EXPORT CONTROL CONCERNS FOR FACULTY, STAFF and STUDENTS

The United States is committed to encourage technology exchanges that are consistent with U.S. national security and nuclear nonproliferation objectives. Although most of the research and technology development The University of North Carolina at Charlotte conducts is exempt from U.S. export control regulations, we must still comply with the regulations.

An export can occur through a variety of means, including:

1. Shipping
2. Oral communications, whether here in the U.S. or abroad.
3. Written documentation (including e-mails)
4. Visual inspections of any technology, software or technical data to any non-U.S. citizen, whether here in the U.S. or abroad.

How do these regulations affect you as a faculty or staff member at UNCC? Export controls affect three main areas at UNCC: research, travel outside the U.S., and shipping.

RESEARCH

If you are doing fundamental research and the results of the research will be in the public domain (see definitions below), you probably will not have any export control issues unless you have a foreign national working with controlled (found on the Commerce Control List or the U.S. Munitions List) proprietary technology in conjunction with your research project (see UNCC Technology Control Plan Template).

You may also be working on a project that has controlled proprietary technology or the government has placed access controls on the technology, but you do not have foreign nationals involved in your research. In this situation you must have a Technology Control Plan in place that limits access to only U.S. citizens and foreign nationals with a green card.

**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 is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research which results in information which 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 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 sponsor or to insure that publication will not compromise patent rights of the sponsor;

(2) the research is federally funded and specific access and dissemination controls regarding the resulting information have been accepted by University or the researcher. The citation for the official definition of Fundamental Research under the EAR is 15 CFR § 734.8. The ITAR citation is 22 CFR § 120.11.

**Public Domain** (22 CFR 120.11) means information that is published and that is generally accessible or available to the public. The following are examples:

1. through sales at newsstands and bookstores or
2. through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information or
3. through second class mailing privileges granted by the U.S. Government or
4. at libraries open to the public or from which the public can obtain documents or
5. through patents available at any patent office or
6. through unlimited distribution at a conference, meeting, seminar, trade show or exhibition generally accessible to the public, in the United States or
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.

**TRAVEL**

Travel outside the U.S. can present export control issues for UNCC employees. There are government regulations that affect:

1. Taking items with you on a trip in support of your work or conference such as:
   - Laptops
   - Encryption products
   - Data/technology
   - Blueprints, drawings, schematics
2. Supplying certain technologies/data at a “closed” conference or meeting (not open to all technically qualified members of the public, and attendees are not permitted to take notes)
3. Money transactions and the exchange of goods and services in certain countries
4. Travel to sanctioned/embargoed countries
5. Doing business with certain people or entities

What this means is that a license could be required from the Departments of Commerce, State, or Treasury, depending on what you are taking and the country you are traveling to. Another aspect to consider is that a license could also be required if you are providing a defense service* to a foreign person.
Fortunately, travel to most countries does not usually constitute an export control problem. In some cases, an exception or exemption to the license requirements is available; however, regulations require the exception/exemption to be documented, and records must be kept for five years. The documentation forms and a detailed explanation of the exception and exemption can be found at [http://www.uncc.edu/compliance-ethics/export-control](http://www.uncc.edu/compliance-ethics/export-control).

***A defense service means the furnishing of assistance (including training) to foreign persons in the design, development, engineering, manufacture, production, assembly testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a defense article. A defense service also includes furnishing to foreign persons any technical data which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. ***

**SHIPPING**

Shipping items outside the U.S. could require a license from OFAC, the Department of State, or the BIS. Check with John Jacobs to determine if a license is needed. An OFAC license takes six months to receive, a license from the Department of State takes two months, and a license from the BIS takes approximately two weeks, so allow plenty of time before you need to ship. Do not ship an item outside the United States without the proper licensing. If customs audits the shipment, and a license was required and not in place, you and UNCC would be fined.

**CONTACT INFORMATION**

Contact John Jacobs, Facility Security Officer/Export Control Officer, Research and Economic Development, in The Office of Research Compliance, if you have any questions regarding export control issues related to your projects or travel outside the U.S. His phone number is 704-687-1877, or e-mail at fso@uncc.edu.

UNCC greatly appreciates the assistance that UT Austin has given to our university.