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EXPORT CONTROL COMPLIANCE

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| Authority: | Provost and Vice-Chancellor for Academic Affairs |
| History: | Established October 1, 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 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. 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.

- B. 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.
- C. 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

1. 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.
2. The committee shall review and recommend to the chancellor or her/his 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

- A. 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.
- B. 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.

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

1. Restrictions on Employment or Participation

- a. 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.
- b. 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>).

D. 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.

VI. Recordkeeping Requirements

- A. 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.
- B. 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, re-export 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.