, programs, applications, and advanced encryption that could be restricted for export control reasons.
- When travelling to OFAC sanctioned countries, additional restrictions apply and a license may be required to export many items, including electronic devices.
- Due to the export control and cyber security issues raised when traveling with electronic devices, RSIC's recommended best practice is to travel with "clean" devices with minimal saved/downloaded data whenever possible.

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<sup>116</sup> Refer to section V, paragraph B for more information on BC's international shipping procedures, including the mandatory screening criteria.

<sup>117</sup> [International Shipping Form](#)

<sup>118</sup> <https://www.bc.edu/content/dam/bc1/sites/policies/International-Travel-Policy-pdf.pdf>

<sup>119</sup> BC's Travel Registry can be accessed at [travelregistry.bc.edu](http://travelregistry.bc.edu).

- Presenting at conferences (and conversations about your work) can raise export control concerns, when export-controlled information is released to foreign nationals. Limiting presentations and discussions to published information and information that is intended to be published (without restriction) is the safest course of action, as information that is in the public domain (ITAR) or published (EAR) is typically excluded from export controls.<sup>120,121,122,123</sup>

## **I. International Collaborations**

International collaborations are integral to the research and academic advancement of the BC community. While export control laws and regulations may, at times, seem like a barrier to international collaboration, RSIC encourages members of the BC community not to allow these laws and regulations to impede this important aspect of their work. Instead, consult with RSIC to ensure you collaborate with international colleagues in a manner that is compliant with the law.

RSIC will conduct a preliminary risk assessment, which includes restricted party screening (RPS), to determine if the individuals and institutions involved in the proposed collaboration are subject to sanctions or appear on any USG lists of restricted or denied parties. If RPS reveals a positive match for a screened individual or institution, RSIC will work with you to navigate the process and when possible and appropriate, obtain the necessary licenses to enable the collaboration.<sup>124</sup> RSIC can also help to determine best practices for your collaboration that account for your unique circumstances.

## **J. Foreign National Visitors on Campus**

Hosting foreign national visitors on campus is a critical part of the research, scholarship, education and work that is conducted at BC, and can be either formal (e.g., Visiting Scholars or Fellows) or informal (e.g., a day visit from a colleague travelling through the area). Hosting foreign national visitors can raise export control and research security concerns. When hosting foreign national visitors on campus, RSIC encourages members of the BC community to “know their visitors” and understand the purpose of visits. This is particularly important in the STEM fields and spaces, where items and technology that are restricted for export control reasons are most likely to be found, as well as any time a visitor could be exposed to proprietary information or intellectual property. These scenarios require special attention to possible export control concerns that could arise.

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<sup>120</sup> 22 CFR § 120.34

<sup>121</sup> 15 CFR § 734.7

<sup>122</sup> See section IV, paragraph C for more on the public domain and published information exclusions.

<sup>123</sup> See section V, paragraph D for more on BC’s International Travel procedures. Also, contact RSIC prior to participating in international conferences or collaborations, in order to understand the procedures and subtle, but important, nuances in this area of export control laws and regulations.

<sup>124</sup> See section V, paragraph A for more information on RPS.

RSIC is available for a consultation should members of the BC community have any concerns about foreign national visitors on campus. RSIC can conduct restricted party screening (RPS) and advise hosts on the areas of concern associated with foreign national visitors on campus. For formal categories of foreign national visitors (e.g., Visiting Scholars, Visiting Fellows, Postdocs, and Interns), sponsors must complete the appropriate Foreign National Visitor Export Control Form and provide a curriculum vitae (CV) to facilitate the RPS process. Although RPS checks and RSIC guidance can assist sponsors and hosts in mitigating risk, they do not eliminate risk; consequently, sponsors and hosts should know their foreign national visitors and understand the possible concerns that could arise from their presence on campus.

## SECTION V: BOSTON COLLEGE EXPORT CONTROL PROCEDURES

### A. Restricted Party Screening (RPS)

The Office of Research Security, Integrity, and Compliance (RSIC) conducts restricted party screening (RPS) of individuals and entities (typically institutions of higher education), to determine if they are included on any lists of denied or restricted parties, particularly those maintained by the U.S. Government (USG). As the BC community enters into a broad range of partnerships, collaborations, and transactions with international partners, this process is an integral part of the University's due-diligence and vetting process. RPS is typically conducted by the RSIC staff, and in some cases, RSIC can provide offices at BC with an account to conduct initial screenings for official business purposes.

The following is a non-exhaustive list of circumstances, under which RSIC may conduct RPS for export control and sanctions compliance reasons, or may delegate that responsibility to the requesting office:

1. Onboarding of foreign national faculty, visiting scholars, visiting fellows, postdocs, and interns.
2. International shipments.
3. Individuals requiring access to sensitive technology.
4. Foreign sponsors, organizers, or hosts of conferences, research, or travel.
5. Parties in conflict of interest/commitment reports.
6. Distance learning that involves foreign persons.
7. Payments to foreign nationals or entities.
8. Parties to official agreements, including, but not limited to, non-disclosure agreements and material transfer agreements.

Upon request, RSIC will conduct RPS and help assess the risk involved with a proposed activity. Members of the BC community are encouraged to contact RSIC prior to commencing international collaborations. While this does not eliminate all risk, it allows members of the BC community to enter the collaboration with a better understanding of the risk involved, and work with RSIC to ensure compliance with relevant laws and regulations. When an individual or entity appears on a denied or restricted party list, that does not necessarily mean that the proposed activity will be prohibited. In many cases the identified risk can be mitigated, and it is possible to comply with relevant export control laws and regulations by taking additional steps, such as acquiring a license from the U.S. Government (USG).

### B. International Shipments

**RSIC must screen, properly classify, and approve all international shipments that meet BC's International Shipment Export Control Screening Criteria, prior to export.**<sup>125</sup> If a

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<sup>125</sup> The current International Shipping Export Control Screening Criteria can be found on the [International Shipping Form](#) and in the International Shipping Guide available on the [RSIC website](#).

proposed shipment meets the screening criteria, the individual shipping the item (exporter) is required to complete BC's International Shipping Form in advance of the proposed shipment date.<sup>126</sup> The form contains questions about the shipment's contents, recipient, destination, and purpose, which assist RSIC in identifying possible export control concerns. Providing detailed information, that is comprehensible to someone unfamiliar with the relevant subject matter, will minimize the need for follow up communications, and expedite the processes of classifying the shipment, making a license determination, and providing a response to the exporter.

It is recommended that exporters submit this form, with all the requested information, well in advance of the intended shipment date. Upon receipt of the form, RSIC will provide a response, which will include a determination as to whether the shipment requires an export license. In most instances, RSIC will provide a response to the exporter within **five business days**; however, due to the complexity of the shipment, staffing levels, or other operational priorities, this response time may not always be possible.

If RSIC determines that a license is required, RSIC will work with the exporter to obtain and verify the necessary information, and the University's Empowered Official will file the license application. Obtaining an export license from the USG is a lengthy process, and the USG may ultimately deny the license application. **Under no circumstances can an item requiring an export license be shipped prior to obtaining the appropriate license.**

Once RSIC clears an item for shipment, exporters may have additional obligations as part of the export process. Those obligations are listed below, and RSIC will provide instructions with the shipment approval notification email to inform exporters when these additional obligations apply.

### ***Destination Control Statement – Shipping Invoice***

Per the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR), all shipments, with the exception of those classified as EAR99, must include the following Destination Control Statement on the shipping invoice.

*These items are controlled by the U.S. Government and authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) herein identified. They may not be resold, transferred, or otherwise disposed of, to any other country or to any person other than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.<sup>127</sup>*

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<sup>126</sup> [International Shipping Form](#)

<sup>127</sup> 15 CFR § 758.6 and 22 CFR § 123.9 (b)(1)(iv)

### ***Export Control Classification Number (ECCN) Declaration – Shipping Invoice***

Shipments with items that have an Export Control Classification Number (ECCN) in the 9X515 or 600 series, typically those with military, space, or intelligence applications,<sup>128</sup> must also have the ECCN printed on the shipping invoice.<sup>129</sup>

### ***Automated Export System (AES), Electronic Export Information (EEI) Filing***

Electronic Export Information (EEI) filings are required by the U.S. Department of Commerce, Bureau of the Census, unless a specific exemption applies. Commerce uses the information collected through EEI filings to compile statistical trade data and to enable compliance with U.S. export control law. Exporters who are required to complete BC's International Shipping Form cannot send their shipments until the shipment has been approved by RSIC and an EEI filing is completed or an EEI exemption filing has been applied and documented. Unless an exemption can be applied, an EEI filing is required if the export:

- Requires an export license/permit
- Exceeds \$2500 in value
- Is destined for an OFAC embargoed country (Cuba, Iran, North Korea, Syria)
- Is destined for China (including Hong Kong), Russia, or Venezuela
- Is destined for a recipient on the Department of Commerce, Bureau of Industry and Security (BIS) Unverified List
- Is controlled by the ITAR
- Is controlled by the EAR, under 600 series or 9X515 ECCNs
- Contains rough diamonds
- Contains self-propelled vehicles
- Is exported without a license under exception - Strategic Trade Authorization (STA)<sup>130,131,132</sup>

The USG provides an Internal Transaction Number (ITN) upon successful completion of an EEI filing. The ITN should be included on the shipping documents and will likely be required by the shipping company. When an EEI exemption is used in place of an EEI filing, the corresponding exemption number should be included on the shipping documentation.

### ***Record Retention***

In accordance with U.S. export laws and regulations, exporters must maintain all documentation pertaining to international shipments, in a format that is not subject to alteration, for a period of

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<sup>128</sup> Intelligence in this context refers to the collection of information of political or military value, typically by an established intelligence entity of a country or organization (e.g., the Central Intelligence Agency). This is not a reference to Artificial Intelligence (AI).

<sup>129</sup> 15 CFR § 758.6(a)(1)

<sup>130</sup> <https://www.trade.gov/filing-your-export-shipments-through-automated-export-system-aes>

<sup>131</sup> [https://help.cbp.gov/s/article/Article-292?language=en\\_US#:~:text=If%20the%20U.S.%20Principal%20Party,citation%20to%20the%20post%20office.](https://help.cbp.gov/s/article/Article-292?language=en_US#:~:text=If%20the%20U.S.%20Principal%20Party,citation%20to%20the%20post%20office.)

<sup>132</sup> 15 CFR § 758.1

at least five years. This recordkeeping requirement, applies regardless of whether the shipment requires a license or EEI filing. Records should be kept in a manner, such that they are retrievable in the event of an audit by the University or a request from the USG, and should remain available even after the exporter has separated from the University, if that is within the five-year retention period. Failure to maintain required records may constitute a violation of U.S. export regulations.<sup>133,134,135</sup>

### ***Foreign Import Laws, Regulations, and Procedures***

Depending on the item and destination, many foreign countries require paperwork, item descriptions/valuation, licenses, and/or fees upon a shipment's arrival. These laws vary by country, and can change frequently, which puts the recipient of the export in the best position to provide guidance on the import side of a transaction, which falls beyond the purview and expertise of RSIC. It is highly recommended that exporters coordinate directly with the recipient to understand the importation process of the recipient's country/jurisdiction and address any of those requirements in advance, to avoid delays to the shipment.

### **C. Procurement Activities**

The procurement process presents an opportunity to obtain information about the export controls on an item, including the USG agency with jurisdiction over the item and the export control classification of the item prior to its arrival on campus. The manufacturer/vendor is typically in the best position to determine the export controls applicable to the item, because they are most familiar with the item and its specifications. Purchasers from the BC community should request that the manufacturer/vendor provide a written export control classification for the item, along with the purchasing quote. Most frequently, the manufacturer will provide an ECCN or a declaration that the item is designated EAR99. Once obtained, this information should be conveyed to RSIC for review, but procurement of the item should not be delayed as a result of the request for export control information. **However, if the item is believed to be controlled by the ITAR or by EAR ECCNs in the 600 or 9X515 series (items with a military, outer space, or intelligence applications), RSIC must be consulted prior to the purchase being finalized.**<sup>136</sup>

If anyone in the procurement process believes an item being purchased is controlled by the ITAR; is controlled by the EAR with ECCNs in the 600 or 9X515 series; has a possible military, outer space, or intelligence application; they must notify RSIC immediately, because additional steps must be taken to prevent a deemed export violation from occurring once the item arrives on

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<sup>133</sup> 15 CFR § 762

<sup>134</sup> 22 CFR §122.5

<sup>135</sup> See section V, paragraph G for more on record retention.

<sup>136</sup> Intelligence in this context refers to the collection of information of political or military value, typically by an established intelligence entity of a country or organization (e.g., the Central Intelligence Agency). This is not a reference to Artificial Intelligence (AI).

campus. A technology control plan (TCP) must be implemented prior to the arrival of such items, to prevent unauthorized access to the items.<sup>137,138</sup>

If the purchaser intends to export the item to a foreign country after delivery, it is important to obtain export control information from the manufacturer and provide it to RSIC in a timely manner. Items cannot be exported from the U.S. until export control classifications and restrictions are determined, and the best way to expedite the export of an item is to obtain the relevant information early on in the procurement process.

#### **D. International Travel**

##### ***International Travel Research Security and Export Control Form***

Pursuant to the BC International Travel Policy, all members of the BC community are required to register BC-related travel through the University's travel registry, which is managed by the Office of Global Engagement.<sup>139,140</sup> As part of the registration process, travelers are asked screening questions designed to identify possible export controls and sanctions concerns. Depending on the answers to those questions, the registry may prompt the traveler to complete the Research Security and Export Control Form, which provides RSIC with more detailed information about travel that may raise export control and sanctions concerns.

**It is the responsibility of the traveler to ensure that the Research Security and Export Control Form is submitted with complete and accurate information about their trip. Delegating administrative tasks associated with travel does not relieve the traveler of their export control obligations with Boston College or under U.S. law. Each traveler should complete the export control screening questions and Research Security and Export Control Form themselves, or at the very least, provide and review the answers submitted on their behalf, in order to avoid inadvertent violations of the law for which the traveler will be accountable to the USG.**

##### ***Sharing Work with International Audiences***

If you plan to present, or otherwise share, your work during international travel, or virtually with international audiences, RSIC is available to provide an export control consultation. In almost all cases, export control restrictions do not apply when **presentations are limited to information that is in the public domain (ITAR), or information that is, or will be, published without restrictions (EAR).**<sup>141,142,143</sup> However, presenters should consult RSIC in advance to discuss the

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<sup>137</sup> See section V, paragraph E for more on TCPs.

<sup>138</sup> Appendix C provides a list of Export Control Red Flags that raise possible export control concerns and should be referred to RSIC for review.

<sup>139</sup> <https://www.bc.edu/content/dam/bc1/sites/policies/International-Travel-Policy-pdf.pdf>

<sup>140</sup> BC's Travel Registry can be accessed at [travelregistry.bc.edu](http://travelregistry.bc.edu).

<sup>141</sup> 22 CFR § 120.34

<sup>142</sup> 15 CFR § 734.7

<sup>143</sup> Consult section IV, paragraph C for more information on the public domain and published information exclusions.



content and circumstances under which the material will be shared, as certain details could impact the applicability of export controls in a given situation.

### ***Exporting Items During Travel***

Anything that a traveler brings with them during international travel (including data downloaded or stored on electronic devices) is considered an export to the destination and all transit countries.<sup>144</sup> International travelers should contact RSIC to discuss any items or technology that may be subject to export control restrictions, which they plan to bring or access during travel. When traveling to OFAC embargoed or comprehensively sanctioned countries, nearly all items are subject to export control restrictions and could be prohibited, regardless of the status of a license for the travel itself.

### ***Travel to OFAC Embargoed/Comprehensively Sanctioned Countries***

Travel to OFAC embargoed/comprehensively sanctioned countries may be prohibited, restricted, or require a license. Depending on the location and purpose of the trip, exemptions may be available in some cases when a license would otherwise be required. OFAC maintains updated sanctions information on its website.<sup>145</sup> While it is a good practice to visit the OFAC website prior to travel, travelers should always consult with RSIC rather than attempting to interpret the restrictions and available licenses/exemptions independently. It is recommended that anyone with travel plans involving an OFAC embargoed/comprehensively sanctioned country, contact RSIC early on in the process to determine the feasibility of the trip and what steps are required prior to travel.<sup>146</sup>

## **E. Technology Control Plans (TCPs)**

When appropriate, a Technology Control Plan (TCP) will be created and implemented to safeguard against the deemed export of technical data (ITAR) and technology (EAR) that is restricted for export control reasons.<sup>147</sup> RSIC will determine when TCPs should be implemented, and work with the appropriate personnel throughout the process. TCPs are required to prevent foreign persons from exposure to controlled technical data and technology, as well as certain physical items, including defense articles and items controlled by the EAR with ECCNs in the 9X515 and 600 series (items with a military, outer space, or intelligence application).<sup>148</sup> A TCP

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<sup>144</sup> See section I, paragraph D for more information on exports.

<sup>145</sup> Information on various OFAC sanctions programs can be found on the OFAC website at <https://ofac.treasury.gov/sanctions-programs-and-country-information>.

<sup>146</sup> Note that some communications technology companies used by the BC community, including Zoom and Duo, restrict the use of their services from OFAC sanctioned/embargoed countries for compliance reasons. Users will typically encounter an error when attempting to access those services from a restricted location. For more information, visit the Zoom and Duo websites at [https://support.zoom.com/hc/en/article?id=zm\\_kb&sysparm\\_article=KB0065066](https://support.zoom.com/hc/en/article?id=zm_kb&sysparm_article=KB0065066) and [https://help.duo.com/s/article/7544?language=en\\_US](https://help.duo.com/s/article/7544?language=en_US), respectively, for more information.

<sup>147</sup> See section IV, paragraph A for more on deemed exports.

<sup>148</sup> Intelligence in this context refers to the collection of information of political or military value, typically by an established intelligence entity of a country or organization (e.g., the Central Intelligence Agency). This is not a reference to Artificial Intelligence (AI).

ensures that everyone with access to restricted items/technical information/technology understands their obligations under the relevant export control laws and regulations.

Each TCP will designate an individual who is responsible for maintaining and monitoring compliance with the TCP (usually the PI), as well as the appropriate storage, use, security, and access of all restricted items, technology, and/or technical data. The TCP contains a description of the restricted item, technology, and/or technical data to be safe-guarded and the security measures taken to prevent unauthorized access. Anyone listed on a TCP will be required to complete relevant training and undergo restricted party screening to ensure compliance with relevant export control laws and regulations. The TCP will remain in effect as long as the restricted item, technology, and/or technical data covered by the plan remains at the University and until RSIC authorizes the cessation of the TCP in writing.

The PI who signs the TCP will be the individual responsible for ensuring compliance with the TCP by all listed project personnel. The TCP will also be signed by the University's designated Empowered Official.

Contact RSIC immediately if you possess, or plan to receive items, technology, or technical data, as described above, that may require a TCP. TCPs should be implemented **prior to** the arrival of the export-controlled item, technical data, or technology on campus.

## **F. License Applications and Correspondence with the U.S. Government**

BC's Empowered Official (EO) is responsible for all license applications, classification requests, and associated correspondence with the USG. The EO will prepare the license application and any other correspondence with the USG, and will require the individual on whose behalf the license application/correspondence is being submitted to review the paperwork and complete an attestation form. This will ensure that the University is providing complete and accurate information to the USG in support of the license application and/or activity.

## **G. Record Retention**

In accordance with U.S. export control laws and regulations, all members of the BC community are required to retain records pertaining to their actual or potential export-controlled activities. All records must be retained, in a non-alterable format, for a period of at least five years from the conclusion of the activity (e.g., international shipment, international travel, technology control plan (TCP) cessation, license, use of a license exception, etc.).

Records may be retained in electronic or hardcopy, but must be retrievable upon request. Records may be requested as part of an internal BC audit or upon request from the USG

Documentation must also be retained following a determination that an activity is not subject to export control restrictions, laws, or regulations due to a classification, exception, exclusion, etc., because that documentation provides support for the determination that was made. Some

common examples of records that must be retained include, but are not limited to: TCPs, travel itineraries, licenses and license applications, commercial invoices, airway bills, bills of lading, packing lists, certificates of origin, carnets, shippers' letters of instruction, EEI filing documents (including Internal Transaction Numbers), restricted party screening results, correspondence, and completed University forms.<sup>149,150</sup>

Please note that the five-year retention period is mandated by the USG, and that obligation continues after individuals separate from the University, if separation occurs within the five-year retention period. In order to avoid future complications and possible violations/penalties for individuals or the University, it is a best practice to ensure that records remain accessible after separation (e.g., in a shared folder).

## **H. Reporting Suspected Violations**

Any member of the BC community who becomes aware of or suspects that an export control or sanctions violation may have occurred, shall promptly report the matter to RSIC or anonymously via the University's EthicsPoint Hotline at [bc.ethicspoint.com](https://bc.ethicspoint.com). RSIC will review the report, gather pertinent information, and consult with the appropriate parties, including the Office of the General Counsel (OGC), as appropriate. If a determination is made that an export control or sanctions violation occurred, RSIC will take appropriate action, which may include a Voluntary Self-Disclosure (VSD) to the relevant USG agency.<sup>151,152</sup>

## **I. Interaction with Law Enforcement/Government Officials**

Members of the BC community should promptly contact RSIC and/or OGC if they are contacted by a USG official or other law enforcement official in relation to an export control or sanctions issue involving their work, position, or activities at the University. This includes, instances when members of the BC community are subjected to enhanced (secondary) screening at U.S. ports of entry, if they are questioned about their work at Boston college or BC-owned electronic devices are searched.

Several USG agencies have legal authority to investigate export control and sanctions violations. Importantly, any statements made to US Government officials, even during a routine, non-investigative interactions, including, but not limited to campus outreach and Customs screening, can be used in furtherance of future law enforcement actions.

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<sup>149</sup> 15 CFR § 762

<sup>150</sup> 22 CFR §122.5

<sup>151</sup> <https://www.bis.doc.gov/index.php/enforcement/oe/voluntary-self-disclosure>

<sup>152</sup> <https://www.bis.doc.gov/index.php/documents/enforcement/3435-vsd-policy-memo-01-16-2024/file>

## **J. Training and Resources**

Training is critical to understanding export control obligations. Certain members of the BC community, by nature of their activities, may require more training and resources than others. Those involved with Technology Control Plans (TCPs), international shipments, international travel, any activity with sanctioned countries, and those who work in STEM fields or receive federal funding, are examples of those who require more training and interaction with RSIC than others.

RSIC has adopted a multifaceted approach to training and education for the BC community, based on USG requirements and internal risk-mitigation procedures. RSIC's comprehensive training program includes in-person training and awareness sessions at the department level, online training resources, and one-on-one consultations for anyone with export control concerns.

## SECTION VI: OTHER EXPORT CONTROL CONSIDERATIONS

### A. Penalties for Export Control Violations

Failure to comply with export control statutes and regulations can result in criminal, civil, and/or administrative penalties imposed upon the responsible individual, as well as the University. Penalties can be substantial, reaching one million USD and 20 years of imprisonment in criminal cases.<sup>153,154,155</sup> Investigations of a known violation often lead to the discovery of additional related violations, and results in additional penalties.

In addition to monetary penalties and possible incarceration, suspension of export privileges and reputational harm are possible outcomes of export control violations. Export control violations, particularly those involving universities, may garner significant interest from the media, as U.S. Government (USG) priorities have increasingly turned to this area, and media coverage has followed.

### B. Closing Statement

This manual serves as the foundational document for BC's Export Control Compliance Program, but it is important to emphasize that export control laws are complex and continue to evolve. This manual is not all inclusive, does not account for every circumstance that may arise, and is not intended to serve as official legal advice. The Office of Research Security, Integrity, and Compliance (RSIC) has developed additional resources, including, but not limited to, trainings, handouts, and guides, that provide more information and detail on the topics covered in this manual.

Members of the BC community should not independently attempt to interpret U.S. export control laws and regulations, or make determinations regarding the applicability of export control restrictions to their activities, including, but not limited to, the applicability of license exemptions/exceptions or the classification of items. The most important point we hope to convey is that export control laws and regulation are complex, and members of the BC community should always seek the guidance of RSIC in relation to these matters to avoid violations and the resulting penalties.

The best means of contact is the RSIC export control mailbox, which is [exportcontrol@bc.edu](mailto:exportcontrol@bc.edu). RSIC is your ally in navigating export control and sanctions compliance and is here to help!

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<sup>153</sup> 22 USC § 2778(c)

<sup>154</sup> <https://www.bis.doc.gov/index.php/enforcement/oe/penalties>

<sup>155</sup> 31 CFR § 501.701

### **C. Future Revisions**

Export control and sanctions law continues to evolve. This manual will be updated, as needed, to address changes to the relevant law and the policies and procedures adopted by the University to ensure compliance.

## APPENDIX A: ACRONYMS

AECA	Arms Export Control Act
AES	Automated Export System
APHIS	U.S. Department of Agriculture, Animal and Plant Health Inspection Service
BIS	U.S. Department of Commerce, Bureau of Industry and Security
CBP	U.S. Customs and Border Protection
CCL	Commerce Control List
CDC	Centers for Disease Control and Prevention
CFR	Code of Federal Regulations
CJ	Commodity Jurisdiction
DDTC	U.S. Department of State, Directorate of Defense Trade Controls
DOE	U.S. Department of Energy
EAR	Export Administration Regulations
ECRA	Export Control Reform Act of 2018
ECCN	Export Control Classification Number
EEI	Electronic Export Information
EHS	Boston College Office of Environmental Health and Safety
EO	Empowered Official
FDA	U.S. Food and Drug Administration
FP	Foreign Person
FRE	Fundamental Research Exclusion
FTR	Foreign Trade Regulations
ITAR	International Traffic in Arms Regulations
ITN	Internal Transaction Number (pertains to EEI filings)
NSPM	National Security Presidential Memorandum
NRC	Nuclear Regulatory Commission
PI	Principal Investigator
OFAC	US Department of the Treasury, Office of Foreign Assets Control
ORP	Boston College Office for Research Protections
OSP	Boston College Office of Sponsored Programs
OTTL	Boston College Office of Technology Transfer and Licensing
RIO	Boston College Office of Research Infrastructure and Operations
RPS	Restricted Party Screening
RSIC	Boston College Office of Research Security, Integrity, and Compliance
STEM	Science, Technology, Engineering, and Mathematics
TCP	Technology Control Plan
USDA	U.S. Department of Agriculture
USG	U.S. Government
USML	U.S. Munitions List
USMIL	U.S. Munitions Import List
VPR	Boston College Office of the Vice Provost for Research

## APPENDIX B: DEFINITIONS

**Arms Export Control Act (AECA)** – The AECA provides the authority and general rules for the conduct of foreign military sales and commercial sales of defense articles, defense services, and training. The AECA came into existence with the passage of the Foreign Military Sales Act (FMSA) of 1968. An amendment in the International Security Assistance and Arms Export Control Act of 1976 changed the name of the FMSA to the AECA.<sup>156</sup>

**Automated Commercial Environment (ACE)** – ACE is the system authorized and maintained by U.S. Customs and Border Protection (CBP) that serves as an electronic data interchange for processing import and export data. The Automated Export System (AES), used to file Electronic Export Information (EEI), is accessed through ACE.<sup>157,158</sup>

**Automated Export Systems (AES)** – AES is the central point through which export shipment data required by multiple agencies is reported electronically to U.S. Customs and Border Protection (CBP), in the form of Electronic Export Information (EEI).<sup>159</sup> The system is managed by CBP, and is a joint venture among CBP, the Foreign Trade Division of the Bureau of the Census (Department of Commerce (Commerce)), the Bureau of Industry and Security (Commerce), the Directorate of Defense Trade Controls (Department of State), other federal agencies, and the export trade community.<sup>160</sup>

**Bureau of Industry and Security (BIS)** – The bureau of the U.S. Department of Commerce that is responsible for administering and enforcing the Export Administration Regulations (EAR).<sup>161,162</sup>

**Carnet** – An international customs document that allows the holder to import into the U.S., or export to foreign countries, certain goods, on a temporary basis, without payment of duties.<sup>163</sup>

**Code of Federal Regulations (CFR)** – The CFR is the codification of the Federal Register by the departments and agencies of the executive branch. The CFR is published in print format, as well as an online searchable version known as the e-CFR.<sup>164,165</sup>

**Commerce Control List (CCL)** – The CCL is the list of export-controlled items under the jurisdiction of BIS. In cases where another USG agency, also asserts jurisdiction over an item on

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<sup>156</sup> [https://samm.dsca.mil/glossary/arms-export-control-act-aeca#:~:text=Arms%20Export%20Control%20Act%20\(AECA\),2022](https://samm.dsca.mil/glossary/arms-export-control-act-aeca#:~:text=Arms%20Export%20Control%20Act%20(AECA),2022)

<sup>157</sup> 15 CFR § 30.1(c)

<sup>158</sup> For more information on ACE, including system access, can be found at <https://www.cbp.gov/trade/automated>.

<sup>159</sup> 15 CFR § 30.1(c)

<sup>160</sup> <https://www.cbp.gov/trade/aes/introduction>

<sup>161</sup> 15 CFR § 730.1

<sup>162</sup> The EAR can be found at 15 CFR §§ 730-774.

<sup>163</sup> 15 CFR § 30.1(c)

<sup>164</sup> <https://www.govinfo.gov/help/cfr>

<sup>165</sup> <https://www.ecfr.gov/>



the CCL, the other agency takes precedence and maintains jurisdiction over the item. The CCL is available at 15 CFR § 774, Supplement 1.<sup>166</sup>

**Commodity Classification** – For commodities controlled under the EAR, classification is the process of determining the assigned Export Control Classification Number (ECCN) or inclusion under the EAR99 catch-all for items without an ECCN. Proper classification is essential to determining the controls that apply to a given item or technology. BIS recognizes three methods of determining the classification of a commodity: making a request to the manufacturer, submitting an official classification request to BIS, or completing a self-classification using the Commerce Control List (CCL) and subject matter expertise. Members of the BC community should contact RSIC for assistance with commodity classifications, as it is a process that requires an advanced understanding of export control regulations and the CCL.<sup>167</sup>

**Commodity Jurisdiction (CJ)** – A CJ request is used to determine whether an item, technology, or service is subject to the export licensing authority of the Bureau of Industry and Security (BIS), the Directorate of Defense Trade Controls (DDTC), or another USG agency. DDTC will (upon written request from the University-designated Empowered Official) provide a determination regarding the appropriate regulatory jurisdiction of the item, technology, or service in question. CJ determinations identify the proper licensing authority but are distinct from actual licenses or approval to export.<sup>168</sup>

**Consolidated Screening List** – A searchable and downloadable list that consolidates multiple export screening lists of the U.S. Departments of Commerce, State, and the Treasury. This list assists exporters in identifying individuals and entities that are subject to export restrictions, which trigger enhanced due diligence and/or licensing requirements prior to initiating an export activity.<sup>169</sup>

**Defense Article** – A defense article, as defined and regulated by the ITAR, is any item or technical data that is specifically designed, developed, configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the US Munitions List (USML). Defense articles also include technical data stored in any physical form, models, mock-ups, or other items that reveal technical data related to an item enumerated on the USML.<sup>170,171</sup>

**Defense Service** – A defense service, as defined and regulated by the ITAR, is the furnishing of assistance, including training, to a foreign person in the U.S. or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of a defense article, as well as providing ITAR controlled technical data to foreign persons wherever located. Military training of foreign units or forces, including formal or informal instruction of U.S. persons in the U.S. or abroad or by correspondence courses, technical, educational, or information publications

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<sup>166</sup> 15 CFR § 774, Supplement 1

<sup>167</sup> <https://www.bis.doc.gov/index.php/licensing/commerce-control-list-classification>

<sup>168</sup> 22 CFR § 120.12

<sup>169</sup> <https://www.trade.gov/consolidated-screening-list>

<sup>170</sup> 22 CFR § 120.31

<sup>171</sup> See section II, paragraph A for more on defense articles.

and media of all kinds, training aid, orientation, training exercise, and military advice, also constitutes a defense service.<sup>172</sup>

**Deemed Export** – A deemed export is the release of technical data (ITAR), technology (EAR), or source code (EAR) to a foreign national located in the physical territory of the U.S.<sup>173,174</sup> Deemed exports can occur through demonstrations, oral briefings, site visits, or any transmission of non-public data. Under the ITAR, the release is deemed to be an export to all countries in which the foreign person has held or holds citizenship or holds permanent residency.<sup>175</sup> Under the EAR, the release is deemed to be an export to the foreign person’s most recent country of citizenship or permanent residency.<sup>176,177</sup>

**Deemed Reexport** – A deemed reexport is the release or transfer of technology or source code subject to the EAR to a foreign person of a country other than the foreign country to which the initial release or transfer took place.<sup>178</sup> A deemed reexport can also be a release outside the United States of technology or source code subject to the EAR, to a foreign person of another country.<sup>179</sup> Under the ITAR, a deemed reexport is the release or transfer of technical data to a foreign person who is a citizen or permanent resident of a country other than the foreign country to which the original release or transfer occurred.<sup>180</sup>

**Denied Persons List (DPL)** – The Bureau of Industry and Security (BIS) maintains a list of persons subject to denial orders, whereby the denied persons are prohibited from any involvement in export or reexport transactions.<sup>181</sup> The failure of any person to uphold the terms of the denial order (i.e., conducting an export transaction that involves a denied person) is a violation under the EAR.<sup>182</sup>

**Directorate of Defense Trade Controls (DDTC)** – DDTC is the directorate at the U.S. Department of State that is charged with controlling the export and temporary import of defense articles and defense services described in the U.S. Munitions List, in accordance with Arms Export Control Act (AECA) and ITAR. DDTC seeks to facilitate legitimate defense trade with partners and allies, while denying adversaries access to sensitive U.S. technology.<sup>183</sup>

**Electronic Export Information (EEI)** – EEI is information about a physical shipment that is filed in the Automated Export System (AES) maintained by U.S. Customs and Border Protection (CBP).<sup>184,185</sup> EEI is required for all physical international shipments, unless a specific exemption

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<sup>172</sup> 22 CFR § 120.32

<sup>173</sup> 22 CFR § 120.50(a)(1)

<sup>174</sup> 15 CFR § 734.13(b)

<sup>175</sup> 22 CFR § 120.50(b)

<sup>176</sup> 15 CFR § 734.13(b)

<sup>177</sup> See section I, paragraph D for more information on deemed exports.

<sup>178</sup> 15 CFR § 734.14(a)(2)

<sup>179</sup> 15 CFR § 734.14(b)

<sup>180</sup> 22 CFR § 120.51(a)(2)

<sup>181</sup> Supplement No. 1 70 15 CFR § 764

<sup>182</sup> 15 CFR § 764.2(k)

<sup>183</sup> [https://www.pmdtcc.state.gov/ddtc\\_public?id=ddtc\\_public\\_portal\\_about\\_us\\_landing](https://www.pmdtcc.state.gov/ddtc_public?id=ddtc_public_portal_about_us_landing)

<sup>184</sup> 15 CFR § 30.2

<sup>185</sup> 15 CFR § 30.6

is applicable.<sup>186</sup> EEI is used by the Census Bureau for statistical purposes and by BIS and other export enforcement agencies for export control and enforcement purposes.<sup>187</sup>

**Embargo** – An embargo is a ban on all transactions (including imports and exports) without a license. The U.S. Department of the Treasury, Office of Foreign Assets Control administers and enforces embargoes and sanctions based on U.S. foreign policy and national security objectives.<sup>188</sup>

**Empowered Official (EO)** – The ITAR stipulates that an EO is an entity’s designated employee, who understands export control laws, has the authority to inquire into and refuse export transactions, and submit license applications on the entity’s behalf.<sup>189</sup> BC has a designated EO who is responsible for license applications and correspondence with USG entities in relation to export control and sanctions issues.<sup>190</sup>

**End-user** - The person outside of the U.S. that receives and ultimately uses an exported or reexported item. The end-user is not an authorized agent or intermediary.<sup>191</sup>

**End-user Statement** – A statement signed by the end-user of an export or reexport, which certifies that the signing party has no intent to reexport the item, technology, technical data, or software in question. End-user statements can be used as a due-diligence tool.

**Entity List** – The Export Administration Regulations (EAR) maintains a list, known as the Entity List, of foreign persons and entities that are subject to specific license requirements for the export, reexport and/or transfer (in-country) of specified items. On an individual basis, the foreign persons and entities on the Entity List are subject to licensing requirements and policies supplemental to those found elsewhere in the EAR, and no license exceptions may be used unless specifically authorized in an entry on the Entity List. The inclusion of foreign persons or entities on the Entity List may be predicated upon activities in support of weapons of mass destruction programs, activities sanctioned by the U.S. Department of State, or activities contrary to U.S. national security and/or foreign policy interests.<sup>192</sup>

**Export** – Under U.S. export control regulations, an export is the shipment or transmission of an item, technology, technical data, source code, or defense service, outside of the U.S., or in the case of a deemed export, to foreign persons located in the U.S.<sup>193,194</sup> The method of export does not matter, and some examples include physical shipments, emails, verbal communications, and downloads from the cloud. See section I, paragraph for D for a more detailed description of exports, including deemed export and reexports.

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<sup>186</sup> 15 CFR § 30.36

<sup>187</sup> 15 CFR § 30.60

<sup>188</sup> <https://ofac.treasury.gov>

<sup>189</sup> 22 CFR § 120.67

<sup>190</sup> See section III, paragraph A for more information on the Empowered Official at Boston College.

<sup>191</sup> 15 CFR § 30.1(c)

<sup>192</sup> <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/entity-list>

<sup>193</sup> 15 CFR § 734.14

<sup>194</sup> 22 CFR § 120.50

**Export Administration Regulations (EAR)** – Regulations administered by the Department of Commerce, Bureau of Industry and Security (BIS). The EAR regulates the export of commercial and “dual-use” items. Dual-use goods and related technology/technical assistance, are designed for commercial purposes, but may also have military or space applications.<sup>195</sup>

**Export Control Classification Number (ECCN)** – An ECCN is a five-character, alphanumeric classification that categorizes items and technology controlled under the EAR based on the nature of the product and its technical parameters.<sup>196</sup> ECCNs are used to determine the export controls on a given item or technology.<sup>197</sup>

**Export-controlled** – Describes controls imposed by the U.S. Government on commodities and technology, as a means to promote and protect U.S. national security interests, foreign policy objectives, and economic interests.<sup>198</sup>

**Export License** – A document from the executive agency with the relevant jurisdiction that authorizes the export of particular items, technology, or services in specific quantities or values to a particular destination and recipient.<sup>199</sup> The most common issuing agencies are the Department of Commerce, Bureau of Industry and Security (BIS) and the Department of State, Directorate of Defense Trade Controls (DDTC). All export license applications at BC will be submitted by the University’s designated Empowered Official.

**Exporter** – The faculty member, student, or staff member responsible for an export (defined above). The exporter must work with RSIC to determine if the export requires a license, which is dependent on the item classification, recipient, destination, and end-use.

**Foreign Person/Foreign National** – A foreign person, often used synonymously with foreign national, is an individual (or entity) that is not a U.S. person. As noted in the glossary below, the definition of U.S. person may vary depending on the set of U.S. export regulations, and in some cases within a given set of regulations. While it is important to understand that nuance, a basic working definition of U.S. person includes U.S. citizens; lawful permanent residents (green card holders); refugees, asylees, or other protected individuals;<sup>200</sup> or entities incorporated under the laws of the United States.<sup>201,202</sup>

**Fundamental Research** – Fundamental research refers to basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community, and are not subject to publication or dissemination restrictions.<sup>203,204</sup> There

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<sup>195</sup> 15 CFR §§ 730-774

<sup>196</sup> 15 CFR § 738.2

<sup>197</sup> See section II, paragraph B, for more on ECCNs.

<sup>198</sup> 15 CFR § 30.1(c)

<sup>199</sup> 15 CFR § 30.1(c)

<sup>200</sup> See 8 USC § 1324b(a)(3) for more on protected individuals.

<sup>201</sup> 22 USC § 6010

<sup>202</sup> See section I, paragraph C for more information on U.S. persons and export controls.

<sup>203</sup> 22 CFR § 120.34(a)(8)

<sup>204</sup> 15 CFR § 734.8(c)

are slight differences in how fundamental research is defined and applied under the ITAR and EAR.<sup>205</sup>

**International Traffic in Arms Regulations (ITAR)** - The ITAR is a set of regulations that controls the export and temporary import of defense articles, technical data, and services as defined by the US Munitions List (USML), and is administered by Department of State, Directorate of Defense Trade Controls (DDTC).<sup>206</sup>

**Internal Transaction Number (ITN)** – The ITN is a number that is issued to confirm the successful submission and acceptance of Electronic Export Information (EEI) via the Automated Export System (AES), and is required for all exports that are not covered by an EEI exemption. The ITN begins with an X, followed by the year/month/day and a random six-digit number. To clear U.S. Customs at the port of export, the ITN must be included on the appropriate shipping documentation.<sup>207</sup>

**Military End User List** – The Military End-User list is maintained by the Department of Commerce, Bureau of Industry and Security (BIS) and identifies parties prohibited from receiving certain items subject to the EAR, with military end-uses, also designated by BIS, without a license.<sup>208</sup>

**Office of Foreign Assets Control (OFAC)** – OFAC is the office within the U.S. Department of the Treasury that administers and enforces economic and trade sanctions and embargoes, based on U.S. foreign policy and national security goals, against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States.<sup>209</sup>

**Public Domain** – Per the ITAR, public domain refers to information that is published and is generally accessible or available to the public. Public domain information is not subject to the ITAR.<sup>210</sup> Public domain is the ITAR equivalent of published information for the EAR.<sup>211</sup>

**Published** – Under the EAR, technology and software is published when it has been made available to the public without restrictions on its further dissemination. Published information is typically not subject to the EAR, and thus not restricted for export control reasons.<sup>212</sup> Published information is derived from the EAR, while its equivalent, public domain information is derived from the ITAR.<sup>213</sup>

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<sup>205</sup> See section IV, paragraph B for more information of fundamental research under the ITAR and EAR.

<sup>206</sup> 22 CFR §§ 120-130

<sup>207</sup> <https://www.census.gov/newsroom/blogs/global-reach/2012/05/itn-trade-term-of-the-month.html>

<sup>208</sup> <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/1770>

<sup>209</sup> <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>

<sup>210</sup> 22 CFR 120.34(a)

<sup>211</sup> See section IV, paragraph C for more on public domain information.

<sup>212</sup> 15 CFR § 734.7

<sup>213</sup> See section IV, paragraph C for more on public domain information.

**Red flag** – In the context of export controls, a “red flag” is something that raises concerns, and therefore, warrants additional scrutiny to mitigate the increased level of associated risk.<sup>214</sup>

**Reexport** – An actual shipment or transmission of an item, technical data, or source code subject to the EAR or ITAR from one foreign country to another foreign country, including the sending or taking of an item to or from the countries in any manner.<sup>215,216</sup> See also “deemed reexport.”

**Restricted Party Screening (RPS)** – RPS is a search of lists, maintained by the U.S and foreign governments, that restrict or deny certain transactions and activities involving listed parties, without first obtaining a license. Depending on the list, examples of restricted/prohibited activities include export transactions, financial transactions, work on US government contracts, or provision of pharmaceutical or medical services.

**Sanctions** – The Office of Foreign Assets Control (OFAC) within the U.S. Department of the Treasury administers and enforces economic and trade sanctions and embargoes, based on U.S. foreign policy and national security goals, against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. OFAC sanctions can be either comprehensive, applying to an entire country, or selective, targeting foreign individuals or entities. Sanctions vary but generally include prohibitions on the importation and exportation of goods and services as well as financial transactions and other business activities.<sup>217</sup>

**Source Code** – Computer commands written in a computer programming language that is meant to be read by humans. Generally, source code is a higher-level representation of computer commands as they are written by humans and, therefore, must be assembled, interpreted, or compiled before a computer can execute the code as a program.<sup>218</sup>

**Technical Data** – Technical data, as defined by the ITAR, includes any information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles.<sup>219,220</sup>

**Technology** – Technology, as defined by the EAR, is the information necessary for the development, production, use, operation, installation, maintenance, repair, overhaul, or refurbishing of an item. Technology may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or

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<sup>214</sup> See Appendix C for a list of example red flag scenarios.

<sup>215</sup> 15 CFR § 734.14(a)(1)

<sup>216</sup> 22 CFR § 120.51(a)(1)

<sup>217</sup>

<https://ofac.treasury.gov/#:~:text=OFAC%20administers%20a%20number%20of,policy%20and%20national%20security%20goals>

<sup>218</sup> <https://www.commerce.gov/about/policies/source-code>

<sup>219</sup> 22 CFR § 120.33

<sup>220</sup> See Section II, paragraph A for a more detailed description of technical data under the ITAR.

documentation, electronic media or information revealed through visual inspection.<sup>221</sup> The EAR uses the term “technology,” while the ITAR refers to “technical data.”

**Technology Control Plan (TCP)** – A TCP is a protocol that outlines procedures to protect certain export-controlled items, technology, technical data, and software from use, access, and observation by foreign persons without proper authorization (e.g., an export license).<sup>222</sup>

**U.S. Export Control Regulations** – U.S. statutes and regulations, pertaining to exports, derived primarily from the ITAR, EAR, and OFAC.

**U.S. Munitions List (USML)** – The USML designates the defense articles, and associated technical data and defense services, that fall under the jurisdiction of the ITAR. The USML is comprised of 21 categories, based on functionality.<sup>223</sup>

**U.S. Munitions Import List (USMIL)** – The USMIL is an equivalent to the USML that is used by the Bureau of Alcohol, Tobacco, Firearms, and Explosives to identify defense articles and services that are controlled for permanent import to the U.S.<sup>224</sup>

**U.S. Person** – The definition of U.S. person may vary depending on the set of U.S. export regulations, and in some cases within a given set of regulations. While it is important to understand that nuance, a basic working definition of U.S. person includes U.S. citizens; lawful permanent residents (green card holders); refugees, asylees, or other protected individuals;<sup>225</sup> or entities incorporated under the laws of the United States.<sup>226,227</sup>

**Unverified List (UVL)** – A list of parties whose bona fides the U.S. Department of Commerce, Bureau of Industry and Security (BIS) has been unable to verify. Parties listed on the UVL are ineligible to receive items subject to the EAR by means of a license exception; a statement must be obtained from the listed party prior to transactions involving EAR-controlled items not subject to a license requirement; and Electronic Export Information (EEI) must be filed for all transactions involving a party on the UVL.<sup>228,229</sup>

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<sup>221</sup> 15 CFR 772.1

<sup>222</sup> See section V, paragraph E for more on TCPs.

<sup>223</sup> The USML can be found at 22 CFR § 121.1.

<sup>224</sup> The USMIL can be found at 27 CFR § 447.21.

<sup>225</sup> See 8 USC § 1324b(a)(3) for more on protected individuals.

<sup>226</sup> 22 USC § 6010

<sup>227</sup> See section I, paragraph C for more information on U.S. persons and export controls.

<sup>228</sup> 15 CFR § 744.15

<sup>229</sup> The unverified list can be found at <https://www.bis.doc.gov/index.php/documents/regulations-docs/2713-supplement-no-6-to-part-744-unverified-list/file>

## APPENDIX C: EXPORT CONTROL RED FLAGS

Below is a non-inclusive list of circumstances that may raise export control concerns, and necessitate additional investigation/due-diligence efforts. Should these scenarios arise, members of the BC community should contact the Office of Research Security, Integrity, and Compliance (RSIC) for guidance. This list represents a non-inclusive list of examples:

- Items, data, or technology with military or space applications. Items, data, or technology with these applications are subject to greater export control restrictions and may require the implementation of a technology control plan (TCP).
- References to export controls, end-users, or end-uses in relation to items, technology, or technical data. These references may appear anywhere, but are commonly included in purchase agreements, invoices, and product specifications.
- Reluctance of a foreign collaborator to provide information about end-use, end-user, or citizenship.
- Reluctance of a U.S. company to provide information about export controls, upon request, including but not limited to, Export Control Classification Numbers (ECCNs) or the regulatory jurisdiction of an item manufactured by the company.
- Travel, shipments, collaborations, or financial transactions that involve sanctioned individuals, entities, or destinations.
- Financial transactions routed to third parties or financial institutions located in third countries. Rerouting of financial transactions is a tactic used to evade sanctions.
- References to reexports, or intent to share an item, technology, or technical data with a national of another country.
- Shipping to a personal address rather than an institutional address.
- Requests to sign an end-user/-use agreement.
- Requests to sign a non-disclosure agreement (NDA).
- Mentions of proprietary information or intellectual property (IP).
- Requests by an external entity to provide/verify citizenship or permanent residence status.
- Questions about nationality or mention of foreign boycotts.
- Agreements or communications with collaborators or sponsors that reference restrictions on publication, foreign national participation, or dissemination of research results. These restrictions may negate the applicability of the fundamental research exclusion, thereby introducing export control restrictions that would not otherwise exist.