

Export Controls

Audit Report # 21-104

December 28, 2020



The University of Texas at El Paso
Office of Auditing and Consulting

"Committed to Service, Independence and Quality"



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Office of Auditing and Consulting Services

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December 28, 2020

Dr. Heather Wilson
President, The University of Texas at El Paso
Administration Building, Suite 500
El Paso, Texas 79968

Dear Dr. Wilson:

The Office of Auditing and Consulting Services has completed a limited-scope audit of Export Controls. During the audit, we identified opportunities for improvement and offered the corresponding recommendations in the audit report. The recommendations are intended to assist the department in strengthening controls and help ensure that the University's mission, goals and objectives are achieved.

We appreciate the cooperation and assistance provided by the Office of Research and Sponsored Projects staff during our audit.

Sincerely,

A handwritten signature in blue ink that reads 'Lori Wertz'.

Lori Wertz
Chief Audit Executive

Report Distribution:

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EXECUTIVE SUMMARY

The Office of Auditing and Consulting Services has completed a limited scope audit of Export Controls.

During the audit we noted the following:

- We reviewed five projects:
 - three did not have evidence of review for Export Controls restrictions, and
 - two projects did not follow the Export Controls Process Guide.
- The pending recommendation from Audit #17-05 Export Controls regarding the use of the Technology Control Plans and Export Control Review forms was not implemented.
- Departments cannot identify projects with export control restrictions in PeopleSoft.
- International travel is not reviewed for Export Control issues as part of the approval process.
- The Information Security Office requires individuals who are planning to travel abroad with University-owned device to submit the Export Controls Acknowledgement form; however, only six forms were submitted over a two year period.
- We tested 70 (100%) employees working on export controlled projects for compliance with hiring restrictions. No exceptions were noted.
- Only 11 researchers have been assigned the Export Controls training.
- We were unable to determine if an Export Control Committee exists, or if the corresponding annual report was created.

BACKGROUND

Export control regulations are federal laws that prohibit the unlicensed export of certain commodities or information. These regulations have been enacted as a means to promote national security interests and foreign policy objectives.

U.S. Export Controls regulations include:

- The Department of Commerce's Export Administration Regulations (EAR) (also known as the Commerce Control List). The EAR is concerned with dual-use items, such as computers or pathogens that are designed for commercial use, but have the potential for military application.
- The Department of State's International Traffic In Arms Regulations (ITAR) which covers defense-related items and services.
- The Treasury Department's Office of Foreign Assets Control (OFAC) Regulations

Qualifying exports include:

- the shipment or transmission of items controlled under the EAR or ITAR out of the United States,
- the written, oral, or visual release of controlled technology, information, or software to a foreign person regardless of their location,
- the actual use of controlled technology on behalf of any foreign entity or person.

Controlled items can be encrypted laptop computers, technical project data, missiles, and chemical, biological, or nuclear weapons to name a few.

UTEP encourages the exchange of research and technology, and most of the research conducted is exempt from export controls restrictions due to the Fundamental Research Exclusion which includes basic or applied research where the information has been shared broadly in the scientific community. University research will *not* qualify as fundamental research if:

- (1) the institution accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors, or
- (2) the research is federally funded, and specific access or dissemination controls regarding research have been accepted by the university or the researcher.

AUDIT OBJECTIVES

The objectives of this audit were to determine whether:

1. the UTEP Export Control Policy is in compliance with UTS 173: Export Controls, and
2. effective policies and procedures are in place to track and monitor:
 - international travel,
 - employment and employee access for export controlled projects,
 - visiting scholars/visiting researchers, and
 - the purchase and shipping of export controlled commodities.

SCOPE AND METHODOLOGY

The audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* and the authoritative guidelines of the *International Professional Practice Framework* issued by the Institute of Internal Auditors.

The scope of the audit will include all export-controlled projects active during the period from September 1, 2018 through August 31, 2020.

We completed our objectives by performing a risk analysis, reviewing applicable Regents *Rules and Regulations*, UT System and UTEP policies, interviewing personnel, and performing detailed testing on a sample basis.

RANKING CRITERIA

We ranked the findings in this report based on an assessment of applicable qualitative, operational control and quantitative risk factors, as well as the probability of a negative outcome occurring if the risk is not adequately mitigated. The criteria for the rankings are as follows:

Priority	An issue identified by an internal audit that, if not addressed timely, could directly impact achievement of a strategic or important operational objective of a UT institution or the UT System as a whole.
High	A finding identified by internal audit considered to have a medium to high probability of adverse effects to the UT institution either as a whole or to a significant college/school/unit level.
Medium	A finding identified by internal audit considered to have a low to medium probability of adverse effects to the UT institution either as a whole or to a college/school/unit level.
Low	A finding identified by internal audit considered to have minimal probability of adverse effects to the UT institution either as a whole or to a college/school/unit level.

AUDIT RESULTS

Compliance with UTS 173: Export Controls Model Policy

UTS 173: Each U.T. System institution is required to formalize an approved policy addressing export control regulations within its respective Handbook of Operating Procedures. Export regulations affect many areas across campus. The policy provides guidance for the Export Controls Officer (ECO), in collaboration with the appropriate Vice Presidents, College Deans, Department Heads, Directors, the Compliance Office, and the Office of Legal Affairs, to implement procedures that comply with the export control regulations.

A. A comprehensive Export Controls Compliance Program is not in place.

Medium Risk

The UTS 173 Export Controls Model policy states,

"The University ... will adopt an export controls compliance program that documents and disseminates information on roles, responsibilities, and procedures for identification, approval, licensing, and tracking of items or activities subject to the export control laws."

Identification of Export Controls Projects

Some export controlled projects are not accurately identified or reviewed by the Office of Research and Sponsored Projects. We selected a judgmental sample of five projects and noted the following:

- Three of five projects with specific export controls references in the grant agreement did not have support documentation to demonstrate that potential export controls restrictions were reviewed and addressed.
- The remaining two projects did not consistently follow the Export Controls Process Guide provided by ORSP on their website.

A systematic means to identify PeopleSoft projects with export control restrictions is not used to facilitate the approval, tracking, and monitoring of projects for compliance. Employees in Purchasing, Disbursement Services and Human Resources are responsible for processing and approving transactions; however, they are unable to identify transactions with export controls restrictions in PeopleSoft.

International Travel

UTEP relies on self-disclosure instead of active monitoring to ensure export controls compliance with international travel. International travel is not reviewed for export control issues as part of the PeopleSoft approval process.

The Information Security Office requires individuals who are planning to travel abroad with a University-owned device to submit an Export Controls Acknowledgement form. Although at least 450 international trips were sponsored or partially sponsored by UTEP in FY19 and FY20, only six employees submitted an Export Controls Acknowledgement form during the two year period.

Employment for Export Controlled Projects

We tested 70 (100%) employees working on export controlled projects for compliance with hiring restrictions. No exceptions were noted.

Training and Awareness of Export Controls Compliance

Although the University has various policies, procedures, and trainings available for Export Controls, detailed trainings are assigned to very few employees and many written policies are not followed.

The Office of Research and Sponsored Projects has a comprehensive training available through Collaborative Institutional Training Initiative (CITI), but only 11 principal investigators received instructions to complete the Export Controls training for researchers for FY20. Support staff in departments that process transactions that may involve export control restrictions should also have access to detailed training.

The UTEP Handbook of Operating Procedures (HOP) Section X Chapter 2: *Policy for Compliance with U.S. Export Control Regulations* provides detailed guidance to comply with UTS 173. Export controlled projects are subject to various hiring, purchasing, shipping, international travel and research requirements which, if not followed, could result in fines, penalties, loss of funding or imprisonment.

The HOP policy includes the establishment of a collaborative Export Control Committee and requires the submission of an Annual Report to the President. We were unable to determine if an Export Control Committee exists, or if the corresponding annual report was created.

Recommendation:

The University should follow the guidelines in the HOP Export Control Policy to implement an export controls compliance program that documents information on roles, responsibilities, and procedures for identification, approval, licensing, and tracking of items or activities subject to the export control laws, and meets the requirements of UTS 173. Employees who need to make decisions regarding the creation, processing, and approval of export controls transactions should complete export controls training applicable to their job duties.

Management Response:

We agree with all the findings and recommendations and are in the process to develop comprehensive processes for export control reviews and training to be compliant with UTS 173.

Responsible Party:

Manuela Dokie, Assistant Vice President for Research and Compliance (Export Control Officer)

Implementation Date:

May 31, 2021

CONCLUSION

Based on the results of audit procedures performed, we conclude UTEP has added an Export Controls policy to the Handbook of Operating Procedures as required by UTS 173. However, the Export Controls Compliance Program required by the UTS 173 Export Controls Model policy has not been implemented.

We wish to thank the management and staff of the Office of Research and Sponsored Projects and the Information Security Office for their assistance and cooperation provided throughout the audit.