

## **Export Controls in Research Policy**

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### **Purpose and Scope**

West Chester University (WCU) is dedicated to assuring that teaching, research, and service conducted by our administrators, faculty, staff, and students complies with federal and state regulations, policies, and guidelines for export controls.

### **Policy Statement**

This policy applies to all WCU faculty, students, staff, and administrators who are approved for foreign travel by the university President and/or who have international research collaborations funded by internal and external grants.

### **Policy Framework**

#### **A. Federal Regulations**

Export Control at WCU falls under the purview of the United States Department of Commerce, Department of State, and Department of Treasury. Regulations, policies, and guidelines provided by these agencies are provided below, along with a brief description of each agencies' mission.

A.1. The Department of Commerce, Bureau of Industry and Security controls the export of dual use technologies, items that are used or have the potential to be used for both military and commercial purposes that could adversely affect national security if exported. These items are covered by the Export Administration Regulations (EAR, 15 CFR §§730-774). A list of EAR items can be found on the Commerce Control List (CCL) at <https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>.

The CCL categorizes these covered items into 10 broad categories:

0. Nuclear Materials, Facilities and Equipment, and Miscellaneous
1. Materials, Chemicals, Microorganisms, and Toxins
2. Materials Processing
3. Electronics Design Development and Production
4. Computers
5. Telecommunications and Information Security
6. Lasers and Sensors
7. Navigation and Avionics
8. Marine Technology
9. Aerospace and Propulsion Systems, Space Vehicles, and Related Equipment

For goods and technology listed on the CCL, a license may be required for export, depending on the destination country, receiving party, and end use, unless an exclusion or exemption applies. Where embargoed countries are involved, a license will be denied. A list of Sanctioned Programs and Countries can be found at (<https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>).

The regulations include an additional catch-all category, the EAR99, which covers any good or technology that is subject to the EAR as defined in 15 CFR §734.3(a), but that is not on the CCL. Items in the EAR99 category do not require a license for list-based controls, but may require a license based on embargoes, sanctions, receiving party or end use.

A.2. The Department of State regulates military or defense-related articles, technologies and services through the International Traffic in Arms Regulations (ITAR, **22 CFR §§120-130**). These articles can be found on the U.S. Munitions List (USML) at <https://www.gpo.gov/fdsys/granule/CFR-2012-title22-vol1/CFR-2012-title22-vol1-part121>.

The categories of articles on the USML are:

1. [Firearms](#), Close Assault Weapons and Combat [Shotguns](#)
2. [Guns](#) and [Armament](#)
3. [Ammunition](#)/Ordnance
4. [Launch Vehicles](#), [Guided Missiles](#), [Ballistic Missiles](#), [Rockets](#), [Torpedoes](#), [Bombs](#), and [Mines](#)
5. [Explosives](#) and [Energetic Materials](#), [Propellants](#), [Incendiary Agents](#), and Their Constituents
6. Surface [Vessels of War](#) and Special Naval Equipment
7. [Ground Vehicles](#)
8. [Aircraft](#) and Related Articles
9. [Military Training Equipment and Training](#)
10. [Personal Protective Equipment](#)
11. Military [Electronics](#)
12. [Fire Control](#), [Range Finder](#), Optical and Guidance and Control Equipment
13. Materials and Miscellaneous Articles
14. [Toxicological](#) Agents, Including [Chemical Agents](#), [Biological Agents](#), and Associated Equipment
15. [Spacecraft](#) and Related Articles
16. [Nuclear Weapons](#) Related Articles
17. [Classified Articles](#), Technical Data, and Defense Services Not Otherwise Enumerated
18. [Directed Energy Weapons](#)
19. [Gas Turbine](#) Engines and Associated Equipment
20. [Submersible](#) Vessels and Related Articles
21. Articles, Technical Data, and Defense Services Not Otherwise Enumerated

The ITAR further defines Defense Services, which include the furnishing of assistance (including training) to non-US persons, whether or not in the United States, with

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respect to defense articles, as well as the furnishing of any technical data associated with a defense article.

A.3. The Department of Treasury Office of Foreign Assets and Control (OFAC) administrates and enforces economic and trade sanctions to accomplish US foreign policy and national security goals (<https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>). Each sanctions program has an Overview of Sanctions document, and some have further clarification in additional documents such as guidelines. A list of countries that are currently being sanctioned is provided below. This list is subject to change and must be reviewed at the above link, periodically.

Balkans-related	Libya
Belarus	Magnitsky
Burma	Non-Proliferation
Central African Republic	North Korea
Core d'Ivoire	Rough Diamond Trade Controls
Counter Narcotics Trafficking	Somalia
Counter Terrorism	Sudan
Cuba	South Sudan-related
Democratic Republic of the Congo	Syria
Iran	Transnational Criminal Organizations
Iraq-related	Ukraine-related
Lebanon-related	Yemen
Former Liberian Regime of Charles Taylor	Zimbabwe

OFAC also maintains the Specially Designated National and Blocked Persons List, which keeps track of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries, as well as individuals, groups, and entities,

such as terrorists and narcotics traffickers designated under programs that are not country-specific. Their assets are blocked and U.S. persons are prohibited from dealing with them.

## **B. Roles and Functional Responsibilities**

As a member of the Pennsylvania State System of Higher Education (PASSHE), WCU's *Policy for Export Control* complies with and defers to the *PASSHE Procedures and Standards for University Operations, #2012-14-A, Compliance with United States Export Control Laws*, hereinafter referred to as *PASSHE Guidance* ([http://www.passhe.edu/inside/policies/Policies\\_Procedures\\_Standards/Compliance%20with%20United%20States%20Export%20Control%20Laws%202012-14-A.pdf](http://www.passhe.edu/inside/policies/Policies_Procedures_Standards/Compliance%20with%20United%20States%20Export%20Control%20Laws%202012-14-A.pdf)).

B.1. The Export Control Officer will be designated by the PASSHE Chancellor to do the following:

- Assist Designated Officers (see B.2.), administrators, faculty, and staff in compliance with export control restrictions.
- Provide resource to enable compliance with the export control regulations, such as Supplemental Information, consultations, screening checklists, model documents and training material.
- Conduct high-level risk assessments and prepare a System-wide risk management plan.
- Submit license requests for restricted or controlled activities to federal agencies.
- Determine eligibility for license exceptions.
- Approve Technology Control Plans (TCPs, plans to manage security on export controlled items and activities. A TCP is required whenever an export or activity requires a license. It is a significant tool in institutional and personal compliance with the export control laws) for activities and projects.
- Conduct inquiries into export activities.

- Act as liaison to federal agencies.
- Provide for central record keeping and retention.
- Work to raise campus awareness of export control requirements.
- Organize and chair a System-wide Export Control Procedures/Standards Committee that comprises university personnel from all areas of responsibility.

B.2. The *PASSHE Guidance* identifies a number of functional areas at each System University whose managers are to be identified by the University as Designated Officials (DOs) responsible for export controls in their respective areas (travel, research, information technology, procurement, asset control, human resources etc.). This section of the Policy identifies those functional areas and describes the responsibilities of the officials in those functional areas here at WCU.

(a) The Associate Vice President and Chief Human Resources Officer will act as the Human Resources Officer (HRO). The HRO must be alert to the requirement for a certification on H1-B Visa applications, which require the university official to certify whether an export license is required, based on the technology or technical data that the university will release, or otherwise provide access to the beneficiary (i.e., employee). Internally, the HRO will obtain information from academic deans on an H1-B visa holder's access to technology and technical data, both at the time of hiring an H1-B visa holder and at any time thereafter during the life of the H1-B visa when there is a change in access. Upon a change in the H1-B visa holders' technology access, research focus and other items subject to export control, the HRO will consult with legal counsel and/or the Export Control Officer to determine if export license or TCPs are required.

(b) The Academic Deans are DOs who will cooperate with Human Resources when hiring an H1-B visa holder and provide information on an H1-B visa holder/employee's access to technology and technical data to HR officers,

both at the time of hiring the H1-B visa holder and at any time thereafter during the life of the H1-B visa. Changes in the visa holders' technology access, research focus and other items subject to export control must be forwarded promptly to the Human Resources office for follow-up.

The Academic Deans will have an important role in developing and implementing a TCP, particularly in designing security measures that involve export-controlled equipment and research projects that are housed within the department or college. A dean might have to ensure that the appropriate project director creates, secures approvals, and implements the TCP.

(c) The Vice Provost for Research and Creative Activity will act as the Sponsored Research Officer (SRO). The SRO is the DO who will screen all research proposals (including internally sponsored research) to determine if the activity involves any foreign travel or foreign nationals- *any natural person who is not a lawful permanent resident (i.e., not a green card holder) or who does not have refugee or asylum status or 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).*

The SRO will also determine if the project involves any restriction on publication or access to restricted or confidential data. If a project involves either of these elements, the Sponsored Research Officer will screen proposals in depth to determine if the research qualifies for the Fundamental Research Exclusion and to determine compliance with EAR, ITAR, and OFAC regulations. The following activities, among others, may be restricted:

- The ability of foreign scholars to participate in export-controlled research at WCU.
- The ability of WCU researchers to disclose or discuss previously unpublished research at conferences and meetings where foreign nationals are in attendance.
- The ability of WCU researchers to engage in collaborations with foreign researchers, including restrictions on teaching foreign collaborators how to use export-controlled items in research.
- The ability to transfer research equipment abroad.

**The WCU International Research Committee** will be charged with acting as liaisons between the faculty and the SRO on issues regarding export controls, specifically assessment of sanctions requirements, shipping of equipment for international projects, screening of foreign companies with whom the university conducts business, screening foreign visitors, and traveling with non-standard equipment (i.e., equipment other than laptops and smart phones). The committee will be made up of three faculty members and two managers, appointed by the SRO.

(d) The Vice President for Finance and Administration will serve as the Procurement Officer (PO). When purchasing items, university the PO will request that vendors provide technical specification sheets and the Department of Commerce's assigned ECCN or the Department of State's USML classification number. Purchased commodities that are on an export control list shall be tagged. Computers on which controlled software is installed shall also be tagged. Both technology and information about technology that is controlled, such as operating manuals, technical specifications, etc., will be tagged and stored securely. Before awarding bids and again at the time of signing contracts or placing orders, the PO will confirm the vendor is not on the Specially



Designated Nationals List by checking the federal consolidated list by checking the database at MKDenial.com.

- (e) The Deputy Provost will act as the Travel Approver, approving official travel requests. The TA must be aware that, when traveling to embargoed or sanctioned countries, regulations may actually prohibit traveling with research equipment, a laptop, GPS, smartphone or similar data devices and prevent one from purchasing certain in-country business services. In addition, travel advisories containing general precautions and entry requirements are posted by the Department of State and should be consulted and followed. Travel to countries with comprehensive embargoes or sanctions, specifically (as of March 2018) Sudan, Cuba, Iran, Syria and North Korea, must be reviewed with the Export Control Officer. In addition, restricted parties lists, such as BIS Denied Persons or Denied Entities or Treasury's Specially Designated Nationals identifies individuals and entities with which the university or traveler may not do business. Financial transactions with SDNs will be blocked, so advance screening is required.
- (f) The Senior Associate Vice President of Information Services and Technology or designee will act as the Chief Information Officer (CIO). The CIO will provide "clean" laptops for travelers from high-risk program areas on university-sponsored business to reduce risks and facilitate use of license exceptions. A clean laptop has no export-controlled hardware, software, data or information. It has no high-encryption software. It has no personal files or settings, no passwords, no student records, personnel records or other sensitive confidential information. It may contain commercially-available software, and encryption that protects any PASSHE network log-in. Utilizing a "clean" laptop greatly reduces the risk of loss, theft or inadvertent disclosure of protected information.

In many cases, the CIO will have an important role in developing and implementing a TCP. The CIO will be prepared to adopt extra network security measures when members of the university community need to store export controlled information or data on the university computer system. This is particularly important when unauthorized foreign nationals might otherwise have access to the shared network resources.

The CIO will be the primary university resource for other Designated University Officials who might have questions on the nature of encrypted software that the university deploys. (For example, encryption that is used to prevent remote access or reverse engineering of software is not controlled by the EAR.) The Department of Commerce provides two decision trees to assist in this determination: BIS encryption flow chart 1 and BIS encryption flow chart 2.

(g) The Associate Vice President for International Programs will serve as the DO for Study Aboard (DOSA) and should be aware of the Embargoes and Export Control Regulations. In most cases, study abroad programs are conducted in non-export controlled countries. However, the travel restrictions and concerns outlined in section B5, above, are relevant. Faculty who lead an overseas joint faculty-student research project (and/or administrators who approve such travel) shall consult with the Sponsored Research Officer.

Foreign national visiting scholars or Foreign national students involved in research create a risk of a deemed export of controlled items. The restrictions that apply to exports to a specific country also apply to visiting scholars and students from that country. For example, if a specific piece of research equipment or related technology is export controlled, meaning it cannot be exported to specific countries without a license, then visiting scholars and students from those countries are not authorized to access or operate that piece of equipment without a license. The DOSA (who approves the

placement of foreign nationals as visiting scholars or as student research workers) must ensure that export control laws are applied and, if necessary, consult with the Export Control Officer who will determine if a license application is necessary or if a license exception covers the case or deny the placement of the foreign national in the specific capacity.

- (h) The Associate Vice President for Digital Learning and Innovation and the Registrar will act as DOs responsible for ensuring that foreign students residing in countries that are under a comprehensive embargo, as administered by OFAC, do not enroll in online courses. The Student information System must flag such residents and prevent their registration for online courses. (As of March, 2018 those countries were Cuba, Sudan, Iran, Syria and North Korea.)
- (i) The Director of ROTC programs and campus police will act as Dos who must securely store all firearms, preventing any and all public access. The university must ensure that no firearm is issued to a foreign national employee without first ensuring the weapon is not on the USML and consulting with the System's Export Control Officer. If campus police store student firearms they must determine if the firearm is on the USML and if the student is a foreign national or on the SDN list. If firearms or weapons are confiscated on campus, the items will be secured per normal campus security protocol and the subsequent investigation will include verification of any export controls that apply to the item through consultation with the System's Export Control Officer.

B.3. The Systemwide, Export Control Procedures/Standards Committee will include university representatives from all areas of functional responsibility. Its purpose will be to identify areas of noncompliance and procedures for compliance, provide input on the effect of the Export Control Reform and regulatory changes and propose revisions/updates to the procedures/standards, provide assistance in preparing a System-wide risk management plan, develop

additional supplemental information as needed, provide expertise in specific areas to the benefit of the other System universities, and other functions that arise related to this purpose.

### **C. Exclusion from Export Controls Laws**

There are several exclusions provided for in the export control legislation, making them outside the scope of the law. These exclusions cover many of the activities that occur at WCU and help preserve freedom to do basic research, teach and publish without restriction.

C.1. Fundamental Research Exclusion. Fundamental research includes basic or applied research in science or engineering at an accredited institution of higher learning in the United States where the information is ordinarily published and shared openly in the scientific community or is about to be published. It is **not** proprietary research or industrial development, design, production and product utilization, the results of which are ordinarily restricted for proprietary or national security reasons. Only information, **not** the materials or software, resulting from fundamental research is excluded from Export Control Regulations.

The Fundamental Research Exclusion will be voided if researchers sign side agreements (including material transfer and non-disclosure agreements) that contain publication restrictions or restrictions on who can participate in the research. *It is vital that no one sign any agreements that pertain to export controls, or contain any language that restricts publication or who can participate in the research, without first consulting with the WCU Sponsored Research Officer to initiate legal review.* Particular care must be exercised in the negotiation and acceptance of research projects that might be subject to restrictions on the export of data and information. PASSHE may accept research agreements that: (1) indicate that technical data generated under the agreement might be subject to export control regulations; and

(2) include the requirement that foreign nationals be identified to the sponsor prior to their involvement in the project. If the sponsor exercises further restrictions on the publication of these data or on the access to, or the participation in, the research by foreign nationals, PASSHE may elect to decline or terminate the agreement if these restrictions are deemed unreasonable under the circumstances. Any agreement that goes beyond these basic parameters—which specifically indicates that the technical data resulting from the project shall be subject to export control and/or reserves sponsor approval in connection with the hiring of foreign nationals—must be evaluated on a case-by-case basis by the university.

C.2. Educational Information Exclusion. Export control regulations do not apply to information released in the university's academic catalog-listed courses or in teaching labs associated with those courses. This means that a faculty member teaching a university course may discuss what might otherwise be export-controlled technology in the classroom or lab without an export control license even if foreign national students are enrolled in the course. This exclusion is based on the recognition in ITAR that "information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities, or information in the public domain" should not be subject to export control restrictions.

The exclusion is available for courses available globally online (distance learning) but it does not allow residents of (OFAC's) comprehensive embargoed countries to enroll in such courses due to a specific prohibition on the transfer of "informational materials not currently created and in existence at the date of the transaction." (As of August 2012 those countries were Cuba, Sudan, Iran, Syria and North Korea.) Independent study courses and courses not described in the university course catalog do **not** qualify for this exclusion. Encrypted software does **not** qualify for this exclusion.

C.3. Public Domain Exclusion. Information that is published and generally available to the public, as well as publicly available technology and software, is outside the scope of the export control regulations. This exclusion does **not** apply to encrypted software, to information if there is reason to believe it might be used for weapons of mass destruction, or where the United States government has imposed access or dissemination controls as a condition of funding.

Information and research results are considered “**published**” when they appear or are generally accessible to the interested public through print, electronic or any other media available for general distribution to any member of the public. It is considered “**generally available**” to the public when it is available through:

- Sales at newsstands and bookstores;
- Subscriptions available without restriction to anyone who purchases it;
- Second class mailing privileges granted by the United States government;
- 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, trade show or exhibition that is generally accessible to the public and is in the United States;
- Website publication where the site owner does not have knowledge or control of who visits the site or downloads the software/information;
- Public release (i.e., unlimited distribution) in any form (not necessarily published) after approval by the cognizant United States government department or agency; and,
- Fundamental research.

The exclusion applies to a project:

- That does **not** involve export controlled equipment, encrypted software, listed-controlled chemicals or bio-agents or toxins, and
- In which there is no reason to believe that any information or non-encrypted software being released will be used for a weapon of mass destruction, and

- For which any information or software involved in the project is already published.

Dissertation research must meet the standards for "fundamental research" to qualify as "publicly available."

If the research falls under the Public Domain Exclusion, there would be no further concerns about the need for an export license.

#### **D. Noncompliance**

Failure to comply with export control laws and regulations might result in prosecution by the federal government and the imposition of federal, civil, criminal, and/or administrative penalties or sanctions, denial of export privileges, and loss of reputation. It might also result in disciplinary action in accordance with the appropriate Collective bargaining Agreement or personnel policies.

#### **Procedures**

West Chester University (WCU) is dedicated to assuring that teaching, research, and service conducted by our administrators, faculty, staff, and students understand and follow federal and state regulations, policies, and guidelines for export controls. The university procedures for monitoring for all activities (research, teaching, testing, and demonstrations) involving export controls are described below.

#### **A. Training**

A.1. Foreign Travel. All faculty, staff, students, and administrators who are approved for foreign travel by the university President will complete online training for Export Control provided through CITI.

A.2. Research and Creative Activity. All faculty, staff, students, and administrators who participate in research and creative activity in a foreign country or in collaboration with foreign nationals will complete online training for Export Control provided through CITI before those activities begin. CITI training must be renewed every three years. Principal Investigators participate in research and creative activity in a foreign country or in collaboration with foreign nationals will be encouraged to take the NCURA Primer on Export Control as well.

A.3. WCU International Research Committee. The committee members will be required to will complete online training for Export Control provided through CITI and the NCURA Primer training on export controls (<https://onlinelearning.ncura.edu/products/a-primer-on-export-controls#tab-product-tab-table-of-contents>). CITI training must be renewed every three years.

A.4. Designated Officers. All DOs will complete online training for Export Control provided through CITI and be encouraged to take the NCURA Primer on Export Control. CITI training must be renewed every three years.

## **B. Voluntary Disclosure of Violations**

Due to the complexity of the federal regulations, unintentional release of export-controlled items might occur. If such cases are discovered, they should be researched by the relevant Designated Officer who will relay and discuss the matter with the Systems' Export Control Officer, who will investigate further and make the final determination as to whether an unauthorized export has occurred and notify the appropriate federal agency.

## **C. Record Keeping and Retention**



Compliance with export control requirements must be documented through the use of questionnaires, checklists, and other tools. Use if any license exception and compliance with the limitation of the license exception must be documented. The record must be maintained for five years after the termination of the project or the travel return date. Any license applications and related documents, such as TCPs, are to be centrally retained by the Export Control Officer.

The Office of Sponsored Research provide information about the number of export compliance evaluations/screenings to the Deans, Executive Vice Provost, and Provost on a biannual basis.

#### **D. Supplemental Information**

Additional laws or federal regulations may apply to export controlled research or other export activities, including but not limited to:

- Dual Use for Research Concern
- Controlled Unclassified Information
- US Department of Energy, Nuclear Energy Regulatory Commission
- Foreign Countries' import restrictions

The WCU DOs and research faculty are responsible for identifying the applicability of other laws or regulations and seeking the appropriate guidance to ensure compliance.

More information can be found in the *Policy for Export Control* complies with and defers to the *PASSHE Procedures and Standards for University Operations, #2012-14-A, Compliance with United States Export Control Laws*

[http://www.passhe.edu/inside/policies/Policies\\_Procedures\\_Standards/Compliance%20with%20United%20States%20Export%20Control%20Laws%202012-14-A.pdf](http://www.passhe.edu/inside/policies/Policies_Procedures_Standards/Compliance%20with%20United%20States%20Export%20Control%20Laws%202012-14-A.pdf)

## References

1. MIT Office Of Sponsored Programs, Export Control, (<https://osp.mit.edu/compliance/export-control/guidance-documents/export-control-regulations/export-administration>) .
2. Pennsylvania State System of Higher Education (PASSHE), PASSHE Procedures and Standards for University Operations, #2012-14-A, Compliance with United States Export Control Laws ([http://www.passhe.edu/inside/policies/Policies\\_Procedures\\_Standards/Compliance%20with%20United%20States%20Export%20Control%20Laws%202012-14-A.pdf](http://www.passhe.edu/inside/policies/Policies_Procedures_Standards/Compliance%20with%20United%20States%20Export%20Control%20Laws%202012-14-A.pdf)).

**Reviewed by:** Office of Research and Sponsored Programs, Academic Deans Council, University Legal Counsel, and WCU APSCUF and WCU APSCUF Meet & Discuss.

**Policy Owner:** Office of Research and Sponsored Programs

**Approved by:**



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Deputy Provost and Vice President of Academic Operations

3/15/21

**Effective Date:** 04/16/2019

**Next Review Date:** 04/16/2023

## History

**Initial Approval:** 04/16/2019

**Review Date:** 02/23/2021



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