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 National Security Decision Directive 189 (NSDD 189); 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 General Administration Policy Manual 500.1 http://www.northcarolina.edu/content.php/aa/research/regulatiory%20compliance.htm.

(a) Export is defined not only as a physical transfer/disclosure of an item outside the United States but also as a transfer/disclosure in any form of a controlled item or information within the U.S. to anyone who is a foreign national (not a U.S. citizen or permanent resident), better known as the “deemed export” rule.

(b) 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 - Bureau of Industry and Security (BIS) - an agency of the Department of Commerce that is responsible for administering and enforcing export controls on “dual use” items. BIS administers the Export Administration Act (EAA) by developing export control policies, issuing export licenses, prosecuting violators, and implementing the EAA’s anti boycott provisions. BIS also enhances the defense industrial base, assists U.S. defense firms, and helps other countries develop export control systems.

2.2 - Commerce Control List (CCL) - a list of items subject to Bureau of Industry and Security export license requirements based on their identity. The CCL is found in Supplement 1 to Part
2.3 - **Deemed Export** - the transmittal of technology or information within the United States to an individual other than a U.S. citizen or permanent resident inside the U.S., either on or off the ECSU campus.

2.4 - **Defense Article** (ITAR 120.6) - any item designated in the United States Munitions List (USML). Examples include(185,407),(954,914)

2.5 - **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.

2.6 - **Directorate of Defense Trade Controls (DDTC)** - the Department of State agency which licenses defense services and defense (munitions) articles.

2.7 - **Dual-use** is items that have both commercial and military or proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also subject to the EAR (see §734.2(a) of the EAR)

2.8 - **Export** - any oral, written, electronic or visual disclosure, shipment, transfer or transmission outside the U.S. to anyone, including a U.S. citizen, of any commodity, technology (information, technical data, or assistance) or software/codes.

(a) The EAR controls technologies and products that serve primarily civil purposes, but may also have military applications.

2.10 - **EAR 99** refers to any good or technology subject to the EAR that does not fall under one of the ten specific CCL categories falls into EAR 99. Licenses are not required for goods or technologies in this category except in limited circumstances, such as for exports to certain countries or individuals to whom exports are embargoed.

2.11 - **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.

2.12 - **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 (as defined by 8 U.S. C. 1101(a)(20) or who does not qualify as a protected individual (as defined by 8 U.S.C. 1324(a)(3).

2.13 - **Fundamental Research** - (EAR and ITAR) means basic or applied research in science and engineering performed or conducted 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 national security reasons (EAR) or pursuant to specific U.S. Government access and dissemination controls (ITAR).

(a) The EAR provides that university research normally shall be considered as fundamental research unless the university or its researchers accept sponsor restrictions on publication of scientific and technical information resulting from the project or activity. The EAR specifically permits limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to ensure that publication shall not compromise patent rights of the sponsor. The citation for the official definition of fundamental research under the EAR is 15 CFR § 734.8.

(b) The ITAR states that university research shall not be deemed to qualify as fundamental research if: (1) the university or its researchers accept any restrictions on publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls
protecting information resulting from the research have been accepted by the university or the researcher. The ITAR citation is 22 CFR § 120.11

2.14 - 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.

2.15 - Office of Foreign Assets Control (OFAC): A department of the U.S. Treasury that enforces economic and trade sanctions against countries and groups of individuals involved in terrorism, narcotics and other disreputable activities. OFAC enforces economic and trade sanctions based on U.S. foreign policy and national security goals and targets foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC also prohibits transactions with Specially Designated Nationals and Blocked Persons and Sanctioned Countries: (http://www.treas.gov/offices/enforcement/ofac/programs/).

2.16 - Public Domain defined in the ITAR (22 CFR 120.11) as information that is published and generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information; (3) through second class mailing privileges granted by the U.S. Government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States; (7) through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency; and (8) through 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.

(a) The EAR does not include the term “public domain,” but does recognize “publicly available technology and software” as outside the scope of the EAR (EAR 732.2(b)).

(b) The EAR defines information as “published” when it becomes generally accessible to the interested public in any form, including periodicals, books, print, electronic, or other media available for general distribution to the public or a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution. It also includes information readily available at public or university libraries, patents and patent applications, or used at an open conference, meeting, or seminar (EAR 734.7).
2.17 - Technical Data - information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blueprints, drawings, plans, instructions, diagrams, photographs, etc. The ITAR definition does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain (ITAR 120.10(5): http://edocket.access.gpo.gov/cfr_2004/aprqtr/22cfr120.10.htm).

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. Principle 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.

4. Procedures
ECSU faculty, staff and students shall contact the Office of Sponsored Programs Contract and Grants (SPCG) on matters related to export control regulations and adhere to the directives from SPCG that will assist them in complying with these regulations. Before entering into a research project, exporting technology or interacting with foreign nationals in research, all relevant parties involved, including the faculty member(s), the graduate student(s), the department head(s), and the dean(s) shall contact SPCG for assistance in determining both the nature and extent of the restrictions required.

(a) All PI or Project Directors must complete the Export Control Check List.

(b) All Faculty, staff, and students traveling out of the United States or engaging in international communications must comply with the Export Control Policy.

5. 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.
6. Penalties for Non Compliance

6.1- International Traffic in Arms Regulations – ITAR (Commerce Department)

(a) Criminal – The penalty for university noncompliance is up to $1 million per violation. The penalty for individual noncompliance is up to $1 million and/or up to 10 years in prison per violation.

(b) Civil – The penalty for university and individual noncompliance is seizure and forfeiture of articles, revocation of exporting privileges, and fines up to $500,000 per violation.

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

(a) Criminal – The penalty for university noncompliance is up to $1 million per violation. The penalty for individual noncompliance is up to $250,000 and/or up to 10 years in prison per violation.

(b) Civil – The penalty for university and individual noncompliance is loss of export privileges and fines of $10,000 to $120,000 per violation.