

The University of Southern Mississippi

**EXPORT CONTROL REVIEW
PROJECT DIRECTOR/PRINCIPAL INVESTIGATOR CERTIFICATION
Office of the VP for Research & Economic Development**

The University of Southern Mississippi has determined that the terms and conditions relating to the sponsored research project entitled:

requires a technical review by the Office of the Vice President for Research And Economic Development/Export Control to determine whether the proposed research involves the use of “export controlled information”. In general terms, export controlled information includes activities, technology or information related to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, modification, demilitarization, processing or use of items with military application. Export controlled information does not include information which is basic marketing information on function or purpose, general system descriptions, or information concerning general scientific, mathematical or engineering principals commonly taught in schools, colleges and universities, or information in the public domain. (Additional definitions are provided below). As part of the administrative process for submitting the above referenced research contract, you will need to provide clear and concise answers to the questions listed below.

Prior to responding, you will need to review the general overview of your obligations under export laws and regulations. Definitions relating to export controlled information are provided below for your convenience. In addition, you may have to review descriptions of technologies that are controlled by the International Traffic in Arms Regulations (ITAR) 22 CFR Section 121.1 et seq., accessible at http://pmdrtc.state.gov/docs/ITAR/2007/official_itar/ITAR_Part_121.pdf and/or the Export Administration Regulations (EAR) 15 CFR Section 774, Supp. 1, (Categories 0-9) accessible at http://www.access.gpo.gov/bis/ear/ear_data.html and decide if you believe the technology involved in this particular project falls within one or more of the categories

General Overview

It is unlawful under export laws and regulations to send or take export controlled information out of the United States or to disclose, orally or visually, or to transfer export controlled information to foreign nationals inside or outside the United States. A “foreign person” is one who is not a U. S. citizen or permanent resident alien of the U. S.

Researchers may be personally liable for violations of export control laws and regulations; therefore it is important that you use reasonable care in responding to the questions provided below. In addition you should use care in identifying research assistants and/or collaborators who are foreign nationals. In the event the information involved is determined to be export controlled, the university Export Control Office will file for appropriate licenses permitting the release of such information. Please note that until approval is received, you should not transfer or disclose such information to a foreign national. Once approval is received, you should take care in controlling access to export controlled information in your possession.

Penalties

The penalty for unlawful export and disclosure of export controlled information under ITAR is up to two years in prison and/or a fine of \$100,000. Under the Export Administration Regulations, the penalty is the greater of \$1,000,000 or five times the value of the export and imprisonment of up to 10 years.

Definitions

A. PUBLISHED INFORMATION AND SOFTWARE

Information is "published" when it becomes generally accessible to the interested public in any form, such as:

- Ready availability at libraries open to the public or at university libraries
- Patents and open (published) patent applications
- Release at an open conference, meeting, seminar, trade show, or other open gathering.

Software and information is published when it is available for general distribution, either for free or at a price that does not exceed the cost of reproduction and distribution. Notwithstanding encryption software with symmetric key length exceeding 64-bits will not be considered published for purposes of this definition.

B. FUNDAMENTAL RESEARCH

Fundamental research is defined as *basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community*. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons.

1. Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research (**"UNIVERSITY" MEANS ANY ACCREDITED INSTITUTION OF HIGHER EDUCATION LOCATED IN THE U.S.**).
2. Prepublication review by a sponsor of university research solely to insure that the publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers does not change the status of the research as fundamental research. However, release of information from a corporate sponsor to university researchers where the research results are subject to prepublication review will require further export review.
3. Prepublication review by a sponsor of university research solely to ensure that publication would not compromise patent rights does not change the status of fundamental research, so long as the review causes no more than a temporary delay in publication of the research results.

C. CORPORATE RESEARCH

1. Research conducted by scientists or engineers working for a business entity will be considered "fundamental research" at such time and to the extent that the researchers are free to make scientific and technical information resulting from the research publicly available without restriction or delay based on proprietary concerns or specific national security controls.
2. Prepublication review by the company solely to ensure that the publication would compromise no proprietary information provided by the company to the researchers is not considered to be a proprietary restriction, however, so long as the review causes no more than a temporary delay in publication of the research results.
3. Prepublication review by the company solely to ensure that publication would compromise no patent rights will not be considered a proprietary restriction for this purpose, so long as the review causes no more than a temporary delay in publication of

the research results.

4. **However, the initial transfer of information from a business entity to researchers is not authorized under the "fundamental research" provision where the parties have agreed that the business entity may withhold from publication some or all of the information so provided.**

D. EDUCATIONAL INFORMATION

"Educational information" is that information released by instruction in catalog courses and associated teaching laboratories of academic institutions. Note that the provisions of this section do not apply to encryption software exceeding 64-bits.

E. DEFENSE SERVICE

1. The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;
2. The furnishing to foreign persons of any technical data controlled under this subchapter (see Sec. 120.10), whether in the United States or abroad; or
3. Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

Having read the definitions and reviewed the relevant categories listed in ITAR and EAR, please provide concise answers to the following questions. Additional pages will be accepted.

1. In the space provided below, briefly describe, in lay terms, The University of Southern Mississippi's responsibilities under the contract/statement of work.

2. Check one box, as applicable: Does the research or instruction involve basic, fundamental research which can be found in the public domain?

Yes. Briefly provide location or example as to where the research or instruction can be found in the public domain in the space provided below.

No. **Answer question 3.**

3. If the research is *not in the public domain*:

3a. Will any materials, technology, information, or software be generated from this project that is intended for military applications or, if intended for civilian purposes, could have a military application?

- Yes, please answer questions 3b and 3c.
- No, please proceed to question 4.

3b. If 3a is YES, then answer: Do you anticipate that military-related research information or results will be shared *before* publication?

- Yes
- No

3c. If 3a is YES, then answer: If there is potential military application, does this include the potential for future arms or munitions sales or defense services?

- Yes
- No

4. If this activity involves the People's Republic of China (PRC), verify whether the item/research is intended, entirely or in part, to make a direct and significant contribution to the PRC military.

- No**, I have no knowledge that the item/research is intended for a military end-use. The export or transfer of the items/research is for civil end use only.
- Yes**, there may be a military end use. (In this case, provide all known information regarding the military end use of the items/research. Attach additional pages if necessary).

5. If new technology is developed, will the results be published?

- Yes
- No

6. Will the foreign sponsor or foreign national (including PI, student, etc.) have access to any Southern Miss or other U.S. company-proprietary information?

- Yes
- No

7. Indicate your determination with regard to whether *this project* is subject to the ITAR or EAR.

- The project does not involve technologies covered by ITAR or EAR.
- The project/technology is covered by either ITAR or EAR. If so, indicate the relevant category information:

8. In the space provided, describe any specialized equipment that will be used by a foreign person in the course of performing the research. (Use of equipment may be controlled for export purposes if such use extends beyond routine operation. A deemed export license may be required when the use of equipment would require access to the manufacturer's proprietary manual, allowing the foreign person access to technology relating to operation, installation, maintenance, repair, overhaul and refurbishing.). If you need additional space, attach a separate sheet of paper.

9. Will any equipment, encrypted software or other materials be sent out of the U.S. in the course of this project? (Note: *Exclusions to export licensing requirements do not apply when shipping equipment, encrypted software, controlled chemicals or bio-agents*).

- Yes
- No

Project Director/Principal Investigator Certification

I hereby certify that I have read and understand the information provided regarding compliance with export laws and regulations. I understand that I could be personally liable if I unlawfully disclose export controlled information to foreign nationals without prior approval. I have provided complete information in responding to the questions listed above.

Signature _____
(Signature may not be delegated. The Project Director/Principal Researcher for the project must sign).

Printed Name _____

Department _____ Date _____

If necessary, the Office of the VP for Research and Economic Development/Export Control will contact you for additional information to complete the export review process. In the event an export license is required, the Export Control Office will submit an application for a license to the appropriate government entity.