

TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER

Operating Policy and Procedure

HSC OP: 73.16, **Export Controls**

PURPOSE: The purpose of this Health Sciences Center Operating Policy and Procedure (HSC OP) is to provide a framework for compliance with federal export control laws and regulations as these apply to Texas Tech University Health Sciences Center (TTUHSC) activities.

REVIEW: This HSC OP will be reviewed on June 1 of each odd-numbered year (ONY) by the Assistant Vice President for Research Integrity, the Research Compliance Officer, the Director of Safety Services, the Assistant Vice President of Sponsored Programs, the Managing Director of Immigration Compliance Services, and the Institutional Compliance Officer, with recommendations for revision forwarded to the Senior Vice President for Research and Innovation.

POLICY/PROCEDURE:

1. Background and Introduction.

It is critical to the mission of TTUHSC that all TTUHSC activity complies with federal export control laws and regulations. Currently there are three primary export control laws that impact TTUHSC:

- a. **The U.S. Department of Commerce Export Administration Regulations (EAR)** regulates the export of technologies that have primarily civil applications, but may also have military applications (“dual use”) as identified in the [Commerce Control List \(CCL\)](#), [15 CFR Part 774](#).
- b. **The U.S. International Traffic in Arms Regulations (ITAR)**, implemented by the State Department, regulates the export of inherently military technologies, which are listed in the [United States Munitions List \(USML\)](#), [22 CFR Part 121](#).
- c. **The U.S. Treasury Department’s Office of Foreign Asset Control (OFAC)** prohibits exports, financial transactions, provision of services and other dealings with sanctioned, [Specifically Designated Nationals And Blocked Persons list \(SDN\)](#)

These export control laws prohibit the export (or re-export) of controlled technology and information to a foreign person or entity without an export license or agency approval, unless an exception applies. Export control laws impact not only TTUHSC’s research activities, but also employment of foreign nationals, travel outside the borders of the United States, and shipment of materials subject to export control laws.

2. Definitions. For purposes of this policy, these terms have the following meanings:

Controlled Technology and/or Information. This includes goods, services and related technology identified on the Commerce Control List (CCL) and governed under EAR, 15 CFR Parts 730-774, and defense articles or services and related technical data listed in the UniCec1 ()-4, (P3.2 (at)-13

The following research and research related activities **may be** subject to export controls, unless an exception applies:

- Research that contains restrictions on publications or access by foreign nationals;
- Research where controlled technology or information is provided to and used by researchers in a laboratory that would require a license for foreign nationals to participate;
- Shipment of controlled technology or information outside the United States;
- Technical assistance agreements where U.S. citizens or permanent residents are providing training to foreign nationals where a controlled technology or information is involved;
- Taking laptop computers, GPS systems or their associated software to another country;
- Travel to embargoed, sanctioned or boycotted countries, or shipment, transport or other provision of equipment, goods, services or anything of value to embargoed, sanctioned or embargoed countries or individuals therein.

b. Export Law Exceptions. There are two (2) exceptions from the export license requirements that may be available to TTUHSC researchers. These exceptions only apply to deemed exports, not to shipments of controlled technology or information outside the U.S.

- 1) Fundamental Research. Fundamental Research is defined by the National Security Decision Directive (NSDD) 189 (September 21, 1985; <http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm>) as:

basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within m21 (y)16.1 ()-p-8.9 (i)3.1 (e)-f6.4 (es)-8 (ear2
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any form, including periodicals, newspapers, books, subscription journals, print, electronic or other media available for general distribution to the public. It also includes information that is readily available at public libraries, patents and patent applications, or information used at open conferences, meetings or seminars as well as information obtained through fundamental research.

- c. Open Research Policy. TTUHSC supports free and open research activity. Unless otherwise approved in writing by the Senior Vice President for Research and Innovation (SVPRI), TTUHSC will not accept or agree to conduct any research activity that contains restrictions on publication/dissemination of research results and/or participation of foreign nationals that would take TTUHSC research outside the fundamental research and/or public domain exceptions under EAR and/or ITAR.

- d. Accepting Research with Export Controls. The SVPRI is TTUHSC's administrative official for all export control issues. This office provides support to address export control and license issues and is the authorized official to sign export license applications on behalf of TTUHSC. **The Research Compliance Officer is the main contact for export control issues or questions.** Contact information for the Research Compliance Officer is at <https://www.ttuhsc.edu/research/export-control-overview.aspx>

Principal Investigators conducting any research subject to export controls accepted under 3.c. above must develop a written Technology Control Plan ([Attachment A](#)) that outlines the procedures for handling and safeguarding Export Controlled Technology and/or Information which shall be submitted to the OSP or CRI, as applicable.

- e. Prohibition of Informal Agreements (“Side Deals”). TTUHSC employees are not authorized and shall not accept or enter into informal agreements (“side deals”) with a sponsor (e.g., not to submit research articles for publication until approved by the sponsor) that could invalidate the fundamental research exception. Failure to comply may result in violation of export control laws and civil/criminal penalties for an

- Computer software received with restrictions on export to or on access by foreign nationals.
- Devices or equipment received with restrictions on export to or on access by foreign nationals.
- Private information about research subjects
- Devices, systems or software that was specifically designed or modified for military or space applications.
- Classified information

6. **Employment of Foreign Nationals (Sponsored or Non-Sponsored Programs)**

Any person who is not a US citizen, lawful permanent resident or in a protected category is a foreign national (see 2. Definitions). All foreign nationals at TTUHSC as employees (faculty and staff); visitors; interns (paid or unpaid); students, or other persons conducting research in the USA at, or for, the benefit of TTUHSC, must conduct their affairs in accordance with U.S. Export Control laws and regulations.

US immigration law requires petitioning employers for H-1B, H-1B1, L-1 or O-1 visa employees to assess whether any technology or technical data made accessible or released to the prospective or continuing foreign national employee, during the period of employment, will require an export controls license. The employer must attest on the immigration petition under penalty of perjury, as to whether an export controls license is required from the U.S. Department of Commerce or the U.S. Department of State.

TTUHSC Immigration Compliance & Services (ICS) is responsible for all immigration filings for foreign national employee hires. ICS will coordinate the export controls attestations process with the Research Compliance Officer.

- a. The hiring department for the foreign national employee must also complete TTUHSC's Export Certification Request Form and provide documentation to the Research Compliance Officer, as necessary, for a determination to be made as to whether an export license is required;
- b. The hiring department is responsible for ensuring and maintaining records documenting that foreign national employees and non-employees do or do not require an export license. These records shall be made available for review by TTUHSC Compliance personnel.

7. **Export Controls Review for Non-Employee Foreign National Visitors**

All foreign visitors to TTUHSC are required to undergo an export compliance review.

- a. The foreign visitor will complete TTUHSC's Consolidated International Visitor Questionnaire. The questionnaire is maintained by Immigration and Compliance Services (ICS) and is available on [ICS' website](#).
- b. The