T TEXAS TECH UNIVERSITY™

Operating Policy and Procedure

OP 74.10: **Export Control**

DATE: June 5, 2018

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to establish policies based on federal laws and regulations governing the export of information, products, and technology.

REVIEW: This OP will be reviewed in January of even-numbered years by the Office of Export and Security with substantive revisions forwarded to the Vice President for Research.

POLICY/PROCEDURE

1. **Policy Statement**

   Regulations promulgated and enforced by the Department of Commerce, Export Administration Regulations (EAR), and the Department of State, International Trafficking in Arms Regulations (ITAR) prohibit the unlicensed export of specific technologies for reasons of national security and protection of trade. If TTU research involves such specified technologies, the EAR and/or ITAR may require the university to obtain prior approval from the Departments of State or Commerce before foreign nationals may participate in the research, before TTU can partner with a foreign company, or before a TTU researchers may share research, verbally or in writing, with persons who are not United States citizens or permanent resident aliens.

   Current export law controls both hardware and information concerning a wide range of commercial items and specially designated "defense articles" in a way that may have a substantial impact on university research. Institutional research that is not freely disseminated in the public domain may not qualify for the fundamental research exclusion, limiting publication rights and international collaborations. The consequences of violating these regulations can be quite severe, ranging from loss of research awards to monetary penalties to jail time. Therefore, Texas Tech University's policy is that principal investigators must conduct a thorough review of research projects and contract provisions and determine if and how regulations affect a particular project.

2. **Federal Regulations Definitions**

   Export control decisions depend on a correct understanding of the following terms. The official regulatory definition should be consulted in specific applications.

   a. The term export, as used in export control regulations, has an expansive meaning. Generally, an export includes: 1) any oral, written, electronic, or visual disclosure, shipment, transfer, or transmission outside the United States to anyone, including a U.S. citizen, of any commodity, technology (information, technical data, or assistance) or software codes; or 2) any oral, written, electronic, or visual disclosure, transfer, or transmission to any person or entity of a controlled commodity, technology, or software/codes with an intent to transfer it to a non-

U.S. entity or individual, wherever located (including a foreign student or colleague at Texas Tech University). The official definition of export under the EAR and ITAR should be consulted when determining whether a specific act constitutes an export. Export is defined in such a way to preclude the participation of foreign graduate students in research that involves covered technology without first obtaining a license from the appropriate government agency. The U.S. government requires a license only for those exports on the export-controlled lists. Most exports do not require prior approval of the U.S. government.

b.   Deemed export – Transport of goods, items, or intellectual property outside of the U.S. is not required for an export to take place. As a general proposition, a "deemed export" (one requiring a license and imposing access restrictions occurs when controlled technical data is released or otherwise transferred to a foreign person in the United States.

c.   The Department of Commerce promulgates and implements the Export Administration Regulations (EAR), Title 15, parts 730-774 of the Code of Federal Regulations (CFR). The EAR regulates the export of goods and services identified on the Commodity Control List (CCL), Title 15 CFR 774, Supp. 1. The unofficial text of the EAR and CCL are available online at https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear.

d.   The Department of State promulgates and implements the International Traffic in Arms Regulations (ITAR), 22 CFR Chapter I, Subchapter M, Parts 120-130. The ITAR regulates defense articles and services and related technical data identified on the United States Munitions List, located at 22 CFR Part 121. The unofficial text of the ITAR is available at https://www.pmddtc.state.gov/?id=ddtc_kb_article_page&sys_id=%2024d528fddbfc930044f9ff621f961987.

e.   Commodity jurisdiction request – If a question exists the EAR or ITAR regulates and article, the Office of Export and Security Compliance can submit a request to the U.S. Department of State to determine which agency will have jurisdiction over the export of the article.

f.   Fundamental research, as used in the export control regulations, includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research that results in information restricted for proprietary reasons or reasons of national security. University research will not qualify as fundamental research if: (1) the university accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to protect proprietary information or patent rights; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher. The citation for the official definition of fundamental research under the EAR is 15 CFR §§734.8, 734.11. The ITAR citation is 22 CFR §120.11(a)(8).

g.   Public domain, 22 CFR §120.11, refers to information that is published and is generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions available without restriction to any individual who desires to obtain or purchase the published information; (3) through second class mailing privileges granted by the U.S. Government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show, or exhibition generally accessible

to the public in the United States; (7) through 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 (8) through fundamental research.

3. **Responsibilities and Procedures**

Principal investigators are responsible for the following:

- Prior to commencing any research, to review and determine whether their research is affected by the controls or requirements contained within the export regulations;

- To re-evaluate that determination before changing the scope of, or adding new staff to, the project because such changes may alter the initial determination;

- To make export determinations far enough in advance to obtain an authorization from the federal government, should it be required; and

- To assist OESC in development of technology control plans for export-controlled projects.

The Office of Export and Security Compliance (OESC) will assist PIs in assessing the application of such regulations, but primary compliance responsibility rests with the PI of the research.

The Office of Research Services (ORS) will review all award documents to determine whether there are references to U.S. export regulations or restrictions that would prevent the project from being fundamental research under EAR and ITAR. For projects that include these references or restrictions, ORS will notify the PI and OESC. OESC will assist the PI in determining whether the research falls within a category of technology covered by EAR or ITAR. For those projects that are covered by EAR or ITAR, the PI, with assistance from OESC, will develop and implement a technology control plan for the project and certify that procedures for handling the export-controlled information are in place. Forms to document export control review and to certify procedures for handling export-controlled information are available on the Export Control website.

The Office of Export and Security Compliance is responsible for the following:

- Determining if an export license is needed for research and related activities;

- Filing commodity jurisdiction requests and applications for export licenses with appropriate U.S. government agencies;

- Determining if a technology control plan is needed for a research project; and

- Determining who is eligible to work on export-controlled projects.