



**LAMAR UNIVERSITY
MANUAL OF ADMINISTRATIVE POLICIES AND PROCEDURES**

SECTION: Academic Affairs

MAPP 02.07.03

AREA: ORSPA

Export Control for Sponsored Research Investigators
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I. POLICY

- A. At Lamar University, our commitment to fostering a culture of excellence in research, innovation, and academic pursuits is paramount. To ensure the integrity, quality, and effectiveness of our research endeavors, it is essential to define terms, establish responsible parties, and provide guidance.

II. PURPOSE AND SCOPE

- A. 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 **Section IV. DEFINITIONS**). 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 an exception to or exclusion from licensing requirements. Lamar University will comply with all applicable export controls, as established by federal regulations (see **Section III. REGULATORY BASIS**).
- B. 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. 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.
- C. This policy applies to all internal and external researchers, key personnel, or any other subject of a funded or unfunded grant, contract, or sponsored program.

III. REGULATORY BASIS

A. 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 Lamar University's Openness in Research policy and qualify for treatment under an exemption (ITAR) or license exception (EAR) in the export control regulations (see **Section VII. ACCEPTING A THIRD PARTY'S CONTROLLED ITEMS OR DATA**).

B. The following Federal regulations strictly define and control exports:

1. **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."

2. **Commerce Department – Export Administration Regulations (EAR)**
15 CFR chapter VII, subchapter C.

The US Department of Commerce, Bureau of Industry and Security (BIS), has export jurisdiction over everything 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.

3. **Treasury Department – Office of Foreign Assets Control (OFEC)**
31 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.

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

IV. DEFINITIONS

A. **Chief Research Officer.** An individual ultimately responsible for the oversight of funded research and sponsored programs at Lamar University. At Lamar University, the Chief Research Officer is

the Associate Provost for Research. The Chief Research Officer may designate an appropriate official to act on their behalf.

- B. **Deemed Export.** 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 jurisdiction over the transaction.
- C. **Export.** The transmission or exchange of 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."
- D. **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*. This directive 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.
- E. **Researcher.** All Individuals who are engaged in research, whether funded or unfunded, or in sponsored programs activities. For the purposes of this policy, the term researcher refers to any Lamar University faculty or staff member having direct responsibility for the design, conduct, and/or reporting of funded or unfunded research or other sponsored programs activities funded or proposed for funding by the federal government or other external funder.
- F. **Research Compliance Officer.** An individual responsible for interpreting and enforcing compliance across all research and sponsored programs enterprises across the University. This officer shall be appointed by the Chief Research Officer and work within the Office of Research and Sponsored Programs Administration.
- G. **Reexport.** 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 one or more countries, or will be unloaded in one or more 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.

H. **Sponsored Programs.** All externally funded activities, including but not limited to: research, training, instruction and/or public service projects involving funds, materials, or other compensation from sources (sponsors) outside of Lamar University, under a grant, contract or other agreement that meets any of the following conditions:

1. Lamar University is bound to a line of scholarly or scientific inquiry specified to a substantial level of detail. Such specificity may be indicated by a plan, by the stipulation of requirements for orderly testing or validation of particular approaches, or by the designation of performance targets;
2. The sponsor requires, or the proposal submitted for consideration contains, a line-item budget or modular budget. A line-item budget details expenses by activity, function, or project period. The designation of overhead (or indirect costs) qualifies a budget as the sponsor requires financial and/or programmatic reports;
3. The sponsor requires that the services performed, the funds awarded, or the materials supplied under the agreement are subject to internal and/or external audit; OR,
4. The agreement provides for the disposition of either tangible (e.g., equipment, records, technical reports, theses, or dissertations) or intangible (e.g., rights in data or inventions) properties that may result from activities covered by the agreement.

I. **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.

V. CONTROLLED MATERIALS

A. Sharing and development of products, goods, computer hardware or software, technology, or other materials may be subject to this policy and US export control laws. These items may be physically or electronically transmitted, shipped, transferred, shared, or traded from the United States to foreign states, people, companies, agents, or entities. These controls govern the handling of these materials in one or more of the following cases:

1. The export has actual or potential military applications.

2. There are economic sanctions or protections concerning the material.
 3. The US government has published or expressed specific concerns about the destination country, organization, or individual.
 4. There are specific US government concerns about the stated or suspected end use of the material or the end user receiving it.
- B. These federal regulations apply to all activities at Lamar University, regardless of the source of funding or whether or not it is research. The University fully cooperates with federal agencies in these matters of the utmost importance. Lamar University employees or students who are unsure of the export status of their materials or foreign individuals should contact the Office of Research and Sponsored Programs Administration to seek guidance.

VI. EXPORT LICENSES FOR OVERSEAS TRANSPORT

- A. The Commerce Department has export jurisdiction over all goods and all "technology" (Commerce Department term for information) in the United States unless another 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:
1. 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;
 2. the description of the tangible item, software, or information;
 3. the technical characteristics and specifications of the item, software, or information;
 4. its intended end-use and end-user; and
 5. its destination(s).
- B. 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, computer 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 Research Compliance Officer.
- C. 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 Research and Sponsored Projects Administration.

- D. Note also that specific training and documentation is needed whenever you are shipping chemicals, biological matter, or other dangerous or otherwise controlled materials.

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

- A. 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, computer 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 activity. 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.
- B. Before a researcher decides to accept such information, they must review the conditions of the University's Openness in Research guidance. 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 Research Compliance 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.
- C. Lamar University's *Commitment to Openness in Research* expresses our institutional dedication 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 University's Commitment to Openness in Research, it must be determined that the intended recipient is in fact "eligible" under the stated regulations.
- D. Generally, federal regulations require that only US Persons as defined in Section IV may be provided with export-controlled items, computer 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, computer 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 Research Compliance Officer. In addition, records must be kept in order to demonstrate compliance.

VIII. ROLES AND RESPONSIBILITIES

- A. The roles and responsibilities of individuals who participate in research and sponsored programs are defined in this section to comply with Federal regulations, Uniform Guidance and the policies of Lamar University and Texas State University System. The responsibilities of program administration are shared by the Chief Research Officer, the Office of Research and Sponsored Programs Administration, and researchers employed by the grant resources.
- B. **Chief Research Officer.** The Associate Provost for Research and the Office of Research and Sponsored Programs Administration bear responsibility for all sponsored grants and contracts and their possible conflicts by providing continuous support and oversight of these activities.
- C. **Office of Research and Sponsored Programs Administration.** The Office of Research and Sponsored Programs Administration shall be represented by the Research Compliance Officer as appointed by the Chief Research Officer. This individual has the following responsibilities:
 - 1. Maintaining current and accurate files on every researcher involved in internal and external sponsored programs.
 - 2. Providing export licenses or licensure exceptions when applicable.
 - 3. Developing approved management plans when applicable.
 - 4. Providing and maintaining relevant training to researchers.
 - 5. Investigating non-compliance or misconduct.
- D. **Researchers** must promptly and fully disclose, in writing, any Export Control concerns (as defined in **Section IV. DEFINITIONS**) that may require a license or explicit licensure exception as determined by the Research Compliance Officer. Researchers must be aware of these regulations and contact the Office of Research and Sponsored Programs Administration if they determine that they must transmit, ship, or otherwise hand over any export-controlled items, computer code, or information to a foreign national or foreign organization as defined by the stated regulations.

IX. NON-COMPLIANCE

- A. Lamar University requires that all researchers comply fully, truthfully and in a timely manner with this policy. Instances of deliberate breach will subject the researcher to disciplinary actions under policies of Lamar University and the Texas State University System. Such action could result in a

formal reprimand, non-renewal of appointment, termination of appointment, or other enforcement action.

- B. If the failure of a researcher to comply with this policy has biased the design, conduct or reporting of funded or unfunded research or sponsored programs activities, Lamar University will promptly notify the appropriate granting agency, sponsor, or other appropriate agency of the incident and corrective action will be taken.

X. EDUCATION AND TRAINING

- A. The University will provide education and training sessions through the CITI system on conflict of commitment regulations and best practices to ensure researchers understand their obligations and responsibilities.

XI. REVIEW AND RESPONSIBILITY

Responsible Parties: Academic Policy Advisory Council; Office of Research and Sponsored Programs Administration.

Review Schedule: Every three years on or before the date the policy was last revised and/or approved.

XII. APPROVAL

Dr. Brett Welch	11/08/2024
Interim Provost and Vice President for Academic Affairs	Date
Dr. Jaime Taylor	11/08/2024
Lamar University President	Date

POLICY LOG

Version	Date	Description of Changes
1	01/01/2011	Issued.
	08/01/2023	Last updated.
		Reviews by constituency groups completed.
		Review by campus community completed.
		Policy approved by President.

APPENDICES**Related Links**

Office of Research and Sponsored Programs Administration

(<https://www.lamar.edu/research/research-and-sponsored-programs.html>)

NSDD 189 (<https://irp.fas.org/offdocs/nsdd/nsdd-189.htm>)

International Traffic in Arms Regulations (ITAR) (<https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-120?toc=1>)

Export Administration Regulations (EAR) (<https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C>)

Office of Foreign Assets Control (OFAC) (<https://www.ecfr.gov/current/title-31/subtitle-B/chapter-V>)

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