



EAST TEXAS A&M
— U N I V E R S I T Y —

EXPORT CONTROL COMPLIANCE PROGRAM MANUAL

Version September 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 regarding export control or this manual should be directed to the Division of Research and Economic Development (ExportControl@etamu.edu).

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List of Abbreviations

BIS	Department of Commerce Bureau of Industry and Security
CCL	Commerce Control List
CO-PI	Co-Principal Investigators
CUI	Controlled Unclassified Information
DDTC	Department of State Directorate of Defense Trade Controls
DFAR	Defense Federal Acquisition Regulation
EAR	Export Administration Regulations
ECCN	Export Control Classification Number
EO	Empowered Official
ETAMU	East Texas A&M University
FAR	Federal Acquisition Regulation
FRE	Fundamental Research Exclusion
ITAR	International Traffic in Arms Regulations
IAWL	International Alternate Work Location
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
OIP	Office of International Programs
PI	Principal Investigator
RPS	Restricted Party Screening
RSO	Research Security Office, The Texas A&M University System
SEVP	Student and Exchange Visitor Program
TAA	Technical Assistance Agreement
TAMUS	The Texas A&M University System
TCP	Technology Control Plan
USML	United States Munitions List
VPRED	Vice President for Research and Economic Development

EAST TEXAS A&M UNIVERSITY EXPORT CONTROL PROCEDURES

1. Commitment to Export Control Compliance

It is the policy of East Texas A&M University ("East Texas A&M" or the "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

East Texas A&M has an obligation to implement an export control compliance program to reduce the risk of export control violations. All employees 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 and Economic Development maintains a website with export control information and resources accessible at <https://www.etamu.edu/research-and-economic-development/export-control/>⁴. Questions about export controls can be directed to ExportControl@etamu.edu or (903)-886-5964.

This Export Control Compliance Program Manual ("Manual") is designed to assist East Texas A&M employees with export control compliance. To the extent this Manual conflicts with Texas A&M University System policies/regulations or East Texas A&M rules/procedures, the Texas A&M University System policies/regulations and/or East Texas A&M rules/procedures supersede this manual. Acronyms are defined in the List of Abbreviations, page 3. Other terms used in this manual that are not defined in the acronyms, in the University Procedure 15.02.99.R1, or within the manual are listed in the Glossary, Appendix A.

2. Key Individuals Responsible for Export Control Compliance

2.1 Empowered Official

The Vice President for Research and Economic Development (VPRED) is the University's Empowered Official (EO) 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 East Texas A&M's representative and point of contact with federal agencies having export

¹ The Export Administration Regulations (EAR) 15 C.F.R. 730-774 can be found at <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C>

² The International Traffic In Arms Regulations (ITAR) 22 C.F.R. 120-130 can be found at <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M>

³ The Office of Foreign Assets Control (OFAC) 31 C.F.R. 500-599 can be found at <https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V>

⁴ Link may be updated from time to time.

control jurisdiction. The Empowered Official is the East Texas A&M official authorized to bind the University in any proceedings before government agencies with export control responsibilities and has final responsibility for compliance with export control laws and regulations.

2.2 Division of Research and Economic Development

The Division of Research and Economic Development, in cooperation with other campus 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 Division of Research and Economic Development will determine, or assist other offices and employees in export control assessments to determine, compliance obligations with respect to the 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)⁵ or other exclusions provided by law. The Division of Research and Economic Development will conduct Restricted Party Screening (RPS) and will assist the Office of International Programs (OIP) with jurisdiction determinations and classification reviews, and consult with The Texas A&M University System (TAMUS) Research Security Office (RSO) and/or 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 Empowered Official, as determined appropriate. Any communications from government officials relating to East Texas A&M's export control compliance program, employees, research, facilities or equipment should be forwarded to the Empowered Official.

2.3 University Administrators

2.3.1 All University employees with managerial or supervisory authority over Foreign Persons or projects involving controlled information or controlled physical items have a legal obligation to oversee export control compliance.

2.3.2 Vice presidents, deans, directors, and department heads have responsibility for overseeing export control compliance in their respective colleges, departments, business units, centers, or institutes and supporting the implementation procedures for export control compliance, including high risk global engagements and high risk international collaborations.

⁵ As defined in 15 C.F.R. 734.8 "*Fundamental research* means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons."

2.4 Export Control Committee

2.4.1 The Export Control Committee considers matters related to export control compliance at the University. Responsibilities include, but are not limited to: regular reviews of the Export Control Compliance Manual; oversight of the export control program; perform routine monitoring of export control procedures and practices; assist in the development of export control processes and guidelines; and assist in disseminating export control information to the university community.

2.4.2 The University Export Control Committee is chaired by the Empowered Official. The membership consists of representatives from business units across campus with responsibility for elements of the export control compliance program. Offices/Units represented include, but are not limited to:

- a) Financial Services
- b) Procurement and Contract Administration
- c) Shipping, Receiving, and Logistics
- d) Sponsored Programs
- e) Risk Management
- f) Environmental Health and Safety
- g) Human Resources
- h) Academic Affairs
- i) Travel
- j) Information Technology
- k) Auxiliary Services (Door Access Management)
- l) Office of International Programs
- m) University Police Department
- n) Accounts Payable and Property Management

2.4.3 The Export Control Committee meets on a bi-annual basis or more frequently as needed.

2.5 Individual Responsibilities

All University employees, visiting scholars, researchers, postdoctoral fellows, and other persons retained by or working at or for the University must conduct their affairs in accordance with United States export control laws and regulations. While complying 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 State of Texas and 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

Empowered Official (EO), the Division of Research and Economic Development, and/or the employees' supervisors.

2.5.2 Investigators (PIs and Co-PIs)), with the assistance of the Division of Research and Economic Development and other offices, are responsible for full compliance with all federal, state, System, and University export control requirements. Violation of the export control laws can directly affect Investigators through potential fines, loss of research funding, and/or personal criminal liability. Investigators should:

- (a) Understand his or her export control obligations and participate in trainings to be able to identify export control issues;
- (b) Be aware of the export control red flags (Section 3) and note such information on any internal compliance or assurance forms;
- (c) Determine, prior to initiation of research, whether any information or technology involved in the research is subject to export control laws or regulations;
- (d) Review his or her research periodically to ensure continuing compliance with export control laws and regulations;
- (e) For export-controlled projects, brief the students and researchers involved in the project of their export control obligations;
- (f) Understand that any informal agreements or understandings entered into with a sponsor may negate the Fundamental Research Exclusion (FRE) or other key exclusions and impose export control obligations on the PI; and
- (g) Understand that any communication of technical data or controlled physical items with a foreign person in the United States or to anyone outside the United States could be considered a deemed export or an export and therefore subject to the export regulations.

3. Identification of Export Control Concerns

3.1 Export Control Red Flags

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

- (a) The results of research conducted at East Texas A&M are intended for military purposes or for other restricted end uses or users;
- (b) Foreign Persons will have access to controlled physical items on campus;
- (c) Software including encryption features will be developed or purchased;
- (d) East Texas A&M 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, or PDAs containing controlled information;
- (e) A proposed activity/transaction will involve designated countries of concern; embargoed countries or entities; individuals/entities located in embargoed countries; or who are on prohibited or restricted end-user lists, as determined by RPS;
- (f) The sponsor requires pre-approval rights over publications or the participation of foreign persons;

- (g) The project requires the shipping of equipment, chemicals or biologicals to a foreign country;
- (h) The agreement contains a Controlled Unclassified Information (CUI) clause. (e.g. DFARS 252.204-7012); and
- (i) The Department of Commerce, Bureau of Industry and Security has posted a list of red flag indicators and related guidance (see <https://www.bis.gov/node/1533>)

3.2 Restricted Party Screening (RPS)

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). To ensure East Texas A&M 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, East Texas A&M must screen individuals and entities as provided in this manual. The Division of Research and Economic Development has licensed export control compliance software to conduct Restricted Party Screens. Authorized users are limited to full-time ETAMU employees.

The export control compliance software performs Restricted Party Screening against all relevant U.S. Government lists, including: Department of Treasury Office of Foreign Assets Control (OFAC) Sanctions, 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.

- 3.2.1 If there is a possible match of the party being screened with a party on a Restricted Party List, referred to as a “hit”, a secondary screening should be conducted using additional detailed information to confirm the possible match. If the hit cannot be ruled out on secondary screening, the possible match should be forwarded to the EO, along with the criteria used to determine the possible match. The EO may consult with the Texas A&M University System Research Security Office (RSO), as needed, and upon further investigation, will make the final determination. The Division of Research and Economic Development is responsible for maintaining records of its determinations.

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. may be exported outside of the United States 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 national⁶ access to or use of the item may be restricted unless specifically authorized by the governing agency.

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

4.1.1 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 120-130 (see, <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M>). 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, 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 and 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

⁶ For export control purposes, foreign nationals are defined as those individuals who are not U.S. citizens, Permanent Residents (“Green Card” holders) or recipients of Political Asylum status. Hence, foreign nationals are individuals with temporary immigrant visa status including but not limited to H1B, J, F, and B-visa beneficiaries.

- 4.1.2 “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 East Texas A&M 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.
- 4.1.3 It is important to keep in mind that ITAR restrictions operate 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 it 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 national restrictions.
- 4.1.4 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 decision tool which may be of assistance in understanding and applying the federal regulations, see https://www.pmddtc.state.gov/ddtc_public.
- a. Defense Article (22 CFR 120.31) is any item or technical data designated in the United States Munitions List (22 Chapter I Subchapter M § 121.1) and includes: (1) 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 and (2) 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.
 - b. 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.

- c. Technical Data (22 CFR 120.33) is defined as: (1) Information, other than software as defined in § 120.40(g), 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, drawings, photographs, plans, instructions, or documentation; (2) 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; (3) information covered by an invention secrecy order; or (4) Software directly related to defense articles. It does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain, which is information which is published and which is generally accessible or available to the public.

4.2 Export Administration Regulations (EAR) – Commerce Control List

- 4.2.1 The Department of Commerce regulates exports of dual use items and technology via the Export Administration Regulations (“EAR”) which can be found at 15 CFR Parts 730-774 (see, <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C>). The EAR includes a list of items subject to regulation known as the Commerce Control List (“CCL”). The CCL can be found at the above link in Part 774.

Categories and product groups include:

0. Nuclear Materials Facilities & Equipment (and Miscellaneous Items)
1. Materials Chemical Microorganisms and Toxins
2. Materials Processing
3. Electronics
4. Computers
5. Pt-1 – Telecommunications
Pt-2 – Information security
6. Sensors and lasers
7. Navigation and Avionics
8. Marine
9. Aerospace and Propulsion

Product Groups:

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

- 4.2.2 Using the above categories and subcategories, 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 the 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.
- 4.2.3 The federal government’s 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’s, the item is “released” to the CCL and controlled under the specifically enumerated ECCN and subject to military end use and embargoes based on the ECCN. For decision tools, FAQ and other resources, see <https://www.bis.gov/>.
- 4.2.4 “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 East Texas A&M 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.
- 4.2.5 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.
- a) Utilizing vendor-proprietary repair or maintenance manuals, or software configuration programs, provided by a vendor (or third party) which are labeled “EAR” or “export controlled.”

- b) 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).
- c) 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

5.1 Technology Control Plan (TCP)

- 5.1.1 If it is determined a project, facility, or item is export controlled, the Division of Research and Economic Development 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 Division of Research and Economic Development 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. The TCP form can be found at:
<https://inside.tamuc.edu/research/export-control/default.aspx>
- 5.1.2 The TCP will include security measures appropriate to the export control categories related to the project/facility/item. Examples of security measures include, but are not limited to:
 - a) Laboratory Compartmentalization - Project operation may be limited to secured laboratory areas physically shielded from access or observation by unauthorized individuals;
 - b) Time Blocking - Project operation may be restricted to secure time blocks when unauthorized individuals cannot observe or access;
 - c) Marking - Export Controlled Information must be clearly identified and marked as Export Controlled;
 - d) 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;
 - e) 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;

- f) 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;
- g) 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.

6. Export Licensing

If it is determined that a Technical Assistance Agreement (TAA), Manufacturing License Agreement, Registration, or other authorization (i.e., exemption) is required, the Division of Research and Compliance will consult with the investigator and other appropriate parties to gather all the information needed to seek a license or authorization. The Empowered Official, or designee, will request the license or other authorization from the cognizant agency with assistance from RSO and/or OGC as needed.

7. Foreign National Employees

It is important for hiring departments/units to be aware that the ability to hire nonimmigrant foreign nationals for certain positions may be restricted or prohibited by export control laws. For example, nonimmigrant foreign nationals may be restricted or prohibited from performing employment responsibilities relating to certain information technology systems to the extent the work will involve access or use of controlled information or items. Supervisors proposing to hire nonimmigrant foreign nationals 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 the export control questions in the Workday hiring process and to complete export control basic training. The Division of Research and Economic Development is responsible for:

- a) Review the position description
- b) Review CV for the applicant
- c) Conducting an RPS on the individual, former affiliated institution and/or organization
- d) Initiating a review for individual from countries of concern as defined in System Regulation 15.05.04, *High Risk Global Engagements and High Risk International Collaborations*.

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 and software/public domain exclusion and/or 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, PIs 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, sanctioned, or otherwise controlled/restricted countries:

- a) EAR 15 CFR 746
- b) ITAR 22 CFR 126.1
- c) OFAC Sanctions Programs and Country Information

8.1 Contract Provisions of Concern

Certain agreement provisions may negate the Fundamental Research Exclusion (FRE) and require seeking a license or undertaking monitoring or other activities. These provisions of concern are identified on the East Texas A&M Export Controls Decision-Making Tree for Administration of Contract Provisions of Concern in Appendix B of this manual and are summarized below.

If any of the following provisions are present (and cannot be negotiated away) in a research agreement or subcontract, a Material Transfer Agreement (MTA), or Non-Disclosure Agreement (NDA) related to research, the Division of Research and Economic Development should be consulted for guidance prior to execution of the agreement.

- a) Sponsor maintains the right to restrict or approve publication or release of research results (other than East Texas A&M’s standard customary brief delay to protect a sponsor’s confidential information or to preserve the patentability of an invention).
- b) Research data and/or other research results will be owned by the sponsor (e.g., as sponsor’s proprietary or trade secret information).
- c) Statements that export control regulations will apply to the research.
- d) 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 8.2 below).
- e) Restrictions on, or prohibitions against, the participation of research personnel based on citizenship or national origin.
- f) Statements that the sponsor anticipates providing export-controlled items or information for use in connection with the research.
- g) Equipment or encrypted software is required to be delivered as part of the project.
- h) The research project will involve the use of export-controlled items or technical information obtained from a third party.
- i) There is a Controlled Unclassified Information (CUI) clause (e.g., DFARS 252.204-7012).
- j) The research will take place outside the United States (e.g. attending conferences, shipping items internationally, and international collaboration).

8.2 Specific U.S. Government Access and Dissemination Controls

Specific access and dissemination controls may be buried within the language of Federal Acquisition Regulation (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 problematic clauses include, but are not limited to:

a) 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.

b) 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 (a).

c) 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.

d) DFARS 252.204-7012 (Controlled Unclassified Information (CUI))

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. For full text see <https://csrc.nist.gov/pubs/sp/800/171/r3/final>

- e) 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 PI to certify that the project does not involve any items that are subject to Export Control Laws.
- f) ARL 52.004-4400 (Approval of Foreign Nationals)

All foreign nationals must be approved before beginning work on the project. 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. May need to require the PI 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 PI is doing basic research and the sponsor will take those results and work on the controlled technology at another location, may be able to delete this clause.
- g) 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.”
- h) AFMC 5352.227-9000 (Export-Controlled Data Restrictions)

Requires an export license prior to assigning any foreign national to work on the project or allowing foreign nationals access to the work, equipment, or technical data generated by the project. foreign nationals make up a large portion of East Texas A&M's scientific undergraduate, graduate, post-doctoral, and visiting scholar population. Often, it is difficult to find qualified U.S. citizens to work on these projects. Also, many students depend on these projects to complete their thesis or dissertation. Need to ask the PI if the project is basic or applied research. If yes, foreign students of any nationality would be allowed to work on the project without first obtaining an export license. If yes, obtain confirmation in writing.

8.3 Procedures Applicable to Research and Other Research-Related Agreements and Subcontracts

- a) Research related agreements, should be reviewed for red flags in a manner similar to the processes described in other sections of this manual. Questions should be directed to Division of Research and Economic Development.
- b) For material transfer agreements, and other agreements administered by the Division of Research and Economic Development, the Division of Research and Economic Development conducts RPS of parties and reviews the substance of the transaction for export control red flags.
- c) Potential export control issues should be forwarded to the Division of Research and Economic Development for resolution.

8.4 Resolving Export Control Issues

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

- a) the conditions merit an application for a license or other authorization,
- b) the conditions are such that an exclusion or license exception may be obtained, or
- c) a Technology Control Plan (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 Division of Research and Economic Development will notify the Principal Investigator and others of the export control determinations. The Division of Research and Economic Development will maintain records of its determinations on a project basis, as provided in Section 15 Recordkeeping.

9. Visiting Scholars and Teaching/Working Outside the United States

9.1 Visiting Scholars at East Texas A&M

Hosts should be aware of possible export control implications, restrictions and obligations associated with a proposed visit. For example: a) the proposed visitor may be from an embargoed country and/or country of concern (i.e., China, Russia, Cuba, Iran, North Korea, as well as other countries); b) the proposed visitor's affiliated institution may appear on a restricted party list; or c) the proposed activities may require a license, be restricted, or prohibited by export control laws. Hosts should carefully consider possible export control implications associated with a proposed visit before extending invitations, and should consult with the Division of Research and Economic Development as needed.

9.1.1 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, license or as authorized in writing by the Division of Research and Economic Development. It is the responsibility of the East Texas A&M employee hosting the visitor to ensure compliance with export control restrictions and to promptly disclose and report to the Division of Research and Economic Development as specified in East Texas A&M Procedure 15.02.99.R1, *Export Controls* any violations thereof.

9.1.2 Approval and notification process for a visiting scholar

(a) International Visiting Scholar

- I. The East Texas A&M employee inviting and hosting the international visiting scholar must complete, prior to the visit, a Request for Approval of a Visiting Scholar Form (Appendix C).
- II. The form is routed to the Department Head of the host department. If the request is denied, an email letter from the Provost Office is sent to the employee requesting the visiting scholar.
- III. If the request is approved by the Department Head, the request is routed to the College Dean of the host department. If the request is denied, an email letter from the Provost Office is sent to the individual requesting the visiting scholar.
- IV. If the request is approved by the Dean, the request is routed to the Office of International Programs (OIP). If the request is denied, an email letter from the Provost Office is sent to the individual requesting the visiting scholar.
- V. If approved by the OIP office, the request is routed to the Division of Research and Economic Development to conduct an RPS on the international visiting scholar and report hits that cannot be ruled for review and resolution as set forth in Section 3.2.1. If the request is denied, an email letter from the Provost Office is sent to the individual requesting the visiting scholar.
- VI. If there are no RPS hits, the request is routed to the VPRED. If the international visiting scholar is coming from an embargoed country or a country designated as a country of concern (e.g. North Korea, Russia, China), it is subject to a System Regulation 15.05.04 review. If the request is denied, an email letter from the Provost Office is sent to the individual requesting the visiting scholar.
- VII. If approved by the VPRED and System Regulation 15.05.04 (as needed), the request is routed to the Provost Office. If the request is denied, an email letter from the Provost Office is sent to the individual requesting the visiting scholar.

- VIII. If approved by the Provost Office, an acceptance letter is emailed to the visiting scholar, VPRED, host employee, and the OIP office. If the request is denied, an email letter from the Provost Office is sent to the individual requesting the visiting scholar.
- IX. OIP initiates the immigration process for the visiting scholar.

(b) Domestic Visiting Scholar

- I. The East Texas A&M employee inviting and hosting the international visiting scholar must complete, prior to the visit, a Request for Approval of a Visiting Scholar Form (Appendix C).
- II. The form is routed to the Department Head of the host department. If the request is denied, an email letter from the Provost Office is sent to the employee requesting the visiting scholar.
- III. If the request is approved by the Department Head, the request is routed to the College Dean of the host department. If the request is denied, an email letter from the Provost Office is sent to the individual requesting the visiting scholar.
- IV. If the request is approved by the Dean, the request is routed to the Provost Office. If the request is denied, an email letter from the Provost Office is sent to the individual requesting the visiting scholar.
- V. If approved by the Provost Office, an acceptance letter is emailed to the visiting scholar, VPRED, and host employee. If the request is denied, an email letter from the Provost Office is sent to the individual requesting the visiting scholar.

9.1.3 RPS of International Visitors

All international visitors, whether present or not in the U.S., must undergo an RPS when:

- (a) Individual will be involved in a research project or collaboration and will have access to laboratories and research facilities for the purposes of observing or conducting research;
- (b) Individual will be issued a university identification card, keys to offices or laboratories, or otherwise be given access to the university's computing system in any way or manner; or,
- (c) Individual will be paid an honorarium, will be reimbursed for expenses, or will be provided something of value.

9.1.4 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 the Division of Research and Economic Development to request the approval of an extension of the visit and completing, submitting, and obtaining approval prior to the effective date of the change.

9.2 Teaching and/or Working Outside of the United States

9.2.1 International Alternate Work Location (IAWL)

Subject to System regulation 33.06.01, *Flexible Work Arrangements*, the CEO or designee must review and approve an alternate work location outside of the United States. An alternate work arrangement outside the United States cannot be for 60 or more days without consulting the System Office of General Counsel. This includes the summer for faculty teaching online or other appointments. NOTE: An employee cannot perform any work from designated countries of concern.

10. Distance Education

Under the Student and Exchange Visitor Program (SEVP), international students within the United States are not permitted to take a full course of study through online classes. Based upon this, international students cannot be admitted into a fully online (100%) program. During the summer semesters, eligible international students can take approved distance education courses.

Distance education at East Texas A&M 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. This instruction can be in the form of 100 percent online or some blended combination of face-to-face and online. Due to the element of distance in these education delivery methods, export control issues are possible. 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 Division of Research and Economic Development. A decision tree for summer distance education courses is provided in Appendix D.

10.1 Certification of Course Content

Most educational activities at East Texas A&M will fall under a specific exception to some export control laws and regulations. Generally speaking, release of information by instruction in East Texas A&M catalog courses will most likely not require a license from BIS or DDTC. The following indicates several exceptions available that might apply to course content.

- a) ITAR §120.33 Technical Data and §120.34 Public Domain – “Technical Data” excludes information concerning general scientific, mathematical, or engineering principles that are generally taught in schools, colleges, and universities (§120.33). Additionally, information meeting the definition and release requirements of “public domain” (§120.34) to include fundamental research, is not subject to the ITAR.
- b) EAR §734.7 Published and EAR §734.8 Fundamental Research – Information that meets the requirements of §734.7 as “published” and/or §734.8 that meets the requirements of “fundamental research” is excluded from the EAR

Departments are responsible for completing the Export Control Checklist for Review of Distance Education Courses, Appendix E, for courses delivered by distance education to confirm compliance with export control requirements.

10.2 Comprehensive Sanctioned Countries

Conducting any academic activity, including delivering a distance education course, with a country currently under a comprehensive sanction is prohibited or is significantly restricted. A list of sanctioned programs and country information is available on the Office of Foreign Assets Control (OFAC) website.

Working with the Office of International Programs, the Division of Research and Economic Development staff will identify current students from comprehensive sanctioned countries prior to the summer terms. If a student registered for a distance education course during a summer term is identified as ineligible for participation in a course offered via distance education, then the department offering the course in conjunction with the Registrars Office, will remove the student from the course.

11. International Activities

East Texas A&M offices responsible for administering international activities and programs are responsible for developing and implementing procedures in coordination with the Division of Research and Economic Development to ensure compliance with export control laws and regulations. When university activities are conducted outside the U.S., it is the responsibility of the university activity organizer and/or responsible program official to seek and obtain appropriate export control approvals from the Division of Research and Economic Development, for: (1) execution of agreements to be performed outside the U.S.; (2) study abroad courses; and (3) making payments to foreign entities.

11.1 High Risk Global Engagements and High Risk International Collaborations

East Texas A&M University supports and encourages global engagements in the pursuit of mutually beneficial fundamental scientific inquiry, cultural, or educational opportunities. When involved in a high risk international engagement or collaboration, employees must comply with System Regulation 15.05.04 and University Rule 15.05.04.R1, *High Risk Global Engagements and High Risk International Collaborations*. Pursuant to the University Rule 15.02.99.R1, the Vice President for Research & Economic Development serves as the University's Empowered Official and is the designated official for high risk global engagements and high risk international collaborations.

11.1.1 Risk Review and Approval

- 11.1.1.1 The University EO has the authority to deny any high risk global engagement or high risk international collaboration. If the EO denies an activity, the EO will provide the RSO with a courtesy copy. If the EO decision to deny a high risk global engagement or high risk international collaboration is appealed, the subjected activity will be submitted to the

System RSO for review and approval pursuant to System Regulation 15.05.04. The System decision is final.

- 11.1.1.2 If the high risk global engagement or high risk international collaboration is approved by the EO, it is submitted to the System RSO for review and approval pursuant to the following System Regulation 15.05.04.
 - (a) The system RSO provides a risk review of the proposed high risk global engagement or high risk international collaboration to the System OGC.
 - (b) System OGC reviews the high risk global engagement or high risk international collaboration for legal compliance review. The combined risk and legal compliance review is forwarded to the vice chancellor for research for consideration.
 - (c) The System Vice Chancellor for research reviews and determines whether to provide approval for the high risk global engagement or high risk international collaboration with notification to the member.
- 11.1.1.3 Approvals for high risk global engagements or high risk international collaborations are valid for the duration of the contract or collaboration. If any amendments are made to the contract or collaboration, a new review process is required.
- 11.1.1.4 Employees involved in high risk global engagements or high risk international collaborations are required to complete export control training once every two years.

11.2 Governor's Executive Order (GA-48) – Relating to the Hardening of State Government

Executive Order No. GA-48 relating to the hardening of state government was issued on November 19, 2024 by the Governor of the State of Texas. The System required implementation plan was issued March 19, 2025. General prohibitions are provided in System Regulation 15.05.04, *High Risk Global Engagements and High Risk International Collaborations*.

11.3 Students Studying Abroad

All students participating in an education abroad program must be registered East Texas A&M University students. The Office of International Programs will provide information and guidance regarding visa restrictions for an international student participating in an education abroad program. The Office of International Programs staff and trip leaders will complete export control training to ensure awareness of their export control compliance responsibilities, and to assist students who participate in the program. Education abroad programs are subject to export control reviews.

12. Purchasing and Financial Transactions

12.1 Financial Transactions

All AggieBuy supplier onboarding activities are performed by the Vendor Help team at Texas A&M University, Financial Management Operations division and screened through Visual Compliance. East Texas A&M University Procurement Services office has an obligation to only do business with verified suppliers who are in the approved supplier database that resides in AggieBuy. Wire transfers to a foreign country require review and approval from the Empowered Official. Any potential export control issues should be referred to the Division of Research and Economic Development.

12.2 Procurement: Identification and Notification of Export Controlled Items

12.2.1 It is important to identify the procurement of ITAR items at an early stage because the State Department tightly restricts foreign national 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.

12.2.2 While vendors often self-identify ITAR items, those engaged in purchasing should remain aware that in the event 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.

- Night vision goggles, infrared cameras
- Gravimeters
- Equipment on loan from federal sponsors
- Sonobuoys and deep oceanic position signaling devices
- Military-band communications systems or GPS
- DOD funded military electronics
- Submersible vessels and related remotely operated accessories
- Inertial navigation units, modem chips, and components
- Radar applications
- Wind tunnel apparatus

12.2.3 The following are examples of the type of dual use (and potentially higher risk/controlled) equipment commonly found in research laboratories and for which those purchasing should identify/request classification.⁷

- Measuring and sensing devices
- Gas movement and filtering devices
- Precision tooling, positioning and balancing instruments

⁷ This list is not intended to be comprehensive of all possible dual use instruments.

- Optical and photonic components (including sensors, infrared and focal plane array detectors)
- Oscilloscopes; spectrometers; fermenters
- Nuclear/radioactive transport or shielding equipment
- Class 3 and 4 lasers, and related precision beam equipment
- Semiconductor substrate and etching development equipment and processes
- Fiber optic cable development equipment
- Marine submersible equipment (including hydrophones, signal receiving/emitting devices, pingers, acoustical releases, submersible video and television apparatus, etc.)
- Unmanned aerial vehicles (drones)
- Inertial navigation systems and related instruments
- Remotely operated vehicles (ROVs)

12.2.4 Identifying ITAR and EAR-Controlled Items in the Procurement Process

Below are some questions to ask:

- a. 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)
 5. Software license (or related terms/conditions)
- b. 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. The Division of Research and Economic Development and/or System Research Security Office can provide assistance.

12.3 When an ITAR Item is identified:

Prior to purchase, if an ITAR item is identified, the Division of Research and Economic Development should be contacted so appropriate measures can be put in place. This may include a discussion with the requisitioning department/individual about whether it is essential to have an ITAR item that will impose foreign national 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 controlled equipment may require a license.

12.4 Outsourced Fabrication, Testing, or Development

Anyone seeking to outsource the fabrication, testing or development of an item that might be export controlled to a vendor or subcontractor should notify the Division of Research and Economic Development prior to forwarding any items, materials, or technical data to any party so that an export control determination can be made.

12.5 Asset Management

Those involved in asset management will work with the Division of Research and Economic Development 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. Disposition of ITAR and EAR controlled items requires approval from the Empowered Official.

12.6 Shipment of Items identified as ITAR/EAR Controlled

If an individual becomes aware that an item identified as ITAR or EAR controlled will be shipped by East Texas A&M to a location outside the United States, the individual should notify the Division of Research and Economic Development and advise the requisitioning department/individual to have the proposed shipment reviewed prior to shipment.

12.7 Contract Administration

Contract Administration will request the Division of Research and Economic Development to conduct RPS on vendors for international agreements before routing to the TAMUS Office of General Counsel. Potential red flags or unresolved RPS hits will be referred to the System Research Security Office by the Division of Research and Economic Development, for guidance and a determination.

13. Shipping

It is the responsibility of East Texas A&M 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. Shipping to countries subject to embargoes⁸ are subject to System Regulation 15.05.04 and must be cleared by the Division of Research and Economic

⁸ See OFAC's Sanctions Program and Country Summaries at <https://ofac.treasury.gov/sanctions-programs-and-country-information> for the most current list of embargoed countries and U.S. sanctions.

Development. Personnel who are responsible for shipping packages out of the country should obtain a list of contents before shipping and contact the Division of Research and Economic Development for an export license determination.

Shipping export controlled items out of the U.S. without a license can result in significant individual fines and potential imprisonment. This applies to the individual, although there may be fines for East Texas A&M 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, including imprisonment. 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, 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.

A shipping decision tree can be found in Appendix B of this manual. Shipping-related export control issues, questions or concerns should be referred to the Division of Research and Economic Development for assistance and resolution.

14. Travel

Individuals traveling internationally on university business must submit a pre-approval request through Emburse and have approval prior to traveling. Travelers are responsible for complying with export control laws and regulations, which may restrict or prohibit some travel related activities and destinations and require licenses. Contact the Division of Research and Economic Development with 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. University equipment and computers, as well as items that are not needed should not be taken abroad. A loaner laptop is required when traveling abroad. Travelers should consult with the Division of Research and Economic Development 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, or countries designated as countries of concern, to conduct university activities. Some travel related activities/destinations subject to System Regulation 15.05.04, may be prohibited or may require a license. The Division of Research and Economic Development 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 C.F.R. 734.7 and 22 C.F.R. 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. Travel to conferences in embargoed countries are subject to review under System Regulation 15.05.04. However, per System Regulation 15.05.04 and the Texas Governors Executive Order, GA-48, travel to conferences in a country on the U.S. Department of Commerce's foreign adversaries list is prohibited.

Unless there is prior approval, East Texas A&M employees traveling outside the U.S. must not take their work computer but rather should contact Information Technology to obtain a loaner laptop. Employees and students traveling outside the U.S. with laptops, PDAs, cell phones, or other data storage 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 Division of Research and Economic Development. There may be limited exceptions and exclusions that apply depending upon the facts and circumstances of each case.

Researchers frequently need to take other East Texas A&M 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 East Texas A&M equipment other than a loaner laptop, PDA, cell phone, or data storage devices, abroad should contact Division of Research and Economic Development to determine if an export license or other government approval is required prior to taking the equipment out of the country.

15. 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 C.F.R. Part 762 (EAR); 22 C.F.R. Sections 122.5, 123.22, and 123.26 (ITAR); and 31 C.F.R. 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 as well as any other information related to the export activities. In addition, whenever a license or license exception/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 Division of Research and Economic Development should be contacted for guidance.

Those conducting Restricted Party Screening (RPS) are expected to maintain documentation of results including, documentation indicating the methodology for their 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 Division of Research and Economic Development.

16. Training

- 16.1 Export Control Basic Training delivered via TrainTraq is required by all University employees:
- 16.2 The Information Security Awareness Training program delivered via TrainTraq includes an export control component and is required for all East Texas A&M employees.
- 16.3 One Card Non-Travel Training delivered via TrainTraq incorporates an export control component. This training is required for all One Card Non-Travel holders.
- 16.4 Depending on the nature of an individual's activities and/or job functions, a university employee may be required to take supplemental export control training as deemed appropriate by the individual's supervisor and/or the Division of Research and Economic Development.
- 16.5 Basic export control training for those identified above is assigned automatically in TrainTraq by group, and by individual assignment for those not included in a category assignment. The Division of Research and Economic Development is responsible for communicating the assignment categories to TrainTraq and for making individual assignments.

17. Monitoring

Export control compliance and monitoring is a shared responsibility coordinated by the Division of Research and Economic Development in cooperation with various other offices across East Texas A&M.

To maintain East Texas A&M's export control compliance program, and ensure consistent adherence to U.S. export control laws and regulations, the following monitoring plan has been adopted. Any suspected violations of U.S. export control laws or regulations will be reported to the Empowered Official.

17.1 Business Units Standard Operating Procedures

Departments and business units with responsibilities for administering elements of the university's export control compliance program will establish standard operating procedures for their export control accountabilities. The department or business unit delegate on the University Export Control Committee will help monitor the procedures and practices within their department or business unit.

17.2 Business Unit Self-Review

Departments and business units are responsible for conducting a review of their export control processes at least once every two years. Reviews should evaluate controls implemented to ensure compliance with export control rules, procedures, and test the effectiveness of controls.

The results of the unit reviews should be reported to the Export Control Committee. The department or business unit is responsible for addressing any deficiencies and for following up on corrective actions.

17.3 Technology Control Plans (TCP)

The Division of Research and Economic Control will conduct an annual review of all the active TCPs. Reviews will evaluate controls implemented to ensure compliance with export control rules, procedures and test the effectiveness of controls. Findings will be reported to and discussed with the individual with primary responsibility.

As part of the annual review, the individual with primary responsibility will be required to take TCP training through TrainTraq.

17.4 Export Control Compliance Plan

Every two years, the Empowered Official and Export Control Committee will review and conduct a risk assessment of the university's export control compliance program. This assessment will consist of identifying risks, mitigations and monitoring mechanisms.

17.5 Texas A&M University System Audits

The Texas A&M University System Internal Audit Department conducts periodic audits on research administration and export control. The Empowered Official is responsible for addressing any deficiencies related to the export control compliance program and for following up on corrective actions.

17.6 Export Control Training

The Division of Research and Economic Development will review TrainTraq reports to determine whether or not assigned employees are current on their export control training. The division will follow up with individuals delinquent on their training to ensure completion.

18. Possible Violations

Each East Texas A&M 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 at ExportControl@etamu.edu or via EthicsPoint.

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 System policies and regulations, and East Texas A&M 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 will determine whether notification to an appropriate government agency is required.

19. 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 up to and including imprisonment. Additionally, employees may be subject to disciplinary action based on the severity of the infraction. This could include, but is not limited to, a letter of reprimand, loss or suspension of research funding, export privileges, international travel privileges, procurement privileges, international visitor hosting opportunities, conference attendance opportunities, university inventory access, or termination in accordance with the university rules and procedures and A&M System policies and regulations.

- 19.1 Minimum penalties for taking unauthorized computers, university equipment, and/or technology out of the United States. Depending upon the severity of the violation additional penalties could be imposed up to and including termination.

Loaner computers obtained from the University's Information Technology department are exempt and may be taken out of the United States, with the exception of any country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R. § 791.4.

9.2.1 First Offense

9.2.1.1 Employee must retake the following trainings

- 2111212: Export Controls & Embargo Training – Basic Course
- 3001: Information Security Awareness

9.2.1.2 Employee receives a formal reprimand letter from their supervisor, which is filed with human resources. Depending upon the severity of the violation additional penalties could be imposed up to and including termination.

9.2.1.3 Employee is not eligible for merit during the current merit cycle

9.2.2 Any further violations will result in termination.

Appendix A – Glossary

Contract – an agreement that creates an obligation to do or not do a particular thing, as defined in System Policy 25.07, Contract Administration

Controlled Information – Information about controlled physical items, including 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. It also includes information in the form of blueprints, drawings, photographs, plans, instructions, and documentation. Further included in this definition are non-physical items (software and algorithms, for example) listed under EAR and ITAR. (See 15 CFR Parts 730-774 and 22 CFR Parts 120-130 for further details.)

Controlled Physical Items – Controlled physical items are dual-use technologies listed under the EAR and defense articles listed on ITAR's USML. (See 15 CFR Parts 730-774 and 22 CFR Parts 120-130 for further details.)

Country of Concern or Countries of Concern – Country or countries designated by System Research Security Office as “of concern” for purposes of System Regulation 15.05.04 based on U.S. government annual reports to Congress, Executive Order GA 48 by the Governor of the State of Texas, and guidance from federal partners including the Defense Counterintelligence and Security Agency.

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 means:

- (1) 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;
- (2) 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
- (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. (See also 22 CFR §124.1.)

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

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).

Exempted International Visitor – As referenced in A&M System Policy 15.02, *Export Controls Program Management*, Exempted International Visitors are International Visitors who are exempt from RPS if no honorarium or reimbursement of expenses will occur and if one or more of the following conditions exist with respect to the anticipated visit of the International Visitor: (i) meet with colleagues to discuss a research project or collaboration, (ii) tour labs or research facilities that are not otherwise restricted per se, or (iii) participate in general academic or scientific meetings or presentation.

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.

Export Control Classification Number – The Export Control Classification Number (ECCN) is the 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.

Foreign Person – any natural person who is not: a lawful permanent resident of the United States, a citizen of the United States, or any other protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, trust, society or any other entity or group that is not incorporated in the United States or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of a foreign government (e.g., diplomatic mission).

High Risk Global Engagement – contracts with one or more Foreign Persons based outside the United States in a Country of Concern. Contracts that require participation with Foreign Persons based outside the United States in a Country of Concern are also considered a High Risk Global Engagement for the purpose of this regulation

High Risk International Collaboration –relationships and activities with Foreign Persons based outside the United States in a Country of Concern as described in Section 238(d)(1) of the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025 (Public Law 118-159). This includes gifts from entities associated with a Country of Concern

Knowledge – When referring to a participant in a transaction that is subject to the EAR, knowledge (the term may appear in the EAR as a variant, such as “know,” “reason to know,” or “reason to believe”) of a fact or circumstance relating to the transaction includes not only positive knowledge that the fact or circumstance exists or is substantially certain to occur, but also an awareness that the existence or future occurrence of the fact or circumstance in question is more likely than not. Such awareness is inferred, inter alia, from evidence of the conscious disregard of facts and is also inferred from a person’s willful avoidance of facts

International Visitor – Foreign Persons having a residence in a foreign country, who are not employees or enrolled students of East Texas A&M University and are coming to East Texas A&M 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 East Texas A&M.

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, 22 CFR § 120.21)

Material Transfer Agreements (MTAs) – A contract that governs the transfer and use of tangible research materials.

Non-disclosure Agreement (NDA) – A contract governing the use and disclosure of confidential and proprietary information.

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.

Restricted Party List – Lists of prohibited and restricted end-users (Restricted Party Lists).

System – Refers to the Texas A&M University System

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 (TAA) – 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 (TCP) – A technology control plan lays out the requirements for protecting export-controlled information and equipment for activities or research projects conducted at East Texas A&M. East Texas A&M has developed a TCP template for use on such projects.

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.

Trip Leader – An East 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.

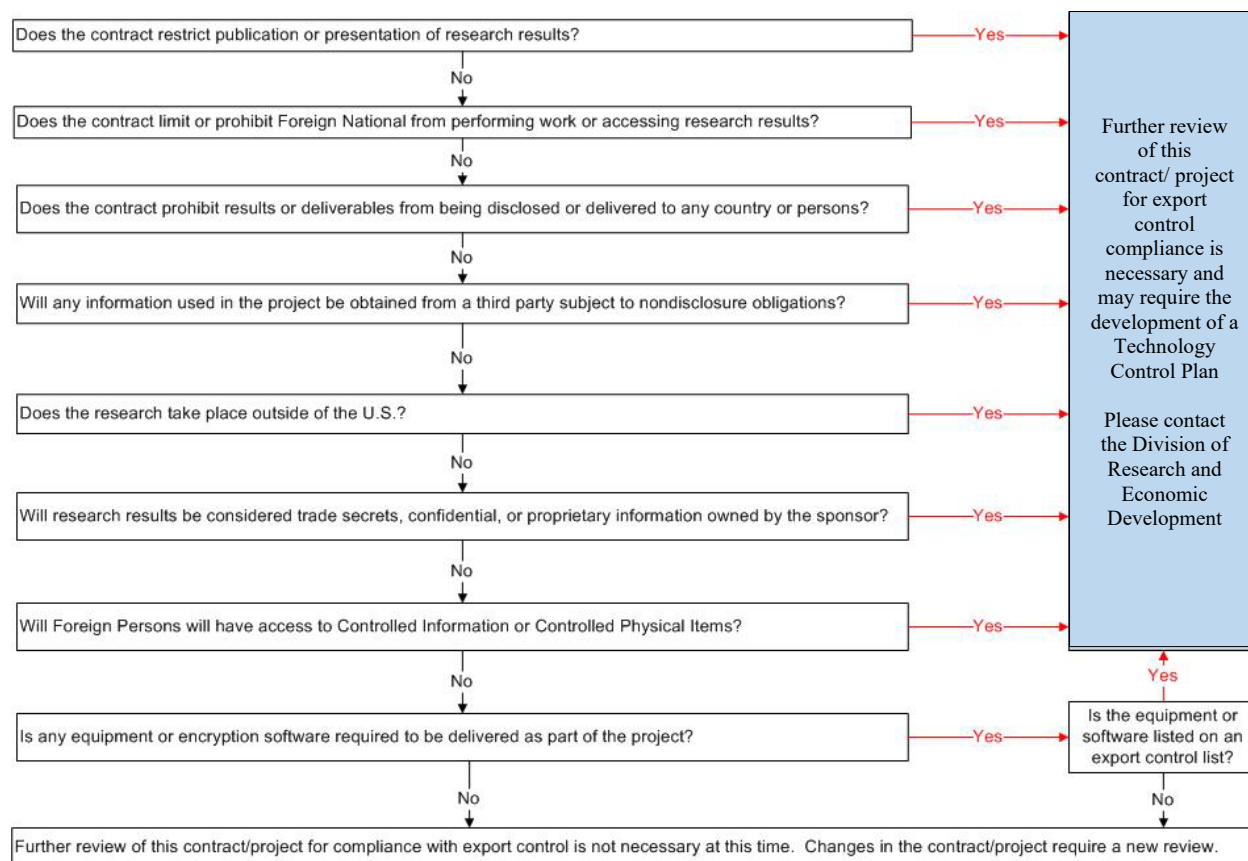
Use – The EAR defines Use Technology as specific information necessary for the “operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing” of a product. If the Technology available to a Foreign Person does not meet all of these attributes, then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

Virtual Private Network – A secure method of connecting to a private network at a remote location, using the internet or any unsecure public network to transport the network data packets privately, with encryption.

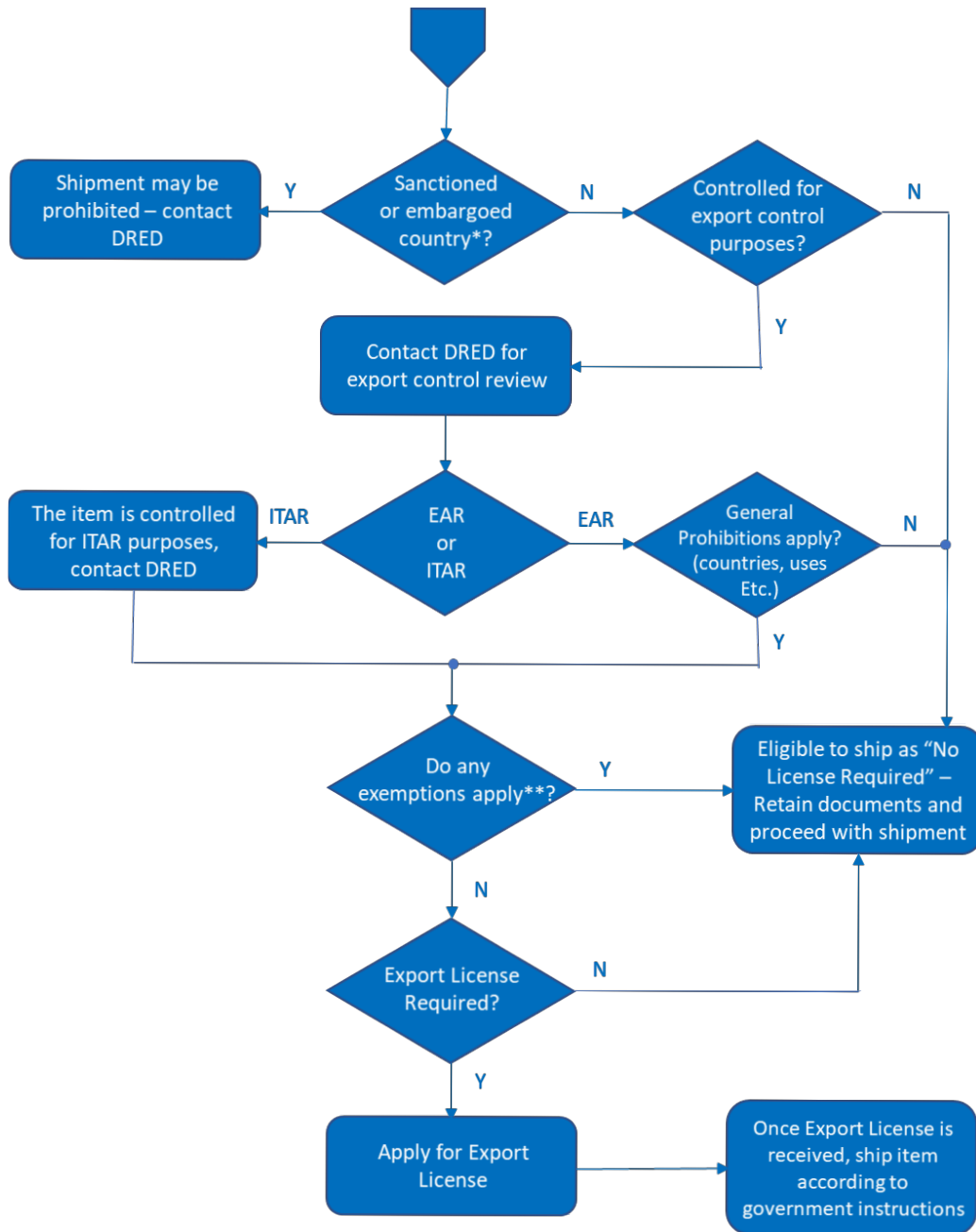
Visiting Scholar Host – The East Texas A&M employee who extends the offer, secures approval for visits, and takes responsibility for overseeing and monitoring the visiting scholar when that individual is accessing university facilities and resources

Appendix B – East Texas A&M Export Control Program Decision Trees

Decision Tree for Administration of Contract Provisions of Concern



Decision Tree for Shipping



DRED = Division of Research and Economic Development

*<https://ofac.treasury.gov/sanctions-programs-and-country-information>
<https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V>

**<https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-740>

Appendix C – Request for Approval of Visiting Scholars

The following is a copy of the online form. The form can be accessed at:

<https://dms.etamu.edu/Forms/VisitingSpeaker>

**EAST TEXAS
A&M**

Request for Approval of Visiting Scholar

With this form, the department requests authorization to invite a Visiting Scholar to East Texas A&M. The hosting sponsor is responsible for attaching a current vita for the visitor.

Visiting Scholar DetailsVisit DetailsHosting Sponsor/Administration Details

It is the responsibility of all employees at East Texas A&M, intending to host a Visiting Scholar, to request approval for the visit at least thirty (30) business days before the arrival of the Visiting Scholar.

First Name *

Middle Name

Last Name *

Title *

Employer *

Email *

Is this an International Visiting Scholar? *

☐ International ☐ Domestic

Institution (City, State/Province, Country) *

Home (City, State/Province, Country) *

PreviousNext



EAST TEXAS
—A&M—

Request for Approval of Visiting Scholar

With this form, the department requests authorization to invite a Visiting Scholar to East Texas A&M. The hosting sponsor is responsible for attaching a current vita for the visitor.

Visiting Scholar Details

Visit Details

Hosting Sponsor/Administration Details

Visitation Start Date *

Visitation End Date *

Describe the nature and purpose of the visit: the goals, significance, and any practical application of the research (i.e., applied, product development, testing, etc.) *

Will you be utilizing laboratories or equipment for research or observation? *

☐ Yes

☐ No

Can the research be categorized as Classified? *

☐ Yes ☐ No

Classified research is usually government funded and can further be defined as national security information at the levels of Top Secret, Secret, and Confidential, and as being governed by Department of Defense National Industrial Security Program Operating Manual (NISPOM) requirements. Publication of classified research results can be legally withheld or restricted.

Can the research be categorized as Controlled Unclassified Information? *

☐ Yes ☐ No

Controlled Unclassified Information (CUI) is a categorical designation that refers to unclassified information that does not meet the standards for National Security Classification under Executive Order 12958, as amended, but is (i) pertinent to the national interests of the United States or to the important interests of entities outside the Federal Government, and (ii) under law or policy requires protection from unauthorized disclosure, special handling safeguards, or prescribed limits on exchange or dissemination. Henceforth, the designation CUI replaces "Sensitive But Unclassified" (SBU).

Can the research be categorized as Proprietary? *

☐ Yes ☐ No

Proprietary research, usually privately funded, is defined as research activities undertaken pursuant to a contract between the University and an outside sponsor with commercial interests, and carried out under the auspices of the University. Publication of proprietary research results can be withheld or restricted, contractually.

Can the research be categorized as Restricted? *

☐ Yes ☐ No

Restricted research is research where publication may require advance review by, or permission of the funding entity. Restricted research may have constraints imposed by the funding entity, whether it be the state, a federal agency, or a private sponsor with or without commercial interests.

Can the research be categorized as "Fundamental"? *

☐ Yes ☐ No

Fundamental research' means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons. Fundamental Research applies only to the dissemination of technical data and information, not to the transmission of material goods.

Does the project restrict participation to US citizens or permanent residents only? *

☐ Yes ☐ No

Will equipment/office space be provided? *

Permission must be received from the Department Head before any lab access can be granted by the Lioncard Office

☐ Yes ☐ No

Will the Visiting Scholar be paid, reimbursed, or provided something of value? *

☐ Yes ☐ No

*Hosting sponsor (University employee requesting authorization) is responsible for ensuring that any plans for paying an international Visitor a stipend follows the payment restrictions that are based on the type of visa held by the visitor, and any regulations of the grant (if paid from a grant).

The Visiting Scholar's vita must be attached to this request form *



EAST TEXAS
—A&M—

Request for Approval of Visiting Scholar

With this form, the department requests authorization to invite a Visiting Scholar to East Texas A&M. The hosting sponsor is responsible for attaching a current vita for the visitor.

Visiting Scholar Details

Visit Details

Hosting Sponsor/Administration Details

Sponsor Name *

Phone Number *

Sponsor Email *

Department *

Department Head *

Dean *

Applicant's Signature:

By submitting this form, I agree submitting this form counts as an electronic signature and I understand that all required documents have been uploaded.

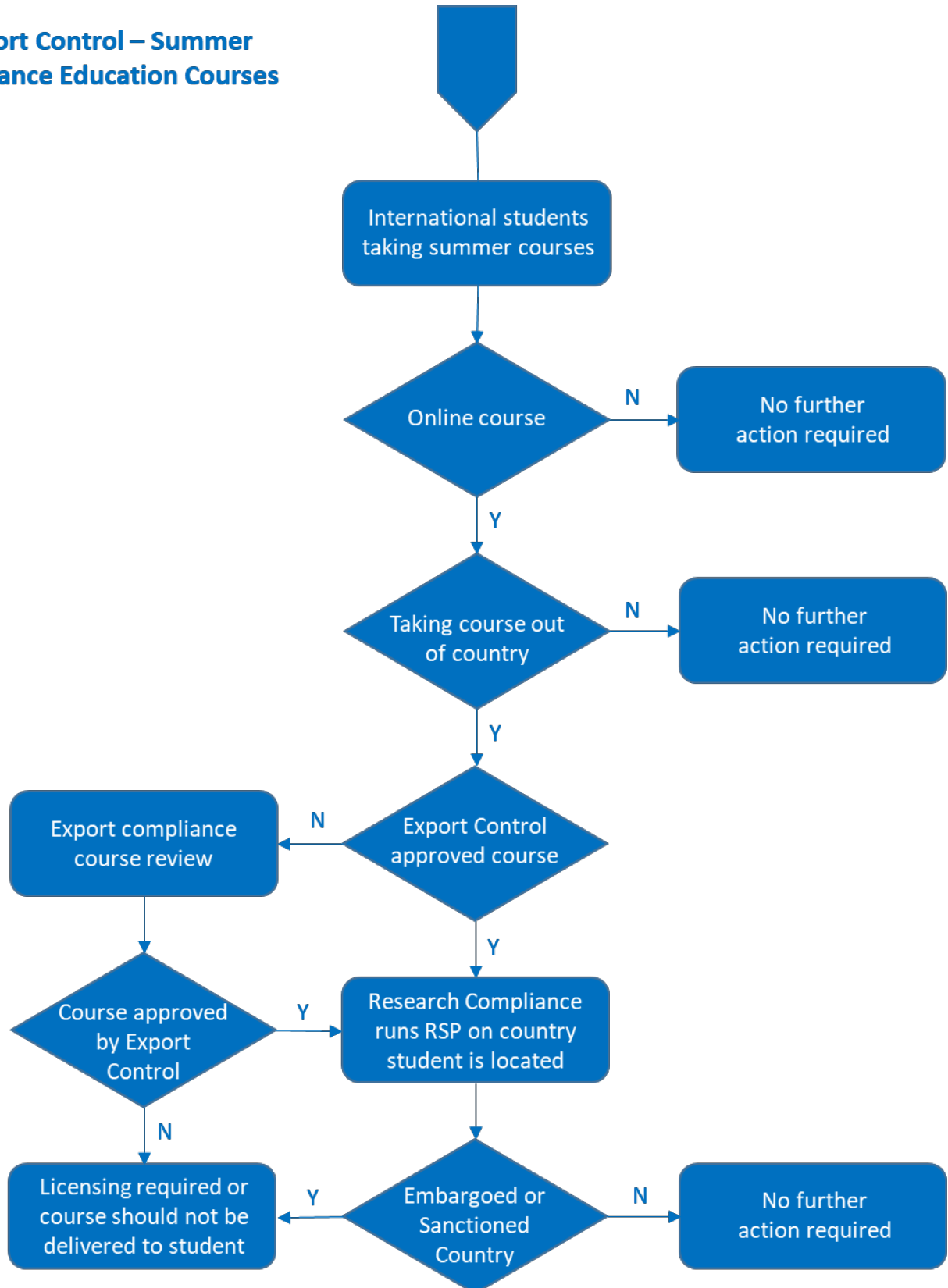
Previous

Next

Submit

Appendix D – Export Control Decision Tree for Review of Distance Education Courses

Export Control – Summer Distance Education Courses



Appendix E – Export Control Checklist for Review of Distance Education Courses

Export Controls Compliance with Distance Education

Checklist for Review of Distance Education Courses

Date: _____

Department: _____

Instructor: _____

Course Number: _____

Course Title: _____

Background: Most educational activities at a US-based institution of higher education may fall under a specific exception to some export control laws and regulations. Generally speaking, release of information by instruction in catalog courses and associated with a US academic institution will most likely not require a license from BIS or DDTC. The following indicates several exceptions available that might apply to course content.

ITAR §120.33 Technical Data and §120.34 Public Domain – “Technical Data” excludes information concerning general scientific, mathematical, or engineering principles that are generally taught in schools, colleges, and universities ([§120.33](#)). Additionally, information meeting the definition and release requirements of “public domain” ([§120.34](#)) to include fundamental research, is not subject to the ITAR.

EAR §734.7 Published and EAR §734.8 Fundamental Research – Information that meets the requirements of [§734.7](#) as “published” and/or [§734.8](#) that meets the requirements of “fundamental research” is excluded from the EAR.

Course Content and Materials:

- ☐ Yes ☐ No Does an exception to export control laws and regulations apply to the course materials (i.e. [ITAR §120.34 “public domain,”](#) [EAR §734.7 “published,”](#) or [EAR §734.8 “fundamental research”](#))? For example, if the course material is publicly available, the published or public domain exception likely applies.
- ☐ Yes ☐ No Will there be an export of physical items or a transfer of controlled technical data?
- ☐ Yes ☐ No Does the course content contain graduate level topics in a STEM discipline?
- ☐ Yes ☐ No Does the course content contain materials not commonly taught in colleges and universities?
- ☐ Yes ☐ No Does the instructor potentially intend to stray from the general course topic?
- ☐ Yes ☐ No Does the course include encryption technology?

Instructor Signature

Date

If the answer to question 1 is “no” or if “yes” is indicated on any of the above assessments other than question 1, consultation with the Division of Research and Economic Development is imperative. The course should not be delivered, or controlled items or information exported before compliancy has been ensured.

Division of Research and Economic Development Export Control Review:

- ☐ Yes ☐ No Will individuals from or located in an embargoed country be enrolled in the course?
If “yes,” the Division of Research and Economic Development should ensure compliancy.
- ☐ Yes ☐ No Has restricted party screenings been conducted on all enrolled non-US persons?

Export Control Review Signature

Date