

15.02.99.C1 Export Controls

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Rule Summary

It is the policy of Texas A&M University-Corpus Christi (hereinafter referenced as “TAMU-CC” or “the university”) to comply with United States export control laws and regulations including, without limitation, 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).

TAMU-CC has an obligation to implement an export control compliance program to reduce the risk of export control violations. All employees and students are responsible for the export control implications of their work and must ensure that their activities conform to export control laws and regulations.

Definitions

Exports: defined in two principal ways:

- (a) International shipments or transfers of items (instruments, software, materials) or data abroad by any means; cargo shipments; electronic data transmission (email), spoken communication, hand carried articles, fax, and courier. The transfer of export controlled data or technology to a foreign national located abroad is an export.
- (b) “Deemed exports”: foreign national access and/or use of export controlled items, technology, materials, software or data (hard or soft copy) occurring in the U.S. (See definition below of foreign national). The export is “deemed” to occur upon the foreign national’s return to their country of citizenship or third country. However, if the access to (or use of) the controlled item (activity) would have required an export license given (i) the sensitivity of the item or technology and (ii) the foreign national’s citizenship, the violation occurs immediately when such unauthorized activity occurs.

Depending on how an item or technology is controlled and its particular control sensitivity, (see definition of Export Controlled items immediately below), the deemed export can occur through potential or actual access (visual or cyber access) or through direct “hands-on” contact or use. For purposes of a deemed export, a foreign national can be present in the U.S. for any number of purposes (e.g., engaged as a student, researcher, or employee of TAMU-CC or a visitor to TAMU-CC); or alternatively, be associated with an external party that is engaged with TAMU-CC but not otherwise affiliated with TAMU-CC.

Export Controlled Items:

Commodities (including scientific instruments, tools, prototypes), software, raw materials (including biological materials and chemicals), technology or data (other than that which is the result of fundamental research intended for publication or already in the public domain) which the U.S. government agencies (primarily Departments of Commerce and State) define as export-sensitive based on their specifications and capabilities.

Items may be “dual use” controlled under the Export Administration Regulations (EAR), i.e. civil by design and application but which (by virtue of their specifications and capacity) may also be used for military or defense purposes; or may be “defense” controlled under the ITAR/International Traffic in Arms Regulations), i.e. specially designed or modified for defense purposes. In both cases, such articles may be commercially available to purchase for use in fundamental research, but still subject to certain export controls with respect to international transfer or related technology sharing with foreign nationals on campus (deemed exports).

Foreign National:

For export control purposes, foreign nationals are defined as those individuals who are not U.S. citizens, Permanent Residents (“Green Card” holders) or recipients of Political Asylum status. Hence, foreign nationals are individuals with temporary immigrant visa status including but not limited to H-1, O-1, J-1, F, and B-visa beneficiaries.

Export License/Authorization:

Permission from one of the governing U.S. agencies to export a controlled item internationally or provide access to (or use of) such item to a foreign national on campus, for whom such item is controlled by virtue of that foreign national’s particular citizenship; in either case, the failure to obtain export license or authorization in advance of the export constitutes an enforceable export violation. Export licenses may be required to transfer a controlled item internationally, even for temporary research use abroad.

International Visitors:

International Visitors are foreign nationals having a residence in a foreign country, who are not employees or enrolled students of TAMU-CC, and are coming to TAMU-CC on a temporary basis as a result of either a verbal or written invitation made to the foreign national by a faculty member, researcher, or administrator, or who request permission to tour the campus.

Restricted Party Screening:

This screening determines whether a person or entity with whom TAMU-CC proposes to engage with in a business, research, or academic capacity is identified on a U.S. government watch list (published in the Federal Register); if so identified, TAMU-CC may be partially or entirely restricted from engaging with such person or entity.

Fundamental Research:

Fundamental research is basic and applied research pursuant to which no publication or citizenship restrictions are accepted from any sponsor (industry or government agency) by any means (prime contract or flow-down), explicitly or unofficially. Generally speaking, this means that foreign nationals are free to participate in the research project, subject only to specific technology controls associated with controlled instruments, software, materials or data used in pursuit of the research.

A publication restriction is one in which a sponsor requires withholding of research results for any reason other than a) to make sure that no proprietary data provided to the PI is disclosed in the published research results or; b) the time necessary to file a patent application. A sponsor's general requirement that publication be withheld "pending review" or review for a period of time beyond what is reasonably required to filter out proprietary data would constitute a publication restriction. A citizenship restriction limits research participation to U.S. persons or reserves the right to determine which researchers, by nationality, can participate in the project.

Proprietary or restricted program:

Government or industry-sponsored program (research or service) which, by virtue of the contractual agreement, is not intended for publication and may be restricted to *U.S. Person-only* participation: hence, it is export controlled.

OFAC controls:

Office of Foreign Assets Controls/U.S. Department of Treasury economic sanctions against engaging with certain blocked or prohibited persons or entities (Specially Designated Nationals); mandates broadly-applied restrictions pertaining to research, business, and academic activities concerning sanctioned countries (e.g., Iran, Cuba, Syria).

Empowered Official:

TAMU-CC-designated individual within the Division of Research, Commercialization and Outreach who is registered with the Department of State as TAMU-CC's export control officer for purposes of approving all export transactions subject to the ITAR, including submitting export license applications to the Defense Directorate of Trade Controls (DDTC) and overseeing implementation of export license conditions and provisos. The Empowered Official has the authority to inquire into any aspect of a proposed export or temporary import by the university; verify the legality of the transaction; and refuse to sign any license application or other request for approval without prejudice or other averse recourse.

At TAMU-CC, this individual also serves as the Export Control Officer (ECO) and is responsible for overall export control compliance, including compliance with the EAR and OFAC regulations.

Additional definitions may be found in system policy 15.02, *Export Controls*.

Rule

1. How TAMU-CC is affected by Export Controls

TAMU-CC supports and encourages research, intellectual inquiry, and the free interchange of information among scholars. TAMU-CC also recognizes that the United States has enacted laws and regulations restricting the transmission of Controlled Information and Controlled Physical Items for the purpose of protecting national, economic, security, and foreign policy interests.

Additional information is available in the TAMU-CC Export Control Manual.

2. Responsibilities

2.1. Individual Responsibilities

All university employees (including post-doctoral fellows), students, and visiting scientists/scholars have a legal (individual and institutional) responsibility to comply with U.S. export regulations. This includes all of TAMU-CC's specialized research centers, such as LSUASC and HRI, among many others.

All TAMU-CC employees with managerial or supervisory authority over Foreign Persons or projects involving Controlled Information or Controlled Physical Items should view export control compliance as an important part of their day-to-day responsibilities.

All affected individuals should view export control compliance as an essential part of their day-to-day responsibilities.

2.2. Empowered Official and Export Control Officer: Division of Research, Commercialization and Outreach

The Vice President for the Division of Research, Commercialization and Outreach (or other designees who may be appointed by the Vice President for the Division of Research, Commercialization and Outreach) serves as TAMU-CC's Empowered Official (EO) for all purposes relating to applicable federal export control laws and regulations. The Vice President for the Division of Research, Commercialization and Outreach is the university official with final responsibility for compliance with export control laws and regulations, including directing and monitoring the university's export control compliance program, maintaining records, and implementing procedures and/or guidelines to comply with federal export control laws and regulations, including developing, implementing, and updating the Export Control Compliance Program Manual. Only this person may sign and submit export license applications or any other official documentation that binds the university from an export compliance perspective.

Director of Research Compliance Officer and Export Control Officer assists the Empowered Official in operations, day-to-day activities, and monitoring for the export control program.

2.3. Export Compliance Program

From a campus administrative and operational standpoint, export compliance responsibilities are specific to function (e.g., Procurement & Disbursements, Property Management, Sponsored Research, Contracts, Human Resources, International Education, Academic Affairs, Information Technology (IT), Finance, among other functions). See Export Compliance Manual for procedures related to each functional area.

When requested, the Division of Research, Commercialization and Outreach will assist other offices and employees in export control assessments to determine compliance obligations with respect to university activities involving foreign nationals or international activities under applicable export control laws and regulations and to determine the applicability of the Fundamental Research Exclusion or other exclusions as described in system policy *15.02, Export Controls*. The Division of Research, Commercialization and Outreach will also consult with the Office of General Counsel on export control matters as appropriate.

3. Export Control Compliance Program Manual

The Division of Research, Commercialization and Outreach, in coordination with other appropriate university offices, will develop, maintain, and update periodically, an Export Control Compliance Program Manual for the university to serve as a guide for identification, administration, and resolution of export control issues.

4. Training

The Division of Research, Commercialization and Outreach, in cooperation with other appropriate offices, will develop and implement an appropriate university training program including, but not limited to, TrainTraq modules.

TAMU-CC employees with managerial or supervisory authority over foreign nationals with authorized access to (or use of) controlled items or any employee or student involved in an export restricted research or service contract are required to take the basic export control online training course at least once every two (2) years.

Depending on the nature of an individual's activities and/or job functions (including participation in any activity controlled through a Technology Control Plan/TCP), a university employee or student may be required to take the basic export control online training course and/or supplemental, targeted export control training as deemed appropriate by the individual's supervisor and/or the Export Control Officer/Empowered Official.

5. Suspected or Potential Violations

5.1. Export Control Program Monitoring

The Division of Research, Commercialization and Outreach will conduct periodic self-assessments of the university's compliance with export control laws and regulations and report its findings to the Vice President for the Division of Research, Commercialization and Outreach Research and/or the President as appropriate.

5.2. Export Control Reporting of Possible Violations

Each TAMU-CC employee and student has the responsibility to report possible violations of United States export control laws or regulations. Suspected violations should be reported to the university's Export Control Officer/Empowered Official, together with the details of the suspected violation. Suspected violations may also be reported via the Ethics and Compliance hotline at <http://sao.fraud.state.tx.us>.

Possible violations of export compliance will be investigated by the Export Control Officer/Empowered Official or designee to the extent deemed necessary.

The Export Control Officer/Empowered Official is authorized to suspend or terminate a research, teaching, testing, or other export activity upon determination that the activity is not in compliance, or will lead to noncompliance, with export control laws and regulations. Upon identifying a suspected or actual violation, TAMU-CC shall take all appropriate steps toward disclosing such suspected or actual violation consistent with Voluntary Self-Disclosure regulations provided for in the EAR and ITAR, and as otherwise appropriate for purposes of OFAC compliance.

6. Recordkeeping

Records required to be maintained by export control laws and regulations shall be kept for the longer of:

- (a) the record-retention period required by the applicable export control regulations (15 C.F.R. Part 762 (ITAR); 22 C.F.R. §§ 122.5, 123.22 and 123.26 (EAR); and 31 C.F.R. § 501.601(OFAC)), or
- (b) the period required for the retention of records as set forth in The Texas A&M University System policies and regulations and university rules and procedures.

Records will be maintained by the responsible office designated in the Texas A&M University-Corpus Christi Export Control Compliance Manual.

Related Statutes, Policies or Requirements

[International Traffic in Arms Regulations \(ITAR\) 22 C.F.R. §§ 120-130](#)
[Export Administration Regulations \(EAR\) 15 C.F.R. §§ 700-799](#)
[Office of Foreign Assets Control \(OFAC\) 31 C.F.R. §§ 500-599](#)
[National Security Decision Directive 189](#)

Appendix

Texas A&M University-Corpus Christi Export Control Compliance Manual

Contact Office

Contact for clarification and interpretation: Director of Research Compliance and Export Control Officer
Research, Commercialization and Outreach
(361) 825-2497