15.02 Export Controls

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Policy Statement

The Texas A&M University System (system), its members, employees and students must comply with all United States export control laws and regulations, including those implemented by the Department of Commerce through its Export Administration Regulations (EAR) and the Department of State through its International Traffic in Arms Regulations (ITAR), as well as those imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC).

Reason for Policy

The export of certain items, technologies, software, and services is regulated for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction, and for competitive trade reasons. Export control laws restrict the shipment, transmission or transfer of certain items, software, technology and services from the United States to foreign countries, as well as "deemed exports" which are releases of controlled physical items or controlled information to foreign nationals located in the United States.

Although many member activities are likely to be excluded from export control laws, some activities may be restricted. The application of export control laws involves a fact-specific analysis. Most exports do not require specific approval from the federal government. Certain exports, however, require a license. Others are prohibited.

There are severe institutional and individual sanctions for violations of export controls laws including the loss of research funding, loss of export privileges, as well as civil and criminal penalties including imprisonment.

Several federal agencies implement export control rules and regulations. Each agency possesses jurisdiction over specific types of technology or restricted trade activities or controlled physical items.

Among other regulations, the Department of Commerce regulates exports through the EAR 15 CFR 730-774. The Department of State regulates exports through the ITAR 22 CFR 120-130, and the Treasury Department regulates exports and transactions involving certain countries, individuals and organizations through the OFAC. Each agency possesses different and changing rules and lists for specifying who or what is considered export sensitive and where export controls apply.

The restrictions enforced by the OFAC are not affected by ITAR, EAR or the fundamental research exemption established by National Security Decision Directive 189 (NSDD189).

Procedures and Responsibilities

All faculty, staff and students must be aware of and are responsible for the export-control implications of their work and must ensure that their activities conform to export control rules and regulations. Any required license/approval must be in place before exporting anything that is deemed controlled.

1. EXCLUSIONS

Most research related exports are likely to be excluded from EAR and ITAR export controls under one of the following exclusions: (1) the fundamental research exclusion; (2) the "publicly available" (EAR) and "public domain" (ITAR) exclusion; or (3) the educational information exclusion.

1.1 <u>Fundamental Research Exclusion</u>

1.1.1 Most research activities conducted at institutions of higher education located in the United States are excluded from export controls under the "fundamental research" exemption established by NSDD189. The fundamental research exclusion applies to basic and applied research in science and/or engineering at an institution of higher education in the United States where the resulting information either is ordinarily published and shared broadly in the scientific community, or where the resulting information has been or is about to be published. Basic research is distinguished from proprietary research or industrial research.

1.1.2 Research activities will not qualify for the fundamental research exclusion if

(a) the institution accepts restrictions on the publication of the information resulting from the research, other than limited pre-publication reviews by research sponsors to prevent inadvertent divulging of proprietary information or to ensure that publication will not compromise patent rights of the sponsor; or

(b) the research is federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the institution or the researcher. Certain corporate-sponsored research may not qualify as fundamental research. The fundamental research exclusion applies to controlled information but not to controlled physical items.

1.2 <u>Publicly Available/Public Domain Exclusion</u>

Information that is published or generally accessible or available to the public and scientific community is excluded from export controls. The exclusions apply so long as the federal government has not imposed export controls or restrictions as a condition of funding and provided there is no reason to believe that the exported information will be used for weapons of mass destruction.

The "publicly available" exclusion under EAR and the "public domain" exclusion under ITAR only apply to the export or deemed export of controlled information, not to the export of controlled physical items or services listed on the United States Munitions List (USML) or the Commerce Control List (CCL).

Information that is published and available to the public at libraries, newsstands and bookstores through subscriptions without restriction, through patents available at any patent office, through unlimited distribution at conferences, meetings, seminars, trade shows and exhibitions held in the United States and generally open to the public are excluded from export controls. (See 22 CFR 120.11 and 15 CFR 734.3 for further details.)

1.3 Educational Information Exclusion

General scientific, mathematical and engineering principles released by instruction in catalog courses and associated teaching laboratories or academic institutions are excluded from export controls under EAR and ITAR. However, under EAR, the exclusion does not cover controlled information conveyed outside the classroom or teaching lab of an academic institution.

2. SYSTEM MEMBER RESPONSIBILITY

Each system member must develop a rule implementing an export control compliance program to reduce the risk of export control violations. Compliance programs should include the following elements:

(a) an export control decision-making tree or similar guideline to use in analyzing export control issues;

(b) identification of the member's "empowered official(s)" who will have decision making authority for the resolution of export control issues;

(c) methods to identify and account for ITAR and EAR controlled physical items and controlled information;

(d) procedures to screen contacts and countries;

(e) record keeping responsibilities;

(f) training and educational programs; and

(g) mechanisms for notification of violations and penalties.

3. INDIVIDUAL RESPONSIBILITY

Each system member will provide assistance to faculty, staff and students in assessing the applicability of export control regulations; however, primary responsibility for compliance rests with the individuals involved in the export, including principal investigators and others in supervisory positions.

Related Statutes, Policies, or Requirements

International Traffic in Arms Regulations (ITAR) 22 CFR 120-130

Export Administration Regulations (EAR) 15 CFR 730-774

Office of Foreign Assets Control (OFAC) 31 CFR 500-598

National Security Decision Directive 189

Atomic Energy Act of 1954 and Nuclear Regulatory Commission Regulations to 10 CFR Part 110

Definitions

Controlled Information – Controlled information is information about controlled physical items. This includes information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of controlled physical items and may be released through visual inspection, oral exchanges, or the application of personal knowledge or technical experience with controlled physical items. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation. Also included in this definition are non-physical items (software and algorithms, for example) listed under EAR and ITAR. (See 15 CFR 730-774 and 22 CFR 120-130 for further details.)

Controlled Physical Items – Controlled physical items are dual use technologies listed under EAR and defense articles listed on ITAR's USML. (See 15 CFR 730-774 and 22 CFR 120-130 for further details.)

Export – An export occurs when a controlled physical item or controlled information is transmitted outside the United States borders or when a controlled physical item or controlled information is transmitted to a foreign person in the United States. When a controlled physical item or controlled information is transmitted to a foreign person in the United States, it is known as a deemed export.

The term "export" is broadly defined. It generally includes (1) actual shipment of any controlled physical items; (2) the electronic or digital transmission of any controlled information; (3) any release or disclosure, including verbal disclosures and visual inspections, of any controlled

information; or (4) actual use or application of controlled physical items or controlled information on behalf of or for the benefit of a foreign entity or person anywhere. Complete definitions of the term "export" are contained in the federal regulations.

Foreign Person – For export control purposes, a foreign person includes any individual in the United States in nonimmigrant status (i.e., H-1B, H-3, L-1, J-1, F-1, B-1, Practical Training), and individuals unlawfully in the United States.

A foreign person is also any branch of a foreign government or any foreign corporation or group that is not incorporated or organized to do business in the United States.

For export control purposes, a foreign person is not an individual who is a United States citizen, lawful permanent resident of the United States, a refugee, protected political asylee or someone granted temporary residency under amnesty or Special Agricultural Worker provisions.

Member Rule Requirements

A rule is required to supplement this policy. See Section 2.

Contact Office

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