



DRAFT

UNIVERSITY OF NORTH CAROLINA WILMINGTON

EXPORT CONTROL MANAGEMENT PLAN

I. Introduction

The purpose of this management plan is to supplement the UNCW Export Control Compliance Policy 03.370 by identifying specific roles, responsibilities and procedures for export control screening at the University of North Carolina Wilmington. “Export control” is a phrase used to refer to a set of laws and regulations implemented by three federal agencies: the Department of Commerce (Export Administration Regulations); the Department of State (International Traffic in Arms Regulations); and the Department of Treasury (through the Office of Foreign Assets Control).

The export control regulations must be considered when entering into grants, agreements, contracts and subcontracts. Additionally, the regulations may apply to activities other than sponsored research, such as international travel opportunities, sharing technical data with foreign nationals, or shipping equipment outside the U.S. Other campus and research activities may be excluded from export control regulations.

Maintaining compliance with these regulations is critical yet problematic, as the regulations conflict with university philosophies of sharing information and academic freedom. The regulations are lengthy, difficult to interpret, and frequently subject to change. However, they are to be taken seriously as penalties for violations may include significant fines and jail time, and are assessed against the individual committing the violation. Members of the campus community are urged to review available resources detailed in this plan, the UNCW Export Control Compliance policy, and the UNCW Export Control website (<http://www.uncw.edu/orssp/conduct-export.html>) to prevent inadvertent violations.

II. Regulatory Overview

A. Export Administration Regulations (EAR) – 15 CFR Parts 730-774

The Export Administration Regulations or EAR are promulgated and implemented by the U.S. Department of Commerce under the Bureau of Industry and Security. The EAR regulate the export of civil and “dual use” commodities, technologies and software (see definitions in section III below). A license may be needed to export items regulated by the EAR depending upon the item and the country to which the item will be exported. Items regulated by the EAR are listed on the Commerce Control List (CCL).

B. International Traffic in Arms Regulations (ITAR) – 22 CFR Parts 120-130

The International Traffic in Arms Regulations or ITAR are promulgated and implemented by the U.S. Department of State. ITAR controls export of items that are inherently military in nature. These items are listed on the Munitions Control List.

C. Office of Foreign Assets Control Regulations (OFAC) – 31 CFR Parts 500-597

The Office of Foreign Assets Control or OFAC is housed in the U.S. Department of Treasury and regulates trade with foreign countries. Certain foreign countries are subject to U.S. trade sanctions or full embargoes.

III. Important Definitions

Deemed Export	The release of technology to a foreign national in the United States through such means as demonstration or oral briefing. This exchange is “deemed” to be an export to the country of the foreign national.
Dual Use Items	A term used for EAR-controlled items that can be used both in military and other strategic uses and in commercial applications.
Educational Information	Information that is released by instruction in catalog courses and associated with teaching laboratories of academic institutions.
Effective Control	To retain physical possession of an item or secure the item in such an environment as a hotel safe, a bonded warehouse, or a locked or guarded exhibition facility.
Export	An actual shipment or transmission of items out of the United States.

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Foreign National	Any person who is not a native or national of the United States unless lawfully admitted for permanent residence in the United States (holder of a permanent resident alien visa or “green card”)
Fundamental Research	Basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community.
Item	A commodity, software or technology.
License	Authority issued by the Bureau of Industry and Security authorizing an export, reexport, or other regulated activity.
Open Conference or Gathering	A conference or gathering where all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record (not necessarily a recording) of the proceedings and presentations, and any registration fee is reasonably related to cost.
Published Information	Information that is generally accessible to the interested public in any form, including: publication in periodicals, books, print, electronic or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or for a price that does not exceed the cost of reproduction and distribution; readily available at libraries open to the public or at university libraries; patents and open (published) patent applications available at any patent office; release at an open conference, meeting, seminar, trade show, or other open gathering.
Reexport	An actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country; or release of technology or software subject to the EAR to a foreign national outside the United States.
Technical Data	Data in the form of blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.

IV. UNCW Export Control Compliance Policy

The UNCW Export Control Compliance Policy was adopted on October 1, 2007 by the Provost and Vice Chancellor of Academic Affairs (Appendix A). The policy affirms UNCW’s commitment to export control compliance, states that UNCW will maintain a free and open academic environment, assigns responsibilities, and establishes recordkeeping requirements. This policy is posted on the UNCW Export Control website (<http://www.uncw.edu/orssp/conduct-export.html>) as well as the main UNCW Policy website (<http://www.uncw.edu/policies/>).

V. Principal Responsible Parties

- A. Empowered Official
Dr. Robert Roer
Dean, Graduate School and Research

In accordance with UNCW policy, the Chief Research Officer shall serve as the Empowered Official (EO) for all aspects of export control. The EO shall maintain current knowledge of export control issues and regulations and is responsible for implementing the foregoing plan.

- B. Regulatory Compliance Officer
Leanne Prete
Research Services and Sponsored Programs

The UNCW Export Control Compliance policy charges the Office of Research Services and Sponsored Programs with monitoring and directing compliance with export control regulations. The regulatory compliance officer (RCO) will assume responsibility for educating the campus community on export control issues, serving as a consultant when export control issues arise, assisting with license application, and coordinating the activities of the UNCW Export Control Advisory Committee.

- C. Export Control Advisory Committee
The Export Control Advisory Committee will provide oversight and will make recommendations to the chancellor or her delegate to implement procedures or encourage compliance with export control regulations.

VI. Statement of Empowered Official

The EO will send a statement regarding the importance of export control compliance to all faculty, staff and graduate students (Appendix B) at the beginning of each academic year.

VII. Roles, Responsibilities and Procedures

- A. Contract Evaluation

1. Sponsored Programs Contracts

Sponsored Programs reviews all contracts for sponsored research. When reviewing contracts, Sponsored Programs uses the UNCW Export Control and Compliance Proposal Checklist (Appendix C) to monitor any contract language that would suggest export control issues. Sponsored Programs will attempt to negotiate any restrictive contract language out of the contract. If negotiations are unsuccessful, the Sponsored Programs contacts the principal investigator (PI) to discuss possible licenses that may be required if contract is signed. Sponsored Programs will contact the RCO with any questions.

2. Purchasing Contracts

Purchasing will email the RCO when a contract involves purchasing from a foreign entity or paying a foreign national for services conducted at UNCW. The RCO will enter names through Visual Compliance and will notify Purchasing if any problems arise. The Purchasing Department on its website will maintain a link to the UNCW Export Controls website.

3. Memorandums of Understanding and Nondisclosure Agreements

The Chief Research Officer/Empowered Official (EO) approves memorandums of understanding and nondisclosure agreements. The EO will determine if any language included in the documents restricts dissemination based on citizenship status or requires UNCW to secure licenses.

B. Shipping and Receiving

1. Departmental Shipping

All departments with Federal Express accounts will be instructed to contact the RCO when shipping to international destinations. Departments must provide to the RCO a full description of the item(s) to be shipped, the name of the shipper, the name of the person or company to receive the shipment, and the destination country. The RCO may request additional information if deemed necessary. The RCO will run the appropriate queries in Visual Compliance and will document the outcomes.

2. Central Shipping

For those shipments sent through central shipping, certain individuals in the shipping/receiving department will be trained on running queries through Visual Compliance and will notify the RCO of any problematic results.

C. International Travel

The UNCW Travel Office will create a custom monthly report showing all international travel requests and will send the report to the RCO for evaluation. The RCO will contact the traveler and provide consultation for export control issues.

D. Visiting Foreign Nationals

The Office of International Programs (OIP) is advised of all foreign nationals visiting UNCW under Visa sponsorship. OIP provides all visiting foreign nationals with informational materials about UNCW and will include an informational flyer regarding export control issues (Appendix D).

E. Support and Administration

The RCO is the primary contact for anyone with export control questions or needs. The RCO convenes the Export Control Advisory Committee as deemed necessary to resolve export control issues that arise. In addition, the RCO performs the following tasks:

1. Compliance Review of Sponsored Projects

The RCO reviews all sponsored program files and uses the UNCW Export Control and Compliance Proposal Checklist (Appendix C) as a tool to identify any export control issues on sponsored projects.

2. Visual Compliance Screening

The RCO enters names of visiting foreign researchers, international cruise participants and foreign vendors on Visual Compliance and documents results. The RCO receives and reviews Visual Compliance updates by email. The RCO assists other campus users of Visual Compliance when questions arise.

3. Website Management

The RCO is responsible for maintaining the UNCW Export Control website (<http://www.uncw.edu/orssp/conduct-export.html>). The RCO will post relevant materials on the website to support the training and education of the campus community.

4. Education and Training

The RCO is responsible for conducting training and education sessions as specified below.

VIII. Training Campus Community

A. Faculty and Staff Awareness Workshops

The RCO will conduct at least two informational workshops for faculty and staff each academic year. Workshops will include an overview of export control regulations, examples of activities that may trigger export control applicability, explanations of exclusions and exemptions and a question and answer period.

B. Website Information

The RCO will maintain relevant educational materials on the UNCW export control website (<http://www.uncw.edu/orssp/conduct-export.html>) such as the UNCW Export Control Compliance Policy, this plan, FAQs, an interactive PowerPoint learning tool, decision trees, and links to federal agency websites.

C. Personal Consultation

The RCO will be available for consultation by phone, email or group presentations as requested.

Accepted:

Empowered Official

Date

ORSSP Director/Associate Dean for Research

Date

Appendix A

Export Control Compliance Policy



03.370

EXPORT CONTROL COMPLIANCE

Authority:	Provost and Vice-Chancellor for Academic Affairs
History:	Established September 21, 2007
Source of Authority:	Export Administration Regulations (EAR) 15 CFR 700-799; International Traffic in Arms Regulations (ITAR) 22 CFR 120-130; Office of Foreign Assets Control (OFAC) regulations; National Security Decision Directive 189 (NSDD 189); UNC GA Policy Manual 500.1
Related Links:	UNCW Patent Policy
Responsible Office:	The Office of Research Services and Sponsored Programs (ORSSP)

I. Purpose

The University of North Carolina at Wilmington (UNCW) is committed to complying with all applicable laws and regulations regarding federal export controls, including those implemented by the Department of Commerce through its Export Administration Regulations (EAR), the Department of State through its International Traffic in Arms Regulations (ITAR), and those imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC).

II. Scope

The UNCW Export Control Compliance Policy applies to all university employees, both full and part time, including faculty, other professionals exempt from the State Personnel Act, staff subject to the State Personnel Act, and students. These policies, as amended from time to time, shall be deemed to be a part of the conditions of employment of every employee, including student employees, and of the conditions of enrollment and attendance by every student at the institution.

III. Policy

A. Free Dissemination of Research Findings

While it is recognized that it may be necessary for a faculty member or student in carrying out a research project to gain knowledge of information considered to be controlled technology by the government or proprietary by a private company, faculty and students of the university must have the right to disseminate freely and openly their research findings, and research sponsors may not abridge this basic right. Research conducted under any form of sponsorship must maintain the university's open teaching and research philosophy and must adhere to a policy that prohibits secrecy in research.

UNCW is committed to maintaining a teaching and research environment that is open for the free exchange of ideas among faculty and students in all forums—classrooms, laboratories, seminars, meetings, and elsewhere. Such an environment contributes to the progress of research in all disciplines. There can be no fundamental limitation on the freedom to publish as the result of accepting extramural research support. Restrictions on publication of the results of research are incompatible with the basic concept of an educational institution as a source of knowledge.

B. Defense-related Research

The university will not knowingly undertake research on weapons development, or directly on problems of chemical and biological warfare, except in times of declared national emergency and upon request of governmental authority. (Such research brings with it extensive export control regulations.) The chancellor is authorized to waive this requirement if it is in the national, state, or institutional interest to do so. The university will not attempt to determine whether or not a study, the results of which may have broader applications in the civilian economy, may conceivably also be used in some way for military purposes. The university will continue to accept support for research contracts and grants through the Department of Defense as well as through other defense-related government agencies as long as they meet the general university criteria for research.

IV. Delegation of Responsibilities

A. Plan Implementation and License Application

The Empowered Official (EO) is ultimately responsible for implementing UNCW's export control management plan and for license application or other approval through the regulatory agencies. Accordingly, the EO must be knowledgeable of the applicable regulations and be legally empowered to sign license applications on behalf of UNCW. The Chief Research Officer is best suited to serve as the EO at UNCW. The EO has the independent authority to enquire into any aspect of a proposed export or temporary import by the applicant, verify the legality of a transaction and the accuracy of the information submitted, and refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

B. Compliance and Training

The Office of Research Services and Sponsored Programs (ORSSP) has been charged with the responsibility for review and approval of proposals for sponsored research, clearance of sponsored programs through appropriate university channels, and for assistance in negotiation with sponsoring agencies. The Office of Research Services and Sponsored Programs (ORSSP) is delegated the responsibility to monitor and direct UNCW's compliance with export control regulations. ORSSP will prepare, maintain and update detailed guidelines for complying with the federal statutes and regulations which require export control compliance.

C. Oversight

The chancellor shall appoint an Export Control Advisory Committee, consisting of no less than seven members, one of whom shall be designated by the chancellor to serve as chair. In addition to the EO, a representative from

the following areas shall serve on the committee: Office of Research Services and Sponsored Programs; Office of International Programs; Center for Marine Science; Information Technology Systems Division; and a faculty member from a science department. The regulatory compliance officer shall serve ex-officio and will convene the committee. University counsel may be consulted for guidance when needed.

The committee shall review and recommend to the chancellor or her delegate the procedures for the implementation of this policy and compliance with export control statutes and regulations; shall resolve questions of restrictions on dissemination of research or involvement of foreign nationals in research; shall resolve questions on restrictions related to overseas travel and shipment or export of controlled items by faculty; and shall make such recommendations as are deemed appropriate to encourage compliance with export control statutes and regulations and assure prompt and expeditious handling, evaluation, and resolution of export control issues related to research opportunities.

V. Procedures

UNCW faculty, staff and students are required to communicate with ORSSP on concerns about export control regulations and comply with directives from the ORSSP which attempt to assist them in their compliance with these regulations.

Before entering into a research project, exporting technology or interacting with foreign nationals in research which may involve the use of what export control regulations deem 'controlled technology', all parties involved, including the faculty member(s), the graduate student(s), the department head(s), and the dean(s), shall contact the ORSSP for assistance in determining both the nature and extent of the restrictions required of the members of the university, including graduate students, regarding the nondisclosure of the technology.

A. UNCW faculty and staff must take the following steps to assure that they do not violate the export regulations and become personally liable for the substantial civil and criminal penalties:

1. Shipping Commodities

Prior to shipment of any commodity out of the U.S., determine if the commodity requires an export license and assist in securing such license, when required. Secure license approval or verify license exception prior to shipment for all controlled items. Contact ORSSP for guidance for verifying license exceptions and submission of license applications.

2. Release of Technical Data

Assure that all technical data about export-controlled commodities, technologies or software qualify as "publicly available" under the export control regulations (e.g., publish early and often) prior to releasing data to foreign nationals.

3. Sharing Export-Controlled Information

If the researcher has a need to share export-controlled information with others, the researcher must then determine a proposed recipient's eligibility under export control regulations. This is done by notifying ORSSP of the need to share the export-controlled information before it is shared in order to assure proper determination of export control eligibility. If the proposed recipient is determined to be a foreign national and eligible to receive the export-controlled information, the primary researcher must document the available license exclusion or license exception.

4. Review any Confidentiality/Non-Disclosure Agreements

Review any Confidentiality/Non-Disclosure Agreements to insure that UNCW and you are not assuming the burden of restricting dissemination based on citizenship status or securing licenses

B. University employees and students must refrain from the following steps:

1. Restrictions on Employment or Participation

Any clause which restricts employment or participation in university research on the basis of citizenship is contrary to policy and should not be accepted. Consistent with this policy, it is university practice that access to university classrooms, libraries, laboratories, and specialized research facilities is open, without regard to citizenship, residency status, or Visa category. Questions regarding citizenship status may not be asked of those entering such facilities, unless the chancellor has approved an exception to the policy, due to the classification of the technology located at the facility.

Before entering into a research project which contemplates restrictions either on the release or publication of information or results, or the involvement of foreign nationals, all parties involved, including the faculty member(s), the graduate student(s), the department head(s), and the dean(s), shall contact the ORSSP for assistance in determining whether these restrictions will trigger the need for further steps in order to comply with export control regulations and how to next proceed. No agreement, however, may interfere with the publication or oral defense of research theses and dissertations of graduate students.

2. Publication Restrictions

Do not accept publication controls or access/dissemination restrictions (such as approval requirements for use of foreign nationals), enter into 'secrecy agreements', or otherwise agree to withhold results in research projects conducted at UNCW or that involve UNCW facilities, students, or staff.

3. Receipt of Confidential Information

Do not accept proprietary information from another that is marked "Export Controlled". Return to the manufacturer any materials they provide to you

about export-controlled equipment that is marked "Confidential". If the researcher believes that such information or materials are necessary to his or her research, he or she must contact ORSSP. If the receipt of such information is in compliance with university policy or a request for an exception to university policy needs approval, the researcher must contact ORSSP and explain the reason it is in compliance or request approval.

4. Closed Meetings and Conferences

Do not attend meetings that foreign nationals are prohibited from attending. Do not sign the DD2345, Militarily Critical Technical Data Agreement, as a condition of attending a conference or receiving materials from the government.

5. Traveling to Embargoed Countries

Do not travel to conduct research or educational activities to embargoed countries without first checking with ORSSP to ascertain whether a license from the Department of Treasury, Office of Foreign Assets Control, is required. A link to lists of embargoed countries can be found on the UNCW Export Controls website (<http://www.uncw.edu/orssp/conduct-export.html>).

Contact ORSSP for assistance if you encounter problems in any of the above areas. ORSSP staff will help you resolve the matter so that your research may proceed in a manner that avoids violation of the export regulations.

V. Recordkeeping Requirements

Each of the relevant export control regulations contain specific recordkeeping requirements that must be satisfied. In addition, the university maintains its own recordkeeping requirements in order to document its commitment to, and compliance with, export control regulations generally.

Departments or programs must keep soft or hard copies of all export documentation, including financial records, shipping documentation (Commercial

Invoices, Shipper's Export Declarations), and any internal campus forms related to export control regulations in their research project files for a period of five years from the date of the export, reexport or controlled deemed export. Furthermore, any original campus form related to export control must be provided to ORSSP, who shall also maintain a copy for a period of five years as described above.

Appendix B

Empowered Official Statement

Dear Colleagues,

The University of North Carolina Wilmington (UNCW) is committed to complying with all applicable laws and regulations regarding federal export controls, including those implemented by the Department of Commerce through its Export Administration Regulations (EAR), the Department of State through its International Traffic in Arms Regulations (ITAR), and those imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC).

These regulations may impact our university community when faculty, staff or students travel internationally, accept restrictions on disseminating research findings, share controlled information with foreign nationals, or ship controlled technologies outside the U.S. Other campus and research activities may be excluded from export control regulations. Since penalties for non-compliance can be very high and are assessed against the individual rather than the institution, UNCW believes educating the campus community is the best way to assure compliance with the regulations.

As the chief research officer for UNCW, I am the individual responsible for implementing UNCW's export control management plan. UNCW's regulatory compliance officer is also available to assist individuals with export control issues. I encourage faculty and staff to review the educational information on UNCW's export control website, where you will find decision charts, FAQs and other tools to help you understand your responsibilities for export control compliance:

<http://www.uncw.edu/orssp/conduct-export.html>

Also, please feel free to contact Leanne Prete, Regulatory Compliance Officer, with any questions about export control compliance (pretel@uncw.edu, 910-962-7774).

Appendix C

Export Control and Compliance Proposal Checklist



**UNIVERSITY OF NORTH CAROLINA WILMINGTON
EXPORT CONTROL AND COMPLIANCE PROPOSAL CHECKLIST**

Proposal # _____

Contract Questions	No	Yes	Notes	Planned Actions
Does the contract contain any clause that:				
a. Requires the sponsor's prior approval of research publications or allows the sponsor to claim resulting research information as proprietary or trade secret?				If cannot negotiate out of contract, obtain PI certification to document understanding of EC issues.
b. Requires prior approval before hiring non-U.S. citizens to work on the project?				
c. Prohibits access by non-U.S. citizens to project information or the employment of non-U.S. citizens to work on the project?				
d. Includes confidentiality or nondisclosure terms for proprietary or export controlled information, without identifying the specific item(s)?				Must require advance approval from UNCW for delivery of known export controlled materials
e. Requires the delivery of a prototype, object, article, or thing (this does not include technical reports)?				

Determination:

Negotiator's Signature: _____ **Date:** _____

Compliance Questions:	No	Yes	Notes	Planned Actions
a. Does the project involve human subjects research?				
b. Does the project involve the use of live, vertebrate animals?				

c. Does the project include foreign travel, (hand carrying) or shipping anything overseas (check budget)?				
d. Is anything else noted on proposal that could trigger export control or compliance issues?				
e. Does the project involve the use of chemicals, biological hazards or radiation?				

Determination:

Compliance Officer Signature: _____ **Date:** _____

Appendix D

Office of International Programs Handout

A Brief Introduction to U.S. Export Regulations

At UNCW we strive to maintain a teaching and research environment that is open for the free exchange of ideas among faculty and students in all forums—classrooms, laboratories, seminars, meetings, and elsewhere. We believe that such an environment contributes to the progress of research in all disciplines.

At the same time, the campus community must be mindful of certain U.S. regulations (called “export control” regulations) that may impact international travel activities, how technical information is shared, and how technical equipment is shipped outside the U.S.

Most university activities such as fundamental research, educational information, and information in the public domain, are excluded from the regulations. Other activities such as taking a laptop out of the country, shipping items that are controlled by the regulations outside the U.S., and divulging technical information that is not ordinarily published or shared freely in the scientific community, may require licenses or special exclusions. If that is the case, please be assured that UNCW staff are here to assist you in any way.

At UNCW we believe that educating the campus community is the best protection against any inadvertent violations of these complex regulations. Some of the situations that may trigger the need for an export control license are:

- Conducting research when you have been asked by the sponsor to restrict publication of the research results.
- Shipping or carrying technical equipment outside the U.S. (technical equipment may include laptops, GPS, sensors, lasers and marine equipment).
- Examining technical blueprints, plans or drawings.
- Discussing technical information that is not considered fundamental research, educational information, or information in the public domain.

If you think any of these situations may apply to you, you are encouraged to contact UNCW’s regulatory compliance officer, Leanne Prete, in the Office of Research Services and Sponsored Programs (910-962-7774 or pretel@uncw.edu).

Additionally, UNCW’s export control website has decision trees, learning tools and FAQs that may help you understand if export control regulations apply to you. The UNCW Export Control Policy is also posted on this website. You can visit UNCW’s Export Control website at: <http://www.uncw.edu/orssp/conduct-export.html>.