

Texas Woman's University University Regulation and Procedure

Regulation and Procedure Name: Export Controls

**Regulation and Procedure
Number: URP: 02.450**

**Policy Owner: Academic Affairs and Finance and
Administration**

POLICY STATEMENT

Export control regulations govern the conditions under which certain items, information, and technologies can be exported to foreign countries, including exports to a U.S. citizen on foreign soil and “deemed exports” to a foreign national on U.S. soil. The purposes of export control laws are to advance U.S. foreign policy goals, protect the U.S. economy, and restrict exports of goods and technology that could contribute to the military potential of international adversaries of the U.S. The penalties for noncompliance with export control regulations include loss of research support, significant fines, and imprisonment. This URP is to assure that Texas Woman’s University complies with all applicable export control laws as established by the U.S. Department of Commerce Export Administration Regulations (“EAR”), the U.S. Department of State International Traffic in Arms Regulations (“ITAR”), and the U.S. Treasury Department through its Office of Foreign Asset Control (“OFAC”) trade sanctions.

APPLICABILITY

This policy is applicable to TWU Faculty, Staff, and Students.

DEFINITIONS

1. “Clean Laptop” means a laptop free of export-controlled technology and information, student records, personnel records, or other sensitive confidential information. Using a “clean” laptop greatly reduces the risk of loss, theft, or inadvertent disclosure of protected information.
2. “Export” means any oral, written, electronic, or visual disclosure, shipment, transfer, or transmission of any commodity, technology (information, technical data, assistance), or software code (1) outside the U.S to anyone,

including U.S. citizens, or (2) to a non-U.S. entity or individual, wherever located.

3. "Re-export" means the shipment or transmission of an item subject to regulation from one foreign country (i.e., a country other than the U.S.) to another foreign country.
4. "Deemed Export" means the release of controlled technology to foreign persons in the U.S. is "deemed" to be an export to the person's country. Persons with permanent residence status or U.S. citizenship or persons granted status as "protected individuals" are exempt from the deemed export rule. There is an obligation to obtain an export license before releasing controlled technology to a foreign person.
5. "Fundamental Research Exclusion" defined in National Security Decision Directive 189 ("NSDD 189") as "basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons." Information in the public domain (i.e., available to the public and scientific community) and educational information released by instruction in catalog courses are also excluded from export controls. The fundamental research exemption applies only to the dissemination of technical data and information, not to the transmission of material goods.
6. "Tools of Trade' Exemption" means EAR temporary export license exemptions that permit Americans to take laptops when temporarily traveling abroad, provided that the laptop contains normal and customary application software and data, is kept under the traveler's control, and is brought back to the U.S. within one year of departure. The TMP exception (15 CFR Part §740.9) applies to institution-owned laptops; the BAG exception (15 CFR Part §740.14) applies to personal laptops. These license exceptions do not apply to laptops taken to Cuba, Iran, North Korea, Sudan, and Syria, or Crimea region of Ukraine.

REGULATION AND PROCEDURE

I. General Information

- A. Texas Woman's University ("TWU") will comply with all applicable export control laws as established by the U.S. Department of Commerce Export

Administration Regulations (“EAR”), the U.S. Department of State International Traffic in Arms Regulations (“ITAR”), and the U.S. Treasury Department through its Office of Foreign Asset Control (“OFAC”) trade sanctions.

- B. Absent extraordinary circumstances, teaching and research will be accomplished openly and without prohibitions or restrictions on the publication and dissemination of the results of academic and research activities, except for certain limited prepublication reviews by research sponsors to protect their proprietary interests. TWU does not undertake classified work or research requiring national security controls and will not accept any conditions of funding awards that would restrict foreign nationals from the ability to participate fully in research projects. Therefore, TWU is generally exempt from regulation under export control laws as a result of the exclusion for fundamental research granted by the National Security Decision Directive 189 (NSDD-189). In the case of actual shipments of controlled items and the transport of electronic devices such as laptop computers, TWU is required to either (1) obtain a license, or (2) document an express determination that no license is needed.
 - C. The Vice Provost for Research and Innovation and Dean of the Graduate School (VPRI/DGS) shall oversee the review of research proposals with prepublication restrictions by a sponsor to determine whether the project falls within the fundamental research exemption per 15 Code of Federal Regulations § 734.8 (15 CFR 734.8), and will oversee the analysis of proposals with prepublication restrictions by sponsors for the sole purposes of (1) preventing inadvertent divulgence of proprietary information, or (2) insuring that publication does not compromise patent rights of the sponsor. The EAR specifically permits limited prepublication reviews by research sponsors for these purposes.
 - D. While research conducted at TWU is excluded from export control regulations under the fundamental research exclusion, instances that require a determination of applicability to export control regulations may arise. In such cases, TWU will retain expert legal counsel for advice and/or the preparation of export licenses.
- II. Federal Agencies Responsible for Implementation of Export Control Regulations
- A. Department of Commerce, Export Administration Regulations (EAR)

The EAR regulates the export of most commercial items, referred to as “dual-use” items that have both commercial and military or proliferation applications. Items regulated by the EAR are listed in the Commerce Control List (CCL).

B. Department of State, International Traffic in Arms Regulations (“ITAR”)

The ITAR controls the manufacture, sale, export and temporary import of defense items and defense services covered by the United States Munitions List (USML).

C. Department of the Treasury, Office of Foreign Assets Control (“OFAC”)

The OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorism-sponsoring organizations, and international narcotics traffickers, terrorists and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC may prohibit travel and/or other activities with embargoed countries and individuals. OFAC restrictions are not affected by ITAR, EAR, or the fundamental research exemption (NSDD189).

III. Responsibilities of TWU Employees

- A. Faculty members must consult with the Office of Research and Sponsored Programs (“ORSP”) about any Funding Opportunity Announcement (“FOA”), program announcements, or proposal guidelines that contain restrictions on publication or dissemination of research results or restrictions that limit the participation of foreign nationals on a project.
- B. TWU employees who wish to take laptop computers and/or other electronic devices out of the country must contact TWU IT Solutions to obtain a loaner laptop and an institutional certification form before traveling. Institutional certification forms are required if employees are traveling with either institution-owned or personal laptops (See Export Controls on Electronic Devices Section V.).
- C. Researchers must consult with the VPRI/DGS prior to the shipment of material goods outside the U.S.
- D. Any arrangements, contracts, terms, or clauses negotiated between a TWU employee and a sponsor without the express knowledge and approval of the University may jeopardize TWU's fundamental research exclusion.

TWU will not honor, recognize, or be bound by any such arrangements, contracts, terms, or clauses.

E. Administrator Responsibilities

1. The Executive Vice President for Academic Affairs and Provost shall sign export license applications prepared by expert legal counsel on behalf of the University.
2. The VPRI/DGS is responsible for the management of issues at TWU that relate to applicable federal export control regulations. This management includes but is not limited to:
 - a. Oversight of the review of research proposals that potentially fall within the scope of export control regulations
 - b. Consultation with researchers regarding the shipment of material goods outside the U.S.
 - c. Consultation with or retention of expert legal counsel regarding issues that may be subject to export control regulations and/or licensing.

F. Office of Research and Sponsored Program Responsibilities

1. ORSP staff will assist investigators in the review of FOAs, program announcements, or proposal guidelines, and will determine whether a project qualifies as fundamental research.
2. ORSP staff will conduct a thorough review of the terms of award documents or contracts for provisions that: (1) restrict access to or publication of research and technical data, (2) limit the participation of foreign nationals in the research effort, or (3) otherwise render the exemptions from the export control regulations inapplicable.

IV. Recordkeeping

- A. Copies of all export documentation including required licenses, financial records, shipping documentation, invoices, analysis of export control issues, and any internal campus forms related to export control regulations must be retained for a period of 5 years from the date of the export, re-export, or controlled deemed export in accordance with 15 CFR 762.2

(EAR) and 22 CFR 122.5 (ITAR). Export control files that contain controlled information shall be stored securely.

- B. Departments must maintain export records internally and must provide the Research Compliance Coordinator in the ORSP with copies. Export documents related to funded projects must be kept for a period of five years from the project's termination date. TWU IT Solutions shall maintain copies of all export license exception certifications for a period of five years.
- V. Export Controls on Electronic Devices (laptops, etc.)
- A. The export of controlled items, technology, commercial software, and encryption code is subject to export control regulations. This includes laptops, PDAs, and digital storage devices. The EAR makes an exception (15 CFR 740.9) to licensing requirements for the temporary export or re-export of such items as long as certain criteria are met. Institution-owned or personal laptops and other electronic devices that contain normal and customary application software and data are considered "tools of trade" and are exempt from export licensing provided that the device is kept under the traveler's control and is brought back to the U.S. no more than one year after the departure date.
 - B. TWU IT Solutions will provide employees who plan to travel to foreign countries with laptops that meet all the criteria for the "tools of trade" exemption. Employees are required to contact TWU IT Solutions at least two weeks prior to departure to open a service request, submit the Export Control Request Form, and arrange the loan of a clean laptop for trips abroad.
 - C. The exempt status of all devices (TWU property or personal property) taken to foreign countries must be documented via an institutional export license exception certification signed by the traveler prior to departure. Travelers must carry the certification at all times during their trip. Institutional certification forms are provided by TWU IT Solutions.

REVIEW

This policy will remain in effect and published until it is reviewed, updated, or archived. This policy is to be reviewed once every six years. Interim review may be required as a result of updates to federal and state law or regulations, Board of Regents policies, or internal processes or procedures.

REFERENCES

None

FORMS AND TOOLS

None

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