



**TEXAS A&M ENGINEERING  
EXPERIMENT STATION**

## **EXPORT CONTROL COMPLIANCE PROGRAM MANUAL**

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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/ethics-compliance/export-controls/index.html>.

Any questions should be directed to TEES Research Compliance (RC) at [researchcompliance@tees.tamus.edu](mailto:researchcompliance@tees.tamus.edu).

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## List of Abbreviations

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

## 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)<sup>1</sup> and the Department of State through its International Traffic in Arms Regulations (ITAR),<sup>2</sup> as well as those imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC).<sup>3</sup>

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 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.

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<sup>1</sup>The Export Administration Regulations (EAR) 15 C.F.R. 700-799 can be found at <https://www.govinfo.gov/content/pkg/CFR-2012-title15-vol2/xml/CFR-2012-title15-vol2-subtitleB-chapVII.xml>.

<sup>2</sup>The International Traffic In Arms Regulations (ITAR) 22 C.F.R. 120-130 can be found at [https://www.pmdotc.state.gov/dotc\\_public?id=dotc\\_kb\\_article\\_page&sys\\_id=%2024d528fddbfc930044f9ff621f961987](https://www.pmdotc.state.gov/dotc_public?id=dotc_kb_article_page&sys_id=%2024d528fddbfc930044f9ff621f961987).

<sup>3</sup>The Office of Foreign Assets Control (OFAC) 31 C.F.R. 500-599 can be found at <https://www.govinfo.gov/https://www.govinfo.gov/app/details/CFR-2004-title31-vol2/CFR-2004-title31-vol2-part500>

TEES maintains a website with export control information and resources accessible at <https://tees.tamu.edu/ethics-compliance/export-controls/index.html/>

Questions concerning export controls can be directed to TEES Research Compliance at [researchcompliance@tees.tamus.edu](mailto: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 4.

## 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 Research 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 Exception (FRE)<sup>4</sup> or other exceptions provided by law. RC will also assist with and conduct Restricted Party and Technology Screening (RPS)<sup>5</sup> and consult with The Texas A&M University System (TAMUS), Office of General Counsel (OGC) on export control matters as appropriate.

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<sup>4</sup> As defined by the U.S. Department of Commerce, Bureau of Industry and Security under [15 CFR § 734.8 \(c\)](https://www.govregs.com/regulations/expand/title15_chapterVII_part734_section734.8), [https://www.govregs.com/regulations/expand/title15\\_chapterVII\\_part734\\_section734.8](https://www.govregs.com/regulations/expand/title15_chapterVII_part734_section734.8) “Fundamental research” means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

<sup>5</sup> As defined in TEES Rule 15.02.99.E1, *Export Controls*, RPS 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 TEES Research Compliance.

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

The TEES Contracts Office and Texas A&M Sponsored Research Services (SRS) 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 of any export control concerns with TEES projects and contracts.

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 "red flag" exists, 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 Exception) or other key license exceptions 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.
- (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 Personal Digital Assistants (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/oeec/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 RC 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 [researchcompliance@tees.tamus.edu](mailto:researchcompliance@tees.tamus.edu), along with the criteria used to determine the possible match. Upon further investigation, RC will make a determination. RC is responsible for maintaining records of its determinations, as provided in Section 11, Recordkeeping. Authorized TEES users are responsible for maintaining records for five years of determinations that are not forwarded to RC.

### 3.2.4 Authorized Users

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

RC will review reported RPS hits from authorized users and provide guidance, if any are definitive matches.

### 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 EC for an export control determination.

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

## 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 the following exceptions: (a) the Public Domain Exception; (b) the Fundamental Research Exception (FRE); and/or (c) the Educational Information Exception. It is important for researchers and others involved in research to be aware of these key exceptions 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 TEES to obtain an export license or to undertake monitoring or other activities. Examples of these provisions of concern are identified in *Appendix A: 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.

#### 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. (See *Appendix B: Troublesome Clauses* for some example clauses.)

#### 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.<sup>6</sup>
- (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 sub-contractors must occur only under signed agreements which fully respect the

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<sup>6</sup> 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.

### 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 RC. 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 TEES Empowered Official as specified in TEES Rule **15.02.99.E1, *Export Controls***, any violations thereof. Violations may also be reported via the [Ethics and Compliance Hotline](#).

#### 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.<sup>7</sup>

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<sup>7</sup> 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 (available from Engineering Human Resources), or any other form identified from time to time by Engineering Human Resources. (See *Appendix C: 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 RC for review and resolution as set forth in Section 3.2.3 of this Manual. If there is no RPS hit, the RC or the designated compliance officer will forward a copy of the approved form to Engineering Human Resources to initiate their 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.

### 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 AggieBuy, 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 an established process 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<sup>8</sup> 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.

Shipments of export-controlled items must be entered into the U.S. Census Bureau's Automated Export System (AES). If you are using a freight forwarder/broker, you must ask for a copy of the AES/EEI filing and maintain a copy of your records for five years. Please contact TEES Research Compliance for assistance before shipping anything that is export-controlled outside of the U.S.

Shipping controlled items out of the U.S. without a license can result in significant individual fines of up to \$1,000,000 and up to twenty (20) 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 \$10,000 per violation, and deliberate violations may result in criminal prosecution of up to \$1,000,000 and twenty (20) 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. (See *Appendix D: Decision Making Tree for Shipping*, for additional details.)

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<sup>8</sup> See OFAC's Sanctions Program and Country Information at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> for the most current list of embargoed countries and U.S. sanctions. This link takes you to the OFAC Programs page which currently highlights COVID-19 response, but the link is still good for all OFAC programs.

## 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. All foreign travel must be preapproved per *System Regulation 21.01.03, Disbursement of Funds* and the TEES Foreign Travel Procedures Memo. An export license may be required, depending on what 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 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 exception to the export control regulations, e.g., the Publicly Available/Public Domain Exception, 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.

(\*See *Appendix E: Temporary Imports, Exports, and Reexports (TMP) Certification for TEES Employees*)



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. *Appendix F: International Travel - Export Control Screening Checklist* 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.

## 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 the 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**

TEES export control compliance program is primarily centralized within TEES Research Compliance. Export control compliance and monitoring is coordinated by RC in cooperation with various other offices 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 Research 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, regulations, and procedures. Processes are continually discussed and improved upon, to ensure that any deficiencies identified are rectified and appropriate corrective action is implemented. Any deficiencies will be discussed with the Empowered Official and/or Dean as appropriate.

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

### **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 EC RC at [researchcompliance@tees.tamus.edu](mailto:researchcompliance@tees.tamus.edu), 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.

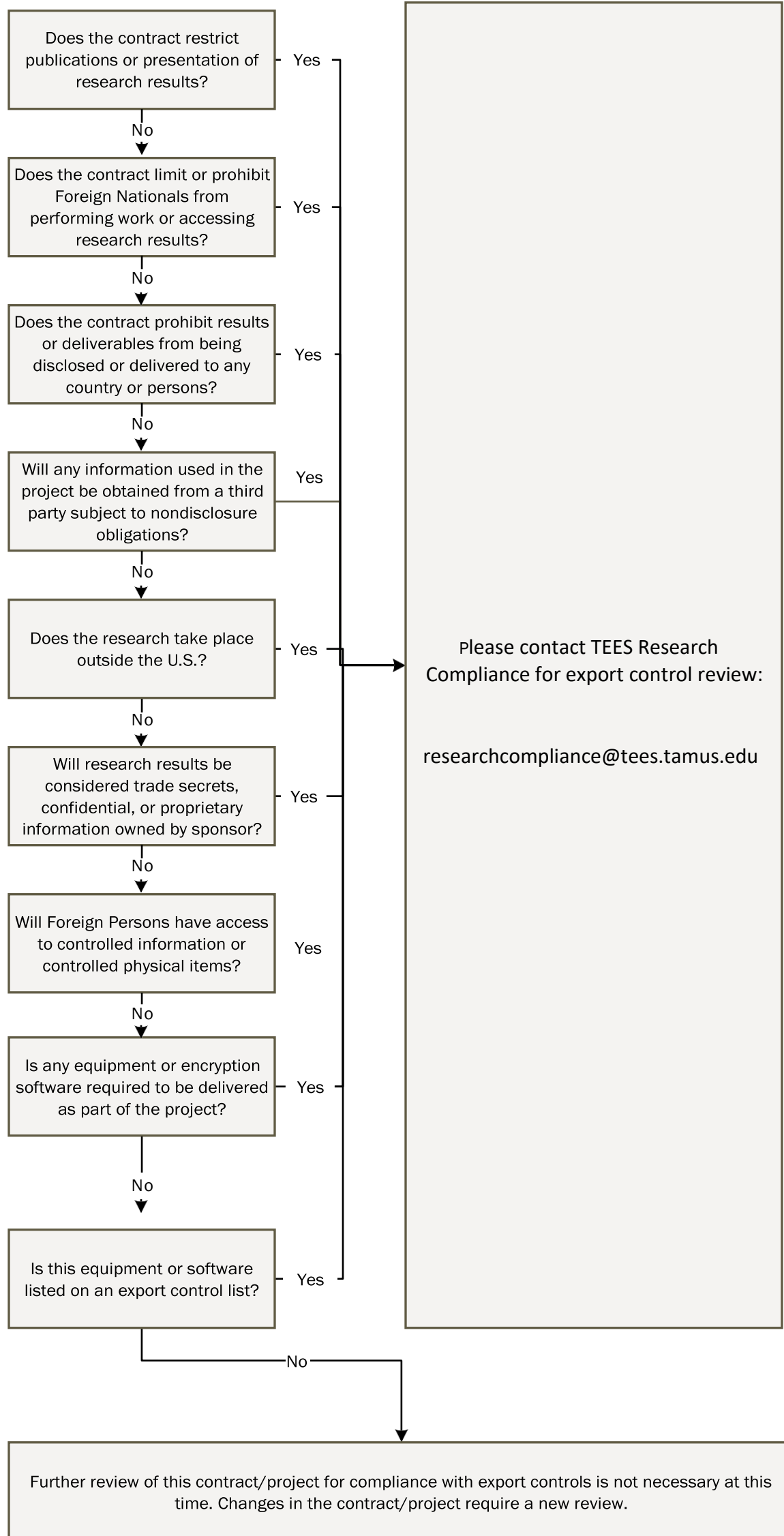
## **15. Disciplinary Actions**

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.



**Appendix A:**

**Decision Making Tree for Administration of Contract Provisions of Concern**



AFMC 5352.227-9000	AFMC 5353.227-9000	ARL 52.004-4400	Controlled Unclassified Information (CUI)
DEAR 952.204-71	DFAR 252.204-7008	DFAR 252.204-7009	DFARS 252.204-7000
DFARS 252.204-7012	DFARS 252.227.7025	FAR 52.204-21	FAR 52.227-17
FAR 52.239-1	NAVAIR 5252.204-9504		

#### **AFMC 5353.227-9000 - Export Controlled Data Restrictions**

This clause requires an export license prior to assigning any foreign national to work on the project or allowing foreign persons access to the work, equipment or technical data generated by the project. TEES Research Compliance should be notified when this clause is included in the contract. A Technology Control Plan will be required. The project should be flagged in Maestro for Export Control - Sponsor Restrictions on Participation of Non-US Persons.

#### **AFMC 5352.227-9000 - Export-Controlled Data Restrictions**

This clause requires an export license prior to assigning any foreign national to work on the project or allowing foreign persons access to any equipment or technical data generated by the project. TEES Research Compliance should be notified when this clause is included in the contract. A Technology Control Plan will be required. The project should be flagged in Maestro for Export Control - Sponsor Restrictions on Participation of Non-US Persons, and Export Control - Equipment, software or technology used in the project is designed for (or could be modified for) military use or use in outer space.

#### **ARL 52.004-4400 - Approval of Foreign Nationals Performing Under Contract Required**

This is a foreign national restriction and voids FRE. TEES Research Compliance should be notified when this clause is included in the contract. A Technology Control Plan will be required. The project should be flagged in Maestro for Export Control - Sponsor Restrictions on Participation of Non-US Persons.

#### **Controlled Unclassified Information (CUI)**

TEES agrees to properly handle all Controlled Unclassified Information (CUI) that TEES may have access to or generate under the performance of this Contract. TEES is responsible for properly identifying, marking, protecting, storing, and destroying any and all CUI in accordance with applicable Federal agency policy. This is really an IT data security issue, although there is chance that this research may also be export controlled and require a Technology Control Plan. TEES Research Compliance, Engineering IT (Andrew Stokes), and the Research Security Office (Kevin Gamache and Clay Bryan), should be notified when a contract contains this clause. The project should be flagged in Maestro for NIST Special Publication 800-171 (Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations).

#### **DEAR 952.204-71 - Sensitive Foreign Nations Controls**

This is a foreign national restriction and voids the Fundamental Research Exclusion (FRE). When the sponsor includes this clause, they are required to attach a list of countries that they consider to be "Sensitive Nations". If they have not provided the list, please ask them to provide the list or else confirm that the clause is not applicable to TEES. If they do provide a list, please notify TEES Research Compliance that this clause is included in the contract. A Technology Control Plan will likely be required. Project should be flagged in Maestro for Export Control - Sponsor Restrictions on Participation of Non-US Persons.

### **DFAR 252.204-7008 – Compliance with Safeguarding Covered Defense Information Controls**

This clause says that TEES must implement the same security requirements required by DFAR clause 252.204-7012 for all covered defense information on all covered contractor information systems that support the performance of this contract. If TEES proposes to vary from any of the NIST requirements, a written explanation must be submitted to the DoD Chief Information Officer (CIO) either as to why the requirement is inapplicable or how an alternative but equally effective measure will be used.

Engineering IT (Andrew Stokes) will need to adjudicate variance requests prior to contract award. This is really an IT data security issue, although there is chance that this research may also be export controlled and require a Technology Control Plan. TEES Research Compliance, Engineering IT (Andrew Stokes), and the Chief Research Security Officer (Kevin Gamache) should be notified when this clause is included in the contract. The project should be flagged in Maestro for DFARS 252.204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting).

### **DFAR 252.204-7009 – Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information**

This clause prohibits third party contractors who are assisting with assessments of cyber incidents from unauthorized release or disclosure. TEES agrees that the conditions listed on the clause must apply to any information it receives or creates in the performance of this contract that is information obtained from a third-party's reporting of a cyber incident pursuant to DFAR clause 252.204-7012. This is a publication restriction and voids the FRE. TEES Research Compliance should be notified when this clause is included in the contract. A Technology Control Plan (TCP) or Restriction of Distribution or Publication (RDP) document will be required. The project should be flagged in Maestro for Export Control - Pre-publication Approval Required by Sponsor.

### **DFARS 252.204-7000 - Disclosure of Information**

This clause is included as boilerplate for most DOD contracts. Unless the contract or the **DOD program officer** has specifically stated in writing that the project will only involve fundamental research, then a Technology Control Plan or RDP will be required. TEES Research Compliance should be notified when this clause is included in the contract. The project should be flagged in Maestro for Export Control - Pre-publication Approval Required by Sponsor.

### **DFARS 252.204-7012 – Safeguarding Covered Defense Information and Cyber Incident Reporting**

This clause is mandatory in all new DOD contracts and results in the requirement of additional IT security controls if unclassified controlled technical information is exchanged during the course of the contract. This is really an IT data security issue, although there is chance that this research may also be export controlled and require a Technology Control Plan. TEES Research Compliance, Engineering IT (Andrew Stokes), and the Chief Research Security Officer (Kevin Gamache) should be notified when this clause is included in the contract. The project should be flagged in Maestro for DFARS 252.204-7012 (Safeguarding Covered Defense Information and Cyber Incident Reporting) and NIST Special Publication 800-171 (Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations).

**DFARS 252.227-7025 – Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends**

This clause implements restrictions on the use or disclosure of certain information furnished by the government. This may not always be an export control concern, but TEES is required to ensure that all project personnel are aware of and following the government's restrictions on this information. TEES Research Compliance should be notified when this clause is included in the contract. A Technology Control Plan or RDP may be required. The project should be flagged in Maestro for Export Control - Pre-publication Approval Required by Sponsor.

**FAR 52.204-21 – Basic Safeguarding of Covered Contractor Information Systems**

This clause requires additional IT security controls if unclassified controlled technical information is exchanged during the course of the contract. There is chance that this research may also be export controlled and require a Technology Control Plan. TEES Research Compliance, Engineering IT (Andrew Stokes), and the Chief Research Security Officer (Kevin Gamache) should be notified when this clause is included in the contract.

**FAR 52.227-17 – Rights in Data – Special Works**

This clause 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. TEES Research Compliance should be notified when this clause is included in the contract. A Technology Control Plan or RDP will be required. The project should be flagged in Maestro for Export Control - Pre-publication Approval Required by Sponsor.

**FAR 52.239-1 – Privacy or Security Safeguards**

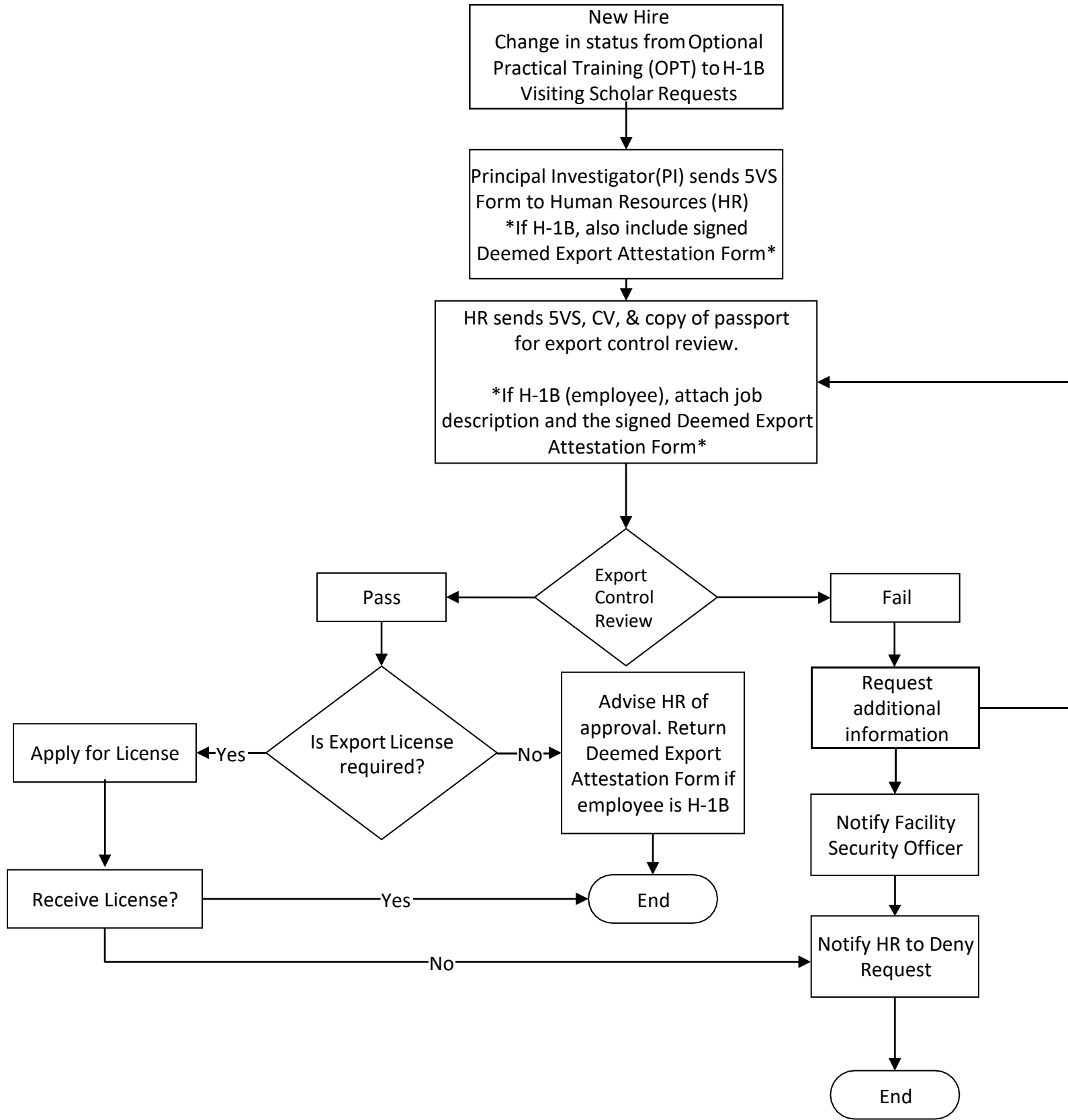
This clause requires the sponsor's written approval to publish or disclose the details of any safeguards either designed or developed by TEES. This is a publication restriction and voids FRE. TEES Research Compliance should be notified when this clause is included in the contract. A Technology Control Plan or RDP will be required. The project should be flagged in Maestro for Export Control - Pre-publication Approval Required by Sponsor.

**NAVAIR 5252.204-9504 Disclosure of Contract Information**

This clause says that TEES shall not release to anyone outside of TEES any unclassified information (e.g., announcement of contract award), regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless the Contracting Officer has given **prior written approval**. This is a publication restriction and voids FRE. TEES Research Compliance should be notified when this clause is included in the contract. A Technology Control Plan or RDP will be required. The project should be flagged in Maestro for Export Control - Pre-publication Approval Required by Sponsor.

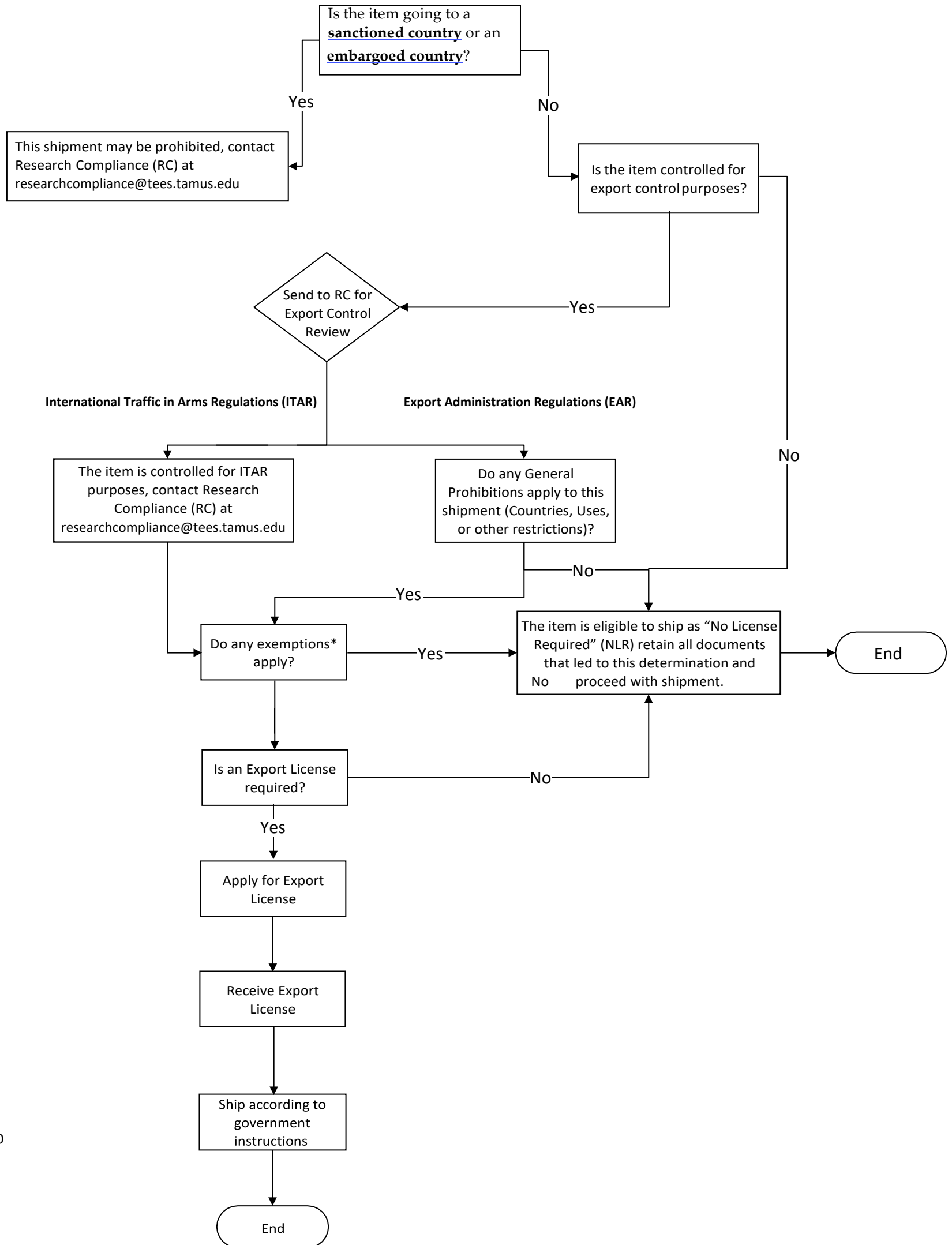
**Appendix C:**

**TEES - New Hires, Change in Status, and Visiting Scholar Requests Decision Tree**





**Appendix D:  
Decision-Making Tree for Shipping**



\*See 15 CFR 740

**Appendix E**



**TEMPORARY IMPORTS, EXPORTS, and REEXPORTS  
(TMP) CERTIFICATION for TEES EMPLOYEES**

The export of items, technology, commercial software, and encryption code is subject to export control regulations. The U.S. Department of Commerce’s Export Administration Regulations (EAR) make 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 to which you are certifying 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 U.S. 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):

Item Name / Description	Manufacturer	Model Number	Amount Taken

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 TEES 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 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 e-mail and other business activities that involve the transmission and use of the 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

Traveler's signature: \_\_\_\_\_ Date: \_\_\_\_\_

\*You are required to maintain a copy of this records for five years from the date of temporary export, in accordance with EAR § 762.2.



**International Travel - Export Control Screening Checklist**

When planning a trip abroad, you should think about the purpose of your trip, who you plan to interact with, what you will take, where you will go, and how long you will be gone. Items that are not needed should not be taken abroad. Consult with TEES Research Compliance (RC) if you are thinking about taking encrypted software, export controlled items/information, unpublished research data or data not in the public domain, or if traveling to an embargoed country to conduct university activities. Some travel related activities/destinations may be prohibited and others may require a license.

Travelers are required to submit a Travel Request in Concur to receive approval to travel to a foreign country. The Checklist below can be used on a voluntary basis to identify potential export control issues. If you mark any of the boxes below “yes” or “unknown”, contact RC at [researchcompliance@tees.tamus.edu](mailto:researchcompliance@tees.tamus.edu). For export control compliance guidance prior to your trip, please email your completed form to RC. Include any relevant background information to put the checklist into context (e.g. countries you plan to visit, the purpose and duration of the trip, items and information you plan to take). It is important to seek guidance from RC as soon as possible. If a license is needed, the RC will need adequate time to prepare, submit and obtain the license-assuming it will be granted. Additional information on Export Controls is available at <https://tees.tamu.edu/ethics-compliance/export-controls/index.html>.

**TRAVELER CHECKLIST**

	Unknown	Yes	No
1. Will you travel to an embargoed destination (e.g. Cuba, Iran, North Korea, Russia, Belarus, Syria)? For current list see <a href="http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx">http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx</a>			
2. Will you take information, technology or items subject to export control regulations and not widely available in the public domain? (e.g. technology, software, and information related to the design, production, testing, maintenance, operation, modification, or use of controlled items or items with military applications – see Attachment 1 for general categories. This does not include basic marketing information on function or purpose; information regarding general scientific, mathematical or engineering principles commonly taught in universities; or information that is generally accessible in the public domain.)			
3. Will you be taking biological or hazardous material? a. If yes, please identify: _____			

## Appendix F

<p>4. Will you take materials or equipment? (Advanced laptops, software or scientific equipment. Please note that this section does not include basic/standard laptops, workstation, and/or tablet, operation general commercial software like Windows and Apple's IOS)</p> <p>a. If yes, please identify: _____</p>			
<p>5. Will your activities involve presenting or sharing information not in the public domain?</p> <p>a. If yes, please explain: _____</p>			
<p>6. Do you know or have any reason to believe that the information you will be sharing or the activities you will engage in while traveling will have a military use or will provide a military service? (E.g., will the information you carry with you or the discussions you engage in aid in the design, development, production, stockpiling or use of nuclear explosive devices, chemical or biological weapons, or missiles?)</p>			
<p>7. Will you be furnishing financial assistance or anything of value (including services) to a blocked or sanctioned country, individual or entity? This includes agreements performable outside the United States, making payments to foreign vendors, engaging collaborative projects/activities.</p>			
<p>8. Will your activities involve sharing non-commercial encryption software in source or object code?</p>			

The answers I have provided are true and correct to the best of my knowledge. If my travel plans change, I understand that I should complete another checklist.

Name of Traveler \_\_\_\_\_

Signature of Traveler \_\_\_\_\_ Date \_\_\_\_\_

If any of the boxes above are marked 'Unknown' or 'Yes', please email completed form to TEES Research Compliance (RC) as instructed above. If all the boxes are marked 'No', the traveler should retain this form for his or her records.

## Appendix F

### ATTACHMENT 1

For questions, or clarification please contact TEES Research Compliance at [researchcompliance@tees.tamus.edu](mailto:researchcompliance@tees.tamus.edu). Additional information available at: <https://tees.tamu.edu/ethics-compliance/export-controls/index.html>.

#### EAR AND ITAR CONTROL LISTS BY MAJOR CATEGORIES

##### COMMERCE CONTROL LIST (ccl)

##### Export Administration Regulations (EAR)

<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

See Part 774 - The Commerce Control List

Category 0 - Nuclear Materials, Facilities & Equipment (and Miscellaneous Items)

Category 1 - Materials, Chemicals, Microorganisms, and Toxins

Category 2 - Materials Processing

Category 3 - Electronics

Category 4 - Computers

Category 5 (Part 1) - Telecommunications

Category 5 (Part 2) - Information Security

Category 6 - Sensors and Lasers

Category 7 - Navigation and Avionics

Category 8 - Marine

Category 9 - Propulsion Systems, Space Vehicles and Related Equipment

##### U.S. MUNITIONS LIST (USML)

##### International Traffic in Arms Regulations (ITAR)

<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=70e390c181ea17f847fa696c47e3140a&mc=true&r=PART&n=pt22.1.121>

Category I—Firearms, Close Assault Weapons and Combat Shotguns

Category II—Guns and Armament

Category III—Ammunition/Ordnance

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

Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents

Category VI—Vessels of War and Special Naval Equipment

Category VII—Tanks and Military Vehicles

Category VIII—Aircraft and Associated Equipment

Category IX—Military Training Equipment and Training

Category X—Protective Personnel Equipment and Shelters

Category XI—Military Electronics

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

Category XIII—Auxiliary Military Equipment

Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

Category XV—Spacecraft Systems and Associated Equipment

Category XVI—Nuclear Weapons, Design and Testing Related Items

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

Category XVIII—Directed Energy Weapons

Category XIX [Reserved]

Category XX—Submersible Vessels, Oceanographic and Associated Equipment

Category XXI—Miscellaneous Article