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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 w

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
-

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: WCU yw4a-ems apply, thi87-17.0ce5s -1.15 Td(non-spons3744.96 Tm()TjETEMC EMC

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

Laptop Check-out Procedure

Two weeks before pick-up:

- Faculty issues an email request to Lois Petrovich-Mwaniki or Kay Moore for a laptop to IPS with date of pick-up and return (Lmwaniki or Kmoore)
- IPS goes on-line to HELP.wcu.edu to request a travel friendly laptop for international travel specifying pick-up and return dates
- IPS receives a ticket # by email and prints this
- IT delivers laptop to IPS at least 2 days ahead of the pick-up date
- IPS checks out laptop and goes over bag contents with faculty member
- Faculty member signs and dates memo
- Faculty member returns laptop to IPS on date specified
- IPS does quick inventory check with traveler to insure that everything is in the bag
- IPS updates ticket number in on HELP website
- IT gets notification and picks up laptop from IPS.

Responsible Contact: International Programs and Services

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. 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 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 and copies sent to a central repository at the Graduate School as directed by the Empowered Official. The office of the Empowered Official is responsible for maintaining a centralized recordkeeping system of all export control transactions and investigations for five years. The records should include the following:

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**

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" categorized 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,

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

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:

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 confir

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

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

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

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

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

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.