

# UNIVERSITY RULE

## 15.02.99.M1 Export Controls

*Approved May 20, 2011*

*Next scheduled review: May 20, 2016*

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### Rule Statement

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It is the policy of Texas A&M 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).

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### Reason for Rule

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Texas A&M University has an obligation to implement an export control compliance program to reduce the risk of export control violations. All employees 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 laws and regulations. There are severe institutional and individual sanctions for violations of export control laws and regulations, including the loss of research funding, loss of export privileges as well as criminal and civil penalties.

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### Definitions

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Each of the following terms used in this Rule is defined in [TAMUS Policy 15.02 – Export Control \(Definitions\)](#):

- Controlled Information
- Controlled Physical Items
- Export
- Foreign Person

Other terms used in this Rule have the meanings set forth below:

- Deemed Export – The transfer of Controlled Information or Controlled Physical Items, or the provision of defense services to a Foreign Person in the United States is deemed to be

an Export to the home country or countries of the Foreign Person, and is subject to the export control laws and regulations.

- Empowered Official – The Empowered Official is defined in 22 C.F.R § 120.25. The Empowered Official has independent authority to:(i) inquire into any aspect of a proposed export or temporary import by the University, (ii) verify the legality of the transaction and the accuracy of the information to be submitted; and (iii) refuse to sign any license application or other request for approval without prejudice or other adverse recourse.
- International Visitors – International Visitors are Foreign Persons having a residence in a foreign country, who are not employees or enrolled students of Texas A&M University, and are coming to Texas A&M University on a temporary basis as a result of a verbal or written invitation made to the Foreign Person by a faculty member, researcher or administrator of Texas A&M University.
- International Center – Texas A&M University Center in Mexico, Texas A&M University Soltis Center for Research and Education in Costa Rica, the Santa Chiara Study Center in Italy and other international centers established from time to time by the University.
- Restricted Party Screening – Determining whether a person or entity is included on the Specially Designated Nationals and Blocked Persons List or any other list included in the screening software made available by the Division of f Research.

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## **Official Rule / Responsibilities / Process**

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Encouraging research and intellectual inquiry is a vital goal of Texas A&M University. Texas A&M University supports open research and the free interchange of information among scholars. The university 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. These federal export control laws and regulations establish the conditions under which Controlled Information and Controlled Physical Items can be transmitted to anyone outside the United States and to Foreign Persons in the United States. In addition, the export control laws and regulations restrict or prohibit the transaction of business with certain countries, persons and entities that have been sanctioned by federal agencies as a threat to important U.S. interests.

### **1. INDIVIDUAL RESPONSIBILITY**

University employees engage in a broad range of innovative and important research activities that may involve Foreign Persons, in the United States or abroad. When these activities also include the use of Controlled Information or Controlled Physical Items, the

University requires that each individual comply with the applicable requirements of United States export control laws and regulations.

All University employees and students, visiting scientists, postdoctoral fellows, and other persons retained by or working at or for the University must conduct their affairs in accordance with United States export control laws and regulations. While complying with all applicable legal requirements, it is equally important to maintain an open research environment that welcomes the participation of researchers from around the world. To maintain this balance, University personnel must be familiar with the United States export control laws and regulations, including important exclusions and exemptions, as they relate to their responsibilities. Depending upon the nature of their activities and/or job functions, University personnel may be required to participate in formal training as determined by the University's Empowered Official(s) and/or the employees' supervisors.

All university 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.

University employees and students will comply with the provisions of any export license, governmental approval, certification, technology control plan, and procedures.

## 2. EMPOWERED OFFICIAL

2.1 The Vice President for Research (in addition to other designees who may be appointed by the Vice President for Research) is the University's "Empowered Official" for all purposes relating to applicable federal export control laws and regulations. The Empowered Official(s) is responsible for license applications and other approvals required for compliance with export control laws and regulations, and serves as the University's representative and point of contact with such agencies. The Empowered Official(s) is the University official authorized to sign license applications and other authorizations required by export control laws and regulations on behalf of the University and to bind the University in any proceedings before government agencies with export control responsibilities.

2.2 The Vice President for Research is the University official with final responsibility for compliance with export control laws and regulations.

## 3. Export Control Compliance Program

### 3.1 Research

#### 3.1.1 Research Contract Administration

Research Services, or such other appropriate office(s), in coordination with the Office of Research Compliance, is responsible for developing and implementing procedures to screen proposals and projects for compliance with export control laws and regulations and specifically to identify those that involve the following factors:

- (a) In the context of research contracts or grants, restrictions on, or approval rights applicable to, publication or release of research results (beyond the customary brief delay to protect a sponsor's confidential information or to preserve the patentability of an invention);
- (b) The contract provides that research results will be considered trade secret, confidential, or proprietary information owned by the sponsor;
- (c) Foreign nationals are excluded from participation in the research, or are subject to approval by the research sponsor;
- (d) Incorporation by reference of federal regulations (FAR, DFAR, agency specific regulations) that impose publication or access restrictions, or provisions that state that export control laws apply;
- (e) Foreign Persons will have access to Controlled Information or Controlled Physical Items;
- (f) Persons or entities involved in the research project or related transactions are identified through Restricted Party Screening as embargoed countries or restricted countries, persons or entities; and
- (g) Controlled Physical Items or Controlled Information (including laptops containing Controlled Information) that will be taken or shipped outside the United States.

## 3.2 International Visitors

3.2.1 Restricted Party Screening for International Visitors – In general, international visitors intending to visit Texas A&M University must undergo a restricted party screening as a previous condition of their visit to Texas A&M University as provided below.

3.2.2 Subjected International Visitors – All International Visitors whether present or not in the United States must undergo a Restricted Party Screening when the International Visitor: (i) will be involved in a research project or collaboration, and will have access to laboratories and research facilities for the purposes of observing or conducting research; (ii) will be

issued a Texas A&M University identification card, keys to offices or laboratories, or otherwise be given access to the Texas A&M University computing system in any manner; or (iii) will be paid an honorarium, will be reimbursed for expenses, or will be provided something of value. It is the responsibility of all employees at Texas A&M University intending to host an International Visitor to notify and request approval of such visit from the Division of Research before the arrival of the International Visitor, as may be further indicated in the Texas A&M University Export Control Compliance Program Manual.

- 3.2.3 Exempted International Visitors – Restricted Party Screening of an International Visitor, as described in 3.2.2, is not required if no honorarium or reimbursement of expenses will occur and if one or more of the following conditions exist with respect to the anticipated visit of the International Visitor: (i) meet with colleagues to discuss a research project or collaboration, (ii) tour labs or research facilities that are not otherwise restricted per se, or (iii) participate in general academic or scientific meetings or presentation. It is the fiduciary responsibility of all employees at Texas A&M University to comply with the initial terms and intent of the visit as communicated to the International Visitor, and to immediately notify the Texas A&M University Division of Research and the International Faculty & Scholar Services Office of any changes in the intent of the visit prior to engaging the International Visitor in any activity that may require a Restricted Party Screening as set forth in this rule, any related procedures or the Export Control Compliance Program Manual.

### 3.3 International Activities

In the case of University activities conducted outside the United States, it is the responsibility of the University activity organizer and/or responsible International Center official to seek and obtain appropriate export control approvals from the Office of Research Compliance, for the following activities without limitation: execution of agreements performable outside the United States; non-credit bearing study abroad courses; and making payments to Foreign Person vendors. The International Programs Office or other office(s) designated by the president or designee, in coordination with the Office of Research Compliance, is responsible for developing and implementing procedures to screen international programs, centers and activities for compliance with export control laws and regulations.

#### 3.3.1 Students Studying Abroad

Study Abroad Programs, or other office(s) designated by President or designee, is responsible for performing Restricted Party Screening on all students enrolled in a Texas A&M University credit bearing program outside the United States who

- (a) are Foreign Persons;
- (b) have not previously attended Texas A&M University, College Station or Galveston campuses; AND
- (c) are not enrolled as continuing students at a college or university based in the United States.

#### 3.4 Distance Education

Those responsible for offering distance education courses, in cooperation with the Office of Research Compliance, will screen courses as appropriate for purposes of compliance with export control laws and regulations and in accordance with the University's Export Control Compliance Program Manual.

#### 3.5 Purchasing and Financial Transactions

It is the responsibility of the Division of Finance, in coordination with the Office of Research Compliance, to develop and implement procedures to screen vendors as appropriate for compliance with export control laws and regulations.

#### 3.6 Export Control Compliance Program Manual

The Office of Research Compliance 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.

#### 3.7 Training

The Office of Research Compliance, in cooperation with other appropriate offices, will develop and implement an appropriate University training program.

University employees with managerial or supervisory authority over Foreign Persons or projects involving Controlled Information or Controlled Physical Items are required to take the Office of Research Compliance's basic export control online training course at least once every two years. Depending on the nature of an individual's activities and/or job functions, a University employee may be required to take the Office of Research Compliance's basic export control online training course and/or supplemental export control training as deemed appropriate by the individual's supervisor and/or the Empowered Official.

#### 3.8 Shipping

It is the responsibility of University personnel who are shipping items outside the United States (including hand-carrying items such as research equipment, materials, data, biological materials) to comply with export control laws and

regulations in coordination with the Office of Research Compliance and other appropriate offices.

#### 4. OFFICES RESPONSIBLE FOR EXPORT CONTROL COMPLIANCE

- 4.1 The Division of Research has ultimate responsibility for ensuring compliance with the export control laws and regulations for the University.
- 4.2 The Office of Research Compliance, in cooperation with other appropriate offices, is responsible for directing and monitoring the University's export control compliance program, record keeping, and for 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 as set forth in section 3.6 above.
- 4.3 When requested, the Office of Research Compliance will determine, or assist other offices and employees in export control assessments to determine compliance obligations with respect to University activities involving Foreign Persons, 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 TAMUS Policy 15.02 *Export Controls*. The Office of Research Compliance will also assist with and conduct Restricted Party Screening and consult with the Office of General Counsel on export control matters as appropriate.
- 4.4 The Office of Research Compliance 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 Research and/or the President as appropriate.

#### 5. TEXAS A&M UNIVERSITY AT QATAR

- 5.1 Texas A&M University at Qatar, in cooperation with the University Office of Research Compliance, will develop and implement additional export control screening procedures including, but not limited to, conducting Restricted Party Screening of all employees. Additional screening may extend to visitors, vendors, and/or students as deemed appropriate by the Division of Research and Graduate Studies, Texas A&M University at Qatar.

#### 6. POSSIBLE VIOLATIONS

- 6.1 Each University employee has the responsibility to report possible violations of United States export control laws or regulations. Suspected violations should be reported to the University's 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.texas.gov/Default.aspx>. Possible violations of United States export control laws or regulations will be investigated by the

Empowered Official or designee to the extent deemed necessary. The Empowered Official is authorized to suspend or terminate a research, teaching, testing or other Export activity if the Empowered Official determines that the activity is not in compliance, or will lead to noncompliance, with export control laws and regulations.

## 7. RECORD KEEPING

7.1 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 (*see* 15 C.F.R. Part 762 (EAR); 22 C.F.R. §§ 122.5, 123.22 and 123.26 (ITAR); 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.

Records will be maintained by the Office of Research Compliance or as otherwise designated in the Texas A&M University Export Control Compliance Manual.

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### Related Statutes, Policies, or Requirements

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- 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,  
<http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm>
- Atomic Energy Act of 1954 42 U.S.C Section 2011, et seq. and Nuclear Regulatory Commission Regulations, 10 C.F.R. Part 110
- [TAMUS Policy 15.02 Export Controls](#)

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### Contact Office

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