

TEXAS A&M UNIVERSITY

EXPORT CONTROL COMPLIANCE PROGRAM MANUAL

Ver. 8-30-19

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 the Export Control Office, exportcontrols@tamu.edu.

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LIST OF ABBREVIATIONS

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
ECO	Export Control Office of Texas A&M University
FAR	Federal Acquisition Regulation
FMO	Financial Management Operation Office
FRE	Fundamental Research Exclusion
ECCN	Export Control Classification Number
ISFS	Immigration Services for Faculty and Scholars
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
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
TTC	Texas A&M Office of Technology Commercialization
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/initiate-research/export-controls>. Questions about export controls can be directed to TAMU's Export Control Office, 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 this Manual conflicts with TAMU rules and/or procedures, the rules and/or procedures take precedent. Acronyms are defined in the List of Abbreviations, page 3. 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

¹ The Export Administration Regulations (EAR) 15 CFR 730-774 can be found at <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

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

³ The Office of Foreign Assets Control (OFAC) 31 CFR. 500-599 can be found at https://www.ecfr.gov/cgi-bin/text-idx?SID=4ed410fd289488e21a17b90d0c33ef63&c=ecfr&tpl=/ecfrbrowse/Title31/31cfrv3_02.tpl

required for compliance with export control laws and regulations and serves as TAMU's 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) Export Control Office

The Export Control Office (ECO), 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.

When requested, the ECO 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. The ECO 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) on export control matters as needed.

All interactions with government officials on export control matters will be made, administered, and/or managed by the ECO 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 the ECO for handling.

As part of its overall responsibility for directing and monitoring TAMU's export control compliance program, the ECO 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 20, 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 the ECO in implementing the procedures set forth in this Manual, and as otherwise deemed necessary by the ECO 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 who will represent the department/unit and coordinate with the ECO 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 the ECO.

e) Investigators

Investigators (includes principal investigators, co-principal investigators, co-investigators), with the assistance of the ECO 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 to a Foreign Person 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), the ECO, 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 Export Control Office.

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 who are on prohibited or restricted End-User lists, as determined by RPS;
- vi) The sponsor requires pre-approval rights over publications or 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. <http://www.bis.doc.gov/index.php/enforcement/oeec/compliance/23-compliance-a-training/51-red-flag-indicators>)

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.

TAMU 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. No access or use will be authorized without ECO approval. To obtain authorization to use the export control compliance software, a user should complete the [Request to Activate/Deactivate Access to Export Control Compliance Software form](#). 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 the ECO if the employee's status changes, so that access

can be deactivated. Authorized users are limited to full-time employees of the System or a System Member.

On an annual basis, the ECO will generate a list, by department/unit, of TAMU authorized users. The list will be sent to the department/unit head or designee to confirm that the individuals listed are still authorized users for that specific department/unit.

In the case of System Members, each System Member should identify an individual to review RPS hits and determine definitive matches. Additionally, each System Member should designate an individual responsible for maintaining a current list of authorized users for the System Member and confirming the need for RPS access for each user on an annual basis.

Authorized users will be limited to full time employees with business need only. The ECO may limit the number of authorized users as it deems appropriate.

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 the ECO, along with the criteria used to determine the possible match. Upon further investigation, the ECO will make a determination. The ECO 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 the ECO, as provided in Section 18, 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) which can be found at 22 CFR 120-129 (https://www.pmddtc.state.gov/ddtc_public). 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, Close Assault Weapons and Combat Shotguns
- II. Guns and Armament
- III. Ammunition/Ordinance
- IV. Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- V. Explosives, 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 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, (https://www.pmddtc.state.gov/ddtc_public).

- i) Defense Articles (22 CFR 120.6) 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 120.9) 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 120.10) 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 which can be found at 15 CFR Parts 730-774 (<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>).

The EAR includes a list of items subject to regulation known as the Commerce Control List (CCL). The CCL can be found at <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>. Categories and Product Groups include:

Categories:

- 0 - Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]
- 1 - Special Materials and Related Equipment, Chemicals, Microorganisms, and Toxins
- 2 - Materials Processing
- 3 - Electronics
- 4 - Computers
- 5 - Part 1 Telecommunications and Part 2 Information Security
- 6 - Sensors and Lasers
- 7 - Navigation and Avionics
- 8 - Marine
- 9 - Aerospace and Propulsion

Product Groups:

- A - Systems, Equipment 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.

The federal government's recent Export reform initiative has resulted in some changes to the USML and CCL. Some Defense Articles that were once listed on the USML have now 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 have generally included 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. For decision tools, FAQ and other resources, see <https://www.bis.doc.gov/index.php/2012-03-30-17-54-11/ecr-faqs>; and https://www.bis.doc.gov/index.php/forms-documents/doc_view/789-600-series-and-ccl-order-of-review.

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) Foreign Person Employees

It is important for hiring departments/units to be aware that the ability to hire nonimmigrant Foreign Persons for certain positions may be restricted or prohibited by export control laws.

For example, nonimmigrant 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. Supervisors proposing to hire nonimmigrant Foreign Persons should carefully consider whether or not the proposed employment will involve access or use of Controlled Information or Items before extending offers of employment. Supervisors are required to complete an [ISFS Export Control Review and Certification Form](#) and to complete export control basic training.

ISFS is responsible for:

- a) Conducting RPS of the Foreign Person plus his/her affiliated institution;
- b) Seeking a determination from the ECO for unresolved name matches;
- c) If applicable, reviewing the completed Export Control Review and Certification; and
- d) Reporting to the ECO any potential export control concerns related to the hiring of nonimmigrant Foreign Persons.

ISFS will not file an immigration petition unless all necessary export control requirements have been addressed by the supervisor and cleared by the ECO as needed;

For procedures relating to the hiring of Foreign Persons for work at TAMUQ see Section 15, TAMUQ.

6) 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), the ECO 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);
- 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 (See Section 6, Research and Other Research-Related Agreements);
- 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, "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& (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, "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)

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 ECO 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, <http://dx.doi.org/10.6028/NIST.SP.800-171> to protect controlled unclassified information (CUI) on non-Federal information systems. For full text see <http://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm>.

c) Procedures Applicable to Research and Other Research-Related Agreements and Subcontracts

- i) In the case of sponsored research agreements administered through SRS, processes and procedures have been established.
- ii) For other sponsored research related agreements and non-sponsored research agreements (i.e., Material Transfer Agreements, Non-Disclosure Agreements, Data Transfer Agreements, etc.) administered through the Office of Research Administration, processes and procedures have been established.

d) Resolving Export Control Concerns

When a potential export control concern is identified, the ECO 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, the ECO 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.

The ECO will notify the Investigator, SRS, and/or Research Administration, of the ECO's export control determinations. ECO will maintain records of its determinations on a project basis, as provided in Section 18, Recordkeeping.

e) Technology Control Plan

i) Development

If the ECO determines a project, facility, or item is export controlled, the ECO will work with the Investigator, facility managers, and others to determine if a TCP is needed. If it is determined that a TCP is necessary, the ECO 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 sample [TCP template](#) can be found on the ECO website and will typically include:

- (1) A commitment to export controls 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) Laboratory Compartmentalization - Project operation may be limited to secured laboratory areas physically shielded from access or observation by unauthorized individuals;
- (2) Time Blocking - Project operation may be restricted to secure time blocks when unauthorized individuals cannot observe or access;
- (3) Marking - Export Controlled Information must be clearly identified and marked as Export Controlled;
- (4) Personnel Identification - 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) Locked Storage - 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;
- (6) Electronic Security - 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) Confidential Communications - 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.

iii) Export Licensing

If the ECO determines that an ITAR, EAR, OFAC or other license, Technical Assistance Agreement, Manufacturing License Agreement, Registration, or other authorization (i.e., exemption) is needed, the ECO will consult with the Investigator and other appropriate parties to gather all the information needed to seek a license or authorization. The ECO 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 the ECO and the OGC if needed.

7) International Visitors to Texas A&M University

Those hosting International Visitors should be aware that there might be restrictions or prohibitions associated with such visits. For example, (i) the proposed visitor is from an embargoed country (i.e., Cuba, Iran, Syria, North Korea and Venezuela), (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. Hosts should carefully consider possible export control implications and obligations associated with a proposed visit before extending invitations, and should consult with the ECO as needed.

All TAMU employees intending to invite or host International Visitors as indicated in TAMU Rule 15.02.99.M1 *Export Controls* are required to notify Immigration Services for Faculty and Scholars (ISFS) and request from the Division of Research (DOR) the approval of research activities for such visit before the arrival of the International Visitor.

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

No International Visitor may have access (whether verbal, written, electronic, and/or visual) to Controlled Information or Controlled Physical Items unless expressly permitted via an approved Technology Control Plan, Export license or as authorized in writing by the ECO. It is the responsibility of the TAMU employee hosting the visitor to ensure compliance with export control regulations and to promptly disclose and report to the ECO as specified in TAMU Rule 15.02.99.M1 *Export Controls* any violations thereof.

b) RPS of International Visitors

RPS is needed for all International Visitors, and includes, but is not limited to, screening of the International Visitor, affiliated institution(s) and/or sponsoring entity. RPS is needed whenever a written or verbal invitation to visit TAMU is made to an International Visitor, regardless of location or whether the University is sponsoring the visitor's visa. This includes visitors who will not be present in the U.S. but will have access to University resources.

c) Procedure to Notify and Request Authorization to Visit

- i) TAMU employees inviting and hosting International Visitors must complete, prior to the visit, a request for Approval of a Visiting Scholar, [Form 5VS](#), or any other form identified from time to time by DOR.
- ii) The DOR will conduct RPS on the International Visitor and report hits that cannot be ruled out on a secondary screening to the ECO for review and resolution as set forth in Section 3. of this Manual. If there is no RPS hit, DOR will forward a copy of the approved form to Immigration Services for Faculty and Scholars (ISFS) to initiate the immigration process for those instances in which TAMU needs to sponsor the International Visitor, as well as for those in which the International Visitor is traveling under the Visa Waiver Program, a B-1/B-2 visa or other nonimmigrant visa status as indicated on a properly annotated I-94.

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

In the event it is anticipated that the nature, purpose, or duration of a visit will change, the host is responsible for contacting ISFS, with a copy to ECO, to request the approval of an extension of the visit and completing, submitting, and obtaining approval of an updated Form 5VS prior to the effective date of the change.

8) Distance Education

Distance education at Texas A&M University refers to credit bearing, transcribed 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 the ECO. Particular guidance is provided in the following areas for review of export control in distance education:

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

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.

Students seeking admission into a degree program offered via distance education will be subject to Restricted Party Screening (RPS) by ECO. Prior to the first class day of each semester and by the 12th day of classes for students registering late, the Office of the Registrar produces a listing of all students enrolled in courses offered via distance education,

including student name, citizenship, and location while taking the distance education course (as answered at registration). Subsequently, a report containing the names of all the students enrolled in exclusively Distance Education Programs will be made available to ECO. The ECO will conduct RPS of all the students on this report regardless of their location (U.S. or abroad).

If a student is identified as ineligible by ECO 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

A 2010, and subsequent 2013, review by Office of the Provost of existing courses offered via distance education found that all content was limited to information from commonly available sources and met the educational information exclusion provided in export control regulations.

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 ECO 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.

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.

9) 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 ECO. 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 the ECO 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.

b) Faculty and Scholars

All Foreign Persons teaching, conducting research, or presenting workshops, symposia, or other academic presentations at an International Center who are not employed by TAMU (College Station or Galveston campus) and are not currently employed by a college or university based in the United States, should undergo RPS prior to participation in academic or research programs at an International Center.

10) Purchasing and Financial Transactions

a) Financial Transactions

The Division of Finance, in coordination with ECO, 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 3, Restricted Party Screening. Any potential export control concerns will be referred to the ECO.

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. In general, these types of items would be used by the following research disciplines: marine, geological, geographic, and atmospheric research.

- 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

⁴ This list is not intended to be comprehensive of all possible Dual-Use 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
- 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)

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

ECO 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, the ECO should be contacted.

d) When an Export Controlled Item is Identified

If an export controlled item is identified, the ECO 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 the ECO 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 the ECO and advise the requisitioning department/individual to have the proposed shipment reviewed by the ECO prior to shipment.

See Section 15 for additional information specific to TAMUQ.

g) Asset Management

Those involved in asset management should take steps to flag items identified as export controlled in the data inventory system for future disposition.

11) TAMU Department of Contract Administration

The Department of Contract Administration will conduct RPS on sponsors and vendors. In addition, the Department of Contract Administration will utilize a checklist to review agreements for red flags (including, without limitation, amendments, memoranda of

understanding, new task orders, etc.). Potential red flags or unresolved RPS hits will be referred to the ECO for a determination.

12) Technology Commercialization

The Texas A&M Office of Technology Commercialization (TTC) has established procedures to address the export control implications of their activities, including procedures related to RPS, invention disclosure screening for red flags, etc. TTC sends invention disclosure documentation to the relevant System Member's export control office for review and a determination before incorporating disclosures into its records management system.

13) Shipping

It is the responsibility of TAMU employees who are shipping items outside the United States (including hand-carrying 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 ECO for an Export license determination. It should be noted that export control regulations are country specific, and Embargoed countries are subject to more restrictions and must first be cleared by the ECO.

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.

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. 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 Department of Census Automated Export System (AES) prior to the Export of the item or information.

The ECO has published [shipping guidelines](#), available on the ECO website. Shipping-related export control concerns questions or concerns should be referred to the ECO for assistance and resolution. It is the responsibility of TAMU employees who are shipping items outside the United States (including hand-carrying 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.

14) Travel

TAMU employees and students traveling on TAMU business or traveling with TAMU property are responsible for complying with export control laws and regulations when traveling outside the U.S. A license may be required depending on which items are taken, which countries are visited, or whether Defense Services are provided to a Foreign Person. The traveler or the traveler's supervisor should contact ECO with any potential export control concerns.

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 the ECO if they are thinking about taking encrypted software, Controlled Items/Information or unpublished research data or data not in the public domain abroad, or if traveling to an embargoed country to conduct university activities. Some travel related activities/destinations may be prohibited and others may require a license. The ECO can help with these assessments and ensure compliance with export control requirements.

Most travel for conferences will fall under an exclusion to the export control regulations, e.g., the Published Technology & software/public domain exclusion, 15 CFR 734.7 and 22 CFR 120.11. 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.

TAMU employees and students traveling outside the U.S. with laptops, cell phones, tablets, portable drives, or other electronic devices and encrypted software must ensure that there is no Controlled Information on such devices unless there is a specific license or other authorization in place for the Information for that destination. Any individual intending to travel with or transmit Controlled Information outside the U.S. should first consult with the ECO.

There are a number of exceptions and exclusions which may apply depending upon the facts and circumstances of each case.

If personal computers and other storage devices are taken abroad that contain encrypted software, a government license or other government approval for Export may be required when traveling to certain countries. Temporary exports under the "Tools of Trade" license exception apply when the laptops, cell phones, tablets, portable drives, or other electronic devices, and encrypted software are:

- a) Hand-carried with the individual while traveling;
- b) Carried in the luggage or baggage that travels with the individual; or
- c) Shipped no more than thirty days prior to the individual's departure or may be shipped to the individual at any time while the individual is outside the country.
- d) Generally, so long as an individual (1) retains laptops, cell phones, tablets, portable drives, or other electronic devices and encrypted software under their personal custody and effective control for the duration of travel; (2) does not intend to keep these items outside the U.S. for longer than one year; and (3) the individual is not traveling to an embargoed country, no government Export license is required. Note that this license exception is not available for equipment, components, or software designed for use in/by/with most satellites or spacecraft. "Effective control" means retaining physical possession of an item or maintaining it in a secure environment.

Researchers frequently need to take other TAMU equipment temporarily outside of the United States for use in University activities. Often, but not always, the tools of trade license exception applies. Some equipment (e.g., global positioning systems (GPS), thermal imaging cameras, inertial measurement units, and specialty software) is highly restricted and may require an Export license, even if one hand carries it. Individuals intending to take TAMU equipment other than laptops, cell phones, tablets, portable drives, or other electronic devices, abroad should contact ECO to determine if an Export license or other government approval is required prior to taking the equipment out of the country. The [Export License Exception \(TMP\) Certification](#), may be used by travelers, as appropriate, to document the application of the one-time TMP license exception. The ECO's [International Travel - Export Control Screening Checklist](#) may also be used by travelers, on a voluntary basis, to assist in the identification of potential export control concerns.

Contact the ECO for information on applicable travel exemptions and exceptions.

15) 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.

a) Personnel Actions and Visitors at TAMUQ

TAMUQ has implemented enhanced procedures to screen personnel actions and visiting scholars. See TAMU SAP 15.02.99.M1.01 *Export Control Screening of Personnel Actions and Requests for Authorization for Visiting Scholars at TAMUQ*, [Checklist for Export Control: Hiring Foreign Persons at TAMUQ](#), and [Checklist for Export Control Concerns: TAMUQ All Visitors](#).

b) Students at TAMUQ

TAMUQ does not have an active recruitment program for students in the embargoed countries. The TAMUQ Office of Records performs RPS on all qualified undergraduate and graduate applicants prior to enrollment. All unresolved hits, including students from embargoed countries, are referred to TAMU's ECO.

c) Technology Control Guidelines at TAMUQ

To safeguard and prevent unauthorized access and/or use of export controlled technical information, data, items, software, hardware, biological materials, and chemicals, TAMUQ has implemented guidelines setting forth the mechanisms to protect against unauthorized access or use of such items. See TAMU SAP 15.02.99.M0.01 *Technology Control Guidelines at TAMUQ*.

d) Purchasing at TAMUQ

Purchases should adhere to Section 10, Purchasing and Financial Transactions. TAMUQ purchasers should determine, in consultation with ECO, whether or not the purchase request, requisition, request for reimbursement, or other purchasing action is subject to export controls. If the purchase contains export controlled items, the purchase or reimbursement should receive additional review from ECO. Please see the [TAMUQ Equipment Purchase and Acquisition Decision Tree](#).

e) Sponsored Research at TAMUQ

Sponsored research agreements will be reviewed by SRS and/or the Division of Research/TEES per Section 6 of this Manual. The contracting party will either be TAMU or TEES. TAMUQ does not have authority to contract in its own name. If an agreement is being administered outside SRS or TAMU, TAMUQ should keep the ECO informed of any export control concerns and coordinate resolution through the ECO as appropriate.

f) Short Courses Offered at TAMUQ

TAMUQ should review short course content, for export control compliance purposes using the [Export Control Compliance Checklist for TAMUQ Short Courses](#). Export control concerns will be forwarded to TAMU's ECO. Additionally, TAMUQ will perform RPS on students registered for such courses as well as their sponsor(s), if applicable. If any boxes on the checklist are marked "yes" or "unknown" TAMUQ will forward the checklist and any supporting documentation to the ECO for further review. Results of RPS will be administered in the same manner as results of personnel actions and visitor screenings. See TAMU SAP 15.02.99.M1.01 *Export Control Screening of Personnel Actions and Requests for Authorization for Visiting Scholars at TAMUQ*.

g) High Performance Computing Facility at TAMUQ

The TAMUQ high performance computing facility follows guidelines established in TAMU SAP 15.02.99.M0.01 *Technology Control Guidelines at TAMUQ* to prevent unauthorized access to Controlled Physical Items or Controlled Information.

Users with general computer accounts do not automatically receive access to the high-performance computing cluster. All users desiring to use the high-performance computing cluster must submit an application for access and agree to terms of use. The TAMUQ Research Computing team is responsible for reviewing the requests for access to ensure compliance with eligibility criteria and Technology control guidelines set forth in TAMU SAP 15.02.99.M0.01. See [Checklist for Export Control: External Users of Computing Facilities at TAMUQ](#). Potential export control concerns are referred to the ECO.

16) 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 ECO, 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 the ECO as needed.

17) 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 the ECO, 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's is responsible for notifying TAMU's ECO and Empowered Official of suspected violations to the extent TAMU projects, contracts, or employees are affected.

18) 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 123.26 (ITAR); and 31 CFR 501.601(OFAC), 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. The ECO 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 the ECO.

19) Training

- a) Export Control Basic Training 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 TAMU's Export Control Office;
 - vi) All employees of the Education Abroad Office;
 - vii) Supervisors submitting requests to hire or host Foreign Persons;
 - viii) All employees of ISFS;
 - ix) All College of Geosciences employees; and
 - x) All Health Science Center employees.
- 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 the ECO.

Basic export control training for those identified in Sections 19a and 19b above is assigned automatically in TrainTraq by group, and by individual assignment for those not included in a category assignment. The ECO is responsible for communicating the assignment categories to TrainTraq and for making individual assignments.

20) Monitoring

Export control compliance and monitoring is a shared responsibility coordinated by TAMU's ECO 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 Export Control Office

ECO 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.

ECO will review approximately one-third of all the active TCPs for TAMU annually, so that each TCP is reviewed at least 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.

Every two years, the ECO will conduct a risk assessment of its compliance program with input from the Designated Liaisons. This assessment will consist of identifying risks, mitigations and monitoring mechanisms (collectively, "ERM Spreadsheet"). The ERM Spreadsheet will be submitted to the Empowered Official for review and approval and then forwarded to the University Office of Risk and Compliance.

The ECO is also responsible for reviewing bi-annual reports generated by TrainTraq to determine whether or not assigned employees are current on their training. The ECO will

follow up with those delinquent on training to ensure course completion. Additionally, the ECO 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 every two years to evaluate controls implemented to ensure compliance with export control requirements and to identify deficiencies in training, procedures, etc. that can be rectified.

The results of the Designated Liaisons' reviews should be reported to the ECO. The report can be in conjunction with the ECO's review outlined in Section 20 of this Manual. The EC Designated Liaison, or designee, is responsible for addressing any deficiencies and for following up on corrective actions. Any suspected violations of U.S. export control laws or regulations will be reported to the Empowered Official, ECO and/or the department/unit head.

21) 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 the ECO 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. The Empowered Official may determine whether notification to an appropriate government agency is required.

22) 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 in nonimmigrant status (i.e., H-1B, H-3, L-1, J-1, F-1, B-1, Practical Training) and individuals unlawfully in the United States.

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.

For export control purposes, a Foreign Person is not an individual who is a United States citizen, lawful permanent resident of the United States, a refugee, a person protected under political asylum, or someone granted temporary residency under amnesty or Special Agricultural Worker provisions.

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 UseU 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).