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

This manual and all documents referenced can be found online at http://tees.tamu.edu/researchcompliance/export-controls/

Any questions should be directed to the Office of Risk and Compliance at researchcompliance@tees.tamus.edu
Table of Contents

List of Abbreviations .................................................................................................................... 4

1. Commitment to Export Control Compliance ................................................................. 4

2. Key Actors Responsible For Export Control Compliance .......................... 5
   2.1 Empowered Official ....................................................................................................... 5
   2.2 Export Control Office/ Interactions with Government Agencies on Export Control
      Matters ......................................................................................................................... 5
   2.3 Research Administration .............................................................................................. 6
   2.4 TEES Administrators .................................................................................................. 6
   2.5 Individual Responsibility ............................................................................................... 6

3. Identification of Export Control Concerns ................................................................. 7
   3.1 Export Control Red Flags ............................................................................................. 7

3.2 Restricted Party and Technology Screening ............................................................. 7
   3.2.1 Restricted Party Screening (RPS) ........................................................................... 7
   3.2.2 Technology Screening ............................................................................................... 8
   3.2.3 Possible Match ........................................................................................................... 8
   3.2.4 Authorized Users ........................................................................................................ 8

3.3 Employment of Nonimmigrant Foreign Nationals ..................................................... 9

4. Research and Other Research-Related Agreements ................................................. 9
   4.1 Contract Provisions of Concern .................................................................................. 9
   4.2 Specific U.S. Government Access and Dissemination Controls ......................... 10
   4.3 Resolving Export Control Issues ............................................................................... 12
   4.4 Technology Control Plan ............................................................................................ 13
      4.4.1 Development ............................................................................................................. 13
      4.4.2 Appropriate Security Measures ............................................................................. 13
   4.5 Export Licensing ........................................................................................................ 14

5. International Visitors Hosted by TEES Researchers ................................................. 14
   5.1 Responsibility to Request Authorization to Visit ..................................................... 14
   5.2 No Authorization to Access Controlled Information, Controlled Physical Items 14
   5.3 RPS of International Visitors ..................................................................................... 14
   5.4 Procedure to Notify and Request Authorization to Visit ........................................ 15

6. International Activities ..................................................................................................... 15

7. Purchasing and Financial Transactions ..................................................................... 15

8. Technology Commercialization ..................................................................................... 16
9. Shipping

10. Travel

11. Recordkeeping

12. Training

13. Monitoring

13.1 TEES Risk and Compliance

14. Possible Violations

15. Disciplinary Actions
List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIS</td>
<td>Department of Commerce Bureau of Industry and Security</td>
</tr>
<tr>
<td>CCL</td>
<td>Commerce Control List</td>
</tr>
<tr>
<td>CJ</td>
<td>Commodity Jurisdiction</td>
</tr>
<tr>
<td>DDTC</td>
<td>Department of State Directorate of Defense Trade Controls</td>
</tr>
<tr>
<td>DFAR</td>
<td>Defense Federal Acquisition Regulation</td>
</tr>
<tr>
<td>EAR</td>
<td>Export Administration Regulations</td>
</tr>
<tr>
<td>FAR</td>
<td>Federal Acquisition Regulation</td>
</tr>
<tr>
<td>FRE</td>
<td>Fundamental Research Exclusion</td>
</tr>
<tr>
<td>ECCN</td>
<td>Export Control Classification Number</td>
</tr>
<tr>
<td>ISFS</td>
<td>International Scholar and Faculty Services</td>
</tr>
<tr>
<td>ITAR</td>
<td>International Traffic in Arms Regulations</td>
</tr>
<tr>
<td>MTA</td>
<td>Material Transfer Agreement</td>
</tr>
<tr>
<td>NDA</td>
<td>Non-Disclosure Agreement</td>
</tr>
<tr>
<td>OFAC</td>
<td>Department of the Treasury Office of Foreign Assets Control</td>
</tr>
<tr>
<td>OGC</td>
<td>Office of General Counsel, The Texas A&amp;M University System</td>
</tr>
<tr>
<td>PI</td>
<td>Principal Investigator</td>
</tr>
<tr>
<td>RC</td>
<td>Risk and Compliance</td>
</tr>
<tr>
<td>RPS</td>
<td>Restricted Party Screening</td>
</tr>
<tr>
<td>SDN List</td>
<td>Specially Designated Nationals and Blocked Persons List</td>
</tr>
<tr>
<td>SRS</td>
<td>Texas A&amp;M Sponsored Research Services</td>
</tr>
<tr>
<td>TAA</td>
<td>Technical Assistance Agreement</td>
</tr>
<tr>
<td>TAMU</td>
<td>Texas A&amp;M University</td>
</tr>
<tr>
<td>TAMUS</td>
<td>The Texas A&amp;M University System</td>
</tr>
<tr>
<td>TEES</td>
<td>Texas A&amp;M Engineering Experiment Station</td>
</tr>
<tr>
<td>TCP</td>
<td>Technology Control Plan</td>
</tr>
<tr>
<td>TTC</td>
<td>Texas A&amp;M Technology Commercialization</td>
</tr>
<tr>
<td>USML</td>
<td>United States Munitions List</td>
</tr>
</tbody>
</table>

1. Commitment to Export Control Compliance

It is the policy of Texas A&M Engineering Experiment Station (TEES) to comply with United States export control laws and regulations including, without limitation, those implemented by the Department of Commerce through its Export Administration Regulations (EAR)\(^1\) and the Department of State through its International Traffic in Arms Regulations (ITAR),\(^2\) as well as those imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC).\(^3\)

TEES has an obligation to implement an export control compliance program to reduce the risk of export control violations. All employees must be aware of, and are responsible for, the export control implications of their work and must ensure their activities conform to export control laws and regulations. There are severe institutional and individual sanctions for

---


\(^2\) The International Traffic in Arms Regulations (ITAR) 22 C.F.R. 120-130 can be found at [http://www.pmddtc.state.gov/regulations_laws/itar.html](http://www.pmddtc.state.gov/regulations_laws/itar.html).

\(^3\) The Office of Foreign Assets Control (OFAC) 31 C.F.R. 500-599 can be found at [http://www.ecfr.gov/cgi-bin/text-idx?SID=4ed410fd289488e21a17b90d0c33ef63&c=ecfr&spidx=ecfrbrowse/Title31/31cfrv3_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=4ed410fd289488e21a17b90d0c33ef63&c=ecfr&spidx=ecfrbrowse/Title31/31cfrv3_02.tpl).
violations of export control laws and regulations, including the loss of research funding, and loss of export privileges, as well as criminal and civil penalties.

TEES maintains a website with export control information and resources accessible at http://tees.tamu.edu/researchcompliance/export-controls/

Questions concerning export controls can be directed to TEES’ Risk and Compliance Office, telephone (979) 458-2586, (979) 458-7474 or by email at researchcompliance@tees.tamus.edu.

This Export Control Compliance Program Manual (the “Manual”) is designed to assist TEES employees with export control compliance. To the extent this Manual conflicts with TEES rules and/or procedures, the rules and/or procedures supersede. Acronyms are defined in the List of Abbreviations, page 5.

2. Key Actors Responsible For Export Control Compliance

2.1 Empowered Official

The Deputy Director is TEES’ Empowered Official for all purposes relating to applicable federal export control laws and regulations. The Empowered Official is responsible for authorizing license applications and other approvals required for compliance with export control laws and regulations and serves as TEES’ representative and point of contact with federal agencies having export control jurisdiction. The Empowered Official is the TEES official authorized to bind TEES in any proceedings before government agencies with export control responsibilities and has final responsibility for compliance with export control laws and regulations.

2.2 Export Control Office/ Interactions with Government Agencies on Export Control Matters

TEES Risk and Compliance (RC), in cooperation with other offices is responsible for directing and monitoring the Agency’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, RC will determine, or assist other offices and employees in export control assessments to determine compliance obligations with respect to TEES activities involving Foreign Persons or international activities under applicable export control laws and regulations as well as to determine the applicability of the Fundamental Research Exclusion (FRE)⁴ or other exclusions provided by law. RC will also assist with and conduct Restricted Party and Technology Screening (RPS)⁵ and consult with The Texas

⁴ As defined in TAMUS Policy 15.02, Export Controls - and - National Security Decision Directive 189, the Exclusion applies to “basic and applied research in science and/or engineering at an institution of higher education in the U.S. where the resulting information either is ordinarily published and shared broadly in the scientific community, or has been or is about to be published.”

⁵ As defined in TEES Rule 15.02.99 E1, Export Controls, “determines 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 Division of Research.”
A&M University System (TAMUS) Office of General Counsel (OGC) on export control matters as appropriate.

All interactions with government officials on export control matters will be made, administered, and/or managed by RC as determined appropriate. Any communications from government officials relating to TEES’ export control compliance program should be forwarded to RC for handling.

2.3 Research Administration

Research services and other appropriate offices work closely with RC, researchers, and other System Members in identifying export control issues related to research and ensuring that approvals are in place before the initiation of projects.

They are responsible for notifying RC and TEES’ Empowered Official of suspected violations to the extent TEES projects, contracts, or employees are affected.

They will conduct RPS on sponsors or work with RC for screening. In addition, they will utilize a checklist to review agreements to determine if there are any export control “red flags”. If any box is marked “yes” a “red flag” exists and the contract administrator will notify RC and seek guidance/approval as appropriate.

Any potential export control issues will be referred to RC for further handling as appropriate.

2.4 TEES Administrators

All TEES 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. They will need to collaborate with RC to implement the procedures set forth in this Manual.

2.5 Individual Responsibility

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

Researchers in collaboration with RC and other appropriate offices are responsible for full compliance with all federal export control laws and regulations involving their research. Violation of the export control laws or regulations can directly affect researchers, through potential fines, loss of research funding, and/or personal criminal liability. To meet his or her obligations, each PI should:
(a) Understand his or her export control obligations and participate in regular trainings to be able to identify export control issues;
(b) Be aware of the export control indicators in Section 3 of this Manual and note such information on any internal compliance or assurance forms;
(c) Determine, prior to initiation of research, whether any information or technology involved in his or her research is subject to export control laws or regulations;
(d) Review his or her research periodically to ensure continuing compliance with export control laws and regulations;
(e) If undertaking an export-controlled project, brief the students and other researchers involved in the project of their export control obligations; and
(f) Understand that any informal agreements or understandings entered into with a sponsor may negate the FRE (Fundamental Research Exclusion) or other key exclusions and impose export control obligations on the PI.

3. Identification of Export Control Concerns

3.1 Export Control Red Flags

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

(a) The results of research conducted at TEES or by TEES employees are intended for military purposes or for other restricted end uses under EAR 99.
(b) Foreign Persons will have access to Controlled Physical Items.
(c) Software including encryption features will be developed or purchased.
(d) TEES 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, individuals located in embargoed countries, or who are on prohibited or restricted end-user lists, as determined by RPS.
(f) The sponsor requires pre-approval rights over publications or prohibits the participation of Foreign Persons.
(g) The project requires the shipping of equipment, chemicals or biologicals to a foreign country.
(h) Other Red Flag Indicators: The Department of Commerce, Bureau of Industry and Security has posted a list of Red Flag Indicators for Things to Look for in Export Control Transactions (see http://www.bis.doc.gov/index.php/enforcement/oee/compliance/23-compliance-a-training/51-red-flag-indicators)

3.2 Restricted Party and Technology Screening

3.2.1 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.
In order to ensure that TEES is not conducting business with individuals or entities that have been debarred, denied export privileges, or are otherwise on one of the numerous government Restricted Party Lists, TEES must screen individuals and entities as provided in this Manual. TEES has licensed export control compliance software that permits authorized users to screen Restricted Party Lists electronically. The Director of Risk and Compliance is responsible for ensuring that authorized users have completed the basic online export control training course delivered via TrainTraq. Authorized users are limited to United States citizens and legal permanent residents who are full-time employees of the System or a System Member.

The export control compliance software performs Restricted Party Screening against all relevant U.S. Government lists, including: Department of Treasury Office of Foreign Assets Control (OFAC) Sanctions, Department of Commerce Bureau of Industry and Security (BIS) Denied Persons List, Department of Commerce BIS Entity List and Unverified List, Department of State Arms Export Control Act Debarred Parties, Department of State Designated Terrorist Organizations, and Department of State Nonproliferation Orders.

3.2.2 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. may be permissibly exported outside of U.S. territory. In order to ensure that TEES is in compliance with all export regulations TEES 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 TEES plans to export via the Export Administration Regulations (EAR) Commerce Control List (CCL) list and the International Traffic in Arms Regulations (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.

3.2.3 Possible Match

Authorized TEES users should conduct screening in accordance with TEES internal procedures. If there is a possible match of the party being screened with a party on a Restricted Party List (a “hit”), a secondary screening should be conducted using additional detailed information to confirm the possible match. If the hit cannot be ruled out after the secondary screening, the possible match should be forwarded to the Director of Risk and Compliance, along with the criteria used to determine the possible match. Upon further investigation, the Director of Risk and Compliance will make a determination. TEES is responsible for maintaining records of its determinations. Authorized TEES users are responsible for maintaining records of determinations that are not forwarded to the Director of Risk and Compliance, as provided in Section 11, Recordkeeping.
3.2.4 Authorized Users

On an annual basis, TEES will obtain a list of current authorized users from TAMU. Authorized users will be limited to those with business need only. TEES may limit the number of authorized users as it deems appropriate.

TEES will identify an individual to review RPS hits and determine definitive matches. Additionally, TEES will confirm the need for RPS access for each user on an annual basis.

3.3 Employment of Nonimmigrant Foreign Nationals

It is important for hiring departments/units to be aware that the ability to hire nonimmigrant Foreign Nationals for certain positions may be restricted or prohibited by export control laws. For example, nonimmigrant Foreign Nationals may be restricted or prohibited from performing employment responsibilities relating to certain information technology systems positions to the extent the work will involve access to Controlled Information or Items. Supervisors proposing to hire nonimmigrant Foreign Nationals should carefully consider whether or not the proposed employment will involve access to Controlled Information or Items before extending offers of employment. Supervisors are required to complete a Form 5VS. Engineering Human Resources will forward the 5VS and a Deemed Export Control Review Cover Letter to RC for an export control determination.

Any export control issues related to the hiring of nonimmigrant Foreign Nationals should be referred to the Director of Risk and Compliance for resolution as appropriate. The Director of Risk and Compliance will work closely with Engineering Human Resources to resolve hiring issues regarding nonimmigrant Foreign Nationals.

A Deemed Export Control Review Cover Letter can be found at http://tees.tamu.edu/researchcompliance/export-controls/

4. Research and Other Research-Related Agreements

Most data and information involved in TAMU/TEES research is 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. It is important for researchers and others involved in research to be aware of these key exclusions and to understand that their benefits can be lost if certain provisions are present in research-related agreements. For this reason, researchers should avoid entering into informal understandings or “side agreements” with research sponsors that restrict Foreign Person access to the research or that impose sponsor controls on the publication or other dissemination of research results. It is important to remember that the restrictions enforced by OFAC are not affected by ITAR, EAR, or the FRE.

4.1 Contract Provisions of Concern

Certain agreement provisions may negate the FRE and require seeking a license or undertaking monitoring or other activities. These provisions of concern are identified on the TEES Export Controls Decision-Making Tree for Administration of Contract Provisions of Concern and are summarized below.
If any of the following provisions are present (and cannot be negotiated away) in a research agreement or subcontract, a Material Transfer Agreement (MTA), or Non-Disclosure Agreement (NDA) related to research, RC should be consulted for guidance prior to execution of the agreement.

(a) Sponsor maintains the right to restrict or approve publication or release of research results (other than TEES’ standard customary brief delay to protect a sponsor’s confidential information or to preserve the patentability of an invention).
(b) Research data and/or other research results will be owned by the sponsor (e.g., as sponsor’s proprietary or trade secret information).
(c) Statements that export control regulations will apply to the research.
(d) Incorporation by reference of Federal Acquisition Regulations (FARs), agency-specific FARs, or other federal agency regulations, which impose specific controls on access to or dissemination of research results (see Section 4.2, below).
(e) Restrictions on, or prohibitions against, the participation of research personnel based on citizenship or national origin.
(f) Statements that the sponsor anticipates providing export-controlled items or information for use in connection with the research.
(g) Export controlled equipment or encrypted software is required to be delivered as part of the project.
(h) The research project will involve the use of export-controlled items or technical information obtained from a third party.
(i) The research will take place outside the United States.
(j) The research is funded by a non-US sponsor.

A Decision Making Tree for Administration of Contract Provisions of Concern can be found at http://tees.tamu.edu/researchcompliance/export-controls/

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 problematic clauses include, but are not limited to:

(a) FAR 52.227-14 (Rights in Data - General).

Grants the Government unlimited rights in data first produced or delivered under the contract. Government approval required to assert copyright in data first produced in the performance of the contract and not published in academic, technical or professional journals, symposia proceedings, or similar works. For basic or applied research suggest requesting Alternate IV to lift this restriction. Alternate IV provides the Contractor with the right to copyright data without Government permission.

(b) FAR 52.227-17 (Rights in Data - Special Works).

Prevents the release, distribution, and publication of any data originally produced for the Government’s internal use and represents an absolute restriction on the publication or dissemination of contractor-generated data. It should not apply to basic
and applied research and should be removed from the contract on the basis of exceptions to this clause’s applicability. Refer to FAR 27.405-1 (a).

(c) DFARS 252. 204-7000 (Disclosure of Information).

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

(d) DFAR 252.225-7048 (Export-Controlled Items).

States, “The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR.” The PI may be required 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. The PI may be required to certify that no Foreign Nationals will be working on the project. If no Foreign Nationals will be employed on the project, Contractor may disregard this clause. If the PI is doing basic research and the sponsor will take those results and work on the controlled technology at another location, Contract Negotiators may be able to delete this clause.

(f) ARL 52.005-4401 (Release of Information).

Includes reference to “non-releasable, unclassified information” and requires TEES to “confer and consult” with the sponsor prior to release of information. The sponsor retains publication/information approval, which voids the FRE. Contract Negotiators may wish to 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 (Export-Controlled Data Restrictions).

An export license is required prior to assigning any Foreign National to work on the project or allowing Foreign Nationals access to the work, equipment, or technical data generated by the project. Foreign Nationals make up a large portion of TEES’ scientific undergraduate, graduate, post-doctoral, and visiting scholar population. Many students depend on these projects to complete their thesis or dissertation. Students may need to ask the PI if the project is basic or applied research. If so, the project may fall under an ITAR exclusion. The PI may also ask the defense contractor if foreign students are allowed to work on the project. If yes, obtain confirmation in writing.

(h) DFAR 252.204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting).

The Contractor shall provide the security requirements described in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations, http://dx.doi.org/10.6028/NIST.SP.800-171 that is in effect at the time the solicitation is issued or as authorized by the Contracting Officer, and when the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor’s ability to perform the requirements of the contract that are designated as operationally critical support, the Contractor shall— Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts, and rapidly report all cyber incidents to DoD at http://dibnet.dod.mil.

4.3 Resolving Export Control Issues

When a potential export control issue is identified, RC will work with the parties involved, as appropriate, 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, RC will determine whether:

(a) the conditions merit an application for a license or other authorization,
(b) the conditions are such that an exclusion or license exception may be obtained, or
(c) a TCP, or other requirements for the conduct of the research, will be necessary to prevent an unauthorized deemed export of the technology from occurring.

RC will notify the Researcher, Contract Administration, and others, as appropriate, of the export control determinations. RC will maintain records of its determinations on a project basis, as provided in Section 11 Recordkeeping.
4.4 Technology Control Plan

4.4.1 Development

If RC determines a project, facility, or item is export-controlled, RC will work with the researcher, facility managers, and others, as appropriate, to develop and implement a TCP to secure the Controlled Technology. A TCP 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) personnel screening measures and training; and
(f) appropriate physical and informational security measures for the duration of the project.

4.4.2 Appropriate Security Measures

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

(a) Laboratory Compartmentalization - Project operation may be limited to secured laboratory areas physically shielded from access or observation by unauthorized individuals. Time Blocking - Project operation may be restricted to secure time blocks when unauthorized individuals cannot observe or access.
(b) Marking - Export-controlled information must be clearly identified and marked as export-controlled.
(c) 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.
(d) 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.
(e) Electronic Security - Project computers, networks, and electronic transmissions should be secured and monitored through User IDs, password controls, 128-bit Secure Sockets Layer encryption, or other federally approved encryption technology. Database access should be managed via a Virtual Private Network.6
(f) 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 subcontractors must occur only under signed agreements which fully respect the

---

6 A mechanism for providing secure, reliable transport over the 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.
Foreign Person limitations for such disclosures.

4.5 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, as determined by RC, RC will consult with the researcher and other appropriate parties to gather all the information needed to seek a license or other authorization. RC will inform the Empowered Official, or designee, of the details of the export control issue and make a recommendation that a license or other authorization should be obtained. The Empowered Official will request the license or other authorization from the cognizant agency with assistance from RC and the OGC as appropriate.

A sample Technology Control Plan can be found at http://tees.tamu.edu/researchcompliance/export-controls/

5. International Visitors Hosted by TEES Researchers

5.1 Responsibility to Request Authorization to Visit

All TEES employees intending to invite or host International Visitors as indicated in TEES Rule 15.02.99.E1 Export Controls, are required to work in collaboration with Engineering Human Resources to complete documentation. Engineering Human Resources will route to RC for export control review.

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 expressly permitted via an approved Technology Control Plan, license or as authorized in writing by the Director of Risk and Compliance. It is the responsibility of the TEES employee hosting the visitor to ensure compliance with export control restrictions and to promptly disclose and report to the Director of Risk and Compliance as specified in TEES Rule 15.02.99.E1, Export Controls, any violations thereof.

5.3 RPS of International Visitors

RPS of International Visitors includes RPS of the International Visitor’s employer and/or sponsoring entity. RPS is needed whenever a written or verbal invitation to visit TEES is made to an International Visitor regardless of whether:

(a) The International Visitor is present or not in the United States.
(b) TEES needs to sponsor the International Visitor for immigration purposes under the J-1 Exchange Visitor Program.⁷

⁷ For example, Foreign Persons may come to visit TAMU-TEES 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.
(c) TEES 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.

5.4 Procedure to Notify and Request Authorization to Visit

TEES employees inviting and hosting International Visitors must complete, prior to the visit, a request for Approval of a Visiting Scholar, Form 5VS, or any other form identified from time to time by Engineering Human Resources. (See TEES-New Hires, Change in Status, and Visiting Scholar Requests Decision Tree for details of the decision process.)

RC will conduct RPS on the International Visitor and report hits that cannot be ruled out on secondary screening to the Director of Risk and Compliance for review and resolution as set forth in Section 3.2.3 of this Manual. If there is no RPS hit, the Director of Risk and Compliance or the designated compliance officer will forward a copy of the approved form to Engineering Human Resources to initiate the immigration process. This would apply to instances in which TEES 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.

A Form 5VS and TEES-New Hires, Change in Status, and Visiting Scholar Requests Decision Tree can be found at http://tees.tamu.edu/researchcompliance/export-controls/

6. International Activities

TEES offices or centers responsible for administering international activities or programs should work in collaboration with RC for compliance with export control laws and regulations. In the case of TEES activities conducted outside the United States, it is the responsibility of the TEES activity organizer to seek and obtain appropriate export control approvals from RC for activities including, but not limited to, the following: execution of agreements performable outside the United States; and making payments to Foreign Person vendors.

7. Purchasing and Financial Transactions

All new vendors set up by TEES Fiscal Office will be screened for compliance with export control laws and regulations.

All outgoing foreign wires performed through the TEES Fiscal Office will be screened for compliance with export control laws and regulations.

For new vendors set up in BAM, it is the responsibility of the Division of Finance at TAMU to conduct such screening as described below and pursuant to the procedures set forth in Section 3.2 Restricted Party and Technology Screening.

Export controlled items noted through TEES Purchasing will be sent to RC for further review.
8. Technology Commercialization

The Texas A&M Technology Commercialization (TTC) submits invention disclosures for TEES to RC for Export Control reviews. RC has established procedures to address export control issues related to ITAR/EAR classifications of the invention disclosures it reviews on behalf of TTC.

9. Shipping

It is the responsibility of TEES employees who are shipping items outside the United States (including hand-carrying items such as research equipment, laptops, materials, data, or biological or chemical materials) to comply with export control laws and regulations. Any transfer of project information, equipment, materials, or technology out of the U.S. by any method may be subject to export control restrictions and may require an export license or be prohibited depending on the item, destination, recipient, and end-use. Even if an item is cleared through Customs, it may still require an export control license.

The simple act of sending a package to a foreign collaborator can result in a violation of export controls. Also, shipping to countries subject to embargoes should first be cleared by RC. Departmental personnel who are responsible for shipping packages out of the country should obtain a list of contents subject to embargoes before shipping and contact RC with any questions.

Shipping controlled items out of the U.S. without a license can result in significant individual fines of up to $250,000 and up to ten (10) years imprisonment. This applies to the individual, although there may be fines for TEES as well. One should not ship an item without taking the time to find out if a license is required.

Mislabeling the package or misrepresenting the classification of the item is illegal. Violations may result in civil penalties of up to $32,500 per violation, and deliberate violations may result in criminal prosecution of up to $1,000,000 and ten (10) years in prison. Under-invoicing or undervaluing an exported item is also against the law. Reporting an incorrect export value on a Shippers Export Declaration is a violation of export regulations.

Shipping-related export control issues, questions or concerns should be referred to RC for assistance and resolution.

A Decision Making Tree for Shipping can be found at http://tees.tamu.edu/researchcompliance/export-controls/

10. Travel

TEES employees traveling on TEES business or traveling with TAMU/TEES property are responsible for complying with export control laws and regulations when traveling outside the U.S. An export license may be required, depending on what items are taken, which countries

---

8 See OFAC's Sanctions Program and Country Summaries at http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx for the most current list of embargoed countries and U.S. sanctions.
are visited, or whether defense services are provided to a Foreign Person. The traveler or the traveler’s supervisor should contact RC with any potential export control concerns.

When making export control assessments while planning a trip abroad, travelers should think about the purpose of their trip, with whom they plan to interact, what they will take, where will they go and how long will they be gone. Items that are not needed should not be taken abroad. Individuals traveling outside the U.S. should consult with RC if they are thinking about taking encrypted software, Controlled Items/Information or unpublished research data or data not in the public domain, or if traveling to an embargoed country to conduct TEES activities. Some travel related activities/destinations may be prohibited and others may require a license. RC is available to assist with these assessments and ensure compliance with export control requirements.

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

TEES 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 intending to travel with or transmit Controlled Information outside the U.S. should first consult with RC. There are a number of exceptions and exclusions which may apply depending upon the facts and circumstances of each case.

If personal computers and other storage devices are taken outside the U.S. that contain encrypted software, a government license or other government approval for export may be required when traveling to certain countries. Temporary exports under the “Tools of Trade” license exception may apply when the laptop, PDA, cell phone, data storage devices, and encrypted software are:

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

Generally, as 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; (2) does not intend to keep these items outside the U.S. for longer than 1 year; and (3) the individual is not traveling to an embargoed country, no government export license is required. Note that this license exception is not available for equipment, components, or software designed for use in/by/with most satellites or spacecraft. “Effective control” means retaining physical possession of an item or maintaining it in a secure environment.

Researchers frequently need to take other TAMU/TEES equipment temporarily outside of the United States for use in Agency activities. Often, but not always, the tools of trade license
exception applies. Some equipment (e.g., global positioning systems (GPS), thermal imaging cameras, inertial measurement units, and specialty software) is highly restricted and may require an export license, even if one hand carries it. Individuals intending to take TAMU/TEES equipment other than a laptop computer, PDA, cell phone, or data storage devices, abroad should contact RC to determine if an export license or other government approval is required prior to taking the equipment out of the country. See Export License Exception (TMP) Certification for use by travelers, as appropriate, to document the application of the one-time TMP license exception. TEES provides an International Travel - Export Control Screening Checklist which may be used by travelers, on a voluntary basis, to assist in the identification of potential export control issues. It is important to note that activities involving teaching or training Foreign Persons on how to use equipment may require a license. Contact RC for information on applicable travel exemptions and exceptions.

An Export Control Screening Checklist and Export License Exception (TMP) Certification can be found at
http://tees.tamu.edu/researchcompliance/export-controls/

11. Recordkeeping

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

(a) the record retention period required by the applicable export control regulations (see 15 C.F.R. Part 762 (EAR); 22 C.F.R. Sections 122.5, 123.22, and 123.26 (ITAR); and 31 C.F.R. 501.601(OFAC), or
(b) the period required for the retention of records as set forth in The Texas A&M University System policies and regulations and TEES rules.

Records will be maintained by RC or as otherwise designated in this Manual.

TEES’ 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 TEES 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).

12. Training

TEES Rule 15.02.99.E1 Export Controls requires basic export control training for TEES employees with managerial or supervisory authority over Foreign Persons or projects involving Controlled Information or Controlled Physical Items.

Export Control Basic Training delivered via TrainTraq is required for any individuals listed as personnel on export controlled projects or any person hosting a foreign visiting scholar.

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

13. Monitoring

Export control compliance and monitoring is a shared responsibility coordinated by RC in cooperation with various other offices and at TEES and throughout The Texas A&M University System.

To maintain TEES’ export control compliance program, and ensure consistent adherence to U.S. export control laws and regulations, TEES has adopted the following Export Control Compliance Monitoring Plan.

13.1 TEES Risk and Compliance

As part of its overall responsibility for directing and monitoring TEES’ export control compliance program, RC will conduct periodic self-assessments of TEES' compliance with export control laws and regulations. Any deficiencies will be discussed with the Empowered Official and/or Dean as appropriate. The purpose of the reviews is to identify possible violations, and to identify deficiencies in training, procedures, etc. that should be rectified.

The reviews will assess the adequacy of procedures designed to ensure compliance with export control laws and regulations; evaluate controls implemented to ensure compliance with TEES rules and procedures; and test the effectiveness of the controls in one or more areas such as:

(a) Recordkeeping
(b) Procedures
(c) Training/Education
(d) Restricted party screening
(e) Technology screening and control plans
(f) Project/transaction screening
(g) Personnel/visitor screening

RC will work with TEES offices to ensure that any deficiencies identified will be rectified by the affected TEES office and will conduct appropriate follow up to monitor the implementation of any corrective actions. Suspected violations of U.S. export control laws or regulations will be reported to Empowered Official and/or Dean as appropriate.

Internal reviews should be conducted on a periodic basis. The results of the internal reviews should be reported to the department/unit head and RC, and/or Empowered Official. The department/unit head is responsible for addressing any deficiencies and for following up on corrective actions. Any suspected violations of U.S. export control laws or regulations will be reported to the Empowered Official through RC.
14. Possible Violations

Each TEES employee has the responsibility to report possible violations of United States export control laws or regulations. Suspected violations should be reported to the Empowered Official, together with the details of the suspected violation. Suspected violations may also be reported to RC at researchcompliance@tees.tamus.edu, (979) 458-2586, or (979) 458-7474; or via the EthicsPoint website. Possible violations of United States export control laws or regulations will be investigated by the Empowered Official, or designee, to the extent deemed necessary. In accordance with TAMUS policies and regulations, and TEES rules and procedures, the Empowered Official is authorized to suspend or terminate 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.

15. Disciplinary Actions

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