

Western Kentucky University Export Controls Policy

RESPONSIBLE AUTHORITY:

Associate Vice President for Research
Office of Sponsored Programs

I. INTRODUCTION

For national security reasons the U.S. government has established export control laws to regulate the transfer of certain technologies to foreign nationals as well as the physical export of hardware and software. These laws apply to the business sector as well as the academic community. The government routinely develops lists of technologies that are restricted from being transferred to certain nationals/nations. The civil and criminal penalties associated with violating export control regulations can be severe, ranging from administrative sanctions including loss of research funding to monetary penalties to imprisonment for individuals. This policy establishes guidelines to ensure Western Kentucky University's compliance with these laws.

II. GENERAL POLICY

It is the policy of the Western Kentucky University that all employees, professors, students, researchers and collaborators comply with U.S. export control laws while ensuring that, to the extent possible, university instruction and research is conducted openly and without restriction on participation or publication.

III. APPLICABILITY

These guidelines are applicable to all members of the university community engaged in university research and other deemed scholarly activities.

IV. POLICY STATEMENT:

It is the policy of the Western Kentucky University (WKU) to comply fully with the U.S. export control laws and regulations. The WKU Office of Sponsored Programs is charged with oversight of export control matters, questions, or issues brought to their awareness. Export control laws restrict certain types of information, technologies, and commodities that can be transmitted overseas to individuals, including U.S. citizens, or made available to foreign nationals on U.S. soil. It is also the mission and policy of the WKU to conduct services openly and without exclusions on the publication and dissemination of academic and research activities. It is the responsibility of administrators, faculty, staff, students and collaborators to be aware of and comply with these laws and the WKU's written instructions and procedures.

U.S. export control laws, including the Export Administration Regulations (EAR), the International Traffic in Arms Regulations (ITAR), and U.S. Department of the Treasury,

Office of Foreign Assets Control (OFAC) sanction regulations, require that Western Kentucky University obtain an export license prior to providing controlled technologies to certain foreign national employees, professors, students, researchers or other foreign national collaborators. However, information generated during the course of “Fundamental Research,” as defined under such laws, is exempt from export licensing requirements. This means that the University will ensure that, unless unavoidable, information generated during the performance of any university research, including sponsored contract activities, qualifies for the Fundamental Research provisions of applicable export control laws.

The University is committed to educating its employees, professors, students, researchers or other collaborators on U.S. export control laws and regulations and their particular application within a university research setting. As part of the University’s ongoing commitment to export control compliance and education, the University has established a website at <http://www.wku.edu/Dept/Support/SponsPrg/grants/index.php?page=export-controls> that contains university export control policies, forms, training modules and reference materials.

V. DEFINITIONS

A. Foreign National:

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.” (*See* 15 C.F.R. § 734.2(b)(2)(ii)(citing 8 U.S.C. § 1324b(a)(3)). Workers employed in the United States under employment-based visas generally are considered foreign nationals for purposes of the deemed export rule. The holders of “H” visas are the largest class of individuals that may need export licenses.

Therefore, some foreign nationals are exempt from the deemed export rule in the following cases:

- A foreign national granted U.S. citizenship;
- A foreign national granted permanent resident status (i.e., “Green Card” holders);
- A foreign national granted status as a “protected individual” under 8 U.S.C. 1324b(a)(3). Protected individuals include political refugees and political asylum holders.

B. Fundamental Research:

For the purposes of this policy, Fundamental Research means, as defined by the EAR and ITAR, basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or national security reasons or pursuant to specific U.S. government access and dissemination controls.

C. Hardware:

Any article, material, equipment, or supply except technology and software.

D. Software:

A collection of one or more programs or microprograms fixed in any tangible medium of expression.

E. Technology:

Specific information necessary for the development, production, or use of a product.

VI. PROCEDURES

A. Responsibilities

1. The Compliance Manager shall:

- a. Ensure implementation of University export control policy and related guidelines and serve as the primary contact for the University on export control matters.
- b. In coordination with Proposal Development, conduct export licensing determinations and prepare, file, and monitor compliance with export licenses, as necessary.
- c. In conjunction with Proposal Development, brief Principal Investigators (“PIs”), as necessary, on applicable U.S. export control law requirements.
- d. Complete the Export Control Review Form.
- e. Consult the Office of General Counsel, as necessary, for export control regulatory guidance and interpretation.
- f. Provide export control training to University staff, students, researchers and other collaborators, as necessary.
- g. Report instances of possible export control law non-compliance to the Office of General Counsel.

2. Proposal Development shall:

- a. Forward all proposals that may be subject to export control laws, as identified on the internal routing form (AKA, Sign-off sheet), to the Compliance Manager.
- b. In conjunction with the Compliance Manager, brief PIs, as necessary, on applicable U.S. export control laws.

3. Principal Investigator (PI) shall:

1. Assist the Compliance Manager and Proposal Development, as necessary, in determining applicable export control requirements for hardware, software and/or technology subject to U.S. export control laws.
2. Execute the Export Control Review Form.
3. Complete the Fundamental Research Exemption Report.
4. Implement export control guidelines provided by the Compliance Manager and Proposal Development.
5. Identify hardware, software, foreign personnel and technology to be exported to a foreign destination and, in advance of export, report the same to the Compliance Manager for an export licensing determination.
6. Report instances of possible export control law non-compliance to the Compliance Manager.

4. Office of General Counsel shall:
 - a. Upon request, provide regulatory guidance to the Compliance Manager, Proposal Development, and the PI on export control matters.
 - b. Assist with contract negotiations concerning export controls.
 - c. Investigate potential export control non-compliance issues.

B. Export Control Review

1. The purpose of this review is to involve PI's when there is an export control issue. To make this determination the Compliance Manager and Proposal Development will review University grants and contracts to determine whether the Fundamental Research exemption will apply to contract activity. If so, the PI shall complete and sign the Fundamental Research Exemption Report. If the Fundamental Research exemption does not apply, with the assistance of the Office of General Counsel, the Compliance Manager and Proposal Development shall revise, modify or negotiate problematic contract provisions with the Sponsor with the goal of preserving the Fundamental Research exemption. The Compliance Manager shall document the end-results of this review using the Export Control Review Form.
2. Where the Compliance Manager determines the Fundamental Research exemption is inapplicable to contract activity, the following actions shall occur:
 - a. The Export Control Review Form is completed and reviewed.
 - b. The Compliance Manager, in coordination with the Proposal Development Team and PI, determines applicable U.S. export control law requirements. The Compliance Manager documents applicable U.S. export controls on the Export Control Review Form.
 - c. The Compliance Manager briefs the PI on applicable U.S. export control restrictions, with the Compliance Manager and PI executing acknowledgement of such briefing on the Export Control Review Form.
 - d. The Compliance Manager coordinates with the PI to perform export control screening for persons participating in contract activity. To do so, the Compliance Manager circulates the Export Control Compliance Questionnaire to all University employees, professors, students, researchers or other collaborators participating in contract activity.
 - e. The Compliance Manager reviews the completed Export Control Compliance Questionnaire and determines whether the University requires an export license to transfer contract related technology or technical data to any persons participating in contract activity.
 - f. The Compliance Manager prepares and submits export licenses, as appropriate. If granted, the Compliance Manager implements the export license and any conditions thereto.
3. University employees, professors, students, researchers or other collaborators desiring to export hardware, software and/or technology shall notify the Compliance Manager of the intended export. The Compliance Manager will determine applicable export licensing requirements, if any, and prepare/submit export license applications as required.

VII. RELATED DOCUMENTS:

1. Export Administration Regulations, 15 C.F.R. Parts 730-774.
2. International Traffic in Arms Regulations, 22 C.F.R. Parts 120-130.
3. U.S. Department of Treasury, Office of Foreign Assets Control Sanctions Program and Country Summaries
(<http://www.treas.gov/offices/enforcement/ofac/sanctions/>).

VIII. FORMS:

- (1) Export Control Review Form
- (2) Fundamental Research Exemption Report
- (3) Export Control Compliance Questionnaire

INITIATING AUTHORITY: Office of Research & Economic Development, Office of Sponsored Programs

ATTACHMENT LIST: Export Control Review Form