

# FOREIGN NATIONALS, DISCLOSURES OR TRANSFERS OF INFORMATION AND TECHNICAL DATA TO (TULANE UNIVERSITY POLICY)

**Responsible University Official:** Vice President for Research  
**Responsible Office:** Research Compliance Officer  
**Coordinating Departments:** Office of International Students & Scholars (“**OISS**”);  
Sponsored Projects Administration (“**SPA**”); and Office of  
General Counsel (“**OGC**”)  
**Issued Date:** February 1, 2011                      **Effective Date:** February 1, 2011  
**Last Reviewed Date:** February 1, 2011                      **Next Review Date:** February 1, 2011  
**Who Needs to Know This Policy:** All Tulane University faculty, staff and students  
**Website:** <http://tulane.edu/asvpr/research-compliance.cfm>

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## I. Background

Research, scholarly, and other activities of Tulane University (“**Tulane**” or the “**University**”) are subject to U.S. export control and trade sanction laws (collectively “**Export Control**”) and implementing regulations, regardless of whether the activity is sponsored or not. Export Control laws are Federal laws designed to prevent foreign citizens, industry, and governments, or their representatives, from obtaining information that is contrary to the national security, economic or political interests of the U.S. These laws govern, among other things, the transfer of certain tangible items, software, technology, and information to a foreign national (either in the U.S. or abroad) or to a foreign country. This includes shipping technologies overseas to anyone, including foreign nationals, and sharing information or technology with researchers and others that are not a U.S. citizen or entity, whether located in the U.S. or overseas. Violation of these laws may result in serious individual fines, seizures, and/or imprisonment.

## II. Policy

- A. **Generally:** It is the policy of Tulane to comply with U.S. Export Control laws and regulations. Export Control laws restrict certain types of information, technologies, and commodities that can be disclosed or made available to foreign nationals, both on U.S. soil or overseas. It applies to both funded and unfunded research, services and academic activities. It is the responsibility of faculty, staff, administrators and students to be aware of and comply with these laws and the University’s written instructions and procedures, and to obtain all requisite licenses or ensure the existence of an exemption from license requirements before undertaking the anticipated activity. Failure to secure the required licenses subjects the researcher to potential criminal and civil penalties as well as University sanctions.

**B. Disclosures in U.S. to Foreign National of Information or Technical Data:** To the extent disclosure of information falls within the “safe harbor” of either public domain, fundamental research, or education exemptions (discussed below), then University faculty, researchers, and students do not need to be concerned about export control issues on campus. Vigilance is required to ensure that the availability of these exemptions are not lost due to inadvertent acceptance of contractually imposed restrictions on access to, dissemination of, or participation in research.

1. **Public Domain Exception:** Both the EAR and ITAR provide that no license is needed to disclose technical information to foreign nationals inside the U.S. in classes or laboratories, at conferences or in publications, if the information is in the public domain. Information is in the public domain if, in part, it is published and generally accessible to the public through unlimited and unrestricted distribution. The education exception does not apply to tangible items (e.g., specific scientific equipment) or services.
2. **Fundamental Research Exception:** EAR and ITAR provide an additional exception to export controls regarding fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. It pertains specifically to transfers of information to foreign persons on U.S. soil. This “fundamental research” exclusion applies for basic and applied research in science and engineering performed by colleges and universities so long as that research is carried out openly and without restrictions on publication or access to or dissemination of the research results. The fundamental research exception does not apply to tangible items (e.g., specific scientific equipment) or services.
3. **Education Exception:** EAR and ITAR contain a second critical exemption regarding education and teaching that permits the disclosure of educational information released by instruction in catalog courses or general scientific, mathematical, or engineering principles commonly taught in colleges and universities without a license from the Department of State.<sup>1</sup> While the fundamental research and public domain exemptions apply only to disclosures to foreigners in the U.S., the education exemptions apply to disclosures of information and technical data, both in the U.S. or abroad. The education exception does not apply to tangible items (e.g., specific scientific equipment) or services.

**C. Disclosures Abroad to Foreign National of Information or Technical Data:** To the extent activities of the University involves teaching or training foreign students or teaching colleagues abroad how to use equipment, export control issues do arise. The education exception may permit such activities (see Section II.B(3)). Consult with the Research Compliance Officer to determine whether any other regulatory exemptions may be available.

**D.** For sponsored research, the Vice President for Research is charged with determining whether an export license is required for the disclosure or transfer of information or

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<sup>1</sup> EAR 734.8; ITAR 120.10(5).

technical data to foreign persons; and, reciprocally, whether a technology control plan is required.

- E. For unsponsored research, the Department/School where the anticipated research or services will be performed is responsible for determining whether an export license is required for the disclosure or transfer of information or technical data to foreign persons. The involved Department/School will work with the PI/faculty member to determine whether to recommend a technology control plan to the Vice President for Research. If a technology control plan is required, the Department/School and the PI/faculty member will prepare, implement and otherwise comply with the approved technology control plan. The technology control plan must be approved by the Department/School and co-signed by the PI/faculty member and the Department/School (with a copy to the RCO and SPA). The technology control plan must be annually certified by the PI/faculty member and the Department/School (with copies of signed annual certifications to SPA and the RCO).

### **III. Procedures**

- A. **Deemed Export Questionnaire:** Tulane has established a process to proactively review foreign nationals that seek to engage in Tulane academic or research activities in the U.S. pursuant to an H-1B, H-1B1 or O-1A visa category. The hiring Tulane department/office is required to complete the “*Deemed Export Questionnaire*” and submit it to OISS with escalated review, as appropriate by Tulane’s Research Compliance Officer.

### **IV. Related Policies**

N/A

### **V. Related Forms**

- A. Deemed Export Questionnaire