

HEALTH SCIENCE CENTER HANDBOOK OF OPERATING PROCEDURES

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|---------------------|---------------------------------|-----------------|--|
| Chapter 7 | Research and Sponsored Programs | Effective: | December 2013 |
| Section 7.1 | Office of Sponsored Programs | Revised: | |
| Policy 7.1.7 | Export Controls | Responsibility: | Vice President for Business Affairs and Chief Financial Officer |

EXPORT CONTROLS

Overview

The export of certain technologies, software and hardware, as well as other commodities, including cash payments is regulated and controlled by federal law for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction, and for competitive trade reasons. The University of Texas Health Science Center at San Antonio (Health Science Center) and its employees are required to comply with the laws and implementing regulations issued by the United States (U.S.) government, including the Department of State, through its International Traffic in Arms Regulations (ITAR); the Department of Commerce, through its Export Administration Regulations (EAR); and, the Department of the Treasury, through its Office of Foreign Assets Control (OFAC).

While, with few exceptions, research conducted at the Health Science Center is excluded from these regulations under the Fundamental Research Exclusion, and is considered to be in the public domain, research involving specified technologies controlled under the EAR and/or ITAR, or transactions and exchanges with designated countries, individuals and entities, may require the Health Science Center to obtain prior approval from the appropriate agency before allowing foreign nationals to participate in controlled research, allowing collaboration with a foreign company, and/or allowing the sharing of research—verbally or in writing—with persons who are not U.S. citizens or permanent residents. The consequences of violating these regulations can be quite severe, ranging from the loss of research funding to monetary penalties and criminal prosecutions for the individual who violated these regulations.

The export control regulations affect not only research conducted on campus, but also travel and the shipping of items outside the U.S. Simply traveling to certain sanctioned countries could require a license from OFAC. OFAC prohibits certain transactions and the exchange of goods and services (including money) with certain countries, designated persons, and entities. Multiple lists of denied individuals and parties are maintained and enforced by federal agencies, including the Departments of State, Commerce, and Treasury. Shipping items outside the U.S., as well as traveling with controlled items on an international flight could

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require a license from these agencies, even if the shipping or traveling is done in the conduct of research.

DEFINITIONS

EMPOWERED OFFICIAL (EO): Means a U.S. citizen who is legally empowered in writing by The University of Texas System to sign export license applications or other requests for approval on behalf of the Health Science Center.

EXPORT CONTROLS OFFICER (ECO): Means a person who is identified formally at the Health Science Center for purposes of institutional compliance with export control regulations.

EMPLOYEES: Means all Health Science Center employees, full-time and part-time, including student employees, consultants, visitors, and others using Health Science Center resources.

RESOURCES: Means all resources owned, leased, or otherwise used by the Health Science Center personnel within the scope of research or other institutional duties.

FUNDAMENTAL RESEARCH: Means basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the U.S. (for ITAR only—the EAR indicates that fundamental research is not determined by location) in which the resulting information is ordinarily published and shared broadly in the scientific community. The ITAR indicates that fundamental research is distinguished from research that results in information that is restricted for proprietary or national security reasons or pursuant to specific U.S. governmental access and dissemination controls. The EAR indicates that fundamental research is distinguished from research that results in information that is restricted for proprietary reasons. In other words, University research is not considered fundamental research if: the University or its researchers accept restrictions on the publication of the results of the project or activity (EAR and ITAR); the sponsor requires prior approval before publication of the results of the project (EAR and ITAR); or, the research is funded by the U.S. government and specific access and dissemination controls protecting information resulting from the research are applicable (ITAR). Other restrictions, such as foreign

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national approval or a requirement that no foreign nationals work on a project, could invalidate the fundamental research exclusion.

ITAR DEFINITION OF PUBLIC DOMAIN: ITAR defines public domain to mean information that is published and which is generally accessible or available to the public through: sales at newsstands and bookstores; subscriptions that are available without restriction to any individual who desires to obtain or purchase the published information; second class mailing privileges granted to the U.S. government; libraries open to the public or from which the public can obtain documents; patents available at any patent office; unlimited distribution at a conference, meeting, seminar, trade show or exhibition generally accessible to the public in the U.S.; public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency; and, fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community.

EAR DEFINITION OF PUBLIC DOMAIN: Information is “published” when it becomes generally accessible to the interested public in any form, including but not limited to: publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline either free or at a price that does not exceed the cost of reproduction and distribution; being readily available at libraries open to the public or university libraries; when issued patents or open patent applications are published and available at any governmental patent office; and, when such information is released or publicly discussed at an open conference, meeting, seminar, trade show, or other open gathering.

POLICY

It is the policy of the Health Science Center to comply with the laws and regulations of the U.S., as well as The University of Texas System policies concerning exchange and exports of technology and other goods and services. All Health Science Center employees are responsible for complying with this policy, as well as with any procedures implementing this policy. The Health Science Center will provide educational materials

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and/or training to its employees and offices whose job responsibilities may be affected by the export control regulations.

AUTHORITY

Through appointment by The University of Texas System, the Senior Executive Vice President and Chief Operating Officer, has been designated the Empowered Official (EO) for the Health Science Center. By appointment of the Health Science Center President, the Assistant Vice President for Research Administration has been appointed as the Export Controls Officer (ECO).

ADMINISTRATION OF POLICY

Pursuant to requirements of The University of Texas System, the Assistant Vice President for Research Administration is responsible for institutional compliance with this policy. Administration of the policy is the responsibility of the Office of Sponsored Programs. Each Health Science Center department or administrative unit has the primary responsibility to ensure compliance with this policy.

PROCEDURES

Through the EO, the ECO is authorized under this policy to implement procedures which will provide Health Science Center compliance with applicable laws and regulations, as well as in conformance with The University of Texas System policy. A working group of applicable individuals and offices affected by this policy shall be established by the ECO to ensure that appropriate practices are in place.

EXPORT CONTROL CERTIFICATION

The ability to hire nonimmigrant foreign nationals for certain positions may be restricted or prohibited by export control laws. An Export Control Certification (available from the Office of Sponsored Programs or the Office of International Services) must be completed and signed by the sponsoring department before the Health Science Center will sponsor any potential employee for a H-1B or O-1 nonimmigrant visa.

SANCTIONS FOR NON-COMPLIANCE

Failure to comply with the requirements of this policy could result in the individual being subject to remedial or disciplinary action for misconduct, up to and including termination, and could also subject the individual to civil penalties and criminal prosecution.

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ITAR Penalties: Civil - up to \$500,000 per violation, extra compliance measures, debarment, and loss of export privileges. Criminal - up to \$1,000,000 per violation and 10 years imprisonment.

EAR Penalties: Civil - up to \$250,000 per violation or twice the amount of the transaction and loss of export privileges. Criminal - up to \$1,000,000 per violation and 20 years imprisonment.

OFAC Penalties: Civil - up to \$250,000 per violation. Criminal - refer to appropriate law enforcement agencies for criminal investigation and/or prosecution. Actions could include license denial/revocation; subject person could be ordered to cease and desist.

REFERENCES

Department of State – International Traffic in Arms Regulations (ITAR):
http://www.pmdtcc.state.gov/regulations_laws/itar.html

Department of Commerce – Bureau of Industry and Security (BIS):
<http://www.bis.doc.gov/licensing/exportingbasics.htm>

Department of the Treasury – Office of Foreign Assets Control (OFAC):
<http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>

The University of Texas System Policy (UTS 173):
<http://www.utsystem.edu/bor/procedures/policy/policies/uts173.html>

Additional Information is also available on the Health Science Center's Office of Sponsored Programs web site at:
<http://research.uthscsa.edu/osp/ExportControls.shtml>