



## Export Control Policy

### **I. Policy Statement**

It is the policy of Kean University that all personnel, including faculty, staff, students, trustees, and all other persons retained by or working at or for the University (“personnel”), conduct their university business in compliance with U.S. laws and regulations, including the U.S. export control laws and regulations applicable to the University’s operations and research activities. It is the responsibility of all personnel to be aware of and comply with this Export Control Policy (“the Policy”) and with all export control requirements related to their activities. In addition to this Policy, the University has established procedures to aid its personnel in complying with these laws and regulations.

### **II. Overview**

Kean University researchers may engage in a broad range of research both in the U.S. and abroad. It is the goal of the University to allow researchers to disseminate their research results, to freely collaborate with their international colleagues in the course of fundamental research, and to allow foreign researchers and students to participate in University research projects. Kean has adopted this Policy to ensure these goals are pursued in harmony with the applicable export control laws.

Export control laws are a complex set of federal regulations that control the conditions under which certain information, technologies, and commodities can be transmitted overseas to anyone, including U.S. citizens, or to a foreign national on U.S. soil. The laws are implemented by both the Department of Commerce through its Export Administration Regulations (“EAR”) and the Department of State through its International Traffic in Arms Regulations (“ITAR”). These laws are designed to protect U.S. national security, prevent the proliferation of weapons of mass destruction, further U.S. foreign policy (including the support of international agreements, human rights and regional stability), and to maintain U.S. economic competitiveness.

Although most research and educational activities at Kean University will generally fall under the fundamental research exclusion, the publicly available/public domain exclusion, the education exclusion or a combination of the three (*see Section III. D “Exemptions/Exclusions”*), some activities may be restricted. Additionally, certain contractual clauses -- such as publication restrictions or limitations, including clauses that require approval before publication -- can exclude the underlying research from the “fundamental research” category, thereby disallowing the exemption. *By not accepting any restrictions on publication or*

*the use of foreign nationals in the project, University researchers preserve the fundamental research exemption.*

Export control laws have the potential to particularly impact university research and researchers in the fields of science and engineering. If research involves technologies that are subject to export control laws, the EAR and/or ITAR may require the principal investigator to obtain federal approval **before** allowing foreign nationals to participate in the research, partnering with a foreign company, or sharing research results in any manner (including by publication or presentation at conferences) with persons who are not U.S. citizens or permanent resident aliens.

Export regulations apply whether or not the research project is funded by a grant, contract, or other agreement, and apply whether or not the EAR or ITAR are mentioned in the award document. If a researcher accepts export-controlled technology or information from a government agency or from industry, the researcher is subject to ITAR or EAR regulations.

In some situations, researchers may want to ship certain tangible items, software or information outside the U.S. If that happens, the University has the responsibility to: 1) obtain an export license; 2) document an express determination that an exception or exemption to the export control laws applies; or 3) document an express determination that no license is needed.

In order to ensure compliance with export regulations, members of the University community must consider the implications of export controls before undertaking any of the following activities:

- initiating new research, whether funded or unfunded, under a grant or contract;
- travelling for any purpose to a [U.S.-sanctioned country](#), as determined by U.S. law;
- taking either personal or University-owned electronic devices (e.g., laptop computers, cell phones, GPS systems) or their associated software to another country;
- exporting, releasing, transmitting or allowing foreign nationals access to current research results;
- participating in research or training activities abroad;
- allowing foreign nationals to participate in research activities in the U.S.; and/or
- receiving export-controlled materials from a third party.

### III. Regulatory Framework

The export control laws apply to all “exports.” The term “export” includes (1) the actual transporting 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, of any technology, software or technical data to any foreign national; or (4) the actual use or application of covered technology on behalf of or for the benefit of a foreign entity or person anywhere.

The term “export” covers not only technology leaving the borders of the U.S. (including transfer to a U.S. citizen abroad whether or not it is pursuant to a research agreement with the U.S. government) but also transmitting the technology to a foreign national **within** the U.S. (a “deemed export”). Even a discussion with a foreign researcher or student in a campus laboratory could be considered a “deemed export.” Export controls preclude the participation of all foreign nationals in research that involves covered technology without first obtaining a license from the appropriate government agency.

Three principal U.S. regulatory regimes govern the export of items and technology from the U.S., the re-export or retransfer of the items outside the U.S., and transfers of controlled technology to foreign persons in the U.S.

#### A. Export Administration Regulations (EAR)

The EAR is a set of regulations administered by the U.S. Department of Commerce through the Bureau of Industry and Security. These regulations control “dual use” items, such as computers, toxins, and chemicals, that could have both civilian and military uses, and the technology related to these items. A listing of the items controlled by the EAR is called the [Commerce Control List](#) (“CCL”),

*Unless an exclusion or exemption applies*, a license generally will be required for the export of goods and technology listed on the CCL. An export license is a written authorization provided by the federal government granting permission for the release or transfer of export-controlled information or items under a defined set of conditions. Those items not explicitly included on the CCL are included in the broad category known as “EAR99.” Though a license generally will not be required for the export of EAR99 designated items, a license will be required if the item will be shipped or otherwise transferred to an embargoed country.

#### B. International Traffic in Arms Regulations (ITAR)

The ITAR is implemented by the State Department’s Directorate of Defense Trade Controls (“DDTC”). These regulations apply to articles, services, and related technical data that are inherently military in nature, as determined by the State Department. Controlled “defense articles”, “defense services”, and related “technical data” are listed on the [U.S. Munitions List](#) (“USML”). Some articles and technologies that are not readily identifiable as inherently military in nature—for example, research satellites or small, research submersibles—are included on the USML.

### C. Office of Foreign Assets Control (OFAC)

The Office of Foreign Assets Control of the U.S. Department of Treasury administers and enforces certain country-specific controls that take the form of economic embargoes against specified countries. The countries with comprehensive sanctions can and do change frequently and, as of the adoption of this Policy, include Cuba, Iran, North Korea, Russia, Syria, and certain conflict regions of Ukraine. The scope of these economic and trade embargoes varies from country to country. Embargoes may be comprehensive, such as those against the countries and region listed above, and heavily restrict nearly all trade and financial transactions between U.S. persons and those areas. Or sanctions may be more targeted, aimed more specifically at prohibiting certain activities with sanctioned persons or entities within a country and, in most cases, do not restrict academic activities. OFAC has adopted regulations that detail the scope of the embargoes/sanctions against each country. A listing of these sanctions programs and the accompanying regulations is available [here](#).

OFAC also maintains a list (updated frequently) of [Specially Designated Nationals and Blocked Persons](#) (“SDN”) with whom U.S. persons are prohibited from engaging in any transactions due to U.S. foreign policy and national security concerns. Transfers of items and information to individuals or entities on these lists are prohibited without the prior approval of OFAC.

### D. Exemptions/Exclusions

Several common exclusions and/or exemptions may remove University activities from the application of export control restrictions. Research and educational activities at Kean University will generally fall under the fundamental research exclusion, the publicly available/public domain exclusion, the education exclusion or a combination of the three. An explanation of each of these exclusions is below.

#### 1. The Fundamental Research Exclusion

Fundamental research is defined as basic and applied research in science and engineering conducted at an accredited U.S. institution of higher education where the resulting information is ordinarily published and shared broadly within the scientific community. Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research. The fundamental research exclusion permits U.S. universities to allow foreign members of their communities (e.g., students, faculty, and visitors) to participate in research projects on campus in the U.S. without a deemed export license. Further, technical information resulting from fundamental research may be shared with foreign colleagues abroad and shipped out of the U.S. without securing a license.

Research will **NOT** qualify as “fundamental research” if:

- The University or its researchers accept restrictions on the publication of scientific and technical information resulting from the research, other than a limited pre-publication review by research sponsors to ensure that proprietary information is not inadvertently disclosed in publication or to ensure that the

publication will not compromise the patent rights of the sponsor. Any agreement between a researcher and a sponsoring agency to restrict the publication of research results (even if the agreement is not written in the actual research contract or grant) could destroy the fundamental research exclusion. Such deals also could expose both the researcher and the University to penalties for export control violations.

- The research is federally funded and the University or its researchers have accepted specific access and dissemination controls regarding the resulting information. Such access and dissemination controls could include a restriction on prepublication dissemination of information to foreign nationals or other categories of persons or a restriction on participation in the research by foreign nationals or other categories of persons.

## **2. Public Domain and Publicly Available Exclusion**

Information that is published and generally available to the public, as well as publicly available technology and software, is outside the scope of the export control regulations. This exclusion does not apply to information which may be used in the production of weapons of mass destruction, or where the U.S. government has imposed access or dissemination controls as a condition of funding.

Information is “published” when it becomes accessible to the public by any method, including:

- publication in periodicals, books, print, electronic, or other media available for general distribution;
- availability at public libraries or at university libraries;
- in the case of patents and patent applications, when they are available at any patent office;
- release at an open conference, meeting, seminar, trade show, or other open gathering held in the U.S. or anywhere except in a sanctioned or embargoed country.

## **3. Educational Instruction Exclusion**

Export control regulations do not apply to information released in academic catalog-listed courses or in teaching labs associated with those courses. This exclusion is based on the recognition in the ITAR that “information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain” should not be subject to export control restrictions.

## **4. Employee Exemption**

To the extent there will be a deemed export of information listed on the USML, the ITAR provides for an “Employee Exemption” that allows foreign persons who are “bona fide and full-

time regular employees” of Kean University, and who meet certain qualifying criteria, to receive USML-listed information without an export license. These criteria are:

- the employee’s permanent residence throughout the period of employment is in the U.S., and
- the employee is not a national of a country to which the ITAR prohibits exports of defense articles and services.

At the time of adoption of this Policy, the employee exemption is **not** available for nationals of Afghanistan, Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, Vietnam, Myanmar, China, Haiti, Liberia, Somalia, Sudan, Rwanda, and the Democratic Republic of the Congo. This list is subject to change. It is also important to note that this exemption is generally not available to graduate and undergraduate students. Further, the EAR does not include a similar exemption.

#### **IV. Export Controls at Kean University**

In general, the export control regulations cover three main categories of activities:

- the shipment of controlled physical items, such as certain scientific equipment, from the U.S. to a foreign country;
- travel to [certain sanctioned or embargoed countries](#) on University business, including for purposes of teaching or performing research; and
- verbal, written, electronic, or visual disclosure of export controlled scientific and technical information or export-controlled information or technology, that is not subject to an exemption and without the appropriate license, to a foreign national, whether such information is shared with a foreign national located either in the U.S. (where the release is considered a “deemed export”) or in another country.

Each of these categories of activities is discussed in greater detail below.

##### **A. Exporting Items Outside the U.S.**

In the case of shipments of tangible items or transfers or transmissions of certain software code or information outside U.S. borders, export control regulations may require that the University first obtain an export license from the federal government. In order to determine whether it is necessary to apply for an export license, the person preparing the shipment or transfer needs to consult with the Office of Research and Sponsored Programs.

All tangible items, source code and technical information not listed on the CCL and/or the USML may be shipped or transmitted to any country, individual or entity that is not sanctioned, embargoed, or otherwise restricted for export, without an export license. Such items, source code and technical information may be exported under the “No License Required” (NLR) designation.

For tangible items, source code and technical information *that are listed on the CCL or the USML*, a license will be required for export, unless an exclusion or exemption applies. Determining the license requirements of an item can be a complex and complicated process requiring classification of the item in light of the target destination, end use and end user(s). The final determination of whether an item requires a license for export, qualifies for a license exemption or can be exported as NLR, will be made by an Export Control Working Group to be established. If a license is required, the Office of Research and Sponsored Programs (ORSP) will coordinate the license application process. No export may take place until the required license is obtained.

### **B. Research Involving Disclosures or Transfers to Foreign Persons in the U.S. (Deemed Exports)**

The release or transmission of information or technology to any foreign national in the U.S. is a “deemed export”, i.e. the release is deemed to be an export to that person’s home country. This includes the release of information or technology to foreign undergraduate and graduate students, faculty and visiting faculty, or other University personnel. Examples of “releases” to foreign nationals include providing access to controlled software, technology, or equipment by visual inspection or use, providing access via tours of facilities, providing access to technical specifications (including in user manuals) and verbal exchange of information. The mere presence of a foreign national in a laboratory will not require a license or authorization.

Despite the deemed export rule, much of the controlled technology and data that foreign nationals and students will access will not require an export license. As discussed above in section III. D., the EAR and the ITAR exclude publicly available information and the results of fundamental research from the regulatory requirements for approvals or license. However, no export can take place until the required license is obtained.

In determining the licensing requirements for deemed exports, the researcher needs to consider the following:

- What is the technical information or technology that will be released to the foreign national? Generally, technologies subject to the EAR are those which are in the U.S. or of U.S. origin, in whole or in part. Most are proprietary. Technologies which tend to require licensing for transfer to foreign nationals are also dual-use (i.e., have both civil and military applications) and are subject to one or more control regimes, such as National Security, Nuclear Proliferation, Missile Technology, or Chemical and Biological Warfare.
- Who is the technology being released to? Some items are controlled for export to certain countries but not to others. Therefore, University researchers must know the citizenship of any foreign national participating in a research project.

### **C. Travelling Outside the U.S.**

Travelling outside the U.S. can present export control issues largely due to the items accompanying them on their travels. The export of tangible items (such as blueprints and

schematics) and certain software and encryption code found on laptops, tablets and cell phones is subject to export control regulations. University personnel must contact Kean Information Technology before traveling outside the U.S. to determine what software, technology and retail level encryption items such as laptops, tablets and smartphones, can be carried abroad.

## **V. Recordkeeping Requirements**

Kean University is required to retain a complete record of all export control documentation including, but not limited to, analyses of license requirements, issued licenses, travel certifications, shipping documents and correspondence related to export transactions for seven (7) years after the completion of the activity. It is the responsibility of University personnel to forward all relevant export documentation to ORSP.

## **VI. Compliance**

University personnel may not transfer items, information, technology or software in violation of the U.S. export control laws or this Policy. Failure to comply with the export control laws exposes both the researcher and the University itself to severe criminal and civil penalties, as well as to administrative sanctions, such as the loss of export privileges and research funding. Thus, it is important that faculty, staff and other researchers understand their obligations under the regulations and take the requisite steps to comply. The penalties for violating the export control laws are detailed below.

### **A. University-Imposed Penalties for Non-Compliance**

The final recommendation of whether the release of information or items requires an export license or is subject to license exclusions will be made by the Export Control Working Group. The researcher will cooperate with ORSP by providing the information needed regarding the information or items at issue. If a license is required, ORSP will coordinate the license application process. No export can take place until the required license is obtained. Failure to comply with this Policy can result in disciplinary action, up to and including termination.

### **B. Criminal and Civil Penalties**

Government-imposed penalties for violations of the export control laws can be both criminal and civil and can be imposed against either individuals, entities or both. Penalties include prison terms of up to 10 years, maximum fines of \$1 million per violation and the loss of all federal funding and export privileges.

### **C. Administrative Penalties**

If either the University or individuals are found in violation of the export control regulations, they could be subject to a number of administrative penalties, including termination of export privileges and debarment or suspension from government contracting.