

# The University of Texas at El Paso



## UTEP Export Control Compliance SOP

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Research & Innovation

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## Section I - Purpose

The purpose of this export control compliance SOP is set forth in U.T. System policies and University of Texas at El Paso (UTEP) procedures, is to comply with United States export control laws and regulations, and is intended to ensure transparency, effective oversight, and administration of the Export Control Program (ECP) at UTEP.

## Section II - Export Controls in Research Policy Statement

The University of Texas at El Paso is committed to full compliance with all applicable U.S. export control laws and regulations, including obtaining any required export license for regulated activities of export-controlled materials, data, technology, or equipment to a foreign person either in the U.S. or abroad, and reviewing all activities that involve any type of transaction with a foreign person or entity. Although most UTEP activities are excluded from U.S. export control regulations, some activities essential to the UTEP mission require oversight and management to ensure export control compliance.

The majority of exports do not require government licenses. Only commodities, software, technology that the U.S. Government considers “*subject to the EAR*”, and ITAR-controlled items require licenses. Export-controlled transfers are usually required for one of the following reasons:

- The nature of the export has actual or potential military applications; or it has economic protection issues.
- Government concerns about the destination country, organization, or individual.
- Government concerns about the declared or suspected end use, or the end user of the export.

University research traditionally has been excluded from these regulations through the Fundamental Research Exclusion and the Employee and Educational Exemptions under the Export Administration Regulations (EAR) and/or the International Traffic in Arms Regulations (ITAR). However, university research involving specified technologies controlled under the EAR and/or ITAR, or transactions and exchanges with designated countries, individuals, and entities, may require the university to obtain prior approval from the appropriate agency before allowing non-U.S. persons to participate in controlled research, collaborate with foreign company and/or share research – verbally or in writing – with persons who are not U.S. persons.

Faculty and other researchers are responsible for:

- Knowing the export compliance classification requirements for the equipment, software, chemicals, materials, and technology they handle or procure.
- Knowing whether the proposed research project will be subject to export control restrictions due to publication or other dissemination or personnel access restrictions.
- Knowing the export compliance classification requirements for university proprietary information they receive under a confidentiality obligation.

- Having an effective security plan to protect export-controlled information in their possession, while taking into account foreign nationals under their invitation, sponsorship or supervision.
- Complying with all export control requirements that apply to physical shipments, including proper shipping permits, etc.
- Identifying export control compliance (including screening for sanctioned or embargoed persons, entities, and countries) prior to foreign travel, sponsoring foreign visitors at UTEP, engaging in research with foreign collaborators, engaging in research sponsored by foreign persons, or conducting research in foreign countries.

All university personnel should be aware of export control compliance but especially those whose work involves, but is not limited to, the following activities:

- Activities or research in controlled areas (e.g., encryption technology, nuclear technology, chemical/biological weapons, select agents and toxins, military technologies, and “Critical and Emerging Technologies”).
- Activities involving the international shipping of or traveling with equipment, technology, or software.
- Activities involving teaching and research collaborations with foreign colleagues, or the participation or training of foreign nationals here or abroad.
- Activities involving travel or work outside the U.S.
- Conducting tours with foreign nationals through research areas.
- Conducting research sponsored by any entity that restricts publication or participation by foreign nationals.
- Activities involving the receipt and/or use of export-controlled information or technologies from other parties.

### **Section III – UTEP Export Control Program**

The UTEP Export Control Program assists university personnel with the identification and management of research projects subject to U.S. export control laws. The program is part of UTEP’s Office of Research & Innovation (RI) and is managed by the University’s Export Control Officer (ECO), who also serves as the Director of Research Protections (See Figure 1). The UTEP Vice President for RI has been designated as the University’s Empowered Official (EO) for export control purposes.

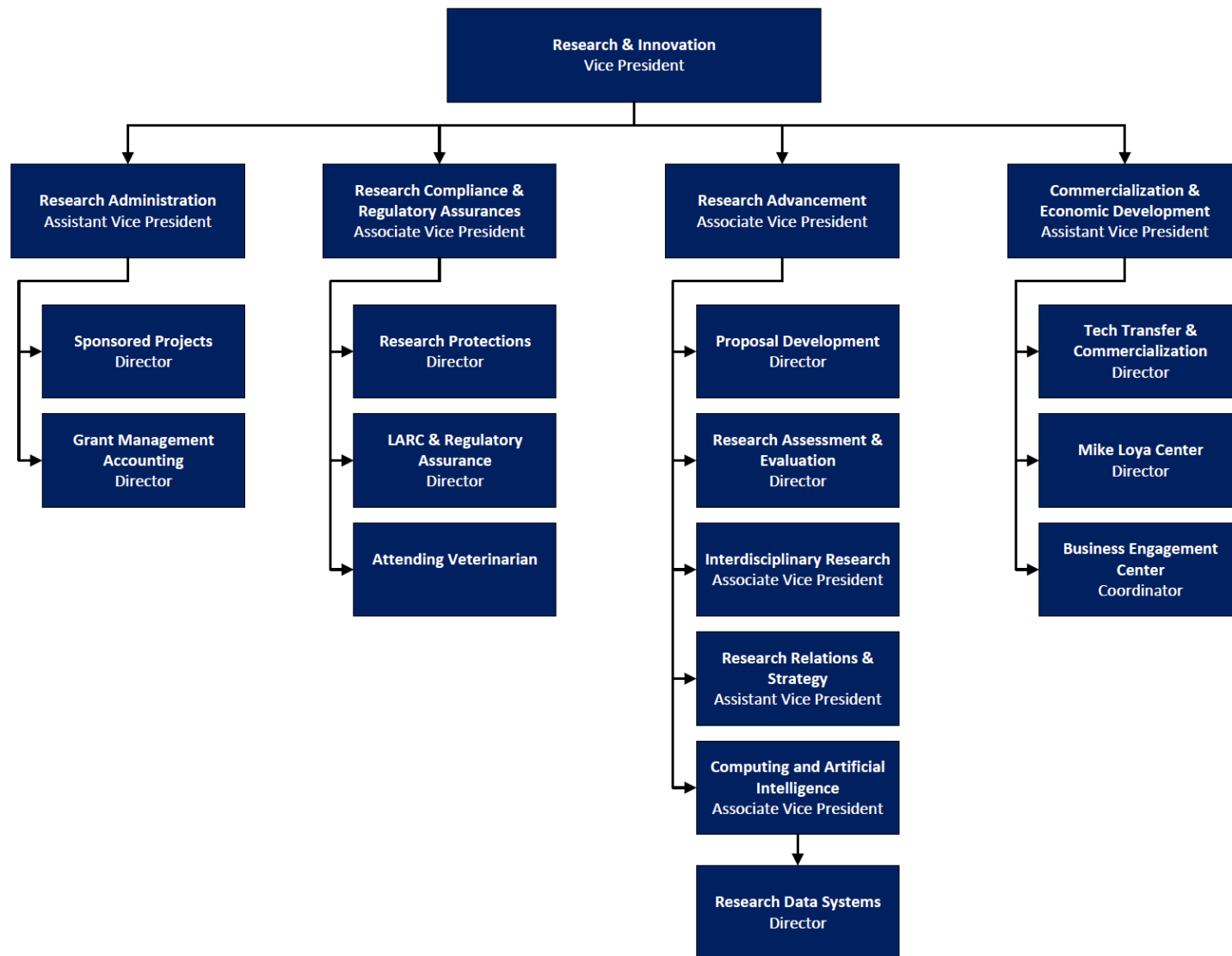


Figure 1. Generalized organizational chart of UTEP’s Office of the Vice President for Research

The Export Control Officer assists members of the university community with assessing their export control obligations and facilitates the procurement of required export licenses. The ECO works with UTEP's Export Controls Committee (ECC) to provide oversight for research that involves export controls. The ECC, whose members include UTEP leadership from key departments, as well as administrators from units engaged in export-controlled research, has the following responsibilities:

- Discussing and recommending actions on issues brought forward by the ECO.
- Setting UTEP's export control policies and procedures.
- Recommending program priorities (training, etc.).
- Monitoring export-controlled projects for regulatory compliance.
- Refer to the [UTEP Handbook of Operating Procedures Section .IV, Ch.9: Compliance with U.S. Export Control Regulations](#) for University Policy.

Because violation of U.S. export control regulations can result in fines and sanctions against both individual researchers and UTEP, UTEP policy requires all university personnel to be aware of and comply with export control regulations and applicable university policies and procedures. With regard to specific research projects, UTEP policy places primary compliance responsibility on researchers. All researchers are expected to notify appropriate administrative staff when they suspect that export control laws apply to their research and to ask the ECO for assistance in making a determination, when necessary.

### **Research Involving the Export of Items Outside of the U.S.**

The ECO will, upon notice or request, determine the licensing requirements for the export of any item (e.g., software, technology, or information) from the university to destinations outside the U.S. To make this determination, the researcher must provide the following information to the ECO:

- What is the item? This includes a detailed description of the item (including software, technology, or information), technical specifications, and the origin of the item.
- Fair Market Value of item being shipped. This will be needed for AES export filing and to calculate the Foreign Direct Product Rule, when necessary.
- Are there any contractual non-disclosure or use restrictions pertaining to the item or results of research involving the item?
- Has the item been assigned an ECCN classification or UMSL category by the sponsor or provider of the item?
- Where is the item going (identify all foreign locations in transit)?
- To whom is the item going / and is this the end user?
- What is the intended end-use?
- Is the item published, patented, or in some other manner in the public domain?

Determining the licensing requirements of an item can be a complicated process, requiring the proper classification of the item and verification and clearance of the target destination, end use, and end users. The final determination of whether an item requires a license, qualifies for a license exemption, or can be exported as "No License Required" will be made by the ECO, in

consultation, when applicable, with the ECC and the researcher(s). If a license is required, the ECO will coordinate the license application process. Obtaining a license can take two to six months (or longer), and there is no guarantee that a license will be issued. No export (or deemed export as discussed further below) may take place until any required license or license exemption is obtained, or until the ECO has reached a “No License Required” determination.

## **Research Involving “Deemed Exports” to Foreign Persons inside the U.S.**

The release or transmission of information or technology subject to Export Control regulations to any foreign national within the U.S. is a “Deemed Export” and is considered to be an export to that person’s home country. Examples of “releases” to foreign nationals can include providing access to controlled software, technology, or equipment by visual inspection or use; providing access via tours of facilities; providing access to technical specifications; and oral or written exchanges of information. In some instances, a license may be required before the information can be released. It is the responsibility of the ECO in consultation, when applicable, with the ECC and researchers to determine the licensing requirements involving deemed exports. To make this decision, the researcher needs to provide the following information to the ECO:

- Information to be released – This includes a detailed description of the information, item, software, or technology, technical specifications, origin of the item and/or any contractual non-disclosure or use restrictions that may exist.
- A list of the names, home country and citizenship of all persons that will be given access to the information, item, software, or technology.
- Origin of the information or item, software, or technology, including whether it resulted from fundamental research.
- Whether the item, software, or technology is published, patented, or is in some other manner in the public domain.

The final determination whether a “deemed export” requires a license and whether UTEP will pursue a license will be made by the ECO in consultation when applicable, with the ECC and the researchers. If a license is required, the ECO will coordinate the license application process. Obtaining a license from the various departments of the U.S. Government can take two to six months (or more), and there is no guarantee that a license will be issued. A “deemed export” of information or items to foreign nationals within the U.S. may not occur until the required license is obtained, and researchers should consider this U.S. Governmental timeframe in determining when to initiate their consultations with the ECO.

## **Section IV – Overview of United States Export Control Laws and Regulations**

U.S. export control laws and regulations control the conditions under which certain items can be transmitted or shipped internationally to anyone (including U.S. citizens) or disclosed, released, or transferred to a foreign national on U.S. soil (“deemed export”). Under U.S. export control laws and regulations, exports are broadly defined as:

- Shipment of any controlled goods or items.
- The electronic or digital transmission of any controlled goods, items or technology or services related to controlled goods;
- Any release or disclosure, including oral disclosure or visual inspections, of any controlled technology, software, or technical data to certain foreign nationals; or
- Actual use or application of controlled technology on behalf of, or for the benefit of, any foreign entity or person regardless of where it is located.

Failure to comply with export control requirements may result in severe penalties to the university, as well as criminal sanctions to individuals. Individuals working in the following areas, which are most likely to be subject to export controls, should become familiar with those laws and regulations and the procedures described below: physical and computer sciences (especially when involved in defense related research); the biological sciences and medicine (including work with select agents and infectious materials); or anyone conducting research or academic collaborations with colleagues in countries that have been designated by the U.S. government as sanctioned or as supporting terrorism.

The primary sources of export control regulation are:

- **The U.S. Department of Commerce** - Bureau of Industry and Security (BIS), through the Export Administration Regulations (EAR), controls proliferation of some non-military technologies and commercial items that have potential military applications, otherwise known as “dual use” technology.
- **The U.S. Department of State** – Directorate of Defense Trade Controls (DDTC), through International Traffic in Arms Regulations (ITAR), controls proliferation of certain military technologies such as weapons, chemical and biological agents, vehicles, missiles, equipment, and satellites.
- **The U.S. Department of Treasury** - Office of Foreign Assets Control (OFAC), prohibits transactions with countries subject to boycotts, trade sanctions, and embargoes. OFAC may prohibit travel and other activities with embargoed countries and individuals even when ITAR and EAR do not apply.

### **Export Administration Regulations (EAR):**

The U.S. Department of Commerce, Bureau of Industry and Security (BIS) issues the Export Administration Regulations (EAR), 15 CFR § 730 through 774, to implement the Export Administration Act (EAA) and other statutory requirements. Amendments to the EAR are published in the Federal Register. Items subject to the EAR include purely civilian items, “dual-use” items (items having both civil and military, terrorism, or potential WMD-related applications), and items that are exclusively used for military applications but that do not warrant control under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 *et seq.*).

The BIS is charged with the development, implementation, and interpretation of U.S. export control policy for items subject to the EAR and maintains the Commerce Control List (CCL), a list of items under the export court jurisdiction of the U.S. Department of Commerce and their Export Control Classification Numbers (ECCNs). The CCL does not include items exclusively

controlled for export by another department or agency of the U.S. Government, though in instances where other agencies administer controls over related items, entries in the CCL may contain a reference to such controls.

The BIS is also responsible for the development, implementation, and interpretation of the anti-boycott provisions of the EAR, 15 CFR Part 760. The anti-boycott provisions discourage, and in some cases, prohibit U.S. persons from participating in foreign boycotts that the United States does not sanction, including complying with certain requests for information designed to verify compliance with the boycott. U.S. persons are also required to report receipt of boycott-related requests. The anti-boycott provisions have the effect of preventing U.S. from being used to implement foreign policies of other nations that run counter to U.S. policy.

### **Items Controlled Under the EAR**

Generally, all items of U.S. origin, or physically located in the United States, are subject to the EAR. Foreign manufactured goods are generally exempt from the EAR re-export requirements if they contain less than a de minimis level of U.S. content by market value. Such de minimis levels are set in the regulations relative to the ultimate destination of the export or re-export.

The EAR requires a license for the exportation of a wide range of items with potential “dual” commercial and military use, or otherwise of strategic value to the United States (but not made to military specifications). However, items listed on the Commerce Control List (CCL) may require a license prior to exportation. Items not listed on the CCL are designated as EAR99 items and generally can be exported without a license, unless the export is to an embargoed country, to a prohibited person, or for a prohibited end-use.

The following summarizes the types of items controlled under the EAR:

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

Many activities are not subject to the EAR. In addition to activities subject to the exclusive authority of another agency (i.e., the export of a defense article which is controlled by ITAR), the EAR lists several exclusions from the regulations. These include published information, information resulting from fundamental research, and educational information.

### **The Commerce Control List Categories**

The CCL provides a list of very specific items that are controlled. The CCL is similar to the "dual use" list adopted by other countries under the Wassenaar Arrangement, although the CCL has additional items. The CCL is divided into ten categories 0-9 and is available online at: [Commerce Control List \(CCL\)](#)

### **Commodity Classification**

BIS encourages exporters to use the detailed descriptions in the CCL to self-classify items to be exported. However, in the event of an incorrect classification, the exporter is liable for any resulting violations of the EAR and may be subject to resulting penalties. Self-classification may be particularly difficult in the university environment where cutting-edge research pushes the boundaries of existing technologies, and in fact may not precisely meet the technical specifications as described in the existing CCL listings. When unsure about a self-classification, the exporter may submit the item/technology to BIS for a formal classification.

However, the Directorate of Defense Trade Controls (DDTC) has jurisdiction to decide whether an item is ITAR- or EAR-controlled. DDTC encourages exporters to self-classify the product. If doubt exists, a Community Jurisdiction (CJ) request may be submitted to DDTC to determine whether an item is ITAR- or EAR- controlled.

Once it is determined that an item is EAR-controlled, the exporter must determine its Export Control Classification Number (ECCN). BIS has two assistance procedures where the proper ECCN classification or licensing requirements are uncertain. To determine both EAR's applicability and the appropriate ECCN for a particular item, a party can submit a "Classification Request" to BIS. To determine whether a license is required or would be granted for a particular transaction, a party can request BIS provide a non-binding "advisory opinion." While BIS provides assistance with determining the specific ECCN of a dual-use item listed on the CCL, if doubt exists as to whether an item is ITAR- or EAR-controlled, BIS will stay its classification proceeding and forward the issue to DDTC for jurisdiction determination.

Unlike ITAR, for classification purposes BIS generally looks at the classification of the complete product being exported rather than at the classification of each subcomponent of the item. This is different from the "see through" treatment under the ITAR. At UTEP, the ECO will assist with the submission of commodity classification/jurisdiction requests as well as with the determination of any export licensing requirements.

### **Authorization to Export**

Once determined that a license is required, an exporter can apply for export authorization from BIS. Unlike the ITAR, there is no requirement for formal registration prior to applying for export authorization. Additionally, the EAR has no equivalent to the Technical Assistance Agreement (TAA) used in ITAR exports.

The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 C.F.R. § 740, as well as review of the notes on applicable license exceptions following the ECCN entry on the CCL. Once an item has

been classified under a particular ECCN, a person can determine whether a license is required for export to a particular country.

- **Determine Reason for Controls.** The "*License Requirements*" section provides notations as to the reasons for control. Examples are: **AT** - Anti-Terrorism, **CB** - Chemical & Biological Weapons, **CW** - Chemical Weapons Convention, **MT** - Missile Technology, **NS** – National Security.
- **Apply Country Chart.** Once an item is identified as meeting the criteria for a particular ECCN, the user can refer to the chart found at 15 C.F.R. § 738, Supp. 1. If the particular control applies to that country, a license is required. For example, Syria has an "X" under AT Column 1, therefore a license would be required unless an exception is applied.
- **Exceptions.** While the CCL is much more extensive than the USML, fewer licenses are required for items controlled under the EAR than under the ITAR. This is because of the many license exceptions that may be available for EAR-controlled exports. It is important to understand that there are limitations on the use of license exceptions (see 15 CFR § 740.2), and that the use of a license exception may have an associated recordkeeping and notification requirement. More than one license exception may be available for a proposed activity. In such cases, the use of the exception with the fewest restrictions on use and the least notification and recordkeeping requirements helps to minimize the compliance burden.

A complete listing of EAR license exceptions may be found in 15 CFR § 740. Exceptions commonly applicable to members of the UTEP community travelling abroad are: BAG (§ 740.14), which applies to personally owned items taken abroad for personal use while abroad; and TMP (§ 740.9), which applies to the temporary export of UTEP owned equipment (including laptop computers and other equipment listed on the CCL), for work related activities, such as professional presentations, teaching, and field research. It is important to note that there are limitations on the use of the TMP license exception. For instance, items must be returned to the U.S. within one year of export, or if not returned, documentation of disposal is required. Exceptions of items exported using the TMP license must be kept under the effective control of the traveler while abroad. Additionally, TMP is not applicable to some restricted locations, such as Cuba.

### Anti-Boycott Restrictions

The Anti-Boycott provisions of the EAR were designed and implemented to address foreign governments' boycott of countries friendly to the U.S. The provisions were first implemented in response to the Arab League Boycott of Israel. As of April 2021 (Federal Register announcement), Arab Countries including Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, and Yemen continue to impose boycott restrictions on Israel and companies that do business with Israel. Such companies are "blacklisted" under the boycott.

The anti-boycott provisions are found in 15 CFR § 760. The provisions apply to any person or entity in the U.S., as well as to U.S. persons or entities abroad. The anti-boycott provisions specifically prohibit the following activities:

- Agreement to refuse or actual refusal to do business with a boycotted country or with blacklisted person.
- Agreement to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality (for example, agreeing to refuse to hire Israeli nationals).
- Providing information about race, religion, sex, or national origin of another person.
- Furnishing information about business relationships with boycotted countries or blacklisted persons (for example, providing information about current or previous business in Israel).
- Furnishing information about membership concerning associations with charitable and fraternal organizations.
- Paying or otherwise implementing letters of credit containing prohibited conditions or requirements.

Exceptions to these prohibitions exist but are limited. Additionally, U.S. persons asked to engage in the prohibited activities are required to report the request to BIS.

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

Under the International Traffic in Arms Regulations (ITAR), 22 CFR § 120-130, the U.S. Department of State Directorate of Defense Trade Controls (DDTC) administers the export and re-export of defense articles, defense services and related technical data from the United States to any foreign destination, or to any foreign person, whether located in the United States or abroad. Section 121.1 of the ITAR contains the United States Munitions List (USML) and includes the commodities, related technical data, and defense services controlled for export purposes. The ITAR controls not only end items, such as radar and communications systems, as well as military encryption and associated equipment, but also the parts and components that are incorporated in the end item. Certain non-military items, such as commercial satellites, and certain chemical precursors, toxins, and biological agents, are also controlled.

The ITAR uses three (3) different terms to designate export-controlled items – defense articles, technical data, and defense services. **With rare exceptions**, if an item contains any components that are controlled under the ITAR, the entire item is controlled under the ITAR.

### **The USML Categories**

The USML designates certain categories and types of equipment as defense articles and associated technical data and defense services. The USML divides defense items into 21 categories. An electronic version of the USML is available on the [U.S. Department of State – Munitions List](#) website.

### **Commodity Jurisdiction**

While DDTC has jurisdiction over deciding whether an item is ITAR or EAR controlled, it encourages exporters to self-classify the item. If doubt exists as to whether an article or service is covered by the USML, upon written request in the form of a Commodity Jurisdiction (CJ) request, DDTC will provide advice as to whether a particular article is a defense article subject to the ITAR, or a dual use item subject to U.S. Department of Commerce licensing.

Determinations are based on the origin of the technology (i.e., as a civil or military article), whether it is predominantly used in civil or military applications, and whether the technology/technical data is available in the public domain. University employees should contact the UTEP Export Control Officer when classifying an item. At UTEP, the Export Control Officer will assist with the submission of CJ requests, as well as with determination of any export licensing requirements.

Steps for requesting a Commodity Jurisdiction (CJ) are described in detail in the **Authorization to Export** section below:

### **Authorization to Export**

An export as defined under the ITAR includes sending or taking a defense article out of the U.S., disclosing (including oral or visual disclosure) technical data to a foreign person whether in the U.S. or abroad, or performing a defense service on behalf of a foreign person whether in the U.S. or abroad (See 22 CFR § 120.17 for a complete listing of export meaning under the ITAR). This definition is extremely broad. It includes taking controlled technical data out of the U.S. on a laptop computer, regardless of whether or not that information is viewed or accessed while abroad. It also includes allowing a foreign person to view or use a defense article in the U.S. Most exports of defense articles and defense services must be licensed by DDTC.

Generally, any U.S. person or entity that manufactures, brokers, or exports defense articles or services must be registered with DDTC. Registration is a precondition to approval of any license application, and the registration number must be included on all correspondence and application forms. UTEP is not registered with this office.

Prior to export, defense articles and defense services require an export license, which will be issued by DDTC. The ECO will follow these procedures when preparing a license application:

- **Review Section 126.1 of ITAR:** This is a list of countries for which U.S. policy denies licenses (exports) of defense articles and defense services. No sale, proposal to sell, or transfer of any defense articles, defense services, or technical data subject to this section should be made without first obtaining approval of DDTC. Review the name of the proposed recipient/entity to ensure that it does not appear on any of the following lists: Statutorily Debarred Parties listed under DDTC website and DOD Excluded Parties, BIS Denied Party lists, and OFAC Specially Designated Nationals (SDN) list. This end-user screening may be done by Export Control Program personnel using Visual Compliance software.
- **Review ITAR Part 121: United States Munitions List,** to determine if the commodity or service is on the list. The Principal Investigator (PI) should provide answers to the following questions when a licensing determination is being made:
  - Who is the end user?
  - What is the item or technical data? Describe its use.

- Source: Did UTEP develop the item? Was it developed under a U.S. Government sponsored contract? If so, provide contract identifying information.
  - What capabilities does the item have?
  - What is the end user's intended purpose?
  - Are there other applications in addition to the intended use?
  - Country of ultimate destination? (Include all international stops while in transit)
  - What is the foreign availability for like items?
  - What is the specific purpose for exporting? (If export is in support of a U.S. Government program, provide specific program information.)
  - Provide name and contact information of U.S. Government contact familiar with item or technology.
- The ECO will determine the type of license/approval that will be needed for a particular circumstance. Types include:
    - **DSP 4076** – *Commodity Jurisdiction Request Form*
    - **DSP 5** – *Application for Permanent Export of Unclassified Defense Articles*. A DSP 5 is typically used when a defined data package is exported for a specific end use.
    - **DSP 73** – *Application for Temporary Export of Unclassified Defense Articles*. Persons intending to temporarily export a defense article must complete the DSP 73 for approval.
    - **DSP 61** – *Application for Temporary Import of Unclassified Defense Articles*.
    - **DSP 85** – *Classified Exports or Temporary imports*.
    - **DSP 119** – *License Amendments*.

All requested information must be provided by the PI to the ECO who will file for the license through the electronic filing process. Documentation of previous licenses to the same entity will be helpful, as are product literature (drawings, technical specs, brochures), and web links to information explaining the technology or supporting the item. Attachments and supporting technical data or brochures should be submitted in Word or PDF.

An exporter may apply for an export authorization by submitting a relatively simple license application for the export of defense articles or technical data; or a complex license application, usually in the form of a Technical Assistance Agreement (“TAA”). The TAA should be used for complex transactions that will require the U.S. entity to provide defense services. Most types of applications also contain additional certifications/transmittal letters, supporting documentation, and in some cases, non-transfer and use certification from the licensee and/or the foreign government of the licensee.

### **Agreements, Off-Shore Procurement and Other Defense Services**

If a TAA is approved by DDTC (which can take an average of 6 months from the date of submittal), exports of technical data in furtherance of the agreement may be made without additional export licenses, so long as the data exported does not exceed the approved scope of the agreement (22 CFR 124.3). The TAA is not effective until approved by DDTC. If a TAA is approved, a copy signed by the U.S. and foreign parties must be filed with DDTC no later than 60 days after its effective date. If the TAA is not implemented by the parties, DDTC must be

notified within 60 days of this decision (22 CFR 124.5). DDTC must be informed, in writing, of the impending termination of a TAA no less than 30 days prior to its expiration (22 CFR 124.6). A Technical Assistance Agreement may only be amended with DDTC's approval, unless the amendment only alters the delivery schedule and does not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreement. One copy of all minor amendments must be submitted to DDTC within 30 days after they are concluded (22 CFR 124.1 (d)).

### **Embargoed Countries under DDTC Regulations**

In general, no ITAR exports may be made either under license or license exemption, to countries proscribed in 22 CFR § 126.1, such as China, Cuba, Iran, North Korea, Sudan, and Syria. Additional restrictions apply to other countries. A complete list of U.S. arms embargoes is available online at: [Country Policies - DDTC Public Portal \(state.gov\)](https://www.state.gov/country-policies-ddtc-public-portal)

### **Office of Foreign Assets Control (OFAC) Regulations**

The U.S. Department of Treasury, Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions. These sanctions are based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States, as set forth in 31 CFR § 500-599. OFAC enforces trade, anti-terrorism, narcotics, human rights, and other national security and foreign policy-based sanctions prohibiting the provision of anything of value, either tangible or intangible, to sanctioned countries, organizations, or individuals. The pertinent regulations provide OFAC with broad authority to block or interdict vaguely defined "prohibited transactions" involving restricted destinations or parties. A complete list of [Sanctions Programs and Country Information](#) can be found in the U.S. Department of Treasury online Resource Center.

While most sanctions are administered by OFAC, BIS has jurisdiction over certain exports prohibitions (via "embargo" regulations), as is the case with exports to Syria. In other words, a license from BIS would be required to ship most items to Syria and other OFAC-sanctioned countries or could be prohibited. Economic sanctions and embargo programs are country-specific and very detailed in the specific prohibitions.

### **Terrorist and Other Barred Entity Lists**

Various U.S. Government agencies maintain a number of lists of individuals or entities barred or otherwise restricted from entering into certain types of transactions with U.S. persons. Particularly since 9/11, U.S. companies have become more assertive in attempting to place contractual terms with foreign companies related to these lists. Such lists must be screened to ensure that the university does not engage in a transaction with a barred entity. UTEP, under a UT system-wide license, uses Visual Compliance Software to expedite screening of these and other lists.

### OFAC Licensing for Country Based Programs

It is important to review the specific sanctions program before conducting activities with an OFAC-sanctioned entity or person, or in an OFAC-sanctioned country. The individual sanctions specifically describe what activities are exempt (personal communications, exchange of informational materials, etc.) from the embargo, as well as what activities may be permitted under an applicable license. Activities which are permitted under a general license do not require specific permission from OFAC prior to engaging in the activity; however, the conditions of a general license must be carefully reviewed, and the use of the general license documented. Activities that do not fall under an available general license may be eligible for a specific license from OFAC. Specific license requests must be submitted and approved by OFAC prior to engaging in the sanctioned activity. Activities conducted under both general and specific licenses are subject to OFAC audit, and records must be maintained for five years after the conclusion of the activity. At UTEP, the Office of Compliance and Regulatory Assurance should be contacted when considering any proposed OFAC-sanctioned activities.

### Miscellaneous Regulations

There are many other export control regulations applicable to the university. The Nuclear Regulatory Commission has regulations for nuclear materials and reactors. The Department of Energy has regulations for assistance with foreign nuclear activities. The Department of Defense has regulations to safeguard classified information. When an export control issue arises, as described below, UTEP's Export Control Program will analyze all applicable regulations to come up with an individual management plan for a given situation.

## **Section V - Key Areas of Concern**

### Fundamental Research Exclusion (FRE)

The term "fundamental research" means (in science, engineering, or mathematics), research in which the results are ordinarily published and shared broadly within the research community, and for which the researchers have not accepted restrictions due to proprietary or national security reasons. Fundamental research is distinguished from proprietary research and from industrial development, design, production, and product utilization, because the results of these are ordinarily restricted for proprietary or national security reasons. Both the ITAR and EAR provide that information resulting from fundamental research is not subject to export controls. This is referred to as the Fundamental Research Exclusion.

Specifically, the **EAR** provides that the fundamental research exclusion applies so long as the university and its researchers do not accept restrictions on publications of scientific and technical information resulting from the project or activity, or personnel access restrictions. The EAR *specifically permits customary prepublication reviews by research sponsors* to prevent inadvertent divulging of proprietary information, or to ensure that the publication will not compromise any patent rights. Access and dissemination controls in government contracts with national security agencies normally do not trigger a license requirement, as long as the university follows any and all national security controls imposed in the contract (15 CFR 734.8(b)).

By comparison, the **ITAR** states that university research will not be deemed to qualify as fundamental research if: (1) the university or its researchers accept **any** restrictions on publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher. The ITAR citation is 22 CFR § 120.11(8).

Under the EAR and ITAR, even if no publication restrictions or personnel restrictions apply, the fundamental research exclusion **does not apply** to the physical shipment of goods and to “technology” of “software” subject to the EAR that is released to conduct fundamental research. The use of sponsor or third-party trade secrets or other proprietary information in a research project which are subject to export control regulations (subject to EAR or ITAR) will continue to be subject to export controls even though the research and the research results are covered by FRE. The EAR citation is 15 CFR § 734.8(a).

### **Deemed Exports**

While exports are commonly associated with the shipment of a tangible item across the U.S. border, export controls have a much broader application. One of the most difficult issues with respect to export controls is the fact that an export is defined to include the transfer of controlled information or services to foreign nationals, even when the transfer takes place within the territory of the United States. Although taking place inside the U.S., the transfer is “deemed” to be an export (as if exporting to the country of the foreign national). The term “deemed export” is unique to the EAR.

Both the ITAR and the EAR provide for deemed exports, even though in the case of defense exports, the regulations generally speak of exports. While the ITAR distinguishes between the transfer of technical data and defense services, the EAR generally provides for the release of technology or source code. Such transfer or release may be made through oral, visual, or other means. An export may occur through:

- a demonstration;
- oral briefing;
- telephone call or message;
- laboratory or plant visit;
- presenting at conferences and meetings;
- faxes or letters;
- hand-carried documents, hardware or drawings;
- design reviews;
- the exchange of electronic communication;
- posting non-public data on the internet or the intranet;
- carrying a laptop with controlled technical information or software to an overseas destination; or
- collaborating with other universities/research centers through research efforts.

The issue of deemed exports is particularly relevant to university research because of the activities that normally take place at a university. While a university may be involved in the

shipment abroad of equipment or machinery to participate in a conference, joint project, or equipment loan programs; most often, faculty and students are engaged in teaching and research. Whenever teaching or research is related to controlled equipment or technology, foreign students' or researchers' involvement may trigger export control compliance issues.

### U.S. and Foreign Persons

For purposes of defense and dual-use exports, the regulations define “foreign” person as anyone who is not a U.S. person. However, BIS looks at the person's most recent citizenship or permanent residence, while DDTC looks at the person's country of origin (*i.e.*, country of birth) and all current citizenships.

### Information Not Subject to Export Controls

It is important to note that most of the activities that UTEP engages in are fundamental research. As such, most activities are not subject to export controls, or even if controlled, do not require licensing. Both ITAR and the EAR have special provisions relating to information that is not subject to export controls, including limited exclusions regarding the release of information in the context of university research and educational activities. Additionally, the embargo regulations have exceptions for certain information and informational materials.

### Publicly Available/Public Domain

All information that is publicly known is also not subject to export controls (again, with the exception of certain encryption software). Under the ITAR, information that is published and that is generally accessible or available to the public is said to be in the “public domain” and not export-controlled (see Section X Terms and Definitions). The EAR uses the term “published” or publicly available rather than “public domain.” Under the EAR, unclassified technology or software information is published and is not subject to the EAR when it has been made available to the public without restrictions upon its further dissemination. In addition to the examples listed above, the EAR specifically provides that software that is available for general distribution either for free or at a price that does not exceed the cost of reproduction and distribution is publicly available (except for certain encryption software classified under ECCN 5D002).

Both ITAR and the EAR address the issue of general educational information that is typically taught in schools and universities. Such information, even if it relates to items included on the USML or the CCL, does not fall under the application of export controls if the information is already “published”.

Under the ITAR, information or software concerning general scientific, mathematical, or engineering principles commonly taught in universities or information in the public domain, are not subject to export controls (See 22 CFR 120.10–11).

### Full Time University Employees

Under a specific exemption, the EAR and ITAR allow a university to disclose unclassified technology, technical data, and source code in the U.S. to a foreign person who is the university's bona fide and **full-time regular employee**. The exemption is available only if:

- the employee's permanent abode throughout the period of employment is in the United States;
- the employee is not a national of a country listed in Country Group D:5 (see [Supplement No 1 Part 740 of the EAR](#)) or to which exports are prohibited pursuant to ITAR § 126.1 (see [Current List of Countries](#));
- the university informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of DDTC; and
- the university documents the disclosure of technical data under the exemption providing: (1) a description of the technical data; (2) the name of the recipient/end-user; (3) the date and time of export; (4) the method of transmission (e.g., e-mail, fax, FedEx); (5) the ITAR reference (i.e., ITAR § 125.4(b)(10), Full-Time University Employee).

Note the "full-time bona fide employee" requirement will preclude *foreign students and postdoctoral researchers from qualifying for access to technical data under this exemption*. Generally, an H1B work visa would be required. This exemption only applies to the transfer of technology, technical data and discussions related to the data. Discussions may occur between the foreign full-time employee and other university employees working on the project. Additionally, the outside company (sponsor of the research) would have to apply for a DSP-5 license to provide technical data directly to the foreign national employee. Furthermore, if the outside party and the employee are to engage in discussions and interchange concerning the data, then the proper authorization would be a Technical Assistance Agreement (TAA) rather than the DSP-5.

## Section VI - Export Control Procedures

### Commitment to Export Control Compliance

It is the policy of The University of Texas at El Paso that instruction, research, and services will be accomplished openly and without prohibitions on the publication and dissemination of the results of academic and research activities.

Federal regulations promulgated and enforced by the Department of Commerce, Export Administration Regulations (EAR), and the Department of State, International Traffic in Arms Regulations (ITAR), prohibit the unlicensed export of specific technologies for reasons of national security or protection of trade. If university research involves such specified technologies, the EAR and/or ITAR may require the university to obtain prior approval from Department of State or Department of Commerce, before allowing foreign nationals to participate in the research, partnering with a foreign company and/or sharing research – verbally or in writing – with persons who are not United States citizens or permanent resident aliens.

Export control regulations have the potential to harm the quality of university research, undermine publication rights, and prohibit international collaboration, if the dissemination of university research is not placed in the public domain and does not qualify for the fundamental research exclusion. The consequences of violating these regulations can be severe, ranging from loss of research contracts to monetary penalties to jail time for the individual violating these regulations.

The Office of Research Compliance and Regulatory Assurances (ORCRA) is responsible for helping the UTEP community understand and comply with the export control laws and apply for an export license when necessary. Please see [UTEP Export Control](#) for additional information. Questions regarding export control laws or procedures for compliance at UTEP may be addressed to Dr. Victor M. Manjarrez, Jr., Export Control Officer at (915) 747-7812 or [exportcontrol@utep.edu](mailto:exportcontrol@utep.edu).

### **Roles and Responsibilities for Export Controls at UTEP**

The roles and responsibilities for ensuring compliance with export control laws at UTEP are included in the Handbook of Operating Procedures (HOOP) Section IV, Chapter 9 – [Policy for Compliance with U.S. Export Control Regulations](#). While it is the responsibility of senior university management and senior school administrators to ensure the existence of adequate resources and management support to comply with the export control regulations and to resolve identified export control issues, the discussion below focuses on other key actors in export compliance at UTEP.

### **Empowered Officials**

The Vice President for the Research & Innovation is the UTEP Empowered Official for all export control matters. In this capacity, the Empowered Official has the authority to represent the university before the export control regulators in matters related to registration, licensing, commodity jurisdiction, classification requests, and voluntary or directed disclosures. While certain oversight functions may be delegated, only the Empowered Official may sign paperwork and bind the university in any proceeding before DDTC, BIS, OFAC, or any other government agency with export control responsibilities.

### **Office of Research Compliance and Regulatory Assurances (ORCRA)**

Responsibilities:

- Monitors and implements export control policies and maintains associated records as required.
- Monitors and interprets export control regulations.
- Provides assistance to researchers, staff, students, and partners in all export control related matters including, but not limited to: training; licensing applications; classification of technology; Technology Control Plans; Data Management Plans; and restricted party screenings.
- Reviews grant proposals, sponsored program awards and research contracts.
- Reviews and classifies controlled technology.
- Advises faculty members on travel-related export control requirements, conducting research abroad, and international collaborations.
- Assists departments in screening non-U.S. persons and entities against appropriate restricted party lists.
- Applies for export licenses, commodity jurisdictions, and classification requests.
- Conducts periodic audits of export control processes and activities to proactively manage compliance.
- Documents and follows up on all export control reviews and determinations.

### Office of Sponsored Projects (OSP)

#### Responsibilities:

- Provides assistance to researchers in reviewing terms of sponsored program research projects and activities, to identify/negotiate any potential export control language or issues at the pre- and post-award stage.
- Informs researchers and ORCRA of projects with export control restrictions (e.g., restrictions to publication or release, limitations for the participation of non-U.S. persons, acceptance of company/sponsor proprietary information), or projects that are ambiguous and require further analysis (e.g., physical exports of materials, projects with a military application).
- In consultation with researchers, discusses and explores potential export control requirements with the sponsor's program or technical administrators in proposal preparation, negotiation, or reporting requirements, and informs them of federal regulations and the university's export control procedures.
- Communicates with ORCRA about any changes in projects that require review for export controls.

### Office of Contracts and Agreements

#### Responsibilities:

- Reviews terms of sponsored research contracts, material transfer agreements and other research-related agreements to identify potential export control issues (e.g., restrictions on publication; required or restricted dissemination of research results; references to U.S. export regulations beyond a mere statement to comply with the law; acceptance of company/sponsor proprietary information).
- Informs researchers and ORCRA of potential export control issues, or issues that are ambiguous and require further determination (e.g., physical exports of materials, projects with a military application).
- Negotiates language in sponsor agreements with the sponsor and consults ORCRA if problematic terms cannot be removed.

### Departments, Centers, and Colleges

#### Responsibilities:

- Oversees export compliance within their areas of administrative responsibility.
- Identifies export control requirements related to the activities and follows procedures outlined in [UTEP Export Control](#) (e.g., Certification of Temporary Export Form, Export Control Related Activity Assessment Form, Technology Control Plans).
- Assists ORCRA in all export control matters (e.g., information and purpose of technology or equipment being shipped, screening and management plan for international visitors with UTEP or non-UTEP visa sponsorship, materials being shipped to UTEP from overseas, purpose of travel, type of service provided by a vendor).
- Discloses promptly (as soon as knowledge is obtained) any violation or potential violation of the EAR/ITAR/OFAC regulations.

## **UTEP Personnel (Researchers and Principal Investigators)**

### Responsibilities:

- Understands his/her obligations and becomes familiar with the U.S. export control laws and regulations (e.g., deemed export rules, purchases, international shipments, international collaborations/travels, foreign national visitors, company proprietary/confidential information) while maintaining an open research environment that welcomes the participation of researchers around the world.
- Identifies export control requirements related to research activities and follows procedures outlined in [UTEP Export Control](#) (e.g., Certification of Temporary Export Form, Export Control Related Activity Assessment Form, Technology Control Plans).
- Safeguards any technology, technical data or information identified as export-controlled, confidential, restricted, proprietary, or sensitive (e.g., Sensitive but Unclassified (SBU), For Official Use Only (FOUO)).

## **Export Control Committee (ECC)**

### Responsibilities:

- Reviewing issues brought to the ECC for discussion, as needed.
- Setting institutional Export Control policies and procedures.
- Recommending program priorities (training, etc.).
- Monitoring the Export Control Program for regulatory compliance.

## **Section VII - Export Control Analysis**

### **Evaluating Sponsored Research Activities**

In coordination with the Office of Sponsored Projects (OSP), the Office of Contracts & Agreements, the Office of Research Compliance and Regulatory Assurances (ORCRA), and the Principal Investigator (PI) should conduct a thorough review of the research project and contract provisions to determine whether, and if so, how a particular research project is impacted by the regulations. ORCRA will assist researchers in assessing the application of such regulations, but primary compliance responsibility rests with the principal investigator of the research.

ORCRA reviews all sponsored activities that could involve export control issues due to the following reasons:

1. Research that does not qualify under the Fundamental Research Exclusion/Public Domain Exclusion due to restrictions on publication or access by non-U.S. persons;
2. Explicit references to export control regulations or language;
3. Research that involves military applications;
4. International travel;
5. Collaboration with foreign entities/individuals (foreign sponsors);
6. Controlled technology, Technical Data, or Item (Subject to EAR/ITAR);
7. Research abroad;
8. Non-U.S. participation;
9. International transactions;
10. International Shipping; and
11. Export Controlled Related Activity Assessments

## Sponsored Research Contracts and Non-Disclosure, Confidentiality, and Material Transfer Agreement

- a. Research & Innovation reviews the terms of the contracts and/or agreements for provisions that may:
  1. Restrict access to or publication of research/technical data;
  2. Limit the participation of non-U.S. persons in the activities; or
  3. Otherwise render the exemptions from the export control regulations inapplicable (e.g., export control language, sending technology abroad, receiving controlled proprietary/confidential information, etc.).
- b. OSP negotiates language in the agreements with the sponsor and consults ORCRA only if the problematic terms cannot be removed.
- c. Research & Innovation refers researchers to the Office of Sponsored Projects for materials transfers that may involve a proposed transfer of biological agents, chemicals and other hazardous materials for approval and shipping instructions.
- d. ORCRA conducts a thorough review of the agreement provisions to determine if and how a particular research activity is subject to export control regulations and determine if any additional information is needed from the researcher. Researchers may be contacted by ORCRA to gather additional or supplemental information necessary to evaluate the export control issue and research activities.
- e. If ORCRA determines that the research activities are subject to export control regulations, they will inform the Office of Sponsored Projects and the PI/Researcher and work with them to make the final determination for appropriate controls (e.g., develop and implement a Technology Control Plan (TCP) or Data Management Plan (DMP); request for export license; prepare faculty agreement, etc.).

## Pre-Award Proposal Processing Procedures

- a. The Office of Sponsored Projects conducts the initial review and has oversight and approval authority for all grants, solicitations, proposals, and awards.
- b. All proposals are submitted by the PI electronically, to the Office of Sponsored Projects. The *Sponsored Research Export Control Checklist* Form **must be submitted with the proposal** to help determine whether any aspect of the sponsored research project activities will be subject to export control regulations.
- c. The PI and the Office of Sponsored Projects may identify the following red flags which indicate the possible presence of export control issues:
  1. References to U.S. export control regulations (beyond a mere statement to comply with the law);
  2. Restricts access or participation based on country of origin;
  3. Restricts the use of proprietary or confidential information;
  4. Grants the sponsor pre-publication review and approval for matters other than the inclusion of patent or sponsor proprietary/confidential information;
  5. Allows the sponsor to claim the results or data generated in the agreement as proprietary or trade secret;
  6. Involves the acquisition of export-controlled items or technical data (if known);
  7. Includes foreign sponsors or collaborators;
  8. Travel, shipping, or work outside of the United States;

9. Military applications of project results.
- d. Upon completion of the Sponsored Research Export Control Checklist Form by the PI, the Office of Sponsored Projects checks for affirmative answers that might be an indication of a potential export control issue.
- e. OSP sends an email notification to the ECO (email: [exportcontrol@utep.edu](mailto:exportcontrol@utep.edu)) indicating that **“Someone marked “YES” to at least one of the Export Control questions in a newly created routing form”**.
- f. ORCRA conducts a thorough review of proposals, projects, and contract provisions to determine if and how a particular research project is subject to export control regulations within 72 hours of the submission and determines if any additional information is needed from the researcher. The PI may be contacted by ORCRA to gather additional or supplemental information necessary to evaluate the export control issue and research activities.
- g. If applicable, the PI/OSP asks the vendor to provide the ECCN or USML category, if known, for equipment/technology purchases. This information is used to determine whether a Technology Control Plan or an export license is required prior to releasing the technology to a non-U.S. person at UTEP or before taking or sending the technology overseas.
- h. If ORCRA determines that the research activities are subject to export control regulations, they will inform the PI and OSP. ORCRA will work with the PI to make the final determination (e.g., develop and implement a Technology Control Plan or Data Management Plan, request export license, prepare faculty agreement, etc.).

### **Post-Award Proposal Processing Procedures**

- a. When OSP processes a Notice of Award (NOA), the routing system sends an email notification to the ECO and other Research Protections staff members to review the terms and conditions.
- b. ORCRA reviews the proposal and documentation related to the Award within 72 hours of the submission and determines if any additional information is needed from the PI based on the initial review at the Pre-Award Stage.
- c. If ORCRA determines that the research activities are subject to export control regulations, they will inform the PI and OSP and work with the PI to make the final determination for appropriate controls (e.g., develop and implement a Technology Control Plan or Data Management Plan, request for export license, prepare faculty agreement, etc.).
- d. In coordination with OSP and Contracts and Grants, ORCRA reviews final contracts and agreements to determine if potential export control issues were addressed prior to setting up the project account.
- e. If a determination is made that export controls apply to the project, the researcher must adhere strictly to any applicable restrictions and cooperate fully with ORCRA's efforts to implement the necessary mechanisms and procedures to safeguard the technology (EAR/ITAR) and to monitor compliance.
- f. If provisions that restrict the dissemination of information cannot be eliminated during negotiations, and if no exclusions or exemptions are applicable, ORCRA will consult with the PI to determine whether a Technology Control Plan or export license is required, based on the classification of the technology and participation of non-U.S. persons.

- g. ORCRA assists with the development and implementation of a Technology Control Plan and provides education and training for all personnel who will have access to export-controlled items.

**Note:** The requirement to determine whether an item meets the definition of a defense article/service (ITAR) may be triggered at numerous phases of the research process, beginning with the earliest concept design stages. Members of the UTEP community should notify ORCRA immediately of any changes.

### Evaluating other Export-Controlled Related Activities

The Office of Research Compliance and Regulatory Assurances, in coordination with Purchasing, and the Office of Sponsored Projects, has developed the following processes and standard operating procedures to help College/Department Administrators, Researchers, and other persons engaged in any research/non-research activity identify whether the export control regulations affect a particular activity:

### Acquisition and Management of Export-Controlled Items

- a) The Purchasing Department, Disbursement Services, and ORCRA require vendors, sponsors, collaborators, and others to notify UTEP if the items are export-controlled. This information is communicated to the PI or individual initiating the procurement for record-keeping and ensuring appropriate use and control of the purchased equipment.
- b) UTEP personnel shall also request a letter from the vendor stating that the items are (or are not) subject to export control regulations prior to placing any order and/or receiving the item.
- c) UTEP's equipment/tangible items such as laboratory materials (agents), technology, software, hardware, and technical data will be classified prior to export to determine which, if any, control requirements apply to the item. In certain cases, access by certain non-U.S. persons for whom particular items are restricted, may also apply.
  - 1. When there is a question as to whether an item being procured is subject to export control, UTEP personnel shall request a letter from the vendor stating that the items are (or are not) subject to export control regulations prior to placing the order and/or receiving the item.
- d) The Office of Sponsored Projects is responsible for managing (in/out) Materials Transfer Agreements (MTAs) regarding biological materials on behalf of faculty. All materials transfer agreements with foreign persons/entities are referred to ORCRA for export control review.
- e) UTEP staff forwards requests for review/classification using the Export Control Related Activity Assessment Request Form to ORCRA.
- f) ORCRA assists with classifying the item through a commodity jurisdiction/classification to determine which governmental agency has jurisdictional control over the item.
- g) Once the commodity jurisdiction has been made, ORCRA informs all affected parties.
- h) ORCRA applies for export licenses and authorizations where required and advises appropriate individuals and license recipients on how to comply with license conditions. No export or deemed export can take place until a license is granted.

- i) ORCRA assists with the development and implementation of a Technology Control Plan and provides education and training for all personnel who will have access to export-controlled items.

### International Shipping

- a) UTEP staff forwards requests for international shipping using the Export Control Related Activity Assessment Request Form to ORCRA.
- b) ORCRA works with the Exporter to get details as necessary and to determine the nature of the materials being shipped, the purpose of the shipment, and if any exceptions apply.
- c) If required, ORCRA will request a Commodity Classification/Jurisdiction from the U.S. Department of Commerce (BIS) or U.S. Department of State (DDTC) or apply for an export license where required. No export can take place until a determination has been made or a license is in place.
- d) ORCRA approves the Export Control Related Activity Assessment Request and provides classification and/or export validation letter.
- e) ORCRA applies for export licenses and authorizations where required and advises appropriate individuals and license recipients on how to comply with license conditions. No export can take place until a license is granted.
- f) Any licensed export, as well as exports with a dollar value greater than \$2,500 must be entered into the Department of Census Automated Export System (AES) prior to the export of the item or information.

### International Travel

- a. International Travel to a region falling under the U.S. Department of State's designated "restricted region list" is monitored by the International Oversight Committee (IOC). The IOC is responsible for reviewing and making approval decisions on all University-sponsored, UTEP-administered, UTEP-organized foreign travel, or foreign travel *conducted within one's capacity as a UTEP representative* to high-risk regions. All UTEP-related foreign travel activities require online registration through [On Call International](#) (UT Group ID 100143CPPD21). More information on services provided by On Call International can be found here: [International Emergency Assistance Program](#)
- b. Travelers that intend to take computers, equipment, software, or any other UTEP inventory out of the U.S. should submit the *Certification of Temporary Export of UTEP Property and Review of U.S. Export Control Regulations* and *Authorization to Remove Equipment Off Campus* forms to ORCRA. This is in addition to the requirements of the Information Security Office (ISO) and the Office of Institutional Property Management.
- c. ORCRA reviews the information provided by the traveler in the form and determines if the equipment listed on the form is subject to EAR/ITAR.
- d. If applicable, ORCRA screens the individuals and entities listed on the form against the list of U.S. government's Denied/Restricted Parties (Visual Compliance Software).
- e. ORCRA validates and sends the form via email to the traveler with the restricted party screening results, if applicable.
- f. If further review is required, the researcher or responsible party provides all required information regarding the activity.
- g. Travel to an OFAC-embargoed country requires a travel license issued by the Treasury Department, if no general license applies.

- h. On November 19, 2024, Governor Greg Abbott signed Executive Order No. GA-48. As a result, all University employees are required to complete a Personal Foreign travel Notification prior to travelling to a foreign-adversary nation and submit a Post Foreign Travel Questionnaire upon their return.
- i. Exclusions that are relevant for researchers when traveling include:
  - 1. **Published Information and Software** – information that is generally accessible to the public through publication in books or periodicals, or information presented in the United States at a conference, meeting, seminar, trade show or other open gathering (members of the general public are eligible to attend and attendees are permitted to take notes) is considered to be in the public domain. Software available from a web site and accessible to the public is also considered to be publicly available. (Encryption software with symmetric key length exceeding 64 bits does not meet this exclusion.)
  - 2. **Educational Information** – Course material taught in U.S. universities, course catalog classes, and information that is in the public domain all fall within the educational information exception. (Encryption software with symmetric key length exceeding 64 bits does not meet this exclusion.)

#### **International Transactions (Financial, Collaboration, Exchanges, etc.)**

- a) UTEP employees must submit a request for a restricted party screening to the Office of Research Compliance and Regulatory Assurances prior to doing business with an entity or individual overseas.
- b) Office of Research Compliance and Regulatory Assurances reviews the information/activity, screens collaborators/vendors, and sends the restricted party screening results to the requester.

#### **Visiting Foreign Scholars/Researchers:**

- a. UTEP staff submits a request for a restricted party screening to ORCRA of all other non-U.S. visitors and potential new non-U.S. employees prior to conducting any transaction or sending an invitation.
- b. Departments, centers, faculty, researchers, and administrators at UTEP who intend to invite or host visitors on a temporary basis should follow the guidelines and processes provided under their programs.
- c. The host must certify that the non-U.S. visitor will not have access (whether verbal, written, electronic, and/or visual) to export-controlled information or physical items during the visit.
- d. UTEP staff forwards the service agreement and *Visiting Scholar/Researcher Approval and Screening Form* to ORCRA for approval.
  - 1. ORCRA reviews the information and the description of the scope of the visit on the visiting scholar/researcher approval form.
- e. ORCRA approves and forwards either the service agreement to OSP if the agreement is related to sponsored research; or the *Visiting Scholar/Researcher Approval and Screening Form* to the applicable department.

### **Technology Control Plans (TCP)**

A Technology Control Plan is a protocol that outlines the procedure to secure certain export-controlled items (technical data, materials, software, or hardware) in order to protect them from unauthorized use, access, and observation by non-U.S. persons who do not have a license to use the technology. TCPs will include:

- a) A commitment to export control compliance;
- b) Identification of the applicable export controls, and items or technologies subject to the controls;
- c) A description of the agreed upon security measures to control the item/technology including, as appropriate:
  1. laboratory compartmentalization
  2. time blocking
  3. marking
  4. personnel identification
  5. locked storage
  6. electronic security
  7. confidential communications
- d) Identification and nationality of each individual who will have access to the controlled item or technology.
- e) Personnel screening measures for granting access to the controlled item/technology.
- f) Appropriate security measures for disposal of the item/technology when use is complete.
- g) TCP renewal (required every year after the initial certification)

### **Monitoring and Auditing**

The Office of Research Compliance and Regulatory Assurances will conduct periodic self-assessments/internal reviews of TCPs and other university activities, to assure the compliance and effectiveness of the UTEP Export Controls program. These reviews may include any or all of the following:

- a) Monitoring all executed Technology Control Plans (TCPs), which will be audited on at least an annual basis and/or as needed to ensure compliance.
- b) Examination of UTEP Export Controls procedures.
- c) Periodic review and tracking of documentation and processes, including review of internal recordkeeping, communications, document transfer, maintenance, and retention.

## **Section VIII - Training**

The Office of Research Compliance and Research Assurances will provide education and training to the UTEP community on export control regulations, compliance, and related issues. ORCRA will prepare training materials and ensure that university employees and students engaged in export-controlled activities receive appropriate briefing, guidance, and oversight. ORCRA will also provide ongoing export briefing sessions for faculty, staff, students, and affiliates on an ad-hoc basis. Export Controls Training can be arranged by contacting the Export Control Officer Dr. Victor M. Manjarrez, Jr. at either (915) 747-7812 and/or [exportcontrols@utep.edu](mailto:exportcontrols@utep.edu).

## Section IX – Recordkeeping and External Reporting

The ITAR, EAR and OFAC regulations all stipulate record-keeping requirements for regulated export activities. Under each of these sets of regulations, records must be retained for five years after the completion of the activity and made available to the regulating authority upon request. 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. Additionally, when a license exception (EAR) or license exemption (ITAR) is used, additional records documenting the applicability of the exception/exemption may be required and, in some cases, there may be additional reporting requirements.

ORCRA will audit export-related records on a periodic and project basis. Unless otherwise provided for, all records indicated herein shall be maintained consistently with the UTEP record retention policy and shall be retained no less than five years after the project’s TCP termination date or license termination date, whichever is later.

If ITAR-controlled technical data must be kept even beyond the five-year retention period, those records must include:

1. a description of the unclassified technical data;
2. the name of the recipient/end-user;
3. the date/time of export;
4. the method of transmission (e.g., e-mail, fax, telephone, FedEx); and
5. the exemption under which the export took place.

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

BIS has specific record-keeping requirements. Generally, records required to be kept by EAR must be kept for a period of five years from the project’s termination date. However, if BIS or any other government agency makes a request for such records following a voluntary self-disclosure, the records must be maintained until the agency concerned provides written authorization otherwise.

## Section X - Terms and Definitions

Term	Definition
<b>Bona Fide Employee Exemption (EAR/ITAR)</b>	Exemption that allows disclosure of unclassified “technology”, technical data or information to a non-U.S. person who is a full time, bona fide university employee and has maintained a permanent address in the U.S. while employed; is not a national of a country to which exports are prohibited; is not a national of a country subject to U.S. embargoes ( <a href="https://www.bis.doc.gov/index.php/policy-guidance/country-">https://www.bis.doc.gov/index.php/policy-guidance/country-</a>

	<a href="#">guidance/sanctioned-destinations</a> ); and is not advised in writing not to share the technical data or information with other non-U.S. persons without prior U.S. Government authorization. The exemption does not include the release of a commodity (article, material, or supply) or defense article.
<b>Commerce Control List (CCL)</b>	A list of items under the export control jurisdiction of the U.S. Department of Commerce. The CCL is divided into ten categories: (0) Nuclear Category Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Chemicals, “Microorganisms”, and Toxins; (2) Materials Processing; (3) Electronics Design, Development and Production; (4) Computers; (5) Telecommunications; (6) Sensors; (7) Navigation and Avionics; (8) Marine; (9) Propulsion Systems, Space Vehicles, and Related Equipment.
<b>Debarred Parties List</b>	List of individuals denied export privileges under ITAR and maintained by the U.S. Department of State.
<b>Deemed Export</b>	Release or transmission of certain items (e.g., information or technology) subject to export control to a foreign national in the U.S. Deemed exports may occur through demonstration, oral briefing, facility visit, as well as the transmission of controlled data. If the university accepts company proprietary information in connection with research, and the information is “technology,” then revealing this information to a non-U.S. person may be a “deemed export”.
<b>Deemed Re-export</b>	The release of technology or information by a non-U.S. person who has been licensed to receive it to a national of another country who has not been licensed to receive the technology or information.
<b>Defense Service</b>	Furnishing technical data or assistance (including training) to foreign persons (i.e., foreign nationals), 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; or military training of foreign units and forces. Defense services also include informal collaboration, conversations, or interchanges concerning technical data.
<b>Defense Article</b>	Any item or technical data (these include military and commercial satellite and space related items, equipment, vehicles, instrumentation, software, and materials), designated by the U.S. State Department in the ITAR. The term includes technical data recorded or stored in any physical form, models, mockups, or other items that reveal technical data directly relating to items on the U.S. Munitions List (USML). It does not include basic marketing information on function or purpose or general system descriptions.
<b>Denied Persons List</b>	A list of persons who have been issued a denial order from the U.S. Department of Commerce’s Bureau of Export Administration (BXA). U.S. Exporters and third parties in general are prohibited from dealing with these persons in transactions involving U.S. items.
<b>Dual Use</b>	Items that have both commercial and military or proliferation

	applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also “subject to the EAR” (see §734.2(a) of the EAR). Items with <b>no specific ECCN</b> are designated as “EAR99.”
<b>Educational Information</b>	Phrase used by the Department of Commerce in §734.9 of the EAR to denote information that is not subject to the EAR if it is released by instruction in catalog courses and associated teaching laboratories of academic institutions. Certain types of information related to encryption software cannot, however, be considered “educational information”, and is subject to the EAR even if released “by instructions in catalog courses and associated teaching laboratories of academic institutions.”
<b>Empowered Official (EO)</b>	Individual authorized by a business enterprise to sign and process license applications on behalf of the University and who must therefore understand the provisions of ITAR (22 CFR Section 120.25), among others. This individual has authority to inquire into any aspect of a proposed export and to verify the legality and accuracy of the information submitted for a transaction, as well as the authority to refuse to sign “any” license application without retribution from the University. This is important because the EO is held liable for any violations of ITAR. The EO is also responsible for internal audit of export control compliance.
<b>Encryption</b>	The process of encoding a message so that only the sender and the intended recipient can read it.
<b>Encryption Software</b>	Software whose main task is encryption and decryption of data, usually in the form of files on hard drives and removable media, or email messages sent over computer networks or the internet.
<b>End-Use</b>	A detailed description of how the ultimate recipient intends to use the commodities being exported.
<b>End-User</b>	The person who receives and ultimately uses the exported or re-exported items. The end-user is not a forwarding agent or intermediary but may be the purchaser or ultimate recipient.
<b>Entity List</b>	Exports to foreign end-users engaged in proliferation activities are usually prohibited without a license. These are administrated on a case-by-case basis.
<b>Export</b>	<ul style="list-style-type: none"> <li>• An actual shipment or transmission out of the United States, including sending or taking of a controlled item (EAR: commodities, software, and technology) or a defense article (ITAR: item, technical data) out of the United States in any manner to anyone, including a U.S. citizen;</li> <li>• Releasing or otherwise transferring “technology”, source code, or technical data to a non-U.S. person in the United States (as a “deemed export”);</li> <li>• Releasing or otherwise transferring a controlled item or a defense article to a foreign embassy or affiliate;</li> <li>• Performing a defense service on behalf of, or for the benefit of, a</li> </ul>

	<p>foreign person, whether in the United States or abroad; or</p> <ul style="list-style-type: none"> <li>• Providing a service or conducting any type of transactions with embargoed countries and individuals and/or entities listed on the “Prohibited Parties List”.</li> </ul>
<b>Export Administration Regulations (EAR)</b>	A set of federal regulations that regulates the export and re-export of most commercial items.
<b>Export Control Classification Number (ECCN)</b>	A five-character alpha number classification is used in the CCL to identify items for export control purposes. ECCNs are found in 15 CFR §774, Supplement 1, and in the Commerce Control List (CCL).
<b>Export Controlled Item</b>	Items subject to export control regulations include, but are not limited to: goods, commodities, materials, defense articles, substances, software, technology, equipment, technical data, information, and funds.
<b>Export Controlled Activity</b>	Activities subject to export control regulations include, but are not limited to: provision services, technical assistance, training, software downloads, conference presentations, tours of facilities, travel, and collaboration in teaching or research.
<b>Export Controls</b>	Federal regulations that restrict the release of certain items (e.g., commodities, software, technology, equipment, or information) and the provision of certain services (e.g., technical assistance, training) to foreign destinations or to foreign nationals in the United States and abroad for reasons of national security, foreign policy, anti-terrorism, or non-proliferation. Federal export control regulations include the Export Administration Regulations (EAR) and the International Traffic Arms Regulations (ITAR, as well as regulations administered by the Office of Foreign Assets Control (OFAC).
<b>Foreign National</b>	A person who is not a U.S. citizen or lawful permanent resident of the U.S., or who does not have refugee or asylum status in the U.S. Foreign National also includes a foreign corporation, business association, partnership, trust, society, or any other foreign entity or group, as well as international organizations and foreign governments.
<b>Fundamental Research</b>	<p>“Fundamental research” in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research in which the results are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:</p> <ol style="list-style-type: none"> <li>1. The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity; or</li> <li>2. The research is funded by the U.S. Government and specific access and dissemination controls protecting information</li> </ol>

	resulting from the research are applicable.
<b>Fundamental Research Exclusion (FRE)</b>	<p>As used in the export control regulations, this 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. The fundamental research exclusion (FRE) applies only to the information that results from Fundamental Research, not to the transmission of material goods. Fundamental research does not cover the export of hardware, software, technical data, and technology; financial dealings with prohibited parties or entities; export-controlled activities like technical assistance; and other transactions that involve embargoed or sanctioned parties/countries.</p> <p>University research will not qualify as fundamental research if (1) the institution accepts any <u>restrictions on the publication and/or access of the information resulting from the research</u>, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information or to insure that publication will not compromise patent rights of the sponsor; or (2) the research is <u>federally funded and specific access or dissemination controls</u> regarding the resulting information have been accepted by the university or the researcher.</p>
<b>International Traffic in Arms Regulations (ITAR)</b>	A set of federal regulations used primarily to control the import and export of defense articles and defense services.
<b>License</b>	A written authorization provided by the appropriate governing regulatory authority detailing the specific terms and conditions under which export, or re-export of export-controlled items is allowed.
<b>License Exception (EAR)</b>	An authorization that allows the export or re-export, under very specific conditions, of items that would normally require a license under the EAR. Export License Exceptions are detailed in EAR §740.
<b>License Exemption (ITAR)</b>	An authorization that allows the export of unclassified defense articles without approval from the Office of Defense Trade Controls. Export License Exemptions are detailed in ITAR § 123.16
<b>Non-U.S. Person</b>	Any person who is not a lawful permanent resident (LAPR/I-551 card holder) or citizen of the United States or other protected individual (e.g., a political refugee). Any non-U.S. corporation, business association, partnership, trust, society or any other foreign entity or group, as well as international organizations and foreign governments, are considered “non-U.S. person(s).”
<b>Open Meeting</b>	Term used to describe a conference, seminar, or other gathering where all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record of the proceedings and presentations.
<b>Patent Information</b>	Information contained in a patent application, or an amendment, modification, supplement, or division of an application. Such information is not subject to the EAR pursuant to §734.10 and §734.7(a)

	3.
<b>Public Domain/Publicly Available</b>	<p><b>a. ITAR:</b> Information which is already published and generally accessible to the public is not subject to ITAR. This includes information that is available through sales at newsstands and bookstores; through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information; through second class mailing privileges granted by the U.S. Government; through patents available at any patent office; through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public in the United States; through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency (see also §125.4(b)(13) for additional information); <i>through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.</i></p> <p><b>b. EAR:</b> Publicly available technology and non-encryption software, such as information that is the subject of an open patent application, published in a book or periodical, released at an open conference anywhere, available on a website accessible by the public with no access controls or information that will be published is not subject to the EAR. This includes submission of manuscripts to journals for consideration with the understanding that the article will be published if favorably received.</p>
<b>Re-export</b>	An actual shipment or transmission of controlled tangible items, software, or information from one foreign country to another foreign country. The export or re-export of controlled, tangible items, software, or information that will transit through a country or countries or will be unloaded in a country or countries for reloading and shipment to a new country, or are intended for re-export to the new country, are deemed to be exports to the new country.
<b>Release</b>	<ul style="list-style-type: none"> <li>• Visual or other inspections by a non-U.S. person of items or defense articles that reveal technology or source code subject to export control or technical data to a non-U.S. person; or</li> <li>• Oral or written exchanges with non-U.S. persons of technology, source code or technical data in the United States or abroad.</li> </ul>
<b>Restricted Research</b>	University research, development, or testing subject to export control sanctions, controlled unclassified restrictions, and/or security controls. Research will not qualify as fundamental research if (1) the institution accepts <u>any restrictions on the publication and/or access of the information resulting from the research</u> , other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information or to insure that publication will not compromise patent rights of the sponsor; or (2) the researcher is <u>federally funded</u> and <u>specific access or dissemination controls regarding the resulting</u>

	<u>information</u> have been accepted by the university or the researcher, or (3) the university accepts access to, or release services on, a defense article.
<b>Sanctioned Country</b>	Even when exclusions to EAR or ITAR apply, the U.S. Treasury Department, Office of Foreign Assets Control may prohibit payment, travel and the transfer of items, assets, and services of value to sanctioned nations.
<b>Specially Designated Nationals (SDN)</b>	Any person who is determined by the U.S. Secretary of the Treasury to be a specifically designated national for any reason under regulations issued by the Office of Foreign Assets Control. U.S. persons are prohibited from having transactions with the persons listed in the Specially Designated Nationals List.
<b>Technical Assistance</b>	Instruction, skills training, working knowledge, and consulting services, as well as the transfer of technical data.
<b>Technical Assistance Agreement</b>	An agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles.
<b>Technical Data (ITAR)</b>	Information, which is required for the design, development, production, manufacture, assembly, operation, repair, testing maintenance or modification of <b>defense articles</b> . This includes information in the form of blueprints, drawings, photographs, plans, instructions, or documentation. Technical data includes classified information relating to defense articles and defense services, and some software may be considered technical data. <i>This definition does not include the controlled equipment/commodity itself, nor educational materials, basic marketing information on function, purpose, or general system descriptions of defense articles contained in publicly available user manuals.</i> The “deemed export” rules apply to the transfer of such technical information to non-U.S. persons inside the U.S.
<b>Technology (EAR)</b>	Any specific information and know-how (whether in tangible form – such as models, prototypes, drawings, sketches, diagrams, blueprints, manuals, or software – or in intangible form, such as training or technical services) that is required for the development, production, or use of a good, but not the good itself.
<b>United States Munitions List (USML)</b>	List of articles, services, and related technical data designated as defense articles and defense services. The State Department has stated that the USML is illustrative only, meaning that the absence of an item on the USML does not conclusively rule out the possibility of its being a defense article or defense service.
<b>University Personnel</b>	Faculty, staff, visiting scholars, postdoctoral fellows, students, and all other persons retained by or working for the University. All University Personnel shall comply with all U.S. export control laws and regulations while engaged in activities at or on behalf of the University.
<b>Use</b>	Technology for operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing of a good.

<b>U.S. Person</b>	Under ITAR, 22 CFR 120.15, any person who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). Also, any corporation, business association, partnership, society, trust, or any other entity, organization, or group that is incorporated to do business in the United States. Also, any governmental (federal, state, or local) entity. Under EAR, 15 CFR 760.1(b), any person who is a United States resident or national, including individuals, domestic concerns, and "controlled in fact" foreign subsidiaries, affiliates, or other permanent foreign establishments of domestic concerns.
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