



THE UNIVERSITY of
NEW ORLEANS

Policy No:	AP-RE-05.2
TITLE:	Compliance with Export Control Laws and Regulations
EFFECTIVE DATE:	February 14, 2014
CANCELLATION:	
REVIEW DATE:	Fall 2018

ADMINISTERED BY: Office of Vice President for Research and Economic Development

PURPOSE

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

AUTHORITY

University of Louisiana System Policy and Procedure Memorandum M-16 (Export Control).

DEFINITIONS

1. "**Export**" means
 - (a.) to send or take controlled tangible items, software or information out of the United States in any manner;
 - (b.) to transfer ownership or control of controlled tangible items, software or information to a foreign person, regardless of whether such transfer takes place within or outside the U.S.
 - (c.) to disclose information about controlled items, software or information to a foreign government or foreign person, regardless of whether such transfer takes place within or outside the U.S.;
 - (e.) an item, software code, or piece of information that has been "exported" under other subparts of this definition.
2. "**Export Controls**" are U.S. laws and regulations that restrict the distribution to foreign nationals and foreign countries of strategically important products, services and information for reasons of foreign policy and national security.
3. "**Re-export**" means an actual shipment or transmission of controlled tangible items, software or information from one foreign country to another foreign country.
4. "**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. May occur through visual inspection, electronic mail, oral exchange and a variety of other means.
5. A "**U.S. person**" is a citizen of the United States, a lawful permanent resident alien of the U.S., (a

"Green Card" holder), or a refugee or someone in the U.S. 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 export controlled items, software or information without first obtaining an export license from the appropriate agency unless a license exception or exclusion is available.

6. 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.

7. **"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.

8. **"Empowered Officials"** refers to the University's representatives for compliance with export control laws and regulations. The Vice President for Research and Economic Development and the Facilities Security Officer have been designated as "Empowered Officials" for export control compliance at UNO.

9. **"Fundamental Research"** is defined by National Security Decision Directive (NSDD) 189 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.

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

11. **"ITAR-Listed"** means items, information and software specifically designed, developed, configured, adapted or modified for a military, spacecraft or intelligence application. The Department of State is responsible for the export and temporary import of defense articles and services governed by 22 U.S.C. 2778 of the Arms Export Control Act ("AECA"; see the [AECA Web page](#)) and Executive Order 13637. The International Traffic in Arms Regulations ("ITAR," 22 CFR 120-130) implements the AECA.

12. **"EAR-Listed"** means "Dual-Use" technologies that are identified on the Department of Commerce's Export Administration Regulations (EAR) Commerce Control List (CCL), Title 15 CFR 774, Supp.1.

13. **"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.

GENERAL POLICY

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. 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, unless an exemption or exclusion is 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 for violations vary depending upon the sanction regime in question. Criminal violations by a 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.

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) as part of conducting research, 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) 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 in which 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

IDENTIFICATION

1. Faculty and staff are to familiarize themselves with UNO export control policies and procedures. Additional information and guidance can be located under Export Controls on the UNO Compliance website: <https://www.uno.edu/research/funding/compliance> Employees engaged in research may be required to undergo more in-depth export control training through the Office of Research and Sponsored Programs.
2. Employees engaged in research are to disclose any circumstance they believe to be a potential export control issue to the 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.

3. Units associated with research, hiring, international visitors, and travel are to develop and maintain procedures for export controlled issues under their purview and work with the Empowered Officials to integrate those procedures with this policy. Employees are to provide timely and accurate information and assist unit representatives in their efforts to comply with applicable export control laws and regulations.

4. Whenever 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 President for Research and Economic Development, Executive Director of Research and Sponsored Programs, and the Facilities Security Officer.

5. The CRC will, at their discretion, consult with relevant parties (e.g. UL System counsel, federal agencies, etc.) to determine whether the University will seek licensure to proceed with an export controlled activity and how to manage export-controlled items or information.

MANAGEMENT OF EXPORT CONTROLLED PROJECTS

In most projects with export control restrictions, the restrictions can be satisfied without obtaining a license (i.e. by restricting access by foreign nationals, etc.). Thus, whenever a project is initiated that has export controls (whether a license is being sought or not), principle investigators are to meet with representatives of the CRC for training and planning of how export control compliance will be ensured.

When a license is obtained to allow a controlled export, the CRC, in consultation with the relevant employees and administrators, will develop an appropriate Technology Management Plan in order to ensure compliance with the requirements of the export control license.

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.

ADDITIONAL RESOURCES

Resources are available on the UNO Compliance website under Export Controls at:
<https://www.uno.edu/research/funding/compliance>.



Peter J. Fos, Ph.D., M.P.H.
President
University of New Orleans