



## **NORTH CAROLINA A&T STATE UNIVERSITY**

### **CHAPTER 900 – RESEARCH**

#### **UNIVERSITY POLICY 901, EXPORT CONTROL**

#### **SECTION 901.1 POLICY STATEMENT**

North Carolina A&T State University's (N.C. A&T or University) mission and vision includes transformative teaching and learning and interdisciplinary research. In all of its activities, the University is required and committed to complying with all U.S. export control laws and regulations, including the Export Administration Regulations implemented by the United States Department of Commerce, the International Traffic in Arms Regulations implemented by the United States Department of State, and regulations implemented by the United State Treasury Department through its Office of Foreign Assets Control.

#### **SECTION 901.2 PURPOSE**

United States (U.S.) export control laws and regulations govern the shipment, transmission, and transfer of certain items, technology, software, and services from the U.S. to foreign persons and entities located outside of the U.S., and also govern releases of technology and software source code to foreign nationals located in the U.S. ("deemed exports"). The purpose of this policy is to set forth the expectation that University employees and students familiarize themselves with this Policy and relevant University procedures, as well as the types of research and activities that may give rise to export control concerns requiring consultation with University export control officials.

#### **SECTION 901.3 SCOPE**

This policy applies to all individuals affiliated with the University, including, but not limited to faculty, staff, contractors, post-doctoral scholars, students, volunteers, visiting scholars or other persons or entities using university facilities or funds who are engaged in activities that fall under export controlled laws and regulations. U.S. export control laws and regulations may affect faculty, staff, and students if participating in:

- Activities or research in controlled areas (e.g., encryption technology, nuclear technology, chemical/biological weapons, and military technologies);
- Activities involving the shipping or taking of equipment, technology, or software outside the U.S.;
- Activities involving teaching and research collaborations with foreign colleagues or the participation or training of foreign nationals in the U.S. or abroad;
- Activities involving travel or work outside the U.S.;
- Conducting tours of foreign nationals through research facilities;
- Conducting research sponsored by any entity restricting publication or participation by foreign nationals;
- Activities involving the receipt and/or use of export-controlled information or technologies from other parties;
- Activities involving payments to or from foreign persons or entities;

- Hosting international visitors;
- Activities related to the sharing, shipping, transmitting, or transferring of encryption software in source code or object code; and
- Activities including sharing, shipping, transmitting, or transferring any item, information, or software that will support the research, design, development, production, stockpiling, or use of nuclear technology, chemical/biological weapons, or missiles.

## **SECTION 901.4      DEFINITIONS**

- (1) “Controlled Export” means specific types of exports regulated by the U.S. government (e.g., commodities, biologics, equipment, software, encryption, technology, or technical information) sent from the U.S. to a foreign person or destination.
- (2) “Deemed Export” refers to the release or transmission of information or technology to any foreign national in the U.S. including students, post-docs, faculty, visiting scientists, or training fellows. A deemed export is treated as an export to the recipient’s home country. Deemed exports are a primary area of export control exposure for the University.
- (3) “Export” occurs whenever any item (i.e., any commodity, software, technology, or equipment) or information is sent from the U.S. to a foreign destination or provided to a foreign national in the U.S. or abroad. The manner in which the transfer or release of the item or information occurs does not matter. Some examples of export activities include the shipment of items, written or oral communications, hand-carrying items when traveling, providing access to or visual inspection of equipment or facilities, and providing professional services. Access includes, but is not limited to physical or electronic access.
- (4) “Export Administration Regulations (EAR)” are administered by the U.S. Department of Commerce, Bureau of Industry and Security (BIS). The EAR regulates exports, re-exports, and activities (goods and technologies) for both dual-use items (items that have both commercial and military or proliferation applications) and solely commercial items. Controlled items are identified on the Commerce Control List (CCL).
- (5) “Export Controls” mean the federal government's use of regulations and licensing requirements to manage exportation of commodities and information to foreign countries; to manage the sharing of commodities and information with foreign persons who are present in the U.S.; and to regulate transactions with sanctioned countries, individuals and entities.
- (6) “Export License” means the written authorization provided by the appropriate regulatory authority detailing the specific terms and conditions allowing the export or re-export of controlled exports.

- (7) “Foreign Assets Control Regulations” are regulations that prevent U.S. persons from engaging in prohibited trade, financial transactions, and other dealings to accomplish foreign policy and national security goals.
- (8) “Foreign Person” means any natural person who is not a U.S. citizen or is not a lawful permanent resident of the U.S. (i.e., does not have a green card), or does not have refugee or asylum status.
- (9) “Foreign Entities” mean any foreign corporation, business association, partnership, trust, or other entity or group that is not incorporated or organized to do business in the U.S, as well as international organizations, foreign governments, or any agency or subdivision of foreign governments.
- (10) “Fundamental Research” as defined by the National Security Decision Directive 189 (NSDD189) means “any basic or applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community...” In order to qualify as Fundamental Research, the research must be conducted free of any publication restrictions and without any access or dissemination restrictions. Research that qualifies as Fundamental Research is not subject to export controls as provided for under the federal regulations (15 C.F.R. § 734.8). Fundamental Research will be lost if a researcher formally or informally allows a sponsor to review and approve publications or in any way to control access to the project or project results. Loss of the Fundamental Research Exclusion can quickly put research in jeopardy of non-compliance with export control regulations.
- (11) “Re-export” means the act of transferring any controlled export from one foreign country to another foreign country, or when technology is released in one foreign country to another foreign country (or to a national of another foreign country).
- (12) “Sanctioned and/or embargoed countries” refers to certain individuals, entities, and countries with whom the U.S. government actively restricts U.S. persons or entities from conducting interactions for a variety of reasons. The following departments all maintain and enforce separate blocked and sanctioned lists:
  - U.S. Department of Commerce. *See* EAR, 15 C.F.R. § 746, “Embargoes and Other Special Controls”;
  - U.S. Department of State. *See* ITAR, 22 C.F.R. § 126.1; and
  - U.S. Department of the Treasury. *See* OFAC sanctions program and related information.

## **SECTION 901.5 COMPLIANCE**

The University requires all individuals affiliated with the University, including, but not limited to, faculty, staff, contractors, post-doctoral scholars, students, volunteers, visiting scholars or other persons or entities using university facilities or funds, to comply with applicable U.S. laws and regulations. Failure to comply with export control laws and regulations exposes employees and the University to the imposition of severe criminal and civil penalties by the federal government,

as well as administrative sanctions such as loss of research funding and export privileges. All employees should familiarize themselves with this policy, including, but not limited to, individuals working in the following areas:

- Engineering, physical and computer sciences (particularly those involved in defense-related research);
- Biological sciences, including those working with select agents and infectious materials; and
- Those conducting research or academic collaborations with colleagues in countries that have been designated as sanctioned and/or embargoed countries by the U.S. Department of State and the U.S. Treasury Department.

Violation by faculty, staff, students and others affiliated with the University subject to the policy may lead to appropriate discipline, consistent with applicable University policies, up to and including termination of employment for employees, student discipline, civil or criminal liability, or any combination of these.

## **SECTION 901.6 EXCLUSIONS AND EXEMPTIONS**

Export control regulations have a variety of exclusions and exemptions. For universities, the most pertinent is the Fundamental Research Exclusion (FRE) as identified in the National Security Decision Directive (“NSDD”) 189. This directive defines fundamental research and declares that federally sponsored university research should be unimpeded by export controls unless there are legitimate national security concerns at stake.

### **Section 901.6.1 Applicability of Fundamental Research Exclusion**

In general, FRE applies to:

- Basic and applied research in science and engineering;
- Research conducted at an accredited institution of higher learning within the U.S.;
- Research in which:
  - The results will be maintained in the “public domain” (i.e., information which is generally available or accessible to the general public via any media or form).
  - There are no contractual clauses or informal agreements to restrict the dissemination of results.
  - There are no restrictions on who can participate in the research.

### **Section 901.6.2 Inapplicability of Fundamental Research Exclusion**

FRE does not apply, and the research is subject to export control regulations, when the subject matter of the research deals with military or dual-use technologies listed under export control regulations; and

- The university accepts restrictions on the publication of scientific and technical information resulting from the project or activity; or
- The grant or contract contains specific restrictions on persons of specific nationalities

from participating.

## **SECTION 901.7 COMPLIANCE ROLES AND RESPONSIBILITIES**

The University Export Control Officer (ECO) is responsible for managing and overseeing institutional compliance with Export Controls regulations.

- The Principal Investigator has primary responsibility for project-specific compliance with export control regulations as they have the expertise in the type of data and technology that will result from their research endeavors.
- The Assistant Vice Chancellor for Research Administration in consultation with the Office of Sponsored Programs (“OSP”), the Office of IP Development and Commercialization, the Office of Research Services and Project Management, and/or the University Export Control Officer as appropriate, will review agreement instruments under negotiation (e.g., sponsored programs, cooperative agreements, material transfer agreements, non-disclosure agreements, teaming agreements, and technical assistance agreements (“TAA”)) to identify likely export control issues.
- The Director of Research Compliance and Ethics will oversee the process for obtaining any applicable license/s from the U.S. government before a foreign national has access to hardware, information, or technology controlled by either the Department of Commerce or the Department of State.
- The Foreign National Employment Administrator in the Division of Human Resources is responsible for the certification of H-1 B applicants in accordance with export control regulations.

### **POLICY HISTORY:**

Eff. March 2, 2021

Revised Eff. December 3, 2021

**AUTHORITY:** Chancellor

**POLICY OWNER:** Vice Chancellor for Research and Economic Development

**RESPONSIBLE OFFICE:** Division of Research and Economic Development

### **RESOURCES:**

- Department of Commerce – BIS: <https://www.bis.doc.gov/index.php/licensing>
- Commerce Control List: <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>
- Department of State – ITAR:  
[https://www.pmdtc.state.gov/ddtc\\_public?id=ddtc\\_kb\\_article\\_page&sys\\_id=%2024d528fddbfc930044f9ff621f961987#sideNav](https://www.pmdtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=%2024d528fddbfc930044f9ff621f961987#sideNav)
- Office of Foreign Asset Control – OFAC: <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>