

ELIZABETH CITY STATE UNIVERSITY

Export Control Policy

Preamble

Elizabeth City State University (ECSU) pursues federal, state and local resources to support teaching, research and community outreach activities. Resources are sought and received from federal agencies, state government, foundations, organizations, and individuals. Export Control policies have been established regarding the implementation of these activities with the goal to recognize the importance of compliance with all applicable export control regulations in the conduct of university activities.

1. Policy Statement

It is the policy of Elizabeth City State University to comply with all United States (U.S.) Export Control laws and regulations, including those implemented by the U.S. Department of Commerce (DOC) through the Bureau of Industry and Security's Export Administration Regulations (EAR) (trade and dual use protection) (*15 CFR 700–799*); the U.S. Department of State through its International Traffic in Arms Regulations (ITAR) (national Security) (*22 CFR 120–130*); and those imposed by the U.S. Treasury Department through its Office of Foreign Assets Control (OFAC) (trade embargo); and the University of North Carolina System Policy 500.1.

Each ECSU faculty, staff, and student who is involved in research must take reasonable precautions for safeguarding sensitive and export controlled data and information from disclosure to foreign persons without proper authorization. A license from the U.S. government is required before a foreign national has access to hardware or technology controlled by either the U.S. Department of Commerce or the U.S. Department of State.

2. Definition of Terms

- 2.1 Deemed Export - a transfer or release of technology or source code to a foreign national in the United States.
- 2.2 Defense Article (ITAR 120.6) - any item designated in the United States Munitions List (USML). Examples include specified chemical agents, cameras designated for military purposes, specified lasers, and GPS equipment as noted above. It also means any technical data recorded or stored in any physical form, models mock-ups, or other items that reveal technical data directly relating to the particular item or "defense article" listed in the USML.
- 2.3 Defense Service (ITAR 120.9) means the furnishing of assistance (including training) anywhere (inside the United States or abroad) to foreign nationals in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles, and the furnishing of any controlled "technical data" (see definition below) to foreign nationals anywhere.
- 2.4 Export - includes any: (1) actual shipment of any covered goods or items; (2) the

electronic or digital transmission of any covered goods, items or related goods or items; or (3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any Foreign National/Person. An export may also include the actual use or application abroad of personal knowledge or technical experience acquired in the United States.

- 2.5 Export Classification Control Number (ECCN) - The Export Classification Control Number "ECCN" categorizes items covered by the Export Administration Regulations "EAR" based on the type of equipment, technology or software and ultimate destination. If an export falls under the controls of the EAR for the country of ultimate destination, an Individual Export License shall be required.
- 2.6 Foreign Nationals - Both the EAR and International Traffic in Arms Regulations (ITAR) define "foreign nationals" as 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), and any natural person who is not a citizen or lawful permanent resident of the United States or who does not qualify as a protected individual.
- 2.7 Fundamental Research - includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental Research is distinguished from research that results in information that is restricted for proprietary reasons or pursuant to specific U.S. Government access and dissemination controls. University research will not be deemed to qualify as Fundamental Research if: (1) the University or researcher accepts any restrictions on the publication of the scientific and technical information resulting from the research, other than limited pre-publication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to insure that publication will not compromise patent rights of the sponsor; or (2) the research is funded by the U.S. Government and specific access and dissemination controls regarding the resulting information have been accepted by University or the researcher. A complete definition of Fundamental Research is contained in the EAR (15 CFR § 734.8) and ITAR (22 CFR § 120.11) and should be consulted when determining whether a project meets the definition of Fundamental Research under those regulations.
- 2.8 International Traffic in Arms Regulations (ITAR): [22 CFR §§ 120-130](#), are promulgated and enforced by the Office of Defense Trade Controls in the Department of State. Technologies, products and information that are controlled under ITAR are identified on the United States Munitions List (USML), [22 CFR § 121.1](#). The ITAR controls technologies, products and information that primarily serve military purposes.
- 2.9 Technical Data - scientific or technical information recorded in any form or presented in any manner. Technical data may take forms such as 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, or read-only memories.

3. Delegation of Responsibilities

To carry out this policy, the Research Compliance Officer (RCO) for ECSU shall serve as the Export Control Empowered Official (ECEO) and consult with the Director of Sponsored Programs on export control matters at ECSU. The ECEO shall have overall responsibility to administer the University's export control compliance with this policy. The Director of Sponsored Programs in consultation with the Export Control Empowered Official shall identify a minimum of seven members for appointment to the Export Control Advisory Council. The proposed Advisory Council members shall be presented to the Provost for consideration and approval. Principal Investigators (PI)/Program Directors (PD) shall be responsible for insuring that all research project staff (including consultants and students) are knowledgeable of the ECSU Export Control Policy. See ECSU's Office of Sponsored Programs Policy Manual.

4. Recordkeeping Requirements

Departments or programs shall 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 shall be provided to SPCG, who shall also maintain a copy for a period of five years.

5. Penalties for Non Compliance

5.1 International Traffic in Arms Regulations – ITAR (Commerce Department)

- (a) *Criminal* – The penalty for university noncompliance is a substantial fine. The penalty for individual noncompliance is a fine and imprisonment.
- (b) *Civil* – The penalty for university and individual noncompliance is seizure and forfeiture of articles, revocation of exporting privileges, and fines.

5.2 Export Administration Regulations – EAR (U.S. Department of State)

- (a) *Criminal* – The penalty for university noncompliance is violation substantial fine. The penalty for individual noncompliance is a fine and/or imprisonment.
- (b) *Civil* – The penalty for university and individual noncompliance is loss of export privileges and fines.