

University of Louisiana System

Title: *EXPORT CONTROL*

Effective Date: October 26, 2009

Cancellation: None

Chapter: Miscellaneous

Policy and Procedures Memorandum

The University of Louisiana System is committed to maintaining an open research, educational and business environment while also complying with federal export control laws which control the conditions under which certain information, technologies, and commodities can be transmitted to anyone overseas, including U.S. citizens, or to a foreign national here in the United States.

Failure to comply with these laws exposes both the employee and university to severe criminal and civil penalties such as fines and prison sentences as well as administrative sanctions which include loss of funding and export privileges.

All System institutions shall develop and implement institution-specific export control plans and procedures in compliance with all applicable federal guidelines. This Memorandum provides general background and context of applicable federal regulations related to export controls to which all System institutions must be compliant.

I. DEFINITIONS

A. **(EAR):** Export Administration Regulations, U.S. Department of Commerce; regulates “Dual-Use” technologies, or items designated for commercial purposes that can have military application.

B. **(ITAR):** International Traffic in Arms Regulations, U.S. Department of State; regulates inherently military technologies.

C. **(OFAC):** Office of Foreign Assets Control, U.S. Treasury Department; prohibits transactions with countries subject to boycotts, trade sanctions, and embargoes.

D. **Deemed Export:** the release of controlled technology and/or software to a foreign national inside the United States, including discussions with a foreign researcher or student.

E. **Export:** any oral, written, electronic or visual disclosure, shipment, transfer or transmission of commodities, technology, information, technical data, assistance or software codes to anyone outside the U.S. including a U.S. citizen, a non-U.S. individual (regardless of location), or a foreign embassy or affiliate.

F. **Foreign National:** any foreign corporation, business association, partnership, trust, society or any other group or entity that is not incorporated or organized to do business in the U.S. as well as international organizations, foreign governments and any agency or subdivision of foreign governments, and anyone who is not a U.S. citizen, a lawful permanent resident of the U.S. (i.e. “greencard” holder) or who does not have refugee or asylum status in the U.S.

G. **Fundamental Research:** basic or applied research in science and/or engineering performed at an accredited institution of higher learning in the U.S. where the resulting information either is ordinarily published and shared broadly in the scientific community or where the resulting information has been or is about to be published. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons (EAR) or restricted pursuant to specific U.S. government access and dissemination controls (ITAR).

H. **Technology:** specific information necessary for the development, production, or use of a product. The information takes the form of technical data or technical assistance.

II. **GENERAL APPLICATION**

- A. These regulations have several purposes:
1. to restrict exports of goods and technology that could contribute to the military potential of U.S. international adversaries;
 2. to help prevent proliferation of weapons of mass destruction and terrorism;
 3. to advance U.S. foreign policy goals; and to protect the U.S. economy.

B. Export control laws prohibit the unlicensed export of certain materials or information for reasons of national security or protection of trade. Exports that the U.S. government considers license controlled under the EAR and/or ITAR require licenses. This requirement relates not only to tangible items (prototypes or software) but also to research results.

C. There are certain countries where U.S. policy generally denies licenses for any transfer of these items. Under OFAC, shipment of an item of value to certain individuals, entities, or countries may also require a license, regardless of the classification of the item in question. The U.S. State Department identifies and maintains listings of these individuals, entities, or countries to which restrictions apply.

III. ACADEMIC APPLICATION

A. Most ULS research activities are excluded from the scope of export controls because of fundamental research exclusions included in ITAR and EAR. However, the fundamental research exclusion does not apply if restrictions on publication and dissemination of results or restrictions on the participation of foreign nationals are accepted in the award document.

B. If an institution accepts export-controlled technology or information, knowingly or not, the researcher is subject to ITAR, EAR, and/or OFAC regulations. Export regulations apply whether or not the research is funded and, if funded, whether or not the EAR, ITAR or OFAC regulations are referred to in the award document.

C. Shipment of controlled hardware and software outside the U.S. may require a license under the appropriate regulations (i.e. EAR, ITAR or OFAC).

D. Technical assistance agreements where U.S. citizens or permanent residents are providing training of foreign nationals where a controlled technology is involved requires a license.

E. Traveling abroad with certain controlled tangible items, software, technology or information may also require an export license.

IV. ORGANIZATION AND MANAGEMENT

A. The University of Louisiana System recognizes that export control regulations may impact activities at ULS institutions. Therefore, it is important that administrators and administrative support staff (e.g., deans, directors, fiscal officers, and personnel officers,) as well as faculty are familiar with export

control laws and procedures in order to discern potential issues that may arise in the conduct of not just research, but of all educational activities.

B. Each System institution shall develop plans and procedures in compliance with all applicable federal regulations as appropriate for their institution. They shall establish processes for recognizing whether information, technology or equipment involved in research may be subject to export controls, and for compliance with export control regulations in the conduct of research and other educational activities such as travel and shipping.

C. In developing institution specific plans, procedures and processes, each System institution shall assess the risk and exposure presented by export control regulations with regard to its business practices, paying particular attention to:

1. sponsored and unsponsored research and technology development,
2. travel outside the United States by university employees,
3. shipping items outside the United States,
4. vendor payments, and
5. sharing of information about controlled technology and information with foreign nationals both in and outside the United States.

D. Each System institution shall establish an office and/or committee or designate an individual or individuals who have the responsibility for administering institution plans and procedures regarding export controls.

E. Each institution is responsible for educating all members of the university community of their individual responsibilities in complying with institution specific export control plans and procedures.

Policy References:

- The U.S. Department of Commerce through its Export Administration Regulations (EAR) regulates “Dual-Use” technologies, or items designated for commercial purposes that can have military application [Title 15, Sections 730-774 of the Code of Federal Regulations (CFR)];
- The U.S. Department of State through its International Traffic in Arms Regulations (ITAR) regulates inherently military technologies [22 CFR Sections 120-130];
- The Treasury Department through its Office of Foreign Assets Control (OFAC) prohibits transactions with countries subject to boycotts, trade sanctions, embargoes [31 CFR 500-599].

Review Process:

System Office Staff
Presidents
Vice Presidents for Academic Affairs
University Research/Grant Officers
Legal Counsel

Distribution:

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