

MISSISSIPPI STATE UNIVERSITY EXPORT CONTROL POLICY

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, technology or software source code that occurs when such controlled data is obtained by foreign nationals within the U.S.

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 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.

Students, undergraduates and graduates, are permitted to participate in export controlled (EAR, ITAR, etc.) research to further their educational experience. The use of any data, information or results from an export controlled research project 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 PI and student to obtain this written approval.

Furthermore, any student’s dissertation or thesis or any draft thereof, or any research publication that utilizes any data, information or results from an export controlled project must be submitted and approved by the contract sponsor, prior to any use or release of the dissertation, thesis, draft or publication outside of the export controlled project team or into the public domain. Said approval should be written and is the responsibility of the PI student or researcher to obtain.

Failure to comply with these laws 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).

Definitions

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

ITAR – International Traffic in Arms Regulations, U.S. Department of State, Directorate of Defense Trade Controls (22 C.F.R. 120-130)

OFAC – Office of Foreign Assets Trade Controls, U.S. Department of Treasury (31 C.F.R. 500)

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.

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.

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.

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.

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).

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).

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.

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; one who understands the provisions and requirements of the various export

control statutes and regulation, and the criminal liability, civil liability and administrative penalties for violating the Arms Control Export Act and the International Traffic in Arms Regulations. For Mississippi State University the empowered official shall be the Director of Research Security.

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.

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.

Procedure

All research, non-funded and funded, of any scope and duration is subject to review to ascertain if it will be impacted by the U.S. export control laws and regulations. This review will be conducted by the Office of Research Security (ORS) assisted by Sponsored Programs Administration. Additionally, the PI or department business manager may be called upon to offer assistance during the review process. The University shall provide the assistance necessary in assessing the application of and compliance with such regulations, but the primary responsibility for ensuring that 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.

Upon the completion of the review of 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 ORS. The TCP must be signed by the PI and any employees directly working on the project before the contract is awarded to the respective PI. If any employees are added to the project after the initial signing of the TCP, they must be vetted by ORS to ensure there are no legal issues. These additional employees must also read and sign the TCP.

All Technology Control Plans (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

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. Technology Control Plan, statement of EAR exemptions that apply, etc. have been signed and received by the Office of Research Security.

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 the parties involved in the controlled project, i.e. PI, ORS, and others as necessary.

All records pertaining to export compliance issues will be maintained for a period of 5 years in accordance with U.S. Government statutes. ORS will maintain these records in either electronic or printed form.

ORS is responsible for providing the necessary instructional resources to University employees to ensure awareness and understanding of export and sanctions regulations and the implementation of policy. These resources may include written and web-based material, formal and informal course offerings and individualized consultations. All students and employees who actively participate in export controlled research projects are required to attend ORS developed and conducted export compliance training every two years. Failure to attend any export compliance training in the specified time period could result in the delay or loss of a contract award, possible suspension of work performance, or possible disciplinary action as determined by the Vice President for Research and Economic Development.

Traveling internationally for research purposes may require export licensing for some items, e.g. laptops, global positioning system equipment (GPS) and possibly other equipment. To assist in determining if a license is required or if a license exemption can be applied, employees should consult with ORS prior to travel.

Review

The Vice President of Research and Economic Development is responsible for review of this policy as needed by no less frequently than four years.

Authorization

Recommended by:

/s/ David R. Shaw 08/15/2014
Vice President for Research and Economic Development Date

Reviewed by:

/s/ Timonthy N. Chamblee 08/18/2014
Assitant Vice President and Director Date
Office of Institutional Research & Effectiveness

/s/ Joan Lucas 08/22/2014
Legal Counsel Date

Approved by:

/s/ Mark Keenum 08/26/2014
President Date