



# **UTSA Export Control Compliance SOP**

**December 2021**

Original Version: October 2016

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# 1. Purpose

The purpose of this Compliance SOP is to set forth U.T. System policies and UTSA procedures for complying with U.S. export control laws and regulations, and is intended to ensure transparency, effective oversight and administration of the Export Control Program at UTSA.

# 2. General Description

The University of Texas at San Antonio (UTSA) is committed to full compliance with all applicable U.S. export control laws and regulations, including obtaining any required export license for the transfer 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 UTSA activities are excluded from U.S. export control regulations, some activities essential to the UTSA mission require oversight and management to ensure export control compliance.

Several federal agencies have jurisdiction over the control of exports, including the Department of Commerce, the Department of Energy, the Department of State, the Department of Treasury, the Nuclear Regulatory Commission, and the U.S. Department of Agriculture. The three main agencies that regulate and enforce federal export control regulations and prohibit the unlicensed export of specific technologies for reasons of national security or protection of trade are the Department of Commerce, through its Export Administration Regulations (EAR) and controlling the exports of “dual use” items; the Department of State, through its International Traffic in Arms Regulations (ITAR) and controlling the export that have primarily military and space applications; and the Department of Treasury, through the Office of Foreign Assets Control (OFAC) and responsible for enforcing specific embargoes and/or sanctions.

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

- The nature of the export has actual or potential military applications or 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 EAR and/or 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 a foreign company and/or share research—verbally or in writing—with persons who are not U.S. citizens or permanent residents. The consequences of violating these regulations can be quite severe, ranging from loss of research contracts to monetary penalties and jail time for the individual violating these regulations.

Faculty and other researchers are responsible for:

- Knowing classification of and export compliance 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 restrictions or personnel access restrictions;
- Knowing the classification of and export compliance requirements for company proprietary information they receive under a confidentiality obligation;
- Having an effective security plan to protect export-controlled information in their possession, 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 UTSA, engaging in research with foreign collaborators, engaging in research sponsored by foreign persons or conducting research in foreign countries.

The Office of Research Integrity (ORI) is responsible for helping the community understand and comply with export control laws. ORI has the responsibility to support all export control-related activities, recordkeeping, review, and reporting processes. ORI is responsible for maintaining and executing this SOP.

### 3. Key Terms and Definitions

Please visit the [Office of Research Integrity Export Control website](http://research.utsa.edu/research-funding/research-integrity-guidelines/export-control/) (<http://research.utsa.edu/research-funding/research-integrity-guidelines/export-control/>) or additional information and for the latest updates to EAR and ITAR definitions.

**Bona Fide Employee Exemption (EAR/ITAR):** 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 ([List of U.S. Arms Embargoed Destinations](#)); 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. This exemption does not include the release of a commodity (article, material, or supply) or defense article.

**Commerce Control List (CCL) -** List of items under the export control jurisdiction of the Bureau of Industry and Security (BIS), of the U.S. Department of Commerce. The CCL is found in Supplement 1 to Part 774 of the EAR.

**Deemed Re-export:** 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.

**Defense Article:** 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. Department of State in the ITAR. This 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.

**Defense Service:** 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.

**Deemed Export:** Release or transmission of information or technology subject to export control to any non-U.S. person, regardless of the location. 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”.

**Debarred Parties List** - List of individuals denied export privileges under ITAR and maintained by the U.S. Department of State.

**Denied Persons List** - 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.

**Dual-Use** - 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 **no specific ECCN** are designated as “EAR99.”

**Export:**

- 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;
- Releasing or otherwise transferring "technology", source code or technical data to a non-U.S. person in the United States (a “deemed export”);
- Releasing or otherwise transferring a controlled item or a defense article to a foreign embassy or affiliate;
- Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad; or
- Providing a service or conducting any type of transactions with embargoed countries and individuals and/or entities listed on the "Prohibited Parties Lists".

**Release:**

- 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
- Oral or written exchanges with non-U.S. persons of technology, source code or technical data in the United States or abroad.

**Re-Export:** A re-export occurs whenever any item (i.e., commodity, software, technology, equipment or information) is sent from one foreign country to another foreign country.

**Entity List** – Exports to foreign end-users engaged in proliferation activities are usually prohibited without a license. These are administered on a case-by-case basis. The list can be accessed at <http://www.bis.doc.gov/entities/default.htm>.

**End-use:** A detailed description of how the ultimate consignee intends to use the commodities being exported.

**End-User:** The person abroad that 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 consignee.

**Export Control Classification Number (ECCN)** - Identifies the Commerce Control List classification and related export requirements of commodities, software and technology subject to the export licensing authority of the Department of Commerce, Bureau of Industry and Security. All commodities, software and technology not specifically identified on the CCL are classified as “EAR99.”

**Educational Information:** Information that is released by instruction in catalog courses and associated teaching laboratories of academic institutions is not subject to export control requirements. Participation in the course should be open to any qualified student enrolled at the academic institution. Educational information is not subject to the EAR, even if the faculty member is teaching the class at an institution outside the U.S.

**Fundamental Research Exclusion (FRE):** As used in the export control regulations, 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 involves embargoed or sanctioned parties/ countries.

University research will *not* qualify as fundamental research if (1) the institution accepts any restrictions on the publication and/or access of the information resulting from the research, 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 federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the university or the researcher.

**Item (EAR):** means “commodities, software, and technology.”

**Restricted Research:** University research, development, or testing subject to export controls sanctions, controlled unclassified restrictions, and/or security controls. Research will not qualify as fundamental research if (1) the institution accepts any restrictions on the publication and/or access

of the information resulting from the research, 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 federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the university or the researcher, or (3) the University accepts access to, or defense services on, a defense article.

**Sanctioned Country** – 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.

**Specially Designated Nationals (SDN)** - Any person who is determined by the U.S. Secretary of the Treasury to be a specially 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.

**Public Domain/Publicly Available:**

**a. ITAR:** 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); ***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.***

**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 the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

- I. The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
- II. The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

**b. EAR:** 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.



**License:** Permit issued by the U.S. Department of Commerce Bureau of Industry and Security authorizing a transaction subject to the export control regulations.

**Technology (EAR):** Specific information necessary for the “development”, “production”, “use”, operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in ECCNs on the CCL that control “technology”) of an item. The information takes the form of ‘technical data’ or ‘technical assistance’.

**Technical Data (ITAR):** Information, which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation. Technical data includes classified information relating to defense articles and defense services, and some software may be considered technical data. *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.* The "deemed export" rules apply to the transfer of such technical information to non-U.S. persons inside the U.S.

**Technical Assistance:** Technical assistance may take forms such as instruction, skills training, working knowledge, consulting services, and may also involve the transfer of technical data.

**Non-U.S. Person:** Any person who is not a lawful permanent resident - green 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).”

**U.S. Person:** A U.S. person is a U.S. born person, a lawful permanent resident alien of the U.S., a refugee or someone in the U.S. as a protected person.

**Use** - Technology for operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing of a good.

## 4. Department of State Regulations (ITAR)

### Export of Defense Articles and Services – International Traffic In Arms Regulations

Under the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 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 and related technical data and defense services controlled for export purposes. The ITAR controls not only end items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that are incorporated into the end item. Certain non-military items, such as commercial satellites, and certain chemical precursors, toxins, and biological agents, are also controlled.

## Items Controlled Under the ITAR

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

## The USML Categories

The USML designates particular 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 website at:

<https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-121>.

## 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 on the public domain. University employees should contact the UTSA Office of Research Integrity (ORI) when classifying an item. At UTSA, ORI will assist with the submission of commodity jurisdiction requests as well with the determination of any export licensing requirements.

Steps for requesting a 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 C.F.R. § 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. UTSA is registered with this office.

UTSA contacts for applications and official correspondence relating to exports under ITAR are:

Dr. Bernard Arulanandam, VPREDKE (Empowered Official)

Dr. Michelle Stevenson, Associate VP, Office of Research Integrity

Mr. Robert Mitchell, Research Security Officer (ORI)

An empowered official must have independent authority to inquire into any aspect of a proposed export or temporary import. The duties of the empowered official include verification of the transaction and the accuracy of the information to be submitted to DDTTC. An empowered official may refuse to sign any export license or other request for approval without prejudice or any other adverse recourse.

Prior to export, defense articles and defense services require an export license, which will be issued by DDTTC. ORI follow this procedure 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 or proposal to sell or transfer any defense articles, defense services, or technical data subject to this section should be made without first obtaining approval of DDTTC. 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 DDTTC website and DOD excluded parties, BIS denied party lists, and OFAC SDN list. This end-user screening may be done by the Office of Research Integrity 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 should provide answers to the following questions when a licensing determination is being made:
  - What is the item or technical data? Describe its use.
  - Source: Did UTSA develop the item? Was it developed under a US 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?
  - 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.
- ORI will determine the type license/approval that will be needed for a particular circumstance. Types include:
  - DS 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 Defense Articles/Technical Data

- DSP 119 - License Amendments

All requested information must be provided by the Principal Investigator to the ORI 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), 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”), for complex transaction 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 Agreement is not effective until approved by DDTC. If an Agreement is approved, a copy signed by the U.S. and foreign parties must be filed with DDTC not later than 60 days after its effective date. If the Agreement 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 not 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 C.F.R. § 126.1, such as China, Cuba, Iran, North Korea, Sudan, and Syria. Additional restrictions apply to other countries; a complete list of U.S. arms embargoes is available online at: [https://www.pmddtc.state.gov/?id=ddtc\\_public\\_portal\\_country\\_landing&spa=1&table=x\\_usd10\\_ddtc\\_public\\_ddtc\\_public\\_country\\_policies&filter=&p=2&o=country&d=asc](https://www.pmddtc.state.gov/?id=ddtc_public_portal_country_landing&spa=1&table=x_usd10_ddtc_public_ddtc_public_country_policies&filter=&p=2&o=country&d=asc) .

## **5. Department of Commerce Regulations (EAR)**

### **Export of Defense Articles and Services – International Traffic in Arms Regulations**

The U.S. Department of Commerce Bureau of Industry and Security (BIS) regulates the export of commercial products and technology under the Export Administration Regulations, 15 C.F.R. 730-774 (EAR). While there are some parallels to the ITAR, there also are some major differences in how the regulations and the relevant agencies function.

They are similar in that both agencies focus on “technology transfer” and have been increasingly focused on enforcement. They differ in that the EAR covers a wider range of products and technology, the product classification process is highly technical, and most importantly, the need for a license depends not only on the type of product but on its final destination.

## 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 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, only items listed on the Commerce Control List (“CCL”) require a license prior to exportation. Items not listed on the CCL are designated as EAR99 items and generally can be exported without a license, unless the export is to an embargoed country, or to a prohibited person or end-use.

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

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

Many activities are not subject to the EAR. In addition to activities subject to the exclusive authority of another agency, e.g. the export of a defense article which is controlled under the ITAR, the EAR lists several exclusions from the regulations. These include published information, information resulting from fundamental research, 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 nine categories and is available online at:

<https://www.bis.doc.gov/index.php/regulations/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, 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 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 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 the ITAR, for classification purposes BIS generally looks at the classification of the complete product being exported rather than at the classification of each subcomponent of the item as opposed to the "see through" treatment under the ITAR. At UTSA, ORI will assist with the submission of commodity classification/jurisdiction requests as well 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 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 applied.
- Exceptions. While the CCL is much more extensive than the USML, many 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 C.F.R. § 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 least notification and recordkeeping requirements minimizes compliance burden.

A complete listing of EAR license exceptions may be found in 15 C.F.R. § 740. Exceptions commonly applicable to members of the UTSA community travelling abroad are BAG, which applies to personally-owned items taken abroad for personal use while abroad, and TMP, which applies to the temporary export of UTSA-owned equipment, including laptop computers and other equipment listed on the CCL, for work-related activities, including professional presentations, teaching, and field research. It is important to note that there are limitations on the use of the TMP license exception; items must be returned to the U.S. within one year of export, or if not returned, documentation of disposal is required. Items exported using the TMP license exception 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, 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 C.F.R. § 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 refusing 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.

## **6. Department of the Treasury (OFAC)**

### **Export of Defense Articles and Services – International Traffic In Arms Regulations**

The U.S. Department of the Treasury Office of Foreign Assets Control ("OFAC") administers exports to embargoed countries and designated entities. U.S. economic sanctions broadly prohibit most transactions between a U.S. person and persons or entities in an embargoed country, including Crimea (Ukraine), Cuba, Iran, North Korea, and Syria. This prohibition includes importation and exportation of goods and services, whether direct or indirect, as well as "facilitation" by a U.S. person of transactions between foreign parties and a sanctioned country. For example, sending a check to an individual in Iran could require an OFAC license or be prohibited. More limited sanctions may block particular transactions or require licenses under certain circumstances for exports to a number of countries, including but not



limited to Balkans, Belarus, Burma, Central African Republic, Congo, Lebanon, Libya, Somalia, South Sudan, Venezuela, Yemen, and Zimbabwe. Because this list is not complete and subject to change, please visit <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>.

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. UTSA, 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 from the embargo (for instance personal communications, exchange of informational materials, etc.) 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 UTSA, the Office of Research Integrity should be contacted when considering any proposed OFAC sanctioned activities.

## **7. Keys Areas of Concern**

### **Fundamental Research Exclusion**

The term “fundamental research” 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. Fundamental research is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons. 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 (FRE).



Specifically, the EAR provides that the fundamental research exclusion applies so long as the university and its researchers do not accept restrictions on publication 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 provided to the researcher by the sponsor or to ensure that 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 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” or “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. Though 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, a joint project, or equipment loan programs, most often faculty and students are engaged in teaching and research. Whenever teaching or research are 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 (Non-U.S.) person as anyone who is not a U.S. person. However, BIS looks at the person's most recent citizenship or permanent residence, while DDTTC 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 UTSA engages in are fundamental research. As such, most activities are not subject to export controls, or even if controlled, do not require licensing. Both the 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 3 for key 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 (again except for certain encryption software classified under ECCN 5D002).

Both the 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 allows 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 to part 740 of the EAR at <https://www.bis.doc.gov/index.php/documents/regulation-docs/2255-supplement-no-1-to-part-740-country-groups-1/file> or to which exports are prohibited pursuant to ITAR § 126.1 (See current list of countries at <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-126>;
- 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 that 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, a 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, and 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.

## 7. Export Control Procedures

### Commitment to Export Control Compliance

It is the policy of The University of Texas at San Antonio 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.

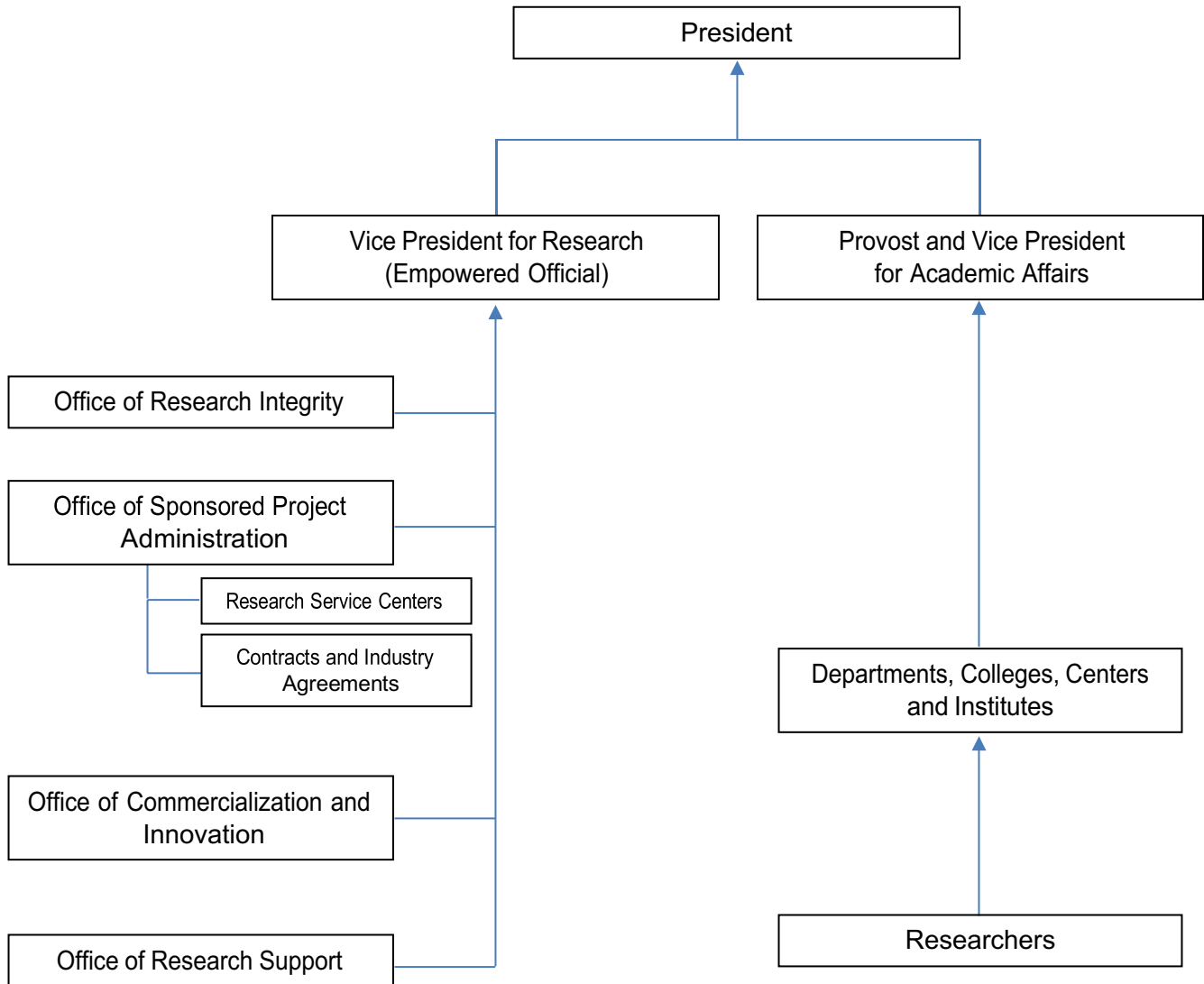
Federal regulations promulgated and enforced by the Department of Commerce, Export Administration Regulations (EAR), and the Department of State, International Traffic in Arms Regulations (ITAR), prohibit the unlicensed export of specific technologies for reasons of national security or protection of trade. If University research involves such specified technologies, the EAR and/or ITAR may require the University to obtain prior approval from State or 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 quite severe, ranging from loss of research contracts to monetary penalties to jail time for the individual violating these regulations.

The Office of Research Integrity is responsible for helping the community understand and comply with the export control laws and apply for an export license when necessary. Please see <http://research.utsa.edu/export-control/> for additional information. Questions regarding export control laws or procedures for compliance at UTSA may be addressed to Robert Mitchell, Office of Research Integrity at 210-458-4233 or [export@utsa.edu](mailto:export@utsa.edu).

## University Functional Organizational Chart for Export Controls



### Approval required for:

- Acceptance of restrictions and export control language
- Technology Controlled Plans
- Exports including deemed
- Foreign Visitors
- Foreign Transactions (Purchases, Contracts)

## Roles and Responsibilities for Export Controls at UTSA

The Roles and Responsibilities for ensuring compliance with export control laws at UTSA are included in [HOP 10.01 policy, Export Control](#). 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 UTSA.

### Empowered Officials

The Vice President for Research, Economic Development, and Knowledge Enterprise is the UTSA 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 and 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 Integrity

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, 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 Administration (OSPA)

Responsibilities:

- Provides assistance to researchers in reviewing terms of sponsored program research projects and activities to identify any potential export control issues at the pre and post award stage.
- Informs researchers and ORI 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 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 inform them of federal regulations and the University's export control procedures.

- Communicates with ORI about any changes in projects that require review for export controls.

### **Office of Contracts and Industry Agreements (CIA)**

#### **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 ORI of potential export control issues, or 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 ORI 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 the UTSA Export Control Website (e.g., Certification of Temporary Export form, Export Control Related Activity Assessment form, Technology Control Plans (TCP) questionnaire).
- Assists ORI in all export control matters (e.g., information and purpose of technology or equipment being shipped, screening and management plan for international visitors with UTSA or non-UTSA visa sponsorship, materials being shipped to UTSA 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.

### **UTSA Personnel (Researchers, Principal Investigators)**

#### **Responsibilities:**

- Understands his/her obligations and become 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 the UTSA Export Control Website (e.g., Certification of Temporary Export form, Export Control Related Activity Assessment form, Technology Control Plans (TCP) questionnaire).
- 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 Analysis

### Evaluating Sponsored Research Activities

In coordination with the Office for Sponsored Projects Administration (OSPA), the Office of Contracts & Industry Agreements, the Office of Research Integrity (ORI), 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. ORI will assist researchers in assessing the application of such regulations, but primary compliance responsibility rests with the principal investigator of the research.

ORI 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; and
- 9) International Transactions.

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

- a) Office of Contracts & Industry Agreements 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) CIA negotiates language in the agreements with the sponsor and consults ORI only if the problematic terms cannot be removed.
- c) CIA refers researchers to the UTSA Laboratory Safety Division for materials transfers that may involve a proposed transfer of biological agents, chemicals and other hazardous materials for approval and shipping instructions.
- d) ORI 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 ORI to gather additional or supplemental information necessary to evaluate the export control issue and research activities.
- e) If ORI determines that the research activities are subject to export control regulations, they will inform CIA and the PI/Researcher, and works with them to make the final determination for appropriate controls (e.g., develop and implement a Technology Control Plan; request for export license; prepare faculty agreement, etc.).



## Pre-Award Proposal Processing Procedures

- a) Office for Sponsored Projects Administration (Research Service Center (RSC)) conducts the initial reviews and has oversight and approval authority for all grants and solicitations, proposal and awards.
- b) All proposals are submitted electronically via the **Electronic Proposal Routing Form** (<https://comal.it.utsa.edu/osp/>). A checklist ([Sponsored Research Export Control Checklist](#)) is available to help determine whether any aspect of the sponsored research project activities will be subject to export control regulations. The PI completes the Export Control section on the proposal routing form.
- c) The PI and RSC 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 item or technical data (if known);
  7. includes foreign sponsors or collaborators;
  8. travel, shipping, or work outside of the United States; and
  9. military applications of project results.
- d) All documentation related to the proposal is uploaded in the Cayuse Production Site (<http://utsa.cayuse424.com/>). RSC and PIs are responsible for uploading supporting documentation on the Cayuse Production Site.
- e) Upon completion of the routing form by the PI, the REDKE reporting system checks for affirmative answers that might be an indication of a potential Export Control issue.
- f) The REDKE routing system sends an email notification to ORI (email: [export@utsa.edu](mailto:export@utsa.edu)) indicating that **"Someone marked "YES" to at least one of the six Export Control questions in a newly created routing form"**.
- g) The REDKE routing system also sends an email notification to ORI (email: [export@utsa.edu](mailto:export@utsa.edu)) when the proposal is **"US Government Sponsored"**.
- h) ORI 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 ORI to gather additional or supplemental information necessary to evaluate the export control issue and research activities.
- i) If applicable, the PI/RSC 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 the releasing the technology to a non-U.S. person at UTSA or before taking or sending the technology overseas.
- j) If ORI determines that the research activities are subject to export control regulations, they will inform the PI and RSC and work with the PI to make the final determination (e.g., develop and implement a Technology Control Plan; request for export license; prepare faculty agreement, etc.).

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

- a) When an RSC processes a notice of award, the REDKE routing system sends an email notification to ORI (email: [export@utsa.edu](mailto:export@utsa.edu)) indicating that **“Someone marked “YES” to at least one of the six Export Control questions in a newly created routing form”**.
- b) The REDKE routing system also sends an email notification to ORI (email: [export@utsa.edu](mailto:export@utsa.edu)) indicating that the award is **“US Government Sponsored”**.
- c) ORI 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.
- d) If ORI determines that the research activities are subject to export control regulations, they will inform the PI and RSC and work with the PI to make the final determination for appropriate controls (e.g., develop and implement a Technology Control Plan; request for export license; prepare faculty agreement, etc.).
- e) In coordination with OSPA and CIA, ORI reviews final contracts and agreements to determine if potential export control issues were addressed prior to setting up the project account.
- f) 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 ORI's efforts to implement the necessary mechanisms and procedures to safeguard the technology (EAR/ITAR) and to monitor compliance.
- g) If provisions that restrict the dissemination of information cannot be eliminated during negotiations, and if no exclusions or exemptions are applicable, ORI 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.
- h) ORI assists with 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 UTSA community should notify ORI immediately of any changes.

## **Evaluating Other Export Controlled Related Activities**

The Office of Research Integrity, in coordination with People Excellence, Global Initiatives, Purchasing, and the Office of Sponsored Project Administration (OPSA), 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 affects a particular activity.

## **Acquisition and Management of Export-Controlled Items**

- a) The Purchasing Department and ORI require vendors, sponsors, collaborators, and others to notify UTSA 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) UTSA 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) UTSA'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, UTSA 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.
  2. For additional information visit the [Procurement and Disposition of Controlled Items Website.](#)
- d) Office of Contracts & Industry Agreements is responsible for negotiating materials transfer agreements on behalf of Faculty. All materials transfer agreements with foreign persons/entities are referred to ORI for export control review.
  - e) UTSA staff forwards requests for review/classification using the [Export Control Related Activity Assessment Request](#) form to ORI.
  - f) ORI 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 determination has been made, ORI informs all affected parties.
  - h) ORI 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) ORI assists with 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) UTSA staff forwards requests for international shipping using the [Export Control Related Activity Assessment Request](#) form to ORI.
- b) ORI works with the Exporter to get details as necessary and to determine the nature of the materials being shipped, purpose of the shipment, and if any exceptions apply.
- c) If required, ORI 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) ORI approves the Export Control Related Activity Assessment Request and provides classification and/or export validation letter.
- e) ORI 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 is monitored by the Office of International Programs and all UTSA-related travel activities requires online registration through International SOS at <https://www.internationalsos.com/>.
- b) Travelers that intend to take computers, equipment, software, or any other UTSA inventory out of the U.S. should submit the [Certification of Temporary Export of UTSA Property and Review of U.S. Export Control Regulations](#) form to ORI.
- c) ORI 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, ORI screens the individuals and entities listed on the form against the list of U.S. government's Denied/Restricted Parties (Visual Compliance Software): <https://www.visualcompliance.com/logon.html>).
- e) ORI 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. For additional information visit the [UTSA Export Control International Travel Website](#).
- g) Travel to an OFAC embargoed country requires a travel license issued by the Treasury Department, if no general license applies.
- h) 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 in course catalog classes and information that is in the public domain fall within the educational information exception. (Encryption software with symmetric key length exceeding 64 bits does not meet this exclusion.)

**International Transactions (Financials, Collaboration, Exchanges, etc.)**

- a) UTSA employees submit a request for a restricted party screening to the Office of Research Integrity prior to doing business with an entity or individual overseas.
- b) ORI reviews the information/activity, screen collaborators/vendors, and send the restricted party screening results to the requester.

**International Service Agreements (Non-Sponsored/Sponsored Research for \$5,000 or Less):**

- a) UTSA staff forwards routing form, service agreement, and Form C (if applicable) located at <https://global.utsa.edu/forms/Form-C-8-11-2017.pdf> to ORI.
- b) ORI reviews the information and the description of the service on the agreement and screens individuals and/or entities listed on the agreement/Form C.
- c) ORI forwards the contract to the Purchasing Department or to the RSCs if the agreement is related to sponsored research.

**Visiting Scholars / Researchers:**

- a) UTSA staff submits a request for a restricted party screening to ORI of all other non-U.S. visitors and potential new non-U.S. employees prior to conduct any transaction or send an invitation.
- b) Departments, centers, faculty, researchers, and administrators at UTSA who intend to invite or host visitors on a temporary basis should follow the guidelines and processes provided under [HOP 1.34, Visiting Scholars and Researchers](#) or visit the [Visiting Scholar & Visiting Researcher Guidelines](#) website for additional information.

- 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) UTSA staff forwards the visa application; routing form, service agreement, and Form C (if applicable) located at <https://global.utsa.edu/forms/Form-C-8-11-2017.pdf>; or the [Visiting Scholar/Researcher Approval and Screening Form](#) to ORI for approval.
  - 1) Visas: ORI reviews the information and the description of the scope of the visit and screen individuals and/or entities listed on the visa application.
  - 2) Agreements: ORI reviews the information and the description of the service on the agreement and screen individuals and/or entities listed on the agreement/Form C.
  - 3) ORI reviews the information and the description of the scope of the visit on the visiting scholar/researcher approval form.
- e) ORI approves and forwards the visa application to Global Initiatives; contract to Purchasing or to the RSCs if the agreement is related to sponsored research; or visiting scholar/researcher approval form to department.

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

When export controlled equipment, data, or technology is identified for a project or activity, ORI will work with UTSA employees to develop and implement a TCP to appropriately secure the controlled technology from use and observation by non-U.S. person who does 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.

### **Monitoring and Auditing**

The Office of Research Integrity will conduct periodic self-assessments/internal reviews of TCPs and other university activities to assure the compliance and effectiveness of the UTSA 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 UTSA Export Controls procedures.

- c) Periodic review and tracking of documentation and processes, including review of internal recordkeeping, communications, document transfer, maintenance and retention.

## Training

The Office of Research Integrity will provide education and training to the UTSA community on export control regulations, compliance and related issues. ORI will prepare training materials and ensure that university employees and students engaged in export-controlled activities receive appropriate briefing, guidance, and oversight. ORI will also provide ongoing export briefing sessions for faculty, staff, students, and affiliates on an ad-hoc basis. Export Controls Training is available at <https://research.utsa.edu/research-funding/research-integrity-guidelines/export-control/training-development/>.

## 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.

ORI will export-related records on a project basis. Unless otherwise provided for, all records indicated herein shall be maintained consistent with the UTSA 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 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 the ITAR. Therefore, the special requirement for recordkeeping when using an exclusion, exception, or exemption may not apply. However, it is a good practice to provide such description for each project to establish a record of compliance.

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.



## 8. Penalties for Export Violations

Violation of the export control laws can result in both civil and criminal penalties including fines and imprisonment and are outside of UTSA's jurisdiction or control. Although there is a maximum amount for a civil or criminal penalty, the actual penalty is often multiplied. For instance, if multiple unauthorized shipments of the same item to the same end user were completed, each individual shipment could incur the maximum penalty. Even a single unauthorized export may result in multiple violations (e.g. export without a license, false representation on shipping documents, acting with knowledge of a violation, etc.). Maximum penalties for violations under the OFAC, ITAR and EAR are \$1,000,000 and criminal prison sentences can be up to 20 years for individuals engaging in the violations. Violation of the export control laws may result in the loss of future export privileges (EAR) or even from debarment from participation in future federal contracts (ITAR).

In assessing penalties, DDTC, BIS, and OFAC will consider mitigating factors. Mitigating factors include whether the disclosure of the violation was made voluntarily, whether the violation is an isolated incident or part of a pattern of continuing behavior, whether the company had a compliance program in place at the time of the violations, whether steps were taken to improve the compliance program after the discovery of the violation and whether the violation was due to inadvertence, mistake of fact, or a good faith misinterpretation of the laws.

Violations of export control laws, including mistakes and errors in business processes, discovered at UTSA should be reported to the Office of Research Integrity or Office of Institutional Compliance. Most importantly, if there is a question as to whether an activity would be a violation of the export control laws, it is important to consult with ORI prior to engaging in the activity. To report any violations, please call the UTSA Hotline toll free phone number at (210) 458-5365 or go to <https://www.utsa.edu/compliance-and-risk-services/report-it/>.

## 9. References

UTSA [HOP 10.01](#), Export Controls

UT System policy [UTS173](#), *ExportControls*

U.S. Department of State, Directorate of Defense Trade Controls (DDTC): <http://www.pmddtc.state.gov/>

U.S. Department of Commerce, Bureau of Industry and Security (BIS): <http://www.bis.doc.gov/>

Export Administration Regulations (EAR): <http://www.bis.doc.gov/index.php/regulations>

International Traffic In Arms Regulations (ITAR):

<https://www.federalregister.gov/documents/2020/01/23/2020-00574/international-traffic-in-arms-regulations-us-munitions-list-categories-i-ii-and-iii>

U.S. Department of Treasury, Office of Foreign Assets Control (OFAC): <http://www.treasury.gov/ofac>

Department of Energy, Office of Arms Control & Non-Proliferation: [http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title10/10cfr810\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title10/10cfr810_main_02.tpl)

[DoD Policy on Contracted Fundamental Research/ NSDD 189](#)