EXPORT CONTROL IN THE STATLER COLLEGE OF ENGINEERING AND MINERAL RESOURCES

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WVU’S EXPORT CONTROL OFFICE (ECO)

- Missions of the Office
  - Ensure Compliance with Export Control Laws while Missions of WVU are Fulfilled
  - Maintain and Improve the Export Control Program
  - Educate the WVU Community about Export Control

- Export Control Policy of WVU
  - Applies to all “WVU Personnel”
    - Who are “teaching, conducting research, or providing services at or on behalf of the University”
    - Includes administrators, faculty, staff and students
    - Wherever located

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FUNCTIONS OF THE EXPORT CONTROL OFFICE

• Educate WVU Personnel about Export Control
• Review and Screen
  – International Travel
  – Visa Applicants
  – International Visitors
  – Research Projects
  – Agreements/Contracts with International Parties
  – Purchases involving International Parties
  – Shipments involving International Parties
• Draft Technology Control Plans
• Apply for Federal Licenses
• Investigate Potential Violations
GOALS OF TODAY’S PRESENTATION

• Raise awareness about the export control office and its functions
• Educate personnel about export control laws
• Inform personnel how and when to interface with the export control office
WHAT ARE THE PURPOSES OF EXPORT CONTROL?

• Prevent proliferation of weapons of mass destruction
• Implement anti-terrorism and crime control
• Protect human rights
• Advance US economic interests
• Maintain national security
• Restrict exports from the U.S. based on the type of export and the destination of the export in view of the above
WHY SHOULD YOU BE CONCERNED ABOUT EXPORT CONTROL LAW?

Export control law involves more than just shipping a physical item to a foreign country.

• Are you collaborating or working with foreign nationals?
• Are you travelling to a foreign country?
• Are you emailing or collaborating with a researcher living in another country?
• Do you host visitors on campus?
• Does your sponsor place a publication or participation restriction on your research?
EXPORT CONTROL ESSENTIAL CONCEPTS
WHAT IS AN EXPORT?

• Any oral, written, electronic or visual disclosure, shipment, transfer or transmission outside of the United States to anyone, including a U.S. citizen, of any commodity, technology (information, technical data, or assistance) or software/codes. Such exports include transfers of such items or information to foreign embassies, foreign corporate affiliates, and contractors.
WHAT IS A DEEMED EXPORT?

• Any oral, written, electronic or visual disclosure, transfer or transmission of a controlled commodity, technology or software/codes to a non-U.S. person* or entity, wherever located

• Extremely important at universities

* A U.S. person is a U.S. citizen, a U.S. permanent resident, or a political refugee protected under the Immigration and Naturalization Act.
WHAT IS A CONTROLLED EXPORT?

• Certain commodities, technologies (information, technical data, or assistance), hardware, or software/codes
  ▪ Just because an item is available to purchase off-the-shelf or online, does NOT mean it is not export controlled
  ▪ An item or subject matter may be export controlled to one country but not another
  ▪ An item or subject matter maybe export controlled to one person in a country but not to another person in the same country

• The export control office personnel is trained to help you determine what is exported controlled – always seek advice!
WHAT HAPPENS IF ITEMS OR ACTIVITIES ARE CONTROLLED?

1. Exclusions
2. Exceptions/Exemptions
3. Licenses

Exclusions

- **Public Domain** – information which is published or generally accessible to the public (must be legally placed in the public domain)
- **Fundamental Research** – basic and applied research in science and engineering where information is published and shared broadly
- **Educational Information** – information released by instruction in an official university catalog course and associated teaching lab of an academic institution
WHAT HAPPENS IF GOODS OR ACTIVITIES ARE CONTROLLED?

1. Exclusions
2. Exceptions/Exemptions
3. Licenses

Exceptions/Exemptions
Eligibility for License Exceptions is based on the item, the country of ultimate destination, the end-use, and the end-user, along with any special conditions imposed within a specific License Exception

- TMP – Temporary Exports/Reexports of Technology
- BAG – Temporary Export of Personal Items or Technology
- BFE – Bona Fide Employee (not student)
WHAT HAPPENS IF GOODS OR ACTIVITIES ARE CONTROLLED?

1. Exclusions
2. Exceptions/Exemptions
3. Licenses

Licenses
• An export control license is the U.S. government mechanism to allow and trace transfers of export controlled technologies
• License applications must be submitted by the Export Control Office to the specific federal agency
• A license application approval/denial can take up to 6 months for review before a final determination is made
• Each license is for a specific export transaction
UNDERSTANDING THE CONTROLS
# THE CONTROLLING LAWS

<table>
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<tr>
<th>Department of State</th>
<th>Department of Commerce</th>
<th>Department of Treasury</th>
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<tr>
<td>Directorate of Defense Trade Controls</td>
<td>Bureau of Industry and Security</td>
<td>Office of Foreign Asset Controls</td>
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INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR)

• The ITAR sets out the requirements for licenses or other authorizations for specific exports of defense articles and services (Items on the U.S. Munitions List)

• The AECA requires the Department of State to provide an annual and quarterly report of export authorizations to Congress

• Certain proposed export approvals and reports of unauthorized re-transfers also require congressional notification
U.S. MUNITIONS LIST (ITAR)

Defense articles

• any item or technical data designated in § 121.1 of this subchapter [on the USML].
• This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in § 121.1 of this subchapter.
• It does not include basic marketing information on function or purpose or general system descriptions.

Defense services

• The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;
• The furnishing to foreign persons of any technical data controlled . . . whether in the United States or abroad
EXPORT ADMINISTRATION REGULATIONS (EAR)

• Regulate the export or re-export of U.S.-origin dual-use goods, software, and technology

• Imposes certain export and re-export controls for foreign policy reasons, most notably against countries designated by the U.S. Secretary of State as state sponsors of international terrorism, as well as certain countries, entities and individuals subject to domestic unilateral or UN sanctions
COMMERCE CONTROL LIST (EAR)

- The CCL is divided into ten broad categories, and each category is further subdivided into five product groups.
- Dual-use goods
- If your item falls under the EAR and is not listed on the CCL, it is designated as EAR99.
- EAR99 items generally consist of low-technology consumer goods and do not require a license in many situations.
TRADE EMBARGOES AND SANCTIONS

• **Embargoed Countries**
  – Transactions between a U.S. person and persons or entities in Cuba, Iran, North Korea, Syria, and Sudan are broadly prohibited.

• **Sanctioned Countries**
  – Transactions between a U.S. person and persons or entities of certain countries involve sanctions of various types. For currently sanctioned countries and a description of the respective sanctions see: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx

• **Terrorist and Barred Entry Lists**
  – Denied Persons List – had export privileges revoked by BIS
  – Excluded Parties List – barred from contracting with US Government
  – List of Disbarred Parties – barred from exporting or re-exporting items subject to the U.S. Munitions List
  – Specially Designated Nationals List – terrorists, drug traffickers, and those associated with embargoed countries
HOW THE LAW IS VIOLATED?

Criminal violation

• Exporting with willful intent and/or knowledge
  – Ignoring the advice of the Export Control Office (U. of Tennessee – Prof. Reece Roth, 2011)
  – Concealing information, providing false information on license applications, lying to fellow employees (Timothy Gormley, 2013)

Administrative violation

• Deemed exports
  – Releasing U.S. origin technology to a foreign national without a license (TFC Manufacturing, 2008)
• Exporting recklessly or negligently
  – Shipping an item without screening the end-user (U. of Mass. at Lowell, 2013)
PENALTIES

International Traffic in Arms Regulations (ITAR)

• Criminal penalties up to $1 million per violation and up to 10 years imprisonment
• Civil penalties up to $500,000 per violation and revocation of export privileges

Export Administration Regulations (EAR)

• Criminal penalties the greater of $50,000 to $1 million or five times the value of the export and up to 10 years in prison
• Civil penalties $10,000 to $120,000 per violation and revocation of export privileges

In addition to institutional liability, both criminal and administrative penalties can be applied to individuals such as a Principal Investigator. Ignorance of the law will not protect you.
PREVENTING VIOLATIONS
EXPORT CONTROL COMPLIANCE INVOLVES MUCH MORE THAN THE EXPORT CONTROL OFFICE
AS A PROFESSOR OR RESEARCHER, WHAT IS YOUR ROLE IN EXPORT CONTROL COMPLIANCE AT WVU?

• Comply with the law as you engage in University activities
  – Accountability for compliance rests with the PI or program manager
  – PIs or program managers are accountable their research teams’ compliance
  – Be aware that non-externally funded projects can be controlled
  – Comply with any export license issued paying attention to detail

• Inform the export control office of suspected violations
• Contact the export control office with any questions
  – Ignorance of the law is not a mitigating factor if things go wrong
## Recognizing Some of the Potential Areas of Risk

### People
- Collaborating with foreign nationals (domestically or abroad) involving export controlled subject matter electronically or in person
- Hosting scholars from certain foreign countries
- Allowing participation of certain foreign nationals in certain research areas

### Places
- Traveling internationally on University business (e.g., conferences, field work)
- Accessing University networks including email when outside of the United States
- Offering or hosting visits or tours to non-student foreign nationals

### Things
- Shipping or carrying items out of the United States (including project deliverables)
- Carrying certain data on electronic devices outside the United States
- Releasing certain technical data to foreign nationals domestically or abroad

### Services
- Entering into transactions involving foreign entities, especially embargoed countries or restricted parties
- Providing certain services (e.g., consulting or training) to foreign nationals domestically or abroad
MITIGATING THE RISKS
The Export Control Office (ECO) will help you navigate safely

**People**
ECO will screen Visa applicants or visitors prior to arrival on campus

**Places**
ECO will screen international travel details and provide Best Practices advice

**Things**
ECO will screen statements of work for research projects and classify the controlled goods, technology, or software

**Services**
ECO will screen any foreign parties to agreements or transactions with WVU or the Research Corp.
WORKING WITH THE ECO WHEN TRAVELING

International Travel Registry

• Purpose is to keep track of WVU personnel traveling outside of the United States on WVU business in case of an emergency or natural disaster.
• The export control questions related to international travel are integrated in this new system so travelers do not have to fill out as many forms.
• Possible to upload documents (CV, abstract, etc.) to the system so it is no longer necessary to email them to the ECO.
• Best Practices is now a part of this system and no longer a separate form. Please do take the time to review the Best Practices when completing the travel registration.
• [http://exportcontrol.wvu.edu/forms](http://exportcontrol.wvu.edu/forms)
Best Practices to Maintain Security of Controlled Technology or Technical Data during International Travel

Introduction
Academic personnel including faculty investigators, graduate students or research fellows, and undergraduates travel internationally to attend or present at conferences and meetings, to collaborate with colleagues at other research institutions, and to perform field research. It is important to note that the academic traveler’s failure to comply with U.S. export control laws can have grave consequences for the traveler and WVU. The traveler is ultimately responsible for compliance.

The Department of Commerce (Export Administration Regulations - EAR), the Department of State (International Traffic in Arms Control Regulations - ITAR), and the Department of Treasury (Office of Foreign Asset Control - OFAC) have regulations that govern items which a traveler may take on international travel such as:

- Laptop computers, smart phones, tablets, etc.;
- Encryption products on your laptop computer;
- Data technology;
- Blueprints, drawings, schematics etc.

Academic personnel must consider the potential effect of each set of U.S. export control regulations on the proposed international travel to ensure that both the institution and the individual traveler are in compliance. The Department of Commerce and the Department of State are principally concerned with whether the academic traveler will take and then disclose (intentionally or unintentionally) any controlled technology or other controlled information to non-U.S. persons (e.g., in papers, in personal communications, on their laptop computer, or on other electronic storage devices) or will export any controlled items (e.g., sensors, test instrumentation, magnets, biological materials or other similar tangible goods) to non-U.S. persons. The Department of Treasury is most concerned with the specific entities (institutions, companies, and persons) which the traveler may interact with or do business with while traveling abroad. A U.S. person is defined as a U.S. citizen, a U.S. permanent resident, or a person having protected status in the U.S.

Traveling with Electronic Devices or Data
A U.S. person traveling abroad may take a WVU-owned laptop computer, smart phone, tablet, etc. in most countries without a license or license exemption or exclusion. While visiting some embargoed countries, a laptop computer, smart phone, tablet, etc. may be carried by a U.S. person provided the laptop computer is kept under the traveler’s effective control* and is returned to the United States not more than one year after the original departure date. It may be necessary to complete the TMB/INSC exclusion form prior to traveling to embargoed countries if the traveler is taking a laptop computer, smart phone, tablet, etc. The Export Control Office will inform the traveler if their trip requires a TMB/INSC exclusion based on information provided by the traveler.

*Effective control: The traveler maintains effective control over an item when they either retain physical possession of the item, or ensure the item whereby no other person may gain access to the item without engaging in criminal activity.

Vacation or Personal Travel
Travelers taking WVU-owned equipment on personal or vacation travel or accessing WVU email while abroad must submit a signed copy of this form to the Export Control Office (ECO) prior to departure if they haven't already done so in the fiscal year when the travel occurs and must notify the ECO of what WVU-owned equipment they are taking and their destination. If the traveler is not taking any WVU-owned equipment or accessing WVU email while abroad, it is not necessary to contact the ECO regarding personal travel unless the destination is an embargoed country.
Deemed Export Attestations for Visa Applications

• Required Documents for Export Control Review
  – WVU Deemed Export Verification Form
  – Visa applicant’s Current CV
  – Copy of Visa applicant’s passport (ID page only)
  – Project description and assigned equipment list, if applicable. **This is required for all visa renewals.**

• The ECO performs a detailed review to determine if there are any export control issues. The review includes a screening for restricted parties and a screening of the proposed project and equipment.

• The ECO will supply the requisite attestation to fulfill Form I-129 (Petition for a Non-immigrant Worker), which states that the visa applicant does not require a license OR the Export Control Office will work to obtain a federal license for the visa applicant.
WVU Deemed Export Verification for Non-immigrant Visas

To be completed by Foreign National's supervisor or a designer with knowledge of the Foreign National's intended work and forwarded electronically to the Export Control Office (ECO) at
nancy.daper@mail.wvu.edu

Name of Foreign National:
Country of Citizenship: current & prior (including dual)
Country of Permanent Residence: current & prior (including dual)
Country of Birth:
Title at WVU:
Visa Type: (select one): H-1B, Renewal: YES NO
Department Name hosting Foreign National:
Site of Employment:
Supervisor's Name, Telephone No., and Email:
PTA's Name, Telephone No., and Email:
Employment date: From: To:
Is the Foreign National currently assigned a project and/or equipment? This information is required for all visa types:

YES NO

If YES, a detailed project description and/or list of equipment MUST be attached. Or if any projects are assumed to the Foreign National at this time, please complete the following statement:

Dr./Ms. has/have no funded or unfunded projects or equipment assigned to him/her at this time. The department/unit has the obligation of providing the ECO, a detailed project description and equipment description prior to the initiation of research by Dr./Ms.

Questionnaire: Please answer all questions below:

1. Foreign National's work will be supported by:
   - Grant
   - Contract
   - State Funds
   - P.R.A. Funds
   - Faculty Start-up Funds
   - Other (Please specify):

2. Foreign National's duties will be (mark all that apply):
   - Administrator
   - Research
   - if Research, in the Research: Basic Applied
   - Teaching
   - Clinical Medicine/Patient Care
   - Other (Please specify):

3. Will the Foreign National be working with high-risk or experimental equipment (example include, but are not limited to, high speed computers, high speed cameras, sensors, material, electronics, lasers, biometrics, telecommunication devices, or other cutting edge equipment)?
   - Yes
   - No

4. Will the Foreign National have access to equipment that was specifically designed or developed for military or space applications (e.g., night vision cameras, satellite technology, controlled imaging equipment, or V-scope GPS) or that has been previously identified as export controlled?
   - Yes
   - No

5. Please list the name(s) and contact details of the personnel who would be responsible for training the Foreign National. If there are none, please answer "none."

6. Will the Foreign National have access to any WVU owned technical data or technology that is considered proprietary or confidential to WVU?
   - Yes
   - No

If the answer to Question 6 is "yes," describe briefly. If "no," please skip to Question 7.

Has the technical data or technology been disclosed to the WVU Export Control Office?

7. If the Foreign National will be involved in any research projects sponsored, in whole or in part, by either WVU or an external sponsor, including the federal government, are there any restrictions in the award grant or contract terms on publication or use of data?

8. If the Foreign National is assigned to work outside of the United States for research related purposes?

   YES NO

   If "yes," please list any WVU owned equipment they will take (e.g., laptop computer, tablet, cell phone or similar equipment).

Certification - WVU Deemed Export Verification

I, [Full Name], hereby certify that the information provided above is true and complete to the best of my knowledge, information, and belief.

[Signature]

[Date]

[Additional Certifier (e.g. Principal Investigator) Information]

[Additional Certifier Information]
WORKING WITH THE EXPORT CONTROL OFFICE

International Visitor Screenings

Required Documents for Export Control Review:

− WVU International Visitor Form (multiple visitors/visits can be listed on the same form)
− Current CV for visitor, if available
− Project description and assigned equipment list, if applicable

Screening is to ensure that WVU is not doing business with any restricted entity or person.
STATEMENTS OF WORK (SOW) AND TECHNOLOGY CONTROL PLANS (TCP)

- Office of Sponsored Programs (OSP) will forward SOWs to the ECO that have language in the contract that indicates that the project might be export controlled (publication restrictions, participation restriction, etc.).
- ECO will conduct a review of the technology and equipment involved to determine if a TCP or license is necessary.
- A TCP defines the procedures for isolating the controlled item from non-U.S. persons.
- If a license is required, the ECO will apply for a license from the DDTC, BIS, or OFAC.
RESOURCES

http://exportcontrol.wvu.edu/home
CONTACT INFORMATION

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