TEXAS A&M UNIVERSITY

EXPORT CONTROL COMPLIANCE PROGRAM MANUAL

August 29, 2025

Export control laws are complex and fact-specific. Regulations, rules, and lists for specifying who or what is considered export-sensitive and where export controls apply are subject to change. This Manual is intended to provide a very brief outline of basic export control information. It should not be relied upon exclusively, nor should it be construed as legal advice. Any questions should be directed to Research Security and Export Controls, exportcontrols@tamu.edu.

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LIST OF ABBREVIATIONS

ACI   Acknowledgment of Controlled Items

BIS   Department of Commerce Bureau of Industry and Security

CCL   Commerce Control List

CJ   Commodity Jurisdiction

DDTC   Department of State Directorate of Defense Trade Controls

DFAR   Defense Federal Acquisition Regulation

DOR   Division of Research

EAR   Export Administration Regulations

FAR   Federal Acquisition Regulation

FMO   Financial Management Operation Office

FRE   Fundamental Research Exclusion

ECCN   Export Control Classification Number

ISSS   International Student and Scholar Services

ITAR   International Traffic in Arms Regulations

MTA   Material Transfer Agreement

NDA   Non-Disclosure Agreement

OFAC   Department of the Treasury Office of Foreign Assets Control

OGC   Office of General Counsel, The Texas A&M University System

RESEC   Research Security and Export Controls of Texas A&M University

RSO   Research Security Office, The Texas A&M University System

RPS   Restricted Party Screening

SDN List   Specially Designated Nationals and Blocked Persons List

SRS   Texas A&M Sponsored Research Services

TAA   Technical Assistance Agreement

TAMU   Texas A&M University

TAMUQ   Texas A&M University at Qatar

TAMUS   The Texas A&M University System

TCP   Technology Control Plan

USML   United States Munitions List

VPR   Vice President for Research

TEXAS A&M UNIVERSITY EXPORT CONTROL PROCEDURES

1) **Commitment to Export Control Compliance**

   It is the policy of Texas A&M University to comply with United States export control laws and regulations including, but not limited to, those implemented by the Department of Commerce through its Export Administration Regulations (EAR)[1] and the Department of State through its International Traffic in Arms Regulations (ITAR),[2] as well as those imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC).[3]

   Texas A&M University (TAMU) has implemented an export control compliance program to reduce the risk of export control violations. All employees and students must be aware of, and are responsible for, the export control implications of their work and must ensure their activities conform to export control laws and regulations. There are severe institutional and individual sanctions for violations of export control laws and regulations, including the loss of research funding, loss of export privileges, as well as criminal and civil penalties.

   The Division of Research maintains a website with export control information and resources accessible at https://vpr.tamu.edu/research-security-and-export-controls/. Questions about export controls can be directed to TAMU's Research Security and Export Controls (RESEC), telephone (979) 862-6419 or by email to exportcontrols@tamu.edu.

   This Export Control Compliance Program Manual (Manual) is designed to assist TAMU faculty, staff, and students with export control compliance. To the extent that this Manual conflicts with TAMU rules and/or procedures, the rules and/or procedures take precedent. Acronyms are defined in the List of Abbreviations herein. Other capitalized terms used in this Manual that are not defined above, in the University Rule 15.02.99.M1, *Export Controls*, or within the Manual are listed in the Glossary.

2) **Key Actors Responsible for Export Control Compliance**
   a) **Empowered Official**

   The Vice President for Research (VPR) (in addition to other designees who may be appointed by the Vice President for Research) is TAMU's Empowered Official for all purposes relating to applicable federal export control laws and regulations. The Empowered Official is responsible for authorizing license applications and other approvals required for compliance with export control laws and regulations and serves as TAMU's

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[1] The Export Administration Regulations (EAR) 15 CFR 730-774 can be found at https://www.bis.gov/ear.

[2] The International Traffic in Arms Regulations (ITAR) 22 CFR 120-130 can be found at https://www.pmddtc.state.gov/ddtc_public/ddtc_public.

[3] The Office of Foreign Assets Control (OFAC) 31 CFR. 500-599 can be found at https://www.ecfr.gov/current/title-31.

representative and point of contact with federal agencies having export control jurisdiction. The Empowered Official is the TAMU official authorized to bind TAMU in any proceedings before government agencies with export control responsibilities and has final responsibility for compliance with export control laws and regulations.

b) **Research Security and Export Controls**

The [Research Security and Export Controls (RESEC) Office](), in cooperation with other offices, is responsible for directing and monitoring the University's export control compliance program, recordkeeping, and implementing procedures and/or guidelines to comply with federal export control laws and regulations, including developing, implementing, and updating this Manual.

RESEC will determine or assist other offices and employees in export control assessments to determine compliance obligations with respect to University activities involving Foreign Persons or international activities under applicable export control laws and regulations, as well as to determine the applicability of the Fundamental Research Exclusion (FRE) or other exclusions provided by law. RESEC will also assist with and conduct Restricted Party Screening (RPS), jurisdiction determinations and classification reviews, and consult with The Texas A&M University System (TAMUS) Office of General Counsel (OGC) and Research Security Office (RSO) on export control matters as needed.

All interactions with government officials on export control matters will be made, administered, and/or managed by RESEC as determined appropriate. Any communications from government officials relating to TAMU's export control compliance program, its employees, research, facilities or equipment should be forwarded to RESEC for handling. RESEC will work in conjunction with the A&M System RSO as appropriate on communications with government officials.

As part of its overall responsibility for directing and monitoring TAMU's export control compliance program, RESEC will conduct periodic reviews of TAMU's compliance with export control laws and regulations and report its findings to the Empowered Official and/or President as appropriate. (*See Section 22, Monitoring*)

c) **University Administrators**

All University employees with managerial or supervisory authority over Foreign Persons or projects involving Controlled Information or Controlled Physical Items should view export control compliance as an important part of their day-to-day responsibilities. Additionally, they are responsible for overseeing export control compliance in their areas

of administrative responsibility and for supporting RESEC in implementing the procedures set forth in this Manual, and as otherwise deemed necessary by RESEC for export control compliance.

d) Export Control Designated Liaisons

TAMU offices with responsibility for administering components of TAMU's export control compliance program should designate an individual as a Designated Liaison, who will represent the department/unit and coordinate with RESEC on export control compliance matters, including performing routine internal monitoring of export control procedures and practices. Such Designated Liaisons should complete any required trainings, as well as attend applicable meetings as recommended by RESEC.

e) Investigators

Investigators (includes principal investigators, co-principal investigators, co-investigators), with the assistance of RESEC and other offices, are responsible for full compliance with all federal and University export control requirements in the conduct of their research. Violation of the export control laws can directly affect Investigators through potential fines, loss of research funding, and/or personal criminal liability, each Investigator must:

i) Understand his or her export control obligations and participate in regular trainings to be able to identify export control concerns;

ii) Be aware of the export control red flags in Section 3 of this Manual and note such information on any internal compliance or assurance forms;

iii) Determine, prior to initiation of research, whether any information or technology involved in his or her research is subject to export control laws or regulations;

iv) Review his or her research periodically to ensure continuing compliance with export control laws and regulations;

v) Brief students and other researchers involved in the project of their export control obligations, if undertaking an export controlled project;

vi) Understand that any informal agreements or understandings entered into with a sponsor may negate the FRE or other key exclusions and impose export control obligations on the Investigator; and

vii) Understand that any communication of Technical Data, proprietary information or export controlled information or technology to a Foreign Person in the U.S or to anyone outside the United States could be considered a Deemed Export or an Export and therefore subject to the Export regulations.

f) Other Individuals

All individuals retained by or working at or for the University must conduct their affairs in accordance with United States export control laws and regulations. While compliance with all applicable legal requirements is imperative, it is equally important to maintain an open research environment that welcomes the participation of researchers from around the world as part of the University's mission. To maintain this balance, University personnel must be familiar with the United States export control laws and regulations, including important exclusions and exemptions, as they relate to their responsibilities. Depending upon the nature of their activities and/or job functions, University personnel may be required to participate in formal training as determined by the University's Empowered Official(s), RESEC, and/or the employees' supervisors.

g) Relationship with Other System Members

Other System Members maintain their own export control compliance programs to ensure compliance with export control laws and regulations. To the extent there are overlapping export control compliance obligations, such as when University faculty, research, facilities or equipment are concerned, System Members should coordinate with TAMU's Research Security and Export Controls.

3) Identification of Export Control Concerns

a) Export Control Red Flags

The following are indicators that an export control review should be conducted to ensure that no violations will occur:

i) The results of research conducted at TAMU or by TAMU employees are intended for military, nuclear, or space purposes or for other restricted End-Uses or Users;

ii) Foreign Persons will have access to Controlled Physical Items on campus;

iii) Software including encryption features will be developed or purchased;

iv) TAMU faculty or staff will export or travel abroad with research equipment, chemicals,

biological materials, encrypted software, or Controlled Physical Items; or travel abroad with laptops, cell phones, tablets, portable drives, or other electronic devices containing Controlled Information;

v) A proposed activity/transaction will involve embargoed countries or entities, individuals/entities located in embargoed countries or countries of concern (as defined by System's Research Security Office pursuant to Regulation 15.05.04- High Risk Global Engagements and High Risk International Collaborations), or who are on prohibited or restricted End-User lists, as determined by RPS;

vi) The sponsor imposes a publication restriction (i.e.. pre-approval of publications) or restricts the participation of Foreign Persons;

vii) International shipments, including equipment, chemicals or biologicals to a foreign country;

viii) The agreement contains a Controlled Unclassified Information (CUI) clause. (e.g. DFARS 252.204-7012); and

ix) Other Red Flag Indicators: The Department of Commerce, Bureau of Industry and Security has posted a list of Red Flag Indicators for Things to Look for in Export Control Transactions.

b) **Restricted Party Screening**

The U.S. Department of Commerce, the U.S. Department of State, and the U.S. Department of Treasury, along with various other government agencies, maintain lists of prohibited and restricted End-Users (Restricted Party Lists). In order to ensure that TAMU is not doing business with individuals or entities that have been debarred, denied Export privileges, or are otherwise on one of the numerous government Restricted Party Lists, TAMU must screen individuals and entities as provided in this Manual. Restricted Party Screening (RPS) is the process of determining whether a person or entity is included on a restricted party list.

TAMUS RSO has licensed export control compliance software that permits authorized users to screen Restricted Party Lists electronically. The export control compliance software performs Restricted Party Screening against relevant U.S. Government lists, including, but not limited to: Department of Treasury Office of Foreign Assets Control (OFAC) Specially Designated Nationals List, Department of Commerce Bureau of Industry and Security (BIS) Denied Persons List, Department of Commerce BIS Entity List

and Unverified List, Department of State Arms Export Control Act Debarred Parties, Department of State Designated Terrorist Organizations, and Department of State Nonproliferation Orders.

i) Authorized Users

Those with a business need to access and use the software will complete and submit an authorization request form. RESEC can facilitate obtaining authorization to use the export control compliance software in conjunction with the RSO. The unit requesting the authorization of a new user is responsible for screening the individual using the export control compliance software before submitting the authorization request form. The requesting unit is also responsible for ensuring that the proposed user has completed the basic online export control training course delivered via TrainTraq, noting the completion date on the request form, and notifying RESEC if the employee's status changes, so that RESEC can assist with deactivating their access and routing dynamic screenings to the appropriate office.

Authorized users are limited to full-time employees of TAMU.

ii) Possible Match

Authorized users should conduct RPS in accordance with their department's/unit's internal procedures. If there is a possible match of the party being screened with a party on a Restricted Party List (a "hit"), a secondary review should be conducted using additional detailed information. If the hit cannot be dismissed on secondary review, the hit should be forwarded to RESEC, along with the criteria used to determine the possible match. Upon further investigation, RESEC will make a determination. RESEC is responsible for maintaining records of its determinations. The departments/units of authorized users are responsible for documenting and maintaining records of all determinations including those not forwarded to RESEC, as provided in Section 20, *Recordkeeping*.

4) Jurisdiction Determination and Classification Review

The U.S. Department of Commerce, and the U.S. Department of State, along with various other government agencies control what technology, items, goods, services, etc. (Technology) may be exported outside of U.S. territory and to Foreign Persons in the United States. If an item is export controlled, prior authorization from one of the government agencies (e.g., Department of Commerce or State) may be required to transfer the item internationally; and/or depending on the type of item (EAR or ITAR) and the circumstances in which it is being accessed and

used, Foreign Person access to (or use of) the item may be restricted unless specifically authorized by the governing agency.

a) International Traffic in Arms Regulations (ITAR) – United States Munitions List (USML)

USML Categories - The Department of State regulates exports of Defense Articles and Defense Services via the International Traffic in Arms Regulations (ITAR) (22 CFR 120-129). The ITAR includes a list of articles, services and related Technical Data designated as Defense Articles and Services regulated by the federal government known as the United States Munitions List (USML) (*See 22 CFR 121.1*). Categories include:

     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

ITAR defense items are broadly defined to include any item or equipment, related Technology, software or data that is built, compiled, specially designed, or modified to

military or defense specifications. This can include precision electronics, components and instruments used during the course of fundamental research. The fact that TAMU can procure such an item commercially does not necessarily mean that the item is not a Defense Article. In some cases, a vendor or provider of such an item may label it ITAR, which flags it as an export-controlled defense item.

It is important to keep in mind that ITAR restrictions apply even in the context of open laboratory, fundamental research projects where no citizenship or publication restrictions have been accepted. Therefore, determining whether or not an item is ITAR controlled prior to incorporation into research inventory or utilized by an Investigator or research team is essential. The fact that the item can be purchased commercially does not remove its controlled status. Buyers, licensees or other types of recipients of ITAR items remain responsible for managing the applicable Foreign Person restrictions.

To better understand what is regulated under ITAR, it is important to read the regulations in the context of the definitions for Defense Article, Defense Service, and Technical Data. Below are the definitions as well as a link to the State Department's website which may be of assistance in understanding and applying the federal regulations.

i) Defense Articles (*see 22 CFR 120.31 (a)6*) are broadly defined to include any item or equipment, related Technology, or Technical Data that is built, compiled, designed, or modified to military specifications. This includes, for example, military-grade electronics and components of instruments even if they are used during the course of fundamental research. It also includes items or Technical Data with significant military or intelligence applicability. The fact that the item is commercially available does not necessarily mean the item is not a "Defense Article." Defense Articles include: hardware, software, Technical Data recorded or stored in any physical form, models, mockups or other items that reveal Technical Data. It also includes forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as Defense Articles. It does not include basic marketing information on function or purpose or general system descriptions.

ii) Defense Service (22 CFR 120.32) is defined as (1) furnishing of assistance (including training) to Foreign Persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of Defense Articles; (2) furnishing to Foreign Persons of any controlled Technical Data, whether in the United States or abroad; or (3) military training of foreign units and

forces, regular and irregular, including formal or informal instruction of Foreign Persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

iii) Technical Data (22 CFR 120.33) is defined as information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of Defense Articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation; information covered by a secrecy order; and software directly related to a Defense Article; classified information relating to Defense Articles and Defense Services on the USML and 600-series items controlled by the Commerce Control List; and software directly related to Defense Articles.

b) **Export Administration Regulations (EAR) – Commerce Control List (CCL)**

The Department of Commerce regulates exports of Dual-Use items and Technology via the Export Administration Regulations (15 CFR Parts 730-774). The EAR includes a list of items subject to regulation known as the Commerce Control List (CCL). Categories and Product Groups include:

Categories:
0 - Nuclear Materials, Facilities, and Miscellaneous
1 - Materials, Chemicals, "Microorganisms," and Toxins
2 - Materials Processing
3 - Electronics
4 - Computers
5 - Telecommunications and Information Security
6 - Lasers and Sensors
7 - Navigation and Avionics
8 - Marine
9 - Propulsion Systems, Space Vehicles, and Related

Product Groups:
A - Equipment, Assemblies, and Components
B - Test, Inspection and Production Equipment
C - Materials
D - Software
E - Technology

Using the above categories and product groups, an Export Control Classification Number (ECCN) can be determined. The ECCN is a 5-character alpha numeric code. The first character is a number that describes the category of the item. The second character is a letter which indicates the product group. The last 3 numerical digits are used for numerical ordering of the item. If an item falls under U.S. Department of Commerce jurisdiction and is not listed on the CCL, it is designated as EAR99. EAR99 items generally consist of low-technology consumer goods and do not require a license in many situations. However, if the item will be exported to an embargoed country, to an End-User of concern, or in support of a prohibited End-Use, a license may be required.

In 2018, the federal government's export reform initiative resulted in some changes to the USML and CCL. Some Defense Articles that were once listed on the USML were moved to the CCL creating two new series of ECCNs: 500 for Spacecraft and 600 for Commerce Munitions. Items that moved from the USML to the CCL generally include some less important parts, components, accessories and attachments used in or with Defense Articles. The federal government uses a "catch" and "release" process to determine if items stay on the USML or are released onto the CCL. If the item is not on the revised USML, or within one of the "specially designed" catch-all, the item is "released" to the CCL and controlled under the specifically enumerated ECCN. (*See the [decision tools](), and Guidance & [FAQs](), from the BIS.*)

Dual-Use items are broadly defined as any item (equipment, instrument, related technology, material, software or data) that is *civilian* by design and intended application, but could, by virtue of its specifications and performance, be used for a defense purpose. Dual-Use items can include research instruments and related software, materials, or data used in fundamental research. The fact that TAMU can procure such items commercially does not mean that they are not export controlled. In some cases, a vendor or provider of an item may label it as EAR-controlled, which flags it as a Dual-Use export-controlled item.

For Dual-Use items, it is important to identify situations where Dual-Use Controlled Technology that is not otherwise the subject of fundamental research and eligible for publication is potentially shared or utilized. Below are several examples of Technology sharing, which may trigger an export control issue:

i) Utilizing vendor-proprietary repair or maintenance manuals, or software configuration programs, provided by a vendor (or third party);

ii) Training research personnel to perform all of the following functions with respect to a specialized research instrument: install, maintain, repair, refurbish and overhaul (or any

combination of these items) that imparts the inherent proprietary design and controlled functionality of a Dual-Use controlled item (again, presumes having a vendor's proprietary installation/repair manual or software configuration program); and

iii) Developing or modifying a Dual-Use instrument (typically a co-development arrangement with a vendor or manufacturer) that likewise exposes the underlying controlled design. Development may include all stages of work prior to serial production, such as design research, analysis, "proof of concept," assembly and testing of prototypes, pilot production schemes, configuration, or integration design.

5) Control Measures

Once export controlled items or technology are identified, control measures may be implemented to mitigate the associated risks of non-compliance, as deemed necessary by RESEC and the Empowered Official.

a) Technology Control Plan

i) Development

If RESEC determines a project, facility, or item is export controlled in such a way that a TCP may be required, RESEC will work with the Investigator, facility managers, and/or others to determine if a TCP is needed. If it is determined that a TCP is necessary, RESEC will then work with the Investigator, facility managers, and others to develop and implement a TCP to secure the Controlled Technology from access by unauthorized Foreign Persons. A TCP will typically include:

(1) A commitment to export control compliance;

(2) Identification of the relevant export control categories and Controlled Technologies;

(3) Identification and nationality of each individual participating in the project;

(4) Appropriate physical and informational security measures;

(5) Personnel screening measures and training; and

(6) Appropriate security measures for the duration of the project and following project termination.

ii) Appropriate Security Measures

The TCP will include physical and informational security measures appropriate to the export control categories related to the project/facility/item. Examples of security measures include, but are not limited to:

(1) <u>Laboratory Compartmentalization</u> - Project operation may be limited to secured laboratory areas physically shielded from access or observation by unauthorized individuals;

(2) <u>Time Blocking</u> - Project operation may be restricted to secure time blocks when unauthorized individuals cannot observe or access;

(3) <u>Marking</u> - Export Controlled Information must be clearly identified and marked as Export-Controlled;

(4) <u>Personnel Identification</u> - Individuals participating on the project may be required to wear a badge, special card, or other similar device indicating authority to access designated project areas. Physical movement into and out of a designated project area may be logged;

(5) <u>Locked Storage</u> - Tangible items such as equipment, associated operating manuals, and schematic diagrams should be stored in rooms with key-controlled access. Soft and hardcopy data, lab notebooks, reports, and other research materials should be stored in locked cabinets; and

(6) <u>Electronic Security</u> - Project computers, networks, and electronic transmissions should be secured and monitored through User IDs, password controls, 128-bit Secure Sockets Layer encryption, or other federally approved encryption technology. Database access should be managed via a Virtual Private Network.

(7) <u>Confidential Communications</u> - Discussions about the project must be limited to the identified and authorized project participants, and only in areas where unauthorized individuals are not present. Discussions with third party sub-contractors must occur only under signed agreements which fully respect the Foreign Person limitations for such disclosures.

b) Acknowledgment of Controlled Biologicals, Chemicals or Items,

In some cases of EAR-controlled items, the principal investigator or responsible individual may be asked to sign an Acknowledgement of controlled Biologicals (ACB), Chemicals (ACC), and/or Items (ACI) form in lieu of a full TCP.

6) Export Licensing

If RESEC determines that an ITAR, EAR, OFAC or other license, Technical Assistance Agreement, Manufacturing License Agreement, Registration, or other authorization (i.e., exemption) is needed, RESEC will consult with the Investigator and other appropriate parties to gather all the information needed to seek a license or authorization. RESEC will inform the Empowered Official, or designee, of the details of the export control concern and make a recommendation that a license or other authorization should be obtained. The Empowered Official, or designee, will request the license or other authorization from the cognizant agency with assistance from RESEC, RSO, and the OGC, if needed.

7) Foreign Person Employees

It is important for hiring departments/units to be aware that the ability to hire a Foreign Person for certain positions may be restricted or prohibited by export control laws. For example, Foreign Persons may be restricted or prohibited from performing employment responsibilities relating to certain information technology systems positions to the extent the work will involve access or use of Controlled Information or Items without an export control license. Supervisors proposing to hire Foreign Persons should carefully consider whether the proposed employment will involve access or use of Controlled Information or Items before extending offers of employment. An export control review is required for all Foreign Person new hires. Supervisors must complete the [TAMU Export Control Review and Certification Form](#), obtain export control approval and to complete Export Controls and Embargo Training-Basic Course (2111212) through SSO prior to the start date.

RESEC is responsible for:

a) Reviewing the Export Control Review and Certification form, CV, offer letter, and position description;

b) Conducting RPS including but not limited to, the Foreign Person, his/her affiliated institution or organization going back five years, and any personal and/or professional references that are provided;

c) Seeking a determination for unresolved name matches;

d) Reporting to the Executive Director of RESEC any potential export control concerns related to the hiring of Foreign Persons; and

e) Routing employment requests subject to A&M System Regulation [15.05.04 High Risk Global Engagements and High Risk International Collaborations](#) for approval by the A&M System.

An immigration sponsorship petition will not be filed unless all necessary export control requirements have been addressed by the supervisor and cleared by RESEC as needed;

8) Research and Other Research-Related Agreements

Most data and information involved in University research is excluded from export control regulation under the ITAR or EAR based on "Published" Technology & software/public domain exclusion and the Fundamental Research Exclusion (FRE). It is important for researchers and others involved in research to be aware of these key exclusions and to understand that their benefits can be lost if certain provisions are present in research-related agreements. For this reason, Investigators should avoid entering into informal understandings or "side agreements" with research sponsors that restrict Foreign Person access to the research or that impose sponsor controls on the publication or other dissemination of research results. It is important to remember that the restrictions enforced by OFAC are not affected by ITAR, EAR, or the FRE. OFAC restrictions and prohibitions generally arise in connection with interactions involving certain individuals, entities and countries most notably in interactions with embargoed countries and individuals/entities from embargoed countries (i.e., Cuba, Iran, North Korea, Syria, Venezuela).

a) Contract Provisions of Concern

Certain agreement provisions may negate the FRE and require seeking a license, undertaking monitoring or other activities. These provisions of concern are identified on the [TAMU Export Controls Decision-Making Tree for Administration of Contract Provisions](#) and are summarized below.

If any of the following provisions are present (and cannot be negotiated away) in a research agreement or subcontract, or other non-sponsored research agreement (e.g., a Material Transfer Agreement or Non-Disclosure Agreement related to research), RESEC should be consulted for guidance prior to execution of the agreement.

i) Sponsor maintains the right to restrict or approve publication or Release of research results (other than TAMU's standard customary brief delay to protect a sponsor's confidential information or to preserve the patentability of an invention);

ii) Research data and/or other research results will be owned by the sponsor (e.g., as sponsor's proprietary or trade secret information);

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iii) Statements that export control restrictions will apply to the research;

iv) Incorporation by reference of Federal Acquisition Regulations (FARs), agency-specific FARs, or other federal agency regulations, which impose specific controls on access to or dissemination of research results;

v) Restrictions on, or prohibitions against, the participation of research personnel based on citizenship or national origin;

vi) Statements that the sponsor anticipates providing export-controlled items or information for use in connection with the research;

vii) Equipment or encrypted software is required to be delivered as part of the project;

viii) The research project will involve the use of export-controlled items or technical information obtained from a third party;

ix) There is a Controlled Unclassified Information (CUI) clause (e.g., DFARS 252.204-7012); or

x) The research will take place outside the United States (e.g. attending conferences, shipping items internationally, and international collaboration).

b) Specific U.S. Government Access and Dissemination Controls

Specific access and dissemination controls may be buried within the language of FARs, Defense Federal Acquisition Regulations (DFARs), and other agency-specific regulations included as part of a prime contract, or flowed down in a subcontract. These clauses include, but are not limited to:

FAR 52.227-14 (Rights in Data – General) grants the Government unlimited rights in data first produced or delivered under the contract. Government approval is required to assert copyright in data first produced in the performance of the contract and not published in academic, technical or professional journals, symposia proceedings, or similar works. For basic or applied research, suggest requesting Alternate IV to lift this restriction. Alternate IV provides the Contractor with the right to copyright data without Government permission.

FAR 52.227-17 (Rights in Data – Special Works) prevents the Release, distribution, and publication of any data originally produced for the Government's internal use and

represents an absolute restriction on the publication or dissemination of contractor-generated data. It should not apply to basic and applied research and should be removed from the contract on the basis of exceptions to this clause's applicability. Refer to FAR 27.405-1 for more information.

DFARS 252.204-7000 (Disclosure of Information) states that the "Contractor shall not Release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract." Three exceptions apply: (1) if the contracting officer has given prior written approval; (2) where the information is already in the public domain prior to date of Release; (3) if the research is determined in writing to be fundamental research by the Contracting Officer. Refer to 27.404-2 & 27.404-3 and NSDD-189 as justification for getting the restriction removed. Also, can refer to IRS Ruling 76-296. May also add alternate language that allows for review and comment on publications.

DFARS 252.225-7048 (Export –Controlled Items) states that the "Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR." May have to require the Investigator to certify that the project does not involve any items that are subject to Export Control Laws.

ARL 52.004-4400 (Approval of Foreign Nationals) requires that all Foreign Nationals must be approved before beginning work on the project. The Contractor is required to divulge if any Foreign Nationals will be working on the project. Provision of name, last country of residence, citizenship information, etc. is required. This clause is commonly found in contracts involving Controlled Technology and sponsored by military agencies. Investigators may need to certify that no Foreign Nationals will be working on the project. If no Foreign Nationals will be employed on the project, Contractor may disregard this clause. If the Investigator is doing basic research and the sponsor will take those results and work on the Controlled Technology at another location, the clause may be able to be deleted.

ARL 52.005-4401 (Release of Information) includes reference to "non-releasable, unclassified information" and a requirement to "confer and consult" prior to Release of information. It is unclear what the review entails. Therefore, the sponsor retains publication/information approval, which voids the FRE. Substitute with ARL Cooperative Agreement Language: Prior Review of Public Releases, "The Parties agree to confer and

consult with each other prior to publication or other disclosure of the results of work under this Agreement to ensure that no classified or proprietary information is released. Prior to submitting a manuscript for publication or before any other public disclosure, each Party will offer the other Party ample opportunity (not to exceed 60 days) to review such proposed publication or disclosure, to submit objections, and to file application letters for patents in a timely manner."

AFMC 5352.227-9000 (Export Controlled Data Restrictions) requires an Export license prior to assigning any Foreign Person to work on the project or allowing Foreign Persons access to the work, equipment, or Technical Data generated by the project. TAMU RESEC needs to be notified if this clause is included in the contract.

DFARS 252.204-7012 (Controlled Unclassified Information) requires the security requirements described in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations, to protect controlled unclassified information (CUI) on non-Federal information systems.

c) **Resolving Export Control Concerns**

When a potential export control concern is identified, RESEC will work with the parties involved, and determine what course of action should be taken to address the concern. In many cases, no license or other authorization may be necessary. In each case, RESEC will determine whether:

i) The conditions merit an application for a license or other authorization;

ii) The conditions are such that an exclusion or license exception may be applicable; or

iii) A TCP, or other requirements for the conduct of the research, will be necessary to prevent an unauthorized Deemed Export of the Technology from occurring.

iv) An Acknowledgement of Publication Restriction or Acknowledgement of Personnel Restriction (APR) will be necessary in cases where the sponsor have restricted publication or participation of foreign persons.

RESEC will notify the Investigator, SRS, and/or Research Administration, of RESEC's export control determinations. RESEC will maintain records of its determinations on a project basis, as provided in Section 20, *Recordkeeping*.

9) Visiting Scholars at Texas A&M University

Hosts should be aware of possible export control implications, restrictions and obligations associated with a proposed visit before extending invitations and should consult with RESEC as needed. For example, (i) the proposed visitor is from an embargoed country and/or a Country of Concern (defined by Texas A&M System Research Security Office) (ii) the proposed visitor or his or her affiliated institution appears on a restricted party list, or (iii) the proposed activities require an Export license.

TAMU employees intending to invite or host Visiting Scholars are required to notify and request from RESEC the approval of research activities for such visit before the arrival of the Visiting Scholar.

a) Procedure to Notify and Request Authorization to Visit

    i. The Visiting Scholar Form 5VS must be completed by the supervisor, including all required signatures, prior to the visit.

    ii. RESEC will conduct an export review, that includes Restrictive Party Screening (RPS) on the Visiting Scholar and his/her affiliated university or organization. The approved form will be sent to the host, and ISSS will be copied as applicable.

b) No Authorization to Access Controlled Information, Controlled Physical Items

Visiting Scholars may not have access (whether verbal, written, electronic, and/or visual) to TAMU Controlled Information or Controlled Physical Items unless expressly permitted via an approved Technology Control Plan, Export license or as authorized in writing by RESEC. It is the responsibility of the TAMU host to ensure compliance with export control regulations and to promptly disclose and report to RESEC as specified in TAMU Rule 15.02.99.M1 *Export Controls Program Management* any violations thereof.

c) Change in Nature, Purpose, or Duration of Visit

In the event there is a change in the nature, purpose, or duration of a visit, the host is responsible for contacting and obtaining approval from RESEC prior to the effective date of that change.

10) Distance Education

Distance education at Texas A&M University refers to credit bearing, transcripted courses only offered to enrolled and registered students, where the course delivery occurs in a setting where the students and faculty member of record are not in the same place at the same time or where the instruction for the course occurs at an approved off-campus educational site. This instruction can be in the form of 100 percent online, face-to-face offsite, or some hybrid combination of face-to-face and online. Due to the element of distance in this education delivery method, some export control concerns may arise. It is the responsibility of the department offering the course and the faculty instructor of record to ensure export control requirements are reviewed and any concerns addressed with RESEC. Particular guidance is provided in the following areas for review of export control in distance education:

Confirming the identification of students enrolled in distance education is standard operating procedure for all courses, whether the student is foreign or domestic. Beginning with the student admission process, student identification is authenticated by the review of student admissions application materials, further identification provided during financial aid and housing application, issuance of a Universal Identification Number (UIN) and unique password. The authenticated UIN and password are used to gain access to a variety of student resources including "HOWDY" student registration and information portal, as well as the e-learning resources utilized in delivery of distance education.

Beginning in 2011, Texas A&M University addressed the issue of reconfirming student location while taking distance education courses, by implementing a query at the time of registration in the "HOWDY" student registration portal. To complete registration for a course offered by distance education (signified by unique section numbering), the student must answer the query for their location.

Faculty members utilize start of semester interaction with students enrolled in distance education to verify location and authenticate UIN for each student, as well as restatement of the Aggie Code of Honor through the syllabus.

The Office of the Registrar produces a listing of all students enrolled in courses offered via distance education, including, but not limited to, student name, citizenship, and location while taking the distance education course (as answered at registration). This report is available to RESEC. The Office of the Registrar has set up an alert system for students who are enrolling in distance education courses from outside the U. S. RESEC will receive an email alert if a student located in an embargoed country, or any other country of concern, registers in a distance education course.

If a student is identified as ineligible by RESEC for participation in a course offered via distance education, then the Office of the Registrar, in concert with the department facilitating the desired course, will remove the student from the course registration and block access to the course e-learning resources.

a) **Certification of Course Content Delivered by Distance Education**

Each semester, each department indicates the previously approved courses (including sections to be delivered via distance education) the department intends to offer for student registration in the coming semester.

Beginning with registration for the Spring 2018 semester, each department will confirm compliance with export control requirements by completing the export control acknowledgement questions as part of the request for scheduling the course in the Section Request System.

The Office of the Registrar will ensure each department head has completed the export control acknowledgement satisfactorily and/or completed RESEC review and approval prior to allowing students to register for the section.

b) **New or Modified Course Offerings via Distance Education**

Faculty requesting to offer new or significantly modified courses must submit a New Course Request or Change in Course Request through the Curricular Approval Request System (CARS) for review by appropriate curriculum committees of the Faculty Senate, and subsequent approval of the full body of the Faculty Senate and the President of Texas A&M University.

These requests include the course description, course credits, course program level (bachelor, masters, doctoral), required and recommended course materials, CIP code, course number, prerequisites, etc.

If the Export Control Questionnaire indicates the need for Export review, RESEC will be notified via the Section Request System, and the review will be conducted prior to course approval.

The New Course Request and Change in Course Request include verification that the faculty member has reviewed the Export Control Basics for Distance Education document.

11) International Activities

TAMU offices responsible for administering international activities, programs, or centers are responsible for developing and implementing procedures to screen international programs, centers, and activities for compliance with export control laws and regulations in coordination with RESEC. In the case of University activities conducted outside the United States, it is the responsibility of the University activity organizer to seek and obtain appropriate export control approvals from RESEC for activities including, but not limited to, the following: execution of agreements performable outside the United States; education abroad courses; and making payments to Foreign Person vendors.

a) Education Abroad

All students participating in an education abroad program are registered as Texas A&M University students. The Education Abroad Programs Office will include information in its materials to alert the field Trip Leader of his or her export control compliance responsibilities, and to assist students who participate in the program.

12) Purchasing and Financial Transactions

a) Financial Transactions

The Division of Finance, in coordination with RESEC, is responsible for conducting RPS of vendors processed through FAMIS and AggieBuy.

Procedures for setting up vendor information in FAMIS and AggieBuy (eProcurement system) include conducting RPS for all vendors at the time vendors are established in the accounting system. For purchases handled by TAMU, it is the responsibility of the Division of Finance to conduct RPS pursuant to the procedures set forth in Section 3b, Restricted Party Screening. Any potential export control concerns will be referred to RESEC.

b) Procurement: Identification and Notification of Export Controlled Items

It is important to identify the procurement of ITAR items at an early stage because the State Department tightly restricts Foreign Person access to ITAR items regardless of whether or not there is an intention to use the item or an understanding of how to use it. This includes visual access in the laboratory environment. EAR restrictions, on the other hand, are "use-based" restrictions: access to (and operation of) the item is generally not at issue, absent certain exceptional use related conditions.

While vendors often self-identify ITAR items, those engaged in purchasing should nonetheless remain aware that, in the event that the vendor does not self-identify, the following types of items are often ITAR controlled. The following research disciplines—engineering, marine, geological, geographic, and atmospheric research are examples of those that may sometimes purchase ITAR controlled items, such as:

i) Night vision goggles, infrared cameras

ii) Gravimeters

iii) Equipment on loan from federal sponsors

iv) Sono-buoys and deep oceanic position signaling devices

v) Military-band communications systems or GPS

vi) DOD funded military electronic

vii) Submersible vessels and related remotely operated accessories

viii) Inertial navigation units, modem chips, and components

ix) Radar applications

x) Wind tunnel apparatus

The following list illustrates, by example, the types of Dual-Use (and potentially higher risk/controlled) equipment commonly found in research laboratories and for which those purchasing should identify/request classification[4]:

i) Measuring and sensing devices

ii) Gas movement and filtering devices

iii) Precision tooling, positioning and balancing instruments

iv) Optical and photonic components (including sensors, infrared and focal plane array detectors)

v) Oscilloscopes; spectrometers; fermenters

vi) Nuclear/radioactive transport or shielding equipment

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[4] This list is not intended to be comprehensive of all possible Dual-Use instruments.

vii) Class 3 and 4 lasers, and related precision beam equipment

viii) Semiconductor substrate and etching development equipment and processes

ix) Fiber optic cable development equipment

x) Marine submersible equipment (including hydrophones, signal receiving/emitting devices, pingers, acoustical releases, submersible video and television apparatus, etc.)

xi) Unmanned aerial vehicles (drones)

xii) Inertial navigation systems and related instruments

xiii) Remotely operated vehicles (ROVs)

The following list includes critical and emerging technology areas that the federal government has identified as being of particular importance to the national security of the United States, and will have increased export control regulations placed on them:

i)   Advanced Computing

ii)   Advanced Engineering Materials

iii)   Advanced Gas Turbine Engine Technologies

iv)   Advanced and Networked Sensing and Signature Management

v)   Advanced Manufacturing

vi)   Artificial Intelligence

vii)   Biotechnologies

viii)   Clean Energy Generation and Storage

ix)   Data Privacy, Data Security, and Cybersecurity Technologies

x)   Directed Energy

xi)   Highly Automated, Autonomous, and Uncrewed Systems (UxS), and Robotics

xii)   Human-Machine Interfaces

xiii)   Hypersonics

xiv)   Integrated Communication and Networking Technologies

xv)   Positioning, Navigation, and Timing (PNT) Technologies

xvi)   Quantum Information and Enabling Technologies

xvii)   Semiconductors and Microelectronics

xviii)   Space Technologies and Systems

c)   Identifying ITAR and EAR-Controlled Items in the Procurement Process

RESEC has established Procurement procedures to receive notification for certain types of purchases. Those involved in purchasing items which might be controlled should consider the following:

i)   Has the vendor disclosed that an item is controlled in product or sales documentation by incorporating such information in the following types of documentation?

(1) Quotation documentation on the purchase order an analogous purchase documentation (i.e., master purchase agreement);

(2) Commercial invoice or packing slip that accompanies the item;

(3) Product specification web page;

(4) Certification issued by the vendor (requiring department to acknowledge in writing the Export controlled status of the item); or

(5) Software license (or related terms/conditions).

ii)   If there has been no identification on whether an item is controlled or not, the vendor/licensor should be asked to certify whether or not the item is controlled at an early stage of the purchasing process by issuing a vendor certification.

For assistance, RESEC should be contacted.

d)   When an Export-Controlled Item is Identified

If an export-controlled item is identified, RESEC should be contacted so appropriate measures can be taken. If the item is highly controlled, this may include a discussion with the requisitioning department/individual about whether it is essential to have the highly controlled item that will potentially have access and use restrictions or instead procure a substitutable lesser-controlled item with no access/use restriction.

It is important to note that activities involving teaching or training Foreign Persons on how to use equipment may require a license.

e) **Outsourced Fabrication, Testing, or Development**

Those seeking to outsource the fabrication, testing or development of an item that might be export controlled to a vendor or subcontractor should notify RESEC prior to forwarding any items, materials, or Technical Data to any party so that an export control determination can be made.

f) **Procurement of Items for Export**

If an individual becomes aware that an item being procured will be sent by TAMU to a location outside the United States, the individual should notify RESEC and advise the requisitioning department/individual to have the proposed shipment reviewed by RESEC prior to shipment.

See Section 17 for additional information specific to TAMUQ.

g) **Asset Management**

Those involved in asset management will work with RESEC to ensure export compliance when transferring assets to external parties. Personnel who have been notified that an item is export controlled are responsible for ensuring export compliance of future activities, including disposition of items.

13) **Department of Contract Administration**

Contract Administration Office works with RESEC to identify any potential export control concerns (i.e. if a company is headquartered outside the United States or if any work is being performed outside the United States) when contracts requisitions are entered in AggieBuy. Contracts are routed to RESEC through AggieBuy for review.

14) **Technology Commercialization**

Texas A&M Innovation has established procedures to address the export control implications of their activities, including procedures related to RPS, invention disclosure screening for red flags, etc.

15) **Shipping**

It is the responsibility of TAMU employees who are shipping items outside the United States (including hand-carry items such as research equipment, materials, data, or biological or

chemical materials) to comply with export control laws and regulations. Any transfer of project information, equipment, materials, or Technology out of the U.S. by any method may be subject to export control restrictions and may require an export license or be prohibited depending on the item, destination, recipient, and end-use. Even if an item is cleared through Customs, it may still require an export control license.

The simple act of sending a package to a foreign collaborator can result in a violation of export controls. Departmental personnel who are responsible for shipping packages out of the country should obtain a list of contents before shipping and contact RESEC for an Export license determination. It should be noted that export control regulations are country specific, embargoed countries and/or countries of concern are subject to more restrictions and must first be cleared by RESEC.

Shipping Export Controlled Items out of the U.S. without a license can result in significant individual fines and imprisonment. This applies to the individual, although there may be fines for TAMU as well. One should not ship an item without taking the time to find out if a license is required.

Intentionally mislabeling the package or misrepresenting the classification of the item is illegal. Violations may result in civil penalties, and deliberate violations may result in criminal prosecution. Under-invoicing or undervaluing an Exported item is also against the law. Intentionally reporting an incorrect Export value on a Shippers Export Declaration is a violation of export regulations.

Shipment of items controlled under the ITAR or EAR should be clearly marked as controlled with the appropriate regulatory control cited. Any licensed Export, regardless of dollar value, as well as Exports with a dollar value greater than $2,500 per Schedule B number, regardless of export control status, must be entered into the US Census Bureau's Automated Export System (AES) prior to the Export of the item or information.

RESEC has published shipping guidelines, available on the RESEC website. The International Shipping Review form is also available on the RESEC website. Submit this form to the RESEC office, via email to exportcontrols@tamu.edu, prior to shipping anything outside of the U.S. Shipping-related questions or concerns should be referred to RESEC for assistance and resolution.

16) Travel

Individuals traveling internationally on university business or with university property are responsible for complying with export control laws and regulations which may restrict or prohibit some travel related activities and destinations and require licenses for others. Research

Security and Export Controls (RESEC) can help with these assessments to ensure institutional and individual compliance with export control requirements.

When planning a trip abroad, travelers should think about the purpose of their trip, who they plan to interact with, what they will take, where they will go and how long will they be gone when making export control assessments. Items that are not needed should not be taken abroad. Travelers should consult with RESEC if they are thinking about taking encrypted software, export controlled items or information, unpublished research data or data not in the public domain, abroad, or if traveling to a sanctioned country (e.g. Iran, Cuba, Syria, North Korea, Crimea region of Ukraine) or a Country of Concern (defined by Texas A&M System Research Security Office) to conduct university activities. A loaner laptop is required when traveling to a Country of Concern.

Most travel for conferences will fall under an exclusion to the export control regulations such as the Publicly Available and Public Domain exclusions (see 22 C.F.R. 120.34 and 15 C.F.R. 734.3). Information that is published and is generally accessible to the public through publication in books or periodicals available in a public library or in bookstores or information that is presented at a conference, meeting, seminar, trade show, or other open gathering is considered to be in the public domain. An open gathering is one in which members of the general public are eligible to attend, and attendees are permitted to take notes. To reduce the risk of potential export control violations, travelers should limit the information and technology they share to information that is published, and/or publicly available and should not share or take information, software, or technology that is proprietary, or designated for military, space, encryption software or nuclear related applications; or may have been received under a nondisclosure agreement, or otherwise subject to contractual restraints.

Items taken outside the U.S., even when temporarily hand-carried, are exports. University employees and students traveling outside the U.S. with items such as equipment, electronics, research materials, biologicals, and chemicals, should submit an International Shipping Review form. RESEC will determine the appropriate export authorization for the items that will be exported. There are a number of exceptions and exclusions which may apply depending upon the facts and circumstances of each case. RESEC will assist with documentation that may be required.

An International Travel - Export Control Screening Checklist may be used by travelers to assist in the identification of potential export control issues. Contact your appropriate export controls office for further information.

17) TAMUQ

There are unique aspects associated with the operation of a branch campus outside the United States which require enhanced export control related procedures and processes at TAMU's campus located in Doha, Qatar. TAMUQ in conjunction with Texas A&M University have established policies and processes for activities that are subject to U. S. export controls for Personnel Actions, Visitors, Student Enrollment, Technology Control, Purchasing, Sponsored Research, Short Courses/Workshops/Conferences, and High Performance Research Computing.

18) International Ocean Discovery Program

The International Ocean Discovery Program (IODP) is an international scientific ocean drilling research program funded by the National Science Foundation, which operates as a Special Center for Research at TAMU. TAMU is the science operator for the program under a subcontract awarded to the Texas A&M Research Foundation (TAMRF). IODP is responsible for complying with the applicable regulatory requirements related to export controls that arise from IODP's research, purchasing, and related activities. Export control concerns related to IODP operations will be identified, assessed, and managed by the IODP Program Director (and designees) and General Manager (and designees), in coordination with RESEC, using this Manual as a guide.

IODP has established procedures to prevent unauthorized access and/or use of export controlled technical information, data, items, software, hardware, biological materials, and chemicals by Foreign Persons and other restricted parties and consults and coordinates with RESEC as needed.

19) Sponsored Research Services

Most of TAMU's sponsored research activities are administered by Texas A&M Sponsored Research Services (SRS) in accordance with established SRS procedures.

SRS works closely with RESEC, Investigators, and System Members as appropriate in identifying export control concerns related to research and ensuring that approvals are in place before the initiation of projects.

SRS is responsible for notifying RESEC and the Empowered Official of suspected violations to the extent TAMU projects, contracts, or employees are affected.

20) Recordkeeping

Records required to be maintained by export control laws and regulations will be kept for the longer of:

a) The record retention period required by the applicable export control regulations. See 15 CFR Part 762 (EAR); 22 CFR. Sections 122.5, 123.22; and 501.601, or

b) The period required for the retention of records as set forth in The Texas A&M University System policies and regulations and University rules.

Records will be maintained on a project basis or as otherwise designated in this Manual, and accessible (electronic or hard copy) for audit/assessment purposes.

Records that should be retained include all memoranda, notes, correspondence (including email), financial records, shipping documentation, Export classification documentation, as well as any other information related to the Export activities. In addition, whenever a license or license exception or exemption is used, additional records documenting the applicability of the license, or exception/exemption may be required, and in some cases there may be additional reporting requirements. RESEC should be contacted for guidance.

Those conducting RPS are expected to maintain documentation of Restricted Party Screening results including, documentation indicating the methodology for determinations.

Records should be protected against unauthorized access, use, disclosure, modification or destruction, including assuring the availability, confidentiality and integrity of information consistent with System Regulation 29.01.03 *Information Security* and related university rules and SAPs, and in accordance with the terms of any license, TCP or as otherwise required by RESEC.

21) Training

a) <u>Export Control Basic Training</u> delivered via TrainTraq is required for the following classes of University employees:

   i) All employees of the Division of Research, excluding research animal technicians/caretakers;

   ii) All employees of the International Ocean Discovery Program;

   iii) All employees of TAMU's High Performance Research Computing Facility;

iv) All department/unit heads;

v) All employees identified on Technology Control Plans processed through the RESEC;

vi) All employees of the Education Abroad Office;

vii) Supervisors submitting requests to hire or host Foreign Persons;

viii) All College of Geosciences employees;

ix) All Health Science Center employees;

x) All persons identified as responsible individuals on Acknowledgement of Controlled Items Forms; and

xi) All employees involved in High Risk Global Engagements or High Risk International Collaborations.

b) Export Control Basic Training Specific for Texas A&M University at Qatar delivered via TrainTraq is required for all employees of TAMUQ excluding local hires.

c) The Information Security Awareness Training Program delivered via TrainTraq includes an export control component and is required for all TAMU employees.

d) Procard Training delivered via TrainTraq incorporates an export control component. This training is required for all Procard holders.

e) Education Abroad Organizers submitting requests for programs via the Education Abroad Office are required to take the Education Abroad Office's Trip Leader Briefing. The training incorporates an export control component and is required for all education abroad Trip Leaders.

Depending on the nature of an individual's activities and/or job functions, a University employee may be required to take the basic export control online training course and/or supplemental export control training as deemed appropriate by the individual's supervisor and/or RESEC.

Basic export control training for those identified in above is assigned automatically in TrainTraq by group, and by individual assignment for those not included in a category assignment. RESEC is responsible for communicating the assignment categories to TrainTraq and for making individual assignments.

22) Monitoring

Export control compliance and monitoring is a shared responsibility coordinated by TAMU's RESEC in cooperation with various other offices across TAMU (including its branch campuses).

To maintain TAMU's export control compliance program and ensure consistent adherence to U.S. export control laws and regulations, TAMU has adopted the following monitoring plan.

a) TAMU Research Security and Export Controls

RESEC will review all export control Standard Operating Procedures every two years in conjunction with each Designated Liaison's review. Reviews should evaluate controls implemented to ensure compliance with export control rules, procedures and test the effectiveness of controls. Findings will be reported to the Empowered Official and Designated Liaison. Any suspected violations of U.S. export control laws or regulations will be reported to the Empowered Official.

RESEC will complete annual desk reviews of all existing TCPs. A full review of each TCP will be conducted at least once every three years. Reviews should evaluate controls implemented to ensure compliance with export control rules, procedures and test the effectiveness of controls. Findings will be reported to the Empowered Official and Responsible Individual. Any suspected violations of U.S. export control laws or regulations will be reported to the Empowered Official.

RESEC will conduct an annual risk assessment of its compliance program with input from the Designated Liaisons, as outlined in Sec. 22.b The results will be submitted to the Empowered Official for review and approval and then forwarded to the University Office of Risk and Compliance.

RESEC is also responsible for reviewing monthly reports generated by TrainTraq to determine whether assigned employees are current on their training. RESEC will follow up with those delinquent on training to ensure course completion. Additionally, RESEC will review assignment categories annually to ensure they are up to date.

b) Other TAMU Offices – Designated Liaisons

Designated Liaisons should review their export control procedures and processes annually to ensure compliance with export control requirements and to identify deficiencies in training, procedures, etc.. This is accomplished by completing the Designated Liaison Review Form. The Form includes three sections. The Designated Liaison completes two sections of the Form. Section A, completed annually, includes questions regarding personnel changes and amendments or updates to the SOP. Section B includes information regarding sample reviews and the results of those reviews and should be completed every two years. The Form is then submitted to RESEC.

RESEC will complete Section C, which lists any concerns or action items. Designated Liaisons, are responsible for addressing any concerns and for following up on any action items. Any suspected violations of U.S. export control laws or regulations will be reported to the Empowered Official, RESEC and/or the department/unit head.

23) Possible Violations

Each TAMU employee has the responsibility to report possible violations of United States export control laws or regulations. Suspected violations should be reported to the Empowered Official, together with the details of the suspected violation. Suspected violations may also be reported to RESEC at exportcontrols@tamu.edu or (979) 862-6419; or via the EthicsPoint website. Possible violations of United States export control laws or regulations will be investigated by the Empowered Official, or designee, to the extent deemed necessary. In accordance with TAMUS policies and regulations, and TAMU rules and procedures, the Empowered Official is authorized to suspend or terminate a research, teaching, testing, or other activity if the Empowered Official, or designee, determines that the activity is not in compliance or will lead to noncompliance with export control laws and regulations. Disciplinary Actions

There are severe institutional and individual sanctions for violations of export controls laws, including the loss of research funding, loss of export privileges, as well as civil and criminal penalties including imprisonment. Additionally, employees and students may be subject to disciplinary action up to and including termination per TAMU rules and procedures and TAMUS policies and regulations.

GLOSSARY

Controlled Information – Information regarding Controlled Physical Items. This includes information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of Controlled Physical Items and may be Released through visual inspection, oral exchanges, or the application of personal knowledge or technical experience with Controlled Physical Items. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation. Also included in this definition are non-physical items (software and algorithms, for example) listed under EAR and ITAR. (See 15 CFR 730-774 and 22 CFR 120-130)

Controlled Physical Items – Dual-Use technologies listed under the EAR and Defense Articles listed on ITAR's USML. (See 15 CFR 730-774 and 22 CFR 120-130)

Deemed Export – Has the meaning set forth in 15 CFR 734.13 of the EAR, and 22 CFR 120.17 of the ITAR. Under the EAR, any Release in the United States of Technology to a Foreign Person is "deemed" to be an Export to the Foreign Person's most recent country of citizenship or permanent residency, and under the ITAR any Release in the United States of Technical Data to a Foreign Person is "deemed" to be an Export to all countries in which the Foreign Person has held or holds citizenship or holds permanent residency.

Defense Article – Any item or Technical Data designated on the United States Munitions List See ITAR §121.1. This term includes Technical Data recorded or stored in any physical form, models, mockups or other items that reveal Technical Data directly relating to items designated in §121.1. It does not include basic marketing information on function or purpose or general system descriptions.

Defense Service – The furnishing of assistance (including training) to Foreign Persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of Defense Articles;

The furnishing to Foreign Persons of any Technical Data controlled under the USML (See 22 CFR §120.10), whether in the United States or abroad; or

Military training of foreign units and forces, regular and irregular, including formal or informal instruction of Foreign Persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice. (See 22 CFR §124.1)

Dual-Use – Items (i.e. commodity, software or Technology) which are those having both commercial and military or proliferation applications.

Export Control Classification Number - Number assigned to each specific category of items or Technology listed specifically on the Commerce Control List maintained by the U.S. Department of Commerce, Bureau of Industry and Security. Commodities, software and Technology that do not fit into a specific ECCN are classified as "EAR 99" and, while they may be exported to most destinations, may still be controlled for export to certain sanctioned entities or a few prohibited destinations.

End-User - The person abroad that receives and ultimately uses the Exported or Re-Exported items. The End-User is not a forwarding agent or intermediary but may be the purchaser or ultimate consignee (See 15 CFR 772.1).

Export – An Export occurs when a Controlled Physical Item or Controlled Information is transmitted outside the United States borders or when a Controlled Physical Item or Controlled Information is transmitted to a Foreign Person in the United States. When a Controlled Physical Item or Controlled Information is transmitted to a Foreign Person in the United States, it is known as a Deemed Export.

The term Export is broadly defined. It generally includes (1) actual shipment of any Controlled Physical Items; (2) the electronic or digital transmission of any Controlled Information; (3) any Release or disclosure, including verbal disclosures and visual inspections, of any Controlled Information; or (4) actual use or application of Controlled Physical Items or Controlled Information on behalf of or for the benefit of a foreign entity or person anywhere. Complete definitions of the term Export are contained in the federal regulations.

Foreign Person – For export control purposes, a Foreign Person includes any individual in the United States who is not a U.S. Person as defined by 8 U.S.C. 1101(a)(20) or a "protected individual" as defined by 8 U.S.C. 1324b (a)(3). Generally, "U.S. Person" or "protected individual" includes U.S. citizens, U.S. lawful permanent residents, individuals admitted as a refugee, and individuals granted asylum.

A Foreign Person is also any branch of a foreign government or any foreign corporation or group that is not incorporated or organized to do business in the United States.

International Visitor – Foreign Persons having a residence in a foreign country, who are not employees or enrolled students of Texas A&M University and are coming to Texas A&M University on a temporary basis as a result of a verbal or written invitation made to the Foreign Person by a faculty member, researcher, or administrator of Texas A&M University.

Manufacturing License Agreement – An agreement whereby a U.S. person grants a Foreign Person an authorization to manufacture Defense Articles abroad and which involves or contemplates: (a) the Export of ITAR controlled Technical Data or Defense Articles; or (b) the use by the Foreign Person of ITAR controlled Technical Data or Defense Articles previously Exported by a U.S. person. (ITAR § 120.21)

Re-Export – The transfer of articles or services to a new or different end-use, End-User, or destination.

Release – Has the meaning set forth in 15 CFR 734.15 of the EAR and 22 CFR 120.50 of the ITAR. Under the EAR, Technology is Released through visual or other inspection by a Foreign Person that reveals Technology subject to the EAR to a Foreign Person in the United States or abroad. Technical Data is Released through visual or other inspection by Foreign Persons of a Defense Article that reveals Technical Data to a Foreign Person, or via oral or written exchanges with the Foreign Person of Technical Data in the United States or abroad.

System Member(s) – Refers to all members of The Texas A&M University System.

Technology – Specific information necessary for the "development," "production," or Use of a product. The information takes the form of Technical Data or Technical assistance.

Controlled Technology is defined in the General Technology Note and in the Commerce Control List (Supplement No. 1 to part 774 of the EAR).

Technical Assistance – May take forms such as instruction, skills training, working knowledge, and consulting services. Technical assistance may involve the transfer of Technical Data.

Technical Assistance Agreement – An agreement for the performance of ITAR-controlled Defense Services or the disclosure of ITAR-controlled Technical Data (22 CFR § 120.22).

Technology Control Plan – A Technology Control Plan (TCP) lays out the requirements for protecting Export Controlled Information and equipment at TAMU. TAMU has developed a TCP template.

Technical Data – *The ITAR defines Technical Data as:*

Information, other than software as defined in 22 CFR § 120.10(d), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of Defense Articles. This includes information in the form of blueprints, drawing,

photographs, plans, instructions or documentation." Including but not limited to diagrams, models, formulae, tables, engineering designs and specifications, manuals, and instructions written or recorded on other media or devices such as disk, tape, and read-only memories;

"Classified information relating to Defense Articles and Defense Services on the U.S. Munitions List and 600-series items controlled by the Commerce Control List;

Information covered by an invention secrecy order; or

Software (*see* § 120.45(f)) directly related to Defense Articles.)

Trip Leader – A Texas A&M faculty/staff/student leader(s) who conducts an international field trip or short program abroad and is accompanied by a group of students, either graduate and/or undergraduate.

Use – The EAR defines Use Technology as specific information necessary for the "operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing" of a product. If the Technology available to a Foreign Person does not meet all of these attributes, then it is not Use Technology for Deemed Export licensing purposes under the EAR (excluding the 600 series of the Commerce Control List (See Technical Data defined herein).