

Export Control Manual



TEXAS A&M UNIVERSITY
SAN ANTONIO

OFFICE OF
RESEARCH
COMPLIANCE



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1. COMMITMENT TO COMPLIANCE

Texas A&M University – San Antonio is committed to complying with export control regulations. Texas A&M University – San Antonio’s export control policy confirms that commitment in stating that “Texas A&M University – San Antonio (“A&M-SA” or “University”) must comply with all export control regulations issued by the federal government, which apply to all activities at Texas A&M University – San Antonio.

2. SCOPE & PURPOSE

The export control policy (located on [A&M-SA’s Export Controls](#) website) and the guidance outlined in this manual apply to all members of the A&M-SA community, including employees, students, contractors, and visitors.

International collaborations are critical to creating breakthrough advances, and A&M-SA highly values global partnerships. However, federal export control and other international compliance laws regulate what or how we may share some items (e.g., technical data, technology, equipment, materials, and software) with non-U.S. persons. This export control manual is designed to:

- Provide an overview of the regulations.
- Outline roles and responsibilities.
- Document export control processes.
- Provide information on licensing, auditing, and record-keeping requirements.
- Share methods for reporting concerns and potential consequences for violations.

The purpose of A&M-SA’s Export Control Compliance Manual is to guide us to comply with the three primary sets of regulations:

1. U.S. Department of Commerce Export Administration Regulations ([EAR](#))



2. U.S. Department of State International Trade in Arms Regulations ([ITAR](#))
3. U.S. Department of Treasury Office of Foreign Assets Control ([OFAC](#))

No member of the A&M-SA community may engage in any activity or commit the university to any activity contrary to U.S. export control laws and regulations. If there are any inadvertent inconsistencies between the content of this manual and U.S. export control laws, the applicable law or regulation supersedes this manual.

3. U.S. EXPORT CONTROL LAWS AND REGULATIONS

The U.S. Department of State's [International Traffic in Arms Regulations](#) (ITAR), and the U.S. Department of Commerce's [Export Administration Regulations](#) (EAR), govern not only the shipment or transfer of export-controlled items (e.g., technical data, software, materials, and equipment) outside the U.S. but also access to certain controlled items to non-U.S. persons within the U.S. In addition, the U.S. Treasury Department's [Office of Foreign Assets Control](#) (OFAC) regulations impose sanctions and embargoes on transactions or exchanges with designated countries, entities, and individuals.

[International Traffic in Arms Regulations \(ITAR\)](#)

The Department of State's responsibility for controlling the permanent and temporary export and temporary import of defense articles and services is governed primarily by [22 U.S.C. 2778](#) of the Arms Export Control Act. The [United States Munitions List \(USML\)](#) is a list of articles, services, and related technology designated as defense and space-related by the United States federal government.

[Export Administration Regulations \(EAR\)](#)

The [Department of Commerce's Bureau of Industry and Security](#) (BIS) is charged with developing, implementing, and interpreting U.S. export control policy for dual-use commodities,



software, and technology. The [Commerce Control List \(CCL\)](#) Identifies those items regulated by BIS. The list includes commercial and dual use items not subject to ITAR or other federal regulations. Dual use items are those with both commercial and military/security applications.

Fundamental Research Exclusion (FRE)

Most A&M-SA research activities are excluded from export controls because of a general exception for fundamental research under the ITAR and EAR. Both sets of regulations provide that no licenses are required to disclose technical information if the information is in the public domain. Information is in the public domain if published and generally accessible to the public or “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.”

The FRE applies to basic and applied research in science if the research is open and without publication restrictions (**EAR 734.8.; ITAR 120.34 (8)**). A&M-SA protects the FRE by not accepting any restrictions on publication or foreign national participation. Under the ITAR, “fundamental research” may occur at “any accredited institution of higher education located in the United States.” In contrast, under the EAR, such research may occur at facilities other than accredited institutions of higher learning in the United States. In the absence of the FRE, A&M-SA would be required to obtain licenses or restrict the involvement of certain Foreign Nationals from research. Thus, protecting the FRE is critical to A&M-SA’s ability to conduct research in an open environment consistent with the principle of academic freedom.

Although the FRE provides a safe harbor for institutions, the FRE can be destroyed if the university: (a) accepts restrictions on publication other than a temporary delay to ensure the



appropriate safeguarding of proprietary information and patent rights; or (b) accepts restrictions on the participation of Foreign Nationals. Additionally, arrangements between a researcher and sponsors contrary to the principles of openness may destroy the FRE. Contact Export Control Office for more information.

Office of Foreign Assets Control (OFAC)

Many university activities—even virtual ones—with sanctioned countries or individuals in those countries may require U.S. federal authorization (e.g., licenses or exemptions). The **Office of Foreign Assets Control** (OFAC) of the U.S. Department of the Treasury administers economic and trade sanctions based on U.S. foreign policy and national security goals. OFAC issues both civil and criminal penalties for non-compliance.

The **Export Controls & Office of Research Compliance** provides consultation to members of the university community interested in participating in activities in a sanctioned country or with individuals or entities who are in sanctioned countries, including but not limited to:

	working from a sanctioned country
	collaborating (even virtually with individuals in a sanctioned country)
	allowing students to take remote coursework, including independent studies from a sanctioned country
	sending or receiving shipments
	making financial transactions
	exchanging items (e.g., equipment, technology, software, materials, etc.)



4. A&M-SA APPROACH TO EXPORT CONTROLS

One of the underlying principles in conducting research at A&M-SA is academic freedom. Relative to export control regulations, this means that research activities should be undertaken freely and openly with no restrictions on the dissemination of research results or access to research results by Foreign Nationals. By adhering to this principle, A&M-SA is generally able to operate under the FRE, which largely limits the impact of the export control regulations on A&M-SA's research activities.

The FRE allows Researchers to conduct their research without having to obtain licenses before sharing information with Foreign Nationals. This exclusion, however, does not apply in all circumstances. In the absence of this exclusion or any other available exception, exemption or exclusion outlined in this guidance and/or in the export control regulations, A&M-SA faculty and staff must obtain the appropriate license or approval, if necessary, before engaging in any exporting.

Openness in Research: A&M-SA is committed to freedom of access by all interested persons to the underlying data, processes, and results of research through the publication and broad dissemination of those results. Consistent with this approach, A&M-SA does not undertake secret or classified research or research whose results may not be published without prior approval by the sponsor. Additionally, unless prohibited by law, no restriction on participation in research may be based on one's country of origin or citizenship.

Activities Beyond the Scope of the FRE: While the FRE provides A&M-SA with a safe harbor in which to conduct its research, it does not cover all activities at the university. For instance, the shipment of physical items beyond the borders of the United States is not covered by the FRE. Any item that comes into A&M-SA's possession which is protected



under a proprietary disclosure of information or non-disclosure agreement, including material transfer agreements, is not covered by the FRE. Also, any activity involving a restricted party, or an embargoed country must be reviewed to ensure that it is appropriate under the law. To ensure that any activities falling outside the scope of the FRE are given proper attention, A&M-SA faculty and staff should engage the Export Controls & International Compliance (ECIC) to review any issues that may be subject to the export control regulations.

Additional Exclusions from the Export Control Regulations

Public Information Exception: The EAR (15 C.F.R. 734.7) and ITAR (22 C.F.R. 120.34) specifically exclude “publicly available technology and software” (EAR) and “information in the public domain” (ITAR) from those export control regulations. These regulatory provisions provide a further safe harbor for activities at A&M-SA, related to information that has been published or resides in the public domain.

Educational Information Exclusion: The EAR (15 C.F.R. 734.3) and ITAR (22 C.F.R. 120.33) regulations each contain an educational information exclusion, which states that the export control regulations do not apply to: (a) “information and software that are released by instruction in a catalog course or associated teaching laboratory of an academic institution” (EAR) nor to “information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities” (ITAR). These regulatory provisions mitigate concerns about export control violations occurring in the classroom setting. These exclusions provide a safe harbor for A&M-SA in instructing its students, both through classroom activities and through research.

Deemed Exports: In the university setting, an export can occur on campus when within the



United States, under the Deemed Export rule. This rule holds that the release of controlled technology or technical data to Foreign Nationals in the United States is “deemed” to be an export to that Foreign National’s country or countries of nationality. Deemed Exports may be undertaken only within an appropriate exemption, exclusion (including the FRE), or license issued by the federal government.

5. ROLES AND RESPONSIBILITIES

Empowered Official (EO): The Vice Provost for Research & Health Sciences will serve as the A&M-SA Empowered Official. The A&M-SA EO (or designee) is responsible for obtaining approvals required for compliance with export control laws, regulations, policies, rules, and procedures. The A&M-SA EO (Vice Provost for Research & Health Sciences) serves as the university’s representative and point of contact for export control matters involving A&M-SA. The EO is authorized to represent A&M-SA in any proceedings before government agencies with export control responsibilities and has final responsibility for compliance with export control laws and regulations. In the event of the reporting of a suspected violation, the A&M-SA EO will investigate the suspected violation to the extent deemed necessary. This process may involve appointing a committee to assist with the investigation.

A&M-SA Export Controls Officer (ECO) (Director of Research Compliance) is responsible for directing and daily monitoring A&M-SA’s export control compliance program, recordkeeping, and implementing procedures and/or guidelines to comply with federal export control laws and regulations, including developing, implementing, and updating this manual.

When requested, A&M-SA ECO will determine (or assist other employees in export control



assessments) to determine compliance obligations with respect to A&M-SA activities involving foreign persons or international activities under applicable export control laws and regulations, and to determine the applicability of the Fundamental Research Exclusion FRE or other exclusions as described in System Policy 15.02, *Export Controls*.

ECO (or designated person) will assist with and conduct Restricted Party and Technological Screening (RPS) and consult with System Office of General Counsel (OGC) on export control matters as appropriate.

Individual Responsibilities:

All A&M-SA employees must conduct their affairs in accordance with U.S. export control laws and regulations and must be aware of (and responsible for) export control implications associated with their work and responsibilities. Compliance with all applicable legal requirements is essential. Conversely, it is important to maintain an open environment that welcomes participation of individuals from around the world as part of the A&M-SA mission. To maintain this balance, A&M-SA personnel must be familiar with the U.S. export control laws and regulations (including important exclusions and exemptions) as they relate to their responsibilities. Depending upon the nature of their activities and/or job functions, employees may be required to participate in formal training as determined by the A&M-SA EO and/or their supervisors.

Identified personnel including Principal Investigators (PIs), with the assistance of the Research Compliance Officer (Director of Research Compliance), are responsible for compliance with export control requirements in the conduct of their research or educational activities. To meet this obligation, PIs should:

- (a) understand his/her export control obligations and participate in regular (every 3



- years) trainings to be able to identify export control issues;
- (b) be aware of the export control indicators in (but not limited to) Section 3, and note such information on any internal compliance or assurance forms;
 - (c) determine, prior to initiation of research or educational activity, whether any information or technology involved in his/her research is subject to export control laws or regulations;
 - (d) periodically review his/her her research to ensure continuing compliance with export control laws and regulations;
 - (e) if undertaking an export-controlled project, brief those involved in the project of their export control obligations; and
 - (f) understand that any informal discussions, agreements, or understandings entered into with sponsors or entities can impose export control obligations on the PI, and may negate the opportunity to claim key exclusions such as the FRE.

A&M-SA employees are to report suspected or known violations to the Export Controls Officer ECO (Director of Research Compliance). Additionally, A&M-SA employees must maintain their commitment to promoting a culture of compliance with all associated laws, regulations, policies, rules, and procedures and discuss any questions or concerns with their department/unit head, supervisor or the A&M-SA EO.

6. COMPLIANCE PROCESS

Submit [Export Control Compliance](#) Form to get the process started.

A. Restricted Party Screenings

It is essential to screen research collaborators to ensure they are not a denied or barred party to follow export control laws and other federal regulations. The U.S. federal government



maintains lists of restricted parties (i.e., denied or barred parties). A&M-SA subscribes to a third-party tool (Visual Compliance) to conduct restricted party screenings like many other universities.

A&M-SA should not conduct business with any person or entity that is identified as a match against these lists until ECO is informed. Once ECO is informed, the appropriate due diligence will be undertaken to ensure that A&M-SA will remain in compliance with the regulations. Additionally, there are restrictions upon activities involving certain countries subject to embargoes enforced by the U.S. Department of the Treasury.

The Office of Research Compliance conducts Restricted Party Screenings on international visitors. The results are shared with the Departments who are responsible for reviewing and approving the appointments.

When appropriate, employees, students, and other members of the community as well as entities with whom A&M-SA conducts business (e.g., vendors, sponsors, and subcontractors) may be screened against various Restricted Party Screening lists to ensure that conducting business with such individuals and/or entities is appropriate and within the law.

A&M-SA generally does not accept any export-controlled information without having first been informed and having granted written authorization. The acceptance of export-controlled information necessitates obtaining licenses (when applicable) and implementing other practices and procedures to ensure that such information is appropriately protected. In addition to determining whether such information can be shared with a Foreign National, A&M-SA would be required to safeguard the information to prevent any inadvertent disclosures. By requiring notice and written agreement, A&M-SA is engaging in due diligence to maintain compliance with the export control regulations. To ensure research security all international visitors and



transactions need to be verified and cleared by the Export Controls Office.

Submit your request for Export Controls clearance using this form [Export Control Compliance Form \(jotform.com\)](#)

The most common tool for conducting this search is Restricted Party Screening using Visual Compliance. Other tools may be used as applicable. All requests must be submitted in writing **prior** to initiating the activity. Export Control Office will respond in writing. If you need more explanation, contact Rani Muthukrishnan @ rmuthukrish@tamusa.edu or 210-784-1223.

(1) Why Do We Conduct Screening?

A&M-SA is responsible for ensuring that we do not unlawfully engage with persons or organizations who may jeopardize compliance with U.S. export controls and trade sanctions regulations, and for documenting our due diligence when complying with those regulations. A U.S. Government export license may be required before proceeding with a collaboration, appointment, or financial transaction when persons or organizations are:

- On a list of companies or individuals restricted from receiving U.S. items, technology, software or services ("Entity List").
- Restricted from receiving some or all items subject to the U.S. Export Regulations unless the exporter secures a license ("End Use/End User").
- Owned or controlled by, or acting for or on behalf of, sanctioned or embargoed countries.
- Subject to trade and financial sanctions ("Specially Designated Nationals and Blocked Persons").
- Convicted of violating or conspiracy to violate the Arms Export Control Act ("Debarred Parties").



Additionally, Restricted Party Screening is used to identify persons and organizations that may present an elevated risk of undue foreign influence.

(2) Who Should Be Screened?

- International collaborators: Individuals and Organizations
- International visitors including: Visiting Scholars, Visiting Postdocs, Visiting Faculty, Visiting Students (e.g. VSR/VSRIIs)
- Industrial affiliates
- Recipients of international shipments: Individuals and Organizations
- International funders – Individuals and Organizations
- Paid or free specialty engagements

(3) Who Should Seek Restricted Party Screening?

A&M-SA personnel with a legitimate business use, including individuals responsible for:

- Hiring and appointments (HR, student services officers)
- Managing research activity (research administrators)
- Negotiating and signing agreements which include international parties (e.g Procurement)
- Processing gift/affiliate payments from international donors (development officers, affiliates program managers)
- Handling international shipments

(4) What is Visual Compliance?

Visual Compliance is an on-line Restricted Party Screening data base accessed remotely through Descartes' Visual Compliance portal. It is one of the most broadly adopted Restricted Party



Screening tools across higher education in the United States. As the data base is accessed remotely, there is no software to download.

(5) What are Restricted Party Screenings?

United States persons are prohibited by the federal government from engaging in activities or financial transactions with individuals or entities that have been determined to be acting contrary to the interests of the United States. These are known as “restricted parties.”

(6) Safeguarding United States Interests

There are tens of thousands of parties that may appear on various United States government lists, including universities or research institutions, as well as individuals. These parties present a greater risk of diversion for weapons of mass destruction (WMD) programs, terrorism, or other activities contrary to United States national security and foreign policy interests.

Restricted Party Screenings seek to identify parties that may be prohibited from receiving some or all items subject to export control regulations, unless the exporter secures a license.

Screenings of known contacts against these lists should also be conducted prior to international travel.

B. Agreement Reviews

The schools/department, in collaboration with the Office of Sponsored Programs (OSP) and other relevant departments, will review the OSP agreements for potential export control issues (red flags). OSP and other departments will consult the ECO before acceptance of agreements with any of the following red flags:

- Publication, access, and dissemination restrictions in the agreement;
- Foreign party restrictions stated in the agreement;



- International travel to countries subject to U.S. embargoes and sanctions;
- Sponsor is providing export-controlled technology, technical data, or equipment;
- Non-U.S. students or visiting scholars participating in a restricted project;
- Project is military, space-related, or has other implications to national security;
- Project will be conducted abroad or with a foreign sponsor or collaborator;
- Sponsor /research/collaborator is in a comprehensively sanctioned country;
- Any international shipment of goods, services, information, or technology abroad.

C. Technology Control Plan (TCP)

A TCP is an internal written document that provides for the policies and procedures to be used to protect potentially controlled, sensitive, or proprietary information at A&M-SA.

When it is necessary to accept export-controlled information, ECO will implement a TCP to ensure compliance with the export control regulations.

The TCP will demonstrate a commitment to export controls compliance, will identify applicable export-controlled items or technologies subject to the export controls, and will outline the security measures to be taken to ensure compliance. These measures may include laboratory compartmentalization, written marking of export-controlled items, secure areas, use of encryption; password-protected information, and confidential communications, or other appropriate measures. The TCP will also identify by nationality each participant in the research who will potentially have access to the export-controlled item or information and will provide appropriate screening of all such participants.

Under these unique circumstances, ECO and EO will be engaged and will work with the requesting party to implement a TCP that must be signed by the responsible Principal Investigator, the appropriate Dean, and the Department Chair. Any individual having access to



items or information under a TCP must be informed of the TCP requirements and must acknowledge acceptance of and compliance with those terms in writing.

D. I-129 Certification Process

The federal government, through the Department of Homeland Security, requires that certain petitions filed by employers on behalf of Foreign Nationals must be accompanied by a certification indicating that: (a) an export license is not required from either the U.S. Department of Commerce and/or the U.S. Department of State to release any technology or technical data to the Foreign National; or (b) a license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the Foreign National and the petitioner will prevent access to the controlled technology or technical data by the Foreign National unless and until the employer has received the required license or other authorization to release the technology or technical data.

Typically, A&M-SA can certify Foreign Nationals will not receive access to any controlled items (technology, data, software, materials, substances, etc.) because of one of the following three reasons:

1. An appropriate exclusion removed such technology or technical information from the export control regulations (such as the FRE).
2. A&M-SA has appropriately vetted all such technology - determining it is not export- controlled.
3. A&M-SA has ensured, through contract or otherwise, that no such controlled technology or data is present at A&M-SA.

To the extent that any controlled technology or data may come to exist at A&M-SA, the



appropriate party must engage ECO and EO for an export control consultation.

E. International Shipments

International shipments are subject to numerous export and import regulations. Many items require prior federal government authorization (e.g., export control license) and specific documentation. A research project may also need a Material Transfer Agreement (MTA) to share and protect the materials with collaborators or other researchers outside A&M-SA.

- **International Shipping Resources:** [System Policy](#) provides general guidance about shipping.

F. Material Transfer Agreements

An MTA is a written contract used to govern the transfer of research material between organizations. University personnel who engage in international shipping are responsible for complying with U.S. export control laws and regulations.

- **Material Transfer Agreements:** Office of Research Compliance manages the MTA process for A&M-SA and maintains a guidance website and a resource at rmuthukrish@tamusa.edu
- **Hazardous Materials:** [Shipping Hazardous Materials](#) provides assistance and training to help university faculty, staff, and students comply with regulations pertaining to shipment of biologicals, chemicals, and radiological materials. For more guidance and resources, contact vpantusa@tamusa.edu.

G. Procurement

There may be export control considerations when purchasing and using certain items (i.e.,



equipment, materials, etc.). Non-U.S. persons are allowed, under federal law, to use or operate most EAR-controlled items. However, there may be restrictions related to the technology, manufacturing, and production or the "know-how" of the item. ITAR equipment is restricted to U.S. persons and needs a license or exemption for a foreign person to use it. Procurement flags indicating authorization may be required to include end-use or export control statements or agreements from the seller or manufacturer.

- Purchase order with strong export control language.
- ITAR-controlled markings.
- Vendor notes shipping or foreign person restrictions.

7. LICENSING

As circumstances warrant, A&M-SA's ECO will work with the appropriate federal agency to secure licenses for export controls compliance. Most commonly, a license might be required for the physical shipment of items overseas. The requesting party should notify the ECO of the need to ship potentially controlled items overseas and work with ECO to properly identify those items and determine whether a license is required.

Federal licenses may also be required for an employee or student to collaborate with a sanctioned country (even virtually from the United States). It is also expected that parties working with comprehensively sanctioned countries will contact ECO for assistance with obtaining federal authorization.

8. TRAINING

Online export control training. Online training will be held through Train Traq. In-person training may be requested from our website: <https://tamusa.jotform.com/231506082059048>



Train Traq course 2111212: Export Controls & Embargo Training- Basic.

If you are travelling abroad for personal or official reasons, please ensure that you have taken the following International Travel training courses within the last three years prior to your scheduled departure date.

2111728: International Travel Safety: Safe Passages Presentation

This presentation provides safety and awareness education for Texas A&M System employees and students while traveling overseas.

2113639: U.S. Foreign Corrupt Practices Act

9. RECORD KEEPING

A&M-SA is required to maintain records related to exports for five years (unless otherwise specified by the ECO) after the license or other approval has expired. ECO maintains records related to all exceptions and exemptions, applications, and licenses for five years after the licenses or other approvals have expired. **Note:** 762.6 of the EAR requires records are to be kept for five years from the latest date of export, reexport, or transshipment.

10. AUDITS

As a critical component to A&M-SA's ongoing compliance monitoring, self-evaluation is an internal assessment process to review procedures. The importance of self-reporting potential issues is emphasized during training sessions and during the TCP onboarding. ECIC annually conducts a TCP review and may periodically evaluate and recommend or require training to maintain compliance with TCP procedures. The purpose of the reviews is to identify violations and deficiencies in training, procedures, personnel, handling of data, etc. The goal of the audit is to identify and correct any issues and self-report any violations should that be necessary.



11. IDENTIFYING & REPORTING VIOLATIONS

To ensure compliance, and to provide the A&M-SA community with the opportunity to self-report any suspected incidents, ECO suggests that any concerns be communicated by either e-mail rmuthukrish@tamusa.edu or telephone 210-784-1223. Anonymous reports can also be made to EthicsPoint (via the [Ethics Point website](#)).

Violations

ECO is identified and send the non-compliance explanation form to the parties. PI's must return the completed form within 3 working days. The Export Control violations are serious matters and will be escalated to appropriate sanctions if needed.

It is the responsibility of the ECO to determine if a university activity has resulted in an export control violation and implement corrective actions. If unauthorized access to certain export- controlled data, information, materials, software, or equipment has been given to non-U.S. persons; or services, equipment, data, or other items have been provided to a "denied entity" then ECO must investigate and as required, report to appropriate the government.

1. If the ECO receives notification that a suspected violation has occurred, or the ECIC discovers a suspected violation during a TCP audit, the activity must cease immediately. ECO will notify the Senior Associate Vice President for Research, the Vice President for Research and as appropriate the Office of General Counsel (OGC) and Risk & Compliance if a suspected violation has occurred.
2. The ECO will investigate the purported violation per the requirements of



the applicable government agency.

3. Individuals involved with the alleged violation will be interviewed and documentation regarding the suspected export violation collected per the requirements of the applicable government agency.
4. If the ECO determines a suspected export violation occurred, the suspected violation will be reported to the appropriate government agency by either the ECO or the OGC. The ECO will work with the impacted units to take corrective action and update any policies and procedures to prevent future issues.
5. The activity can be reinstated only after being deemed as not an export violation by the university investigation, or the appropriate government agency has determined the activity to not be an export control violation, or a government authorization (license) has been obtained for the activity.

12. CONSEQUENCES OF VIOLATIONS OF EXPORT CONTROL REGULATIONS

Failure to comply with the various export control regulations can result in both individual criminal and civil penalties. Under the EAR regulations, criminal penalties can involve imprisonment and significant monetary penalties up to \$1 million per violation, while civil penalties are also substantial. Additionally, the loss of exporting privileges – including the FRE – may result. In addition, in recognition of the seriousness of non-compliance with export controls, A&M-SA will address non-compliance in accordance with university policy.

In assessing penalties, DDTC, BIS, and OFAC will consider several factors, both aggravating and mitigating. Mitigating factors include (1) whether the disclosure was made voluntarily; (2) whether this was a first offense; (3) whether the company had compliance procedures; (4)



whether steps were taken to improve compliance after discovery of violations; and (5) whether the incident was due to inadvertence, mistake of fact, or good faith misapplication of the laws. Aggravating factors include: (1) willful or intentional violations; (2) failure to take remedial action after discovery; (3) lack of a compliance program; and (4) deliberate efforts to hide or conceal a violation.

13. DEFINITION OF KEY TERMS

CCL (Commerce Control List): a list of “dual use” items under the specific jurisdiction of the Department of Commerce, subject to regulation under the EAR and is used to help determine if an export license is needed for U.S. exports.

Commodity: Any article, material, or supply except technology and software.

Deemed Export: the release of technology or source code controlled under the EAR to a Foreign National within the United States.

Dual Use Items: are controlled under the EAR and used in military and civilian applications.

EAR (Export Administration Regulations): policies and regulations issued by the U.S. Department of Commerce’s Bureau of Industry and Security, which govern “dual use” items.

Export: the transfer of export-controlled data, items, equipment, materials, and software or providing a defense service to a non-U.S. Person or entity. An export can occur in a number of ways, such as; a physical shipment, hand-carrying an item out of the U.S., email transmission of data, presentations, discussions, or visually accessing export-controlled data.

Foreign National: an individual who is not a United States citizen, permanent resident alien



of the United States (*i.e.*, “green card holders”), lawfully admitted temporary resident alien or refugee, or other protected individual as defined by 8 U.S.C. 1324b(a)(3).

Fundamental Research (under the EAR): research in science, engineering, or mathematics, the results are ordinarily published and shared broadly within the research community, and the researchers have not accepted restrictions for proprietary or national security reasons.

Fundamental Research (under the ITAR): 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, as distinguished from results restricted for proprietary reasons or specific U.S. government access and dissemination controls. 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.

Fundamental Research Exclusion (FRE): policy established under National Security Decision Directive 189, issued in 1985, which states that the products of Fundamental Research are excluded from the export control regulations.

ITAR (International Traffic in Arms Regulations): regulations issued by the U.S. Department of State’s Directorate of Defense Trade Controls, which control the export and import of defense articles and defense services.

Item: Item means “commodities, software, and technology.” When the EAR intends to refer



specifically to commodities, software, or technology, the text will use the specific reference.

OFAC (Office of Foreign Assets Control): a division of the U.S. Department of Treasury, which administers and enforces economic, and trade sanctions based on U.S. foreign policy and national security goals against targeted 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 U.S.

Restricted Party Lists: a series of lists published by the U.S. Departments of Commerce, Treasury, and State as well as the General Services Administration, which identify the names of companies and individuals to whom there exists restrictions upon the ability to export controlled items. These lists include the Denied Persons List, the Unverified List, the Entity List, the Specially Designated Nationals List, the Debarred List, and the Excluded Parties List.

Software: A collection of one or more “programs” or “microprograms” fixed in any tangible medium of expression.

Technology: Technology means: 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.

Technology Control Plan (TCP): an internal document outlining the procedures to be used to protect potentially controlled, sensitive, or proprietary information at A&M-SA.

USML (United States Munitions List): a list of articles, technical data, and defense services designated as defense- and space-related by the U.S. government subject to the ITAR.



[Department of Commerce Bureau of Industry and Security website](#)

[Export Administration Regulations \(EAR\), 15 C.F.R. 730-774](#)

[State Department Directorate of Defense Trade Controls website](#)

[International Traffic in Arms Regulations \(ITAR\), 22 C.F.R. 120-130](#)

[Office of Foreign Assets Control \(OFAC\) website](#)

[U.S. departments and agencies with export control responsibilities](#)

Contacts

[A&M-SA Export Controls Office \(ECO\) website](#)

History:

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