

Export Control Policy

This policy addresses issues related to:

1. shipping tangible items overseas,
2. sharing proprietary, confidential or restricted information or software code with foreign nationals at Lamar University,
3. interactions with embargoed or sanctioned countries, organizations or individuals.

Federal regulations related to these topics are complex and changing. Individuals at Lamar University are therefore encouraged to contact Lamar's Export Control Officer whenever they expect to be involved with any of these issues

BACKGROUND

Export controls, set forth in regulations administered by several federal agencies, impose access, dissemination, and participation restrictions on the transfer and retransfer of "controlled" software code and information and on the export and reexport of tangible items. An export is defined as the shipment of tangible items and the transmission or transfer of software code or information to another country, while a "deemed export" is the disclosure of controlled software code or information to foreign nationals in the US (see DEFINITIONS Section I). The US Commerce Department must issue an export license or provide an exception to or exclusion from license requirements before any controlled tangible item, software or information in the US on the Commerce Control List (CCL) may be exported or reexported. Likewise, if a tangible item, software or information is on the US Munitions List (USML), the US State Department must issue an export license or provide for an exception to or exclusion from licensing requirements. Lamar University will comply with all applicable export controls, as established by federal regulations (see REGULATIONS, Section II).

Export controls restricting a foreign national's participation in university research within the United States, i.e., "deemed export" restrictions, generally do not apply to the conduct or results of [fundamental research](#). Lamar University conducts only fundamental research as defined by the export control regulations - namely, openly-conducted basic and applied research in science and engineering that is not subject to access, dissemination, or participation restrictions (see Openness in Research policy). Fundamental research conducted outside of the US, however, remains subject to export controls. Because fundamental research conducted on US soil is excluded from export control regulations, research and other scholarly activities involving foreign nationals at Lamar University do not

trigger the need to obtain export licenses before they may proceed.

However, in the case of shipments of certain tangible items, software or information outside the U.S., Lamar has the responsibility to either:

1. obtain an export license;
2. document an express determination that an exception to export licensing requirements applies; or
3. document an express determination that no license is needed.

Of primary concern are transactions involving proprietary or confidential export-controlled information provided to Lamar University researcher by third parties, such as corporate vendors, subcontractors, or government collaborators. These may generate disclosure restrictions that may only be acceptable if they fall within the narrow exceptions provided by the Openness in Research Policy and qualify for treatment under an exemption (ITAR) or license exception (EAR) in the export control regulations (see ACCEPTING A THIRD PARTY'S CONTROLLED ITEMS OR DATA, Section IV).

In all of these cases, there are related recordkeeping requirements that must be observed (see RECORDKEEPING REQUIREMENTS, Section V).

The following are the major sections of this policy:

- I. Definitions
- II. Regulations
- III. Export Licenses for Overseas Shipments
- IV. Accepting a Third Party's Controlled Items or Data
- V. Recordkeeping Requirements

I. DEFINITIONS

A. Export

"Export" means to send or take controlled tangible items, software or information out of the United States in any manner, to transfer ownership or control of controlled tangible items, software or information to a foreign person, or to disclose information about controlled items, software or information to a foreign

government or foreign person. The controlled tangible item, software or information being sent or taken out of the United States is also referred to as an "export."

B. Reexport

"Reexport" means an actual shipment or transmission of controlled tangible items, software or information from one foreign country to another foreign country. The export or reexport of controlled tangible items, software or information that will transit through a country or countries, or will be unloaded in a country or countries for reloading and shipment to a new country, or are intended for reexport to the new country, are deemed to be exports to the new country.

C. Deemed Export

"Deemed Export" is a term used by the Commerce Department to describe the situation where a foreign national on US soil may be exposed to, or have access in any manner to, an export-controlled item or export-controlled software or information. Although the State Department does not use this term, but rather includes this concept in its definition of export, Lamar University will use the term "deemed export" when discussing access by foreign nationals to controlled information on our soil, without regard to which agency may have cognizance over the transaction.

D. US Person/Foreign Person

A "US person" is a citizen of United States, a lawful permanent resident alien of the US, (a "Green Card" holder), a refugee or someone here as a protected political asylee or under amnesty. US persons also include organizations and entities, such as universities, incorporated in the US. The general rule is that only US persons are eligible to receive controlled items, software or information without first obtaining an export license from the appropriate agency unless a license exception or exclusion is available.

A "foreign person" is anyone who is not a US person. A foreign person also means any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do business in the US. Foreign persons may include international organizations, foreign governments and any agency or subdivision of foreign governments such as consulates.

E. Fundamental Research

The concept of "fundamental research" was established by [National Security Decision Directive 189](#) (NSDD 189), which establishes a national policy with

regard to how such research shall be treated for purposes of the various export control regimes.

NSDD 189 defines fundamental research as:

basic and applied research in science and engineering where the resulting information is to be shared broadly within the scientific community.

NSDD 189 provides that the conduct, products, and results of fundamental research are to proceed largely unfettered by deemed export restrictions. It also states that the government must determine - before releasing a research opportunity - whether the research should be classified or otherwise kept secret. Research that carries access, participation, or dissemination restrictions will not qualify as fundamental research for purposes of the export control regulations.

Because export regulations expressly recognize that fundamental research is excluded from deemed export controls, no export license or other authorization is needed to involve foreign nationals in fundamental research activity at Lamar University. However, such research may give rise to export issues if the primary research is to be conducted outside of the US or if it requires exposure of foreign nationals to proprietary or confidential export controlled information provided by third parties such as corporations, commercial vendors or government collaborators. Please see Section IV for guidance.

II. REGULATIONS

A. State Department - [International Traffic in Arms Regulations](#) (ITAR) 22 CFR 120-130

The US Department of State, Directorate of Defense Trade Controls (DDTC), is responsible for items and information inherently military in design, purpose, or use. Referred to as "defense articles," such items are found on the US Munitions List, 22 CFR 121. Spacecraft and satellites, even if not for military use, are on the Munitions List, along with their associated systems and related equipment. Information related to Defense Articles is referred to as "technical data."

B. Commerce Department - [Export Administration Regulations](#) (EAR) 15 CFR 700-799

The US Department of Commerce, Bureau of Industry and Security (BIS), has export jurisdiction over every thing in the United States, although BIS does not require a license for every export. BIS controls goods and information having

both civilian and military uses by including them on the Commerce Control List, 15 CFR 774, also known as the "Dual Use List." BIS uses the term "technology" when referring to information about the goods on the Commerce Control List.

**C. Treasury Department - [Office of Foreign Assets Control \(OFAC\)](#)
CFR 500-599**

The US Department of the Treasury oversees US economic sanctions and embargoes through its Office of Foreign Assets Control (OFAC). Empowered by the *Trading with the Enemy Act* and the *International Emergency Economic Powers Act*, OFAC enforces trade, anti-terrorism, narcotics, human rights and other national security and foreign policy based sanctions prohibiting the provision of anything of value, either tangible or intangible, to sanctioned countries, organizations or individuals. The pertinent regulations provide OFAC with broad authority to block or interdict vaguely defined "prohibited transactions" involving restricted destinations or parties.

The export control regulations summarized here each impose severe monetary and criminal penalties for failure to comply with their requirements.

III. EXPORT LICENSES FOR OVERSEAS SHIPMENTS

The Commerce Department has export jurisdiction over all goods and all "technology" (Commerce Department term for information) in the United States, unless some other agency has expressly been given such authority. However, this does not mean that a license must be obtained before any item or piece of information can be shipped. An Export Control Decision Tree is available to assist in determining the applicability of export control regulations in the case of shipments of tangible items or transfers or transmission of software code or information outside US borders. In order to determine whether it is necessary to obtain an export license from the relevant federal agency to send tangible items or to transfer or transmit software code or information outside the United States, the researcher preparing the shipment or transfer needs to consider:

- whether the software code or information is proprietary or disclosure-restricted and thus possibly export controlled, or whether it resulted from fundamental research to which export controls do not apply,
- the description of the tangible item, software or information,
- the technical characteristics and specifications of the item, software or information
- its intended end-use and end-user, and

- its destination.

All tangible items, software code and information not on a US export control list may be shipped or transmitted to any country, individual or entity that is not sanctioned, embargoed or otherwise restricted for export. Such items, code and information may be exported under "No License Required" (NLR) provisions. Questions about the applicability of NLR to a proposed export should be directed to the University Export Control Officer.

Overseas shipments or transmissions being handled on a "No License Required" basis will require an explanation and justification for that classification. Lamar University NLR Certifications are available, and the original Lamar University Certification should be provided to the office of Sponsored Projects Administration; see Section V for information about recordkeeping.

Note also that specific training and documentation is needed whenever you are shipping chemicals, biologicals or other dangerous materials.

IV. ACCEPTING A THIRD PARTY'S CONTROLLED ITEMS OR DATA

The conduct and results of fundamental research may proceed openly and be shared freely with foreign nationals in the United States without concern for deemed export restrictions. Export-controlled items, software code or information provided by a third party, however, may not be openly shared with certain foreign nationals, even though those individuals may be important contributors to the performance of the fundamental research. For example, a corporate vendor or a research partner may have to disclose the proprietary heat and vibration tolerances on a piece of export-controlled hardware being provided for use in carrying out a fundamental research experiment. Proprietary or restricted information that is **required** for the development, production or use of export-controlled equipment is itself export-controlled. It carries with it export control requirements that must be honored by the researcher who agrees to be a recipient of such information.

Before a researcher decides to accept such information, he or she must review the conditions of the University's Openness in Research Policy. If the receipt of such information is in compliance with University policy, the researcher must complete a Certification on the Handling and Use of Third-Party Export Controlled Information. Should the researcher have a need to share export-controlled information with others, the researcher must then determine a proposed recipient's eligibility under export control regulations. This is done by notifying the University Export Control Officer of the need to share the export-

controlled information before it is shared in order to assure proper determination of export control eligibility. If the proposed recipient is determined to be a foreign national, and eligible to receive the export-controlled information, the primary researcher must document the available license exclusion or license exception (see Section V below).

A. Lamar University Openness in Research Policy

Lamar's Openness in Research Policy expresses our institutional commitment to "the principle of freedom of access by all interested persons to the underlying data, to the processes, and to the final results of research." This policy does not forbid nondisclosure agreements, but such a commitment may relate only to such information that is substantially remote from the intellectually significant portions of the research. A promise not to disclose export-controlled information may be appropriate, so long as keeping the confidentiality of that information will not disadvantage any other researchers on the same project AND receipt of that information is not conditioned on submitting to restrictions on the right to publish.

Once it is determined that the nondisclosure commitment does not violate the Openness in Research Policy, it must be determined that the intended recipient is in fact "eligible" under the regulations.

B. Export controls on individual eligibility as a recipient

Generally, federal regulations require that only US persons as defined in Section I may be provided with export-controlled items, software code or information without having to obtain an export license. Nonetheless, there are some specific exemptions (ITAR) and license exceptions (EAR) available to those within the University community that may be useful. It is extremely important to keep them in mind should it become necessary to share any export-controlled items, software code or information beyond the original recipient.

For questions regarding the use of "No License Required," Non-Disclosure Agreements, or license exceptions and exemptions, please contact the University Export Control Officer . In addition, records must be kept in order to demonstrate compliance (see Section V below).

V. RECORDKEEPING REQUIREMENTS

Each of the relevant export control regulations contain specific recordkeeping requirements that must be satisfied. In addition, the university maintains its own recordkeeping requirements in order to document its commitment to, and

compliance with, export control regulations generally.

Departments or programs must keep soft or hard copies of all export documentation, including financial records, shipping documentation (Commercial Invoices, Shipper's Export Declarations), and appropriate Lamar University Certifications in their research project files for a period of five years from the date of the export, reexport or controlled deemed export. Furthermore, each original Lamar University Certification must be provided to the Office of Sponsored Projects. For assistance in determining which Certifications apply to a proposed shipment or transfer, please contact:

Export Control Officer

QUESTIONS

Inquiries concerning the applicability of the export control regulations to any specific set of facts should be directed to the Office of Sponsored Projects.

Provider: Office Sponsored Projects Administration, Lamar University

Contact:

Last updated: Aug 1, 2007