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Frequently Asked Questions

What is my individual responsibility?

All Texas A&M AgriLife employees shall be aware of and are responsible for export control implications associated with their work and institutional responsibilities while acting in accordance with all applicable U.S., System, and agency laws, policies, regulations, rules, and procedures. It is the individual responsibility of all Texas A&M AgriLife employees to report suspected or known violations to the AgriLife Empowered Official. All Texas A&M AgriLife employees shall be committed to promoting a culture of compliance.

What are exports, deemed exports, and export control laws?

For export control purposes, exports occur when a controlled physical item or controlled information—subject to Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR)—is transmitted outside the borders of the United States, or when such controlled physical items or controlled information is transmitted to a foreign person in the United States.

Software, technology, or technical data is considered a deemed export when the transfer of controlled information or 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. An export can be considered deemed through: visual inspection by foreign national of U.S. origin equipment and facilities; oral exchanges of information in the U.S. or abroad; or the application of situations abroad of personal knowledge or technical experience acquired in the U.S.

Export control laws are U.S. laws that regulate the transmission of certain information, technologies, and commodities to foreign persons or entities in the United States and abroad for reasons of foreign policy and national security. It is imperative that Texas A&M AgriLife employees and affiliates recognize that export control laws apply to all activities, and not just sponsored research.

For these purposes, how is “foreign person” defined?

For the purposes of export controls, 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), as well as individuals unlawfully in the United States. Additionally, 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 with the United States. A foreign person is not an individual who is a United States citizen or permanent resident. For a more comprehensive definition, see System Policy 15.02, *Export Controls*.

Are there exclusions from export control laws?

Yes, there are several exclusions. It is important to note that exclusions apply only to information, and sometimes software associated with research. The exclusions do not apply to equipment, articles, services, or encryption software.

- **Fundamental Research Exclusion (FRE)**

FRE applies to both basic and applied research in science and/or engineering at an institution of higher education in the U.S. where the resulting information is either 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 and from industrial development, design, production, and product utilization—the results of which ordinarily are restricted for proprietary or national security reasons.

Research activities will not qualify for FRE if: the agency accepts restrictions on the publication of the information resulting from the research other than limited pre-publication reviews by research sponsors in efforts to prevent inadvertent divulging of proprietary information, or to ensure that publication will not compromise patent rights of the sponsor; or the research is federally funded, and specific access or dissemination controls in regards to the resulting information have been accepted by the agency or the researcher. Some corporate-sponsored research may not qualify as fundamental research. FRE applies to controlled information but not controlled physical items.

- **Public Domain/Public Information Exclusion**

Information that is published or generally accessible or available to the public and scientific community is excluded from export controls. Information that is published and available to the public at libraries, newsstands, and bookstores through subscriptions without restrictions, 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. These 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. These exclusions through EAR and ITAR apply to the export of controlled information, but not to the export of controlled physical items or services listed on the U.S. Munitions List or the Commerce Control List.

- **Educational Information Exclusion**

The educational exclusions in EAR and ITAR cover instruction in math, science, and engineering that is taught in courses listed in catalogues and associated teaching laboratories of academic institutions.

Please see System Policy 15.02, *Export Controls*, for comprehensive definitions of these exclusions.

What about foreign person visitors and employees?

Foreign person visitors are foreign persons having a residence in a foreign country, who are not employees of Texas A&M AgriLife, and who are coming to facilities on a temporary basis as a result of either a written or verbal invitation.

What is controlled equipment?

For the purpose of Texas A&M AgriLife export control procedures, equipment is any AgriLife-owned or controlled tangible item to include, but not limited to: laptops, PDAs, cell phones, and digital storage devices. Tangible property can also include hardware components and research materials such as biological reagents. Controlled equipment includes any equipment that is listed on the Commerce Control List or the U.S. Munitions List.

Is a deemed export license required for foreign nationals to use controlled equipment in research projects, classes, and teaching labs?

The actual use of equipment by a foreign national in the U.S. is not controlled by the export regulations. Inside the U.S., any person may purchase export-controlled commodities and the deemed export rule only applies to technical information

about the controlled commodity. As such, while the use of the equipment is not controlled inside the U.S., the transfer of technical information relating to the use (i.e. operation, installation, maintenance, repair, overhaul, and refurbishing) of equipment may be controlled in certain circumstances. The export regulations allow foreign students, researchers, and visitors to use (and receive information about how to use) controlled equipment while conducting fundamental research on U.S. university campuses, or while studying at the institution, so long as the technical information about the controlled equipment qualifies as in the public domain or publicly available. Controlled equipment operation, troubleshooting, repair, and maintenance manuals are not to be kept with the equipment. These are to be maintained in such a manner that access is not granted to foreign persons.

How can export controls possibly affect research?

The following scenarios may require (but not limited to) an export license:

- Physical transfer or disclosure of an item outside the U.S.
- Participation of foreign national faculty, staff, or students
- Transfer or disclosure of a controlled item or information within the U.S. to a foreign national
- Laboratory visits by foreign persons
- Transfer of research equipment abroad
- Participation of foreign visiting faculty, researchers, or students under the visiting scholars program
- Presentation or discussion of previously unpublished research at conferences or meetings where foreign national scholars may be in attendance

What is a Technology Control Plan (TCP)?

A TCP is a formal plan that outlines how an export-controlled project will be conducted. It includes: details about how the technology will be secured, who will have access to it, and how the technology will be disposed of at the end of the project.

What is an export license?

An export license is a government document issued by an export agency authority that authorizes the recipient to proceed with the export, re-export, or other regulated activity as specified. Requests for export licenses will be initiated by AgriLife Risk and Compliance, and can take months for review before final determinations are made.

What about international travel?

Laptops/PDAs/memory sticks are subject to export control regulations. Some can be taken to most countries using a temporary export license exception (Export License Exception TMP). Travelers can take a certificate describing the device and the applicable export control regulations and exceptions.

Keep in mind that the data on the device could be subject to export controls. Data related to University campus-based fundamental research is excluded generally. However, research activity that is export-controlled in a non-academic environment, but which is covered by the fundamental research exclusion when performed on the University campus, becomes subject to export controls if performed outside the campus. In addition, the mere opening of an e-mail containing export-controlled information/data in a foreign country can be considered an export of this information/data. Results of fundamental research conducted on the University campus or public domain, or publicly available information can be freely taken and exchanged with anyone.

U.S. customs officials are authorized to search or retain electronic devices (including, but not limited to, disk drives and cell phones) even without probable cause in efforts to look for violation of export control regulations and other laws and regulations. In preparation for this possibility:

- Don't carry data that should not be viewed by others
- Don't carry the only copy of the data
- Have a second plan if the data will still be needed after arriving at the destination
- Consider taking a minimal device with ordinarily recognizable software and minimal data

What about shipping items outside of the U.S.?

It is important to remember that transfer of commodities or equipment is only controlled by export regulations when the item is shipped outside the U.S. Unless a valid license exception or license exemption applies, licenses to ship an item outside the U.S. are required even when the item or equipment is either used in or results from fundamental research.