
OFFICE OF THE CHANCELLOR
University of New Orleans

Administrative Policy & Procedure
AP 28.04
AP Effective Date: July 15, 2011

SUBJECT: *Compliance with Export Control Laws and Regulations*

This policy addresses issues related to sharing proprietary, confidential or restricted information or software code with foreign nationals either in the U.S. or abroad, shipping tangible items overseas, and interactions with embargoed or sanctioned countries, organizations or individuals.

AUTHORITY

Article VII, Section 4 of the Bylaws and Regulations of the Board of Supervisors of the Louisiana State University System.

POLICY STATEMENT

It is the policy of the University of New Orleans to comply with U.S. export control laws. Export control laws restrict certain types of information, technologies, and commodities that can be transmitted overseas to individuals, including U.S. citizens, or made available to foreign nationals on U.S. soil.

REASON FOR POLICY

The export of certain items, technologies, software and services is regulated for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction and for competitive trade reasons. Prior written authorization (a “license”) from one or more U.S. government agencies will be required to carry out certain sponsored research or other educational activities involving specified technologies or certain countries, if an exemption or exclusion is not available.

Although many of the University’s activities are exempt from export control laws, some activities may be restricted. Failure to comply with these laws exposes both the employee and the University to severe criminal and civil penalties as well as administrative sanctions (loss of research funding and export privileges).

Criminal penalties for unlawful export and disclosure of information in violation of U.S. export control laws may include fines up to \$1 million and/or imprisonment up to 20 years. Civil penalties can be assessed up to \$250,000 or 2 times the value of the transaction, whichever is greater, for each violation. The university and the individual(s) involved also may lose their ability to export in the future.

LAWS AND REGULATIONS

Export Administration Regulations (EAR) implemented by the Department of Commerce: The EAR covers the export of dual-use (civilian and military) items and technologies. Criminal violations by the university can incur penalties up to \$1 million for each willful violation. For individuals, these penalties can reach up to \$1 million or 20 years imprisonment, or both, per violation. Civil penalties for both the university and individuals can reach up to \$250,000 per violation, or two times the value of the export, whichever is greater. These violations can also result in a denial of export privileges as well as other potential collateral penalties.

International Traffic in Arms Regulations (ITAR) implemented by the Department of State: The ITAR covers the export of military and defense-related items, technologies and services. Criminal penalties can reach up to \$1 million per violation and 10 years imprisonment for individual willful violation. Civil penalties imposed upon departments, agencies, and officials can reach up to \$500,000 per violation. A university found to be in violation of ITAR regulations can be debarred from contracting with the federal government and could lose its export privilege.

Department of Treasury, Office of Foreign Assets Control (OFAC) policies and regulations: These regulations address country-specific controls, including economic and trade sanctions and embargoes, as well as restrictive controls with respect to specific entities and individuals. Travel and the transfer of funds, services, and items to certain countries and a designated list of entities and individuals are subject to OFAC regulations. Penalties will range depending upon the sanction regime in question. Criminal violations by the university can reach up to \$1 million, and criminal penalties for individuals can reach \$1 million or 20 years in prison, or both. Civil penalties can be imposed up to \$55,000 per violation, or two times the transaction in question, or both.

DEFINITIONS

1. **"Export"** means to send or take controlled tangible items, software or information out of the United States in any manner, to transfer ownership or control of controlled tangible items, software or information to a foreign person, or to disclose information about controlled items, software or information to a foreign government or foreign person.
2. **"Re-export"** means an actual shipment or transmission of controlled tangible items, software or information from one foreign country to another foreign country.
3. **"Deemed Export"** is a term used to describe the situation where a foreign national on U.S. soil may be exposed to, or have access in any manner to, an export-controlled item or export-controlled software or information.
4. A **"U.S. person"** is a citizen of United States, a lawful permanent resident alien of the U.S., (a "Green Card" holder), a refugee or someone here under amnesty or political asylum. U.S. persons also include organizations and entities, such as universities, incorporated in the U.S.. The general rule is that

only U.S. persons are eligible to receive controlled items, software or information without first obtaining an export license from the appropriate agency unless a license exception or exclusion is available.

5. A "**Foreign Person**" is anyone who is not a U.S. person. A foreign person also means any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do business in the U.S.. Foreign persons may include international organizations, foreign governments and any agency or subdivision of foreign governments such as consulates.

6. "**Export License**" refers to the approval documentation issued by an export agency authorizing the recipient to proceed with the export, re-export, or other regulated activity as specified on the license application.

7. "**Empowered Officials**" refers to the University's representatives for compliance with export control laws and regulations. The Vice Chancellor for Research and Sponsored Projects and Senior Associate Vice Chancellor for Research and Economic Development have been designated as "Empowered Officials" for export control compliance at UNO.

8. The concept of "**Fundamental Research**" was established by National Security Decision Directive 189. NSDD 189 defines fundamental research as:

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

NSDD 189 provides that the conduct, products, and results of fundamental research are to proceed largely unfettered by deemed export restrictions. It also states that research whose results carry dissemination or foreign national access restrictions will not qualify as fundamental research for purposes of the export control regulations.

9. "**Dual-Use**" means items, information and software that are primarily commercial or civil in nature but also have potential military applications.

10. "**ITAR-Listed**" means items, information and software "specifically designed, developed, configured adapted or modified" for a military, spacecraft or intelligence application. These items, information and software are identified on the U.S. Munitions List (USML), Title 22 CFR § 121.

11. "**EAR-Listed**" means "Dual-Use" technologies, or items designated for commercial purposes that may also have military application. These items, information and software are identified on the Commerce Control List (CCL), Title 15 CFR 774, Supp.1.

12. "**Technology**" refers to specific information necessary for the "development", "production", or "use" of a product. The terms "necessary," "development," "production," "use," and 'technology' are all defined in Part 772 of the EAR.

ACADEMIC APPLICATION

1. Most UNO research activities are excluded from the scope of export controls because of fundamental research exclusions included in ITAR and EAR. However, the fundamental research exclusion does not apply if restrictions on publication and dissemination of results or restrictions on the participation of foreign nationals are accepted in the award document.
2. If a UNO researcher accepts export-controlled technology or information, knowingly or not, the researcher and the University may be subject to ITAR, EAR, and/or OFAC regulations. Export regulations apply whether or not the research is funded and, if funded, whether or not the EAR, ITAR or OFAC regulations are referred to in the award document.
3. When filing a petition to temporarily bring a foreign national to work at UNO in the H-1B, H1B1, L-1 and O-1A nonimmigrant categories, a UNO representative must certify that the individual (a) will not have access to controlled technology or technical data or (b) that the individual will not have access to such controlled technology or technical data until the University has received the appropriate export license or authorization to release such information to the applicant.
4. Shipment (via freight, electronic mail, facsimile, U.S. postal service, courier, or by computer or memory device during travel, etc.) of controlled hardware, software and information outside the U.S. may require a license under the appropriate regulations (i.e. EAR, ITAR or OFAC).
5. Technical assistance agreements where U.S. citizens or permanent residents are providing training of foreign nationals where a controlled technology is involved requires a license.
6. Traveling abroad with certain controlled tangible items, software, technology or information may also require an export license.

EXPORT CONTROL PROCEDURES

A. IDENTIFICATION

1. The Vice Chancellor for Research and Sponsored Projects and Senior Associate Vice Chancellor for Research and Economic Development have been designated as the University's representatives or "Empowered Officials" for compliance with export control laws and regulations.
2. Faculty and staff should familiarize themselves with UNO export control policies and procedures. Additional information and guidance can be located under Export Controls on the UNO Compliance website: <http://compliance.uno.edu/> Employees engaged in research may be required to undergo more in-depth export control training through the Office of Research and Sponsored Programs.
3. Employees engaged in research are encouraged to disclose potential export control issues to Office of Research and Sponsored Programs as soon as possible. Because applying for an export control license and development of a Technology Management Plan takes time, it is in the employee's best interest to disclose these issues early so as not to delay the start of a research project.

4. Departmental or unit procedures have been developed to identify potential export control issues related to University activities such as research, hiring and travel. Employees are expected to provide timely and accurate information and assist unit representatives in their efforts to comply with applicable export control laws and regulations.

5. In cases where a research project or other University activity requires an export control license, or where there is a question as to whether a license is required, the matter will be submitted to the Compliance Review Committee (CRC) for final determination. CRC is comprised of individuals in the following positions: Vice Chancellor for Research and Sponsored Programs, Executive Director of Research and Sponsored Programs, Senior Associate Vice Chancellor for Research and Economic Development and the University Counsel.

6. The CRC will determine whether the University will exercise its discretion to proceed with licensure of an export controlled activity.

B. MANAGEMENT

The CRC, in consultation with the interested employee and administrators, will develop an appropriate Technology Management Plan in order to ensure compliance with the requirements of the export control license.

C. RECORDKEEPING REQUIREMENTS

Departments or programs must keep electronic or hard copies of all export documentation, including financial records, shipping documentation (Commercial Invoices, Shipper's Export Declarations), and certifications in their research project files for a period of five years from the date of the export, re-export or controlled deemed export.

D. ADDITIONAL RESOURCES

The following resources may be located on the UNO Compliance website under Export Controls at <http://compliance.uno.edu/Home/ExportControl.aspx>

UNO Export Controls Basics Power Point Presentation

Export Control Decision Tree

NACUANOTES International Academic Travel and U.S. Export Controls

NACUANOTES: Export Compliance During the Visa Application Process: The New I-129 Form and Its Implications for Higher Education

Council on Government Relations Brochure on Export Controls and Universities
http://www.cogr.edu/Pubs_ExportControls.cfm