Guidelines and Procedures for the Export Management System
at The University of North Carolina at Greensboro
Updated September 29, 2007

Table of Contents

I. Export Control Compliance Policy Statement
II. Background
   A. Introduction
   B. Overview
III. Responsible Parties
IV. Recordkeeping
V. Hiring Practices
   A. Hiring Foreign Nationals
   B. Orientation for New Employees
   C. Employee Transfers within UNCG
   D. Employee Termination
VI. Admission Practices
   A. U.S. Consulate Application Review and Applicant Interview
   B. Inspection by Bureau of Customs and Border Protection
   C. SEVIS Validation and Tracking
   D. Visa Extensions / Renewals
   E. Applications for Immigration Benefits through the Department of Homeland Security
   F. Departure Procedures about NSEERS
VII. Internal Audits
VIII. Education and Training
IX. Partner Screening
   A. Policy on Transactions with Sanctioned Countries
   B. Review of Government Lists and Diversion Risk Profile
X. Jurisdiction and Classification
   A. Technology Review
   B. Management of Biological Agents
XI. Fundamental Research
XII. Deemed Exports
XIII. Licensing Determination
XIV. Notification
XV. Visual Compliance
APPENDICES

APPENDIX A: Glossary of terms
APPENDIX B: Frequently Asked Questions
APPENDIX C: Flow chart to assist investigators in determining if research is subject to Export Control Regulations
APPENDIX D: Questions to determine if taking a laptop computer out of the country is subject to Export Control Regulations
APPENDIX E: Resource Links

ACKNOWLEDGEMENTS
I. Policy Statement

The University of North Carolina at Greensboro will exercise all due diligence to comply fully and completely with all United States export control laws and regulations, including those implemented by the Department of Commerce through its Export Administration Regulations (EAR) and the Department of State through its International Traffic in Arms Regulations (ITAR) as well as those imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC).

This document describes the UNCG management system for complying with these export control and embargo laws. Its purpose is twofold. It is written for the UNCG community to help explain and facilitate compliance with these complex laws. It is also intended to describe the administrative functions that are needed to manage compliance with these laws.

II. Background

A. Introduction

It is important that all faculty, staff, students and administrators understand their obligations under these laws.

The export of certain goods and technologies has been restricted by federal laws since the 1940s. The purpose of these laws is to restrict export of “sensitive” or “controlled goods, technologies and related technical information” that might hurt U.S. interests or contribute to the military capabilities of countries whose policies are in conflict with ours. The laws also cover the sharing of such items or information on U.S. soil with individuals from certain embargoed countries.

Events surrounding September 11, the 2001 USA Patriot Act, and other recent developments have heightened the Federal government’s interest in the enforcement of export control laws. Stricter enforcement of these very complex laws has been applied to the business community and now is being applied to the university community. Consequently, many universities are just now developing export control management plans to maintain open and vigorous teaching and research environments while remaining in compliance.

Export control regulations affect a broad spectrum of university functions including, but not limited to, admissions, human resources, international programs, academic research, sponsored programs, technology transfer, accounts payable, and materials management and procurement. For example, taking laptop computers out of the country can be subject to export control regulations.

Civil and criminal sanctions, including fines and/or prison sentences for individual violating export control and embargo laws, are substantial. They can apply to individual UNCG community members as well as to UNCG as an institution. Fines can range from $50,000 up to $1,000,000 per violation for individual and/or the University. Prison sentences of up to 20 years may be imposed.
**B. Overview**

Research, innovation, and development of critical technologies are central to the technological superiority of the United States and to the protection of numerous economic interests of the country. Although academic research is normally conducted openly and most research activities are not subject to export control regulations, there are certain conditions under which the export of that research either is prohibited or requires a license. Certain technologies (called “covered” technologies) may require an export license unless they meet the test that the research is either fundamental research or is in the public domain. According to the National Security Decision Directive 189 ([http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm](http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm)) fundamental research (see Appendix A for definitions) is basic and applied research in science and engineering if the results are ordinarily published and broadly shared within the scientific community and there is to be no restriction on access and dissemination of such research results, other than by classification. The UNC System requires ([http://www.northcarolina.edu/content.php/legal/policymanual/uncpolicymanual_500_1.htm](http://www.northcarolina.edu/content.php/legal/policymanual/uncpolicymanual_500_1.htm)) and it is the customary practice at UNCG that research will be accomplished openly and without prohibitions on the publication and dissemination of the results. Either of these actions, i.e., publication restrictions (other than a limited review for patent protection or for the removal of a sponsor’s inadvertently included proprietary information) or limitations on access or dissemination of research results (such as to foreign nationals who are not permanent residents of the United States) prevents the information from qualifying as fundamental research and, for covered technologies, a license from either the Department of Commerce or the Department of State may be required before the research can go forward.

**III. Responsible Parties**

To carry out this policy, the Associate Provost for Research and Public/Private Sector Partnerships will serve as the Empowered Official for export control matters for UNCG. The Empowered Official will have overall responsibility for the University’s compliance with this policy. The Assistant Provost for Research will serve as the Official Export Controls Officer and will be responsible for the implementation and oversight of the Export Control Management System.

The Office of General Counsel will provide advice to the Empowered Official and to the Official Export Controls Officer. Outside legal counsel will be consulted as needed.

**IV. Recordkeeping**

- All export transactions will be kept in compliance with EAR’s requirements found at [http://www.access.gpo.gov/bis/ear/pdf/762.pdf](http://www.access.gpo.gov/bis/ear/pdf/762.pdf) and ITAR’s requirements found in Section 122.5 which covers *Maintenance of Records by Registrants*. The EAR requires that records of all export transactions be kept for a period of five years.

In addition, under the General Statutes of North Carolina, Chapter 132 any record generated in the conduct of the University’s business is a public record, “regardless of physical form or
characteristics” and is therefore subject to the State of North Carolina Records, Retention and Disposition Schedule after all applicable federal requirements are fulfilled. (http://its.uncg.edu/Records_Management/UNCGenSch14062007.pdf).

All matters that require an export control review of technology, including those where a determination was made that no license was required, are maintained in files within the Office of Research and Public/Private Sector Partnerships (ORPPSP). These records are maintained either in the original form in which they were received or created, or in an approved reproduction of the original pursuant to §762.5. The individual responsible for the maintenance of these records is the Assistant Provost for Research.

V. Hiring Practices

A. Hiring Foreign Nationals

At UNCG, only those positions which are Exempt from the State Personnel Act (EPA) may be sponsored by UNCG for immigration benefits. EPA positions are generally instructional staff and faculty members, research staff, or senior academic and administrative officers.

EPA hiring is decentralized and managed within each department, laboratory, center, or division. Detailed hiring guidelines for both faculty positions and EPA non-faculty positions can be found online at http://provost.uncg.edu/documents/personnel/facultysearch.pdf and http://provost.uncg.edu/documents/personnel/nonfaculty_search.pdf.

If the recommended candidate in an EPA search is not a U.S. citizen or permanent resident, the Director of Immigration Services in the Office of the Provost should be consulted to review the candidate’s current immigration documents and employment eligibility. The Director will then advise and assist the recruiting unit with the procedures for hiring a foreign employee. The Director of Immigration Services is the primary liaison to the Department of Labor and the Department of Homeland Security on immigration matters related to employment of foreign nationals in H-1B, TN, or O-1 status. This includes submitting labor-related and immigration-related documentation to the relevant government agencies either electronically or in hard copy, as required by regulation. The Director of International Student and Scholar Services in the International Programs Center is the primary liaison when the foreign national is in J-1 or F-1 status.

All appointment letters to non-resident aliens include a statement that the offer of an appointment to an individual who is not a U.S. citizen or permanent resident is made contingent upon receiving the appropriate immigration documentation. The effective date of employment is consistent with the effective dates of the individual’s immigration documents.

The Office of Human Resources (HRS) conducts employment eligibility verification on all new employees.
B. Orientation for New Employees

Upon arriving at UNCG, foreign nationals meet with a member of the International Student and Scholar Services staff. The obligation to maintain valid immigration status and documents as a condition of employment as printed in the DS-2019 and I-20 forms are review verbally with each employee.

The International Programs Center provides mandatory orientation for new international visiting scholars and students.

C. Employee Transfers within UNCG

Employees may apply for other positions at UNCG in which they have an interest and for which they feel qualified. If they assume another position, the new employment is initiated by the hiring department or division. Changes in appointment/employment of foreign nationals in EPA positions must be reported to the Office of the Provost or the Office of International Programs, as appropriate. If necessary, amendments to visa documentation are sent to the appropriate government agencies, informing them of the changes.

D. Employee Termination

Upon termination of employment, the employing department/division is responsible for deactivating computer and security accesses and email account, collecting UNCG keys, and forwarding the appropriate paperwork to the EPA Personnel Office. Upon termination of employment of a foreign national, the appropriate liaison withdraws or terminates labor and immigration-related documents with the relevant government agencies (Department of Labor and Department of Homeland Security). The Director of International Student and Scholar Services is notified if the employee is in J-1 status and follows regulations related to terminating the record.

VI. Admission Practices

Before an international student or scholar may be admitted to the United States to study, teach, or conduct research at UNCG, he/she must apply for a U.S. entry visa at a U.S. Consular post abroad. The exception to this rule is Canadian citizens, for whom the visa requirement is waived, but who must be screened by the Bureau of Customs and Border Protection before admission across the U.S. border and who must be tracked in all applicable government tracking systems.

A. U.S. Consulate Application Review and Applicant Interview

a) Visa Application Forms: All foreign national applicants must complete visa application forms. These forms ask specific questions. The answers to these questions will reveal issues that might make certain people ineligible for U.S. entry visas (as defined in the Immigration and Nationality Act, Title II: Chapter 2, Section 212 General Classes of Aliens Ineligible to Received Visas and Ineligible for Admission, found at http://www.fourmilab.ch/uscode/8usc/www/t8-12-II-II-1182.html).
b) Consular Lookout System: Once the visa application is submitted, consular officials make an electronic inquiry to CLASS (Consular Lookout system). If there is a “hit” or match with a visa applicant’s name, date of birth, or other identifiers, further investigation is done to determine visa eligibility. Information about CLASS is found in the Department of State’s Foreign Affairs Manual at http://www.state.gov/documents/organization/87961.pdf

Numerous government agencies serve as sources of information for the CLASS database, including the following: Department of State, National Crime Information Center, Drug Enforcement Agency, Federal Bureau of Investigations, Interpol, Central Intelligence Agency, National Security Agency, Office of Foreign Asset Control, Bureau of Non-Proliferation, Department of Commerce, and others. If any of these agencies believe the individual is a risk, a CLASS “hit” will appear at the time of consular inquiry.

c) Other databases: Consulates also have the ability to check criminal history in local and national databases in the home country where the alien is applying for the visa.

d) INA 212(a) Technology Alert List: If any foreign national’s field of study or research is deemed to be in a sensitive technology, or if the individual is from a country which the Department of State deems a risk (for espionage, export risk, etc.), the Consulate may ask for a Security Advisory Opinion (SAO) from the Department of State in Washington, DC. The Foreign Affairs Manual of the Department of State describes Security Advisory Opinions at http://www.state.gov/documents/organization/86964.pdf

e) Student and Exchange Visitor Information System: The Department of Homeland Security’s tracking system is called the Student and Exchange Visitor Information System (SEVIS). This system specifically tracks students and scholars in F, J and M status. Consular officials can see data in their own systems which have been forwarded from SEVIS. When a student or scholar appears at the consulate for a visa interview, consular officials can match the documents presented with the information in the computer database. Information is available on the Department of Homeland Security web site at http://exchanges.state.gov/education/jexchanges/about/sevis.htm

f) U.S. Visitor and Immigrant Status Indicator Technology (US VISIT): Ultimately, if the decision is made to grant an applicant a visa, the U.S. Consulate scans the index fingerprints of the applicant and takes a digital photograph. This information is fed into the US-VISIT system, a congressionally-mandated entry and exit tracking system. US-VISIT is designed to track the arrivals and departures of all non-immigrants, regardless of visa type. For more information, consult the Federal Register, Vol. 69, No. 2, January 4, 2004, Rules and Regulations, located at http://grants.nih.gov/grants/policy/fed_reg_peer_rev_20040115.pdf. See also http://www.dhs.gov/us-visit

B. Inspection by Bureau of Customs and Border Protection

a) Border Inspection: When the student or scholar arrives at the port of entry to the U.S., he/she is interviewed/inspected by immigration and customs officials. The Bureau of Customs and Border Protection enters the arrival information into the SEVIS system.
b) **US-VISIT Biometrics**: In addition to being questioned by an official and having his/her
documents and baggage inspected, the individual is required to insert index fingers into the US-
VISIT machine to verify that the person entering the US is the person who originally applied for
the visa.

US-VISIT technology is being rolled out gradually, and is currently in place at more than 30
ports of entry. US-VISIT will be implemented nationwide over time. DHS is also conducting a
pilot program now involving exit points, collecting biometric data on individuals as they depart
the U.S.

**C. SEVIS Validation and Tracking**

a) **Validation of Program Participation**: Upon arrival at the destination institution, students and
scholars in F and J status must report to the appropriate International Office to check in. In
addition to providing welcome and orientation information at that time, the International
Programs Center is required to “validate” the SEVIS record, confirming arrival in the
government database. If an individual fails to appear and the SEVIS record is not validated
within 30 days, the SEVIS record will revert to “inactive” status and the individual is subject to
immigration enforcement action.

b) **Program Updates**: During the course of study/research/teaching, the International Programs
Center is required to report progress, extensions, change of address, transfers, and other “events”
to the Department of Homeland Security via SEVIS. If, at any time, the institution is unable to
verify compliance of the individual with regulations in SEVIS, the SEVIS record reverts to
“inactive” status and the person becomes subject to immigration enforcement action.

**D. Visa Extensions / Renewals**

When the initial visa stamp expires and a student or scholar travels outside the U.S., he/she must
seek an extension of the U.S. entry visa before returning to the U.S. All application procedures,
interviews, and security checks must be repeated at the U.S. Consulate before a visa renewal is
granted, in accordance with regulations.

**E. Applications for Immigration Benefits through the Department of Homeland
Security**

Students and scholars may apply within the U.S. for immigration benefits, such as a change of
immigration status or employment authorization based on practical training. This application is
reviewed by the Department of Homeland Security. In addition to adjudicating the application on
its merits, the Department of Homeland Security’s Citizenship and Immigration Service (CIS)
Service Center is required to conduct name check procedures on the applicant. CIS will not
reveal the details of this process to the public.

Once an immigration benefit is granted, record of that action is entered by the CIS Service
Center into the Computer Linked Application Information Management System (CLAIMS). This
data is then available to ports of entry, CIS Service Centers and federal agencies. See
F. Departure procedures about NSEERS

National Security Entry-Exit Registration System (NSEERS), also known as Special Registration, is a U.S. government system instituted to track the entry and exit of persons born in or nationals of certain identified countries. These individuals may become subject to special registration at the time of entry to the United States. These subject individuals are required to report to the Department of Homeland Security at the international port of exit any time they depart from the country.

Staff members of the International Programs Center (IPC) provide related information and assistance to students and scholars subject to NSEERS registration during their new student and scholar orientation and prior to travel overseas.

VII. Internal Audits

Ensuring compliance with UNCG’s policies regarding Export Controls will be the responsibility of the Associate Provost for Research and Public / Private Sector Partnerships. The Assistant Provost for Research will have the responsibility for auditing Export Control compliance through the completion of an annual review of and written report on UNCG’s Export Control Program. Other offices and directors, including but not limited to the Office of Sponsored Programs, Office of Research Compliance, Office of Technology Transfer, Office of Contracts and Grants, International Programs Center, Director of Immigration Services, and the campus legal counsel, may be requested to provide input. The scope of the report will include, but not be limited to, such areas as:

- Recordkeeping
- Hiring policies and practices
- Licensing practices
- Training and Education
- Partner Screening
- Technology review
- Registration of Biological Agents

VIII. Education and Training

The Export Management System includes a program for keeping employees with export control responsibilities fully up-to-date on any amendments to the EAR, ITAR, OFAC and how the amendments affect their responsibilities. Initially experts will be hired to provide campus-wide education about the Export Management System. However, the goal is to implement the following activities.

1. UNCG’s Office of Research and Public / Private Sector Partnerships website at http://www.uncg.edu/rsh will contain the most current information distributed by the Office of General Administration related to the management of exports.
2. The Office of the Assistant Provost for Research will publish memos or other communications on a regular basis providing information on current issues.
3. The electronic internal processing of contracts and grants will include a series of questions with appropriate links to allow a principle investigator to determine if the proposed project is subject to export control.

4. Representatives from the Office of Research and Public / Private Sector Partnerships will make presentations to departments, laboratories and centers tailored to address their specific issues around the management of exports.

5. The Office of the Assistant Provost for Research will prepare an on-line training module which covers export control issues relating to academic institutions.

A principal responsibility of the Assistant Provost for Research will be the development, adoption, and implementation of a web-based research administration training function for all UNCG personnel on export controls.

IX. Partner Screening

A. Policy on Transactions with Sanctioned Countries

UNCG will not issue payments or purchase orders to companies or consultants located in sanctioned countries or which call for delivery to sanctioned countries. Sanctioned Countries are those identified by the U.S. Department of Treasury's Office of Foreign Asset Control (OFAC). The OFAC's list of sanctioned countries is issued in concert with the ongoing effort of the U.S. Government to fight terrorist financing and bank crimes under such regulations as the Patriot Act and the Bank Secrecy Act. The current list of sanctioned countries can be view on the Department of Treasury's web site at http://www.treas.gov/offices/enforcement/ofac/programs/.

Prior to any payments, including travel advances or reimbursement of travel costs, UNCG will first perform a Restricted Party Screening (using Visual Compliance) to ensure that the individual or entity being paid is not a restricted party.

In addition, any UNCG employee who intends to travel abroad should check the U.S Department of the Treasury, Office of Foreign Assets Control web site for a list of Embargoed Countries at http://www.treas.gov/offices/enforcement/ofac/programs/index.html and contact the Export Control Officer if the travel is to a country on the OFAC list.

Please contact the Assistant Provost for Research, if you have additional questions.

B. Review of Government Lists and Diversion Risk Profile

To determine that export control regulations are being followed, appropriate lists and profiles will be reviewed as necessary.

Government Lists

The U.S. Departments of State, Commerce, and Treasury provide information on countries, companies and individuals that have been determined to constitute a potential treat to domestic export control measures. These lists are reviewed when foreign individuals are identified by UNCG staff as individuals who are provided hardware/software technology in the course of a
transaction with UNCG on research project or other endeavors. When deemed necessary, the following lists are reviewed by appropriately trained UNCG employees.

**U.S. List of Debarred Parties** – now a paysite
http://www.pmdtc.org/debar059.htm
Persons who have been precluded by the Department of State from participating—either on a direct or indirect basis—in any transaction which requires a State Department license or State Department approval.

**U.S. Denied Persons List** – now a pay site
http://www.bis.doc.gov/DPL/thedeniellist.asp
Persons who have been denied export privileges by the Department of Commerce because they have, or are believed to have, violated the Export Administration Act or the Export Administration Regulations.

**U.S. Unverified List**
http://www.bis.doc.gov/enforcement/unverifiedlist/unverified_parties.html
Names and countries of foreign persons who in the past were parties to a transaction for which the Bureau of Industry and Security (BIS) could not conduct a pre-license check or a post-shipment verification for reasons outside of the U.S. Government’s control.

**U.S. Specially Designated Nationals and Blocked Persons Lists**
http://www.treas.gov/offices/enforcement/ofac/sdn/index.html
Individuals and entities with which U.S. persons are precluded from dealing. The individuals and entities on this list were placed there because they are associated with international narcotics or terrorism or because they are owned or controlled by, or acting for or on behalf of, the governments of countries which the U.S. considers to be hostile to U.S. foreign policy or national security objectives.

**Excluded Parties List System**
https://www.epls.gov/
Identifies those parties excluded throughout the U.S. Government (unless otherwise noted) from receiving federal contracts or certain subcontracts and from certain types of federal financial and non-financial assistance and benefits.

**U.S. Embargo Reference Chart** - Foreign countries against which the United States federal government has imposed controls for the export of defense articles and services.
http://www.treas.gov/offices/enforcement/ofac/programs/index.html has been archived

**UK Embargoes** - A reference point for lists of UN, EU, OSCE, and UK sanctions.
http://www.fco.gov.uk/en/business-trade/export-controls-sanctions/country-listing/ has been archived

Most of these lists can be accessed by using Visual Compliance II.

**Diversion Risk Profiles**
The following checklist, provided by the United States Department of Commerce, is used by the staff of the relevant office at UNCG to check for possible violations of the Export Control regulations.

- The customer or its address is similar to one of the parties found on the Department of Commerce Bureau of Industry and Security list of denied persons.
- The customer or purchasing agent is reluctant to offer information about the end-use of the item.
- The product's capabilities do not fit the buyer's line of business, such as an order for sophisticated computers for a small bakery.
- The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- The customer has little or no business background.
- The customer is unfamiliar with the product's performance characteristics but still wants the product.
- Routine installation, training, or maintenance services are declined by the customer.
- Delivery dates are vague, or deliveries are planned for out of the way destinations.
- A freight forwarding firm is listed as the product's final destination.
- The shipping route is abnormal for the product and destination.
- Packaging is inconsistent with the stated method of shipment or destination.
- When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for re-export.

X. Jurisdiction and Classification

A. Technology Review

All items (hardware, software or technical data) that are exported by any means undergo an analysis by the Export Control Officer to determine which U.S. government agency has jurisdiction over the exported items. For each matter identified involving a potential export of controlled hardware/software/technology, the potential export is classified and evaluated for the applicability of any export control restrictions. The Assistant Provost for Research will interview the researcher most knowledgeable about the technical aspects of the equipment or information under consideration for export. In addition, the items listed in the Commerce Control List and/or Munitions List, as appropriate, are reviewed. If an item is identified in one or more categories of a list, further analysis is done to determine whether the item is controlled for its intended destination, and if so, whether any License Exceptions may apply. If there is any uncertainty in this determination, outside counsel is consulted. If it is determined that a license is required, the procedures in Section XIII are followed.

B. Management of Biological Agents
The EAR Commerce Control List (CCL) and the ITAR U.S. Munitions List (USML) name many biological agents the use of which is a matter of export control management. In addition the Select Agents, approximately 40 viruses, bacteria, rickettsiae, fungi, and toxins that are considered to potentially pose substantial harm to human health (the list is available at http://www.cdc.gov/od/sap/docs/salist.pdf) may also be subject to export regulations. However, certain strains of organisms and quantities are exempt from the regulations. Individuals should contact the Assistant Provost for Research for additional information.

The export of any regulated select agent requires the review of the Institutional Biosafety Committee of the specific agent, approval to export from the Assistant Vice Chancellor for Environmental Safety, and if sponsored program activity is involved, the written approval of the Assistant Provost for Research.

XI. Fundamental Research

Fundamental research, as used in the export control regulations, 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, in some cases, is ordinarily published and shared broadly in the scientific community and, in other cases, where the resulting information has been or is about to be published. 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 research institution accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsors of to insure that publication will not compromise patent rights of the sponsor; or (2) the research is federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the University or the researcher.

Appropriate personnel will be trained in procedures to determine if a sponsored program/joint venture meets the definition of fundamental research. Where terms and conditions are presented to UNCG for a sponsored program/joint venture and do not fall under the fundamental research umbrella, the terms and conditions will be negotiated. Such negotiations may involve the Assistant Provost for Research, the researchers, and, if necessary, the senior UNCG administration. In particular, international collaborations are reviewed carefully for any aspect of technology transfer between collaborating institutions or entities for any possibility of an exchange of technology or information that would be subject to export control regulations. No Department, Laboratory, or Center personnel or UNCG researchers has the legal authority to sign any document that would contain a provision that would fall outside the fundamental research exception.

XII. Deemed Exports

“Deemed” exports are transfers of controlled technology to foreign persons, usually in the U.S. The transfer is regulated because the transfer is “deemed,” by law, to be to the country where the
person is a resident or a citizen. For example, transfer of infrared camera technology to an Indian national in the U.S. may be regulated as if the transfer of the technology was made to the Indian national in India. The transfer is thus “deemed” to be to India even though all activities would take place in the U.S.

The Commerce Department’s Export Administration Regulations (“EAR”) and the State Department’s International Traffic In Arms Regulations (“ITAR”) define “deemed exports” as (a) the transfer or disclosure (visually, electronically, or in any other medium) (b) of “technologies” (EAR) or “technical data” (ITAR), meaning information beyond general and basic marketing materials (e.g., source code or equipment installation, operation and repair instructions), as well as consulting, instruction, training, or lectures, concerning export-controlled equipment, materials, or items (“Materials or Items”), (c) to a foreign entity or individual (d) in the U.S. (even on campus). Deemed exports do not include the mere transfer of the actual controlled Materials or Items without any associated information. (See 15 C.F.R. 734.2; 22 C.F.R. 120.17 regarding “deemed exports” and see 15 C.F.R. 772, 774; 22 C.F.R. 120.10(5) regarding “technologies” and “technical data.”) Note that the ITAR does not use the term “deemed export” as is used under the Commerce Department regulations, but the concept is the same under both the EAR and ITAR.

Appropriate personnel will be trained to review potential sponsored programs/joint ventures, as described in the prior section, for deemed exports to foreign nationals.

XIII. Licensing Determination

A determination is made in the manner described below whether a license is required for the hardware/software/technology being transferred and whether any exceptions are available.

1) In accordance with the procedures outlined in this document, all necessary information is gathered from the researcher and/or the entity from which the hardware/software/technology is being procured or to which it is being sent in order to assess the classification of the intended item or information to be exported.

2) A determination is made whether a license is required or whether a license exception exists.

3) If a license is required, the appropriate agency forms are completed and submitted, generally in electronic form with hard-copies sent.

4) The Assistant Provost for Research or designated administrative staff members is available to answer any questions that may be raised by the agency; technical questions are answered by the researchers.

5) The researchers are kept informed of the process and notified promptly of receipt of the export license. The Office of the Assistant Provost for Research ensures that any special provisions within the license are understood by the parties who will be exporting the items or information. If a Technology Control Plan is required under the license, it will be developed in conjunction with the researchers.

6) The Office of the Assistant Provost for Research maintains records to document that the export activities comply with the timelines indicated in the license and contacts the agencies in advance of a license needs to be extended.
XIV. Notification

In the event that a question arises regarding the propriety of specific transactions or if potential violations have occurred, UNCG will take appropriate steps to evaluate the issue and, if necessary, to communicate with the U.S. Bureau of Industry and Security (BIS) and the Department of State. All communications from UNCG are made through the Office of the Assistant Provost for Research.

XV. Visual Compliance

UNCG will utilize the Visual Compliance system by eCustoms. This is a standard in export compliance software solutions that provides the necessary documentation and online tools to help the University remain in compliance with U.S. export control regulations.
APPENDIX A
Glossary of Terms


**Commerce Control List (CCL)** - A list of items under the export control jurisdiction of the Bureau of Industry and Security (BIS), U.S. Department of Commerce. The CCL is found in Supplement 1 to part 774 of the EAR.

**Commerce Control List (CCL) Category** - The CCL is divided into 10 categories: (0) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (1) Materials Chemicals, “Microorganisms,” and Toxins; (2) Materials Processing; (3) Electronic Design, Development and Production; (4) Computers; (5) Telecommunications; (6) Sensors; (7) Navigation and Avionics; (8) Marine; (9) Propulsion Systems, Space Vehicles, and Related Equipment.

**Commerce Control List (CCL) Group** - The CCL is divided into 10 categories. Each category is subdivided into five groups, designated by the letters A through E: (A) Equipment, Assemblies, and Components; (B) Test, Inspection, and Production Equipment; (C) Materials; (D) Software; (E) Technology

**Deemed Export** - An export of controlled technology and software to a foreign national (other than a U.S. citizen or permanent resident) inside the United States.

**Defense Article** - (ITAR §120.6) Any item designated in the 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.

**Defense Service** - (ITAR § 120.9) 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 national anywhere.

**Denied Persons List** - A list of specific persons who have been denied export privileges, in whole or in part. The full text of each order denying export privileges is published in the Federal Register.

**Dual Use** - 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 also are subject to the EAR (see § 734.2(a) of the EAR).
Empowered Official- A U.S. person who:

- Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and
- Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
- Understands the provisions and requirements of the various export control statues and regulations, and the criminal liability, civil liability, and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and
- Has the independent authority to:
  - Inquire into any aspect of a proposed export or temporary import by the applicant; and
  - Verify the legality of the transaction and the accuracy of the information to be submitted; and
  - Refuse to sign any license application or other request for approval without prejudice or other adverse recourse. (22 C.F.R. § 120.25)

Export- There are several meanings in export control regulations, which include any of the following: 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; 3) any release or disclosure, including verbal disclosures or visual inspections, or any technology, software, or technical data to any foreign national; or 4) actual use or application of covered technology on behalf of or for the benefit of any foreign entity or person anywhere.

Export Administration Regulations- The Export Administration Regulations (EAR), Title 15, Sections 730-774 of the Code of Federal Regulations (C.F.R.), means the regulations promulgated and implemented by the Department of Commerce that regulate the export of goods and related technology identified on the Commodity Control List (CCL); Title 15 C.F.R. 774, Supp. 1. Goods and technology on the CCL are not inherently military in nature; they are primarily and inherently commercial or potentially commercial in nature.

Export Control- The set of laws, policies, and regulations that govern the export of sensitive items for a country or company.

Export Control Classification Number (ECCN) - identifies items on the Commerce Control List that are subject to the export licensing authority of the Bureau of Industry and Security.

Exporter- The person who has authority of a principal party in interest to determine and control the sending of items out of the country.

Export License- The approval documentation issued by an export agency authorizing the recipient to proceed with the export, re-export, or other regulated activity as specified on the application.

Foreign National- Any person who is not a citizen or Permanent Resident Alien of the U.S. Under the EAR, the term applies to “persons lawfully admitted for permanent residence in the
United States” and does not apply to persons who are protected individuals (i.e., have been admitted as a refugee or granted asylum). (See Immigration and Naturalization Act (8 U.S.C. § 1324b (a) (3)). “Foreign national” is not an ITAR term per se, but the ITAR does define the term “foreign person” as any natural person who is not a lawful permanent resident or who is not a “protected individual,” and may also include any corporation, business association, partnership society, trust, or any other entity, organization, or group that is incorporated to do business in the United States. This also includes any governmental entity.

**Fundamental Research**- (EAR and ITAR) 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 or national security reasons (EAR), or pursuant to specific U.S. government access and dissemination controls (ITAR).

**Fundamental Research Exclusions**- The EAR provides that university research normally will 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 insure that publication will not compromise patent rights of the sponsor. The citation for the official definition of fundamental research under the EAR is 15 C.F.R. § 734.8).

The ITAR states that university research will 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 C.F.R. § 120.11 (8).

**Good**- Any article, natural or man-made substance, material, supply, or manufactured product, including inspection and test equipment, and excluding technology.

**International Trafficking in Arms Regulations (ITAR)**- The International Trafficking in Arms Regulations (ITAR) 22 C.F.R. § §120-130, means the regulations promulgated and implemented by the Department of State that control the export of articles, services, and related technical data that are inherently military in nature as determined by the State Department. These “defense articles,” “defense services,” and related “technical data” are listed on the Munitions List (USML), 22 C.F.R. § 121. Even some article and technologies that are not readily identifiable as inherently military in nature- for example research satellites- are included on the USML.

**Munitions List**- Articles, services, and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act.
Public Domain—(ITAR; 22 C.F.R. § 120.11). Information that is published and that generally is accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions that 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.

Re-export—An actual shipment or transmission of items subject to export regulations from one foreign country to another foreign country. For the purposes of the U.S. EAR, the export or re-export of items subject to the EAR that will transit through a country or countries to a new country, or are intended for re-export to the new country, are deemed to be exports to the new country.

Specially Designated National (SDN)—Any person who is determined by the U.S. Secretary of the Treasury to be a specially designated national for any reason under regulations issued by the Office of Foreign Assets Control.

Technical Assistance—Technical assistance may take such forms as instruction, skills training, working knowledge, and consulting services, and may also involve the transfer of technical data.

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. May take such forms 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. 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)).

Technology—Any specific information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, manuals, or software, or in intangible form, such as training or technical services) that is required for the development; production, or use of a good, but not the good itself.

U.S. Person—An individual who is a citizen of the United States or a foreign national with a visa of Legal Permanent Resident (LPR). An LPR is also known as a Permanent Resident Alien (PRA).
APPENDIX B
Frequently Asked Questions1

Section A: Publication

Question A(1): I plan to publish in a foreign journal a scientific paper describing the results of my research, which is in an area listed in the EAR as requiring a license to all countries except Canada. Do I need a license to send a copy to my publisher abroad?

Answer: No. This export transaction is not subject to the EAR. The EAR do not cover technology that is already publicly available, as well as technology that is made public by the transaction in question (99734.3 and 734.7 of this part). Your research results would be made public by the planned publication. You would not need a license.

Question A(2): Would the answer differ depending on where I work or where I performed the research?

Answer: No. Of course, the result would be different if your employer or another sponsor of your research imposed restrictions on its publication (8734.8 of this part).

Question A(3): Would I need a license to send the paper to the editors of a foreign journal for review to determine whether it will be accepted for publication?

Answer: No. This export transaction is not subject to the EAR because you are submitting the paper to the editors with the intention that the paper will be published if favorably received (§734.7(a) (4) (iii) of this part).

Question A(4): The research on which I will be reporting in my paper is supported by a grant from the Department of Energy (DOE). The grant requires prepublication clearance by DOE. Does that make any difference under the Export Administration Regulations?

Answer: No, the transaction is not subject to the EAR. But if you published in violation of any Department of Energy controls you have accepted in the grant, you may be subject to appropriate administrative, civil, or criminal sanctions under other laws.

Question A(5): We provide consulting services on the design, layout, and construction of integrated circuit plants and production lines. A major part of our business is the publication for sale to clients of detailed handbooks and reference manuals on key aspects of the design and manufacturing processes. A typical cost of publishing such a handbook and manual might be $500; the typical sales price is about $15,000. Is the publication and sale of such handbooks or manuals subject to the EAR?

Answer: Yes. The price is above the cost of reproduction and distribution (§734.7(a) (1) of this part). Thus, you would need to obtain a license or qualify for a License Exception before you could export or reexport any of these handbooks or manuals.

Question A(6): My Ph.D. thesis is on technology, listed in the EAR as requiring a license to all destinations except Canada, which has never been published for general distribution. However,

1 Excerpts from EAR Part 734, Supplement 1
the thesis is available at the institution from which I took the degree. Do I need a license to send another copy to a colleague overseas?

Answer: That may depend on where in the institution it is available. If it is not readily available in the university library (e.g., by filing in open stacks with a reference in the catalog), it is not "publicly available" and the export or reexport would be subject to the EAR on that ground. The export or reexport would not be subject to the EAR if your Ph.D. research qualified as "fundamental research" under §734.8 of this part. If not, however, you will need to obtain a license or qualify for a License Exception before you can send a copy out of the country.

**Question A (7):** We sell electronically recorded information, including software and databases, at wholesale and retail. Our products are available by mail order to any member of the public, though intended for specialists in various fields. They are priced to maximize sales to persons in those fields. Do we need a license to sell our products to foreign customers?

Answer: You would not need a license for otherwise controlled technology or software if the technology and software are made publicly available at a price that does not exceed the cost of production and distribution to the technical community. Even if priced at a higher level, the export or reexport of the technology or software source code in a library accessible to the public is not subject to the EAR (§734.7(a) of this part).

**Section B: Conferences**

**Question B(1):** I have been invited to give a paper at a prestigious international scientific conference on a subject listed as requiring a license under the EAR to all countries, except Canada. Scientists in the field are given an opportunity to submit applications to attend. Invitations are given to those judged to be the leading researchers in the field, and attendance is by invitation only. Attendees will be free to take notes, but not make electronic or verbatim recordings of the presentations or discussions. Some of the attendees will be foreigners. Do I need a license to give my paper?

Answer: No. Release of information at an open conference and information that has been released at an open conference is not subject to the EAR. The conference you describe fits the definition of an open conference (§734.7(a) of this part).

**Question B (2):** Would it make any difference if there were a prohibition on making any notes or other personal record of what transpires at the conference?

Answer: Yes. To qualify as an "open" conference, attendees must be permitted to take notes or otherwise make a personal record (although not necessarily a recording). If note taking or the making of personal records is altogether prohibited, the conference would not be considered "open".

**Question B (3):** Would it make any difference if there were also a registration fee?

Answer: That would depend on whether the fee is reasonably related to costs and reflects an intention that all interested and technically qualified persons should be able to attend (§734.7(a)(4)(ii) of this part).
**Question B (4):** Would it make any difference if the conference were to take place in another country?

**Answer:** No.

**Question B (5):** Must I have a license to send the paper I propose to present at such a foreign conference to the conference organizer for review?

**Answer:** No. A license is not required under the EAR to submit papers to foreign organizers of open conferences or other open gatherings with the intention that the papers will be delivered at the conference, and so made publicly available, if favorably received. The submission of the papers is not subject to the EAR (§734.7(a) (4) (iii) of this part).

**Question B (6):** Would the answers to any of the foregoing questions be different if my work were supported by the Federal Government?

**Answer:** No. You may export and reexport the papers, even if the release of the paper violates any agreements you have made with your government sponsor. However, nothing in the EAR relieves you of responsibility for conforming to any controls you have agreed to in your Federal grant or contract.

**Section C: Educational Instruction**

**Question C (1):** I teach a university graduate course on design and manufacture of very high-speed integrated circuitry. Many of the students are foreigners. Do I need a license to teach this course?

**Answer:** No. Release of information by instruction in catalog courses and associated teaching laboratories of academic institutions is not subject to the EAR ($734.9 of this part).

**Question C (2):** Would it make any difference if some of the students were from countries to which export licenses are required?

**Answer:** No.

**Question C (3):** Would it make any difference if I talk about recent and as yet unpublished results from my laboratory research?

**Answer:** No.

**Question C (4):** Even if that research is funded by the Government?

**Answer:** Even then, but you would not be released from any separate obligations you have accepted in your grant or contract.

**Question C (5):** Would it make any difference if I were teaching at a foreign university?

**Answer:** No.

**Question C (6):** We teach proprietary courses on design and manufacture of high-performance machine tools. Is the instruction in our classes subject to the EAR?

**Answer:** Yes. That instruction would not qualify as "release of educational information" under §734.9 of this part because your proprietary business does not qualify as an
"academic institution" within the meaning of §734.9 of this part. Conceivably, however, the instruction might qualify as "release at an open seminar, or other open gathering" under §734.7(a) of this part. The conditions for qualification of such a seminar or gathering as "open", including a fee "reasonably related to costs (of the conference, not of producing the data) and reflecting an intention that all interested and technically qualified persons are able to attend," would have to be satisfied.

Section D: Research, Correspondence, and Informal Scientific Exchanges

**Question D (1):** Do I need a license in order for a foreign graduate student to work in my laboratory?

**Answer:** Not if the research on which the foreign student is working qualifies as "fundamental research" fewer than 5734.8 of this part. In that case, the research is not subject to the EAR.

**Question D (2):** Our company has entered into a cooperative research arrangement with a research group at a university. One of the researchers in that group is a PRC national. We would like to share some of our proprietary information with the university research group. We have no way of guaranteeing that this information will not get into the hands of the PRC scientist. Do we need to obtain a license to protect against that possibility?

**Answer:** No. The EAR do not cover the disclosure of information to any scientists, engineers, or students at a U.S. university in the course of industry-university research collaboration under specific arrangements between the firm and the university, provided these arrangements do not permit the sponsor to withhold from publication any of the information that he provides to the researchers. However, if your company and the researchers have agreed to a prohibition on publication, then you must obtain a license or qualify for a License Exception before transferring the information to the university. It is important that you as the corporate sponsor and the university get together to discuss whether foreign nationals will have access to the information, so that you may obtain any necessary authorization prior to transferring the information to the research team.

**Question D (3):** My university will host a prominent scientist from the PRC who is an expert on research in engineered ceramics and composite materials. Do I require a license before telling our visitor about my latest, as yet unpublished, research results in those fields?

**Answer:** Probably not. If you performed your research at the university, and you were subject to no contract controls on release of the research, your research would qualify as "fundamental research" (§734.8(a) of this part). Information arising during or resulting from such research is not subject to the EAR (§734.3(b)(3) of this part). You should probably assume, however, that your visitor will be debriefed later about anything of potential military value he learns from you. If you are concerned that giving such information to him, even though permitted, could jeopardize U.S. security interests, the Commerce Department can put you in touch with appropriate Government scientists who can advise you. Write to Department of Commerce, Bureau of Industry and Security, P.O.Box 273, Washington, DC 20044.
**Question D (4):** Would it make any difference if I were proposing to talk with a PRC expert in China?

**Answer:** No, if the information in question arose during or resulted from the same "fundamental research."

**Question D (5):** Could I properly do some work with him in his research laboratory inside China?

**Answer:** Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience, and such an export may be subject to the EAR. If any of the knowledge or experience you export in this way requires a license under the EAR, you must obtain such a license or qualify for a License Exception.

**Question D (6):** I would like to correspond and share research results with an Iranian expert in my field, which deals with technology that requires a license to all destinations except Canada. Do I need a license to do so?

**Answer:** Not as long as we are still talking about information that arose during or resulted from research that qualifies as "fundamental" under the rules spelled out in §734.8(a) of this part.

**Question D (7):** Suppose the research in question were funded by a corporate sponsor and I had agreed to prepublication review of any paper arising from the research?

**Answer:** Whether your research would still qualify as "fundamental" would depend on the nature and purpose of the prepublication review. If the review is intended solely to ensure that your publications will neither compromise patent rights nor inadvertently divulge proprietary information that the sponsor has furnished to you, the research could still qualify as "fundamental." But if the sponsor will consider as part of its prepublication review whether it wants to hold your new research results as trade secrets or otherwise proprietary information (even if your voluntary cooperation would be needed for it to do so), your research would no longer qualify as "fundamental." As used in these regulations it is the actual and intended openness of research results that primarily determines whether the research counts as "fundamental" and so is not subject to the EAR.

**Question D (8):** In determining whether research is thus open and therefore counts as "fundamental," does it matter where or in what sort of institution the research is performed?

**Answer:** In principle, no. "Fundamental research" is performed in industry, Federal laboratories, or other types of institutions, as well as in universities. The regulations introduce some operational presumptions and procedures that can be used both by those subject to the regulations and by those who administer them to determine with some precision whether a particular research activity is covered. Recognizing that common and predictable norms operate in different types of institutions, the regulations use the institutional locus of the research as a starting point for these presumptions and procedures. Nonetheless, it remains the type of research, and particularly the intent and freedom to publish, that identifies "fundamental research," not the institutional locus ($734.8(a) of this part).
**Question D (9):** I am doing research on high-powered lasers in the central basic-research laboratory of an industrial corporation. I am required to submit the results of my research for prepublication review before I can publish them or otherwise make them public. I would like to compare research results with a scientific colleague from Vietnam and discuss the results of the research with her when she visits the United States. Do I need a license to do so?

**Answer:** You probably do need a license (§734.8(d) of this part). However, if the only restriction on your publishing any of that information is a prepublication review solely to ensure that publication would compromise no patent rights or proprietary information provided by the company to the researcher your research may be considered "fundamental research," in which case you may be able to share information because it is not subject to the EAR. Note that the information will be subject to the EAR if the prepublication review is intended to withhold the results of the research from publication.

**Question D (10):** Suppose I have already cleared my company's review process and am free to publish all the information I intend to share with my colleague, though I have not yet published?

**Answer:** If the clearance from your company means that you are free to make all the information publicly available without restriction or delay, the information is not subject to the EAR. (§734.8(d) of this part)

**Question D (11):** I work as a researcher at a Government-owned, contractor-operated research center. May I share the results of my unpublished research with foreign nationals without concern for export controls under the EAR?

**Answer:** That is up to the sponsoring agency and the center's management. If your research is designated "fundamental research" within any appropriate system devised by them to control release of information by scientists and engineers at the center, it will be treated as such by the Commerce Department, and the research will not be subject to the EAR. Otherwise, you would need to obtain a license or qualify for a License Exception, except to publish or otherwise make the information public (§734.8(c) of this part).

**Section E: Federal Contract Controls**

**Question E (1):** In a contract for performance of research entered into with the Department of Defense (OD), we have agreed to certain national security controls. DOD is to have ninety days to review any papers we proposed before they are published and must approve assignment of any foreign nationals to the project. The work in question would otherwise qualify as "fundamental research" section under §734.8 of this part. Is the information arising during or resulting from this sponsored research subject to the EAR?

**Answer:** Under §734.11 of this part, any export or reexport of information resulting from government-sponsored research that is inconsistent with contract controls you have agreed to will not qualify as "fundamental research" and any such export or reexport would be subject to the EAR. Any such export or reexport that is consistent with the controls will continue to be eligible for export and reexport under the "fundamental research" rule set forth in §734.8(a) of this part. Thus, if you abide by the specific controls you have agreed to, you need not be concerned about violating the EAR. If you violate those controls and export or reexport information as "fundamental research" under
$734.8(a) of this part, you may subject yourself to the sanctions provided for under the EAR, including criminal sanctions, in addition to administrative and civil penalties for breach of contract under other law.

**Question E (2):** Do the Export Administration Regulations restrict my ability to publish the results of my research?

**Answer:** The Export Administration Regulations are not the means for enforcing the national security controls you have agreed to. If such a publication violates the contract, you would be subject to administrative, civil, and possible criminal penalties under other law.

**Section F: Commercial Consulting**

**Question F (1):** I am a professor at a U.S. university, with expertise in design and creation of submicron devices. I have been asked to be a consultant for a "third-world" company that wishes to manufacture such devices. Do I need a license to do so?

**Answer:** Quite possibly you do. Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience that is subject to the Export Administration Regulations. If any part of the knowledge or experience your export or reexport deals with technology that requires a license under the EAR, you will need to obtain a license or qualify for a License Exception.

**Section G: Software**

**Question G (1):** Is the export or reexport of software in machine readable code subject to the EAR when the source code for such software is publicly available?

**Answer:** If the source code of a software program is publicly available, then the machine readable code compiled from the source code is software that is publicly available and therefore not subject to the EAR.

**Question G (2):** Is the export or reexport of software sold at a price that does not exceed the cost of reproduction and distribution subject to the EAR?

**Answer:** Software in machine readable code is publicly available if it is available to a community at a price that does not exceed the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition. In this case, the provider of the software does not receive a fee for the inherent value of the software.

---

2 Exporters should note that these provisions do not apply to software controlled under the International Traffic in Arms Regulations (e.g., certain encryption software).
**Question G (3):** Is the export or reexport of software subject to the EAR if it is sold at a price BIS concludes in a classification letter to be sufficiently low so as not to subject it to the EAR?

**Answer:** In response to classification requests, BIS may choose to classify certain software as not subject to the EAR even though it is sold at a price above the costs of reproduction and distribution as long as the price is nonetheless sufficiently low to qualify for such a classification in the judgment of BIS.

**Section H: Available in a Public Library**

**Question H (1):** Is the export or reexport of information subject to the EAR if it is available in a library and sold through an electronic or print service?

**Answer:** Electronic and print services for the distribution of information may be relatively expensive in the marketplace because of the value vendors add in retrieving and organizing information in a useful way. If such information is also available in a library -- itself accessible to the public -- or has been published in any way, that information is "publicly available" for those reasons, and the information itself continues not to be subject to the EAR even though you access the information through an electronic or print service for which you or your employer pay a substantial fee.

**Question H (2):** Is the export or reexport of information subject to the EAR if the information is available in an electronic form in a library at no charge to the library patron?

**Answer:** Information available in an electronic form at no charge to the library patron in a library accessible to the public is information publicly available even though the library pays a substantial subscription fee for the electronic retrieval service.

**Question H (3):** Is the export or reexport of information subject to the EAR if the information is available in a library and sold for more than the cost of reproduction and distribution?

**Answer:** Information from books, magazines, dissertations, papers, electronic data bases, and other information available in a library that is accessible to the public is not subject to the EAR. This is true even if you purchase such a book at more than the cost of reproduction and distribution. In other words, such information is "publicly available" even though the author makes a profit on your particular purchase for the inherent value of the information.

**Section I: Miscellaneous**

**Question I (1):** The manufacturing plant that I work at is planning to begin admitting groups of the general public to tour the plant facilities. We are concerned that a license might be required if the tour groups include foreign nationals. Would such a tour constitute an export? If so, is the export subject to the EAR?

**Answer:** The EAR define exports and reexports of technology to include release through visual inspection by foreign nationals of U.S.-origin equipment and facilities. Such an export or reexport qualifies under the "publicly available" provision and would not be subject to the EAR so long as the tour is truly open to all members of the public, including your competitors, and you do not charge a fee that is not reasonably related to the cost of conducting the tours. Otherwise, you will have to obtain a license, or qualify
for a License Exception, prior to permitting foreign nationals to tour your facilities ($734.7 of this part).

**Question I (2):** Is the export or reexport of information subject to the EAR if the information is not in a library or published, but sold at a price that does not exceed the cost of reproduction and distribution?

**Answer:** Information that is not in a library accessible to the public and that has not been published in any way, may nonetheless become "publicly available" if you make it both available to a community of persons and if you sell it at no more than the cost of reproduction and distribution. Such reproduction and distribution costs may include variable and fixed cost allocations of overhead and normal profit for the reproduction and distribution functions either in your company or in a third party distribution system. In your company, such costs may not include recovery for development, design, or acquisition costs of the technology or software. The reason for this conclusion is that the provider of the information receives nothing for the inherent value of the information.

**Question I (3):** Is the export or reexport of information contributed to an electronic bulletin board subject to the EAR?

**Answer:** Assume each of the following:
1. Information is uploaded to an electronic bulletin board by a person that is the owner or originator of the information;
2. That person does not charge a fee to the bulletin board administrator or the subscribers of the bulletin board; and
3. The bulletin board is available for subscription to any subscriber in a given community regardless of the cost of subscription.
Such information is "publicly available" and therefore not subject to the EAR even if it is not elsewhere published and is not in a library. The reason for this conclusion is that the bulletin board subscription charges or line charges are for distribution exclusively, and the provider of the information receives nothing for the inherent value of the information.

**Question I (4):** Is the export or reexport of patented information fully disclosed on the public record subject to the EAR?

**Answer:** Information to the extent it is disclosed on the patent record open to the public is not subject to the EAR even though you may use such information only after paying a fee in excess of the costs of reproduction and distribution. In this case the seller does receive a fee for the inherent value of the technical data; however, the export or reexport of the information is nonetheless not subject to the EAR because any person can obtain the technology from the public record and further disclose or publish the information. For that reason, it is impossible to impose export controls that deny access to the information.
APPENDIX C
Flow chart to assist investigators in determining if research is subject to Export Control Regulations
APPENDIX D
Questions to determine if taking a laptop computer out of the country is subject to Export Control Regulations

If the answer to ALL of the following questions are yes, and the laptop, components or software are not designed for use in /with /by satellites or spacecraft or otherwise regulated as a defense article, then the hand-carry, shipment or retransfer of the laptop, components or software qualifies for License Exception TMP.

• Is the item or software to be hand-carried, shipped or retransferred abroad?
• Is the item or software to be returned to the U.S. within 12 months of being taken abroad?
• Will the item or software to be hand-carried, shipped or retransferred be used ONLY either a) as a “tool of the trade” to conduct University business or b) for exhibition of demonstration or c) inspection, testing, calibration, or repair?
• If for inspection, calibration or repair, will the item or software be shipped, retransferred or hand-carried to any country other than:
  o Albania, Armenia, Azerbaijan, Belarus, Cambodia, China, Georgia, Iraq, Kazakhstan, Kyrgyzstan, Laos, Libya, Macau, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, or Vietnam?
• Will the item or software remain under the “effective control” of University personnel while the property is abroad? (”Effective Control” is defined as retaining physical possession of an item or maintaining it in a secure environment such as a guarded facility.)
• Is the encryption code incorporated in the item or on the software media limited to that available through retail purchase (phone order, mail, internet, or over-the-counter transactions)?

3 Taken from the memorandum from Harold L. Martin, General Administration for the UNS System, RE: Export Controls Regulations, on August 22, 2007
APPENDIX E

Resource Links

United States Government Departments and Agencies with Export Control Responsibilities

Department of State, Directorate of Defense Trade Controls (DTC):
http://www.pmddtc.state.gov/
Licenses defense services and defense (munitions) articles.

Tel. (202) 663-1282

Department of the Treasury, Office of Foreign Assets Control (OFAC):
http://www.treas.gov/offices/enforcement/ofac/
OFAC administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations, and international narcotics traffickers. The OFAC Web site provides information on these sanctions as well as the complete list of Specially Designated Nationals and Blocked Persons (the "SDN list").

Tel. 1-800-540-6322 Fax: (202) 622-1657

Nuclear Regulatory Commission, Office of International Programs:
http://www.nrc.gov/about-nrc/organization/oipfuncdesc.html
Licenses nuclear material and equipment.

Tel. (301) 415-2344 Fax: (301) 415-2395

Department of Energy, Office of Arms Controls and Nonproliferation, Export Control Division:
Licenses nuclear technology and technical data for nuclear power and special nuclear materials.

Tel. (202) 586-2112 Fax: (202) 586-6977

Department of Energy, Office of Fuels Programs:
http://www.fe.doe.gov/
Licenses natural gas and electric power.

Tel. (202) 586-9482 Fax: (202) 586-6050
Defense Technology Security Administration:

The Defense Technology Security Administration (DTSA) administers the development and implementation of Department of Defense (DoD) technology security policies on international transfers of defense-related goods, services and technologies.

Tel. (703)325-4049  Fax: (703) 602-5842

Department of the Interior, Division of Management Authority:
Controls the export of endangered fish and wildlife species.

Tel. (703) 358-2093  Fax: (703) 358-2280

Drug Enforcement Administration, Office of Diversion Control, Import-Export Unit:

http://www.deadiversion.usdoj.gov/imp_exp/index.html
Oversees the export of controlled substances and the import and export of listed chemicals used in the production of control substances under the Controlled Substances Act.

Controlled Substances

Tel. (202) 307-7182 – (202) 307-7181  Fax: (202) 307-7503

Chemicals

Tel. (202) 307-4916  Fax: (202) 307-4702

Food and Drug Administration, Office of Compliance:

http://www.fda.gov/
Licenses medical devices.

Tel. (301) 594-4699  Fax: (301)594-4715

Food and Drug Administration, Import/Export:

http://www.fda.gov/
Licenses drugs.

Tel. (301)594-3150  Fax: (301) 594-0165
Patent and Trademark Office, Licensing and Review:
http://www.uspto.gov/
Oversees patent filing data sent abroad.

Tel. (703) 308-1722  Fax: (703) 305-3603

Environmental Protection Agency, Office of Solid Waste, International and Transportation Branch
http://www.epa.gov/epaoswer/osw/internat/index.htm
Regulates hazardous waste exports

Tel. (703)308-0005

International/Government Export Control Web sites

Wassenaar Arrangement:
http://www.wassenaar.org/
Provides links and information on the export controls of the various participating countries.

U.S. Mission to the OSCE, Vienna, Austria:
http://vienna.usmission.gov/
Provides links to the history of the Wassenaar Arrangement, Questions and Answers, Documentation, and Reference Materials

Links to other Federal Resources for Export Promotion
The following is a brief list of some federal agencies offering promotion trade information and related services.

International Trade Administration (ITA) Department of Commerce:
http://trade.gov/index.asp
ITA provides industry and country specific market information, and offers a wide variety of programs to assist U.S. exporters.

ITA s Trade Information Center (TIC):
http://www.export.gov/exportbasics/ticredirect.asp
A comprehensive resource for information on all federal government export assistance programs.

Small Business Administration (SBA):
SBA provides a full range of export assistance services to small businesses, particularly those new to exporting, and offers counseling, training, managerial and trade finance assistance.

**Exports.gov:**

http://www.export.gov/
U.S. Government export portal

**Bureau of Census - Department of Commerce:**

http://www.census.gov/
Census provides trade data on exports and imports, and information on Schedule B numbers and the Shipper's Export Declaration.

**Bureau of Customs and Border Protection** and **Bureau of Immigration and Customs Enforcement:**

http://www.customs.gov/
These two Bureaus, formerly the U.S. Customs, are responsible for ensuring that all goods entering and exiting the United States do so in accordance with all U.S. laws and regulations.

**Links to other Federal Resources**

**USA.gov**

http://www.usa.gov/

**Regulations.gov:**

http://www.regulations.gov/search/index.jsp
The location where you can find, review, and submit comments on Federal documents that are open for comment and published in the Federal Register.


**U.S. Navy, Office of Naval Research, Best Manufacturing Practices (BMP):**

http://www.bmpcoe.org/
This Navy Center of Excellence Web page is designed to introduce companies to the best practices in the areas of design, text, production, facilities, logistics, and management. BIS partners with the BMP program to assist small and medium-companies in competitive enhancement and defense diversification efforts.
ACKNOWLEDGEMENTS

The following sources were used in creating this document. Their contribution is gratefully acknowledged.


Winston-Salem State University Export Control Management Plan.

Bureau of Industry and Security, US Department of Commerce website (http://www.bis.doc.gov/about/reslinks.htm)

MIT’s Research Policy Guideline Export Control Laws and Regulations.