

EXPORT CONTROLS & CONFLICTS OF INTEREST

CRA Fall Review
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TEXAS A&M UNIVERSITY

Division of Research

OBJECTIVES

- Export Controls
 - Applications
 - Exclusions
- Conflicts of Interest and Commitment
 - Types of Conflicts
 - Federal Requirements
 - Management
- Foreign Influence
- Responsible Conduct of Research
 - Requirements

What are Export Controls?

The term “Export Controls” refers collectively to those U.S. laws and regulations that govern the transfer of controlled information, items or technologies to **foreign countries** and/or **foreign persons**.

The U.S. Government controls certain **information, items, technologies, and services** deemed to be critical to:

- National Security
 - To prevent terrorism or restrict exports of goods and technology that could contribute to U.S. adversaries’ military potential;
- Economy; and/or
- Foreign Policy.

What is an export?

- Any item, commodity, technology, or software that is sent out of the U.S. to a foreign destination.
- This includes the physical shipment of goods or items, traveling (or “hand carrying”) controlled items, and electronic or digital transmission of technology or software. It can also include some services (defense).

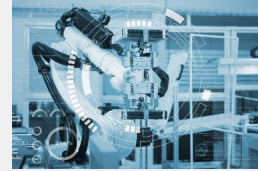
What is a deemed export?

- The transfer of export-controlled information or technologies to a foreign person while IN the United States
- Can involve release of information by:
 - Tours of laboratories & visual inspection
 - Emails
 - Oral conversations

Export Control Regulations apply to BOTH Exports AND Deemed Exports

What is subject to Export Control Regulations?

Tangible things – every tangible item in the U.S. is subject to US export controls



Intangible things - Specified technology (information) and software **related to controlled items**.



NOTE:

- U.S.-origin items and technology are still subject to export controls even if they are not currently in the U.S.
- Even when something is available worldwide, US Export Control laws may still apply to it.
- Custom/lab-built devices are subject to US Export Control laws.

Who Regulates Export Controls?



Department of State: Directorate of Defense Trade Controls (DDTC)
International Traffic in Arms Regulations (ITAR)
United States Munitions List (USML)

- Covers military items or defense articles
- Regulates goods and technology designed to kill or defend against death in a military setting, as well as defense services
- Includes space related technology because of application to missile technology
- Includes technical data related to defense articles and services



Department of Commerce: Bureau of Industry and Security (BIS)
Export Administration Regulations (EAR)
Commerce Control List (CCL)

- Regulates items, commodities, software and technologies designed for commercial purpose but which could have military applications (computers, civilian aircraft, pathogens) – these are known as “dual use”.
- Covers both the goods and the technology



Department of Treasury: Office of Foreign Assets Control (OFAC)
Embargoes and Sanctions on Restricted Entities
Entities listed on the Denied Persons List or Unverified Persons List (among others)

- Regulates the transfer of items/services of value to embargoed nations
- Imposes trade sanctions, and trade and travel embargoes aimed at controlling terrorism, drug trafficking and other illicit activities
- Economic sanctions focus on end-user or country
- Prohibits payments or providing “value” to nationals of sanctioned countries and certain entities



CONSEQUENCES OF EXPORT CONTROL VIOLATIONS

- Severe criminal and civil noncompliance penalties and sanctions for **individuals** as well as institutions/corporations
 - Up to \$1M for institutions/corporations and up to \$500,000 for individuals
 - Up to 20 years in prison
 - Termination of export privileges
 - Suspension and/or debarment from federal government contracting
 - Loss of federal funds

HOW DOES THIS APPLY IN A UNIVERSITY SETTING?

Examples of University activities where an Export Control review is required:

- Traveling overseas on University business (e.g., conferences, conducting field work, international symposia)
- Shipping (or “hand carrying”) anything to a location outside the United States, including international waters
- Handling controlled information and items
- Any research collaborations with foreign persons and entities
- Visits or tours of research facilities by foreign persons
- Providing services or anything of value to an embargoed or sanctioned country



Export controls impact:

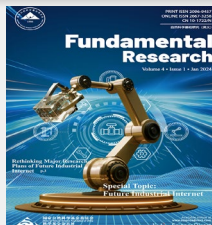
- All international university activities/ interactions (here and abroad).
- Research projects involving controlled information, items, or technology.

EXCLUSIONS

- Research & teaching conducted at U.S. universities is often **exempt** from export controls under the following exclusions:
 - Fundamental Research Exclusion
 - Educational Information Exclusion
 - The Public Information Exclusion
- Research results are not subject to U.S. Export Regulations if they fall into one of the above listed exclusion categories.

NOTE: The University must demonstrate and **document** that the appropriate export control reviews were performed in order to claim an exemption

EXCLUSIONS



The **Fundamental Research Exclusion** applies to basic and applied research in science and engineering, the results of which are intended to be published and shared broadly within the scientific community that has:

- No restrictions on publications
- No restrictions on the participation of foreign nationals
- No specific national security controls on the research or results



The **Education Information Exclusion** applies to information that is commonly taught in universities via instruction in catalog courses and/or through the associated teaching laboratories (and is NOT research or design projects).



The **Public Information Exclusion** applies to information that is already published or out in the public domain.

Examples include:

- Books, newspapers, pamphlets
- Publicly available technology and software
- Information presented at conferences, meetings or seminars open to the public
- Information included in published U.S. patents
- Websites freely accessible to the public

NOTE: These exclusions only apply to results or information and **NOT** to physical items

FUNDAMENTAL RESEARCH EXCLUSION

(IN A LITTLE MORE DETAIL)

- The Fundamental Research Exclusion is void if a contract is accepted with either of the following:
 - publication restrictions (approval requirement), or
 - restrictions on the participation of foreign nationals
- Some contracts contain certain clauses which impose these types of restrictions. When possible, it is beneficial to negotiate these clauses out, to remain under the umbrella of the fundamental research exclusion as much as possible.
 - Examples of these clauses:
 - DFAR 252.204-7000 Disclosure of Information – creates a publication restriction
 - FAR 52.227-17 Rights in Data – Special Works - prevents the release, distribution, and publication of any data originally produced in the performance of the award
 - ARL 52.004-4400 – requires approval of Foreign Nationals
 - AFMC 5352.227-9000 Export Controlled Data Restrictions - requires an export license prior to assigning any foreign national to work on the project or allowing foreign persons access to the work, equipment or technical data generated by the project
 - CUI – “Controlled Unclassified Information”
- However, if the sponsor will not remove the restrictions, a Technology Control Plan (TCP) and/or export control license(s) may be required, which could take some additional time and delay the project funds from being released.

Export Controls in Action:

Example – International Shipping Review

QUESTIONS WE CONSIDER:

- What is it?
- What is the value?
- Who will access/use/maintain it?
- Temporary or permanent export?
- What is its export classification (ECCN)?
- Where is it going?
- How will it be used? (End use)

End-Use/End User	Embargoes & Sanctions	Restricted or Prohibited Party Lists
<p>What is it (e.g. exported item, technology, export-controlled information) being used for?</p> <p>Who is using it?</p> <p>Potential concerns include:</p> <ul style="list-style-type: none"> • Military, nuclear, chemical or biological weapons • Prohibited parties • Plans to divert or transfer to another party 	<p>Is it going to a country under a US Embargo or Sanction?</p> <ul style="list-style-type: none"> • Targeted foreign countries, terrorists, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats. • Most Restrictive: Cuba, Iran, North Korea, Russia, Syria, Regions of Ukraine: Crimea, Donetsk, Luhansk • Many other countries with sanctions - each program is specific to the risk in that country 	<ul style="list-style-type: none"> • Lists of parties of concern – if a party to a transaction appears on one of the lists, additional due diligence is required before proceeding. • Depending on the list, a match could indicate strict export prohibition, a specific license requirement, or presence of a "red flag". • Individuals as well as entities can be on the lists. <p>NOTE: This is why we conduct Restricted Party Screening</p>

Responsible Conduct of Research

Many federal granting agencies require institutions receiving funds to have a program in place to provide research personnel Responsible Conduct of Research (RCR) training.

Why is RCR Training Required?

- Per the National Institute of Health (NIH): The practice of scientific investigation with integrity. It involves the awareness and application of established professional norms and ethical principles in the performance of all activities related to scientific research.
- Per the National Science Foundation (NSF): The responsible and ethical conduct of research (RECR) is critical for excellence, as well as public trust, in science and engineering. The responsible and ethical conduct of research involves not only a responsibility to generate and disseminate knowledge with rigor and integrity, but also a responsibility to:
 - conduct peer review with the highest ethical standards
 - diligently protect proprietary information and intellectual property from inappropriate disclosure
 - treat students and colleagues fairly and with respect.
- Per the United States Department of Agriculture (USDA): Institutions that conduct USDA-funded extramural research must foster an atmosphere conducive to research integrity, bear primary responsibility for prevention and detection of research misconduct, and maintain and effectively communicate and train their staff regarding policies and procedures.
- Per TAMU SAP, RCR is generally defined as the rules, regulations, and best practices established to guide research and scholarly activities in order to product results that are honest, accurate, efficient and objective (SAP 15.99.99.M0.04).

Responsible Conduct of Research

Responsible Conduct of Research Training

- **Federal Requirements:**

- NSF

- RCR training required of all **undergraduate students, graduate students, postdoctoral researchers, faculty and senior personnel** who will be supported by NSF to conduct research.
 - Training plans are not required to be included in proposals, but are subject to review by the NSF, upon request.
 - An institution must designate one or more persons to oversee RCR compliance & institutions are responsible for verifying appropriate RCR training is taken.

- USDA-NIFA

- **Program directors, faculty, undergraduate students, graduate students, postdoctoral researchers, and any staff** participating in the research project **must** receive appropriate training and oversight in the responsible and ethical conduct of research.
 - Online CITI RCR training is encouraged.

- NIH

- RCR training is required by the National Institutes of Health (NIH) for **all trainees, participants, and scholars** receiving support through a specific list of grants and awards.
 - NOTE: These grants require an RCR training plan to be submitted with the proposal and the NIH approves this plan.
 - A minimum of 8 hours of formal, face-to-face instruction at least once during each career stage and at least every 4 years is required. Research faculty at the institution should participate in the instruction.

Responsible Conduct of Research

Responsible Conduct of Research Training

- It is important to keep in mind that there can be University/Institutional RCR Requirements as well
- At TAMU:
 - All undergraduate and graduate students and postdoctoral researchers participating in research are required to complete RCR training per [University SAP 15.99.99.M0.04](#).

Responsible Conduct of Research

Expected RCR Training Subject Matter Areas:

- RCR topics cover a variety of knowledge areas:
 - Research misconduct
 - Research data management
 - Conflict of interest/commitment
 - Collaborative science
 - Responsible authorship, plagiarism, peer review,
 - Mentoring
 - Human Participant protection
 - Animal welfare
 - Biosafety
 - Scientific Ethics
 - Safe Research Environments
- NSPM-33 and CHIPS & Science Act are including specific training in areas like:
 - Export controls
 - Research Security

TYPES OF CONFLICT OF INTEREST

- **Personal**
- **Professional**
- **Organizational**
- **Financial**
- **Institutional**



CONFLICT OF INTEREST

- **§ 200.112 Conflict of interest.**
- **Federal agencies must establish conflict of interest policies for Federal awards. A recipient or subrecipient must disclose in writing any potential conflict of interest to the Federal agency or pass-through entity in accordance with the established Federal agency policies.**

Federal Agency Regulations for Conflicts of Interest

Agency	Location of Information	Title
Public Health Services – National Institutes of Health	42 CFR Part 50 Subpart F	Promoting Objectivity in Research
National Science Foundation	PAPPG Chapter IX	Conflict of Interest Policies
Department of Energy	FAL 2022-02	Department of Energy Interim Conflict of Interest Policy Requirements for Financial Assistance
NASA	GCAM and T&C	Conflict of Interest Policy

GENERAL REQUIREMENTS

- Maintain an up-to-date written, enforced COI policy
- Make the policy publicly available
- Require training every four years or more often under certain circumstances
- Flow through any COI terms to subrecipients or collaborators

TAMU System Regulation

15.01.03, Financial Conflicts of Interest in Sponsored Research

15.01.03 Financial Conflicts of Interest in Sponsored Research

Revised [January 13, 2025](#)

Next Scheduled Review: January 13, 2030

Click to view [Revision History](#).



Regulation Summary

The Texas A&M University System (system) recognizes its responsibility to encourage interaction between its employees and the public and private sectors as an important component of its research activities. The system and system members are committed to conducting research in a manner consistent with the highest standards of integrity and ethics. The system adopts this regulation to promote objectivity in research and to ensure that the research activities conducted by each member are free from bias and influence resulting from financial conflicts of interest (FCOI).

This regulation implements federal law and regulations adopted by the Public Health Service (PHS) of the U.S. Department of Health and Human Services and the National Science Foundation (NSF) to address when significant financial interests (SFIs) may reasonably influence or bias the design, conduct or reporting of research, resulting in FCOIs.

EXAMPLES OF ACTUAL OR POTENTIAL FCOI

- Faculty member owns private business, wants to contract to the university
- Faculty-owner expects to oversee company-funded research at the university
- Serving in an executive or managerial capacity in an entity doing business with the University, or where the entity is in one's field of research,
- When an employee is in a position to influence purchasing or contracting decisions
- Acceptance of gifts
- Outside employment
- Utilizing students, trainees, or other university employees in faculty member's private business or consulting

TO DISCLOSE BY AGENCY

- PHS “A financial interest consisting of one or more of the following interests of the **Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's institutional responsibilities**”: publicly traded entities, non-publicly traded entities, IP rights and interests, sponsored travel.”
- DOE “A financial interest consisting of one or more of the following interests of the **Investigator (and those of the Investigator's spouse and dependent children) that reasonably appears to be related to the Investigator's institutional responsibilities**”: publicly traded entities, non-publicly traded entities, IP rights and interests, sponsored travel.”
- NSF “anything of monetary value, including, but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interest (e.g., stocks, stock options, private equity, or other ownership interests); venture or other capital financing, and intellectual property rights (e.g., patents, copyrights, and royalties from such rights).”
- NASA “anything of monetary value, including, but not limited to, salary and any payment for services not otherwise identified a salary (e.g., consulting fees or honoraria), equity interest (e.g., stock, stock options, private equity, or other ownership interests), venture or other capital financing, and intellectual property rights (e.g., patents, copyrights, and royalties from such rights).”

SIGNIFICANT FINANCIAL INTEREST

- With regard to any **publicly traded entity**, an SFI exists if the **value** of any remuneration **exceeds \$5,000**. (salary and any payment for services not otherwise identified as salary (e.g., consulting fees, honoraria, paid authorship); equity interest includes any stock, stock option, or other ownership interest, as determined through reference to public prices or other reasonable measures of fair market value)
- With regard to any **non-publicly traded entity**, an SFI exists if the value of any remuneration **exceeds \$5,000**, or when the investigator (or the investigator's immediate family member) holds any equity interest (e.g., stock, stock option, or other ownership interest)
- Intellectual property and royalty interests (e.g., patents, copyrights), upon receipt of income related to such rights and interests
- The occurrence of any reimbursed or sponsored travel related to institutional responsibilities (including that which is paid on behalf of the investigator but not reimbursed to the investigator so that the exact monetary value may not be readily available); provided, however, that this does not include travel that is reimbursed or sponsored by a federal, state, or local government agency, an institution of higher education, an academic teaching hospital, a medical center, or a research institute that is affiliated with an institution of higher education;.
- Gifts, when the value of a single gift exceeding \$250, or when the aggregated value of multiple gifts received from a single entity within the preceding 12 months exceeds \$250, excluding gifts received from a covered family member
- Any fiduciary position held by an investigator or a covered family member in a for-profit or nonprofit entity in the preceding 12 months, including a position as a member of the board of directors, an officer, or other executive or management position, for which the investigator or covered family member received any form of remuneration or reimbursement for expenses

NOT SFI

- Salary, royalties, or other remuneration paid by a member to the investigator if the investigator is currently employed or otherwise appointed by the member;
- Intellectual property rights assigned to the system or its member and agreements to share in royalties related to such rights;
- Income from investment vehicles, such as mutual funds and retirement accounts, as long as the investigator does not directly control the investment decisions made in these vehicles;
- Income from seminars, lectures, or teaching engagements sponsored by a federal, state, or local government agency or an institution of higher education as defined by 20 U.S.C. §1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an institution of higher education;
- Income from service on advisory committees or review panels for a federal, state, or local government agency, or an institution of higher education as defined by 20 U.S.C. §1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an institution of higher education;
- Travel reimbursed or sponsored by a federal, state, or local government agency, or an institution of higher education as defined by 20 U.S.C. §1001(a), an academic teaching hospital, a medical center, or a research institute that is affiliated with an institution of higher education.

DEFINITION BY AGENCY

- PHS “A **significant financial interest** that could directly and significantly affect the design, conduct or reporting of PHS funded research.”
- DOE “A situation in which an Investigator or the Investigator's spouse or dependent children has a **significant financial interest or financial relationship** that could directly and significantly affect the design, conduct, and reporting or funding of a project.”
- NSF “When reviewer(s) reasonably determine that a **significant financial interest** could directly and significantly affect the design, conduct, or reporting of NSF-funded research or educational activities.”
- NASA “A situation in which an investigator, or the investigator's spouse or dependent children, has a **significant financial interest** that could directly and significantly affect the design, conduct, or reporting of NASA-funded research.”

TAMUS Regulation Definition

Conflict of interest – occurs when an individual's private financial interests compete with his/her professional obligations to the system to a degree that an independent observer might reasonably question whether the individual's professional actions or decisions are determined by considerations of personal gain, financial or otherwise.

MANAGING CONFLICTS OF INTEREST

- Develop a project-specific management plan approved by the university prior to the expenditure of PHS funds
- Modification of the research plan
- Public disclosure of financial conflicts of interest
 - (e.g., when presenting or publishing the research)
- For research projects involving human subjects research, disclosure of financial conflicts of interest directly to participants
- Appointment of an independent monitor capable of taking measures to protect the design, conduct, and reporting of the research against bias resulting from the financial conflict of interest
- Change of personnel or personnel responsibilities, or disqualification of personnel from participation in all or a portion of the research
- Reduction or elimination of the financial interest (e.g., sale of an equity interest)
- Severance of relationships that create financial conflicts
- The Institution shall monitor Investigator compliance with the management plan on an ongoing basis until the completion of the project

DISCLOSER BY AGENCY

- PHS “project director or principal Investigator and any other person, regardless of title or position, who is **responsible for the design, conduct, or reporting of research funded by the PHS, or proposed for such funding, which may include, for example, collaborators or consultants.**”
- DOE “the principal Investigator (PI) and any other person, regardless of title or position, who is **responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE.** DOE program offices have the discretion to expand the definition to include also any person who participates in the purpose, design, conduct, or reporting of a project.”
- NSF “the PI, co-PIs, and any other person identified on the proposed project who is **responsible for the design, conduct, or reporting of research or educational activities funded or proposed for funding by the NSF.**”
- NASA “the principal investigator, project director, and any other person, regardless of title or position, identified on the proposed project who is **responsible for the design, conduct, or reporting of research funded or proposed for funding by NASA.**”

WHEN TO DISCLOSE?

- Within 30 days of the investigator's initial employment date
- Annually, based on the prior disclosure date(s)
- Within 30 days after acquiring a new SFI requiring disclosure or a change in an existing SFI
- For those investigators participating in externally funded research (e.g. PHS or NSF), not later than the application date for the funded research

CONFLICT OF COMMITMENT

Conflict of Commitment (COC): exists when a faculty or staff member's external relationships or activities have the possibility (either in actuality or in appearance) of interfering or competing with the University's educational, research, or service missions, or with that individual's ability or willingness to perform the full range of duties and responsibilities associated with his or her position. It includes the performance of duties for an external entity substantially similar to or in competition with any portion of the individual's employment responsibilities as described in the individual's position description, letters of appointment, and workload assignments.

FOREIGN INFLUENCE

- Foreign influence is defined by the FBI as “covert actions by foreign governments to influence U.S. political sentiment or public discourse”.
- In an academic setting, the risks of foreign influence include:
 - Conflicts of Interest
 - Conflicts of Commitment
 - Diversion of intellectual property (IP) in grant applications
 - Sharing of confidential information during peer review
- Federal sponsors are concerned about any undisclosed sources of foreign funding such as:
 - Sponsored research or foreign employment
 - Unfunded (in-kind) resources received from foreign entities, including equipment, lab space, visiting scholars, etc.
 - Participation in Foreign Government Sponsored Talent Recruitment Programs

ADDITIONAL REGULATIONS

- NSPM – 33 National Security Presidential Memorandum (NSPM)-33 Implementation Guidance (follow up to NSPM – 33, 2021) Instructs *Federal agencies* to develop standard requirements related to:
 - Disclosure requirements and standardization* - Bio sketches and Current and Pending Support
 - Digital persistent identifiers
 - Consequences for violation of disclosure requirements
 - Information sharing
 - Research security programs*
- Chip and Science
 - Funds an NSF research security office
 - Authorizes NSF to conduct risk assessments
 - Requires DOE to develop tools to mitigate research security risks (e.g., S&T risk matrix)
 - Develops requirements for malign foreign talent program prohibition (and certification process requirement)
 - Mandates research security training
 - Revises responsible conduct training
- “**Research security**” refers to safeguarding the U.S. research enterprise against the misappropriation of research and development to the detriment of national or economic security, related violations of research integrity, and foreign government interference. (NSTC, OSTP Aug. 31, 2022)

What is a Malign Foreign Talent Recruitment Program?

Any type of program, position or activity that involves one of more of the following:

- Unauthorized transfer of intellectual property, materials, data or other nonpublic information;
- Recruitment of trainees or researchers to enroll in such program, position or activity;
- Establishing a laboratory or entity in a foreign country in violation of terms and conditions of a federal research award;
- Accepting a faculty position, or undertaking any other employment or appointment in violation of the standard terms and conditions of a federal research award;
- Being unable to terminate the activity except in extraordinary circumstances;
- Being limited in capacity to carry out a federal research award;
- Requirement to engage in work that overlaps or duplicates a federal research award;
- Requirement to obtain research funding from the foreign government's entities;
- Requirement to omit acknowledgement of the U.S. home institution and/or the federal funding agency;
- Requirement to not disclose participation in the program, position, or activity; **OR**
- Having a conflict of interest or commitment contrary to a federal research award.

AND

Is sponsored by one of the following:

- A foreign country of concern
- An entity based in a foreign country of concern
- An institution or program on certain prohibited lists

RESEARCH MISCONDUCT

- **Fabrication** is making up data or results and recording or reporting them.
- **Falsification** is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
- **Plagiarism** is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit

THANK YOU



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Division of Research