
Export Control Management System

**The University of Tennessee,
Knoxville**

This document is intended to promote understanding of the regulations in order to ensure compliance by all persons involved in research. Direct questions about how the export regulations apply to specific research to Dairin Malkemus, Export Control Officer, (865) 974-0232 or dmalkemu@utk.edu.

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Introduction

Rapid advances in the fields of science and engineering have resulted in a closer association between the university and industry. This close association in rapidly advancing technical fields often involves export controlled information, materials and technology.

The University of Tennessee is committed to the highest level of compliance with all applicable export control laws and regulations that pertain to the conduct and dissemination of our research and to the export of tangible items such as equipment, components or materials. While our primary mission is education, research and dissemination of knowledge, the responsibility remains to balance the service of this mission with safeguarding national assets through adherence to the export regulations, rules and laws of our country.

The purpose of this manual is to restate for the UT Knoxville community the essential aspects of the laws and regulations concerning exports, confirm our policy for compliance, and explain how the University will provide our researchers with the assistance they may need to ensure compliance with these complicated laws.

Export Control Regulations

The three main export Control Regulations applicable to the university are the International Traffic in Arms Regulation (ITAR), the Export Administration Regulations (EAR), and the Office of Foreign Assets Control (OFAC).

The Export Administration Regulations (EAR), Title 15, sections 730-774 of the Code of Federal Regulations (CFR) are promulgated and implemented by the Department of Commerce. The EAR regulates the export of ‘dual use’ goods and services (goods and services having both military and civilian uses) identified on the Commodity Control List (CCL). The complete text of the EAR and CCL are available online at <http://www.bis.doc.gov/policiesandregulations/ear/index.htm>

The International Traffic in Arms Regulations (ITAR), 22 CFR §§ 120-130 are promulgated and implemented by the Department of State and regulate defense articles and services and related technical data. Regulated items are identified on the United States Munitions List (USML), 22 CFR § 121. Complete, on-line versions of ITAR and USML are available online at http://www.pmddtc.state.gov/regulations_laws/itar.html.

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

Important Definitions

Code of Federal Regulations (CFR) — The United States **Code of Federal Regulations (CFR)** is the codification of the general and permanent rules and regulations published in the Federal Register by the executive departments and agencies of the Federal Government.

Commerce Control List (CCL) -A list of items under the export control jurisdiction of the Bureau of Industry and Security, U.S. Department of Commerce. The CCL is found in Supplement 1 to part 774 of the EAR.

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

Commerce Control List (CCL) Group -The CCL is divided into 10 categories. Each category is subdivided into five groups, designated by the letters A through E: (A) Equipment, assemblies, and components; (B) Test, inspection and production equipment; (C) Materials; (D) Software; and (E) Technology.

Controlled country -A list of countries designated controlled for national security purposes found in Country Group D:1, including: Armenia, Azerbaijan, Belarus, Cambodia, the People's Republic of China, Georgia, Iraq, Kyrgyzstan, Laos, Libya, Macau, Moldova, Mongolia, North Korea, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam. Cuba is a controlled country, but is listed in Country Group E:2 (unilateral embargoes) rather than Country Group D:1.

Deemed Export -The disclosure or transfer of export controlled software, technologies or technical data to a foreign entity or individual *inside* the US is “deemed” to be an export to the home country of the foreign entity or individual

Defense Article -(ITAR 120.6) means any item designated in the USML. Examples include specified chemical agents, cameras designated for military purposes, specified lasers, and GPS equipment as noted above. It also means any technical data recorded or stored in any physical form, models, mock-ups, or other items that reveal technical data directly relating to the particular item or “defense article” listed in the USML.

Defense Service -(ITAR 120. 9) means the furnishing of assistance (including training) anywhere (inside the United States or abroad) to foreign nationals in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles, and the furnishing of any controlled “technical data” (see definition below) to foreign nationals anywhere.

Denied Persons List -A list, referenced in Supplement No. 2 to part 764 of the EAR, of specific persons that have been denied export privileges, in whole or in part. The full text of each order denying export privileges is published in the *Federal Register*.

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

Empowered Official -a U.S. person who:

- (1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and
- (2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
- (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) Enquire into any aspect of a proposed export or temporary import by the applicant, and
 - (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. (22 C.F.R.§ 120.25)

End-use -A detailed description of how the ultimate consignee intends to use the commodities being exported.

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

Export -in export control regulations, there are several meanings which include any of the following: 1) actual shipment of any covered goods or items; 2) the electronic or digital transmission of any covered goods, items or related goods or items; 3) any release or disclosure, including verbal disclosures or visual inspections, or any technology, software or technical data to any foreign national; or 4) actual use or application of covered technology on behalf of or for the benefit of any foreign entity or person anywhere.

Export Administration Regulations -The Export Administration Regulations (EAR), Title 15, sections 730-774 of the Code of Federal Regulations (CFR), means the regulations promulgated and implemented by the Department of Commerce that regulate the export of goods and related technology identified on the Commodity Control List (CCL), Title 15 CFR 774, Supp. 1. Goods and technology on the CCL are *not* inherently military in nature; they are primarily and inherently commercial or potentially commercial in nature.

Export control -The set of laws, policies, and regulations that govern the export of sensitive items for a country or company.

Export Control Classification Number (ECCN) -Identifies items on the Commerce Control List that are subject to the export licensing authority of the Bureau of Industry and Security.

Exporter -The person who has authority of a principal party in interest to determine and control the sending of items out of the country.

Export license -The approval documentation issued by an export agency authority authorizing the recipient to proceed with the export, reexport, or other regulated activity as specified on the application.

Foreign National / Foreign Person- Persons who are not U.S. citizens, “Lawful Permanent Residents” (Green Card), (8 USC § 1101(a)(20)) or other “Protected Individuals” under the Immigration and Naturalization Act (8 USC §1324b(a)(3)) designated an asylee, refugee, or a temporary resident under amnesty provisions. A foreign national also means any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do business in the US. Under ITAR, the term “foreign person” is used, but has the same definition as “foreign national” herein.

Fundamental Research -(EAR and ITAR) means basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons (EAR) or pursuant to specific U.S. government access and dissemination controls (ITAR).

Fundamental Research Exclusions -The EAR provides that university research normally will be considered as fundamental research unless the university or its researchers accept sponsor restrictions on publication of scientific and technical information resulting from the project or activity. The EAR specifically permits limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to insure that publication will not compromise patent rights of the sponsor. The citation for the official definition of fundamental research under the EAR is 15 CFR § 734.8.

The ITAR states that university research will not be deemed to qualify as fundamental research if: (1) the university or its researchers accept any restrictions on publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher. The ITAR citation is 22 CFR § 120.11(8).

International Trafficking in Arms Regulations (ITAR) – The International Traffic in Arms Regulations (ITAR), 22 CFR §§ 120-130, means the regulations promulgated and implemented by the Department of State that control the export of articles, services, and related technical data that are inherently military in nature, as determined by the State Department. These “defense articles,” “defense services,” and related “technical data” are listed on the Munitions List (USML), 22 CFR § 121. Even some articles and technologies that are not readily identifiable as inherently military in nature—for example, research satellites—are included on the USML.

Munitions List -articles, services and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act.

Public Domain -(ITAR; 22 CFR § 120.11) means information that is published and that is generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information; (3) through second class mailing privileges granted by the U.S. government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, in the United States; (7) through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency; and (8) 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.

Reexport -"Reexport" means an actual shipment or transmission of items subject to export regulations from one foreign country to another foreign country. For the purposes of the U.S. EAR, the export or reexport of items subject to the EAR that will transit through a country or countries to a new country, or are intended for reexport to the new country, are deemed to be exports to the new country.

Specially Designated National (SDN) -Any person who is determined by the U.S. Secretary of the Treasury to be a specially designated national for any reason under regulations issued by the Office of Foreign Assets Control.

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

Technical data -means information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blueprints, drawings, plans, instructions, diagrams, photographs, etc. May take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, or read-only memories. The ITAR definition does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain (ITAR 120.10(5)).

Technology -Any specific information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, manuals, software, or in intangible form, such as training or technical services) that is required for the development, production, or use of a good, but not the good itself.

U.S. person -an individual who is a citizen of the United States or a foreign national with a visa status of Legal Permanent Resident (LPR). An LPR is also know as a Permanent Resident Alien (PRA).

University Export Control Compliance Structure and Responsibilities

The University's export compliance efforts will be coordinated through the Office of Sponsored Programs with the assistance of The Office of the General Counsel. However, much of the responsibility for export compliance lies with individual university personnel. The purpose of this section is to outline the university's export compliance structure.

Responsible Officials -Office of Research

I. Associate Vice Chancellor for Research

Dr. Gregory Reed
1534 White Avenue
Knoxville, TN 37996-1529
Phone: (865) 974-3526 Fax: (865) 974-7400

II. Export Control Officer

Dairin Malkemus
1534 White Avenue
Knoxville, TN 37996-1529
Phone: (865) 974-0232
Fax: (865) 974-2805

Export Control Officer

The Export Control Officer has been charged with the responsibility to monitor and direct the University's compliance with export control regulations, review and approval of proposals for sponsored research, clearance of sponsored programs through appropriate university channels.

Export Control Compliance-UT System Level

I. Vice President for Research and Empowered Official

David Millhorn, Ph.D.
Executive Vice President & Vice President for Research
813 Andy Holt Tower
1331 Circle Park
Knoxville, TN 37996-0180
Phone: (865) 974-4048
Fax: (865) 974-9580

Empowered Official

As a part of its compliance efforts, the University has designated the Vice President for Research, Dr. David Milhorn, as the "Empowered Official." Under the applicable

regulations, the Empowered Official shall be a United States citizen, corporation or lawful permanent resident. The Export Control Officer is hereby designated and empowered by the University to oversee any of the University's export licensing or approval activities and to sign license applications or other documentation relating to such licensing or to export approval.

II. Vice Chancellor for Research and Engagement

Taylor Eighmy, Ph.D.
711E Andy Holt Tower
1331 Circle Park
Knoxville, TN 37996
Phone: (865) 974-8701

Screening

The following screens must be performed or coordinated by the Export Control Coordinator as a procedure in the review of export control issues on campus.

The University at Knoxville employs the Visual Compliance web service:

The **Visual Compliance** export control web service screens many U.S. government lists, including:

- Department of Commerce Bureau of Industry and Security (BIS) Denied Persons List
- Department of Commerce BIS Entity List
- Department of Commerce BIS Unverified List
- Department of State Arms Export Control Act Debarred Parties
- Department of State Designated Terrorist Organizations
- Department of State Terrorist Exclusion List (TEL)
- Department of State Nonproliferation Orders: Missile Sanctions, Lethal Military Equipment Sanctions, Chemical and Biological Weapons Sanctions, Nuclear Sanctions
- Department of State International Traffic In Arms Regulations (ITAR) Munitions Export Orders
- Department of Treasury Specially Designated Nationals and Blocked Persons, including Cuba and Merchant Vessels, Iran, Iraq and Merchant Vessels, Sudan Blocked Vessels
- Department of Treasury Specially Designated Terrorist Organizations and Individuals
- Department of Treasury Specially Designated Narcotic Traffickers and Narcotics Kingpins
- Department of Treasury Foreign Narcotics Kingpins
- Department of Treasury Foreign Persons Designated Under the Weapons of Mass Destruction (WMD) Trade Control Regulations
- U.S. Federal Register General Orders

Optionally, U.S. federal procurement program exclusion and medical program exclusion lists can be scanned by **Visual Compliance** software simultaneously.

- U.S. General Services Administration (GSA) List of Parties Excluded from Federal Procurement Programs
- U.S. General Services Administration (GSA) List of Parties Excluded from Federal Nonprocurement Programs
- U.S. General Services Administration (GSA) List of Parties Excluded from Federal Reciprocal Programs
- U.S. Office of the Inspector General List of Individuals/Entities Excluded from Federal Health and Medicare Programs

Domestic

- Specially Designated Nationals and Blocked Persons (OFAC)
- Federal Bureau of Investigation (FBI) Wanted Fugitives
- FBI Ten Most Wanted Fugitives
- FBI Most Wanted Terrorists
- FBI Hijack Suspects
- FBI Seeking Information
- Food and Drug Administration – Clinical Investigators
- Food and Drug Administration – Debarment List
- Food and Drug Administration – Disqualified and Restricted
- Department of Homeland Security Most Wanted Fugitive Criminal Aliens
- Department of Homeland Security Most Wanted Most Wanted Human Smugglers
- U.S. Marshals Service – Top 15 Most Wanted
- U.S. Marshals Service – Major Fugitive Cases
- U.S. Drug Enforcement Administration – Major International Fugitives
- U.S. Central Command Iraqi SS Most Wanted
- Immigration and Customs Enforcement Most Wanted
- Office of Research Integrity PHS Administrative Actions
- U.S. Postal Inspection Service – Most Wanted
- U.S. Secret Service – Most Wanted
- Bureau of Alcohol, Tobacco, Firearms, and Explosives Most Wanted
- Air Force Office of Special Investigations – Top Ten Fugitives
- Naval Criminal Investigation Service – Wanted Fugitives

International

- Japan Foreign End-Users of Concern
- Canada Public Safety and Emergency Preparedness Listed Entities
- Politically Exposed Persons in Money Laundering Risk Countries (CIA)
- Australia Department of Foreign Affairs and Trade Consolidated List
- European Union (EU) Council Regulation on Restrictive Measures to Combat Terrorism

[Designated Persons, Groups, and Entities]

- Interpol Recently Wanted
- United Nations (UN) Consolidated List
- Bank of England Consolidated List of Financial Sanctions Targets in the U.K.
- World Bank Listing of Ineligible Firms
- OSFI Consolidated List – Entities
- OSFI Consolidated List – Individuals
- OSFI Warning List
- OCC List of Unauthorized Banks
- Royal Canadian Mounted Police (RCMP) – Wanted

Visual Compliance Restricted Party Screening software also includes Risk Country alerts for any problem countries named in the search, including foreign-produced, direct product re-exports and transshipment country prohibitions among others.

EAR Part 736 General Prohibition Eight (In transit shipments and items to be unladen from vessels or aircraft)

- EAR Part 746, Embargoes and Other Special Controls
- U.S. Department of Commerce EAR Country Group E:1, Terrorist Supporting Countries ("T-7 Countries")
- Office of Foreign Assets Control (OFAC) Sanctions
- United Nations (UN) Sanctions
- U.S. Department of State, List of State Sponsors of Terrorism
- Department of State U.S. Arms Embargoes
- Export destination for defense articles and defense services prohibited under the ITAR (126.1)
- BIS India and Pakistan Export Restrictions, including Atomic Energy blocked entities
- Exports and Reexports to Afghanistan Restrictions
- Countries that may require participation in, or cooperation with, an international boycott [Section 999(b)(3) of the Internal Revenue Code of 1986]

Recordkeeping

The university is subject to several regulatory recordkeeping requirements related to its export activities. The ITAR and the EAR require that records be kept reflecting the export and temporary import of defense articles, defense services, dual-use commodities and related technologies. This procedure outlines requirements for complying with the recordkeeping regulations. Types of records to be maintained will depend on the university's activities and how items are controlled for export. The retention period is five years from the date of export, re-export, or any other termination of the transaction

I. Transactions Subject to Recordkeeping Requirements

The following types of transactions are subject to recordkeeping requirements:

- Exports of controlled commodities, software or technical data from the United States or by U.S. persons;
- Re-exports or transshipments of controlled products or technical data originally exported from the United States or by U.S. persons;
- Any other transaction subject to export control, whether the export or reexport actually occurs;
- Negotiations in connection with an export; and
- Exports, where it appears that a person in another foreign country has an interest in the transaction or that the commodity or technical data will be exported, transshipped, or diverted.

II. Records Required to be Kept

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

- Any paperwork detailing internal export control assessments, including any documentation regarding the applicability of any licensing exemptions (such as public domain or fundamental research).
- Include records of the compliance program, implementation efforts, and the steps to discover and rectify inadequacies
 - Such steps may mitigate the consequences of unintentional violations
 - Encourage prompt disclosure of potential violations to the central office for a knowledgeable and timely response
 - Including appropriate self-disclosure to the appropriate agency to mitigate penalties.
 - *E.g.* in an Export Control Management Plan

- Classification decisions issued by the appropriate government agency;
- License applications, and all supporting documents;
- Issued licenses with limitations or provisos, if any;
- International Import Certificates and applications therefore;
- Delivery Verification or similar evidence of delivery;
- Shipper's Export Declarations ("SED");
- Receipts, bills of lading and other documents related to export clearance;
- Reports of boycott requests and all documents relating to the requests;
- Any other document issued by the U.S. Government that demonstrates that an export occurred;
- Applications for registration;
- Purchase orders;
- Foreign import certificates;
- Airway bills;
- Non-transfer and use certificates;
- Memoranda, notes, correspondence, contracts, invitations to bid, books of account, financial records, and any other written matter pertaining to an export;

III. Period of Retention

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

1. Export records under the EAR (*See* §762.6) must be retained for five (5) years from the *latest* of the following times:
 - The date the export from the U.S. occurs;
 - The date of any known re-export, transshipment, or diversion of such item;
 - The date of any termination of the transaction, whether contractual, legal, formally in writing or by any other means, or;
 - In the case of records of or pertaining to transactions involving restrictive trade practices or boycotts, the date the regulated person receives the boycott-related request.
2. Records relating to exports under the ITAR must be maintained for five (5) years from:
 - The expiration of the license or other approval to which the documentation relates;
 - The date the license or other authorization is exhausted or used completely; or
 - The date the license or other authorization is suspended, revoked, or no longer valid.

IV. Identifying Responsible Recordkeeping Functions

The University will maintain the following records, either originals or back-ups, through the Coordinator, Export Control, and Office of Research/Sponsored Programs:

V. Accessibility

Records must be kept in a manner which facilitates the ability to retrieve the records for any purpose and to review the records during internal or U.S. Government audits.

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

A request for documents under the Tennessee Sunshine Law needs to be in writing on the letterhead of the requesting entity.

HR Policy HR0580 (Code of Conduct), currently provides, in paragraph 6d, that faculty and staff are prohibited from "Violating federal government security regulations as outlined in contracts". That language has been in the HR0580 since 2/1/1996, although the Knoxville campus had virtually identical language in its procedure since 4/1/1977.

Faculty/Staff Awareness Workshops

It is critical that faculty and appropriate staff are made aware of Export Control rules and issues. Violations of export control laws carry severe penalties, including huge monetary fines and possible prison time. One of the many components of compliance with federal Export Control laws is the establishment of an effective and ongoing education and awareness program.

The Export Control Officer has developed and implemented annual Faculty/Staff Awareness Workshops. The presentation is comprehensive and punctuated with case studies that relate to each department's research or science. We end each meeting with a discussion of the current issues and a question and answer session. The Office of Research offers these workshops at anytime upon request.

The presentation and an additional tutorial are also available on the web site.

Workshop Format

I. Export Control Basics -Welcome and Conceptual Overview

- Purpose of U.S. export control laws
- Regulatory agencies controlling exports
- The effect of U.S. export controls on universities
- Fundamental research/education/employment exclusions
- Examples of the exclusions
- Enforcement: violations and penalties
- Discussion/Questions

II. What Faculty Need to Know:

- Deemed Exports
 - What is a deemed export and how does it occur?
 - Handouts and case studies
 - • Foreign Nationals
 - Definition of foreign national
 - Transfer of controlled technology to foreign nationals
 - Case studies/discussion/questions

III. Key Issues for the University: Determining Whether or Not the Export Control Laws Apply to Research

- Visas-Country of Origin
- Identifying and securing all controlled equipment
- Chart/ case studies/ Gray areas of research/Best practices
- University departments that warrant export attention
- The responsibility of the P.I.

IV. The Far Reaching Impact of Export Controls on Universities

- Current Issues
- Proposed changes in “use” technology
- Proposed DoD changes, badging of foreign nationals
- **V. Discussion/Questions/Close**

Internal Assessments

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

I. Types of Assessments

Policies and Procedures Assessment

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

Self-Audit/Internal Audit

Regular internal audits should be conducted to ensure that the university's Export Control Compliance Program is operating effectively. Included:

Best practices:

- Faculty awareness education program
- Export Control Determinations

The goal is to ensure that the guidelines of the Export Control Management System are being followed, that the processes are changed as needed and new processes are added when required.

Compliance Assessment

A review of select contracts, activities, practices and procedures will be conducted to assess whether the University is successfully implementing the policies and procedures of the compliance program.

II. Responsibilities for Internal Assessments

- Dr. Gregory Reed
- Dairin Malkemus

III. Frequency of Internal Assessments

Policies and procedures assessments and compliance assessments will be conducted on an annual basis, and will consist of scheduled review.

Crisis Management

Notification

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

If *any* of the following events occur, you must *immediately* contact Alice Woody, Office of General Counsel, the Export Control Officer and the Vice Chancellor for Research:

- Any non-routine contact, by phone, letter or in person, by a United States Government official or agency concerning exports or imports, including any request to review or discuss a previously issued export license or past export shipment.
 - A shipment from or to the university is detained or seized by U.S. Customs.
 - Receipt of a subpoena or other criminal procedure notification related to U.S. export or import laws.
 - A suspected violation of export control laws or the university guidelines regarding exports.
 - Any reporting requirements under the anti-boycott and restricted trade practices regulations.
 - Any requirement for United States Government export approvals.

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

Crisis Communications Plan

Procedures and Alerting Responsibilities

In the event of an out-of-the-ordinary regulatory violation, the following University personnel will be contacted immediately:

- Dairin Malkemus, Export Control Officer
- Ryan Stinnett, Assistant General Counsel
- Taylor Eighmy, Vice Chancellor for Research
- Gregory Reed, Associate Vice Chancellor for Research
- David Millhorn, Vice President for Research
- Margie Nichols, Vice Chancellor for Communications
- Miriam Campo, Director -Sponsored Programs

Investigating Suspected Violations

The failure of the University to comply with applicable United States export laws and regulations could result in substantial penalties, including suspension of the university's export privileges, fines, and imprisonment for personnel found to be in violation of these laws. University personnel shall not willfully ignore information that comes to them in the normal course of university activities to avoid potential compliance issues. Knowledge possessed by university personnel can be imputed to the university and render the university liable for violations. Therefore, any questionable, unauthorized, or illegal activities, whenever discovered by any employee, must immediately be reported to the Office of the General Counsel for review and evaluation. Sufficient information must be provided to allow the University to pursue an appropriate course of action in the event of an actual or potential violation. Accordingly, university personnel are encouraged to provide as much detail as available when reporting possible violations.

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

Voluntary Disclosures

I. Department of State

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

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

Under the ITAR, it is unlawful:

- To export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required by the ITAR without first obtaining the required license or written approval from the ODTC;
- To import or attempt to import any defense article whenever a license is required by the ITAR without first obtaining the required license or written approval from the ODTC;
- To conspire to export, import, re-export or cause to be exported, imported or re-exported, any defense article or to furnish any defense service for which a license or written approval is required by the ITAR without first obtaining the required license or written approval from the ODTC;
- To violate any of the terms or conditions of licenses or approvals granted pursuant to the ITAR;
- To willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by The Arms Export Control Act or any regulation, license or approval issued;
- To use false or misleading statements or omit a material fact on any export or import control document.

II. Department of Commerce

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

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

The following actions violate the EAR:

- Aiding, abetting, counseling, commanding, inducing, procuring or permitting the doing of any act prohibited, or the omission of any act required by the EAR or any license or authorization issued;
- An attempt or conspiracy to violate or willfully evade compliance with the EAA or the EAR;
- Possession of goods or technology with the intent to violate export restrictions or with the knowledge or reason to believe the goods will be exported illegally;
- Misrepresenting or concealing facts to BIS or Customs;
- Failure to report a violation or comply with recordkeeping requirements.