

POL 10.05.02
Export Control Policy

Authority: Chancellor

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Related Policies:

- [UNCP Policy 10.05.01 Patent Policy](#)
- [UNCP Faculty Handbook Section II Chapter 3, Academic Freedom and Responsibility in the University Community](#)

Additional References:

- [US Department of Commerce Export Administration Regulations](#)
- [US Department of State International Traffic in Arms Regulations](#)
- [US Department of the Treasury Office of Foreign Asset Control](#)
- [UNC System Policy Manual and Code 500.1](#)

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1. INTRODUCTION

As described in the UNCP Faculty Handbook, academic freedom, absent extraordinary circumstances, in the pursuit of 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. However, for reasons of national security and foreign policy, Federal export control laws restrict the shipment, transmission or transfer of certain items, software, technology and services from the U.S. to foreign countries. Also regulated are those things that can be “deemed exports,” which include release(s) of controlled technology and/or software source code to foreign nationals located in the U.S. Although many UNCP activities are exempt from export control laws, some activities may be restricted. Prior written authorization (a “license”) from one or more U.S. government agencies may be required to carry out certain sponsored research or other educational activities involving specified technologies or certain countries, if an exemption or exception is not available. Failure to comply with these laws exposes both the employee and the University to severe criminal and civil penalties (fines and prison sentences) as well as administrative sanctions (loss of research funding and export privileges).

2. PURPOSE

The University of North Carolina Pembroke (UNCP) is committed to compliance with all applicable federal statutes, executive orders, regulations, and contractual requirements for the safeguarding of controlled technical information in its possession. This includes full and total compliance with Export Administration regulation (EAR), Department of State International Traffic in Arms Regulations (ITAR), and US Department of Treasury Office of Foreign Asset Control (OFAC).

3. STATEMENT OF POLICY

Employees or other persons acting on behalf of UNCP shall, under no circumstances, engage in activities in contravention of U.S. export control regulations.

3.1.1 Scope. This regulation applies to all university personnel, including faculty, staff, students and visiting scholars. Research which is in the public domain, or that is considered fundamental research (see 3.2.8 below), is not subject to export regulation.

3.2 Definitions

3.2.1 Deemed Export. An export of technology or source code (except encryption source code) is "deemed" to take place when it is released to a foreign national within the United States. See §734.2(b)(2)(ii) of the Export Administration Regulations ([EAR](#)).

3.2.2 Defense Article. Defense article means any item or technical data designated in [§121.1 of the EAR](#). The policy described in [§120.3](#) is applicable to designations of additional items. This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in § 121.1 of this subchapter. It does not include basic marketing information on function or purpose or general system descriptions. Examples include certain chemical agents, cameras designated for military purposes, specified lasers, and GPS equipment that exceed certain specifications.

3.2.3 Defense Service. 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; the furnishing to foreign persons of any technical data controlled under this subchapter (see [ITAR § 120.10](#)), whether in the United States or abroad; or 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.

3.2.4 “Export” means an actual shipment or transmission of items subject to the EAR out of the United States, or release of technology or software subject to the EAR to a foreign national in the United States, as described in paragraph (b)(2)(ii) of this section. See paragraph (b)(9) of this section for the definition that applies to exports of encryption source code and object code software subject to the [EAR](#).

3.2.5 Export Controls. The set of U.S. laws, regulations and policies that govern the export of certain items, software and technology as described in the Legal Authority Export Administration Regulations.

3.2.6 Foreign Person. Foreign person means any natural person who is not a lawful permanent resident as defined by [8 U.S.C. 1101\(a\)\(20\)](#) or who is not a protected individual as defined by [8 U.S.C. 1324b\(a\)\(3\)](#). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

3.2.7 Fundamental Research. Fundamental research is 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 as defined in § [734.11\(b\)](#) of this part. (See Supplement No. 1 to this part, Question D(8)). Note that the provisions of this section do not apply to encryption software classified under ECCN 5D002 on the Commerce Control List (Supplement No. 1 to part 774 of the EAR), except publicly available encryption object code software classified under ECCN 5D002 when the corresponding source code meets the criteria specified in § 740.13(e) of the EAR. See § [740.13\(e\)](#) of the EAR for eligibility requirements for exports and reexports of publicly available encryption source code under License Exception TSU.

3.2.7.1 University Research that falls in the following categories is considered fundamental Research:

3.2.7.1.1 Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research, as described in paragraphs (b) (2) through (6) of this section [734.8](#).

3.2.7.1.2 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, is subject to the EAR. (See Supplement No. 1 to part 734.8.)

3.2.7.1.3 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.

3.2.7.1.4 The initial transfer of information from an industry sponsor to university researchers is subject to the EAR where the parties have agreed that the sponsor may withhold from publication some or all of the information so provided.

3.2.7.2 University based research is not considered “fundamental research” if the university or its researchers accept (at the request, for example, of an industrial sponsor) restrictions on publication of scientific and technical information resulting from the project or activity. Scientific and technical information resulting from the research will nonetheless qualify as fundamental research once all such restrictions have expired or have been removed. The provisions of § [734.11](#) of this part will apply if a university or its researchers accept specific national security controls (as defined in § [734.11](#) of this part) on a research project or activity sponsored by the U.S. Government.

3.2.8 U.S. Government Restricted Party Lists. Several restricted party lists have been established and published by the U.S. Government. The University of North Carolina system utilizes the Visual Compliance to simultaneously screen parties against the U.S. Government Restricted Party Lists. These lists include:

3.2.8.1 A Denied Persons List of individuals and entities who have been denied export privileges.

3.2.8.2 The Entity List identifies foreign parties that are prohibited from receiving some or all items subject to the EAR unless the exporter secures a license. Those persons present a greater risk of diversion to weapons of mass destruction (WMD) programs, terrorism, or other activities contrary to U.S. national security or foreign policy interests. By publicly listing such persons, the Entity List is an important tool to prevent unauthorized trade in items subject to the EAR. The Bureau of Industry and Security (BIS) can add to the Entity List a foreign party, such as an individual, business, research institution, or government organization, for engaging in activities contrary to U.S. national security and/or foreign policy interests. In most instances, license exceptions are unavailable for the export, reexport, or transfer (in-country) to a party on the Entity List of items subject to the EAR. Rather, a prior license is required, usually subject to a policy of denial. For guidance concerning the prohibitions and license application review policy applicable to a particular party, please review that party's entry on the list. Procedures for removal from the Entity List appear in section [744.16](#) of the EAR. General Orders also may restrict exports to named individuals or entities.

3.2.8.3 The Unverified List of parties whose bona fides BIS has been unable to verify. No license exceptions may be used for exports, reexports, or transfers (in-country) to UVL parties. A statement must be obtained from such parties prior to shipping items not subject to a license requirement. See Section [744.15](#) of the EAR.

3.2.8.4 The Consolidated Screening List is a downloadable file that consolidates export screening lists of the Departments of Commerce, State and the Treasury into one spreadsheet to assist in screening potential parties to regulated transactions. If the potential match is from the consolidated list, please follow the detailed instructions on the Consolidated List homepage to determine what list the potential match is from and under what government agency's jurisdiction.

4. IMPLEMENTATION

4.1 Administration

4.1.1 Empowered Official (EO). The Associate Vice Chancellor for Research and Sponsored Programs shall serve as the EO.

4.1.2 Empowered Official as defined in ITAR [22 CFR 120.25](#) for all export control and embargo compliance at UNCP and is authorized as the signing official for export license applications or other requests for approval on behalf of the University. The Empowered Official will consult with UNCP General Counsel for legal guidance for export controls issues. The duties of the Empowered Official include:

4.1.2.1 authorizing, signing and processing of export license applications on behalf of the university;

4.1.2.2 exercising the authority to make inquiry into any aspect of a proposed export in order to verify that the export is legal, and that the information submitted for a transaction is accurate.

4.1.3 The Office of the Provost. The approval signature of the Provost is required for all international travel by faculty or university staff. Prior to approving international travel, the

Provost's office will coordinate with the Office of Global Engagement and the Office of Sponsored Research and Programs to verify whether the planned international travel involves sanctioned or embargoed countries or individuals; and whether UNCP employees are transferring controlled technologies/technical data to foreign nationals without appropriate licenses, license exemptions or regulatory exclusions.

All foreign visitors to UNCP must obtain the Provost's approval at least 1 (one) month in advance of the visit. The Provost's office will coordinate with the Office of Global Engagement to determine, in advance of the planned visit, whether the World Health Organization and/or the Centers for Disease Control and Prevention have issued any travel notices pertaining to the international visitor's home country.

4.1.4 The AVC of the Office of Global Engagement is the official responsible for monitoring international travel to embargoed countries, including travel to Cuba for compliance with the Cuban Assets Control Regulations at 31 CFR Part 515. The AVC of the Office of Global Engagement will work with the Empowered Official to facilitate compliance with all export control regulations.

4.1.5 The Office of Global Engagement. The Office of Global Engagement will utilize the Visual Compliance Software for review and clearance of foreign national undergraduate, graduate and international exchange students, respectively, against U.S. Government Restricted Party Lists.

4.1.6 The Department of Business Services. Export or import of materials is restricted. The Department of Business Services will be responsible for assuring that purchase of materials that may be shipped directly from suppliers to overseas locations are not in violation. Likewise, receipt into the U.S. from overseas suppliers must be reviewed. Business Services will utilize the Visual Compliance software to assure that vendors from whom UNCP makes purchases are not debarred or restricted vendors.

Additionally, Business Services will make every attempt to determine whether or not items that require bids have an Export Control Classification Number (ECCN). If the item is determined to have control classification, the Empowered Official and the head of the department wishing to purchase will be notified for follow-up.

4.1.7 Department of Information Technology (DoIT). Foreign travel with laptop computers that contain encryption technology are deemed controlled, and therefore, restricted. Theft or loss of such laptops while overseas can result in severe fines and/or criminal charges. For this reason, travel-appropriate laptop computers will be available from DoIT for UNCP faculty and staff to sign-out for foreign travel.

4.1.7 Office of Sponsored Research and Programs. The Office of Sponsored Programs and Research is responsible for the review of all grant and contract awards to determine whether any terms or provisions within the award restrict access to the research or information resulting from the research in a manner that would render the project as unqualified for exclusion as fundamental research. Awards will be specifically reviewed for:
Restrictions which preclude foreign nationals from performing or accessing the research

4.1.7.1 Restrictions on disclosure of results or submission of deliverables to certain countries or individuals

4.1.7.2 Requirements for the use of third-party information that is subject to non-disclosure

4.1.7.3 Deliverables that are actually equipment or encryption technology that are controlled by export regulations

4.1.8 Office of Human Resources.

The Office of Human Resources is responsible for UNCP's compliance with federal laws and regulations regarding employment of foreign nationals