



*Western Carolina University*  
*Export Control*  
*Communication*  
*Plan*

*Export Control Review Committee*

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# **Western Carolina University Export Control Communication Plan**

## **Statement of Compliance**

In its mission to conduct research, promote scholarly works, and conduct business transactions, Western Carolina University (“WCU” or the “University”) will comply with all United States (U.S.) export controls and regulations. These include, but are not limited to, those implemented by the U.S. Department of Commerce (DOC) through its Export Administration Regulations (EAR) and the U.S. Department of State through its International Traffic in Arms Regulations (ITAR) as well as embargo regulations posed by the U.S. Treasury Department through its Office of Foreign Assets Control (OFAC).

It is the policy of the University that instruction, research, and services will be openly conducted without prohibitions on the publication and dissemination of the results.

Federal regulations may require the University to request permission from the Department of State, the Department of Commerce, or the Office of Foreign Assets Control before allowing foreign nationals to participate in research involving specific technologies or before sharing research information with persons who are not citizens of the United States or permanent resident aliens.

## **Background**

Federal laws restricting export of certain goods and technologies have been in place since the 1940s. The purpose of these laws is to restrict export of "sensitive" or "controlled" goods, technologies, and related technical information that might harm 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 here on U.S. soil (including our campus) with individuals from certain specifically embargoed countries (OFAC Country Sanctions Programs).

Events surrounding September 11th, the 2001 USA Patriot Act, and other recent developments have heightened the Federal government's interest in the enforcement of export control laws. Strict enforcement of these very complex laws has been applied to the business community and is now being applied to the university community. Export control laws have significant implications for scholarly activities – implications that are not always recognized or understood by a university community whose culture purposefully promotes the dissemination of knowledge. Consequently, universities are now developing export control management plans in order to maintain an open and vigorous teaching and research environment while remaining in compliance.

Export controls affect research administration; sharing of information; publishing of results; management of intellectual property; processing visas; hiring of foreign nationals; purchasing; shipment and utilization of scientific equipment; working with collaborators and colleagues

within and outside of the U.S.; and travel outside the U.S. for scientific and educational purposes.

Civil and criminal sanctions, including fines and/or prison sentences for individuals violating export control and embargo laws, are substantial and apply to individual WCU community members as well as to WCU as an institution. It is imperative that faculty, staff, students, and administrators understand their obligations under these laws.

## **Overview of Export Control**

Research, innovation, and development of critical technologies are central to the U.S. maintaining technological advancement and to the protection of significant economic interests of this country. Although academic research normally is conducted openly and most research activities are not subject to export control laws, there are certain conditions under which the export of technology, which includes certain technical and scientific data, either is prohibited or requires a license.

Certain technologies (called “controlled” technologies) require an export license unless they meet the test that the research results will be placed in the public domain. According to the National Security Decision Directive 189, “fundamental research” results are freely publishable and there is no restriction on access and dissemination of the research results.

The following actions may require the need to apply for and receipt of a license from either the U.S. Departments of Commerce or State before the research activity may begin:

- Publication restrictions (other than a limited review for patent protection or for the removal of a sponsor’s inadvertently included proprietary information)
- Limitations on access of dissemination or research results (such as to foreign nationals who are not permanent U.S. residents)
- Removal of information from the public domain
- Controlled technologies

Export controls and embargo regulations cover all of the Sciences, Technology, Engineering, and Mathematics disciplines; however, these regulations prohibit under certain conditions – the export without a license of certain technologies, materials, data, or information for reasons of national security or the protection of trade. In addition, these regulations cover other University activities not necessarily related to or connected with the research enterprise.

Export controls regulations have an impact on the following University activities:

- Management of intellectual property
- Visits of foreign nationals
- Purchasing and dealing with foreign/international vendors
- Shipment and utilization of scientific equipment
- Working with collaborators and colleagues within and outside of the United States

- Travel outside the United States for scientific and educational purposes
- Admission and matriculation of students from embargoed countries
- Employment restrictions
- University facilities access by foreign nationals
- Publication restrictions
- Confidential information transmission and receipt
- Exporting information, goods or services to foreign nationals and countries identified as threat by the Departments of State, Commerce, and Treasury
- Recordkeeping requirements
- Licenses for regulatory approval

### **Key Issues and Basic Concepts of Export Control**

An understanding of certain basic concepts is crucial:

- What is an export?
- What is a deemed export?
- What kind of technology is export-controlled, and how can it be identified?
- How can the fundamental research exclusion be protected?

Most exports do not require government licenses. Only those considered by the United States government to be “license controlled” under the EAR and ITAR require licenses.

Exports described under the following will likely be license-controlled:

- The materials, technology, or data having real or potential military applications or economic protection issues.
- There are government concerns about the country of destination or about the host organization or individual(s)
- There are government concerns about the declared or suspected final use or final user of the export.

#### **What is an export?**

An **export** is the physical transfer of controlled technology, information, equipment, software, or services to a non-resident foreign national in the United States or abroad by any means.

#### **What is a deemed export?**

A **deemed export** is the disclosure of controlled information to a foreign researcher, either in the United States or in a foreign country. Deemed exports are subject to all federal regulations. See Appendix C, Briefing on the Handling of Export-Controlled Information.

Export controls regulate the following:

- shipment of controlled items outside of the United States
- visual inspection of controlled information or materials in or outside the United States
- written or oral disclosure of controlled information in or outside of the United States. For extensive definitions and essential related terms, see appendix A.

## **University Authority and Oversight**

### **Empowered Official**

The Provost has designated the Chief Research Officer (CRO) as the Empowered Official (EO) for all export control and embargo compliance at Western Carolina University and as the official contact for governmental agencies with respect to export control and embargo issues. The EO will work closely with the WCU Legal Counsel, WCU Internal Auditor, the Export Control Review Committee (ECRC), and the Export Control Steering Committee (ECSC) to address campus compliance issues. With recommendations from the ECRC and the ECSC the EO will:

- Review and approve compliance plans
- Oversee training on Export Control issues and policies
- Conduct annual refresher training
- Ensure compliance with WCU's Export Controls Plan, implementation and oversight
- Ensure recordkeeping - Per EAR §762.2 (ECO is responsible for maintaining a centralized recordkeeping system of all export control transactions for five years)
- Ensure audit findings are addressed in a timely manner

Responsible Contact: Graduate School

### **Export Control Review Committee (ECRC) and Steering Committee (ECSC)**

The ECRC provides guidance and oversight to the EO. The membership will include the following: Chief Research Officer, Legal Counsel, Internal Auditor, representative from Research Administration, Director of International Programs and Services, and representatives from Administration and Finance, including Post Award, Human Resources and Purchasing. The Provost will appoint the committee membership from recommendations submitted to him by the EO. The ECRC may periodically seek advice from the various university academic units as needed.

The ECSC is comprised of representatives from each college and other units across campus as needed. Members of the ECSC will facilitate training and disseminate information within their units. They will also provide input to the ECRC regarding export control issues related to their units/departments.

Responsible Contact: Empowered Official

## **Research Administration**

The Office of Research Administration will assist the Principal Investigator to review the necessary EAR and ITAR regulations and take the appropriate steps. Research Administration will review all proposals for the following:

- Restrictions on foreign nationals from performing or accessing research results
- Restrictions on deliverables or results from being disclosed or delivered to any country or individuals
- Requirement to use third-party information that is subject to nondisclosure obligations
- Deliverables that include equipment that may be controlled by export regulations or encryption software

If one or more of these items apply, the fundamental research exclusion does not apply. Further review by Research Administration and the Principal Investigator is required to determine if the technology is controlled.

It is important to note that export control laws and embargos apply to all activities undertaken by WCU faculty, staff, and students whether sponsored or not. Research Administration must be contacted if there are any questions regarding the applicability of export controls or embargos to non-sponsored research.

Responsible Contact: Research Administration

## **Director of Grants & Contracts**

The Office of Grants and Contracts will review all grant and contract awards for any terms or provisions that restrict access to the research or research information, limit the participation of foreign person in the research, restrict the release of research results, or otherwise render inapplicable the exclusion for fundamental research conducted in the public domain.

Grant and contract awards will be reviewed for the following:

- Restrictions on foreign nationals from performing or accessing research results.
- Restrictions on deliverables or results from being disclosed or delivered to any country or individuals.
- Requirement to use third-party information that is subject to nondisclosure obligations.
- Deliverables that include equipment that may be controlled by export regulations or encryption software.

If one or more of these items apply, the fundamental research exclusion does not apply. Further review by Director of Grants & Contracts and the project director is required to determine if the technology is controlled.

An Export Control Review and Certification Form will be completed by the Office of Contracts & Grants and will be on file with the grant documentation with a copy to the Empowered Official. See Appendix B for Export Control Review and Certification Form.

Responsible Contact: Office of Post Award

## **Campus-Wide Education and Training**

Human Resources and Research Administration will provide training on export control regulations and the University's Export Control Management Plan with both classroom and online options to administrators, faculty, staff, and students. Training will be conducted during new staff/faculty orientation and as required. An interactive on-line training site will be made available through Human Resources for campus use.

Responsible Contacts: Graduate School, Human Resources, Research Administration

## **Research**

Primary Research compliance responsibility rests with the principal investigator (PI). WCU faculty and staff must take the following steps to ensure export control regulations are followed:

- Review information about export controls on the Research Administration web page.
- Attend training on export controls as provided by the University.
- Coordinate with Research Administration in determining the export control requirements in conducting research.
- Notify Research Administration of change in scope or staff in research projects.
- Notify Research Administration when mailing scientific equipment, including SPS equipment and encrypted software out of the country in order to determine whether a license is required.
- Notify Research Administration before engaging in research activities with persons in countries subject of OFAC boycott program.

If the Principal Investigator is aware that a research contract may require shipping scientific equipment out of the country or transmitting technology to foreign persons abroad, the PI must notify Research Administration as soon as possible.

Responsible Contact: Research Administration

## **Graduate Student Research**

Research conducted by graduate students during the course of the completion of degree requirements must be cleared of any possible export control violations.

The research must be approved by the departmental faculty in the respective school/college in which the student is enrolled or the Thesis Committee.

The EO can assist with the clearance of the research to ensure that export control regulations do not apply. The faculty member and graduate student are ultimately responsible for obtaining the clearance.

Responsible Contact: Graduate School

## **Foreign Travel and Foreign Visitor Authorization**

Prior to travel out of the country on university business, faculty and staff must have written approval of the appropriate immediate supervisor, Dean or Vice Chancellor, and the Provost, in accordance with University Policy #100, "*International Travel and International Visitors.*" [<http://www.wcu.edu/25383.asp>] The Provost's office will coordinate with the Graduate School and Research Administration with regard to export control management plan administration. The Provost's office will determine, prior to approving international travel, whether (1) the planned international travel involves sanctioned or embargoed countries or individuals; and (2) WCU employees are transferring controlled technologies/technical data to foreign nationals without appropriate licenses, license exemptions or regulatory exclusions.

The Provost's office, in coordination with International Programs and Services, will provide to all University employees and students who travel on approved University business outside the United States with a briefing on foreign travel applicable to the travel destination.

All foreign visitors to WCU must obtain the Provost's approval at least three months in advance of the visit when possible. Faculty already employed in the United States are cleared through Visual Compliance by their home institution. International Programs and Services will not be required to perform Visual Compliance on visiting scholars that are foreigners but were already employed in the United States. The Provost's office will coordinate with the Graduate School and Research Administration with regard to Export Control Management Plan administration. The Provost's office will also coordinate with the University Pandemic Flu Coordinator to determine, in advance of the planned visit, whether the World Health Organization and/or the Centers for Disease Control and Prevention have issued any travel notices pertaining to the international visitor's home country.

Responsible Contact: Provost

## **Overseas Goods and Services Contracts**

Prior to entering into a contractual obligation with a foreign entity or individual, and execution of the contract by an authorized University representative, University Legal Counsel will review all contracts, in accordance with University Policy #62, "*Execution of Contracts,*" to certify that they are in compliance with applicable state and federal laws and are in a legally sufficient form. With regard to transactions with a foreign entity or individual, Legal Counsel will review all agreements that involve:

- Support for foreign collaborations
- A foreign entity providing goods or services to the University
- The University providing goods or services to a foreign entity to ensure that goods or services are not provided to a country on any current list of embargoed countries.

Responsible Contact: Legal Counsel

## **Employment of Foreign Nationals**

The Office of International Programs and Services (IPS) is responsible for Western's compliance with Federal regulations regarding employment of foreign nationals in certain visa classifications. Foreign nationals participating in on campus interviews will be treated as an International Visitor in accordance with University Policy #100, "*International Travel and International Visitors*." However, if the foreign national is already employed at another American university or is currently a student at an American university, Visual Compliance will not be conducted. IPS handles immigration matters for all international scholars and employees, who may or may not be United States citizens, and non-holders of green cards who are not students at Western. The term "international scholar" includes Western's employees in a broad range of positions, primarily in teaching and research, but also in professional, administrative, or technical positions. The term also includes short-term visiting and exchange scholars, who may be on sabbatical leave from their institutions, self-funded, home-government-funded, or receiving financial support from Western and/or other United States sources.

The Office of International Programs and Services will use the Visualization Compliance II system to evaluate foreign entities whom they are processing to clear for employment or to approve agreements where goods or services are being proposed to or by foreign entities.

The Office of Human Resources will use the Visualization Compliance II system to clear foreign nationals who are finalists for employment at Western as faculty or staff. A "foreign national" is defined as "any person who is not a U.S. citizen, lawful permanent resident, political asylee, refugee, or another member of a limited class of protected individuals." Therefore, any foreign nationals employed under E, F, H, J, L, or O nonimmigrant visa classifications are considered foreign nationals for purposes of the "deemed export" rule, will be subject to background screening and may require a license. Formal employment is contingent upon the successful completion of a background check. In an effort to comply with export control regulations and to ensure compliance with all applicable employment discrimination laws, all advertised job opportunities and offers of employment will list "eligibility to receive deemed exports of controlled technology" among the conditions of employment. Any collected information relating to an applicant's nationality or citizenship is solely for export control compliance purposes and will not be used to unfairly discriminate during the hiring process.

Responsible Contact: Human Resources

## **Admission and Enrollment of Foreign Nationals**

The Admissions Office and the office of International Programs and Services are responsible for review and clearance of foreign national undergraduate and graduate student applications, respectively.

- Undergraduate students entering WCU for the first time: The Admissions Office will use the Visual Compliance software to certify that a newly admitted undergraduate foreign national is not on any excluded person lists under the EAR and ITAR.

- Undergraduate students declaring majors: **Upon admission, the Admissions Office, and upon changing majors after admittance, the office of International Programs and Services**, will use the Visual Compliance software to certify that an undergraduate or graduate foreign national who declares a major in a high-risk discipline is not from an embargoed country or on an excluded person list. The office of International Programs and Services will conduct visual compliance on these students twice during each semester they are enrolled at WCU.
- Undergraduate and graduate students entering WCU as exchange students: the office International Programs and Services will use the Visual Compliance software to certify that an undergraduate or graduate international exchange student is not from an embargoed country or on an excluded person list. The office of International Programs and Services will conduct visual compliance on these students twice during each semester they are enrolled at WCU.
- Jamaican students: the office of International Programs and Services will use the Visual Compliance software to certify that an undergraduate Jamaican student is not from an embargoed country or on an excluded person list at the time the I-20s are issued in spring semester. The office of International Programs and Services will conduct Visual Compliance on these students once during the second summer session that they are enrolled at WCU.

Responsible Contact: International Programs and Services

### **Evaluating Positive Matches in the Visual Compliance System**

The following areas are submitted to the Visual Compliance System for review:

1. International students
2. International visitors
3. Equipment purchases
4. Businesses and organizations
5. Controlled technology

If the results of the search for #1-2 are a positive match, the person conducting Visual Compliance will check with the Visual Compliance office to verify the evaluation. This information will be shared with the empowered official.

If the results of the search for #3-5 are a positive match, the WCU person requesting the purchase, visiting the businesses and/or organizations, or sharing controlled technology, will be advised against participating in this activity.

### **Restricted Facilities and Equipment**

The University will not allow access by foreign nationals or foreign persons to export-controlled information and technology without first obtaining an export license, other authorization, or exemption. Accordingly, access to the College of Arts and Sciences laboratories, facilities, and equipment in the Natural Sciences and Stillwell buildings and the Kimmel School of

Construction Management and Engineering and Technology facilities and equipment located in the Belk Building and the Center for Applied Technologies shall be restricted. The Deans of the College of Arts and Sciences and the Kimmel School will be responsible for approving and coordinating access to restricted facilities and equipment. The Deans will also ensure that adequate controls of physical, visual, and electronic access to export-controlled information and technology are developed, which may include unique badging requirements for foreign nationals and segregated work areas for export-controlled information and technology.

Responsible Contacts: Appropriate Deans

### **Hazardous Material Tracking**

The University will maintain an inventory of all hazardous chemical and radiological materials through the Office of Safety and Risk Management. Appropriate reports of usage and materials stored will be reported to the EO by the Director of Environmental Health and Safety.

Responsible Contact: Environmental Health and Safety

### **Purchasing, Shipping and Receiving**

Federal import/export regulations for purchasing materials that may be shipped directly from the supplier to locations overseas or from overseas suppliers into the United States are complex. The Director of Purchasing Department, the Director of Environmental Health and Safety, and the EO will determine on a case-by-case basis whether the materials are restricted for import or export. Each College will work with the EO to develop a satisfactory mechanism to track shipments that would trigger export control compliance issues. Employees wishing to make purchases may check the purchasing website for debarred or restricted vendors (both state and federal) from whom they wish to purchase.

Every attempt will be made by the Purchasing department to determine if items requiring the bid process have an Export Control Classification Number (ECCN). If an ECCN is obtained, the EO and the department head will be notified with all relevant information about the commodity being purchased. If after the bid process the control status remains unclear, Purchasing will notify the EO and the department of its concern. The ordering department will then be responsible for investigating the item to determine its status or contacting Federal agencies for determination. Notification of purchase of any item with an ECCN assigned must be forwarded to the EO.

Responsible Contacts: Purchasing, Environmental Health and Safety, and Empowered Official

## Mandatory Oversight

The University must oversee the following steps to assure that faculty and staff members do not violate the export regulations and become personally liable for the substantial civil and criminal penalties:

- Determine if the commodity requires an export license and assist in securing such license prior to shipment of any commodity out of the U.S. There are two main 'lists' of controlled items: Export Regulations (EAR) and International Traffic in Arms (ITAR). The sender has to check both lists.
- Secure license approval or verify license exception PRIOR to shipment for all controlled items.
- Contact the EO for guidance on the responsible office on your campus for verifying license exceptions and submission of license applications.
- Assure that all technical data about export-controlled commodities qualify as "publicly available" under the above-described criteria (e.g., publish early and often).
- Reject publication controls or access/dissemination restrictions (such as approval requirements for use of foreign nationals), enter into 'secrecy agreements,' or otherwise agree to withhold results in research projects conducted at the University or that involve University facilities, students, or staff.

## Licensing

Regulations have been imposed on exports and deemed exports, re-exports and foreign persons to prevent terrorism, restrict the exports of goods and technology that could help our enemies and/or hamper U.S. economic vitality and prevent the proliferation of weapons of mass destruction. These regulations have been in existence for some time but the war on terrorism, among other things, has contributed to increasing monitoring efforts. **Unless the fundamental research exclusion applies, the University's export of controlled technology to a non-permanent resident foreign national may require a license and/or be prohibited. The burden of making such a determination falls on the University.**

Research, innovation, and development of critical technologies are central to the U.S. maintaining technological advancement and to the protection of significant economic interests of this country. Although academic research normally is conducted openly and most research activities are not subject to export control laws, there are certain conditions under which the export of technology, which includes certain technical and scientific data, either is prohibited or requires a license.

Certain technologies (called "controlled" technologies) require an export license unless they meet the test that the research results will be placed in the public domain. According to the National Security Decision Directive 189, "fundamental research" results are freely publishable and there is no restriction on access and dissemination of the research results.

Responsible Contacts: Empowered Official and Legal Counsel

## **Actions Before Research Begins**

The following actions may require the need to apply for and receipt of a license from either the U.S. Departments of Commerce or State before the research activity may begin:

- Publication restrictions (other than a limited review for patent protection or for the removal of a sponsor's inadvertently included proprietary information)
- Limitations on access of dissemination or research results (such as to foreign nationals who are not permanent U.S. residents)
- Removal of information from the public domain
- Controlled technologies

**Public Domain** includes:

- Sales at newsstands and bookstores
- Subscriptions available without restriction
- Second class mailing privileges
- Libraries open to the public or from which the public can obtain documents
- Patents available at any patent office
- Unlimited distribution at a conference, meeting, seminar, tradeshow or exhibition, generally accessible to the public, in the United States
- Public release
- 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

It should be noted that the public domain limitation applies to *technical data*, not to items such as firearms or weapons on the Munitions List -- actual shipments of USML items will always require a license.

## **Fundamental Research**

University research will **not** be considered fundamental research if

- The university accepts restrictions on the publication of scientific and technical information resulting from the project or activity
- The research is funded by the government and specific access and dissemination controls protecting information are applicable
- Fundamental research, defined as “basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community”
- Distinguished from “proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons”
- University based research normally will be considered fundamental research

## **Fundamental Research Caveats**

A license will be required, however, if

- The university or its researchers accept restrictions on publication of scientific and technical information resulting from the project or activity
- Research results are subject to prepublication review. Prepublication review by a sponsor is permitted to insure that the publication would not inadvertently divulge proprietary information or to ensure that publication would not compromise patent rights. The ITAR has no such caveat.

Familiarity with the definitions of export, deemed export, re-export, and foreign will be helpful when making such a determination. See Appendix A.

The guideline below can be used to determine whether or not an export, a deemed export or a re-export may require a license.

### **Determining whether or not an export needs to be licensed:**

- First classify the technology or goods involved. (Are they ITAR, EAR, or OFAC related? Refer to lists and websites listed above.)
- Then determine if a license is needed for the technology/end user/end use.
- Then determine if a license exemption or exclusion is available. (public domain, fundamental research, EAR exemption from CCL)

### **What kind of license is needed**

If no exemptions are available, determine what kind of license is needed.

- Deemed Export License (EAR)
- Technical Assistance Agreement or DSP-5 (ITAR)
- Shipping License (EAR or ITAR)

### **Where to apply for a license**

- Deemed Export License (EAR) ---- Bureau of Industry and Security BIS
- Technical Assistance Agreement or DSP-5 (ITAR) ---- Directorate of Defense Trade Controls (DDTC)
- Shipping License (EAR or ITAR)

**Apply promptly – licensing can take MONTHS!**

## **Penalties**

- Criminal penalties of up to \$1,000,000 for each violation and/or imprisonment up to ten years for willful violations
- Civil penalties up to \$500,000 for each violation
- Debarment from exporting defense articles and technical data, or from furnishing defense services for which a license or approval is required, for an appropriate period

The University will not accept any research projects where publication restrictions are required. Exceptions to the rule must be petitioned in writing and submitted to the Empowered Official for approval.

## **Recordkeeping**

All export controls and embargoes documents will be kept functionally stored by the responsible agency for five years. The records are kept on the university share drive with appropriate, scanned and/or printed documents residing in each named office and should include the following:

- Export Control Review and Certification Forms for the Handling of Export-controlled Information
  - Empowered Official
- International Travel Policy 100 documents
  - International Programs and Services
- Agreement, contracts, subcontracts
  - Research Administration
- Compliance Visualization II Reviews and Searches
  - Human Resources
  - International Programs and Services
  - Research Administration
- EAR, ITAR, OFAC license applications
  - Empowered Official
- International Shipping Documents
  - Empowered Official
- Documents and reports on restrictive trade practice or boycott
  - Empowered Official
- Training and Education Documents
  - Empowered Official
  - Research Administration
  - Human Resources

## System Reviews

The University's Internal Audit Department will assist with the analysis of the efficacy of the system. Review areas may include, but are not limited to the following:

- Awareness and training programs
- Appropriate policies and procedures
- Foreign travel and goods/services authorization documentation
- Appropriate briefings.
- Findings will be provided to EO and Export Control Review Committee

Responsible Contact: **Internal Auditor**

## **Appendices**

**Appendix A** Definitions

**Appendix B** Export Control Review and Certification Form

**Appendix C** Security Measures Regarding Externally Funded Research

**Appendix D** Visual Compliance II by eCustoms

**Appendix E** Online Resources

## **APPENDIX A**

### **A. Definitions**

**Actual Export** is the physical transfer of controlled technology, information, equipment, software, or services to a non-resident foreign national in the United States or abroad by any means.

**Bureau of Industry and Security (BIS):** an agency of the Department of Commerce that is responsible for administering and enforcing export controls on "dual use" items. BIS administers the Export Administration Act (EAA) by developing export control policies, issuing export licenses, prosecuting violators, and implementing the EMA's anti-boycott provisions. BIS also enhances the defense industrial base, assists U.S. defense firms, and helps other countries develop export control systems.

**Commerce Control List (CCL):** a list of items subject to Bureau of Industry and Security export license requirements based on their identity. The CCL is found in Supplement 1 to Part 774 of the Export Administration Regulations (EAR).

**Commodity Jurisdiction Ruling:** a request that can be made of the State Department Directorate of Defense Trade Controls for its determination whether a thing, service, or information falls under the EAR and the Commerce Department or the **ITAR** and the State Department.

**Deemed Export** is the disclosure of controlled information to a foreign researcher, either in the United States or in a foreign country. Deemed exports are subject to all federal regulations. See Appendix C, Briefing on the Handling of Export-Controlled Information.

**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, manufacturing, 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 nationals anywhere.

**Directorate of Defense Trade Controls (DDTC):** the Department of State agency which licenses defense services and defense (munitions) articles.

**Export:** any oral, written, electronic, or visual disclosure, shipment, transfer, or transmission outside the U.S. to anyone, including a U.S. citizen, of any commodity, technology (information, technical data, or assistance) or software/codes.

**Export Administration Regulations (EAR):** Title 15, sections 730-774 of the Code of Federal Regulations (CFR) are promulgated and enforced by the Bureau of Industry and Security in the Department of Commerce. Technologies and products that are controlled under the EAR are identified on the Commodity Control List (CCL), Title 15 CFR 774 SUDDI and divided into ten categories: (1) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (2) Materials, Chemicals, "Microorganisms," and Toxins; (3) Materials Processing; (4) Electronics Design, Development and Production; (5) Computers; (6) Marine; and (7) Propulsion Systems, Space Vehicles, and Related Equipment. The EAR controls technologies and products that serve primarily civil purposes, but may also have military applications.

**EAR 99:** any good or technology subject to the EAR that does not fall under one of the ten specific CCL categories. Licenses are not required for goods or technologies in this category except in limited circumstances, such as for exports to certain countries or individuals to whom exports are embargoed.

**Export Classification Control Number (ECCN):** The Export Classification Control Number "ECCN" categorizes items covered by the Export Administration Regulations "EAR" based on the type of equipment, technology or software and ultimate destination. If an export falls under the controls of the EAR for the country of ultimate destination, an Individual Export License will be required.

**Foreign Person:** both the EAR and International Traffic in Arms Regulations (ITAR) define "foreign person" and any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions), and any natural person who is not a citizen or lawful permanent resident of the United States (as defined by 8 U.S. C. 1101 (a) (20) or pursuant to specific U.S. Government access and dissemination controls (ITAR)).

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 sponsor or to ensure that publication will not compromise patent rights of the sponsor. The citation for the official definition of fundamental research under the EAR is 15 CFR 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; (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 CFR 120.11.

**International Traffic in Arms Regulations (ITAR) 22 CFR 120-130**, are promulgated and enforced by the Office of Defense Trade Controls in the Department of State. Technologies, products, and information that are controlled under ITAR are identified on the United States Munitions List (USML), 22 CFR 121.1. The ITAR controls technology, products, and information that primarily serve military purposes.

**No License Required (NLR)** is the symbol entered on the Shipper's Export Declaration (SED), certifying that no BIS export license is required.

**Office of Foreign Assets Control (OFAC):** A department of the U.S. Treasury that enforces economic and trade sanctions against countries and groups of individuals involved in terrorism, narcotics and other disreputable activities. OFAC enforces economic and trade sanctions based on U.S. foreign policy and national security goals and targets foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC also prohibits transactions with Specially Designated Nationals and Blocked Persons and Sanctioned Countries.

**Public Domain:** Defined in the ITAR (22 CFR 120.11) as information that is published and generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions which 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. The EAR does not include the term "public domain," but does recognize "publicly available technology and software" as outside the scope of the EAR (EAR 732.21a). The EAR defines information as "published" when it becomes generally accessible to the interested public in any form, including periodicals, books, print, electronic, or other media available for general distribution to the public or a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution. It also includes information readily available at public or university libraries, patents and patent applications, or used at an open conference, meeting, or seminar (EAR 734.7).

**Re-Export** is the transfer of defense articles or defense services to an end use, end user or destination not previously authorized.

**Shipper's Export Declaration (SED):** a document used by the Bureau of Census for compiling U.S. trade statistics and by the Bureau of Industry and Security (BIS) in administering and enforcing the Export Administration Regulations (EAR).

**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. 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 (IIAR 120.10(5)).

**Appendix B**  
**B. Export Control Review and Certification Form**

Title of project:  
Banner Fund Number:  
Researcher(s)/Principal:  
Department and School/College:  
Sponsor:

**PART I: GRANT/CONTRACT/MTA/NAD/TAA REVIEW –To be completed by Post Award Administrator**

Does the instrument contain any clause that:

- a. references U.S. export regulations? YES NO
- b. restricts non-US entity participation? YES NO
- c. prohibits access by non-US citizens to project information? YES NO
- d. prohibits the hiring of non-US persons? YES NO
- e. addresses the use of proprietary information? YES NO
- f. addresses security concerns? YES NO
- g. grants the Sponsor a right to prepublication review for matters other than the inclusion of patent and/or proprietary sponsor information? YES NO
- h. allows the Sponsor to claim resulting as proprietary or trade secret? YES NO

Completed by \_\_\_\_\_  
Post Award Administrator Date \_\_\_\_\_

IF YES IS GIVEN TO ANY OF THE QUESTIONS ABOVE, A TECHNICAL REVIEW PART II MUST BE DONE BY THE COMPLIANCE OFFICER IN RESEARCH ADMINISTRATION (ORA) IN CONJUNCTION WITH THE PARTICIPATING PRINCIPAL INVESTIGATOR (PI) AND/OR ANY AFFILIATE RESEARCHERS. NOTE: MOST OF THESE CLAUSES MAY CONFLICT WITH VARIOUS WCU POLICIES AND/OR MAY NEGATE THE “FUNDAMENTAL RESEARCH” EXCLUSION UNDER EXPORT LAWS. IN THESE CASES, CLAUSES WILL NEED TO BE MODIFIED OR DELETED BY THE OFFICE OF LEGAL AFFAIRS.

**Part II: TECHNICAL - To be completed jointly by ECO & Principal Investigator and/or Researchers**

**To All Principal Investigators:** The agreement instrument identified above contains provisions that may require University compliance with export control laws and regulations that are issued by the Department of Commerce and/or State. A final determination of the application of those regulations to this particular project depends on whether the research falls within a category of technology the government has determined raises particular issues of national security or

economic interest. As the PI for the project, you are the person most qualified to decide if your research falls within covered areas.

**Procedures:** You, as the PI, will have to review, in conjunction with the EO, descriptions of technologies that are controlled by the International Traffic in Arms Regulations (ITAR), 22 CFR Section 121.1 and the Export Administration Regulations (EAR), 15 CFR Section 774, Supp. 1 (categories 0-9), and decide if the technology involved in the particular project falls within one or more of those categories. Links to the regulations, as well as information on export control laws and how they may affect University research, can be found on the Export/Import Regulations and Resources section of the ORA website.

If you have any questions, contact the Office of Research Administration, extension 7212.

### **PART III - CERTIFICATION ON THE HANDLING OF EXPORT CONTROLLED INFORMATION - to be completed by the PI and/or Any Affiliated Researchers with the assistance of the EO**

**Overview:** The research project identified below will involve the receipt of technical data that is controlled under United States export control laws; the Export Administration Act and Export Administration Regulations (EAR), enforced by the Bureau of Industry and Security in the Department of Commerce or the Arms Export Control Act and its implementing regulations, the International Traffic in Arms Regulations ("ITAR"), enforced by the Office of Defense Trade Controls in the State Department.

**ITAR:** The ITAR control the export of equipment, technologies, and technical data that are primarily military in nature. It is unlawful under the ITAR to send ITAR controlled technical data to foreign persons outside the United States or to disclose -- in written, oral or visual form -- ITAR-controlled technical data to foreign persons *in* or *outside* the United States unless one of several exclusions applies or the State Department has issued a license authorizing the disclosure or export of the technical data to specific foreign persons.

**EAR:** The EAR control the export of equipment, technologies (including software), and technical data that serve primarily civil uses. The prohibition on the export or disclosure of technical data controlled under the EAR is determined on a country-by-country basis for each disclosure of controlled technical data. As a result, it is unlawful to export technical data out of the U.S. or to disclose technical data in or outside the U.S. to foreign persons of countries for which a license is required as a condition of making such exports and disclosures.

#### **Definitions:**

A "**foreign person**" is anyone who is "not a lawful permanent resident" of the United States (i.e. not a green card holder) or does not have refugee or asylum status.

In general, **export controlled technical data** is specific information that is needed to develop, produce, maintain, manufacture, assemble, test, repair, operate, modify, process or otherwise use equipment or technologies that are on the control lists of the EAR or the ITAR. Controlled

technical data may take the form of "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, read-only memories." Basic marketing information on function or purpose of equipment; general system descriptions; general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities and related information, and information that is in the public domain -- commonly available to interested persons -- does not qualify as controlled technical data under the export control laws. The export laws and regulations determine if technical data is controlled, not your intended or actual use of the information.

**Obligations:** Recipients of export controlled technical data may be held personally liable for disclosures of export controlled technical data to unauthorized foreign persons. As a result, researchers must take reasonable measures to prevent the disclosure to and use and access of export-controlled technical data by unauthorized, unlicensed foreign persons. What qualifies as reasonable depends on the circumstances. Examples of measures researchers should consider adopting include clearly marking "controlled" technical data that is controlled, identifying personnel who may lawfully access the technical data, storing hard copies of controlled technical data in locked cabinets or desks, securing access to electronic copies of and communications containing controlled technical data by passwords, user ids, or other controls; storing technical data in a single location; making only that number of copies of technical data as is necessary, and requiring all persons with lawful access to controlled technical data to sign this certification

**Penalties:** Individual liability for the disclosure of controlled technical data to unauthorized foreign persons under the ITAR. Includes fines up to \$500,000 per violation for civil violations and up to ten years imprisonment and penalties up to \$1,000,000 per violation for criminal violations. Liabilities under the EAR may involve fines ranging from \$10,000 to \$120,000 for each civil violation and fines ranging from \$50,000 to \$1,000,000 for each criminal violation and 10 years imprisonment. Individual researchers and the university also face loss of export privileges and debarment from Federal contracts and grants.

**Certification:** I certify that I am familiar with the EAR and ITAR regulations summarized above, as well as other export control documents that have allowed me the understanding necessary to certify as appropriate at this time. I understand that I could be held personally liable if I unlawfully disclose export controlled technical data to foreign persons and agree to take reasonable measures to prevent unauthorized foreign persons from having access to or using any export controlled technical data I may receive under the contract identified below. I agree to take appropriate security measures and to contact the Research Administration before making any type of disclosure of controlled technical data to any foreign person.

I certify that this project:

1. Does not involve technologies that are covered by either the EAR or the ITAR, is "EAR 99" or the Fundamental Research Exemption applies;
2. May involve technologies that are covered by either the EAR or the ITAR;
3. Is dominated by EAR-governed technology, specifically (identify category name and section)  
Category Name: Section:

4. Includes discrete, easily identifiable and separable research components that are within the scope of an ITAR-governed technology, specifically (identify category by name and section)  
Category Name: Section:

5. Includes discrete, easily identifiable and separable research components that are within the scope of an EAR-governed technology, specifically (identify category by name and section)

If only box 1 is checked, sign below and return this form to the EO.

If any of box 2, 3, 4, or 5 are checked, read the Briefing on the Handling of Export-Controlled Information (Briefing), and sign below indicating you have read and understand the Briefing. You must also contact the EO to determine if a Technology Control Plan (TCP) or a license is required for this project. The EO will check below indicating whether or not a TCP or license is required. NOTE: If a license is required, foreign nationals may not begin work on the project's controlled technology until the license is in place.

If it has been determined a TCP is required, the EO will assist the PI with development of the TCP which must be in place before research begins. The PI must ensure all project personnel read and sign the Briefing and the TCP, certifying that they have read and understand the implications of both documents. NOTE: Personnel added during the course of the project must read and sign the Briefing and the TCP before they begin work on the project.

TCP not required    TCP Required

\_\_\_\_\_  
Printed Name of PI

\_\_\_\_\_  
Name of Empowered Official

\_\_\_\_\_  
Signature of PI/Date

\_\_\_\_\_  
Signature of Empowered Official

\_\_\_\_\_  
Printed Name of Legal Counsel

\_\_\_\_\_  
Signature of Legal Counsel

Note: Attach a separate sheet to include the printed name and signature of any affiliated researchers who must also review and certify in the same manner as the PI participating in this project.

## **APPENDIX C**

### **C. Security Measures Regarding Externally Funded Research**

Examples of security measures are:

- Project Personnel – Authorized personnel must be clearly identified.
- Laboratory “work-in-progress” - Project data and/or materials must be physically shielded from observation by unauthorized individuals by operating in secured laboratory spaces, or during secure time blocks when observation by unauthorized persons is prevented.
- Marking of Export-Controlled Information - Export-Controlled Information must be clearly identified and marked as export-controlled.
- Work Products - Both soft and hardcopy data, lab notebooks, reports, and research materials are stored in locked cabinets; preferably located in rooms with key-controlled access.
- Equipment or internal components – Such tangible items and associated operating manuals and schematic diagrams containing identified “export-controlled” technology are to be physically secured from unauthorized access.
- Electronic communications and databases – Appropriate measures will be taken to secure controlled electronic information. Such measures may include: User ID, password control, and approved encryption technology. Database access may be managed using a protected site created by Information Resources. Only authorized users can access the site and all transmissions of data over the internet will be encrypted using approved encryption technology.
- Conversations – Discussions about the project or work products are limited to the identified contributing investigators and are held only in areas where unauthorized personnel are not present. Discussions with third party sub-contractors are only to be conducted under signed agreements that fully respect the non-U.S. citizen limitations for such disclosures.

#### **Export Control Security Plans**

- Each PI must have a plan in place that outlines the procedures to be taken to handle and safeguard the Export-Controlled information, equipment and facilities.
- The EO will assist the PI in the development of a plan.
- The PI must ensure each person working on the project has read and understands the security measures above.
- The plan will be documented in writing and available for review by auditors.
- Project personnel must review and certify that they understand the plan before they can begin work on the project.

## **APPENDIX D**

### **D. Visual Compliance II by eCustoms**

Visual Compliance performs Restricted Party Screening against all relevant U.S. Government lists, including Specially Designated Nationals and Blocked Persons (SDN), under (among others):

- Department of Treasury Office of Foreign Assets Control (OFAC) Sanctions
- Department of Commerce Bureau of Industry and Security (BIS) Denied Persons List
- Department of Commerce BIS Entity List and Unverified List
- Department of State Arms Export Control Act Debarred Parties
- Department of State Designated Terrorist Organizations
- Department of State Nonproliferation Orders

Optional services to screen against a comprehensive inventory of U.S. law enforcement, military, public service, banking, and international lists (including Japan Foreign End-Users of Concern, the United Nations and European Union lists of terrorist suspects, and Interpol) are also available. Additionally, the Visual Compliance electronic License Assistant management service helps determine whether export permits or export licenses are required.

The University of North Carolina (UNC) has obtained a subscription to Visual Compliance II, a comprehensive online eCustoms system for inquiring against the various lists associated with export control regulations (EAR, ITAR, and OFAC).

The Empowered Official will provide training sessions to provide an introduction to the Visual Compliance II system. This system will be used per the University's Export Controls Management Plan by the various units as appropriate. The Graduate School, Office of Admission, Office of International Programs and Services, and Office of Human Resources will have a designated person responsible for keeping track of changes to the system and serving as their area's point of contact for assistance with the system.

Below are the directions for the self-registration process for the Visual Compliance II online system:

There are two (2) levels of access: Level 1 is primarily denied persons and controlled technologies, but Level 2 is more extensive and covers topics such as banking restrictions and federal debarment. Anyone with an email domain of @WCU.edu can be given user access. To gain access you have to go through the self-registration process described below. Level 2 access will be limited to those areas that show a need for this type of information.

Level 1 - allows limited access:

[https://www.visualcompliance.com/register/UNCS/add\\_user.cfm?VCRUserID=UNCS&VCRPassword=1789A](https://www.visualcompliance.com/register/UNCS/add_user.cfm?VCRUserID=UNCS&VCRPassword=1789A)

Each individual wishing to access Visual Compliance **II** is required to have an individual Username and Password. To obtain your Username and Password please follow the link above and complete the required information.

Once you have filled in the information, a confirmation email will be sent to you. You may then access Visual Compliance II by going to <https://www.visualcompliance.com/login.cfm> and entering your Username. The username is your WCU email address.

Please note that there will be a pop-up screen listing the Terms and Conditions. This is a **one-time only pop-up**. If you have a pop-up blocker on your desktop, you will not be able to view the screen and will not know why you cannot access the system. Please be aware that **you need to view and accept the Terms and Conditions before you will be granted access**. You should allow [www.visualcompliance.com](http://www.visualcompliance.com) as a trusted website so you will be able to view the terms and conditions in the event of pop-up blockers on your desktop.

If in the future you forget your password, go to the eCustoms site at <https://www.visualcompliance.com/login.cfm> and click on the "Forgot your Password" reminder. Enter your email address and your password will be emailed to you.

## **Appendix E**

### **E. Online Resources**

**Export Administrations Regulations (EAR):** 15 CFR 730-774;  
[http://www.access.gpo.gov/nara/cfr/waisidx\\_99/15cfrv2\\_99.html](http://www.access.gpo.gov/nara/cfr/waisidx_99/15cfrv2_99.html)

**Q's and A's** Relating to Guidance on Publications, Conferences, Educational Instruction, Research, Federal Contract Controls, Consulting and Other matters:  
[http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr\\_2003/15cfr734.12.htm](http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2003/15cfr734.12.htm)

**Embargoed Country List:**  
<http://www.access.gpo.gov/bis/ear/pdf/744spir.pdf>

**Denied Persons List:**  
<http://www.bis.doc.gov/dpl/default.shtm>

**Entity List** - EAR Part 744, Supplement 4 -A list of organizations identified by BIS as engaging in activities related to the proliferation of weapons of mass destruction Depending on your item, you may be required to obtain a license to export to an organization on the Entity List even if one is not otherwise required.  
<http://www.bis.doc.gov/Entities/Default.htm>

**Unverified List:** Composed of firms for which BIS was unable to complete an end-use check Firms on the unverified list present a "led flag" that exporters have a duty to inquire about before making an export to them,  
[http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified\\_parties.html](http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html)

**Commodity Control List (CCL):** 15 CFR 774, Supp I;  
[http://a257.g.akamaitech.net/7/257/2422/01jan20061500/edocket.access.gpo.gov/cfr\\_2006/janqtr/pdf/15cfr774.1.pdf](http://a257.g.akamaitech.net/7/257/2422/01jan20061500/edocket.access.gpo.gov/cfr_2006/janqtr/pdf/15cfr774.1.pdf)

**International Traffic in Arms Regulations:** 22 CFR 120-130;  
<http://fas.org/spp/starwars/offdocs/itar>

**Commerce Controlled List:**  
[http://www.stanford.edu/dept/DoR/exp\\_controls/lists.html#ccl](http://www.stanford.edu/dept/DoR/exp_controls/lists.html#ccl)

**US Munitions List:**  
<http://www.fas.org/spp/starwars/offdocs/itar/p121.htm#121.8>

**Office of Foreign Assets Control Regulations:** 31 CFR 501;  
<http://www.treas.gov/offices/enforcement/ofac/legal/regs/31cfr501.pdf>

**Treasury Department Specially Designated National and Blocked Persons List:** EAR part 764, Supplement 3 - A list maintained by the Department of Treasury's Office of Foreign Assets Control comprising individuals and organizations deemed to represent restricted countries or known to be involved in terrorism and narcotics trafficking.

<http://www.treas.gov/offices/enforcement/ofac/>

**List of Embargoed Entities and Persons:**

<http://www.treas.gov/offices/eotffc/ofac>

**Questions and Answers -Technology and Software Subject to the EAR (EAR 734 Supplement 1):**

<http://www.gpo.gov/bis/ear/pdf/734.pdf>

**NOTE: Check the Denied Persons List as well as the OFAC Sanctioned Programs list before exporting any research articles or services. You may also contact the Compliance Officer to assist you with the search.**