

**UNIVERSITY OF LOUISIANA AT MONROE
POLICIES AND PROCEDURES MEMORANDUM**

<i>Title:</i>	EXPORT CONTROLS POLICY
<i>Effective Date:</i>	10/13/2008
<i>Update Responsibility:</i>	Academic Affairs
<i>Update Date:</i>	NONE
<i>Cancellation Date:</i>	NONE

PURPOSE/PREAMBLE

The United States (US) laws that govern exports control physical items (hardware) as well as information transfers. Congress passed export control laws to protect national security, prevent terrorism and other illicit activities, restrict exports of goods and technologies that could contribute to the military potential of our adversaries and prevent the proliferation of weapons of mass destruction.

The US export control laws affect higher education by undermining publication rights and prohibit international collaboration if the information or hardware does not qualify for the defined fundamental research exclusion. The consequences for violating these regulations range from loss of research awards and/or other monetary penalties to incarceration.

It is the University of Louisiana at Monroe (ULM)'s policy to comply fully and completely with all United States export control laws and regulations, including those implemented by the Department of Commerce through its Export Administration Regulations (EAR) and the Department of State through its International Traffic in Arms Regulations (ITAR) as well as those imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC). Any export control issue related to research being performed at ULM must be directed to the Office of Sponsored Programs and Research (OSPR).

1) DEFINITIONS

- a. Bureau of Industry and Security (BIS) is responsible for implementing and enforcing the Export Administration Regulations (EAR), which regulate the export and re-export of most commercial items. Items that BIS regulates are often referred as "dual-use" - items that have both commercial and military or proliferation applications - but purely commercial items without an obvious military use are also subject to the EAR.
- b. Controlled Technology is that which is listed on the Commerce Control List.
- c. Deemed Export Rule refers to an export of technology or source code that is "deemed" to take place when it is released to a foreign national within the United States. See §734.2(b)(2)(ii) of the Export Administration Regulations (EAR).
- d. Denied Persons - You may not participate in an export or re-export transaction subject to the EAR with a person whose export privileges have been denied by the BIS.
- e. Entity List - EAR Part 744, Supplement 4 refers to a list of organizations identified by BIS as engaging in activities related to the proliferation of weapons of mass destruction. Depending on your item, you may be required to obtain a license to export to an organization on the Entity List even if one is not otherwise required.
- f. Export Administration Regulations (EAR) refer to the laws that regulate the export and re-export of most commercial items.
- g. Export license refers to the approval documentation issued by an export agency with the authority to authorize the recipient to proceed with the export, re-export, or other regulated activity as specified on the license application.

- h. Foreign National refers to any person who is not a citizen or Permanent Resident Alien of the U.S. Under the EAR, the term applies to “persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals (i.e. has been admitted as a refugee or granted asylum).
- i. Fundamental Research - (EAR and ITAR) means basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons (EAR) or pursuant to specific U.S. government access and dissemination controls (ITAR).
- j. Fundamental Research Exclusions refers to research that normally will be considered as fundamental research unless the university or its researchers accept sponsor restrictions on publication of scientific and technical information resulting from the project or activity.
- k. International Traffic in Arms Regulations (ITAR) refers to the US Department of State’s responsibility for the control of the permanent and temporary export and temporary import of defense articles and services as governed primarily by 22 U.S.C. 2778 of the Arms Export Control Act (AECA) and Executive Order 11958, as amended. The AECA, among other requirements and authorities, provides for the promulgation of implementing regulations, the International Traffic in Arms Regulations (“ITAR,” 22 CFR 120-130).
- l. Technology refers to specific information necessary for the ‘development’, ‘production’, or ‘use’ of a product. Please note that the terms "required," "development," "production," "use," and ‘technology’ are all defined in Part 772 of the EAR.
- m. Transaction refers to “what the item is, where it is going, who will receive it, and what it will be used for. The majority of U.S. commercial exports do not require a license” (BIS).

2) PROCEDURES

- a. Before including foreign nationals in on-campus research, presenting research at international conferences or transferring research information or materials to foreign nationals (within or outside the U.S.A.), there needs to be a discussion with OSPR.
- b. OSPR will review the information to determine if it falls under the fundamental research, educational or bona fide employee exclusions.
 - i. The EAR provides that university research normally will be considered as fundamental research unless the university or its researchers accept sponsor restrictions on publication of scientific and technical information resulting from the project or activity. The EAR specifically permits limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to insure that publication will not compromise patent rights of the sponsor. The citation for the official definition of fundamental research under the EAR is 15 CFR § 734.8.
 - ii. The ITAR states that university research will not be deemed to qualify as fundamental research if: (1) the university or its researchers accept any restrictions on publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher. The ITAR citation is 22 CFR § 120.11(8).
- c. OSPR will also review the following lists to determine their relevance to the export (re-export) transaction (<http://www.bis.doc.gov/complianceandenforcement/liststocheck.htm>):
 - i. Denied Persons List— a list of individuals and entities that have been denied export privileges. Any dealings with a party on this list that would violate the terms of its denial order are prohibited.
 - ii. Unverified List— a list of parties where BIS has been unable to verify the end-user in prior transactions. The presence of a party on this list in a transaction is a “Red Flag” that should be resolved before proceeding with the transaction.

- iii. Entity List— a list of parties whose presence in a transaction can trigger a license requirement under the Export Administration Regulations. The list specifies the license requirements that apply to each listed party. These license requirements are in addition to any license requirements imposed on the transaction by other provisions of the Export Administration Regulations.
 - iv. Specially Designated Nationals List— a list compiled by the Treasury Department, Office of Foreign Assets Control (OFAC). OFAC's regulations may prohibit a transaction if a party on this list is involved. In addition, the Export Administration Regulations require a license for exports or reexports to any party in any entry on this list that contains any of the suffixes "SDGT", "SDT", "FTO" or "IRAQ2".
 - v. Debarred List— a list compiled by the State Department of parties who are barred by §127.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR §127.7) from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required by the ITAR.
 - vi. Nonproliferation Sanctions— Several lists compiled by the State Department of parties that have been sanctioned under various statutes. The Federal Register notice imposing sanctions on a party states the sanctions that apply to that party. Some of these sanctioned parties are subject to BIS's license application denial policy described in §744.19 of the EAR (15 CFR §744.19).
 - vii. General Order 3 to Part 736 (page 9)— This general order imposes a license requirement for exports and reexports of all items subject to the EAR where the transaction involves a party named in the order. This order also prohibits the use of License Exceptions to export or reexport to these parties. These parties are currently located in: Dubai, United Arab Emirates; Germany; Syria; Lebanon; Malaysia; Iran; and Hong Kong.
- d. Should the research be deemed export controlled, then export control training, commodity jurisdiction/classification, and a technology control plan will be required.

3) RESPONSIBILITIES

- a. When faculty, staff, or administrators engage in dialogue with foreign nationals they need to be aware that they may be in violation of the US export control laws.
- b. Researchers must ensure that they are protected by the fundamental research exclusion prior to commencing research where export control laws may apply.
- c. OSPR will review presented information to determine whether the fundamental research exclusion applies or if an export license must be secured prior to commencing research. In addition, OSPR may be able to negotiate favorable contract terms that will place the research under the fundamental research exclusion.

Policy References:

Research Administration and Management. [edited by] Elliott C. Kulakowski and Lynne U. Chronister. Jones and Bartlett Publishers. Sudbury, MA. 2006.
Bureau of Industry and Security (BIS), retrieved from: <http://www.bis.doc.gov/licensing/exportingbasics.htm>
Society of Research Administrators presentation: Export Controls – Basics. Brandi Boniface, University of Florida and Susan Wyatt Sedwick, University of Texas at Austin
Treasury (OFAC) <http://www.treas.gov/offices/enforcement/ofac/sanctions/index.html>
OIG Report on Deemed Exports <http://www.oig.doc.gov/oig/reports/2004/BIS-IPE-16176-03-2004.pdf>

Review Process:

Academic Deans

Distribution:

Academic Deans
Controller
Budget Officer
Vice President for Business Affairs