

October 13, 2015

MEMORANDUM

To: Members of the Executive Committee,
Academic Directors and Department Chairs

From: Andrea Giuffrida, Ph.D.
Vice President for Research

Re: Research, Export Controls, and Trade Sanctions

The University of Texas Health Science Center at San Antonio is committed to the creation and dissemination of knowledge. Our faculty, staff, and students conduct research and scholarly inquiry intended for wide distribution and benefit to the public. By policies established by The University of Texas System Board of Regents, no research or sponsored activity may be undertaken by any Health Science Center investigator that permits third party approval of publication or otherwise restricts the public sharing of research results. The dissemination of research findings from federally-funded, fundamental research has commonly been restricted only by security classification in accordance with a National Security Decision Directive (NSDD 189) issued during the Reagan presidency and reaffirmed by President Bush's then National Security Advisor Condoleezza Rice in November 2001. Because classified research may not be conducted at the Health Science Center, research conducted here has been, for the most part, exempt from export controls.

Nationally, concern over export control regulatory compliance has been gradually increasing since September 11, 2001. The academic community's efforts to balance national security concerns and open communication in the academic community has been subject to increased scrutiny. Governmental interpretation of activities that may be controlled and persons who are affected has broadened significantly.

Export controls imposed by the United States Government may restrict certain access to and dissemination of information and tangible items and may limit the individuals who can have access to certain controlled information. The regulations governing export controls are implemented by the U. S. Department of Commerce through its Export Administration Regulations (EAR concerning trade protection), by the U. S. Department of State through its International Traffic in Arms Regulations (ITAR concerning national security), and by the U. S. Treasury Department through its Office of Foreign Asset Control (OFAC trade sanctions). Research on campus that was once thought to be exempt from export controls and trade sanctions may now possibly be subject to export controls. If a research activity is ineligible for exemption, rigorous licensing and/or other export control requirements of the Departments of Commerce, State, and/or Treasury will apply.

The term "export" is very broad and includes any:

1. Actual shipment, or electronic or digital transmission, of covered items or technology;
2. Release or disclosure, including verbally, of covered technology, software or equipment to a foreign national anywhere; or
3. Use or application of covered technology for the benefit of a foreign entity or person anywhere.

Export is not only the shipment of items or transmission of technology outside the United States, but also transmission of information and/or technology to a non-U.S. citizen, non-permanent resident within the United States (a "deemed export"). Thus, a disclosure to a foreign researcher or student on the Health Science Center campus is a "deemed export" and covered by these regulations.

There are three significant exclusions to the export licensing requirements that affect colleges and university research and teaching activities:

1. The "fundamental research" exclusion. Generally, an export license is not needed to conduct basic and applied research, including work with foreign nationals, *provided* there are no restrictions on access by students and others to the research results, including publications; the research is carried out openly; and the results are intended to be and are published or shared broadly within the scientific community.
2. The "public domain" exclusion. Generally, an export license is not necessary before sharing technical data or information with a foreign national outside or inside of the U. S. if the same technical data or information has already been published widely; is available in libraries or through newsstands, bookstores, subscriptions or free websites; or is disclosed in published patent applications.
3. The "teaching" exclusion. In general, a license is not needed to share information as part of instructional activities or to train most foreign nationals to use most otherwise-controlled pieces of scientific equipment as part of classroom or laboratory instruction.

Because the Health Science Center adheres to the Regental policy requiring free and open dissemination of our research and scholarly activities, we are able to take advantage of exemptions above such that, in general, we generally do not need to secure export licenses. These exemptions can be lost, however, if researchers sign side agreements in which the Health Science Center is not a party (including material transfer and non-disclosure agreements) that contain publication restrictions or restrictions on who can participate in the research).

Despite the relief presently granted by the exemptions, a license will be required to ship controlled items, including equipment or materials, to any foreign country-there are few exceptions or exemptions. One major exception involves laptop computers. Excluding countries under sanction, faculty who wish to take their computer laptops out of the country to use in a project that qualifies as fundamental research may be able to do so under the license exception for temporary export if the faculty member retains control of the laptop at all times.

There is yet another set of regulations in the export controls arena. The Office of Foreign Asset Control (OFAC) administers and enforces economic and trade sanctions against foreign countries, individuals, and organizations identified as terrorists or international narcotics traffickers, or involved in or supportive of activities related to the proliferation of weapons of mass destruction.

Individuals may not provide technologies or services either to countries on OFAC's list of sanctioned countries (at present those countries include Cuba, Iran, Ukraine, Russian, Iraq, Libya, North Korea, Sudan and Syria) or to specifically designated persons without first obtaining licenses from OFAC and the State or Commerce Departments.

It now becomes essential for faculty investigators to consider whether their research conducted both on and off campus may be affected by the increased enforcement of these regulations. However, export controls are statutorily-based and apply to all research, whether or not the regulations are cited in the award documents. The penalties for noncompliance with these regulations can be quite severe and include loss of research support, loss of the Health Science Center's export privileges, significant fines, and imprisonment. Areas of particular sensitivity include:

1. Dual use goods (i.e., goods with a commercial and military applications) including scientific equipment such as fermenters, centrifuges, mass spectrometers and most other equipment commonly found in an investigators laboratory;
2. Technology and software (such as organisms that could be considered bioterrorism agents);
3. GPS equipment accessible by foreign nationals from embargoed countries, and laptops with modem encryption technology); and
4. Travel to embargoed countries for field research or conferences.

Melanie Zuñiga Rapp, Office of the VPR, and Gary Sertich, Office of Legal Affairs, are available to meet with department chairs and faculty to present information and guidance on these matters and to discuss export control issues with researchers.

There are many Washington-based education and research associations working individually and collectively to ensure that export regulations and trade sanctions do not significantly affect academic research and international collaborative relationships. While these regulations may appear obscure and inconsistent with research in a university setting, we believe that an appropriate balance can be achieved between the freedoms normally characteristic of university-based research and the considerations of national security.

Please contact either Ms. Zuñiga Rapp or Dr. Sertich if questions arise concerning the transmission of materials and/or information outside of the United States.

Cc: Melanie Zuñiga Rapp
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