Section 6 Compliance Subject 6.5 Export Controls **Policy 6.5.7 Export Control Compliance**	04/07/11- Originated -Reviewed w/ changes -Reviewed w/o changes Center for Technology Development- Author

Export Control Compliance

Definitions

Dual Use - items or technologies that have commercial applications and also can be of military or terrorist use.

Deemed Export –the providing, transferring or disclosing certain technology or information to a foreign national within the United States is *"deemed"* an export to the foreign national's home country.

Export – is the actual shipment or transmission of items or technology subject to the EAR out of the United States.

Export Administration Regulations (EAR) - The Department of Commerce implements the EAR, which bars the export of items, technology, and technical information found on the Commerce Control List to foreign countries or persons (e.g., foreigh nationals) without appropriate export license. EAR covers the transfer of dual-use items.

Empowered Official (EO) - means a U.S. citizen who is legally empowered in writing by UTMB to sign export license applications or other requests for approval on behalf of UTMB. The EO has the independent authority to inquire about any aspect of a proposed export, to verify the legality of the transaction and the accuracy of the information to be submitted, and to refuse to sign a license application or other request for approval without prejudice or other adverse recourse.

Export Controls Officer (ECO) -means a person who is identified formally at UTMB for purposes of institutional compliance with export control regulations.

Foreign National- means any natural person who is not a lawful permanent resident in the U.S and is not a "protected individual."

For the purpose of export controls, foreign nationals who are protected individuals are the following:

1. foreign nationals granted U.S. Citizenship,
2. "green card" holders,
3. foreign nationals granted status as a "protected individual" under 8 U.S.C. §1342b(a)(3) which includes political refugees and political asylum holders.

Fundamental Research– means basic or applied research in science and engineering performed or conducted at an accredited institution of

Definitions, continued

higher learning in the U.S. in which the resulting information is ordinarily published and shared broadly in the scientific community.

Fundamental Research Exclusion –means research that is not subject to export control regulations due to the research being the result of scientific or engineering research at an accredited university in the U.S. to which no publication restrictions apply, (other than a short period in which to seek patent protection or remove sponsor proprietary data under EAR and possibly ITAR) and is not proprietary and is ordinarily published (for EAR-or *is intended to be published*) and broadly shared in the scientific community. University research will not be considered fundamental research if:

1. the university or its researchers accept restrictions on the publication of the results of the project or activity (EAR and ITAR);
2. the sponsor requires prior approval before publication of the results of the project (EAR and ITAR), or;
3. 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 national approval or a requirement that no foreign nationals work on a project, could invalidate the fundamental research exclusion.

International Traffic in Arms Regulation (ITAR)- The Department of State implements the ITAR, which regulates the export of items on the Munitions Control List and technical information about them. Most of these items are military use items.

Office of Foreign Assets Control ("OFAC") – The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.

Public Domain- means information that is published and generally accessible or available to the public.

Policy

The University of Texas Medical Branch (UTMB) policy for compliance with U.S. export control regulations is based upon maintaining an open, fundamental research environment. This export control policy is designed to provide guidance to UTMB personnel in the application of the various U.S. export regulations to UTMB research and to foreign

Policy, continued

nationals including, but not limited to, graduate students, teaching assistants, research assistants, post-doctorate scholars, visiting faculty, and colleagues on campus, off-site, and at meetings and symposia. It is the policy of UTMB to comply with U.S. export laws and regulations. UTMB will comply with all export control regulations, including obtaining any required export licenses, for the transfer of export-controlled materials, data, technology or equipment to a foreign national, either in the U.S. or abroad. Additionally, UTMB will provide instructional manuals and export control training to its employees and departments whose job responsibilities may be affected by the export control regulations.

The export control regulations affect many areas across campus. To effectively implement this policy, the ECO shall work with the appropriate Vice Presidents, Provost, College Deans, Department Heads, Directors, the Compliance Office, Legal Affairs and/or the UT System Office of General Counsel to implement procedures that comply with the export control regulations.

To implement this policy, UTMB will adopt an export control compliance program that documents and disseminates information on roles, responsibilities and procedures for identification, approval, licensing and tracking of items or activities subject to the export control laws. The program will include record-keeping, awareness training, and procedures for self assessment and monitoring.

The administrative unit at UTMB that is charged with the responsibility for implementation of this policy and development of related procedures is the Center for Technology Development.

Background

The U.S. Government relies on the due diligence of exporters to help ensure national security. It is through a strong public-sector/private-sector partnership that the diversion of dual-use and munitions list items for harmful and destructive purposes can most effectively be prevented. Given the breadth of commodities that may be so categorized, as well as the potential for issues with regard to parties to a transaction, it behooves UTMB to adopt an export compliance program, and the prescription herein may be applied to all that export or plan to export.

UTMB and its employees are required to comply with the laws and implement regulations issued by the government, including the

Background, continued

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 Controls (OFAC).

While most research conducted on UTMB campus 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 UTMB to obtain prior approval from the appropriate agency before allowing foreign nationals to participate in controlled research, allowing UTMB to collaborate with a foreign entity, and/or allowing the sharing of research—orally 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 contracts to monetary penalties and jail time for the individual who violated these regulations.

The export control regulations not only affect research conducted on campus, but also travel and the shipping of items outside the U.S. For example, ordinary business travel to certain sanctioned countries could require a license from OFAC.

UTMB is committed to full compliance with all applicable U.S. export control laws and regulations. This policy applies to all activities in which UTMB resources are used.

All UTMB employees are responsible for complying with this policy, as well as with any procedures implementing this policy.

Procedure

The President of UTMB shall appoint or approve the appointment of an ECO for purposes of compliance with U.S. export regulations. The ECO shall receive authority from the President of UTMB to perform his/her job duties. The ECO may also be appointed as an Empowered Official. Additionally, an Export Control Compliance Committee (ECCC) will be formed in order to assist in the resolution of potential conflicts with export controls as well as ensuring campus-wide commitment to compliance of the program.

Responsibility for oversight and implementation of the Export Control

Procedure, continued

Compliance rests with a multidisciplinary ECCC, whose membership is appointed by the Executive Institutional Compliance Committee (Executive ICC). Minutes of all meetings are maintained in a confidential manner and are provided to the Executive ICC on a quarterly basis. Minutes are maintained in the Office of Institutional Compliance (OIC). The ECCC will consist of members from UTMB areas, offices, or activities that are affected by export control compliance. Such areas include, but are not limited to:

a) Research conducted by faculty and students on campus, as well as research projects conducted abroad (also includes foreign visiting scientists on campus);
b) Items shipped outside the U.S.;
c) International Programs – includes students and faculty studying or teaching abroad;
d) Logistics/Purchasing/Accounting (vendor payments) Departments;
e) Center for Technology Development;
f) Office of Sponsored Programs;
g) Human Resources Department;
h) Travel Office – for travel outside the U.S.; and
i) Information Systems.

Penalties

In addition to civil and criminal penalties that may apply under applicable laws[i] to UTMB personnel, violation of export control laws and regulations may subject the violator to remedial or disciplinary action by UTMB and The University of Texas System for misconduct, including termination or dismissal, in accordance with applicable UTMB and The University of Texas System policies and procedures.

References

University of Texas System Administration Policy Library – Policy

UTS173: www.utsystem.edu/rtt/COMPLIANCE/ExportControls/

Export Administration Regulations: www.bis.doc.gov

International Traffic In Arms Regulations: www.state.gov

Office of Foreign Assets Control: www.treas.gov/ofac

UTMB Export Control Procedure Manual.

As of October 1, 2010:

[i] ITAR penalties: Civil – up to $500,000 each violation, extra compliance measures, debarment, and loss of export privileges.
Criminal – up to $1,000,000 each 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 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.