JACKSON STATE UNIVERSITY

OFFICE OF RESEARCH AND REDERAL RELATIONS

EXPORT CONTROL POLICIES AND PROCEDURES

It is the policy of Jackson State University that, absent extraordinary circumstances, teaching, research, and service will be accomplished openly and without prohibitions or restrictions on the publication and dissemination of the results of academic and research activities. Under the current climate of terrorism and the need to protect the populace, air space, and terrain of the United States, certain federal regulations may require the University to obtain permission from the Department of State, the Department of State, the Department of Commerce, or the Office of Foreign Assets Control before allowing foreign nationals to participate in research involving specific technologies or before sharing research information with persons who are not citizens of the United States or permanent resident aliens.

These export control regulations have the potential to limit the research opportunities of University researchers and their students, affect publication rights, and prevent international collaboration in certain research areas. In addition, violations of these export control regulations can result in the loss of research contracts, monetary fines, or incarceration in the penitentiary. *The regulations do not apply, however, to information that is in the public domain or to information that is the result of fundamental research activities.*

As a faculty member, there are several important items that must be considered related to export control prior to becoming the Principal Investigator for an extramurally funded project. You are the person most qualified to decide if your research falls within covered areas. **Please note that your project should be reviewed periodically as the applicability of export control regulations could change based on the direction of the research, changes in the status of controlled information and technology or changes in the law and regulations.**

The following questions and answers may provide further information, but the official rules and regulations are governed by the International Traffic in Arms Regulations (ITAR); the Export Administration Regulations (EAR); and the Office of Foreign Assets Control (OFAC).

- The United States Department of State (which controls the export of "defense articles and defense services") under the International Traffic in Arms Regulations (ITAR), 22 CFR 120-130. for a list of controlled technologies, see 22 CFR 121.1
  http://www.fas.org/spp/starwars/offdocs/itar/p121.htm (ITAR)
- The United States Department of Commerce through its Export Administration Regulations (EAR), Title 15, sections 730-774 of the Code

of Federal Regulations. For a list of controlled technologies, see 15 CFR 774, Supplement I.
http://www.access.gpo.gov/nara/cfr (EAR)

- The United States Department of Treasury's Office of Foreign Assets Control (OFAC) through the foreign asset control regulations, 31 CFR 500, administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, and those engaged in activities related to the proliferation of weapons of mass destruction.
http://www.treas.gov./offices/enforcement/ofac/

What is an export?

The export regulations define an export as:

- Any oral, written, electronic or visual disclosure, shipment, transfer or transmission outside of the United States to anyone, including a U. S. citizen, or any commodity, technology (information, technical data, or assistance) or software/codes.
- Any oral, written, electronic or visual disclosure, transfer or transmission to any person or entity of a controlled commodity, technology or software/codes with an intent to transfer it to a non-U.S. entity or individual, wherever located (even to a foreign student or colleague at Jackson State University.

It is important to emphasize that only exports for which the U. S. government requires a license are those that are listed on the export controlled lists. The vast majority of exports do not require the prior approval of the U. S. government. The official definition of export under the EAR and ITAR should be consulted when determining whether a specific act constitutes an export. As is evident in many instances, export is defined so as to preclude the participation of foreign graduate students in research that involves covered technology without first obtaining license from the appropriate government agency.

How can export controls affect my research?

"Export" is defined not only as a physical transfer/disclosure of an item outside the U.S., but also as a transfer/disclosure in any form of a controlled item or information within the U. S. to anyone who is a foreign national (not a U. S. citizen or permanent resident). This is called the "deemed export" rule. As a result, unless an exclusion or exemption is available, the University may be required to obtain prior governmental approval (in the form of an export license) before allowing the participation of foreign national faculty, staff, or students in affected research. In some cases, a license may not be available at all based on the country involved.

In addition to affecting who may participate in the research project on campus, the following are examples of situations in which a license may be required:

- Presentation/discussion of previously unpublished research at conferences and meetings where foreign national scholars may be in attendance

- Research collaborations with foreign nationals and technical exchange programs

- Transfers of research equipment abroad

- Visits to your lab by foreign scholars

What kinds of projects raise export control questions?

Basically, any research activity may be subject to export controls if it involves the actual export or "deemed" export of any goods, technology, or related technical data that is either 1) "dual use" (commercial in nature with possible military application) or 2) inherently military in nature.

Work in the following areas is considered high risk:

- Engineering
- Space sciences
- Computer Science
- Biomedical research with lasers
- Research with encrypted software
- Research with controlled chemicals, biological agents, and toxins

In addition, any of the following raise export control questions for your project:

- Sponsor restrictions on the participation o foreign nationals in the research
- Sponsor restrictions on the publication or disclosure of the research results
- Indications from the sponsor or others that export-controlled information or technology will be furnished for use in the research
- The physical export of controlled goods or technology is expected

What is fundamental research?

Fundamental research, as used in the export control regulations, includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the United States where the resulting information, in some cases, is ordinarily published and shared broadly in the scientific community and, in other cases, 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 pursuant to specific U. S. government access and disseminations controls. University research will not be deemed to qualify as fundamental research if:

- The university of research institution accepts any restriction on the publication of information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor; or
- The research is federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the university or the researcher.

The citation for the official definition of Fundamental Research under the EAR is 15 CFR 734.8 and the ITAR citation is 22 CFR 120.11

What is considered published information as used fundamental research?

The EAR and ITAR approach the issue of publication differently. For the EAR, the requirement is that the information has been, is about to be, or is ordinarily published. The ITAR requirement is that the information has been published.

Information becomes "published" or considered as "ordinarily published" when it is generally accessible to the interested public through a variety of ways. Publication in periodicals, books, print, electronic or any other media available for general distribution to any member of the public or to those that would be interested in a scientific or engineering discipline. Published or ordinarily published material also includes the following:

- Readily available at libraries open to the public;
- Issued patents; and,
- Released at an open conference, meeting, seminar, trade show, or other open gathering.

A conference is considered "open" if all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (but not necessarily a recording) or the proceedings and presentations. In all cases, access to the information must be free or for a fee that does not exceed the cost to produce and distribute the material or hold the conference (including a reasonable profit).

What is a Commodity Jurisdiction Ruling?

When an article is arguably covered by both the EAR and ITAR, a request can be made to the State Department to determine which agency will have jurisdiction over the export of the article.

What is public domain and why is it important?

Public domain is the term used for "information that is published and generally accessible or available to the public" through a variety of mechanisms. Publicly available software

or technology is that which already is, or will be published. To fall under this exclusion, there are a number of conditions which demonstrate public availability which are enumerated in the EAR.

The following list includes areas of public domain:
- Sales at newsstands and bookstores
- Subscription which are available without restriction to any individual who desires to obtain or purchase the published information
- Second class mailing privileges granted by the U. S. Government
- Libraries that are open to the public or from which the public can obtain documents
- Through patents available at any patent office
- Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States
- Through public release in any form after approval by the cognizant U. S. government department or agency
- Through fundamental research

If a license is needed, what is the process?

Jackson State University has designated the Office of Sponsored Programs as the Responsible University Official for export control regulations. They will arrange appropriate support with the Office of Research and Federal Relations and, where necessary, outside the University to address export control and license issues. Unless there is an urgent need for expedited review and approval, it normally takes six months or longer to secure a license to export controlled materials from the U. S. or to transmit them to a non U. S. citizen or permanent resident within the U. S.

Export License Decision-Making Steps

- Licensing determinations are very complicated and can involve many different regulations. For assistance, contact Ms. Rita Presley, Assistant Vice President of Research and Director of Sponsored Programs Administration (601-979-2931) or epresley@jsums.edu .The following steps cover most cases, but correct determination requires review of the facts and circumstances in each case.

   1. Determine whether the export is subject to U.S. jurisdiction. (U.S. universities are subject to U.S. jurisdiction as are any foreign nationals in the U.S.; overseas operations *may* be subject to U.S. jurisdiction).

   2. Classify the goods or technology involved as subject to ITAR, EAR, or other regulations.

   3. Determine whether a license is needed for the particular technology and particular end-use and end-user.

4. Determine availability of license exemptions, e.g., public domain, fundamental research, etc.).

5. Determine whether embargoes apply or whether any prohibited parties or destinations are involved.

6. Determine whether there are any "red flags" or other warning signs of possible diversion of the technology.

■ If a license is required, apply promptly – licenses can take weeks or months to obtain.

- State Department (ITAR) licensing requirements and forms are at http://www.pmdtc.org.

- Commerce Department (EAR) licensing requirements and forms are at http://www.bis.doc.gov.

- Treasury (OFAC) licensing requirements are at http://www.ustreas.gov/offices/enforcement/ofac/.

LINKS:

1. Export Controls: Background http://www.stanford.edu/dept/DoR/C-Res/itar_ref.html
2. Council on Governmental Relations Export Brochure http://www.cogr.edu/ (look under Educational Materials, then Export Controls)
3. Export Control Regulations Website http://www.access.gpo.gov/bis/ear/ear_data.html
4. Department of Commerce Bureau of Industry and Security
   1. Export Control Basics http:www.bxa.doc.gov/licensing/exportingbasics.htm
   2. Frequently Asked Questions http://www.bxa.doc.gov/licensing/index.htm#faqs
   3. Deemed Exports http://www.bxa.doc.gov/DeemedExports/DeemedExportsFAQs.html
   4. Lists to Check http://www.bxa.doc.gov/complianceandenforcement/index.htm#1tc
      1. Denied Persons List http://www.bxa.doc.gov/dpl/Default.shtm
      2. Entity List http://www.bxa.doc.gov/Entities/Default.htm
      3. Unverified List http://www.bxa.doc.gov/Enforcement/UnverifiedList/unverified_parties.htm
      4. Office of Foreign Assets Control-Specially Denied Nationals and Blocked Persons http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.html

5. Defense Trade Controls-List of Statutorily Debarred Parties, July
                    1988-April 2004 http://pmdtc.org/debar059.htm
        5. Red Flag Indicators http://bxa.doc.gov?Enforcement/redflags.htm
5. Massachusetts Institute of Technology (MIT) Exports Control Website
    http://web.mit.edu/osp/www/resources_export.htm
        1. Briefing Document-Deemed Exports
            http://web.mit.edu/osp/www/Deemed%20Export_Information%20to%20faculty_researchers_September2004.doc
        2. Summary of Issues Regarding Export-Controlled Software.
            http://web.mit.edu/osp/www/2005-03-14%20Export%20Controlled%20Software.pdf
        3. Do I Need To Be Concerned About Export Controls?
            http://web.mit.edu/osp/www/OSP_Booklet_2003/export_concerned.htm
        4. Export Controls and Embargoes Key
            http://web.mit.edu/osp/www/Export%20Controls_Embargo%20Key.doc
        5. Export Controls (EAR/ITAR) and Embargoes (OFAC)
            http://web.mit.edu/osp/www/Export%20Controls%20(EARITAR)%20and%20Embargoes(OFAC).doc
6. Department of State, Office of Defense Trade Controls http://www.pmdtc.org/index.htm
        1. International Traffic in Arms Regulations (ITAR)
            http://www.pmdtc.org/reference.htm
        2. U.S. Munitions List Quick Reference Chart
            http://www.pmdtc.org/usml.htm
        3. Defense Trade Controls-Embargo Reference Chart
            http://www.pmdtc.org/country.htm
        4. Foreign National Employment, Licensing Guidelines
            http://www.pmdtc.org/doc/Foreign_National_Employment.doc
        5. List of Statutorily Debarred Parties http://pmdtc.org/debar059.htm
7. Department of Treasury, Office of Foreign Assets Control
    http://www.treas.gov/offices/enforcement/ofac/
        1. Sanctions Programs and Country Summaries
            http://www.ustreas.gov/offices/enforcement/ofac/sanctions/
        2. Specially Denied Nations and Blocked Persons
            http://www.ustreas.gov/offices/enforcement/ofac/sanctions/
        3. Civil Penalties Information
            http://www.ustreas.gov/offices/enforcement/ofac/civpen/