



70.04: EXPORT CONTROL

Purpose

The purpose of this operating policy is to establish responsibilities and processes pertaining to the Mississippi State University Export Control Program. The export outside of the U.S. of certain commodities, technologies, software, and services is regulated by the U.S. Government for reasons of national security, foreign policy, the non-proliferation of weapons of mass destruction, and for competitive trade. Also regulated under the export control statute, “deemed export”, is the transfer or release of controlled information within the U.S.

This policy is designed to comply with export control laws and regulations. These include but are not limited to ITAR, EAR, and OFAC:

- International Traffic in Arms Regulations (ITAR), U.S. Department of State, Directorate of Defense Trade Controls (22 C.F.R. 120-130)
- Export Administration Regulations (EAR), U.S. Department of Commerce, Bureau of Industry & Security (Title 15, Sections 730-774 of the Code of Federal Regulations)
- Office of Foreign Assets Control (OFAC), U.S. Treasury Department (31 C.F.R. 500-598)

Failure to comply with export control laws and regulations exposes both the individual and the University to severe criminal and/or civil penalties (e.g. fines and prison sentences), as well as administrative sanctions (e.g. loss of research funding and export privileges, statutory debarment).

Policy

It is the policy of Mississippi State University that all students and employees, including faculty, staff, visiting professors, visiting scientists, postdoctoral fellows, researchers, and all other persons retained by or working at or for the university, comply with all U.S. laws and regulations while studying, teaching, conducting research or providing service activities on the behalf of the University. As such, all students and employees are required to comply with U.S. export laws that regulate the transfer of items, information, technology, and services to destinations and persons outside of the United States, as well as in some cases, to non-U.S. employees at the University.

Examples of activities that may implicate export control laws and regulations and therefore require close review by the Export Control Officer (ECO) prior to commencement include, but are not limited to, the following:

- Engaging in research in controlled areas;
- Engaging in research where publication or participation by foreign nationals is restricted by the sponsor;
- Receiving and/or using export-controlled information or technologies obtained from other parties;
- Shipping or taking equipment, technology, or software overseas (promotional items or documents that do not contain confidential or sensitive information are not required to be reviewed);
- Traveling or working outside the United States;
- Collaborating with foreign nationals on research projects, education program, and other services, whether within the U.S. or abroad;
- Preparing or presenting information at venues abroad or at venues within the U.S. where foreign nationals are present;
- Participating in international exchange programs;
- Employing foreign nationals to work in university offices and laboratories;
- Hosting foreign visitors; and
- Training foreign nationals.

Export control laws and regulations generally do not apply to research, teaching, and service activities conducted by university personnel in the U.S. when the item: 1) is already in the public domain or otherwise publicly available; 2) is educational information; 3) forms a part of fundamental research, or, for ITAR regulated-unclassified technical data only, is disclosed to a bona-fide, full-time employee (see definition).

Students, undergraduates and graduates, are permitted to participate in export controlled (EAR, ITAR, etc.) research to further their educational experience; however, the use of any data, information or results from an export controlled research project (including a dissertation or thesis) by any student or researcher that will cause that data, information or results to be shared with individuals outside of the export controlled project team, or into the public domain must first receive written approval from, the contract sponsor, prior to use. Said approval should be in writing and is the responsibility of the respective Principal Investigator (PI) and student to obtain this written approval.

In the event a foreign national is required to work on a restricted project they may be eligible for a Full-Time Employee Exemption (FTEE) if they meet the criteria in 22 CFR 125.4(b)(10). The FTEE applicability must be examined on an individual basis considering several factors to determine if the employee meets the “bona fide” test.

If foreign nationals or a foreign company, as defined by the applicable U.S. Government export regulation(s), are needed to work on a controlled project then a license or a technical assistance agreement (TAA) may be required. The requirement for the license(s) or TAA will be made known to all parties involved in the controlled project.

Procedure

ORC&S reviews all research proposals, non-funded and funded, of any scope and duration

to ascertain if it will be impacted by the U.S. export control laws and regulations. The PI or department business manager may be called upon to assist during the review process. The primary responsibility for ensuring there has been a good faith and diligent determination as to the application of export regulations and compliance with such regulations rests with the PI of the research.

Any contract that is awarded to the University that is found to have requirements for compliance with the U.S. export laws and regulations, and prior to its award to the respective PI, a Technology Control Plan (TCP) will be put into place. The TCP will be presented to the PI and project employees by ORC&S. The TCP must be signed by the PI and ORC&S before the contract is awarded to the respective PI. If any additional people are added to the project the PI must (1) authorize the person in writing, (2) ORC&S will perform an Restricted Party Screening (RPS), (3) the person must provide proof of citizenship, either a birth certificate, passport, or visa, then (4) the person must review and sign the TCP.

No export controlled research will begin or expend any funds designated for the research project until all of the appropriate control documents associated with the controlled research, e.g. TCP, statement of EAR exemptions that apply, etc. have been signed and received by ORC&S.

All TCPs will remain in effect until the contract or project ends, unless there is a change in the PI, contract or project scope, or a major change in any of the protection requirements. Records for all ITAR and EAR projects must be maintained for five years after the end of the project. ORC&S will maintain the TCP and funding information for this period in either electronic or printed form. Training is required every two years by all individuals participating in/having access to export controlled projects.

Definitions

Debarred – To be banned or excluded from doing business. In this instance the U.S. Government can debar companies, colleges, universities, and individuals that have violated the export control acts from doing any international business or even accepting U.S. government contracts. Once a company has been debarred they are placed on the open domain Excluded Parties List System (EPLS) database for the length of the debarment period which is usually 3 years (ITAR 22 CFR 127.7).

Deemed Export – The release or transmission of controlled information, technology or source code that is subject to export control to a foreign national in the U.S. This can be via discussions with students, graduate students, visitors or foreign researchers. Such a release of controlled information is considered to be an export to the foreign national's home country.

EAR - Export Administration Regulations, U.S. Department of Commerce, Bureau of Industry & Security (Title 15, Sections 730-774 Code of Federal Regulations) includes items on the Commerce Control List (CCL)

ECO – Export Control Officer is the administrator of export controlled programs at Mississippi State University in the Office of Research Compliance and Security (ORC&S)

Export – Any item (commodity, software, technology, equipment, software, or information) sent from the U.S. to a foreign destination is considered an export. Examples of exports include the actual shipment of goods as well as the transfer of written documents or information via e-mail, phone, fax, Internet and verbal conversations.

Export License – A written authorization provided by the appropriate governing regulatory authority detailing specific terms and conditions under which the export or re-export of export controlled items can occur.

Educational Information Exclusion – General scientific, mathematical and engineering principles released by instruction in catalog listed courses and associated teaching laboratories or academic institutions are excluded from the export controls under the EAR and ITAR. However, under the EAR the exclusion does not cover controlled information that is conveyed outside of the classroom or teaching lab of an academic institution.

Empowered Official – A U.S. Person who is legally empowered in writing by the University to sign ITAR export license applications or other requests for approval on behalf of Mississippi State University.

Foreign National – A foreign national is anyone who is not a U.S. citizen, or who is not a lawful permanent resident, or who does not have refugee or asylum status in the U.S. Any foreign corporation, business association, partnership, trust, society, or any other foreign entity or group as well as international organizations and foreign governments are considered foreign national(s).

Fundamental Research – As defined by the National Security Decision Directive 189 (NSDD 189), fundamental research is any “basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community...” Information that results from Fundamental Research is not subject to export control. However, if a company, college or university accepts any type of restriction on a contract or project, be it on publication rights, dissemination of results, etc., the fundamental research exemption will not apply.

ITAR – International Traffic in Arms Regulations, U.S. Department of State, Directorate of Defense Trade Controls (22 C.F.R. 120-130) includes items on the United States Munition List (USML)

Re-export – This occurs whenever any item (commodity, software, technology, equipment or information) is sent from one foreign country to another foreign country. If the export originated in the U.S. then the U.S. export control laws and statutes apply to the re-export.

Technology Assistance Agreement (TAA) – is a contract for providing technology transfer for ITAR controlled items, i.e. defense articles and services. The TAA is between a U.S. defense contractor and a foreign based contractor, and is initiated by the U.S. based

contractor. The TAA defines the role of the parties involved; what technology and services are covered; who can access the ITAR controlled technology; where the controlled technology will be physically located; restrictions on the use of the technology; and any allowable exemptions and duration to access the technology. It must be submitted to the U.S. Department of State for approval, and the project that is to be governed by the TAA cannot proceed until the TAA approval is received.

Technology Control Plan (TCP) –The TCP is an internal university compliance document that is prepared by the Office of Research Security (ORS). It states the type of export-controlled information associated with a research project, security measures to be taken by the PI to ensure access to the export-controlled information is controlled and managed, and signed by the PI and all who are working on the project. Once the TCP is in place it is the responsibility of the PI to ensure that all of the security measures listed to safeguard the controlled information or technology are enforced.

U.S. Person – A U. S. person is any U.S. citizen, permanent U.S. resident alien (green card holder), or protected individual (refugee or asylum) wherever that person is located. U.S. incorporated or organized firms and their foreign branches are considered U.S. person(s).

Review

The University's Export Control Program, a unit of the Office of Research Compliance & Security that reports to the Vice President of Research and Economic Development, is responsible for the administration of this policy. This policy will be reviewed every four years (or whenever circumstances require immediate review) by the Export Control Officer, the Director of Research Compliance & Security, and the Vice President for Research and Economic Development.

REVIEWED:

/s/ Chris Jenkins 1/25/2021
Export Control Officer Date

/s/ Kacey Strickland 1/25/2021
Director, Research Compliance & Security Date

/s/ Julie Jordan 1/25/2021
Vice President for Research and Economic Development Date

/s/ Tracey N. Baham 1/25/2021
Director, Institutional Research and Effectiveness Date

/s/ Joan Lucas 1/25/2021
General Counsel Date

APPROVED

/s/ Mark Keenum 1/25/2021
President Date