



**Texas A&M University-San Antonio
Export Controls Compliance Program Manual**

**Office of Graduate Studies and Research
January 2014**

The purpose of this manual is to provide a guide for basic exports control information. It is not intended to be used exclusively, nor does it constitute legal advice.

Export control laws are complex, detailed and specific. The laws, regulations, rules, procedures, and lists specifying either who or what is considered export control sensitive and where export controls apply are subject to change. Therefore, links to A&M System and U. S. government Web sites providing current, detailed information on regulations, rules and procedures on export controls are provided so that users of this manual can have access to the most current information.

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Abbreviations

BIS	Department of Commerce Bureau of Industry and Security
CCL	Commerce Control List
CJ	Commodity Jurisdiction
DDTC	Department of State Directorate of Defense Trade Controls
DFAR	Defense Federal Acquisition Regulation
EAR	Export Administration Regulations
ECCN	Export Control Classification Number
FAR	Federal Acquisition Regulations
FRE	Fundamental Research Exclusion
IFSS	International Faculty and Scholar Services – Texas A&M University
ITAR	International Traffic in Arms Regulations
IVRPSF	International Visitor Restricted Party Screening Form
MTA	Material Transfer Agreement
NDA	Non-Disclosure Agreement
OFAC	Department of Treasury Office of Foreign Assets Control
OGC	The Texas A&M University System Office of General Counsel
OVPR	Texas A&M University Office of the Vice President for Research
PI	Principal Investigator
RPS	Restricted Party Screenings
SDNL	Specially Designated nationals and Blocked Persons List
SRS	The Texas A&M System Sponsored Research Services
TAA	Technical Assistance Agreement
TAMU	Texas A&M University
TAMUS	The Texas A&M University System
TC	The Texas A&M University System Technology Commercialization
TCP	Technology Control Plan
U.S.	United States
USML	United States Munitions List

Section 1. TAMU-SA COMMITMENT TO COMPLIANCE

Texas A&M University-San Antonio (TAMU-SA) is committed to upholding highest standard of ethical conduct in compliance with the university's legal obligations.

In accordance with A&M System Policy 15.02, *Export Controls* the export of certain items and information is regulated for reasons of national security, foreign policy, the prevention of the spread of weapons of mass destruction, and competitive trade reasons, TAMU-SA is committed to operating in compliance with the United States (U.S.) export control laws and regulations including those implemented by the Department of Commerce through the Export Administration Regulations (EAR 15 CFR 700-799 found at http://www.access.gpo.gov/nara/cfr/waisidx_99/15cfrv2_99.html), the Department of State through the International Traffic in Arms Regulations (ITAR 22 CFR 120-130 found at http://www.pmddtc.state.gov/regulations_laws/itar_official.html), and the Treasury Department through the Office of Foreign Assets Control (CFR500-599 found at http://www.access.gpo.gov/nara/cfr/waisidx_08/31cfrv3_08.html#500). Due to the complexity of the laws and regulations, potential export-controlled activities will be evaluated on an individual basis, and each case will be evaluated on its own merits.

TAMU-SA employees are ultimately *individually* responsible for ensuring compliance with U.S. export controls laws/regulations and System policies/regulations. It is essential that TAMU-SA employees maintain open communication with their respective supervisors about these matters and to recognize that export control laws and regulations apply broadly to all research projects (sponsored and non-sponsored) or educational activities. This *TAMU-SA Export Controls Compliance Program Manual* is designed to assist employees in the area of export control compliance. It is not intended to be used exclusively, nor is it intended to constitute legal advice.

Acronyms are defined in the Abbreviations section at the beginning of this manual, and definitions are contained in Appendix A.

Questions regarding export controls should be directed to the Director of Graduate Studies and Research (who is the Research Compliance Officer and Empowered Official) at 210-784-2323 or graduatestudies@tamusa.tamusa.edu

Section 2.0 KEY PERSONS RESPONSIBLE FOR EXPORT CONTROL COMPLIANCE

2.1 Individual Responsibility

All TAMU-SA employees must conduct their affairs in accordance with U.S. export control laws and regulations and must be aware of (and responsible for) export control implications associated with their work and responsibilities. Compliance with all applicable legal requirements is essential. Conversely, it is important to maintain an open environment that welcomes participation of individuals from around the world as part of the TAMU-SA mission. To maintain this balance, TAMU-SA personnel must be familiar with the U.S. 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, employees

may be required to participate in formal training as determined by the TAMU-SA Empowered Official and/or their supervisors.

Principal Investigators (PIs), with the assistance of the Research Compliance Officer (Director of Graduate Studies and Research), are responsible for compliance with export control requirements in the conduct of their research or educational activities. To meet this obligation, PIs should:

- (a) understand his/her export control obligations and participate in regular (every 2 years) trainings to be able to identify export control issues;
- (b) be aware of the export control indicators in (but not limited to) Section 3 below, and note such information on any internal compliance or assurance forms;
- (c) determine, prior to initiation of research or educational activity, whether any information or technology involved in his/her research is subject to export control laws or regulations;
- (d) periodically review his/her her research to ensure continuing compliance with export control laws and regulations;
- (e) if undertaking an export-controlled project, brief those involved in the project of their export control obligations; and
- (f) understand that any informal discussions, agreements, or understandings entered into with sponsors or entities can impose export control obligations on the PI, and may negate the opportunity to claim key exclusions such as the Fundamental Research Exclusion FRE4.

TAMU-SA employees are to report suspected or known violations to the Export Controls Empowered Official (Director of Graduate Studies and Research). Additionally, TAMU-SA employees must maintain their commitment to promoting a culture of compliance with all associated laws, regulations, policies, rules, and procedures and discuss any questions or concerns with their department/unit head, supervisor or the TAMU-SA Empowered Official.

2.2 EMPOWERED OFFICIAL

The Director of Graduate Studies and Research will serve as the TAMU-SA Empowered Official. The TAMU-SA Empowered Official (or designee) is responsible for obtaining approvals required for compliance with export control laws, regulations, policies, rules, and procedures. The TAMU-SA Empowered Official (Director of Graduate Studies and Research) serves as the university's representative and point of contact for export control matters involving TAMU-SA. The Empowered Official is authorized to represent TAMU-SA in any proceedings before government agencies with export control responsibilities, and has final responsibility for compliance with export control laws and regulations. In the event of the reporting of a suspected violation, the TAMU-SA Empowered Official will investigate the suspected violation to the extent deemed necessary. This process may involve appointing a committee to assist with the investigation.

2.3 TAMU-SA COMPLIANCE MANAGEMENT

TAMU-SA Export Controls Empowered Official (Director of Graduate Studies and Research) is responsible for directing and monitoring TAMU-SA'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, TAMU-SA Export Controls Empowered Official will determine (or assist other employees in export control assessments) to determine compliance obligations with respect to TAMU-SA activities involving foreign persons or international activities under applicable export control laws and regulations, and to determine the applicability of the Fundamental Research Exclusion FRE or other exclusions as described in System Policy 15.02, *Export Controls*.

Empowered Official (or designated person) will assist with and conduct Restricted Party and Technological Screening (RPS) and consult with System Office of General Counsel (OGC) on export control matters as appropriate.

2.4 OFFICE OF SPONSORED RESEARCH

The Office of Sponsored Research in coordination with TAMU-SA Empowered Official (Director of Graduate Studies and Research), is responsible for developing and implementing procedures to screen proposals and projects for compliance with export control laws and regulations as follows:

- (a) assistance in reviewing the terms of proposals and agreements, and in determining whether the research or related activity is export-controlled;
- (b) assistance in identifying factors that can negate the FRE and in negotiating the deletion of such restrictions, if possible;
- (c) on export-controlled research to assist PIs and the Empowered Official (or designated person) to document assurance that controlled physical items and controlled information are secured, that licenses and other authorizations are obtained, and that research is conducted in accordance with the Technology Control Plan (TCP); and
- (d) coordination with Empowered Official (or designated person) to ensure that all export control determinations related to a research project are communicated in writing to the Principal Investigator (PI), to project negotiators and administrators assigned to the research, and System Members, as appropriate.
- (e) As defined : “determine[s] whether a person or entity is included on the Specially Designated Nationals and Blocked Persons List or any other list included in the screening software made available by the Office of Graduate Studies and Research.”

- (f) Contact TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, for assistance in determining controlled items, controlled information, and screening against restricted party lists.

2.5 TAMU-SA ADMINISTRATORS

All TAMU-SA employees with managerial or supervisory authority over foreign persons or projects involving controlled information or controlled physical items should view export control compliance as an important part of their day-to-day responsibilities, and are responsible for overseeing export control compliance in their areas of administrative responsibility and for supporting TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, in implementing the procedures set forth in this manual, and as otherwise deemed necessary by the Empowered Official for export control compliance.

3.0 IDENTIFYING EXPORT CONTROL CONCERNS

3.1 Export Control Red Flags

The following (but not limited to) are indicators that an export control review should be conducted to ensure that no violations occur:

- (a) The results of research and educational activities conducted at TAMU-SA or by TAMU-SA employees are intended for military purposes or for other restricted end uses under EAR 99 http://www.access.gpo.gov/bis/ear/ear_data.html#ccl.
- (b) Foreign persons will have access to controlled physical items on campus or TAMU-SA property.
- (c) Software that includes encryption features will be developed or purchased.
- (d) TAMU-SA employees 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 financial transaction will involve embargoed countries or entities (such as banks), individuals located in embargoed countries, or who are on prohibited or restricted end-user lists. (Visual Compliance software will be used for this purpose)
- (f) The sponsor requires pre-approval rights over publications or the participation of foreign persons.
- (g) The project requires the shipping of equipment to a foreign country.

3.2 Restricted Party and Technology Screening

A. 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). If not wholly prohibited, licenses are required for exportation to these end-users, or for carrying out a transaction in which a prohibited or restricted end-user is involved. Visual Compliance software will be used for this purpose) TAMU-SA must screen individuals and entities as provided in this manual in order to ensure that TAMU-SA is not doing business with individuals or entities that have been debarred, denied export privileges, or are otherwise on one of the government restricted party lists. TAMU-SA's Empowered Official (Director of Graduate Studies and Research) will use special software (Visual Compliance) to screen restricted party lists electronically when this becomes necessary. The export control compliance software performs restricted party screening against all relevant U.S. Government lists, including: OFAC Sanctions, BIS Denied Persons List, BIS Entity List and Unverified List, Department of State Arms Export Control Act Debarred Parties, Department of State Designated Terrorist Organizations, Department of State Nonproliferation Orders. Visual Compliance software will be used for this purpose)

B. Restricted Technology Screening

The U.S. Department of Commerce, and the U.S. Department of State, along with various other government agencies control what technology, items, goods, services, etc. (technology) may be permissibly exported outside of U.S. territory. In order to ensure that TAMU-SA is in compliance with all export regulations, TAMU-SA must screen the technology that it intends to export. Screening of technology is accomplished using the same export control compliance software used to perform restricted party screening. This software allows for a search of the technology TAMU-SA plans to export via the EAR/Commerce Control List, and ITAR/U.S. Munitions List (USML). The export control compliance software will notify the screener if a cross-match is found on another listing and what applicable licenses may be required. Visual Compliance software will be used for this purpose)

TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, is responsible for maintaining records of its determinations, in accordance with the Section on *Recordkeeping*.

4.0 RESEARCH AND EDUCATIONAL ACTIVITIES

Most data and information involved in TAMU-SA research and educational activities could possibly be excluded from export control regulation under the ITAR or EAR based on several key provisions:

- (a) the Public Domain Exclusion;
- (b) the Fundamental Research Exclusion (FRE); and
- (c) the Exclusion for Educational Information.

The provisions outlined above are more fully described in Appendix B of this manual. It is essential that researchers and others involved in research and educational activities be aware of these key exclusions, and to understand that their benefits can be lost if certain provisions (such as restriction of foreign person access to the research or sponsor controls on publication or other dissemination of the research results) are present in research and educational activities–related agreements. PIs should seek guidance before entering into informal understandings or “side agreements” with research and educational activities where such provisions are present. It is also important to remember that the restrictions enforced by Department of Treasury Office of Foreign Assets Control (OFAC) are not affected by the ITAR, EAR, or FRE.

4.1 Contract Provisions of Concern

Certain research and educational activities agreement provisions may negate the fundamental research exclusion (FRE), and require seeking a license or undertaking monitoring or other activities. Contact TAMU-SA Empowered Official (Director of Graduate Studies and Research) for assistance in determining controlled items, controlled information, and screening against restricted party lists.

These provisions of concern are identified on the *Decision–Making Tree for Administration of Contract Provisions of Concern* in Appendix C of this manual, and are summarized below. If any of the following provisions is present (and cannot be negotiated away) in a research or educational activities agreement or subcontract, a Material Transfer Agreement (MTA), or Non–Disclosure Agreement (NDA) related to research or educational activities, the agreement will trigger a secondary screening and should be submitted for Office of Sponsored Research review:

- (a) Sponsor maintains the right to restrict or approve publication or release of research or educational activity results (other than TAMU-SA’s standard customary brief delay to protect a sponsor’s confidential information or to preserve the patentability of an invention).
- (b) Research or educational activity data and/or other research or educational activity results will be jointly with TAMU-SA or solely 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 or educational activity.
- (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 or educational activity results (see Section 4.2, below).
- (e) Restrictions on, or prohibitions against, the participation of research or educational activity 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 or educational activity.
- (g) Equipment or encrypted software is required to be delivered as part of the project.

- (h) The research project or educational activity will involve the use of export-controlled items or technical information obtained from a third party.
- (i) The research or educational activity will take place outside the United States.

4.2 Specific U.S. Government Access and Dissemination Controls

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

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 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 in the performance of the award. This establishes controls for data generated by contractors 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(a)(1)

C. DFAR 252.204-7000 (Disclosure of Information)

This reference states, "Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium, pertaining to any part of this contract or any program related to this contract." This is an example of a publication/information restriction that voids the FRE. Refer to 27.404(g)(2) & (3) and NSDD-189 as justification for getting the restriction removed. Also, one can refer to IRS Ruling 76-296. One may also add alternate language that allows for review and comment on publications.

D. DFAR 252.204-7008 (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.

E. 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 project. If no foreign nationals will be employed, 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.

F. 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.”

G. AFMC 5352.227-9000 (Requirement for ITAR License)

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. Need to ask the PI if the project is basic or applied research. If yes, it may fall under an ITAR exclusion. May also ask the defense contractor if foreign nationals are allowed to work on the project. If yes, obtain confirmation in writing.

4.3 Procedures Applicable To Research Agreements and Subcontracts

A. General

Export control screening of projects/contracts is a two-step process. The first step consists of project/contract screening which involves screening the substance of the project or contract using the required assurances form in Maestro. The second step is known as Restricted Party Screening (RPS). This involves screening the parties and entities involved on a project/contract using export control screening software (Visual Compliance software will be used).

B. Proposal Stage

Upon receiving notification from a PI that a proposal is to be submitted, the Office of Sponsored Research Proposal Administrator sends to the PI the required assurances form. The PI then checks “yes” or “no” to a series of questions. Upon receiving the completed form from the PI, the Proposal Administrator, following the form, checks “yes” or “no” on the proposal

compliance screen in Maestro. (At some point in the near future, it is anticipated that the PI will login directly to Maestro to complete the questions online.) Maestro will send electronic notifications to the System member point of contact for export controls based upon the affirmative answers to these questions.

C. Contract Stage

At the contract stage, the Sponsored Research contract negotiators verify if any updates to the questions completed on the required assurances form at the proposal stage are necessary based upon their review of the proposed agreement. In addition to the foregoing, a restricted party screening is performed on all contracts and subawards, as needed. Below are the procedures for performing a restricted party screening (RPS):

- (1) All names (whether company or individual) of the other parties involved in the project/contract are checked using Visual Compliance software.
- (2) In the event of a positive match resulting from the Visual Compliance search, the individual performing the search will submit the screening results to the System member point of contact for export controls for further review and approval.
- (3) Each search result performed by Office of Sponsored Research from Visual Compliance, and any related documentation provided by the System member will be loaded into the appropriate administration database system with its respective record.

4.4 DETERMINING EAR AND ITAR COMMODITY JURISDICTION

A. If an agreement or subcontract includes contract provisions of concern (for example those listed in Section 4.1), the PI will work closely with Office of Sponsored Research and TAMU-SA Empowered Official (Director of Graduate Studies and Research or designated person) in Restricted party screenings are performed for all sponsors except state or federal entities, and for all subawardees except for intrasystem agreements and state and federal subawardees. The PI will refer to the ITAR US Munitions List, 22 CFR§121.1 <http://www.fas.org/spp/starwars/offdocs/itar/p121.htm>, the EAR Commerce Control List, 15 CFR Part 738, Supplement 1 to Part 738 <http://www.access.gpo.gov/bis/ear/pdf/738spir.pdf>, and other relevant parts of the regulations as directed by TAMU-SA Risk and Compliance, to identify the appropriate export classification (as listed in Appendix B).

B. TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, in consultation with the PI and department representatives, will make a determination of commodity jurisdiction (as listed in Appendix B), and will document this determination . TAMU-SA Empowered Official (or designated person) will also undertake further export control analysis as indicated in Section 4.5.

C. On rare occasions when questions remain about commodity jurisdiction, TAMU-SA Empowered Official (or designated person) will consult with the TAMU System Office of General Counsel for further guidance. If there is still a question about commodity jurisdiction,

the Empowered Official (Director of Graduate Studies and Research), or designated person, will prepare a commodity jurisdiction request for submission to the Department of State or the Department of Commerce, as appropriate. In such cases—until an official determination is received—the project will be considered export-controlled, and no foreign persons will be permitted to participate until an official determination is made to the contrary. Requesting an official commodity jurisdiction ruling from the government takes time. A minimum of two weeks is required for completion of the request itself, and several more weeks or months can be expected before the receipt of a response from the government.

D. Finalization of the agreement or subcontract need not be delayed pending TAMU-SA Export Control Official's (or designated person's) determination of commodity jurisdiction or other export control determinations; however, all necessary controls must be implemented before the work begins.

4.5 Resolving Export Control Issues

A. TAMU-SA Compliance Management

Once a potential export control issue is identified, TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, 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, TAMU-SA Empowered Official (or designated person), in consultation with the PI and the department will determine whether:

- (1) the conditions merit an application for a license or other authorization,
- (2) the conditions are such that an exclusion or license exception may be obtained, or
- (3) 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.

TAMU-SA Empowered Official (Director of Graduate Studies and research) will notify the parties involved of export control compliance determinations. Empowered Official (or designated person) will maintain records of its determinations on a project basis, as provided in section on *Recordkeeping*.

B. Technology Control Plan (TCP)

(1) Development

If TAMU-SA Empowered Official (Director of Graduate Studies and Research) determines a project or facility is export-controlled, Empowered Official (or designated person) will work with the PI and department representatives, facility managers, to develop and implement a TCP (Appendix D) to secure the controlled technology from access by unauthorized foreign persons. A TPC will typically include:

- a. a commitment to export controls compliance;

- b. identification of the relevant export control categories and controlled technologies;
- c. identification of the project's sponsors;
- d. identification and nationality of each individual participating in the project;
- e. appropriate physical and informational security measures;
- f. personnel screening measures and training; and
- g. appropriate security measures for and following project termination.

(2) Appropriate Security Measures

The TCP will include physical and informational security measures appropriate to the export control categories involved on the project. 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. These areas must remain locked at all times.

b. *Time Blocking*—Project operation may be restricted to secure time blocks when unauthorized individuals cannot observe or access.

c. *Marking*—Export-controlled items or 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 or greater Secure Sockets Layer encryption, or other federally approved encryption technology. Database access should be managed via a Virtual Private Network. A mechanism for providing secure, reliable transport over Internet. A VPN uses authentication to deny access to unauthorized users, and encryption to prevent unauthorized users from reading the private network packets. The VPN can be used to send any kind of network traffic securely, including voice, video or data.

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.

(3) Export Licensing

If a license, Technical Assistance Agreement, Manufacturing License Agreement, ITAR Registration, or other authorization is the appropriate method to address an export control issue, TAMU-SA Compliance Officer will consult with the PI and other appropriate parties to gather all the information needed to submit the appropriate documentation to seek a license. TAMU-SA Empowered Official (or designated person) will determine that a license or other authorization should be obtained. The Empowered Official will request the license or other authorization from the appropriate agency with assistance from the System Office of General Counsel (OGC), as appropriate.

5.0 VISITORS

5.1 International Visitors Require Restricted Party Screening (RPS) prior to Arrival on University Property

All TAMU-SA employees intending to invite or host international visitors on campus are responsible for notifying in writing the TAMU-SA Export Controls Empowered Official (Director of Graduate Studies and Research) before the visitor arrives on any university property, so that prescreening (RPS) can be initiated, see Section 5.4 of this manual and Appendix D.

5.2 No Authorization To Access Controlled Information, Controlled Physical Items

No international visitor may have access (whether verbal, written, electronic, and/or visual) to controlled information or controlled physical items unless an export control license has been obtained. It is the responsibility of the faculty, researcher, staff, or administrator hosting the visitor to ensure compliance with export control restrictions and to promptly disclose and report any violations to TAMU-SA Export Controls Empowered Official (Director of Graduate Studies and Research).

5.3 Restricted Party Screening (RPS) of International Visitors

Screening of international visitors (utilizing Visual Compliance software) includes the screening of the *foreign entity* or *institution* where the international visitor is employed. Screening is needed whenever a written or verbal invitation to visit TAMU-SA is made to an international visitor regardless of whether:

- A. The international visitor is present or not in the United States.
- B. TAMU-SA needs to sponsor the International Visitor for immigration purposes under the J-1 Exchange Visitor Program¹⁰.
- C. TAMU-SA does not need to sponsor the international visitor for immigration purposes because he or she is traveling or has entered the United States under the Visa Waiver Program a B-1/B-2 visa or other nonimmigrant visa status as indicated on a properly annotated I-94. For example, Foreign Persons may come to visit TAMU-SA under the J-1 exchange visitor program in the following instances:

- (a) Sabbaticals with their own funding;
- (b) Conducting collaborative research funded by their home institution or government;
- (c) Fulbright or other similar type of sponsorship; and
- (d) Student internship, paid or unpaid.

5.4 Procedure To Notify and Request Authorization To Visit

Prior to the visit, faculty, researchers, and administrators inviting and hosting international visitors must complete *Approval of Visitor Exchange Program (Visiting Scholars, Scientists, and Interns)* form, and/or *Approval of Reimbursement/Honoraria for Subjected International Visitor* form.

These forms must be submitted to TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person. Submission is required regardless of whether the visit involves or results in a financial disbursement (i.e. honorarium, reimbursement of expenses, and alike) payable to the international visitor. Empowered Official (or designated person) will conduct restricted party screening (RPS). Any other export control issues raised will be addressed by TAMU-SA requesting host (TAMU-SA employee who extended invitation to visitor). If RPS results cause restrictions to be imposed, TAMU-SA Empowered Official (or designated person) will notify the requestor and TAMU-SA Human Resources (if processed by Human Resources) and attempt to resolve if possible. Once approved, a copy of the approval (and associated documents) will be sent to the department, , the TAMU-SA Office of International Studies to initiate the immigration process for those instances in which TAMU-SA needs to sponsor the international visitor, as well as for those in which the international visitor is traveling under the Visa Waiver Program, a B-1/B-2 visa, or other nonimmigrant visa status as indicated properly on the annotated I-94.

6.0 Employment of Non-Immigrant Foreign Nationals

It is imperative for TAMU-SA hiring departments to be aware that the ability to hire non-immigrant foreign nationals for certain positions may be restricted or prohibited by export control laws. For example, non-immigrant foreign nationals may be restricted or prohibited from performing employment responsibilities relating to certain information technology systems positions to the extent the work will involve access to controlled information or items. If non-immigrant foreign nationals are prohibited by export control laws from performing the employment responsibilities associated with a position, the Notice of Vacancy (NOV) may be posted in such a way that those individuals are notified ahead of time they cannot be considered. The following statement may be added to the “Comments to Applicant” section of the NOV: *Non-immigrant foreign nationals are prohibited by export control laws from performing the employment responsibilities associated with this position; sponsorship is not available.* After extending an employment offer to foreign nationals, the supervisor is required to submit *Checklist for Export Controls Issues When Hiring Foreign Nationals* form (Appendix D), to TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person. TAMU-SA Empowered Official (or designated person) will conduct restricted party screening (RPS), and return the checklist to the department as notification of the completed RPS. Upon an accepted offer, the hiring department will coordinate with the Human Resources office to complete the hiring process. Records will be kept in accordance with Section 11,

Recordkeeping. Departments will forward the completed forms with *in-processing* documents to TAMU-SA Payroll for inclusion in the employee's payroll file. Any export control issues related to the hiring of nonimmigrant foreign nationals should be referred to TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, for resolution as appropriate.

7.0 INTERNATIONAL ACTIVITIES

In the case of TAMU-SA activities conducted outside the United States, it is the responsibility of the TAMU-SA activity organizer to seek and obtain appropriate export control approvals for activities including, but not limited to, the following: (a) execution of agreements performable outside the United States; and (b) making payments to foreign person vendors.

7.1 Travel—General

TAMU-SA employees traveling on TAMU-SA business or traveling with TAMU-SA property are responsible for complying with export control laws and regulations when traveling outside the U.S. TAMU-SA employees are required to *Checklist for Export Controls Issues When Hiring Foreign Nationals* form (Appendix D), before international travel begins. A license may be required depending on which items are taken, which countries are visited, or whether defense services are provided to a foreign person. The traveler or the traveler's supervisor should contact TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, with any potential export control concerns. If appropriate, TAMU-SA Empowered Official (or designated person) will follow restricted party screening (RPS using Visual Compliance software) procedures as described in Section 3.2 of this manual.

When planning a trip abroad, travelers should review export control regulations and embargoes. Individuals should ensure that any information that will be discussed or any items that will be taken are not controlled, or, if controlled, that appropriate licenses are in place. Not only could TAMU-SA be held liable, but individuals may also be held liable for improperly transferring controlled information or controlled physical items.

Most travel for conferences will fall under an *exclusion* to the export control regulations, e.g., the Publicly Available/Public Domain Exclusion, 22 CFR §120.11 and 15 CFR §734.3. Information that is published and is generally accessible to the public through publication in books or periodicals available in a public library or in bookstores or information that is presented at a conference, meeting, seminar, trade show, or other open gathering is considered to be in the public domain. An open gathering is one in which members of the general public are eligible to attend, and attendees are permitted to take notes.

TAMU-SA employees 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 traveling with or transmitting controlled information outside

the U.S. should first consult with TAMU-SA Empowered Official (or designated person). There are a number of exceptions and exclusions that may apply depending upon the facts and circumstances of each case.

If personal computers and other storage devices are taken abroad that contain encrypted software (15 C.F.R. Part 742), a government license or other government approval for export may be required when traveling to certain countries. For example, the Microsoft Windows VISTA Business suite contains such encrypted software and is subject to export restrictions. Windows VISTA may be taken out of the U.S. temporarily, but only under an export license exception as described below.

Temporary exports under the "Tools of Trade" (as defined in Appendix B) license exception apply when the laptop, PDA, cell phone, data storage devices, and encrypted software are:

- (1) Hand-carried with the individual while traveling,
- (2) Carried in the luggage or baggage that travels with the individual, or
- (3) Shipped no more than thirty days prior to the individual's departure or may be shipped to the individual at any time while the individual is outside the country.

Generally, no government export license is required so long as an individual:

(1) retains his or her laptop computer, PDA, cell phone, data storage devices and encrypted software under their personal custody and effective control for the duration of travel; (Note: In some instances, personal custody requires the person to have with them during meals, etc.)

(2) does not intend to keep these items in these countries for longer than 1 year; and

(3) is not traveling to an embargoed country. See OFAC's Sanctions Program and Country Summaries at <http://www.treasury.gov/resourcecenter/sanctions/Programs/Pages/Programs.aspx> for the most current list of embargoed countries and U.S. sanctions.

Note that this license exception is not available for equipment, components, or software designed for use in/by/with most satellites or spacecraft. "Effective control" means retaining physical possession of an item or maintaining it in a secure environment.

Researchers frequently need to take other TAMU-SA equipment temporarily outside of the United States for use in TAMU-SA research. 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, night vision goggles, and specialty software) is highly restricted, and may require an export license, even if one hand carries it. If taking TAMU-SA equipment other than a laptop computer, PDA, cell phone, or data storage devices, contact the Empowered Official (Director of Graduate Studies and Research), or designated person, to determine if an export license or other government approval is required prior to taking the equipment out of the country. Please see Appendix E of this manual for recommended protocols before traveling internationally with laptops.

It is important to note that activities involving teaching or training foreign persons on how to use equipment may require a license. A list of some of the travel exemptions and exceptions are more fully described in Appendix B of this manual.

7.2 Non-Employees Participating in TAMU-SA International Activities

All foreign persons acting on behalf of but not employed by TAMU-SA (e.g. independent contractors; volunteers; foreign collaborators) and are not currently employed by a college or university based in the United States, should undergo RPS prior to participation in research or educational programs at an international center.

8.0 FINANCIAL TRANSACTIONS, PROCUREMENT AND CONTRACTS

TAMU-SA (Accounts Receivables, Cash Management, Disbursements, and Procurement and Contracts), in cooperation with TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, is responsible for developing and implementing procedures to screen financial transactions as appropriate for compliance with export control laws and regulations. See OFAC's Sanctions Program and Country Summaries at <http://www.treasury.gov/resourcecenter/sanctions/Programs/Pages/Programs.aspx> for the most current list of embargoed countries and U.S. sanctions.

8.1 Financial Transactions

A. Vendors

TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, will conduct RPS on all existing non-employee vendors (excluding federal, state, and local governments and entities, domestic universities, and TAMUS members) that have been established in the accounting system. A list of all screened vendors will be published so that departments can verify if a vendor has been screened.

Domestic Vendors (non-employees)—If restricted party screening (RPS) has not previously been conducted for a domestic vendor, TAMU-SA Empowered Official (or designated person) will conduct RPS. TAMU-SA Empowered Official (or designated person) will forward RPS Screening form to TAMU-SA Director of Procurement (or disbursement office) as notification of the completed RPS. From this point, normal procedures for TAMU-SA Disbursements will resume. Records will be kept in accordance with Section 11, *Recordkeeping*.

Foreign Vendors (non-employees)—If RPS has not previously been conducted for a foreign vendor, TAMU-SA Risk and Compliance will conduct RPS. TAMU-SA Risk and Compliance will forward, *Certificate of Foreign Status* form, to TAMU-SA Director of Procurement (Disbursements) as notification of the completed RPS. From this point, normal procedures for TAMU-SA Disbursements will be in effect. Records will be kept in accordance with Section 11, *Recordkeeping*.

B. Wire Transfers

RPS will be conducted for all foreign wire transfers before the transaction process takes place. TAMU-SA Cash Management will notify TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, by forwarding completed TAMU-SA *Wire Transfer Request form*, when wire transfers are requested—and before funds are released—so RPS can be conducted. Empowered Official (or designated person) will forward the Wire Transfer Request form and associated documents to the corresponding Chief Financial Officer (or designee) as notification of the completed RPS. From this point, normal procedures for TAMU-SA Cash Management will resume. Records will be kept in accordance with Section 11, *Recordkeeping*.

C. Accounts Receivables

Only departments and units (other than any TAMU-SA laboratories performing diagnostic services, and the TAMU-SA Bookstore) invoicing foreign persons or entities will submit the appropriate form Empowered Official (Director of Graduate Studies and Research), or designated person, before sending the invoice or invoice request. The completed form and associated documentation to the Empowered Official (or designated person) who will then conduct RPS, and return the form to the department as notification of the completed RPS. Records will be kept in accordance with Section 11, *Recordkeeping*.

D. Independent Contractors

RPS will be conducted for foreign independent contractors before the work and transaction processes take place. Departments are required to complete *Independent Contractor Status Certification* form when requesting approval of independent contractors. TAMU-SA Procurement and Contracts will notify TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, by forwarding completed TAMU-SA form —prior to approval—so RPS can be conducted. Empowered Official (or designated person) will return the form to TAMU-SA Procurement and Contracts as notification of the completed RPS. Records will be kept in accordance with Section 11, *Recordkeeping*.

E. TAMU-SA Conference Services

RPS will be conducted for foreign person conference registrations. TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, will receive registrant reports periodically, and will conduct RPS on all international registrants. Conference sponsors will be notified of any associated export control compliance issues that arise. Records will be kept in accordance with Section 11, *Recordkeeping*.

8.2 Procurement

Individuals making purchases with procurement cards, under unit delegation, or through TAMU-SA Procurement and Contracts will be responsible for ensuring their purchases comply with export control laws, as well as coordinating with TAMU-SA Compliance Manger (Director

of Graduate Studies and Research) to resolve any export control issues prior to the purchase. Departments/units can check to see if RPS has been conducted for a vendor. Anyone unsure of any export controls compliance associated with procurement should contact TAMU-SA Empowered Official (or designated person).

8.3 Agreements and Non-Sponsored Contracts

RPS will be conducted on all foreign sponsors and vendors. TAMU-SA Procurement and Contracts will notify TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, by forwarding agreements and non-sponsored contracts so RPS can be conducted. TAMU-SA Empowered Official (or designated person) will return such agreements to TAMU-SA Procurement and contracts as notification of the completed RPS. Records will be kept in accordance with Section 11, *Recordkeeping*.

9.0 TECHNOLOGY COMMERCIALIZATION

System Technology Commercialization (TC) has developed, implemented, and maintained procedures to address the export control implications of their work, including procedures related to RPS, invention disclosure screening, etc. Invention disclosure forms that are submitted to the TC should be marked by the inventor as export-controlled or not export-controlled using an export control checklist incorporated on the invention disclosure form approved by OGC. Per TC procedures, all disclosures will be reviewed by TC for export control red flags. Potential concerns or questions will be referred to OGC, TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, or other office(s) as appropriate. TC will conduct RPS on parties with whom it contracts. Any potential export-controlled issues will be referred to TAMU-SA Export Controls Empowered Official or System Office of General Counsel for recommended handling. To prevent unauthorized access by foreign nationals to exported-controlled information and technology, TAMU-SA will develop and implement a technology control plan (TCP).

10.0 SHIPMENTS

It is the responsibility of TAMU-SA employees who are shipping items outside or inside the U.S. (including hand-carrying items such as research equipment, computers, materials, data, or biological 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 U.S. Customs, it may still require an export control license. Contact TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, for assistance with shipping. The simple act of sending a package to a foreign collaborator can result in a violation of export controls. Also, shipping to countries subject to embargoes must first be cleared by TAMU-SA Empowered Official, or designated person.

Employees who are responsible for shipping packages out of the country should obtain a

list of contents before shipping and contact TAMU-SA Empowered Official (or designated person) with any questions. Every effort should be made to correctly label a package and accurately represent the classification of the item because mislabeling and misclassification, regardless of intent, is a violation of the law. Under-invoicing or under-valuing an exported item, or reporting an incorrect export value on a Shippers Export Declaration also violates export regulations.

A shipping decision tree is available in Appendix C of this manual for shipping-related questions and concerns. Potential export control issues regarding shipping should be referred to TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person.

11.0 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 CFR §§Sections 122.5, 123.22, and 123.26 (ITAR); and 31 CFR §501.601(OFAC), or

B. the period required for the retention of records as set forth in The Texas A&M University System policies and regulations, University and agency rules/procedures, and the TAMUS records retention schedule.

Records will be maintained by TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, or as otherwise designated in this manual. TAMU-SA's policy is to maintain export-related records on a project basis. Unless otherwise provided for, all records indicated herein will be maintained consistent with the TAMU-SA record retention policy, and must be retained no less than five (5) years after the project's TCP termination date or license termination date, whichever is later (subject to any longer record retention period required under applicable export control regulations). TAMU-SA Empowered Official, or designated person, export controls records will be maintained in a password protected USB drive.

Section 12.0 TRAINING

The System provides an online training course via Single Sign On, TrainTraq Course #2111212, *Export Controls and Embargo Training*. Although this training is currently not required for all employees (except as provided below), TrainTraq Course #2111212 is highly recommended because it is ultimately the individual's responsibility to comply with export control laws, regulations, policies, rules, and procedures. TAMU-SA employees with managerial or supervisory authority over foreign persons or projects involving controlled information or controlled physical items are required to take TrainTraq Course #2111212, basic export control online training course at least once every two (2) years. Depending on the nature of an individual's activities and/or job functions, an TAMU-SA employee may be required to take TrainTraq Course #2111212, basic export control online training and/or supplemental export

control training as deemed appropriate by the individual's supervisor and/or the empowered official.

13.0 INTERNAL COMPLIANCE REVIEWS AND MONITORING

To assist TAMU-SA employees in complying with export controls procedures, the University Empowered Official (Director of Graduate Studies and Research), or designated person, will conduct periodic reviews.

14.0 POSSIBLE VIOLATIONS

Each TAMU-SA employee has the responsibility to report possible violations of U.S. export control laws or regulations. Suspected violations should be reported by one of the following methods:

(1) TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person) at (210) 784-2323, or (2) EthicsPoint website https://secure.ethicspoint.com/domain/en/report_custom.asp?clientid=20488. Possible violations of U.S. export control laws or regulations will be investigated by the empowered official (or designee) to the extent deemed necessary. The empowered official is authorized by the University CEO to suspend or terminate a research, teaching, testing, or other activity if the empowered official, or designee, determines that the activity is not in compliance or will lead to noncompliance with export control laws and regulations. The empowered official may determine whether notification to an appropriate government agency is required. All such decisions will be communicated to the CEO prior to implementation.

15.0 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. In the event of non-compliance with processes set forth in this manual, *Non-Compliant Explanation* form (Appendix D), will be completed and forwarded to the corresponding department head or director. Additionally, employees may be subject to disciplinary action up to and including termination in accordance with TAMU-SA rules and System policies and regulations.

Related Statutes, Policies or Requirements

[Export Administration Regulations \(EAR\) 15 CFR Parts 700-799](#)

[International Traffic in Arms Regulations \(ITAR\) 22 CFR Parts 120-130](#)

[Office of Foreign Assets Control \(OFAC\) 31 CFR Parts 500-599](#)

[System Policy 15.02, *Export Controls*](#)

[TVMDL Rule 15.02.99.V1, *Export Controls*](#)

[TVMDL Procedure 15.02.99.V1.01, *Export Controls*](#)

Appendix A | Glossary

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 EAR and defense articles listed on ITAR’s USML. (See 15 CFR Parts 730-774 and 22 CFR Parts 120-130 for further details.)

Deemed Export—A release of technology or source code to a Foreign Person in the United States. A “deemed export” is considered an export to the country of nationality of the Foreign Person.

Defense Article—Any item or technical data designated on the United States Munitions List See ITAR, 22 CFR §121.1.

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 ITAR, 22 CFR §120.10), whether in the U.S. or abroad; or

3. Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the U.S. 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 ITAR, 22 CFR §124.1.)

ECCN—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.

Exempted International Visitor—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:

1. meet with colleagues to discuss a research project or collaboration,
2. tour labs or research facilities that are not otherwise restricted per se, or
3. 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 U.S. 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;
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; or
5. Viewing an email with controlled information when outside the U.S.

Foreign National/Foreign Person—Any person other than a U.S. citizen, a lawful permanent resident of the United States (i.e., a “green card” holder), or a “protected individual” as defined in 8 U.S.C. §1324b (c) (1 & 2) (e.g., refugees or persons seeking asylum). For export control purposes, a Foreign Person includes any individual in the U.S. in nonimmigrant status (i.e., H-1B, H-3, L-1, J-1, F-1, B-1, Practical Training) and individuals unlawfully in the U.S.

A Foreign Person is also any branch of a foreign government or any foreign corporation or group that is not incorporated or organized to do business in the U.S. For export control purposes, a Foreign Person is not an individual who is a U.S. citizen, lawful permanent resident of the U.S., a refugee, a person protected under political asylum, or someone granted temporary residency under amnesty or Special Agricultural Worker provisions.

International Visitor—Foreign Persons having a residence in a foreign country, who are not employees or affiliates of TAMU-SA, and are coming to TAMU-SA 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 TAMU-SA.

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.

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:

1. the export of ITAR controlled technical data or defense articles; or
2. the use by the Foreign Person of ITAR controlled technical data or defense articles previously exported by a U.S. person. (ITAR, CFR §120.21)

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

Non-disclosure Agreements (NDAs)—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—Technology or software is “released” for export through:

1. visual inspection by Foreign Persons of U.S.–origin equipment, facilities or documentation;
2. oral or written exchanges of information in the United States or abroad; or
3. the application to situations abroad of personal knowledge or technical experience acquired in the U.S.

Subjected International Visitors—Subjected International Visitors are International Visitors who:

1. will be involved in a research project or collaboration, and will have access to laboratories of observing or conducting research;
2. will be issued a TAMU identification card, keys to offices or laboratories, or otherwise be given access to the TAMU or TAMU-SA computing system in any way or manner; or
3. will be paid an honorarium, will be reimbursed for expenses, or will be provided something of value.

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.”

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 projects conducted at TAMU-SA.

TAMU-SA has developed a TCP template for use on such projects. See Appendix D of this manual for the TAMU-SA sample form.

Technical Data—Includes information “required for” the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles. It may take the form of blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, and instructions written or recorded on other media or devices such as disk, tape, and read-only memories.

Trip Leader—TAMU-SA employees who conduct an international field trip or short program abroad and is accompanied by a group of students, either graduate, and/or undergraduate.

Use—Operation, installation (including on-site installation), maintenance (including checking), repair, overhaul, and refurbishing.

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 individual who extends the offer, secures approval for, visits and takes responsibility for overseeing and monitoring the Visiting Scholar when that individual is accessing TAMU-SA facilities and TAMU-SA resources.

Appendix B | Applicable U.S. Laws and Regulations

The following is a summary of selected provisions of the EAR, ITAR, and OFAC regulations. This Appendix and its contents is intended only as a general guide to understanding, and should not be relied upon exclusively. Additionally, it should not be used as a substitute for consulting the current version of these regulations, which are subject to amendment from time-to-time. Contact TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person, with any questions.

Three principal U.S. regulatory regimes govern the export of items and technology:

1. The International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130, govern the export of defense articles and related technical data (i.e., items or technology that are “inherently military” in nature as well as most space-related items). These regulations are administered by the U.S. Department of State, Directorate of Defense Trade Controls (DDTC). A copy of the consolidated regulations is available at:

http://pmdrtc.state.gov/regulations_laws/itar_consolidated.html.

2. The Export Administration Regulations (EAR), 22 CFR. Parts 730-774, govern the export of items or technologies that are commercial or “dual-use” in nature, identified on the EAR’s Commerce Control List (CCL). In addition to the regulation of items listed on the CCL, EAR 99 regulates unlisted items and technologies, based on restricted end-uses and end-users.

The Anti-Boycott provisions of the EAR prohibit participation in international boycotts that have not been sanctioned by the U.S. government (e.g., the Arab League countries’ boycott

of Israel). See EAR, 15 CFR Part 760. These regulations are administered by the U.S. Department of Commerce, Bureau of Industry and Security (BIS). A copy of the updated set of regulations is available at: http://www.access.gpo.gov/bis/ear/ear_data.html.

3. For certain prohibited persons or destinations (e.g., Iran, Syria), the export of all items or technologies is generally prohibited under regulations administered by the Department of Treasury, Office of Foreign Assets Control (OFAC). OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. The Anti-Boycott provisions of the OFAC prohibit participation in international boycotts that have not been sanctioned by the U.S. Government (e.g., the Arab League countries' boycott of Israel). With the exception of the sanctions on Cuba and North Korea, OFAC sanctions are promulgated under the International Emergency Economic Powers Act of 1977, 50 U.S.C. §§ 1701-1706 (IEEPA). The embargoes on Cuba and North Korea are promulgated under the Trading with the Enemy Act of 1917, 12 U.S.C. § 95a (TWEA).

4. Various other U.S. Government agencies administer limited controls on the export of certain types of items and technologies with which TAMU-SA may be involved, such as the following: Nuclear Regulatory Commission (nuclear equipment and materials); Department of Energy (nuclear technology, high-energy lasers, etc.); Food and Drug Administration (pharmaceutical development, medical devices); Anti-Boycott Act; Economic Espionage Act; and Anti-Bribery statutes. Regardless of proper registration with other federal regulatory agencies, export control issues may exist.

ITAR—Export of Defense Articles and Services | The International Traffic in Arms Regulations (ITAR),

22 CFR Parts 120-130, are promulgated pursuant to Section 38 of the Arms Export Control Act, 22 U.S.C. §§ 2778 *et seq.*) DDTC administers the export and re-export of controlled articles, services, and data from the U.S. to any foreign destination or to any foreign person, whether located in the U.S. or abroad. ITAR contains the U.S. Munitions List (USML), and includes the commodities and related technical data and defense services controlled for export purposes. The ITAR controls not only end items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that are incorporated into the end item. Certain non-military items, such as commercial satellites and certain chemical precursors, toxins, and biological agents, are also controlled.

Items Controlled Under the ITAR | The ITAR uses three different terms to designate export controlled items: defense articles, technical data, and defense services. With rare exceptions, if an item contains any components that are controlled under the ITAR, the entire item is controlled under the ITAR. For example, a commercial radio that would normally not be controlled under the ITAR becomes a controlled defense article if it contains an ITAR-controlled microchip.

1. Defense Article—means any item or technical data that is specifically designed, developed,

configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the USML. (22 CFR §120.6) Defense article also includes models, mock-ups, or other items that reveal technical data relating to items designated in the USML.

2. Technical Data—means any information for the design, development, assembly, production, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings or assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed. However, technical data does not include general scientific, mathematical, or engineering principles commonly taught in schools, information present in the public domain, general system descriptions, or basic marketing information on function or purpose. (22 CFR §120.10)

3. Defense Service—means providing assistance, including training, to a Foreign Person in the United States or abroad in the design, manufacture, repair, or operation of a defense article, as well as providing technical data to Foreign Persons. Defense services also include informal collaboration, conversations, or interchanges concerning technical data. (22 CFR §120.9).

The USML Categories | The USML designates particular categories and types of equipment as defense articles and associated technical data and defense services. (22 C.F.R. § 121.1) The USML divides defense items into 21 categories, listed below. An electronic version of the USML is available on the Department of State website at:

http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf.

I Firearms, Close Assault Weapons, and Combat Shotguns

II Guns and Armament

III Ammunition / Ordnance

IV Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines

V Explosives, Propellants, Incendiary Agents, and their Constituents

VI Vessels of War and Special Naval Equipment

VII Tanks and Military Vehicles

VIII Aircraft and Associated Equipment

IX Military Training Equipment

X Protective Personnel Equipment

XI Military Electronics

XII Fire Control, Range Finder, Optical and Guidance, and Control Equipment

XIII Auxiliary Military Equipment

XIV Toxicological Agents and Equipment and Radiological Equipment

XV Spacecraft Systems and Associated Equipment

XVI Nuclear Weapons, Design, and Testing-Related Items

XVII Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated

XVIII Directed Energy Weapons

XIX [Reserved]

XX Submersible Vessels, Oceanographic, and Associated Equipment

XXI Miscellaneous Articles

Classification | While DDTC has jurisdiction over deciding whether an item is ITAR– or EAR–controlled, it encourages exporters to self-classify the item. If doubt exists as to whether an

article or service is covered by the USML, upon written request in the form of a Commodity Jurisdiction (CJ) request, DDTC will provide advice as to whether a particular article is a defense article subject to the ITAR, or a dual-use item subject to Commerce Department licensing. (22 CFR §120.4) Determinations are based on the origin of the technology (i.e., as a civil or military article) and whether it is predominantly used in civil or military applications.

Definition of Export Under the ITAR | The ITAR defines the term “export” broadly. The term applies not only to exports of tangible items from the U.S., but also to transfers of intangibles, such as technology or information. The ITAR defines as an “export” the passing of information or technology to Foreign Persons, even in the United States.” (22 CFR §120.17) The following are examples of exports:

1. Exports of articles from the U.S. territory

- Shipping or taking a defense article out of the United States.
- Transferring title or ownership of a defense article to a Foreign Person, in or outside the United States.

2. Extra-territorial transfers

- The re-export or re-transfer of defense articles from one Foreign Person to another, not previously authorized (i.e., transferring an article that has been exported to a foreign country from that country to a third country).
- Transferring the registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite covered by the USML, whether the transfer occurs in the U.S. or abroad.

3. Export of intangibles

- Disclosing technical data to a Foreign Person, whether in the U.S. or abroad, through oral, visual, or other means.
- Performing a defense service for a Foreign Person, whether in the U.S. or abroad.

ITAR Registration | Any entity operating in the U.S. that either manufactures or exports Defense Articles, Defense Services, or related Technical Data, as defined on the [United States Munitions List \(Part 121 of the ITAR\)](#), is required to register with the Directorate of Defense Trade Controls (DDTC). Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing and exporting activities. Registration does not confer any export rights or privileges but is generally a precondition for the issuance of any license or other approval for export. (22 CFR §§120.1(c) and (d); 122.1(c))

University/agency researchers are usually engaged only in the creation of unclassified technical data or in the fabrication of articles for experimental or scientific purposes, including research and development. Therefore, the University is not usually required to register with DDTC. (22 C.F.R. §§ 122.1(b) (3) and (b) (4)) However, if the University/Agency desires to involve Foreign Nationals in ITAR-controlled research, it must register with the DDTC to apply for a license or take advantage of certain license exemptions. License exclusions and exemptions specific to universities are described in detail below.

Authorization to Export | Once the ITAR Registration is complete, an exporter may apply for an export authorization by submitting a relatively simple license application for the export of Defense Articles or Technical Data; or a complex license application, usually in the form of a Technical Assistance Agreement (TAA), for a complex transaction that will require the U.S. entity to provide defense services. Most types of applications also contain additional certifications or transmittal letters, supporting documentation, and in some cases, non-transfer and use certification from the licensee and/or the foreign government of the licensee.

Embargoed Countries Under DDTC Regulations | ITAR Prohibitions | In general, no ITAR exports may be made either under license or license exemption to countries proscribed in 22 C.F.R. § 126.1, such as China, Cuba, Iran, North Korea, Sudan, and Syria. Additional restrictions apply to other countries; a complete list of U.S. arms embargoes is available online at: http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf.

EAR—Export of Commercial Dual-Use Goods and Technology | BIS regulates the export of commercial products and technology under the EAR, 15 CFR Parts 730-774. While there are some parallels to the ITAR, there also are some major differences in how the regulations and the relevant agencies function. They are similar in that both agencies focus on “technology transfer” and have been increasingly focused on enforcement. They differ in that the EAR covers a wider range of products and technology, requires a highly technical product classification process, and most importantly, the need for a license depends not only on the type of product but on its final destination under the EAR.

Items Controlled Under the EAR | Generally, all items of U.S. origin, or that are physically located in the U.S., are subject to the EAR. Foreign manufactured goods are generally exempt from the EAR re-export requirements if they contain less than a trivial (de minimis) level of U.S. content by value. Such de minimis levels are set in the regulations relative to the ultimate destination of the export or re-export. The EAR requires a license for the exportation of a wide range of items with potential “dual” commercial and military use, or are otherwise of strategic value to the U.S. (but not made to military specifications). However, only items listed on the CCL require a license prior to exportation. Items not listed on the CCL are designated as EAR99 items and generally can be exported without a license, unless the export is to an embargoed country or to a prohibited person or end-use (15 CFR Part 734). The following summarizes the types of items controlled under the EAR:

- Commodities**—Finished or unfinished goods ranging from high-end microprocessors to airplanes to ball bearings.
- Manufacturing Equipment**—This includes equipment specifically for manufacturing or testing controlled commodities, as well as certain generic machines, such as computer numerically controlled (CNC) manufacturing and test equipment.
- Materials**—This includes certain alloys and chemical compounds.
- Software**—This includes software specifically associated with particular commodities or manufacturing equipment, as well as any software containing encryption and the applicable source code.
- Technology**—Technology, as defined in the EAR, includes both technical data and services. Unlike the ITAR, there is generally no distinction between the two. However, the EAR may apply different standards to technology for “use” of a product than for the technology for

the “design” or “manufacture” of the product.

The Commerce Control List Categories | The CCL provides a list of very specific items that are controlled. The CCL is similar to the "dual–use" list adopted by other countries under the Wassenaar Arrangement (<http://www.bis.doc.gov/wassenaar/default.htm>), although the CCL has additional items. The CCL is updated from time to time, and is subject to change. The current CCL is available online at: http://www.access.gpo.gov/bis/ear/ear_data.html. A searchable PDF version of the CCL is also available online at: <http://www.learnexportcompliance.com/v.php?handle=ccl>. The CCL is divided into the nine categories below:

CATEGORIES

0. Nuclear Materials, Facilities & Equipment (and Miscellaneous Items)
 1. Materials, Mechanicals, Microorganisms, and Toxins
 2. Materials Processing
 3. Electronics
 4. Computers
 5. Part 1 Telecommunications
 5. Part 2 Information Security
 6. Sensors and Lasers
 7. Navigation and Avionics
 8. Marine
 9. Propulsion Systems, Space Vehicles, and Related Equipment

Classification | DDTC has jurisdiction to decide whether an item is ITAR– or EAR–controlled. DDTC encourages exporters to self–classify the item. If doubt exists, a CJ request may be submitted to DDTC to determine whether an item is ITAR– or EAR–controlled.

Once it is determined that an item is EAR–controlled, the exporter must determine its ECCN. To determine EAR’s applicability and the appropriate ECCN for a particular item, a party can submit a “Classification Request” to Department of Commerce Bureau of Industry and Security (BIS). To determine whether a license is required or would be granted for a particular transaction, a party can request that BIS provide a non–binding “advisory opinion.” While BIS provides assistance with determining the specific ECCN of a dual–use item listed on the CCL, if doubt exists as to whether an item is ITAR– or EAR–controlled, BIS will stay its classification proceeding and forward the issue to DDTC for jurisdiction determination.

Unlike the ITAR, for classification purposes BIS generally looks at the classification of the complete product being exported rather than at the classification of each subcomponent of the item (i.e., "black box" treatment), as opposed to the "see through" treatment under the ITAR.

Definition of Export and Re-export Under the EAR

Export—Export is defined as the actual shipment or transmission of items subject to the EAR out of the U.S. The EAR is similar to the ITAR in that it covers intangible exports of “technology,” including source code, as well as physical exports of items.

Deemed Export—Under the EAR, the release of technology to a Foreign Person in the U.S. is "deemed" to be an export, even though the release took place within the U.S. Deemed exports may occur through such means as a demonstration, oral briefing, or plant visit, as well as the electronic transmission of non-public data received abroad.

Re-export—Similarly to the ITAR, the EAR attempts to impose restrictions on the re-export of U.S. goods, i.e., the shipment or transfer to a third country of goods or technology originally exported from the U.S.

Deemed Re-export—Finally, the EAR defines "deemed" re-exports as the release of technology by a Foreign National who has been licensed to receive it to a national of another foreign country who has not been licensed to receive the technology. For example, ECCN 5E001 technology may be exported to a university in Ireland under the license exception for technology and software, but might require a deemed re-export license authorization before being released to a Russian Foreign National student or employee of that university in Ireland.

Authorization to Export | Once determined that a license is required, an exporter can apply for export authorization from BIS. Unlike the ITAR, there is no requirement for formal registration prior to applying for export authorization. Additionally, the EAR has no equivalent to the TAA used in ITAR exports. The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 Part § 740, as well as review of the notes on applicable license exceptions following the ECCN entry on the CCL. (15 Part § 740) Each category of the CCL contains ECCNs for specific items divided into five categories, A through E: "A" refers to specific systems or equipment (and components); "B" refers to test, inspection and production equipment; "C" refers to materials; "D" refers to software; and "E" refers to the technology related to that specific equipment. For example, most civilian computers would be classified under ECCN 4A994. The "4" refers to Category 4, Computers, and the "A" refers to the subcategory, i.e., equipment. Generally, if the last three digits begin with a 'zero' or 'one' (e.g., 4A001), the product is subject to stringent controls, whereas if the last three digits are a "9XX" (e.g., 4A994), then there are generally fewer restrictions on export.

Once an item has been classified under a particular ECCN, a person can determine whether a license is required for export to a particular country. The starting point is the information following the ECCN heading. The "List of Items Controlled" describes the specific items covered or not covered by the ECCN.

1. Determine Reason for Controls—The "License Requirements" section provides notations as to the reasons for control. These reasons include:

AT Anti-Terrorism CB Chemical & Biological Weapons

CC Crime Control CW Chemical Weapons

Convention

EI Encryption Items FC Firearms Convention

MT Missile Technology NS National Security

NP Nuclear

Nonproliferation

RS Regional Security

SS Short Supply XP Computers
SI Significant Items

The most commonly used controls are Anti-Terrorism and National Security, while other controls only apply to limited types of articles. For example, ECCN 4A994 lists “License Requirements:

1. Reason for Control: AT” (i.e., anti-terrorism) and the following:
Control(s) Country Chart AT applies to entire entry AT Column 1
2. Apply Country Chart—Once an item is identified as meeting the criteria for a particular ECCN, the user can refer to the chart found at 15 Part § 738, Supp. 1. If the particular control applies to that country, a license is required. For example, Syria has an “X” under AT Column 1, therefore a license would be required unless an exception applied.
3. Exceptions—The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 Part § 740, as well as review of the notes on applicable license exceptions following the ECCN entry.

These exceptions include:

LVS Items of limited value (value is set under each ECCN).

GBS Items controlled for national security reasons to Group B countries.

CIV Items controlled for national security reasons to particular countries where end-user is civilian.

TSR Certain technology and software to certain countries.

APP Computer exports to certain countries.

KMI Encryption exemption for key management.

TMP Certain temporary exports, re-exports, or imports, including items moving through the U.S. in transit.

RPL Certain repair and replacement parts for items already exported.

GFT Certain gifts and humanitarian donations.

GOV Exports to certain government entities.

TSU Certain mass-market technology and software.

BAG Baggage exception.

AVS Aircraft and vessels stopping in the U.S. and most exports of spare parts associated with aircraft and vessels.

APR Allows re-export from certain countries.

ENC Certain encryption devices and software.

AGR Agricultural commodities.

CCD Authorization of certain consumer communication devices to Cuba.

License exceptions specific to universities, as well as licensing procedures, are described in detail in *Important Exclusions Applicable to University Research* below.

OFAC Sanctions Program and Barred Entities Lists Sanctioned Countries | U.S. economic sanctions broadly prohibit most transactions between a U.S. person and persons or entities in an embargoed country, including Cuba, Iran, North Korea, Syria, and Sudan.¹³ This prohibition includes importation and exportation of goods and services, whether direct or indirect, as well as "facilitation" by a U.S. person of transactions between foreign parties and a sanctioned country. For example, sending a check to an individual in Iran could require an OFAC license or be prohibited. More limited sanctions may block particular transactions or require licenses under

certain circumstances for exports to a number of countries, including but not limited to Burma, Liberia, and Zimbabwe. Because this list is not complete and is subject to change, please visit <http://www.treas.gov/offices/enforcement/ofac/> or <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> for guidance. While most sanctions are administered by OFAC, BIS has jurisdiction over certain export prohibitions (via “embargo” regulations), as is the case with exports to Syria (15 Part § 746). In other words, a license from BIS would be required to ship most items to Syria and other OFAC-sanctioned countries or could be prohibited. Economic sanctions and embargo programs are country-specific and very detailed in terms of specific prohibitions.

Terrorist and Other Barred Entity Lists | Various U.S. Government agencies maintain a number of lists of individuals or entities barred or otherwise restricted from entering into certain types of transactions with U.S. persons. Particularly since 9/11, U.S. companies are beginning to become more assertive in attempting to place contractual terms with foreign companies related to these lists. Such lists must be screened to ensure that the University does not engage in a transaction with a barred entity. TAMU/TAMU-SA, under a TAMU System-wide license, uses export control compliance software to expedite screening of these and other lists, including, but not limited to:

□ Specially Designated Nationals and Blocked Persons List (SDN List)—Maintained by OFAC, this is a list of barred terrorists, narcotics traffickers, and persons and entities associated with embargoed regimes. Generally, all transactions with such persons are barred. The SDN List is available at: <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>.

With the exception of the sanctions on Cuba and North Korea, OFAC sanctions are promulgated under the International Emergency Economic Powers Act of 1977, 50 U.S.C. §§ 1701-1706 (IEEPA). The embargoes on Cuba and North Korea are promulgated under the Trading with the Enemy Act of 1917, 12 U.S.C. § 95a (TWEA).

□ Persons Named in General Orders (15 Part § 736, Supp. No. 1)—General Order No. 2 contains the provisions of the U.S. embargo on Syria; General Order No. 3 prohibits the re-exports to Mayrow General Trading and related parties. A link to the General Orders is available at: <http://www.access.gpo.gov/bis/ear/pdf/736.pdf>.

□ List of Debarred Parties—The Department of State bars certain persons and entities from engaging in the export or re-export of items subject to the USML (available at: <http://www.pmddtc.state.gov/compliance/debar.html>). Note that the number of countries subject to a U.S. arms embargo is much broader than those subject to OFAC embargoes. See http://www.pmddtc.state.gov/embargoed_countries/index.html.

□ Denied Persons List—These are individuals and entities that have had their export privileges revoked or suspended by BIS. The Denied Persons List is available at: <http://www.bis.doc.gov/dpl/Default.shtm>.

□ Entity List—These are entities identified as being involved in proliferation of missile technology, weapons of mass destruction, and related technologies. The Entity List is available at: <http://www.bis.doc.gov/Entities/Default.htm>.

□ Unverified List—These are Foreign Persons and entities for which BIS has been unable to verify the nature of their operations. While transactions with these entities are not barred, special due diligence is required. The Unverified List is available at:

http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html.

□ Excluded Parties List—These are entities that have been barred from contracting with U.S. Government agencies. In general, companies cannot contract with such parties in fulfilling a U.S. Government contract, either as prime or sub-contractor. Please see:

<https://www.sam.gov/portal/public/SAM/>.

□ Non-proliferation Sanctions maintained by the Department of State. These lists are available at: <http://www.state.gov/t/isn/c15231.htm>.

Other Related Regulations

Anti-Boycott Restrictions—“Participation” in such boycotts includes minor activity such as answering questions aimed at determining whether you are in violation of the boycott (e.g., whether or not you do business or have ever done business with Israel). Note that there are strict reporting requirements even where the U.S. person refuses to participate in a requested boycott action. The Anti-Boycott provisions of the EAR prohibit participation in international boycotts that have not been sanctioned by the U.S. government (e.g., the Arab League countries’ boycott of Israel). See EAR, 15 CFR Part 760.

Anti-Bribery Provisions—The Foreign Corrupt Practices Act of 1977 makes it unlawful to bribe foreign government officials to obtain or retain business.

Economic Espionage Act—Makes the theft or misappropriation of a trade secret a federal crime. Generally:

(a) whoever, intending or knowing that the offense will benefit any foreign government, foreign instrumentality, or foreign agent, knowingly—

(1) steals, or without authorization appropriates, takes, carries away, or conceals, or by fraud, artifice, or deception obtains a trade secret;

(2) without authorization copies, duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies, replicates, transmits, delivers, sends, mails, communicates, or conveys a trade secret;

(3) receives, buys, or possesses a trade secret, knowing the same to have been stolen or appropriated, obtained, or converted without authorization;

(4) attempts to commit any offense described in any of paragraphs (1) through (3);

or

(5) conspires with one or more other persons to commit any offense described in any of paragraphs (1) through (4), and one or more of such persons do any act to effect the object of conspiracy:

shall, except as provided in subsection (b), be fined not more than \$500,000 or imprisoned not more than 15 years, or both.

(b) Organizations. Any organization that commits an offense described in subsection (a) shall be fined not more than \$10,000,000.

Important Exclusions Applicable to University Research | Most agency/university research in the United States is not subject to regulation under the EAR or ITAR based on the exclusions described below.

1. Publicly Available/Public Domain Exclusion—Information and items in the public domain, as that term is defined in 15 CFR §734.3(b)(3) under the EAR and §120.11 under the ITAR, are not subject to control under those regulations.

a) Under the EAR, “publicly available” means:

- i. Printed and published materials, prerecorded phonographic records, exposed or developed microfilm, motion picture film and soundtracks, reproducing printed and published content; or
- ii. Publicly available software and technology that: (i) have been or will be published; (ii) arise from fundamental research (see definition below); (iii) are educational; or (iv) are included in certain patent applications.

b) Under the ITAR, “public domain” means information that is published and generally accessible or available to the public, through:

- i. Sale at newsstands and bookstores, through subscriptions available without restriction, through distribution at a conference open to the public, through any patent office, and through libraries, if accessible by the public; or
- ii. Public release of controlled technical data “in any form” (e.g., not necessarily in published form) after approval by the cognizant U.S. Government department or agency; or
- iii. Fundamental research (see definition below).

2. Fundamental Research Exclusion—The Fundamental Research Exclusion, as set forth in both the EAR and ITAR, is pursuant to an Executive Order issued by President Reagan in 1985 and still in effect today (NSDD 189). This Order requires that: “to the maximum extent possible, the products of fundamental research remain unrestricted.” The Order also directs that national security interests be protected through National Security Classification, not by restricting the conduct or reporting of unclassified research.

Pursuant to this Order, both the EAR and the ITAR exclude fundamental research from controls. Generally speaking, the Fundamental Research Exclusion applies only to information and Technical Data, and not to Controlled Physical Items.

Under the EAR, fundamental research means basic and applied research in science and engineering conducted by scientists, engineers, or students, at a university within the U.S. Normally, university research will be considered fundamental research (and not subject to the EAR) where the resulting information is ordinarily published and shared broadly within the scientific community. However, university research is NOT considered fundamental, and therefore is subject to the EAR, if:

- i. Publication of research results is subject to restriction or withholding of research results, or substantial prepublication review, by a sponsor (other than for the protection of patents and/or sponsor’s confidential proprietary

information); or

ii. The research is funded by the U.S. Government and is subject to specific access and dissemination controls.

Similarly, under the ITAR fundamental research means basic and applied research in science and engineering at accredited institutions of higher learning in the U.S., where the resulting information is ordinarily published and shared broadly in the scientific community. However, university research will NOT be considered fundamental, and is therefore subject to the ITAR if:

i. Publication of scientific and technical information resulting from the activity is restricted; or

ii. The research is funded by the U.S. Government and is subject to specific access and dissemination controls.

3. ITAR Exclusion for Educational Information—The ITAR specifically excludes from regulation information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, or universities. Such educational information is not included as part of the “Technical Data” that is subject to ITAR controls.

4. License Exceptions and Exemptions Related to Travel Outside the U.S.—Travel or transmissions to destinations outside the U.S. can also implicate export control regulations. A license may be required depending on which items, technology, or software are taken, which countries are visited, or whether defense services are provided to a foreign person. However, an exception or exemption from license requirements may exist.

A *License Exception* may be available for EAR controlled items, technology, or software if the individual travelling outside the U.S. can certify that he or she:

- will ship or hand-carry the items, technology, or software for TAMU-SA business only;
- will return or certify the destruction of the items, technology, or software within twelve (12) months of leaving the U.S.;
- will keep the items, technology, or software within his or her effective control;
- will take necessary security precautions to protect against the unauthorized export of the item, technology, or software; and
- will not ship or hand-carry the items, technology, or software to Iran, Syria, Cuba, North Korea, or Sudan without first consulting with TAMU-SA Risk and Compliance.

A *License Exemption* may be available to ITAR-controlled technical data transmitted outside the U.S. if the individual transmitting the technical data can certify that:

- the technical data is to be used overseas solely by a U.S. person(s);
- the U.S. person overseas is an employee of TAMU-SA or the U.S. Government and is not an employee of a foreign subsidiary;
- if the information is classified, it will be sent overseas in accordance with the requirements of the Department of Defense Industrial Security Manual; and
- no export will be made to countries listed by 22 §126.1.

5. ITAR Registration Exemptions—The ITAR exempts certain persons and entities from the registration requirement, including “Persons who engage only in the fabrication of articles for experimental or scientific purpose, including research and development.” However, ITAR

Registration is generally a precondition to the issuance of any license or other ITAR approval. (22 CFR § 122.1)

Exceptions to Agency Travel | TAMU-SA employees and students traveling outside the U.S. intending to bring laptops or other data storage equipment must ensure that there is no export controlled information contained on such devices unless there is a specific license or other authorization in place for that information and for that destination. Any individual intending to travel or transmit controlled data outside the U.S. should first consult with TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person.

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

1. Export License Exception (TMP)—The export of items, technology, commercial software, and encryption code is subject to export control regulations (this includes laptops, PDAs and digital storage devices). EAR makes an exception to licensing requirements for the temporary export or re-export of certain items, technology, or software for professional use as long as the criteria below are met. The exception does not apply to any EAR satellite or space-related equipment, components, or software, or to any technology associated with high-level encryption products. In addition, this exception does not apply to items, technology, data, or software regulated by ITAR.

2. Export License Exception (Baggage)—EAR makes an exception to the licensing requirement for the temporary export or re-export of certain items, technology, or software for personal or professional use as long as the criteria to which one certifies below are met. The exception does not apply to any EAR satellite or space-related equipment, components, or software, or to any technology associated with high-level encryption products. It also does not apply to ITAR items, technology, data, or software.

TAMU-SA employees should not ship or hand-carry controlled items, technology, or software to any country on OFAC’s Sanctions Program and Country Summaries list, (see <http://www.treasury.gov/resourcecenter/sanctions/Programs/Pages/Programs.aspx>) without first consulting with TAMU-SA Empowered Official (Director of Graduate Studies and Research), or designated person.

3. Laptop (TAMU-SA-owned) Baggage Exception—Employees who need to take their laptops out of the country in connection with TAMU-SA fundamental research may do so under the baggage exception for temporary export as long as:

- the country of travel is not under U.S. sanctions;
- the laptop is a “tool of trade;” and
- the laptop remains in their possession and control at all times.

Please note that other exceptions or exemptions may be available.

Record Keeping

1. ITAR Requirements—If ITAR-controlled Technical Data is exported under an exemption, certain records of the transaction must be kept even beyond TAMU-SA’s five (5) year retention period. (22 CFR §§122.5 and 123.26) Those records include:

- a description of the unclassified technical data;

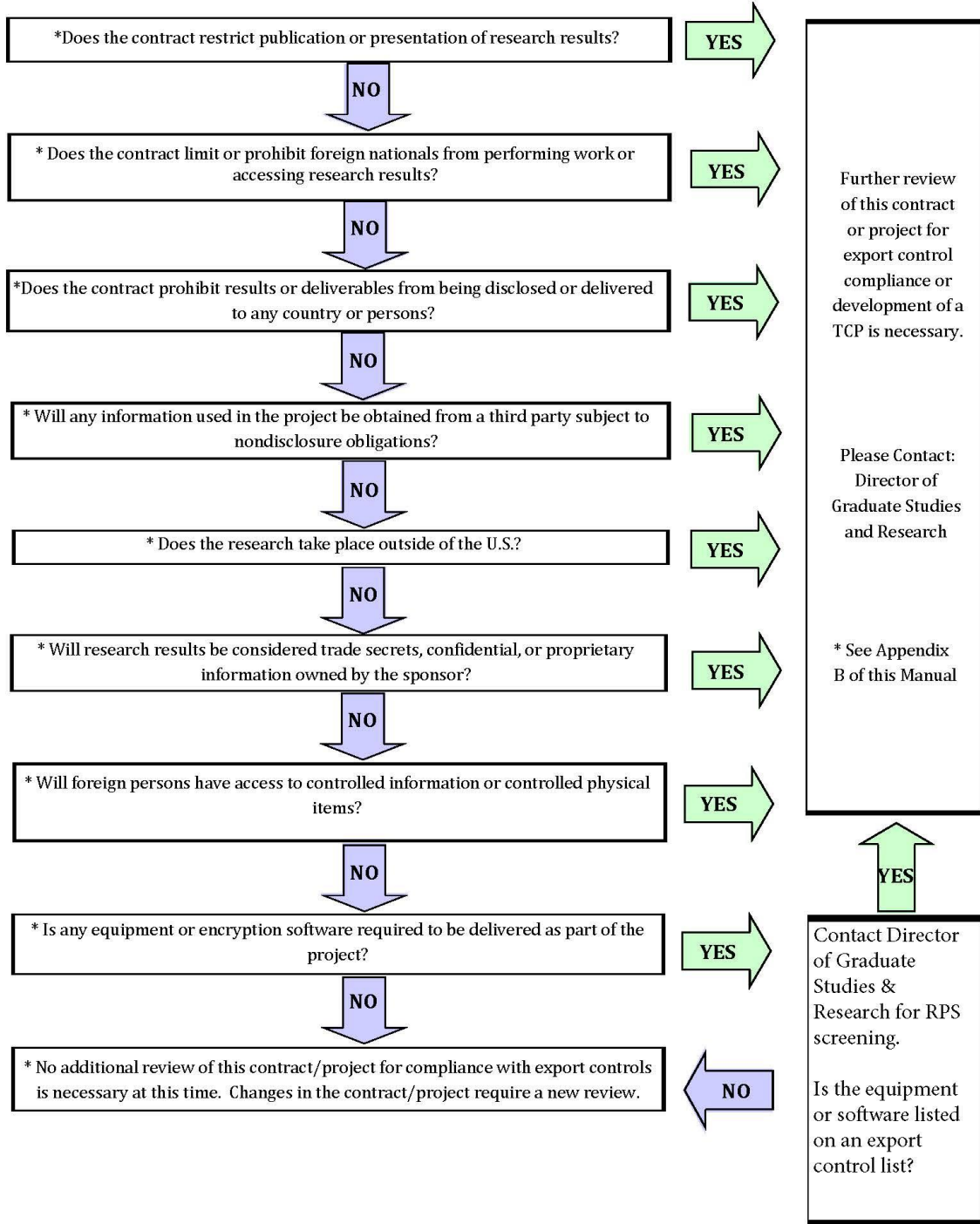
- the name of the recipient/end-user;
- the date/time of export;
- the method of transmission (e.g., email, fax, telephone); and
- the exemption under which the export took place.

Note that information which meets the criteria of being in the public domain, being educational information, or resulting from fundamental research is not subject to export controls under the ITAR. Therefore, the special requirement for recordkeeping when using an exclusion, exception, or exemption may not apply. However, it is a good practice to provide such description for each project to establish a record of compliance.

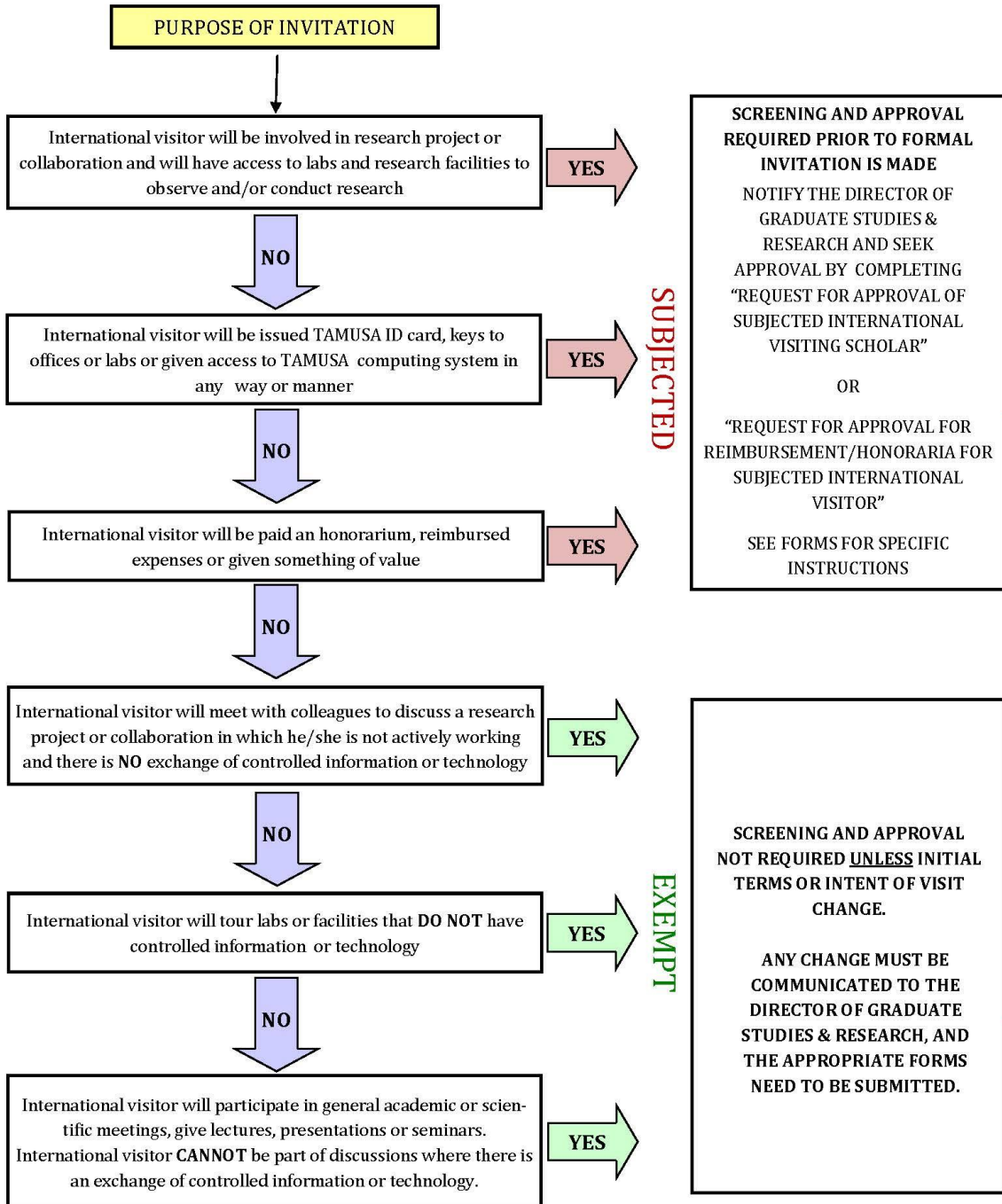
2. EAR Requirements—BIS has specific recordkeeping requirements. Generally, records required to be kept by EAR must be kept for a period of five (5) years from the project's termination date. However, if BIS or any other government agency makes a request for such records following a voluntary self-disclosure, the records must be maintained until the agency concerned provides written authorization otherwise. (15 CFR Part 762)

3. OFAC Requirements—Generally, OFAC requires that records be available for examination for at least five (5) years after the date of any transaction that is subject to the regulations. Except as otherwise provided in the regulations, every person holding blocked property is required to keep a full and accurate record of such property for at least five (5) years after the date such property is unblocked. (31 CFR § 501.601)

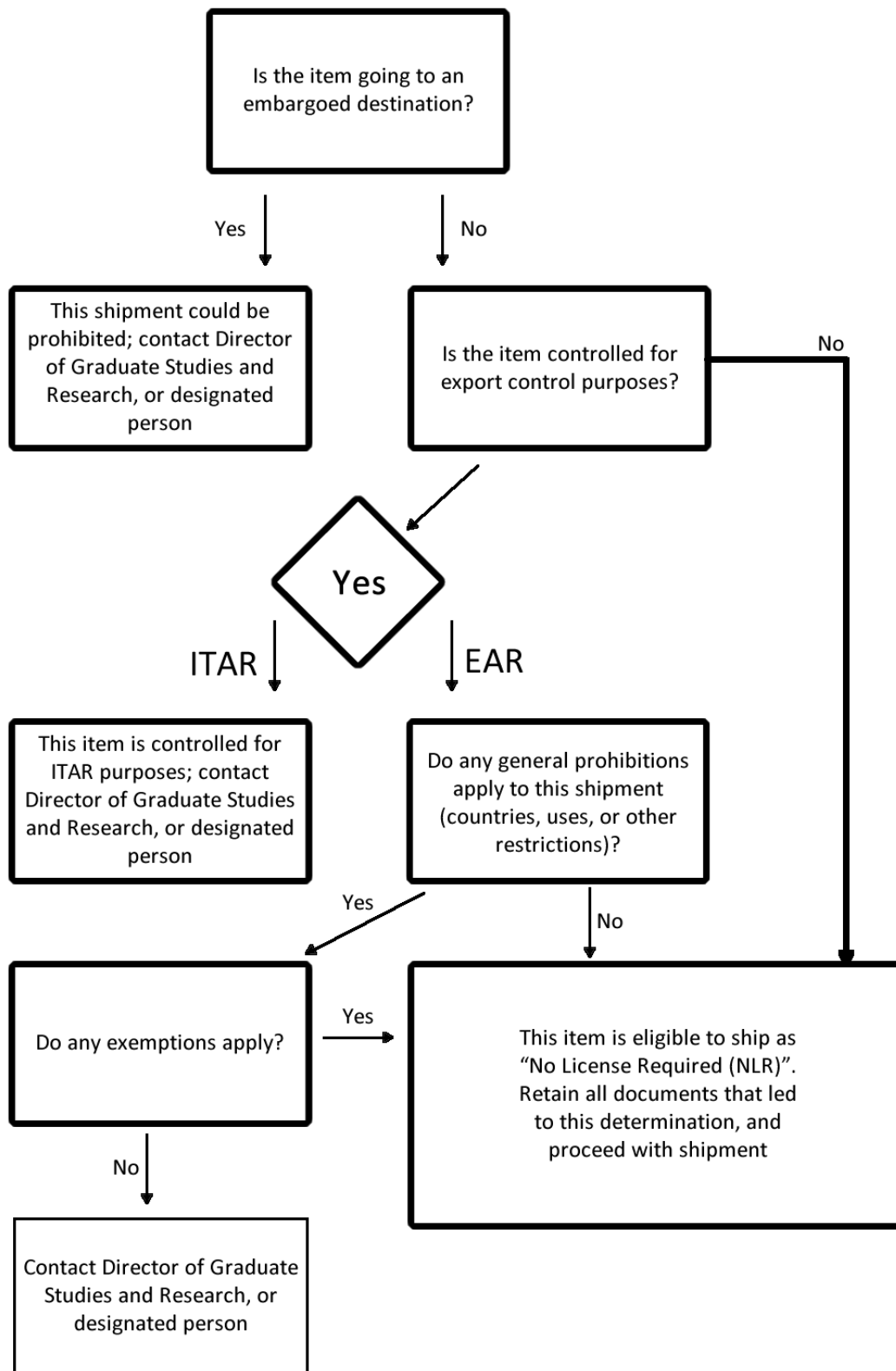
Texas A&M University—San Antonio Decision-Making Tree for Administration of Contract Provisions of Concern



Decision-Making Tree for International Visitors



Appendix C | Decision Making Trees
 Export Control Decision Making Tree for Shipping



Appendix D | International Travel Export License Exception Certification

TAMU-SA International Travel Export License Exception Certification

For Export administration Regulations (EAR) controlled items, technology, and software

This form does not serve as a blanket for all activities and must be submitted with each instance of request or certification.

Certifying individual:

Name _____ Date _____

Department/Unit _____ Telephone: _____

Mailing Address: _____ Email: _____

Scheduled Trip:

Location: _____ Trip Dates: _____

The export of items, technology, commercial software, and encryption code are subject to export control regulations. The Department of Commerce's Export Administration Regulations (EAR) make exceptions to licensing requirements for the temporary export or re-export of certain items, technology, or software for professional use as long as the criteria to which you are certifying below are met.

The encryption does not apply to any EAR satellite or space-related equipment, components, or software, or to any technology associated with high-level encryption products. In addition, this exception does not apply to items, technology, data, or software regulated by the Department of State's International Traffic in Arms Regulations (ITAR), or when traveling to Iran, Syria, Cuba, North Korea, or Sudan.

Please provide a detailed description of items, technology or software to which this certification applies (please be sure to list the common name of the item, the model, and the manufacturer. By my signature below, I certify that:

1. I will ship or hand-carry the items, technology, or software to _____ as a "tool of the trade" to conduct Texas A&M University-San Antonio business only.
2. I will return the items, technology, or software to the U.S. on _____ which is no later than 12 months from the date of leaving the U.S. unless the items, technology, or software are certified by me to have been consumed or destroyed abroad during this 12 month period.
3. I will not ship or hand-carry the items, technology, or software to Iran, Syria, Cuba, North Korea or Sudan.
4. I will keep the items, technology, or software under my "effective control" while abroad (defined as retaining physical possession of the item or keeping it secured in a place such as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility).
5. I will take security precautions to protect against unauthorized release of the technology while the technology is being shipped or transmitted and used abroad such as:
 - (a) Use of secure connections when accessing email and other business activities that involve the transmission and use of such technology.
 - (b) Use of password systems on electronic devices that store technology; and
 - (c) Use of personal firewalls on electronic devices that store the technology.

*** Keep a signed copy of this document with you when traveling abroad.**

Signature: _____ Date _____

Of certifying individual

TAMU-SA Export Controls Empowered Official (Director of Graduate Studies & Research) Use Only

Appendix D | Technology Control Plan

TAMU-SA – Technology control Plan

Applicable ECCN or USML Category: _____

ECCN—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. **USML**- is the United States Munitions List.

If there is no applicable ECCN or USML category, does the research project possess a “foreign person” restriction? (Use Visual Compliance software to screen items, entities, persons.)

Yes

No

I. SCOPE

This Technology Control Plan (TCP) applies to all elements of the Texas A&M University-San Antonio (TAMU-SA) research projects described below and all activities, which are not specifically identified in Export administration Regulations (EAR) (EAR 15 CFR §§734.8 and 7.34.9) and Supplement I and International Traffic in Arms Regulations (ITAR) (ITAR 22 CFR §120.11) as fundamental research and/or educational information.

Disclosure of export-controlled technology or information to foreign persons who are employees, visitors, or students may be considered an export under the ITAR, 22 CFR §§ 120-130 and/or EAR, 15 CFR §734, and may be subject to a Department of Commerce or Department of State License or Agreement. An export may occur by passing information or material that is export-controlled and can occur anywhere.

Principal investigators (PIs) and other appropriate parties, in coordination with Empowered Official (or designated person), will develop contract-specific guidance and procedures that will be considered part of this TCP for this specific research agreement described in Section V below.

II. PURPOSE

The purpose of the TCP is to ensure that technical information and/or technical data which is not specifically exempted as fundamental research and/or educational information by EAR or ITAR is not transferred to foreign persons (including employees, visitors, or students) unless approved by license or other authorization with the Department of State, directorate of Defense Trade controls (DDTC), or Department of Commerce Bureau of Industry and Security (BIS), as applicable.

III. BACKGROUND

Texas A&M University-San Antonio is committed to maintaining a research environment that is open for the free exchange of ideas among faculty and students in all forums: classrooms, laboratories, seminars, meetings, conferences, and elsewhere. Such an environment contributes to the progress of research in all disciplines. TAMU-SA is a State of Texas entity that provides (or will provide) fundamental research services.

IV. RESEARCH PROJECT DESCRIPTION

(Summarize the scope of the export, identify the research agreement, and clearly define the technical data, hardware, and/or defense services. Include background information on the full scope of the program or project.)

V. TEXAS A&M UNIVERSITY RESPONSIBILITIES

Texas A&M University-San Antonio’s Empowered Official (Director of Graduate Studies and Research), or designated person, will assist the Principal Investigator (PI) and researchers with complying with this TCP. The Compliance Officer will screen faculty, staff, students, and contractors who will work on the project against the Denied Party List, the Entity List, the Unverified List, the Specially Designated Nationals List, the Debarred List, the NSA nonproliferation Sanctions List, and General Order 3 part 736 of the EAR.

The University Empowered Official (or designated person) and PI will periodically evaluate compliance with this TCP. Any item of issue will be reported to the Empowered Official.

VI. PHYSICAL SECURITY AND PERSONNEL ACCESS

1. Identify the people who will be working on or have access to this project:

Name	Nationality
_____	_____
_____	_____
_____	_____

No additional personnel may be assigned to or have access to this project without first notifying University Empowered Official (Director of Graduate Studies and Research), or designated person, of:

A. Are foreign persons authorized to work on this project? Yes No
Note: Green Card Holders are considered U.S. persons for purposes of export laws.

B. If yes, is an export authorization required? Yes No

C. If yes, has one been obtained? Yes No
Note: No foreign persons may begin working on the project until such authorization is obtained or activated.

1. What is the authorization number? _____

2. What is the expiration date? _____

3. Who is the license holder? Name: _____ Phone: _____

2. Where will the work or activity be performed/conducted?

A. How will the room be secured?

B. Who will have access to keys?

Individuals with keys or key cards are expressly prohibited from permitting others to use their keys or key cards for access to the research site. Doors to secured areas may not be propped or left open.

C. If the room has multiple uses, how will the work areas be segregated to ensure there are no inadvertent transfers of project information or details?

D. Please address the storage of the project equipment:

Photographs of export-controlled items are strictly prohibited, and all cell phones must remain off and stored while in the room.

E. How will controlled data and equipment be marked or identified? Please note that all export-controlled information and equipment must be clearly marked and labeled.

F. How will visitor access be controlled?

Note: The researchers and staff who are authorized to enter the room when export-controlled material is present will escort all visitors and keep visitor logs during the time export-controlled material is in use. The University Empowered Official (or designated person) must be contacted to approve all visitors prior to granting access to the room and will document citizenship of all visitors when making access determinations.

Note: Authorized project personnel should not share or discuss project-related information with any individual not authorized to participate in the project.

Note: The custodial and facilities management staff access will be coordinated with the researchers, so that sensitive materials are securely locked away during their visit.

- G. Are there any restrictions on public dissemination or project-related information (i.e., publication or presentation restrictions)? If yes, please explain how this restriction will be managed.

VII. COMPUTING AND INFORMATION SECURITY

1. How will the project-related laboratory notebooks and any other hard copy materials be stored?

2. Where will electronic data be stored, and who will have access to the data?

3. How will access to electronic data be restricted to only those individuals authorized to access data?

Note: If the computers that collect and store export-controlled data are not on the Internet or a network and are password-protected, then files do not have to be encrypted. Any files removed from this system by any media will be encrypted. Virus protection software will also be provided for these computers. If isolation is not possible, 128-bit or better encryption must be utilized to protect information.

Removable hard drives may be used for data backup. When not in use, the backup removable drives will be securely locked away in a:

The only persons who will have keys are:

Disposal: Disposal of computer floppy drives, compact discs, flash drives, portable digital media devices, and papers that contain controlled information or technical materials will be coordinated with the University Empowered Official (Director of Graduate Studies and Research), or designated person.

Note: any computer hard drives containing sensitive information will be reformatted at the end of the contract and overwritten three (3) times with a DOD disk-wipe program.

4. Who is the assigned IT person? Is that person a U.S. citizen or legal permanent resident?
-

VIII. INTERNATIONAL TRAVEL

Computers or other electronic storage devices containing restricted information should not normally be used for travel. If a computer is necessary for international travel, all unnecessary technical information not required for the trip should be removed, and any information which is required must be authorized for the destination and end-use.

For meetings, foreign travel, emails, symposia, etc., where unlicensed controlled technology is potentially discussed, prior approval will be sought from TAMU-SA Empowered Official (Director of Graduate Studies and Research) and licenses obtained if necessary.

IX. COMMUNICATION PLAN

All personnel working on this project will be briefed on this Technology Control Plan (TCP), and will sign a briefing form (attached) acknowledging that they have received a copy of the TCP and were briefed on the contents of the plan. Any new personnel assigned to this project must be briefed and sign this TCP prior to beginning their assignment.

Employees will receive refresher training on this TCP at least once annually.

TEXAS A&M UNIVERSITY-SAN ANTONIO TECHNOLOGY CONTROL PLAN BRIEFING FORM

BACKGROUND

The sponsored project identified below may involve the use of export-controlled information or possess a foreign person participation restriction. The International Traffic in Arms Regulations (ITAR), enforced by the Department of State, and the export Administration Regulations (EAR), enforced by the Department of Commerce, prohibit sending or taking export-controlled or foreign person-restricted information out of the U.S. and disclosing or transferring export-controlled information to a foreign person inside or outside the U.S. A foreign person is defined as any person who is not a U.S. citizen or legal permanent resident of the U.S. Verbal and visual disclosures are equally prohibited, and there are no exceptions for foreign graduate students. Generally, export-controlled information includes items and information related to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, modification, demilitarization, destruction, processing, or use items with a capacity for substantial military application utility. Export-controlled material does not include basic marketing information about function or purpose, general system descriptions, or information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities or information in the public domain. It does not matter whether the actual intended use of export-controlled information is military or civil in nature.

PRINCIPAL INVESTIGATOR RESPONSIBILITIES

Principal Investigators (PIs) may be held personally liable for violations of the EAR and the ITAR, with significant financial and criminal penalties as a result. With that in mind, it is extremely important that PIs exercise care and caution in using and sharing export-controlled or foreign person-restricted information with others. For example, PIs should identify who among proposed research project personnel and collaborators are foreign persons. If a foreign person does not have security clearance, the State Department or the Department of Commerce (depending on whether the ITAR or the EAR controls the technology) must grant a license authorizing that person access to export-controlled information. In the absence of a license or security clearance, PIs should not leave export-controlled or foreign person-restricted information unattended. PIs should clearly identify export-controlled information and make copies only when absolutely necessary. PIs should securely store export-controlled information in locked file cabinets, locked drawers, or under password-protected computer files. PIs should avoid moving export-controlled information from one location to another, if at all possible.

CRIMINAL/CIVIL LIABILITY AND PENALTIES

The penalty for unlawful export and disclosure of export-controlled information under the ITAR is up to two (2) years imprisonment and/or a fine of one hundred thousand dollars (\$100,000). The penalty for unlawful export and disclosure of information controlled under the EAR is the greater of either a fine or up to one million dollars (\$1,000,000) or five (5) times the value of the export for a corporation and imprisonment of up to ten (10) years and/or a fine of up to two hundred fifty thousand dollars (\$250,000) for an individual. It is very important to keep in mind that PIs may be held personally liable for export control violations even when performing a project that is funded through the university.

Name of PI(s): _____
Department/Unit: _____
Project title: _____
Contract Number: _____
Sponsor: _____

CERTIFICATION

I hereby certify that I have read and understand this certification. I understand that I could be held personally liable if I unlawfully disclose, regardless of form or format, export-controlled information to unauthorized persons. I also acknowledge that I have read the Texas A&M University-San Antonio Technology Control Plan for this project and have discussed the plan with my supervisor (if not the PI) and that I agree to comply with its requirements. Furthermore, I agree to immediately contact TAMU-SA Compliance Officer with any questions I may have regarding the designation, protection, or use of export-controlled or foreign person-restricted information.

Principal Investigator Signature (print name and sign) _____
Date

**Texas A&M University-San Antonio Empowered Official (Director of Graduate Studies and Research)
Use Only**

Date Received _____
Print and Sign name of Person Receiving this document

Appendix D | Restricted Party Screening Request

Restricted Party Screening Request

Requestor: _____ Department: _____ Date: _____

Request to Screen (check person, entity or both):

Screened Persons (full/all names):

Last Name First Name Middle Name

Country (Citizenship)

Screened Entity (i.e., organization, company, bank, university name, etc.):

Name

Country

Reason for screening (full description to include associated PO, wire transfers, sponsored project number, etc.):

Accounts Receivables Other (please explain) _____

For use by University Export Controls Empowered Official (Director of Graduate Studies)only

Results:

No results returned

Match – found to be positive; secondary screener signature/date required.

Match-found to be a false positive; requires description of how this hit was determined to be a false positive and (2) secondary unit screener signatures/date required. Reason for determination of false positive:

Primary Screener Name (print)

Primary Screener Signature & Date

Secondary Screener Name (print)

Secondary Screener Signature & Date

Unit Notification _____

Attach Restricted Party Screening Results Page

Appendix D | Approval of Visitor Exchange Program

Approval of Visitor Exchange Program

(Visiting Scholars, Scientists, and Interns)

_____ (Department/College) requests authorization to make a faculty visitation agreement with a visiting scholar, as outlined in the TAMU-SA Export Controls Compliance Manual.

Person:

Last Name

First Name

Middle Name

Country (Citizenship)

Title

Institution:

Name of Institution

Country

Address

City

State

Zip Code

Home address:

Address

City

State

Zip Code

Country

Visitation Period: From _____ through _____

Identify sources of financial support for scholar during visit:

Provide Summary description of education and background or attach resume or vitae:

Describe the nature and purpose of the visit and how the visit is research-related:

The following questions are intended to address export-controlled issues. Please check “yes” or “no” regarding work contemplated during the scholar’s visit, both funded and unfunded. Hosts should review System and TAMU-SA policies, regulations, rules, and procedures regarding export controls on host responsibilities.

Yes No **Can the research be categorized as classified?**

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 the Department of Defense National

Industrial Security Program Operating Manual (NISPOM) requirements. Publication of classified research results can be legally withheld or restricted.

Yes No **Can the research be categorized as controlled unclassified information?**

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).

Yes No **Can the research be categorized as proprietary?**

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

Yes No **Does the project restrict participation to U.S. citizens or permanent residents only?**

Yes No **Can the research be categorized as restricted?**

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 is the state, a federal agency, or a private sponsor with or without commercial interests.

Yes No **Can the research be categorized as "fundamental?"**

"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.

Yes No **Will the visiting scholar have access to technical specifications of equipment where such specifications are not available through published materials such as commercially available manuals, documentation in libraries or the Web, information from teaching laboratories, or information available to interested communities either for free or where the price does not exceed the cost of production?**

Host:

_____	_____	_____
Name	Email Address	Telephone Number
_____	_____	
Signature	Date	

Approved by: (Department Chair/Unit Head)

_____	_____	_____
Name	Signature	Date

Approved by: (College Dean/Director's Office)

_____	_____	_____
Name	Signature	Date

This section to be completed by TAMU-SA Empowered Official (or designated person)
(Attach RPS screening form/documentation)

Yes No **Passed denied person/embargo list**

Yes No **Any restrictions? If yes, explain:**

Screener Name (empowered official) Signature Date

Screener Name (Research Compliance Official) Signature Date

Appendix D | Approval of Reimbursement/Honoraria for Subjected International Visitor

Approval of Reimbursement/Honoraria for Subjected International Visitor

Note: Complete this form if international visitors you are hosting are foreign persons having a residence in a foreign country who are not employees or enrolled students of TAMU-SA, and are coming to TAMU-SA 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 TAMU-SA.

This request is only applicable to international visitors that will not: (1) be involved in a research project or collaboration, and will not have access to laboratories and research facilities for the purposes of observing or conducting research, and/or (2) be issued a TAMU-SA Identification Card, keys to offices or laboratories, or otherwise be given access to the TAMU-SA computing system in any way or manner.

If the international visitor you are hosting falls within any of the above activities, you must not complete this request, but rather complete *Approval of Visiting Exchange Program* form.

_____ (Department/College/unit) requests authorization to reimburse expenses/pay honoraria/pay speaker fees to the international visitor shown below who does not fall within the definition of a visiting scholar and who is not involved in an employer-employee relationship with TAMU-SA.

Last Name	First Name	Middle Name
Country (Citizenship)	Title	
Address	City	
State	Zip Code	
Foreign Employer's Name	Country	
Address	City	
State	Zip Code	

Describe the purpose of the visit:

Indicate intended payment:

Speaker Fee Reimbursement of expenses Honoraria

Host faculty member:

Name	Signature	Date
------	-----------	------

**This section to be completed by TAMU-SA Empowered Official (or designated person)
(Attach RPS Screening form)**

Yes No **Passed RPS for person**

Yes No **Passed RPS for home institution or current employment**

Yes No Any restrictions? If yes, explain:

Screener Name	Signature	Date
---------------	-----------	------

Appendix D | Non-Compliant Explanation

Non-Compliant Explanation

Date: _____

Department/College/Unit: _____ Telephone: _____

Name: _____ Email Address: _____

Compliance Area: _____

Description of Compliance Issue (include violated TAMUS/TAMUSA Policies and/or Regulation, Rules and Procedures):

Explanation for the Unauthorized Action:

Explanation of Steps Taken to Avoid Recurrence:

Employee Responsible for Unauthorized Action:

Printed Name: _____ Signature & Date: _____

College or Unit Head:

Printed Name: _____ Signature & Date: _____

Department Chair or Director:

Printed Name: _____ Signature & Date: _____

Received by TAMU-SA Empowered Official (Director of Graduate Studies & Research), or designated person):

Printed Name: _____ Signature & Date: _____

Appendix D | Checklist for Export Controls Issues When Hiring Foreign Nationals
Checklist for Export Controls Issues When Hiring Foreign Nationals

Date _____

 Department/College

 Telephone Number

 Name of Foreign National

 Job Title

 Country (or countries) of citizenship

This form must be completed and submitted with any request to hire a foreign national worker. Your answers to these questions will help determine whether any aspect of your proposed hire will be subject to export control regulations. For questions or assistance in completing the form, contact TAMU-SA Empowered Official (Director of Graduate Studies and Research,), or designated person.

Question	Unknown	Yes	No
Do the job duties involve working with items/articles, software, or technology listed on the EAR/Commerce Control List or the ITAR/U.S. Munitions List? (See attachment at the end of this form for general categories on this list.)			
Do the job duties involve work with any embargoed or sanctioned country? Follow these links for listings: http://www.treasury.gov/resource-center/sanctions/programs/pages/programs.aspx and			
Will the job duties include working on a contract with any of the following (check each one that applies):			
A. Restrictions on publication (including reporting of the research results) or presentations at conferences			
B. Restrictions on the participation of foreign nationals			
C. Export control clauses or references to ITAR/EAR			
Do the job duties involve "use" or access to encryption software?			
Do the job duties involve activities that could be related to the spread or increase of nuclear, chemical, or biological weapons or missile technology?			

I have knowledge of the nature of the proposed employment. The answers I have provided are true and correct to the best of my knowledge and belief.

 Name of Supervisor of Foreign National

 Signature and Date

(Continue on reverse side)

Restricted Party Screening

Date of screening: _____

Name of Screener

Results

Signature

Date

Secondary Screener (if applicable)

Date of screening: _____

Name of Screener

Results

Signature

Date

Results

Appendix D | Traveling with Laptops

TAMU-SA Traveling With Laptops

Below are recommended protocols when preparing to travel internationally with laptops:

- Avoid taking laptops if possible.
- Backup any data and leave a safe copy of any DATA files at office prior to departure.
- If taking a laptop is required, then password-protect, encrypt, or remove all student, personal and proprietary information stored on your laptop.
- Make sure the system patches and antivirus are updated and the laptop FIREWALL is turned on.
- Have the TAMU-SA IT Department install encryption software and Forticlient SSL VPN software prior to departure and utilize a VPN connection at ALL TIMES while in foreign country.
- Hand carry the “International Travel Export License Exception Certification” form.

While traveling, carrying laptops could fall under the temporary license exclusion known as the “tools of the trade,” EAR makes an exception to licensing requirements for the temporary export or re-export of certain items, technology, or software for professional use as long as the criteria below are met. The exception does not apply to any EAR satellite or space-related equipment, components, or software, or to any technology associated with high-level encryption products. In addition, this exception does not apply to items, technology, data, or software regulated by the ITAR. Note that this license exception is not available for equipment, components, or software designed for use in/by/with most satellites or spacecraft. “Effective control” means retaining physical possession of an item or maintaining it in a secure environment.

- Hand-carried with the individual while traveling,
- Carried in the luggage or baggage that travels with the individual, or
- Shipped no more than thirty days prior to the individual’s departure or may be shipped to the individual at any time while the individual is outside the country.

Generally, no government export license is required so long as an individual:

- Retains his or her laptop computer, PDA, cell phone, data storage devices and encrypted software under their personal custody and effective control for the duration of travel.
- Does not intend to keep these items in these countries for longer than 1 year; and
- Is not traveling to an embargoed country.

You may use a wiped laptop, as recommended.