



TEXAS A&M UNIVERSITY  

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**COMMERCE**

## **EXPORT CONTROL COMPLIANCE PROGRAM MANUAL**

Ver. 1/11/19

Export control laws are complex and fact specific. Regulations, rules, and lists for specifying who or what is considered export sensitive and where export controls apply are subject to change. This Manual is intended to provide a very brief outline of basic export control information. It should not be relied upon exclusively, nor should it be construed as legal advice. Any questions should be directed to the Office of Research Compliance ([researchcompliance@tamuc.edu](mailto:researchcompliance@tamuc.edu)) or Office of Sponsored Programs ([osp@tamuc.edu](mailto:osp@tamuc.edu)).

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## List of Abbreviations

BIS	Department of Commerce Bureau of Industry and Security
CCL	Commerce Control List
DDTC	Department of State Directorate of Defense Trade Controls
DFAR	Defense Federal Acquisition Regulation
EAR	Export Administration Regulations
FAR	Federal Acquisition Regulation
FMO	Financial Management Operation Office
FRE	Fundamental Research Exclusion
ECCN	Export Control Classification Number
ISFS	Immigration Services for Faculty and Scholars
ITAR	International Traffic in Arms Regulations
MTA	Material Transfer Agreement
NDA	Non-Disclosure Agreement
OFAC	Department of the Treasury Office of Foreign Assets Control
OGC	Office of General Counsel, The Texas A&M University System
OSP	Office of Sponsored Programs
OIP	Office of International Programs
PI	Principal Investigator
RPS	Restricted Party Screening
SDN List	Specially Designated Nationals and Blocked Persons List
TAA	Technical Assistance Agreement
TAMU	Texas A&M University
TAMUS	The Texas A&M University System
TCP	Technology Control Plan
USML	United States Munitions List
VPR	Vice Provost for Research

# TEXAS A&M UNIVERSITY-COMMERCE EXPORT CONTROL PROCEDURES

## 1. Commitment to Export Control Compliance

It is the policy of Texas A&M University-Commerce (hereafter A&M Commerce) to comply with United States export control laws and regulations including, but not limited to, those implemented by the Department of Commerce through its Export Administration Regulations (EAR)<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>

A&M-Commerce has an obligation to implement an export control compliance program to reduce the risk of export control violations. All employees and students must be aware of, and are responsible for, the export control implications of their work and must ensure their activities conform to export control laws and regulations. There are severe institutional and individual sanctions for violations of export control laws and regulations, including the loss of research funding, loss of export privileges, as well as criminal and civil penalties.

The Office of Sponsored Programs (OSP) maintains a website with export control information and resources accessible at <http://www.tamuc.edu/research/compliance/export-control.aspx>. Questions about export controls can be directed to Research Compliance by telephone (903) 886-5766 or by email to [researchcompliance.edu](mailto:researchcompliance.edu).

This Export Control Compliance Program Manual (the "Manual") is designed to assist A&M-Commerce faculty, staff, and students with export control compliance. To the extent this Manual conflicts with A&M-Commerce rules and/or procedures, the rules and/or procedures control. Acronyms are defined in the List of Abbreviations, page 4. Other capitalized terms used in this Manual that are not defined above, in the University Procedure 15.02.99.R1, *Export Controls*, or within the Manual are listed in the Glossary, Appendix A.

## 2. Key Actors Responsible for Export Control Compliance

### 2.1 Empowered Official

The Vice Provost for Research (VPR) is A&M-Commerce's Empowered Official for all purposes relating to applicable federal export control laws and regulations. The Empowered Official is responsible for authorizing license applications and other approvals required for compliance with export control laws and regulations and serves as A&M-Commerce's representative and point of contact with federal agencies having export control jurisdiction. The Empowered

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

<sup>2</sup> The International Traffic In Arms Regulations (ITAR) 22 C.F.R. 120-130 can be found at [https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title22/22cfr120\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title22/22cfr120_main_02.tpl).

<sup>3</sup> 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&tpl=/ecfrbrowse/Title31/31cfrv3\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?SID=4ed410fd289488e21a17b90d0c33ef63&c=ecfr&tpl=/ecfrbrowse/Title31/31cfrv3_02.tpl)

Official is the A&M-Commerce official authorized to bind A&M-Commerce in any proceedings before government agencies with export control responsibilities and has final responsibility for compliance with export control laws and regulations.

## 2.2 Office of Sponsored Programs/ Interactions with Government Agencies on Export Control Matters

The OSP, in cooperation with other offices, is responsible for directing and monitoring the University's export control compliance program, recordkeeping, and implementing procedures and/or guidelines to comply with federal export control laws and regulations, including developing, implementing, and updating this Manual.

When requested, the OSP will determine, or assist other offices and employees in export control assessments to determine, compliance obligations with respect to University activities involving Foreign Persons or international activities under applicable export control laws and regulations as well as to determine the applicability of the Fundamental Research Exclusion (FRE)<sup>4</sup> or other exclusions provided by law. The OSP will also assist OIP with Restricted Party Screening (RPS)<sup>5</sup>, jurisdiction determinations and classification reviews, and consult with The Texas A&M University System (TAMUS) Office of General Counsel (OGC) on export control matters as needed.

All interactions with government officials on export control matters will be made, administered, and/or managed by the OSP as determined appropriate. Any communications from government officials relating to A&M-Commerce's export control compliance program, its employees, research, facilities or equipment should be forwarded to the OSP for handling.

## 2.3 University Administrators

All University employees with managerial or supervisory authority over Foreign Persons or projects involving Controlled Information or Controlled Physical Items should view export control compliance as an important part of their day-to-day responsibilities. Additionally, they are responsible for overseeing export control compliance in their areas of administrative responsibility and for supporting the OSP in implementing the procedures set forth in this Manual, and as otherwise deemed necessary by the OSP for export control compliance.

## 2.4 Export Control Designated Liaisons

A&M-Commerce offices with responsibility for administering components of A&M-Commerce's export control compliance program should designate an individual who will represent the department/unit and coordinate with the OSP on export

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<sup>4</sup> As defined in 15 C.F.R. 734.8 "*Fundamental research* means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons."

<sup>5</sup> As defined in A&M-Commerce Procedure 15.02.99.R1, *Export Controls*, "The process of determining whether a person or entity is included on the Specially Designated Nationals and Blocked Persons List or any other restricted list included in the screening software made available by A&M-Commerce."

control compliance matters, including performing routine internal monitoring of export control procedures and practices. Such Designated Liaisons should be appropriately trained.

## 2.6 Individual Responsibility

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

2.6.2 PIs, with the assistance of OSP and other offices, are responsible for full compliance with all federal and University export control requirements in the conduct of their research. Violation of the export control laws can directly affect PIs 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 red flags 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 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 A&M-Commerce or by A&M-

Commerce employees are intended for military purposes or for other restricted end uses or users.

- (b) Foreign Persons will have access to Controlled Physical Items on campus.
- (c) Software including encryption features will be developed or purchased.
- (d) A&M-Commerce faculty or staff will export or travel abroad with research equipment, chemicals, biological materials, encrypted software, or Controlled Physical Items; or travel abroad with laptops, cell phones, or PDAs containing Controlled Information.
- (e) A proposed activity/transaction will involve embargoed countries or entities; individuals/entities located in embargoed countries; or who are on prohibited or restricted end-user lists, as determined by RPS.
- (f) The sponsor requires pre-approval rights over publications or the participation of Foreign Persons.
- (g) The project requires the shipping of equipment, chemicals or biologicals to a foreign country.
- (h) The agreement contains a Controlled Unclassified Information (CUI) clause. (e.g. DFARS 252.204-7012).
- (i) 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/oe/compliance/23-compliance-a-training/51-red-flag-indicators> )

### 3.2 Restricted Party Screening (RPS)

The U.S. Department of Commerce, the U.S. Department of State, and the U.S. Department of Treasury, along with various other government agencies, maintain lists of prohibited and restricted end-users (Restricted Party Lists). 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 A&M-Commerce is not doing business with individuals or entities that have been debarred, denied export privileges, or are otherwise on one of the numerous government Restricted Party Lists, A&M-Commerce must screen individuals and entities as provided in this Manual. A&M-Commerce has licensed export control compliance software that permits authorized users to screen Restricted Party Lists electronically (Appendix D). No access/use will be authorized without OSP approval. Authorized users are limited to full-time employees.

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

#### 3.2.1 Possible Match

Authorized users should conduct RPS in accordance with their department's/unit's internal procedures (Appendix D). 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 on secondary screening, the possible match should be forwarded to the OSP, along with the criteria used to determine the possible match. Upon further investigation, the OSP will make a determination. The OSP is responsible for maintaining records of its determinations. The departments/units of authorized users are responsible for documenting and maintaining records of all determinations including those not forwarded to the OSP, as provided in Section 18, Recordkeeping.

#### **4. Jurisdiction Determination and Classification Review**

The U.S. Department of Commerce, and the U.S. Department of State, along with various other government agencies control what technology, items, goods, services, etc. (technology) may be permissibly exported outside of U.S. territory and to Foreign Persons in the United States. If an item is export controlled, prior authorization from one of the government agencies (e.g., Department of Commerce or State) may be required to transfer the item internationally; and/or depending on the type of item (EAR or ITAR) and the circumstances in which it is being accessed and used, foreign national<sup>6</sup> access to (or use of) the item may be restricted unless specifically authorized by the governing agency.

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

###### **4.1.1 USML Categories**

The Department of State regulates exports of defense articles and defense services via the International Traffic in Arms Regulations ("ITAR") which can be found at 22 C.F.R. 120-129 (see, [https://www.pmddtc.state.gov/regulations\\_laws/itar.html](https://www.pmddtc.state.gov/regulations_laws/itar.html)). The ITAR includes a list of articles, services and related technical data designated as defense articles and services regulated by the federal government known as the United States Munitions List ("USML")(see, 22 C.F.R. 121.1 for the USML). Categories include:

- I. Firearms, Close Assault Weapons and Combat Shotguns
- II. Guns and Armament
- III. Ammunition/Ordnance
- IV. Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- V. Explosives, Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- VI. Surface Vessels of War and Special Naval Equipment

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



- VII. Ground Vehicles
- VIII. Aircraft and Related Articles
- IX. Military Training Equipment and Training
- X. Personal Protective Equipment
- XI. Military Electronics
- XII. Fire Control, Laser, Imaging and Guidance Equipment
- XIII. Materials and Miscellaneous Articles
- XIV. Toxicological Agents, Including Chemical Agents, Biological Agents and Associated Equipment
- XV. Spacecraft Systems and Related Articles
- XVI. Nuclear Weapons and Related Articles
- XVII. Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- XVIII. Directed Energy Weapons
- XIX. Gas Turbine Engines and Associated Equipment
- XX. Submersible Vessels and Related Articles

4.1.2 “ITAR” defense items are broadly defined to include any item or equipment, related technology, software or data that is built, compiled, specially designed, or modified to *military or defense* specifications. This can include precision electronics, components and instruments used during the course of fundamental research. The fact that A&M-Commerce can procure such an item commercially does not necessarily mean that the item is not a “defense article.” In some cases, a vendor or provider of such item may label it “ITAR,” which flags it as an export controlled defense item.

4.1.3 It is important to keep in mind that ITAR restrictions operate even in the context of open laboratory, fundamental research projects where no citizenship or publication restrictions have been accepted. Therefore, determining whether or not an item is ITAR controlled prior to incorporation into research inventory or utilized by an investigator or research team it is essential. The fact that the item can be purchased commercially does not remove its controlled status. Buyers, licensees or other types of recipients of ITAR items remain responsible for managing the applicable Foreign National restrictions.

4.1.4 To better understand what is regulated under ITAR, it is important to read the regulations in the context of the definitions for “defense article”, “defense service”, and “technical data”. Below are the definitions as well as a link to the State Department’s decision tool which may be of assistance in understanding and applying the federal regulations, see [http://pmddtc.state.gov/licensing/decision\\_tools.html](http://pmddtc.state.gov/licensing/decision_tools.html).

a. Defense Articles (22 CFR 120.6) are broadly defined to include any item or equipment, related technology, or technical data that is built, compiled, designed, or modified to military specifications. This includes, for example, military-grade electronics, components of instruments used during the course of fundamental research. It also includes items or technical data with significant military or intelligence applicability. The fact that the item is commercially available does not necessarily mean the

item is not a “defense article.” Defense articles include: hardware, software, technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data. It also includes forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles. It does not include basic marketing information on function or purpose or general system descriptions.

b. Defense Service (22 CFR 120.9) is defined as (1) furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; (2) furnishing to foreign persons of any controlled technical data, whether in the United States or abroad; or (3) military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

c. Technical Data (22 CFR 120.10) is defined as information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation; information covered by a secrecy order; and software directly related to a defense article; classified information relating to defense articles and defense services on the USML and 600-series items controlled by the Commerce Control List; and software directly related to defense articles.

#### 4.2 Export Administration Regulations (EAR) – Commerce Control List

4.2.1 The Department of Commerce regulates exports of dual use items and technology via the Export Administration Regulations (“EAR”) which can be found at 15 C.F.R. Parts 730-774 (see, <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>). The EAR includes a list of items subject to regulation known as the Commerce Control List (“CCL”). The CCL can be found at <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>.

Categories and product groups include:

Categories:

0. Nuclear Materials Facilities & Equipment (and Miscellaneous Items)
1. Materials Chemical Microorganism and Toxins
2. Materials Processing
3. Electronics Design Development and Production
4. Computers

- 5. Pt-1 Telecommunications
  - Pt2 – Information security
- 6. Sensors and lasers
- 7. Navigation and Avionics
- 8. Marine
- 9. Aerospace and Propulsion

Product Groups:

- A. Systems, Equipment and Components
- B. Test, Inspection and Production Equipment
- C. Materials
- D. Software
- E. Technology

- 4.2.2 Using the above categories and subcategories, an export control classification number (“ECCN”) can be determined. The ECCN is a 5 character alpha numeric code. The first character is a number that describes the category of the item. The second character is a letter which indicates the subcategory. The last 3 numerical digits are used for numerical ordering of the item. If an item falls under U.S. Department of Commerce jurisdiction and is not listed on the CCL, it is designated as EAR99. EAR99 items generally consist of low-technology consumer goods and do not require a license in many situations. However, if the item will be “exported” to an embargoed country, to an end-user of concern, or in support of a prohibited end-use, a license may be required.
- 4.2.3 The federal government’s recent export reform initiative has resulted in some changes to the USML and CCL. Some defense articles that were once listed on the USML have now moved to the CCL creating two new series of ECCNs: 500 for Spacecraft and 600 for Commerce Munitions. Items that moved from the USML to the CCL have generally included some less important parts, components, accessories and attachments used in or with defense articles. The federal government uses a “catch” and “release” process to determine if items stay on the USML or are released onto the CCL. If the item is not on the revised USML, or within one of the “specially designed” catch all’s, the item is “released” to the CCL and controlled under the specifically enumerated ECCN and subject to military end use and embargoes based on the ECCN. For decision tools, FAQ and other resources, see <https://www.bis.doc.gov/index.php/2012-03-30-17-54-11/ecr-faqs>; and [https://www.bis.doc.gov/index.php/forms-documents/doc\\_view/789-600-series-and-ccl-order-of-review](https://www.bis.doc.gov/index.php/forms-documents/doc_view/789-600-series-and-ccl-order-of-review).
- 4.2.4 “Dual Use” items are broadly defined as any item (equipment, instrument, related technology, material, software or data) that is *civilian* by design and intended application, but could, by virtue of its specifications and performance, be used for a defense purpose. Dual use items can include research instruments and related software, materials, or data used in fundamental research. The fact that A&M-Commerce can procure such items commercially does not mean that they are not export controlled. In

some cases, a vendor or provider of an item may label it as “EAR-controlled,” which flags it as a dual use export controlled item.

- 4.2.5 For dual use items, it is important to identify situations where dual use controlled technology that is not otherwise the subject of fundamental research and eligible for publication is potentially shared or utilized. Below are several examples of technology sharing which may trigger an export control issue.
- a. Utilizing vendor-proprietary repair or maintenance manuals, or software configuration programs, provided by a vendor (or third party) which are labeled “EAR” or “export controlled”.
  - b. Training research personnel to perform all of the following functions with respect to a specialized research instrument: install, maintain, repair, refurbish and overhaul (or any combination of these items) that imparts the inherent proprietary design and controlled functionality of a dual-use controlled item (again, presumes having a vendor’s proprietary installation/repair manual or software configuration program).
  - c. Developing or modifying a dual use instrument (typically a co-development arrangement with a vendor or manufacturer) that likewise exposes the underlying controlled design. Development may include all stages of work prior to serial production, such as design research, analysis, “proof of concept,” assembly and testing of prototypes, pilot production schemes, configuration, or integration design.

## **5. Foreign National Employees**

It is important for hiring departments/units to be aware that the ability to hire nonimmigrant Foreign Nationals for certain positions may be restricted or prohibited by export control laws. For example, nonimmigrant Foreign Nationals may be restricted or prohibited from performing employment responsibilities relating to certain information technology systems positions to the extent the work will involve access or use of Controlled Information or Items. Supervisors proposing to hire nonimmigrant Foreign Nationals should carefully consider whether or not the proposed employment will involve access or use of Controlled Information or Items before extending offers of employment. Supervisors are required to complete the export control review and certification questions in the Request for Approval of International Visiting Scholars form (Appendix C) and to complete export control basic training. Any questions should be referred to the OSP.

## **6. Research and Other Research-Related Agreements**

Most data and information involved in University research is excluded from export control regulation under the ITAR or EAR based on “Published” technology & software/public domain exclusion and the Fundamental Research Exclusion (FRE). It is important for researchers and others involved in research to be aware of these key exclusions and to understand that their benefits can be lost if certain provisions are

present in research-related agreements. For this reason, PIs should avoid entering into informal understandings or “side agreements” with research sponsors that restrict Foreign Person access to the research or that impose sponsor controls on the publication or other dissemination of research results. It is important to remember that the restrictions enforced by OFAC are not affected by ITAR, EAR, or the FRE. OFAC restrictions and prohibitions generally arise in connection with interactions involving certain individuals, entities and countries most notably in interactions with embargoed countries and individuals/entities from embargoed countries (i.e., Cuba, Iran, North Korea, Syria, Sudan, Crimea Region of Ukraine).

## 6.1 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 A&M-Commerce Export Controls Decision-Making Tree for Administration of Contract Provisions of Concern in Appendix B1 of this Manual and are summarized below.

If any of the following provisions is present (and cannot be negotiated away) in a research agreement or subcontract, a Material Transfer Agreement (MTA), or Non-Disclosure Agreement (NDA) related to research, the OSP 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 A&M-Commerce’s standard customary brief delay to protect a sponsor’s confidential information or to preserve the patentability of an invention).
- (b) Research data and/or other research results will be owned by the sponsor (e.g., as sponsor’s proprietary or trade secret information).
- (c) Statements that export control regulations will apply to the research.
- (d) Incorporation by reference of Federal Acquisition Regulations (FARs), agency-specific FARs, or other federal agency regulations, which impose specific controls on access to or dissemination of research results (see Section 6.2 below).
- (e) Restrictions on, or prohibitions against, the participation of research personnel based on citizenship or national origin.
- (f) Statements that the sponsor anticipates providing export-controlled items or information for use in connection with the research.
- (g) Equipment or encrypted software is required to be delivered as part of the project.
- (h) The research project will involve the use of export-controlled items or technical information obtained from a third party.
- (i) The research will take place outside the United States.
- (j) There is a Controlled Unclassified Information (CUI) clause (e.g., DFARS 252.204-7012).

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

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

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

(c) DFARS 252.204-7000 (Disclosure of Information)

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

(d) DFARS 252.225-7048 (Export –Controlled Items)

States, "The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR." May have to require the PI to certify that the project does not involve any items that are subject to Export Control Laws.

(e) ARL 52.004-4400 (Approval of Foreign Nationals)

All Foreign Nationals must be approved before beginning work on the project. Contractor is required to divulge if any Foreign Nationals will be working on the project. Provision of name, last country of residence, citizenship information, etc. is required. This clause is commonly found in contracts involving Controlled

Technology and sponsored by military agencies. May need to require the PI to certify that no Foreign Nationals will be working on the project. If no Foreign Nationals will be employed on the project, Contractor may disregard this clause. If the PI is doing basic research and the sponsor will take those results and work on the controlled technology at another location, may be able to delete this clause.

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

Includes reference to “non-releasable, unclassified information” and a requirement to “confer and consult” prior to release of information. It is unclear what the review entails. Therefore, the sponsor retains publication/information approval, which voids the FRE. Substitute with ARL Cooperative Agreement Language: Prior Review of Public Releases, “The Parties agree to confer and consult with each other prior to publication or other disclosure of the results of work under this Agreement to ensure that no classified or proprietary information is released. Prior to submitting a manuscript for publication or before any other public disclosure, each Party will offer the other Party ample opportunity (not to exceed 60 days) to review such proposed publication or disclosure, to submit objections, and to file application letters for patents in a timely manner.”

(g) AFMC 5352.227-9000 (Export-Controlled Data Restrictions)

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

(h) DFARS 252.204-7012 (Controlled Unclassified Information)

Requires the security requirements described in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations, <http://dx.doi.org/10.6028/NIST.SP.800-171> to protect controlled unclassified information (CUI) on non-Federal information systems. For full text see (<http://www.acq.osd.mil/dpap/dars/dfars/html/current/252204.htm>).

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

6.3.1 Based on proposal timing and the limited information available at proposal submission, limited screening may be conducted by OSP at this stage.

- 6.3.2 Other research related agreements, should be reviewed for red flags in a manner similar to the processes described in Sections 3, 6, and 11 of this Manual. Questions should be directed to OSP.
- 6.3.3 For material transfer agreements, and other agreements administered by the OSP, the OSP conducts RPS of parties and reviews the substance of the transaction for export control red flags.
- 6.3.4 Potential export control issues should be forwarded to the OSP for resolution.

#### 6.4 Resolving Export Control Issues

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

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

The OSP will notify the PI and others of the OSP's export control determinations. OSP will maintain records of its determinations on a project basis, as provided in Section 18 Recordkeeping.

#### 6.5 Technology Control Plan (TCP)

##### 6.5.1 Development

If the OSP determines a project, facility, or item is export-controlled, the OSP will work with the PI, facility managers, and others to develop and implement a TCP to secure the Controlled Technology from access by unauthorized Foreign Persons. A sample TCP template can be found on the OSP website and will typically include:

- (a) a commitment to export controls compliance;
- (b) identification of the relevant export control categories and Controlled Technologies;
- (c) identification and nationality of each individual participating in the project;
- (d) appropriate physical and informational security measures;
- (e) personnel screening measures and training; and
- (f) appropriate security measures for the duration of the project and following project termination.

##### 6.5.2 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.
- (b) Time Blocking. Project operation may be restricted to secure time blocks when unauthorized individuals cannot observe or access.
- (c) Marking. Export-controlled information must be clearly identified and marked as export-controlled.
- (d) Personnel Identification. Individuals participating on the project may be required to wear a badge, special card, or other similar device indicating authority to access designated project areas. Physical movement into and out of a designated project area may be logged.
- (e) Locked Storage. Tangible items such as equipment, associated operating manuals, and schematic diagrams should be stored in rooms with key-controlled access. Soft and hardcopy data, lab notebooks, reports, and other research materials should be stored in locked cabinets.
- (f) Electronic Security. Project computers, networks, and electronic transmissions should be secured and monitored through User IDs, password controls, 128-bit Secure Sockets Layer encryption, or other federally approved encryption technology. Database access should be managed via a Virtual Private Network.<sup>7</sup>
- (g) Confidential Communications. Discussions about the project must be limited to the identified and authorized project participants, and only in areas where unauthorized individuals are not present. Discussions with third party sub-contractors must occur only under signed agreements which fully respect the Foreign Person limitations for such disclosures.

## 6.6 Export Licensing

If an ITAR, EAR, OFAC or other (i.e., NCR/NNSA) license, Technical Assistance Agreement, Manufacturing License Agreement, Registration, or other authorization (i.e., exemption) is needed to address an export control issue, as determined by OSP, the OSP will consult with the PI and other appropriate parties to gather all the information needed to seek a license or authorization. The OSP 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, or designee, will request the license or other authorization from the cognizant agency with assistance from the OSP and the OGC if needed.

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<sup>7</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.

## 7. International Visitors to Texas A&M University-Commerce

7.1 Those hosting Foreign Nationals should be aware that there might be restrictions or prohibitions associated with such visits. For example, (i) the proposed visitor may be from and embargoed country (i.e., Cuba, Iran, Syria, Sudan, North Korea, Crimea Region of Ukraine), (ii) the proposed visitor or his or her affiliated institution may appear on a restricted party list, or (iii) the proposed activities may require a license, or be restricted or prohibited by export control laws. Hosts should carefully consider possible export control implications associated with a proposed visit before extending invitations, and should consult with the OSP as needed.

7.2 All A&M-Commerce employees intending to invite or host Subjected International Visitors as indicated in A&M-Commerce Procedure 15.02.99.R1 *Export Controls* are required to notify and request from OSP the approval of research activities for such visit before the arrival of the Subjected International Visitor per **Section 7.4** below.

7.3 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 OSP. It is the responsibility of the A&M-Commerce employee hosting the visitor to ensure compliance with export control restrictions and to promptly disclose and report to the OSP as specified in A&M-Commerce Procedure 15.02.99.R1, *Export Controls* any violations thereof.

7.4 RPS of Subjected International Visitors

RPS of Subjected International Visitors includes RPS of the Subjected International Visitor's affiliated institution and/or sponsoring entity (Appendix D). RPS is needed whenever a written or verbal invitation to visit A&M-Commerce is made to a Subjected International Visitor regardless of whether:

- (a) The Subjected International Visitor is present or not in the United States;
- (b) A&M-Commerce needs to sponsor the Subjected International Visitor for immigration purposes under the J-1 Exchange Visitor Program;<sup>8</sup> or
- (c) A&M-Commerce does not need to sponsor the Subjected International Visitor for immigration purposes because he or she is traveling or has entered the United States under the Visa Waiver Program a B-1/B-2 visa or other nonimmigrant visa status as indicated on a properly annotated I-94.

7.5 Procedure to Notify and Request Authorization to Visit

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<sup>8</sup> For example, Foreign Persons may come to visit A&M-Commerce 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.

A&M-Commerce employees inviting and hosting Subjected International Visitors must complete, prior to the visit, a request for Approval of a Visiting Scholar Form (Appendix C) of this Manual.

The OSP will conduct RPS on the Subjected International Visitor and report hits that cannot be ruled for review and resolution as set forth in **Section 3.2.1** of this Manual. If there is no RPS hit, OSP will forward a copy of the approved form to Office of International Programs (OIP) to initiate the immigration process for those instances in which A&M-Commerce needs to sponsor the Subjected International Visitor, as well as for those in which the Subjected International Visitor is traveling under the Visa Waiver Program, a B-1/B-2 visa or other nonimmigrant visa status as indicated on a properly annotated I-94.

#### 7.6 Exempted International Visitors that Become Subject to Screening

Exempted International Visitors as defined in A&M-Commerce Procedure 15.02.99.R1 *Export Controls* are not subject to RPS unless the terms and/or purpose of the visit changes.

Any changes in the initial terms and intent of the visit that would make such Exempted International Visitor fall under one or more of the conditions subject to screening listed in A&M-Commerce Procedure 15.02.99.R1 *Export Controls* and **Section 7.4 and 7.6** of this Manual, require the host to notify OSP and request the approval of such visit or change in visit prior to permitting the International Visitor to engage in any activity that may require an RPS. Approval requests should follow the procedure outlined above in Section 7.5.

#### 7.6 Change in Nature, Purpose, or Duration of Visit

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

### 8. Distance Education

Distance education at A&M-Commerce refers to credit bearing, transcribed courses only offered to enrolled and registered students where the course delivery occurs in a setting where the students and faculty member of record are not in the same place at the same time or where the instruction for the course occurs at an approved off-campus educational site. This instruction can be in the form of 100 percent online, face-to-face offsite, or some hybrid combination of face-to-face and online. Due to the element of distance in this education delivery method, some export control concerns may arise. It is the responsibility of the department offering the course and the faculty instructor of record to ensure export control requirements are reviewed and any concerns addressed with the OSP. Particular guidance is provided in the following areas for review of export control in distance education:

#### 8.1 Restricted Party Screening (students seeking admission for degree programs and/or registering for courses offered via distance education)

Confirming the identification of students enrolled in distance education is standard operating procedure for all courses, whether the student is foreign or domestic. Beginning with the student admission process, student identification is authenticated by the review of student admissions application materials, further identification provided during financial aid and housing application, issuance of a Universal Identification Number (UIN) and unique password. The authenticated UIN and password are used to gain access to a variety of student resources including “MyLeo” student registration and information portal, as well as the e-learning resources utilized in delivery of distance education.

International students and U.S. citizens/lawful permanent residents seeking admission into a degree program offered via distance education or any admitted student seeking to register for courses from outside the United States or through one of the University’s approved off-campus educational sites will be subject to Restricted Party Screening (RPS) by OIP as identified by the Registrar’s Office prior to the first day of classes and by the 20th day of classes for students registering late for classes. Results of the OIP review will be communicated to the Registrar’s Office before a student is permitted to take a course.

If a student is identified as ineligible by OIP for participation in a degree program offered via distance education, then the Office of Admissions, in concert with the department facilitating the desired degree program, will rescind the admission offer.

## **9. International Activities**

A&M-Commerce offices responsible for administering international activities, programs, or centers are responsible for developing and implementing procedures to screen international programs, centers, and activities for compliance with export control laws and regulations in coordination with OSP. In the case of University activities conducted outside the United States, it is the responsibility of the University activity organizer to seek and obtain appropriate export control approvals from the OSP for activities including, but not limited to, the following: execution of agreements performable outside the United States; non-credit bearing study abroad courses; and making payments to Foreign Person vendors.

### **9.1 Additional Procedures for Students Engaged in Programs & Activities Outside the United States**

#### **9.1.1 Students Subject to RPS**

All Foreign Nationals who are attending courses and/or receiving instruction at an international center; or enrolled in a A&M-Commerce credit bearing program abroad; or participating in a A&M-Commerce non-credit bearing program, activity, or field trip abroad who have not previously attended A&M-Commerce and are not enrolled as continuing students at a college or university based in the United States, will undergo RPS prior to participation in the Study Abroad program or in the non-credit bearing program, activity, or field trip as soon as reasonably possible once identified.

## 9.1.2 RPS Procedures

9.1.2.1 International Center Activities/Programs – Once identified, the Center Director will submit the student name to the OIP for RPS.

9.1.2.2 International Credit Bearing Activities/Programs – The Study Abroad Programs Office will submit the student name to the OIP to conduct RPS for students involved in these activities.

9.1.2.3 International Non-credit Bearing Activities/Programs - The Study Abroad Programs Office will include information in its materials to alert the field trip leader of his or her export control compliance responsibilities. The field trip leader will submit the student name(s) to the OIP for RPS.

## 10. Purchasing and Financial Transactions

### 10.1 Financial Transactions

The Division of Business and Administration at Texas A&M University is responsible for conducting RPS of vendors processed through FAMIS and AggieBuy.

Procedures for setting up vendor information in FAMIS and AggieBuy (eProcurement system) include conducting RPS for all vendors at the time vendors are established in the accounting system. For purchases handled by A&M-Commerce, it is the responsibility of the Division of Business and Administration to conduct RPS pursuant to the procedures set forth in Section 3.2 Restricted Party Screening. Any potential export control issues will be referred to the OSP.

### 10.2 Procurement: Identification and Notification of Export Controlled Items

10.2.1 It is important to identify the procurement of ITAR items at an early stage because the State Department tightly restricts Foreign National access to ITAR items regardless of whether or not there is an intention to use the item or an understanding of how to use it. This includes visual access in the laboratory environment. EAR restrictions, on the other hand, are “use-based” restrictions: access to (and operation of) the item is generally not at issue, absent certain exceptional use related conditions.

10.2.2 While vendors often self-identify ITAR items, those engaged in purchasing should nonetheless remain aware that, in the event that the vendor does not self-identify, the following types of items are often ITAR controlled. In general, these types of items would be used by the following research disciplines: marine, geological, geographic, and atmospheric research.

- Night vision goggles, infrared cameras
- Gravimeters
- Equipment on loan from federal sponsors

- Sonobuoys and deep oceanic position signaling devices
- Military-band communications systems or GPS
- DOD funded military electronics
- Submersible vessels and related remotely operated accessories
- Inertial navigation units, modem chips, and components
- Radar applications
- Wind tunnel apparatus

10.2.3 The following list illustrates, by example, the types of dual use (and potentially higher risk/controlled) equipment commonly found in research laboratories and for which those purchasing should identify/request classification.<sup>9</sup>

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

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

For those involved in purchasing items that might be controlled, below are some questions to ask:

- a. Has the vendor disclosed that an item is controlled in product or sales documentation by incorporating such information in the following types of documentation:
  1. Quotation documentation on the purchase order an analogous purchase documentation (i.e., master purchase agreement)
  2. Commercial invoice or packing slip that accompanies the item
  3. Product specification web page
  4. Certification issued by the vendor (requiring department to acknowledge in writing the export controlled status of the item)
  5. Software license (or related terms/conditions)

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<sup>9</sup> This list is not intended to be comprehensive of all possible dual use instruments.

- b. If there has been no identification on whether an item is controlled or not, the vendor/licensor should be asked to certify whether or not the item is controlled at an early stage of the purchasing process by issuing a vendor certification.

10.3 When an ITAR Item is identified:

Prior to purchase, if an ITAR item is identified, the OSP should be contacted so appropriate measures can be taken. This may include a discussion with the requisitioning department/individual about whether it is essential to have an ITAR item that will impose Foreign National access and use restrictions or instead procure a substitutable lesser-controlled item with no access/use restriction.

10.4 When a Particular Specification or Build to Print Items is Marked "ITAR" or "Export Controlled"

Those seeking to outsource the fabrication, testing or development of an item to a vendor or subcontractor necessitating the transfer of technical data marked "ITAR" or "export controlled", should notify the OSP prior to forwarding the item to any party so that any export control implications of the documentation can be resolved.

10.5 Asset Management

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

10.6 Shipment of Items identified as ITAR/EAR Controlled

If an individual becomes aware that an item identified as ITAR or EAR controlled will be sent by A&M-Commerce to a location outside the United States, the individual should notify the OSP and advise the requisitioning department/individual to have the proposed shipment reviewed by the OSP prior to shipment.

10.7 Contract Administration

Contract Administration will conduct RPS on vendors for international agreements before routing to the TAMUS Office of General Counsel. Potential red flags or unresolved RPS hits will be referred to the OSP for a determination.

## 11. Shipping

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

The simple act of sending a package to a foreign collaborator can result in a violation of export controls. Also, shipping to countries subject to embargoes<sup>10</sup> must first be cleared by the OSP. Departmental personnel who are responsible for shipping packages out of the country should obtain a list of contents before shipping and contact OSP with any questions.

Shipping regulated 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 A&M-Commerce 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 \$500,000 and five (5) 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.

Shipment of items controlled under the ITAR or EAR should be clearly marked as controlled with the appropriate regulatory control cited. Any licensed export, regardless of dollar value, as well as exports with a dollar value greater than \$2,500, regardless of export control status, must be entered into the Department of Census Automated Export System (AES) prior to the export of the item or information.

A shipping decision tree can be found in Appendix B2 of this Manual. Shipping-related export control issues, questions or concerns should be referred to the OSP for assistance and resolution.

## **12. Travel**

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

When planning a trip abroad, travelers should think about the purpose of their trip, who they plan to interact with, what they will take, where they will go, and how long will they be gone when making export control assessments. Items that are not needed should not be taken abroad. Travelers should consult with the OSP if they are thinking about taking encrypted software, Controlled Items/Information or unpublished research data or data not in the public domain abroad, or if traveling to an embargoed country to conduct university activities. Some travel related activities/destinations may be prohibited and others may require a license. The OSP can help with these assessments and ensure compliance with export control requirements.

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<sup>10</sup> See OFAC's Sanctions Program and Country Summaries at <http://www.treasury.gov/resource-center/sactions/Programs/Pages/Programs.aspx> for the most current list of embargoed countries and U.S. sanctions.



Most travel for conferences will fall under an exclusion to the export control regulations, e.g., the Published technology & software/public domain exclusion, 15 C.F.R. 734.7 and 22 C.F.R. 120.11. Information that is published and is generally accessible to the public through publication in books or periodicals available in a public library or in bookstores or information that is presented at a conference, meeting, seminar, trade show, or other open gathering is considered to be in the public domain. An open gathering is one in which members of the general public are eligible to attend, and attendees are permitted to take notes.

A&M-Commerce employees and students traveling outside the U.S. with laptops, PDAs, cell phones, or other data storage devices and encrypted software must ensure that there is no Controlled Information on such devices unless there is a specific license or other authorization in place for the Information for that destination. Any individual intending to travel with or transmit Controlled Information outside the U.S. should first consult with the OSP. There are a number of exceptions and exclusions which may apply depending upon the facts and circumstances of each case.

If personal computers and other storage devices are taken abroad that contain encrypted software, a government license or other government approval for export may be required when traveling to certain countries. Temporary exports under the "Tools of Trade" license exception apply when the 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, so long as an individual (1) retains his or her laptop computer, PDA, cell phone, data storage devices and encrypted software under their personal custody and effective control for the duration of travel; (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 A&M-Commerce equipment temporarily outside of the United States for use in University activities. Often, but not always, the tools of trade license exception applies. Some equipment (e.g., global positioning systems (GPS), thermal imaging cameras, inertial measurement units, and specialty software) is highly restricted and may require an export license, even if one hand carries it. Individuals intending to take A&M-Commerce equipment other than a laptop computer, PDA, cell phone, or data storage devices, abroad should contact OSP to determine if an export license or other government approval is required prior to taking the equipment out of the country.

### 13. Recordkeeping

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

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

Records will be maintained on a project basis or as otherwise designated in this Manual, and accessible (electronic or hard copy) for audit/assessment purposes.

Records that should be retained include all memoranda, notes, correspondence (including email), financial records, shipping documentation as well as any other information related to the export activities. In addition, whenever a license or license exception or exemption is used, additional records documenting the applicability of the license, or exception/exemption may be required and in some cases there may be additional reporting requirements. The OSP should be contacted for guidance.

Those conducting RPS are expected to maintain documentation of Restricted Party Screening results including, documentation indicating the methodology for their determinations.

Those relying on self-classifications are responsible for maintaining documentation to support such determinations.

Records should be protected against unauthorized access, use, disclosure, modification or destruction, including assuring the availability, confidentiality and integrity of information consistent with System Regulation 29.01.03 *Information Security* and related university rules and SAPs, and in accordance with the terms of any license, TCP or as otherwise required by the OSP.

### 14. Training

19.1 Export Control Basic Training delivered via TrainTraq is required for the following classes of University employees:

- All employees of the OSP, excluding research animal technicians/caretakers
- All department/unit heads
- Supervisors submitting requests to hire foreign nationals
- All employees of OIP

19.2 The Information Security Awareness Training program, delivered via TrainTraq This training includes an export control component and is required for all A&M-Commerce employees.

19.3 Procard Training, delivered via TrainTraq incorporates an export control component. This training is required for all procard holders.

- 19.4 Depending on the nature of an individual's activities and/or job functions, a University employee may be required to take OSP's basic export control online training course and/or supplemental export control training as deemed appropriate by the individual's supervisor and/or the OSP.
- 19.5 Basic export control training for those identified in Sections 19.1 and 19.2 above is assigned automatically in TrainTraq by group, and by individual assignment for those not included in a category assignment. The OSP is responsible for communicating the assignment categories to TrainTraq and for making individual assignments.

## **15. Monitoring**

Export control compliance and monitoring is a shared responsibility coordinated by A&M-Commerce's OSP in cooperation with various other offices across A&M-Commerce.

To maintain A&M-Commerce's export control compliance program, and ensure consistent adherence to U.S. export control laws and regulations, A&M-Commerce has adopted the following monitoring plan.

### **20.2 Other A&M-Commerce Offices**

20.2.1 Members of the Export Control Committee serve as Designated Liaisons for their units and are responsible for reviewing their unit's export control procedures and processes every two years to evaluate controls implemented to ensure compliance with export control requirements and to identify deficiencies in training, procedures, etc. that can be rectified.

20.2.2 The results of the unit reviews should be reported to the Export Control Committee. The Designated Liaison 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, OSP and/or the department/unit head.

## **15. Possible Violations**

Each A&M-Commerce 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 Research Compliance at [researchcompliance@tamuc.edu](mailto:researchcompliance@tamuc.edu) or 903.886.5766; 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 A&M-Commerce rules and procedures, the Empowered Official is authorized to suspend or terminate a research, teaching, testing, or other activity if the Empowered Official, or designee, determines that the activity is not in compliance or will lead to noncompliance with export control laws and regulations. The Empowered Official may determine whether notification to an appropriate government agency is required.

## **18. Disciplinary Actions**

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

## Appendix A - Glossary

Controlled Information – Information about controlled physical items, including information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled physical items and may be released through visual inspection, oral exchanges, or the application of personal knowledge or technical experience with controlled physical items. It also includes information in the form of blueprints, drawings, photographs, plans, instructions, and documentation. Further included in this definition are non-physical items (software and algorithms, for example) listed under EAR and ITAR. (See 15 CFR Parts 730-774 and 22 CFR Parts 120-130 for further details.)

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

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

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

Defense Service means:

- (1) The furnishing of assistance (including training) to Foreign Persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles;
- (2) The furnishing to Foreign Persons of any technical data controlled under the USML (see 22 CFR §120.10), whether in the United States or abroad; or
- (3) Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice. (See also 22 CFR §124.1.)

ECCN – The Export Control Classification Number (ECCN) is the number assigned to each specific category of items or technology listed specifically on the Commerce Control List maintained by the U.S. Department of Commerce, Bureau of Industry and Security. Commodities, software and technology that do not fit into a specific ECCN are classified as "EAR 99" and, while they may be exported to most destinations, may still be controlled for export to certain sanctioned entities or a few prohibited destinations.

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

Export – An export occurs when a controlled physical item or controlled information is transmitted outside the United States borders or when a controlled physical item or controlled information is transmitted to a Foreign Person in the United States. When a controlled physical item or controlled information is transmitted to a Foreign Person in the United States, it is known as a deemed export.

The term “export” is broadly defined. It generally includes (1) actual shipment of any controlled physical items; (2) the electronic or digital transmission of any controlled information; (3) any release or disclosure, including verbal disclosures and visual inspections, of any controlled information; or (4) actual use or application of controlled physical items or controlled information on behalf of or for the benefit of a Foreign Entity or Person anywhere. Complete definitions of the term “export” are contained in the federal regulations.

Foreign National – Any person other than a U.S. citizen, a lawful permanent resident of the United States (i.e., a “green card” holder), or a “protected individual” as defined in 8 U.S.C. §1324b (c) (1 & 2) (e.g., refugees or persons seeking asylum).

Foreign Person – For export control purposes, a Foreign Person includes any individual in the United States in nonimmigrant status (i.e., H-1B, H-3, L-1, J-1, F-1, B-1, Practical Training) and individuals unlawfully in the United States.

A Foreign Person is also any branch of a foreign government or any foreign corporation or group that is not incorporated or organized to do business in the United States.

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

International Visitor – Foreign Persons having a residence in a foreign country, who are not employees or enrolled students of A&M-Commerce, and are coming to A&M-Commerce on a temporary basis as a result of a verbal or written invitation made to the Foreign Person by a faculty member, researcher, or administrator of A&M-Commerce. As referenced in TAMUS Policy 15.02, Export Controls, International Visitors are International Visitors who: (i) will be involved in a research project or collaboration, and will have access to laboratories for observing or conducting research; (ii) will be issued a A&M-Commerce identification card, keys to offices or laboratories, or otherwise be given access to the A&M-Commerce computing system in any way or manner; or (iii) will be paid an honorarium, will be reimbursed for expenses, or will be provided something of value.

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

Manufacturing License Agreement – An agreement whereby a U.S. person grants a Foreign Person an authorization to manufacture defense articles abroad and which involves or contemplates: (a) the export of ITAR controlled technical data or defense articles; or (b) the use

by the Foreign Person of ITAR controlled technical data or defense articles previously exported by a U.S. person. (ITAR, 22 CFR § 120.21)

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

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

Re-export – The transfer of articles or services to a new or different end-use, end-user, or destination.

Release – Technology or software is “released” for export through: (i) visual inspection by Foreign Persons of U.S.-origin equipment, facilities or documentation; (ii) oral or written exchanges of information in the United States or abroad; or (iii) the application to situations abroad of personal knowledge or technical experience acquired in the United States.

System Member(s) – Refers to all members of The Texas A&M University System.

Technology – Specific information necessary for the “development,” “production,” or “use” of a product. The information takes the form of “technical data” or “technical assistance.”

Technical Assistance – May take forms such as instruction, skills training, working knowledge, and consulting services. Technical assistance may involve the transfer of “technical data.”

Technical Assistance Agreement (TAA) – An agreement for the performance of ITAR-controlled defense services or the disclosure of ITAR-controlled technical data. (22 CFR §120.22)

Technology Control Plan (TCP) – A technology control plan lays out the requirements for protecting export-controlled information and equipment for activities or research projects conducted at A&M-Commerce. A&M-Commerce has developed a TCP template for use on such projects. (See OSP website for TCP sample.)

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

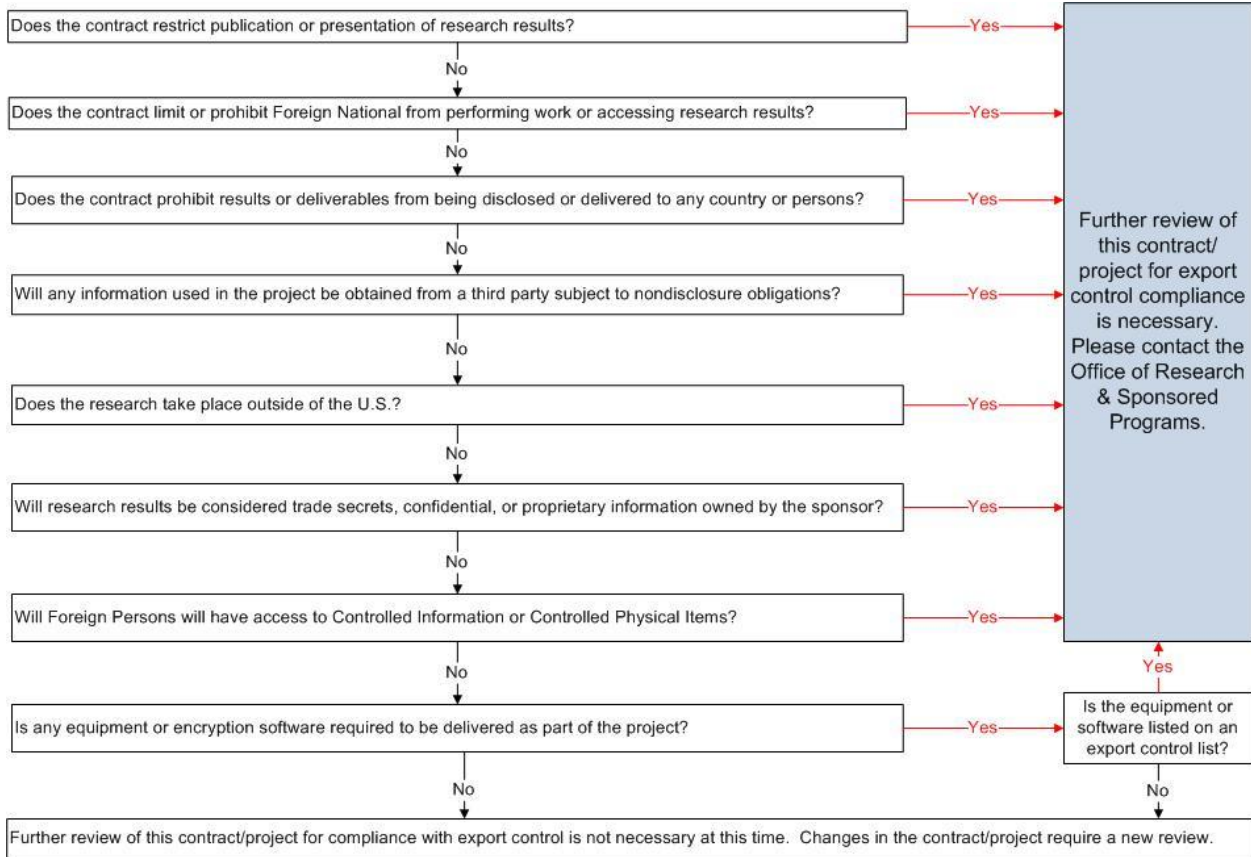
Trip Leader – An A&M-Commerce faculty/staff/student leader(s) who conducts an international field trip or short program abroad and is accompanied by a group of students, either graduate and/or undergraduate.

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

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

## Appendix B - A&M-COMMERCE Export Control Program Decision Trees

### Decision Tree for Administration of Contract Provisions of Concern





### Decision Tree for Shipping

Ask yourself:	If "Yes"	If "No"
Is the item going to an <a href="#">embargoed or export-controlled destination</a> ?	Contact OSP for advice.	Proceed to next question.
Is this item on the <a href="#">US Munitions list</a> ?	Go to <b>STATE DEPARTMENT</b> below	Go to <b>COMMERCE DEPARTMENT</b> below
<b>STATE DEPARTMENT</b>		
Ask yourself:	If "Yes"	If "No"
Is an exemption available for this shipment?	Document the exemption and proceed with shipment.	Contact OSP regarding a State Dept. license application.
<b>COMMERCE DEPARTMENT</b> Bureau of Industry and Security		
Ask yourself:	If "Yes"	If "No"
Is this item subject to the <a href="#">Export Administration Regulation</a> ?	Go to <b>ECCN/CCL Question 1.</b>	Contact OSP for determination of appropriate export regulations.
<b>EXPORT CONTROL CLASSIFICATION NUMBER/COMMERCE CONTROL LIST</b>		
Ask yourself:	If "Yes"	If "No"
1. Is this item on the Bureau of Industry and Security <a href="#">Commerce Control List</a> ?	Go to Question 2.	Go to <b>EAR 99 Question 1.</b>
2. Do any <a href="#">General Prohibitions (pdf)</a> apply? (Country use and other restrictions - pdf file)	Go to Question 3.	Go to <b>EAR 99 Question 2.</b>
3. Is an <a href="#">exception (pdf)</a> available for this shipment? [pdf file]	Document the exemption and proceed with shipment.	Contact OSP regarding a Commerce Dept. license application.
<b>EXPORT ADMINISTRATION REGULATION 99 (EAR 99)</b>		
Ask yourself:	If "Yes"	If "No"
1. Do any <a href="#">General Prohibitions (pdf)</a> 4-10 apply? [pdf file, scroll to #4-10].	Contact OSP regarding a Commerce Dept. license application.	Go to Question 2.

2. Eligible for "No License Required" (NLR)?	Document the exemption and ship "No License Required".	Contact OSP regarding a Commerce Dept. license application.
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**QUESTIONS ABOUT EXEMPTIONS OR LICENSE APPLICATIONS?**  
If you have questions about the applicability of exemptions, or in the event that an export license may be required for a shipment, contact the Office of Sponsored Programs,  
P.O. Box 3011 Commerce, TX 75429-3011  
Tel: 903-886-5766 Fax: 903-468-8784  
Email: [researchcompliance@tamuc.edu](mailto:researchcompliance@tamuc.edu)

## Appendix C – Request for Approval of International Visiting Scholars

**Read the following note before proceeding**

This request is only applicable to international visitors that **WILL**:

- 1) Be involved in a research project or collaboration, and will not have access to laboratories and research facilities for the purposes of observing or conducting research; and/or
- 2) Be issued a Texas A&M University-Commerce identification card, keys to offices or laboratories, or otherwise be given access to the Texas A&M University-Commerce computing system in any way or manner; and/or
- 3) Be paid an honorarium, will be reimbursed for expenses, or will be provided something of value.

International visiting scholars are foreign persons having a residence in a foreign country, who are not employees or enrolled students of Texas A&M University-Commerce and are coming to Texas A&M University-Commerce on a temporary basis as a result of a verbal or written invitation made to the foreign person by a faculty member, researcher or administrator of Texas A&M University-Commerce

The Department requests authorization to make a Facility Visitation Agreement with a Visiting Scholar as outlined in the Texas A&M University Rule 15.02.99.R1 Export Control and who is not involved in an Employer/Employee Relationship with Texas A&M University-Commerce.

### **International Visiting Scholar Information**

First Name:

Middle Name:

Last Name:

Title:

Country of Citizenship:

Addresses

Institution (city, state/province, country):

Home (city, state/province, country):

Visitation Period (mm/dd/yyyy):      From:                      Through:

Identify source(s) of financial support for Scholar during visit:

**It is the responsibility of the sponsoring faculty member and department to ensure that all required documents listed below are attached to this form before the packet is submitted to the College Dean.**

- Current Vitae
- Narrative specifying the requirements of the position
- Transcripts
- Background Check Form
- Narrative of qualifications of the individual selected
- Deemed Export Control Attestation Form
- Narrative of equipment/office space/etc. provided by A&M-Commerce

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**Please complete this section if the visiting scholar is a foreign person (not a U.S. citizen or lawful U.S. Resident).**

The following questions are intended to address export controlled issues. Please check yes or no for all of the work contemplated during the scholar's visit, both funded work and unfunded work, with the host or other faculty member or researcher.

a) Yes      No      **Can the research be categorized as Classified?**

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

b) Yes      No      **Can the research be categorized as Controlled Unclassified Information?**

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

c) Yes      No      **Can the research be categorized as Proprietary?**

Proprietary research, usually privately funded, is defined as research activities undertaken pursuant to a contract between the University and an

outside sponsor with commercial interests, and carried out under the auspices of the University. Publication of proprietary research results can be withheld or restricted, contractually.

d) Yes No **Does the project restrict participation to US citizens or permanent residents only?**

e) Yes No **Can the research be categorized as Restricted?**

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

f) Yes No **Can the research be categorized as “Fundamental”?**

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

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

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**Host Faculty Member/Administrator Information**

Name (Print/Type): \_\_\_\_\_ Department: \_\_\_\_\_

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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**Required Signatures for Approval**

Department Head/Director: \_\_\_\_\_ Date: \_\_\_\_\_

College Dean: \_\_\_\_\_ Date: \_\_\_\_\_

Equal Opportunity: \_\_\_\_\_ Date: \_\_\_\_\_

Provost: \_\_\_\_\_ Date: \_\_\_\_\_

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**This section to be completed by the OSP – Restricted Party Screening Check**

Yes	No	Passed restricted party screening for person
Yes	No	Passed restricted party screening for home institution or current employment
Yes	No	Any restrictions, if yes, explain:

Name (Print/Type)::

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**APPENDIX D**

**RESTRICTED PARTY SCREENING – VISUAL COMPLIANCE  
EXPORT CONTROL PROGRAM**

In order to ensure that A&M-Commerce is not doing business with individuals or entities that have been debarred, denied export privileges, or are otherwise on one of the numerous government Restricted Party Lists, A&M-Commerce must screen individuals and entities. The following are indicators that an export control review, including the restricted party screening, must be conducted to ensure that no violations will occur:

- (a) The results of research conducted at A&M-Commerce or by A&M-Commerce employees are intended for military purposes or for other restricted end uses under EAR 99 [http://www.access.gpo.gov/bis/ear/ear\\_data.html#ccl](http://www.access.gpo.gov/bis/ear/ear_data.html#ccl).
- (b) Foreign Persons will have access to Controlled Physical Items on campus.
- (c) Software including encryption features will be developed or purchased.
- (d) A&M-Commerce faculty or staff will export or travel abroad with research equipment, chemicals, biological materials, encrypted software, or Controlled Physical Items; or travel abroad with laptops, cell phones, or PDAs containing Controlled Information.
- (e) A proposed 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 the participation of Foreign Persons.
- (g) The project requires the shipping of equipment to a foreign country.

Name of Individual to be Screened:

Address of Individual to be Screened:

Individual's Current Employer (University or Company):

Reason for Screening (identify from the items listed above):

- (a)  (b)  (c)  (d)  (e)  (f)  (g)

**Submit this form to Ms. Glenda Denton in the Office of Sponsored Programs. For questions, please contact Ms. Denton at [glenda.denton@tamuc.edu](mailto:glenda.denton@tamuc.edu) or 903-886-5766.**

**Results:**

- No Matches (retain copy locally)
- Match – Found to be a False Positive; requires 1) description of how this hit was determined to be a false positive 2) Secondary Unit screener signature/date, and 3) copy to Export Control Program at the Office of Research and Sponsored Programs.
- Match – Contact Export Control Program at Office of Sponsored Programs for appropriate action.

Screened by:

\_\_\_\_\_  
Signature of Screener

\_\_\_\_\_  
Date Screened