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## Rule Summary

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All employees and students at Texas A&M University-Commerce (A&M-Commerce) are expected to comply with United States (U.S.) export control laws and regulations including, but not limited to, those implemented by the Department of Commerce through the Export Administration Regulations (EAR) and the Department of State through its International Traffic in Arms Regulations (ITAR), as well as those imposed by the Department of Treasury through the Office of Foreign Assets Control (OFAC).

A&M-Commerce 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. There are severe institutional and individual sanctions for violations of export control laws and regulations, including the loss of research funding, the loss of export privileges, and criminal and civil penalties. This rule is required by System Regulation *15.02, Export Controls Program Management*.

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## PROCEDURES AND RESPONSIBILITIES

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### 1 GENERAL

Encouraging research and intellectual inquiry is vital to the accomplishment of the university's research mission. A&M-Commerce supports open research and the free exchange of information among scholars. The university also recognizes that the U.S. 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 U.S. and to foreign persons in the U.S.

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.

## 2 INDIVIDUAL RESPONSIBILITY

- 2.1 A&M-Commerce employees and students engage in a broad range of innovative and important research activities that may involve Foreign Persons in the U.S. or abroad. When these activities include the use of Controlled Information or Controlled Physical Items, the university requires that each individual comply with the applicable requirements of U.S. export control laws and regulations.
- 2.2 A&M-Commerce employees, students, visiting scientists, researchers, postdoctoral fellows, and other persons retained by or working at or for the university must conduct their affairs in accordance with U.S. 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 U.S. 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 (EO) and/or the employees' supervisors.
- 2.3 University employees with managerial or supervisory authority over Foreign Persons or projects involving Controlled Information or Controlled Physical Items have a legal obligation to oversee export control compliance as an important part of their responsibilities.
- 2.4 University employees and students will comply with the provisions of any export license, governmental approval requirements, required certifications, technology control plans, and procedures adopted by or granted to A&M-Commerce.

## 3 EMPOWERED OFFICIAL

- 3.1 The named Vice President for Research and Economic Development is the university's EO for purposes relating to applicable federal export control laws and regulations.
- 3.2 The Empowered Official shall have direct and regular access to the President and the System Chief Research Security Officer.
- 3.3 The EO 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 for export control matters involving A&M-Commerce. The Empowered Official is the university official authorized to sign license applications and other authorizations required by export control laws and regulations on behalf of A&M-Commerce.

## 4 EXPORT CONTROL COMPLIANCE PROGRAM

### 4.1 Research Contract Administration

The EO and the Research Compliance Coordinator, in coordination with the Office of Sponsored Programs (OSP), are 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:

- 4.1.1 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);
- 4.1.2 A provision that research results will be considered trade secret, confidential, or proprietary information owned by the sponsor;
- 4.1.3 A provision that Foreign Persons are excluded from participation in the research or are subject to approval by the research sponsor;
- 4.1.4 A provision that imposes publication or access restrictions (incorporated by federal regulations such as Federal Acquisition Regulation, Defense Federal Acquisition Regulation, or agency specific regulations) or have provisions which state that export control laws apply;
- 4.1.5 A project that allows Foreign Persons access to Controlled Information or Controlled Physical Items;
- 4.1.6 A project which necessitates that Foreign Persons or entities involved in the research project or related transactions are identified through Restricted Party Screening (RPS) as embargoed countries or restricted countries, persons or entities; and,
- 4.1.7 A project wherein Controlled Physical Items or Controlled Information (including laptops containing Controlled Information) will be taken or shipped outside the U.S.

### 4.2 International Visitors

#### 4.2.1 Restricted Party Screening for International Visitors

In general, international visitors intending to visit A&M-Commerce must undergo RPS as a prior condition of their visit to A&M-Commerce. It is the responsibility of all employees at A&M-Commerce intending to host an International Visitor to notify and request from the EO the approval of the visit before the arrival of the International Visitor. RPS will be conducted by the EO or her delegate. (See *12.99.99.R0.05 Invited Speakers*)

#### 4.2.2 Subjected International Visitors

All international visitors whether present or not in the U.S., must undergo RPS when the international visitor:

- 4.2.2.1 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;
- 4.2.2.2 Will be issued an A&M-Commerce identification card, keys to offices or laboratories, or otherwise be given access to the A&M-Commerce computing system in any way or manner; or,
- 4.2.2.3 Will be paid an honorarium, will be reimbursed for expenses, or will be provided something of value.

4.2.3 It is the fiduciary responsibility of all employees at A&M-Commerce to comply with the initial terms and intent of the visit as communicated to the international visitor and to notify the EO immediately, as well as the Provost's Office, of any changes in the intent of the visit prior to engaging the international visitor in any activity that may require further export control review.

#### 4.3 International Activities

4.3.1 When A&M-Commerce activities are conducted outside the U.S., it is the responsibility of the university activity organizer and/or responsible International Studies Program official to seek and obtain appropriate export control approvals from the EO, for the following activities without limitation:

- 4.3.1.1 Execution of agreements to be performed outside the U.S.;
- 4.3.1.2 Non-credit bearing study abroad courses; and,
- 4.3.1.3 Making payments to Foreign Persons.

4.3.2 The EO, or her delegate, as applicable, is responsible for developing and implementing procedures to screen international programs, centers, and activities for compliance with export control laws and regulations.

#### 4.3.3 Students Studying Abroad

Study Abroad Programs, or other office(s) designated by the President (or designee), are responsible for performing RPS on all students enrolled in an A&M-Commerce credit-bearing program outside the U.S. RPS is required when a student:

- 4.3.3.1 Is a Foreign Person;
- 4.3.3.2 Has not previously attended A&M-Commerce; and,
- 4.3.3.3 Is not enrolled as a continuing student at a college or university based in the U.S.

#### 4.4 Distance Education

Those responsible for offering distance education courses, in cooperation with the EO, will screen courses as appropriate for purposes of compliance with export control laws and regulations.

#### 4.5 Purchasing and Financial Transactions

It is the responsibility of the Division of Finance and Administration, in coordination with the EO, to develop and implement procedures to screen vendors as appropriate for compliance with export control laws and regulations and to coordinate with the EO to classify purchases subject to the EAR or the USML.

#### 4.6 Hiring Foreign National Persons

It is the responsibility of the hiring supervisor and/or department head to undergo training on export controls and to complete a Deemed Export Control Memorandum.

#### 4.7 Training

The EO, in cooperation with other appropriate offices, will authorize and assign approved A&M-Commerce Export Controls Training. Administrators, faculty, and researchers (e.g., students, postdocs, research scientists, etc.) involved in research activities will be required to complete, successfully, an approved basic export control training course at least once every two years. University employees with managerial or supervisory authority over Foreign Persons or projects involving Controlled Information or Controlled Physical items are required to complete, successfully, an approved basic export control training course at least once every two years.

Depending on the nature of an individual's activities and/or job function, an A&M-Commerce employee may be required to successfully complete an approved supplemental export control training as deemed appropriate by the individual's supervisor and/or the EO.

#### 4.8 Shipping

It is the responsibility of A&M-Commerce personnel or students who are shipping items outside the U.S. (including hand-carried items including but not limited to research equipment, materials, data, biological, chemical, and nuclear weapons/explosives) to comply with export control laws and regulations in coordination with the EO and other appropriate offices. A&M-Commerce personnel and students should contact the EO for assistance, if needed, prior to shipping items outside the U.S.

### 5 OFFICES RESPONSIBLE FOR EXPORT CONTROL COMPLIANCE

5.1 The EO, in cooperation with other appropriate offices, has ultimate responsibility for ensuring compliance with the export control laws and regulations for the university.

5.2 The EO, and other appropriate offices, are 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.

- 5.3 Pursuant to System Policy 15.02, the EO will ensure A&M-Commerce conducts an export control-specific risk assessment annually. Such assessment will be included with the A&M-Commerce annual compliance plan.
- 5.4 Pursuant to System Policy 15.02, the EO will ensure A&M-Commerce reports monthly to the System Research Security Office applications and all associated documents regarding visiting scholars and employment of Foreign Persons from countries of concern.
- 5.5 When requested, the EO 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 System Policy 15.02, *Export Controls*. The EO will also assist with and conduct RPS and consult with the System Office of General Counsel and System Research Security Office (RSO) on export control matters as appropriate.
- 5.6 The A&M-Commerce Department of Campus Operations & Safety will conduct periodic self-assessments of the university's compliance with export control laws and regulations and report its findings to the Research Compliance Officer.

## 6 POSSIBLE VIOLATIONS

Each university employee has the responsibility to report possible violations of U.S. export control laws or regulations. Suspected violations should be reported to the EO, together with the details of the suspected violation. Suspected violations may also be reported via the Risk, Fraud & Misconduct Hotline (EthicsPoint). Possible violations of U.S. export control laws or regulations will be investigated by the EO or designee to the extent deemed necessary. The EO is authorized to suspend or terminate a research, teaching, testing, or other export activity if the EO 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 will be kept for the longer of either:
  - 7.1.1 The record-retention period required by the applicable export control regulations (see 15 C.F.R. Part 762 (ITAR); 22 C.F.R. Sections 122.5, 123.22 and 123.26 (EAR); and 31 C.F.R. 501.601(OFAC)); or,
  - 7.1.2 The period required for the retention of records as set forth in The Texas A&M University System policies, regulations, and/or university rules.
- 7.2 Records will be maintained by the EO and/or the appropriate and designated office responsible for the export or activity.

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## Definitions

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Each of the following terms used in this Rule is defined in System Policy *15.02, Export Controls Program Management (Definitions)*:

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

Other terms used in this Rule have the meanings as described 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 Section 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 A&M-Commerce, and are coming to A&M-Commerce 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 A&M-Commerce.
- Restricted Party Screening – The process of determining whether a person or entity is included on the Specially Designated Nationals and Blocked Persons List or any other restricted list included in the screening software made available by the OSP.

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## Related Statutes, Policies, or Requirements

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System Regulation [15.02, Export Controls Program Management](#)

University Procedure [12.99.99.R0.05 Invited Speakers](#)

[Attestation Form](#)

[Risk, Fraud & Misconduct Hotline](#)

U.S. Department of State [International Traffic in Arms Regulations \(ITAR\)](#)

U.S. Department of Commerce [Export Administration Regulations \(EAR\)](#)

U.S. Department of the Treasury [Office of Foreign Assets Control \(OFAC\)](#)

[National Security Decision Directive 189](#)

[Atomic Energy Act 1954 and Nuclear Regulatory Commission Regulations to 10 CFR Part 110](#)

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## **Contact Office**

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