RESEARCH ADMINISTRATORS’ ROUND TABLE: AN INTRODUCTION TO EXPORT CONTROL

Gary J. Morris, Ph.D., Export Control Officer
Nancy L. Draper, Senior Export Control Analyst
Abigail A. Wolfe, Associate Export Control Officer
February 2016
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
**WVU 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
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
WHY SHOULD YOU BE CONCERNED ABOUT EXPORT CONTROL LAW?
UNDERSTANDING THE CONTROLS
# THE CONTROLLING LAWS

<table>
<thead>
<tr>
<th>Department of State</th>
<th>Department of Commerce</th>
<th>Department of Treasury</th>
</tr>
</thead>
<tbody>
<tr>
<td>Directorate of Defense Trade Controls</td>
<td>Bureau of Industry and Security</td>
<td>Office of Foreign Asset Controls</td>
</tr>
</tbody>
</table>
U.S. MUNITIONS LIST (ITAR)

Defense articles
  • any item or technical data designated in § 121.1 of this subchapter [on the USML].

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;
COMMERCE CONTROL LIST (EAR)

• Dual-use goods
• The CCL is divided into ten broad categories, and each category is further subdivided into five product groups
• 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**
  - Cuba, Iran, North Korea, Syria, and Sudan
  - Transactions between a U.S. person and persons or entities in these countries are broadly prohibited

- **Sanctioned Countries**
  - Transactions between a U.S. person and persons or entities of certain countries involve sanctions of various types.

- **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
EXPORT CONTROL ESSENTIAL CONCEPTS
WHAT IS AN EXPORT?
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
WHAT IS CONTROLLED?

- Certain commodities, technologies (information, technical data, or assistance), hardware, or software/codes are controlled
  - To certain **Destinations**, 
  - To certain **End-Users**, or 
  - For certain **End-Uses**.
WHAT IS NOT CONTROLLED?

• **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
MAY STILL BE CONTROLLED

GOODS OR INFORMATION AVAILABLE ONLINE

OFF-THE-SHELF PURCHASES
WHAT HAPPENS IF GOODS OR ACTIVITIES ARE CONTROLLED?

1. Exceptions/Exemptions
2. 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. Exceptions/Exemptions
2. Licenses

Licenses

- An export control license is the U.S. Government’s mechanism to allow and trace transfers of export controlled goods and services
- 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
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.
HOW THE LAW APPLIES AT WVU
EXPORT CONTROL COMPLIANCE INVOLVES MUCH MORE THAN THE EXPORT CONTROL OFFICE
AS A RESEARCH ADMINISTRATOR, WHAT IS YOUR ROLE IN EXPORT CONTROL COMPLIANCE AT WVU?

• Comply with the law as you engage in University activities
• Assist researchers and investigators with export control compliance
  – Accountability for compliance rests with the PI or program manager
  – PIs or program managers are accountable for their research teams’ compliance
  – Comply with any export license issued paying attention to detail
• Contact the export control office with any questions about compliance
  – Ignorance of the law is not a mitigating factor if things go wrong
• Inform the export control office of suspected violations
# Recognizing Some of the Potential Areas of Risk

<table>
<thead>
<tr>
<th>People</th>
<th>Places</th>
<th>Things</th>
<th>Services</th>
</tr>
</thead>
</table>
| • 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 | • 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 | • 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 | • 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 |
An aerospace company wants to fund research for the development of a new material. The company selected two universities, West Virginia University and the University of Hamburg.

The Company will transfer to each university some hardware and email some technical data. The research will require collaboration between the faculty at two universities. Dr. Faculty would like to hire three graduate research assistants to help with the project, one of which is a Chinese national.

Finally, the Company would like Dr. Faculty to present his research at the Annual Aerospace Conference in London next January.
WHAT ARE THE EXPORT CONTROL RISKS?

- Collaborating with a foreign party
- Transferring hardware and technical data
- Hiring foreign nationals
- Travelling to an international location
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.
WHAT DOES THIS MEAN?
WORKING WITH THE OFFICE
1. There is an international element to an activity.  
   • International location  
   • Foreign national or entity  
   • Controlled technology – new technology, items with military application, or the seller won’t ship internationally

2. Contact the Export Control Office (ECO).  
   • Travel – a minimum of two weeks prior to travel  
   • Hiring – WVU Hire or Immigration Liaisons will contact the ECO  
   • Visitors – a minimum of two weeks prior to visit  
   • Research – OSP will contact the research when processing  
   • Transfers to/from WVU – a minimum of two weeks prior to shipment
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.
HIRING

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 designee with knowledge of the Foreign National's intended work and forwarded electronically to the Export Control Office (ECO) at nancy.dupré@mail.wvu.edu.

1. Foreign National’s work will be supported by:
   - Grant
   - Contract
   - State Funds
   - F&A Funds
   - Faculty Start-up Funds
   - Other (please specify):

2. Foreign National's duties will be (mark all that apply):
   - Research
   - Teaching
   - Clinical Medicine/Patient Care
   - (Please specify):

3. Will the Foreign National be working with high-tech or experimental equipment (examples include, but are not limited to, high speed computers, high speed cameras, sensors, materials, electronics, lasers, biometrics, telecommunications 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 Y-000 GPS) or that has been previously identified as export controlled?
   - Yes
   - No

5. Please list the name(s) and contact details of the person(s) 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?
   - Yes
   - No

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 publications of results or participation of foreign nationals?
   - Yes
   - No

8. Will the Foreign National travel outside of the United States for research related purpose?
   - Yes
   - No
   - If “yes,” please list any WVU owned equipment they will take (i.e., laptop computer, tablet, cell phone or similar equipment).

Certification - WVU Deemed Export Verification

I, [Name], have read and understand the contents of this form and agree to the terms and conditions set forth. I certify that all information provided is true, complete, and accurate to the best of my knowledge, information, and belief.

[Signature]
[Date]

[Office of International Students and Scholars]

[Name]
[Position]

[Office of International Students and Scholars]
[Name]
[Position]

[Office of International Students and Scholars]
[Name]
[Position]

[Office of International Students and Scholars]
[Name]
[Position]

[Office of International Students and Scholars]
VISITORS

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.

WVU Export Control Form for International Visitors

Please complete this form for any non-U.S. person invited to campus who does not currently reside in the United States. Please attach any additional documents (e.g., CV, letter of invitation, passport, visit itinerary, etc.), if available. The ECO may need to request additional information depending on the visit details. If you have any questions, please contact the Export Control Office at 304-293-3084 or by email at exportcontrol@mail.wvu.edu.

<table>
<thead>
<tr>
<th>Visitor Name</th>
<th>Employee/Affiliation</th>
<th>Purpose of visit, WVU mean to be visited</th>
<th>Visit Dates</th>
<th>WVU Personnel hosting visit</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

October 2015
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.
TRANSFERS TO OR FROM THE UNIVERSITY

Transfers from the University

• Depending on the shipment, who will receive it and in what country, and how they will use it, it may require a license.
• Complete and accurate documentation helps a shipment leave the US legally and enter the destination country smoothly.
• This is necessary for even temporary exports.

Transfers to the University

• Depending on the item, a license or technology control plan may be necessary to prevent a violation.
• May include items that are obtained from U.S. sources.
West Virginia University
Export Control Compliance Manual

January 2015

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

Gary J. Morris, Ph.D.
Export Control Officer
Associate Director of Technology Transfer
Professor of Mechanical and Aerospace Engineering
Gary.Morris@mail.wvu.edu
(304)293-6329

Nancy L. Draper
Senior Export Control Analyst (Primary point of contact)
Nancy.Draper@mail.wvu.edu
(304)293-3084

Abigail A. Wolfe
Associate Export Control Officer
aawolfe@mail.wvu.edu

WVU Export Control Website Address:
http://exportcontrol.wvu.edu

Export Control Office
Chestnut Ridge Research Building
886 Chestnut Ridge Road
7th Floor, Room 723