



# **Handbook of Operating Procedures**

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## **EXPORT CONTROL POLICY**

### **A. Purpose**

The United States government regulates the distribution of strategically important products, services, technology and information to foreign nationals and foreign countries for reasons of foreign policy, national security, and protection of United States Commerce under a matrix of regulations collectively referred to as “Export Controls.”

Items addressed by Export Controls regulations include:

- (1) Transfers of controlled information, including technical data, to persons and entities outside the United States;
- (2) Shipment of controlled physical items, such as scientific equipment, that require export licenses from the U.S. to a foreign country; and
- (3) Verbal, written, electronic, and/or visual disclosures of controlled scientific and technical information related to export controlled items to foreign nationals (“deemed exports”) in the United States.

The purpose of this policy is to address compliance with all United States “Export Control” regulations including those regulations implemented by The Department of Commerce through its Export Administration Regulations (EAR), Department of State through its International Traffic in Arms Regulations (ITAR), and the Treasury Department’s Office of Foreign Assets Control (OFAC), while encouraging technology exchange.

### **B. Persons Affected**

This policy applies to:

Faculty, staff, or students whose research, scholarship, or work involves:

- foreign travel;
- training foreign nationals in the United States or abroad in using equipment or technology;
- collaborating with foreign colleagues in the United States or abroad;
- shipping equipment to foreign countries;



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- negotiating with sponsors who wish to assert pre-approval rights over publications or the participation of foreign persons;
- hiring of foreign nationals; or
- admitting foreign students

need to be aware of export control regulations.

Supervisors and staff in offices that support such work also need to be aware of these policies and regulations.

### C. Policy

The institutional commitment of The University of Texas-Pan American is that all instruction, research and services will be conducted in an open manner, without restrictions on the publication and dissemination of the results of academic and research activity.

The policy of The University of Texas-Pan American is to pursue its mission in instruction, research, scholarship and service in a manner that is consistent with the US Export Control laws and regulations while making reasonable efforts to maximize activities in the public domain or under fundamental research exemptions to the regulations.

Failure to comply with federal export control laws and regulations, or failure to comply with the University's export control policy and procedure may result in disciplinary action. In addition, US authorities may hold individual faculty or staff members personally liable for export control violations.

### D. Definitions

1. *Export.* Any oral, written, electronic or visual disclosure, shipment, transfer, or transmission outside the United States to anyone, including an American Citizen, of any commodity, technology (information, technical data, or assistance) or software/codes.
2. *Deemed Export.* An export of a controlled technology or software to a foreign national (other than US citizen or permanent resident) inside the United States. The transfer of or access to technology controlled under the EAR (Export Administration Regulations 15 CFR 700-799) or ITAR (International Traffic of Arms Regulations 22 CFR 120-130).



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3. *EAR (Export Administration Regulations, Title 15, sections 730-774 of the Code of Federal Regulations (CFR)).* Regulations promulgated and implemented by the Department of Commerce that regulate the export of goods and related technology identified on the Commodity Control List (CCL), Title 15 CFR 774, Supp. 1. Goods and technology on the CCL are not inherently military in nature; they are primarily and inherently commercial or potentially commercial in nature. The complete texts of the EAR and CCL are available online at [http://w3.access.gpo.gov/bis/ear/ear\\_data.html](http://w3.access.gpo.gov/bis/ear/ear_data.html).
4. *ITAR (The International Traffic in Arms Regulations (ITAR), 22 CFR § 120-130.* Regulations promulgated and implemented by the Department of State that control the export of articles, services, and related technical data that are inherently military in nature, as determined by the State Department. These “defense articles,” “defense services,” and related “technical data” are listed on the Munitions List (USML), 22 CFR § 121. Prohibited countries where it is U.S. policy to deny licenses for exports of defense articles and defense services are listed in Section 126.1 of the ITAR ([http://pmdtc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_126.pdf](http://pmdtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf) )
5. *Fundamental Research.* Basic and applied research in science and engineering, the results of which ordinarily are published and spread broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production and product utilization, the results of which are ordinarily restricted for proprietary or national security reasons<sup>1</sup>. To be eligible to be characterized as fundamental research, a university or college needs to be carrying out openly-conducted basic or applied research in science or engineering, the results of which will be shared with the interested scientific community (i.e., no sponsor has placed any publication restrictions on the work).
6. *Public Domain.* Technical information available in the public domain is not subject to export controls. Public domain refers to the realm or status of property rights, including publications, products and processes that: (a) belong to the community at large, (b) are unprotected by copyright or patent, and (c) can be used by anyone without permission from the creator.
7. *Technology.* Specific information that is necessary for the development, production, or use of a product. The information can take the form of technical data or technical assistance.
8. *US Person/Foreign Person.* A US person is a citizen of the United States, lawful permanent resident alien of the US, a refugee or someone in the US as a protected

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<sup>1</sup> As defined in National Security Decision Directive 189 (NSDD 189).



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person (under political asylum or amnesty). The general rule is that only US persons are eligible to receive controlled items, software or information without first obtaining an export license. A foreign person is anyone who is not a US person. This also includes any foreign corporation, business association, or partnership that is not incorporated to do business in the United States. This category may also include foreign/international organizations, government, and any agency or subdivision of a foreign government including the consulates.

### **E. Responsibilities**

1. The Human Resources Office is responsible for screening all incoming faculty and staff to identify areas where export control restrictions apply (Individuals identified may be able to work, dependent upon specific work and required restrictions.)
2. The Director of Materials Management is responsible for the identification of faculty and staff travel, shipments, and vendors where export control restrictions apply.
3. The Director of International Admissions and Services will assist with identifying foreign students who would be restricted from access to technology or software by export controls.
4. The Director of International Programs is responsible for assuring that all international programs and participants meet export control regulations concerning sanctioned and embargoed countries.
5. The Vice Provost for Research and Sponsored Projects (VPRSP) is responsible for:
  - identifying potential contracts carrying restrictions on publications or use of foreign nationals;
  - identifying where export controlled data is provided to or used by researchers in a laboratory that would require a license for foreign nationals to participate, specifically deemed exports;
  - assisting Principal Investigators in determining whether restricted technology or software can be maintained separately from those portions of the research that will eventually lead to publication of research results;
  - establishing a training/awareness program for researchers and research administrators, paying special attention to those departments or laboratories that



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are most likely to have projects in covered technologies, such as engineering, computer sciences, and space science;

- developing a mechanism to ensure that information on the export control laws in general and the institutional policies and procedures be made available institution-wide; and
  - designating an individual to assist researchers and University administrators in the identification and management assessment of export control matters.
6. The Chief Information Security Officer is responsible for identifying all software or codes which are subject to export controls.
  7. Inventory Control identifies the equipment that the University has which is subject to export controls.
  8. The Department of Environmental Health and Safety is responsible for evaluating chemical, biological and radioactive agents that have the potential to pose a threat to public health and safety, to ensure compliance with export control laws and any other applicable regulations.

### **F. Procedures**

1. Under the direction of the Human Resources Office (HR), all employees will be screened in accordance with [Handbook of Operating Procedures \(HOP\) 7.2.2 Employee Criminal Background Checks](#). Note: All employees hired through HR, in any aspect, are screened. Unless employed, HR does not screen students. When it is determined that the research is subject to the Export Control Policy, it is the responsibility of the Principal Investigator to ensure that students, who are not officially employed, and are under their specific direction, are screened in a manner equivalent to [HOP 7.2.2](#) and [HOP 6.7.6 Student Criminal Background Checks](#).
2. Under the direction of the Director of Materials Management, vendors and suppliers be screened against federal lists to determine if export controls apply to them. Shipments of goods to foreign persons and/or foreign countries will be screened to determine if any items are subject to export controls.
3. Under the direction of the Vice Provost for Research and Sponsored Projects (VPRSP), the Office of Research and Sponsored Projects (ORSP) will conduct a thorough review of the terms of contracts and awards for provisions: (a) that restrict publication of research and technical data, (b) that limit the participation of foreign persons in the



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research, or (c) otherwise limit the fundamental research exemption from some export controls.

Where the terms of a sponsored project would limit the fundamental research exemption from export controls, the VPRSP will discuss the problematic terms of the contract with the Principal Investigator. If the terms fall under any of the export control regulations, ORSP will contact the sponsor and negotiate for the removal or modification of the terms that impact the University's exemption from regulations. If the negotiation does not lead to the removal or modification of the terms, the VPRSP and Provost will determine if the University will (a) apply for an export control license, (b) conduct the activity under the conditions required by the sponsor, or (c) abandon the activity due to the burdens or restrictions associated with compliance with the regulations.

4. Principal Investigators conducting activities subject to export controls will develop a technology control plan for handling and safeguarding export-controlled information and technology. A copy of the plan will be maintained with the official award records.

### **G. Review**

The Divisional Head for this policy is the Provost/Vice President for Academic Affairs and this policy shall be reviewed every five years or sooner if necessary by the following Stakeholders:

1. Vice Provost for Research and Sponsored Projects – Senior Reviewer
2. Director of Materials Management
3. Director of International Admissions and Services
4. Director of Human Resources
5. Director of International Programs
6. Director of Innovation and Intellectual Property
7. Director of Research and Sponsored Projects
8. Director of Environmental Health and Safety
9. Chief Information Security Officer
10. Compliance Officer
11. Academic Affairs Executive Team
12. Faculty Senate Chair
13. Staff Senate Chair
14. Student Government Association President