

## **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 fundame

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

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:

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

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.

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

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