

West Texas A&M University Rule

15.02.99.W1 **Export Controls**
Effective May 2013
Supplements System Policy 15.02, Export Controls

1. Rule Statement

It is the policy of West Texas A&M University (WTAMU) to comply with United States export control laws and regulations including, without limitation, those implemented by the Department of Commerce through its Export Administration Regulations (EAR) and the Department of State through its International Traffic in Arms Regulations (ITAR), as well as those imposed by the Treasury Department through its Office of Foreign Assets Control (OFAC).

2. Reason for Rule

WTAMU has an obligation to implement an export control compliance program to reduce the risk of export control violations. All employees and students are responsible for the export control implications of their work and must ensure that their activities conform to export control laws and regulations. There are severe institutional and individual sanctions for violations of export control laws and regulations, including the loss of research funding, the loss of export privileges, and criminal and civil penalties.

The export of certain items, technologies, software, and services is regulated for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction, and competitive trade. Export control laws restrict the shipment, transmission or transfer of certain items, software, technology and services from the United States to foreign countries. Export control laws also restrict the shipment, transmission, or transfer of “deemed exports” which are releases of controlled physical items or controlled information to foreign nationals located in the United States.

Among other regulations, the Department of Commerce regulates exports through the EAR 15 CFR 700-799. The Department of State regulates exports through the ITAR 22 CFR 120-130, and the Treasury Department regulates exports and transactions involving certain countries, individuals and organizations through the OFAC. Each agency possesses different and changing rules and lists for specifying who or what is considered export sensitive and where export controls apply. The restrictions enforced by the OFAC are not affected by ITAR, EAR or the fundamental research exemption established by National Security Decision Directive 189 (NSDD189).

3. Procedures and Responsibilities

Encouraging research and intellectual inquiry is a vital goal of WTAMU. WTAMU supports open research and the free interchange of information among scholars. WTAMU also recognizes that the United States has enacted laws and regulations restricting the transmission of Controlled Information and Controlled Physical Items for the purpose of protecting national, economic, security, and foreign policy interests. These federal export control laws and regulations establish the conditions under which Controlled Information and Controlled Physical Items can be transmitted to anyone outside the United States and to Foreign Persons in the United States. In addition, the export control laws and regulations restrict or prohibit the transaction of business with certain countries, persons and entities that have been sanctioned by federal agencies as a threat to important U.S. interests.

3.1 Individual Responsibility

WTAMU employees and students engage in a broad range of innovative and important research activities that may involve Foreign Persons, in the United States or abroad. When these activities also include the use of Controlled Information or Controlled Physical Items, the University requires that each individual comply with the applicable requirements of United States export control laws and regulations.

All WTAMU employees and students, visiting scientists, postdoctoral fellows, and other persons retained by or working at or for the University must conduct their affairs in accordance with United States export control laws and regulations.

All WTAMU employees with managerial or supervisory authority over Foreign Persons or projects involving Controlled Information or Controlled Physical Items should view export control compliance as an important part of their day-to-day responsibilities.

WTAMU employees and students will comply with the provisions of any export license, governmental approval requirements, required certifications, technology control plans, and procedures adopted by or granted to WTAMU.

3.2 Empowered Official

WTAMU's Chief Research Officer is the institution's Export Control Official and is WTAMU's "Empowered Official" for all purposes relating to applicable federal export control laws and regulations. The Empowered Official will be assisted by export area coordinators with the day-to-day activities in their areas of responsibility. The Empowered Official, assisted by the Director of Sponsored Research Services (SRS), is responsible for license applications and other approvals required for compliance with export control laws and regulations, and serves as WTAMU's representative and point of contact for export control matters involving WTAMU. The Empowered Official is WTAMU's official authorized to sign license applications and other authorizations required by export control laws and regulations on behalf of WTAMU and to bind WTAMU in any proceedings before government agencies with export control responsibilities.

3.3 Export Control Compliance Program

3.3.1 Research

3.3.1.1 Research Contract Administration

The Chief Research Officer and other appropriate office(s), in coordination with WTAMU's Sponsored Research Services office, is responsible for developing and implementing procedures to screen proposals and projects for compliance with export control laws and regulations and specifically to identify those that involve the following factors:

- (a) In the context of research contracts or grants, restrictions on, or approval rights applicable to publication or release of research results (beyond the customary brief delay to protect a sponsor's confidential information or to preserve the patentability of an invention);

- (b) The contract provides that research results will be considered trade secret, confidential, or proprietary information owned by the sponsor;
- (c) Foreign persons are excluded from participation in the research or are subject to approval by the research sponsor;
- (d) Impose publication or access restrictions (incorporated by federal regulations such as FAR, DFAR, or agency-specific regulations) or have provisions which state that export control laws apply;
- (e) Allow Foreign Persons access to Controlled Information or Controlled Physical Items;
- (f) Persons or entities involved in the research project or related transactions are identified through Restricted Party Screening as embargoed countries or restricted countries, persons or entities; and
- (g) Controlled Physical Items or Controlled Information (including laptops containing Controlled Information) that will be taken or shipped outside the United States.

3.3.2 International Visitors

3.3.2.1 Restricted Party Screening for International Visitors

In general, international visitors intending to visit WTAMU must undergo a restricted party screening as a pre-condition of their visit to WTAMU as provided below.

3.3.2.2 Subjected International Visitors

All International Visitors whether present or not in the United States must undergo a Restricted Party Screening when the International Visitor: (i) will be involved in a research project or collaboration, and will have access to laboratories and research facilities for the purposes of observing or conducting research; (ii) will be issued a WTAMU identification card, keys to offices or laboratories, or otherwise be given access to the WTAMU computing system in any manner; or (iii) will be paid an honorarium, will be reimbursed for expenses, or will be provided something of value. It is the responsibility of all employees at WTAMU who intend to host an International Visitor to notify and request approval of such visit from the Export Control Official, or the Director of SRS, before the arrival of the International Visitor.

3.3.2.3 Exempted International Visitors

Restricted Party Screening of an International Visitor, as described in 3.3.2.2, is not required if no honorarium or reimbursement of expenses is paid and if one or more of the following conditions exist: (i) the International Visitor is meeting with colleagues to discuss a research project or collaboration, (ii) the International Visitor is touring labs or research facilities that are not otherwise restricted per se, or (iii) the International Visitor is participating in general academic or scientific meetings or presentations. It is the fiduciary responsibility of all employees at WTAMU to comply with the initial terms and intent of the visit as communicated to the International Visitor, and to immediately notify the WTAMU Office of the Dean of the Graduate School and Research, the Sponsored Research Services office, and the Office of the Provost of any changes in the intent of the visit prior to engaging the International Visitor in any activity that may require a Restricted Party Screening.

3.3.3 International Activities

When WTAMU activities are conducted outside the United States, the WTAMU activity organizer's and/or responsible international activity official's responsibility is to seek and obtain appropriate export control approvals from the office of Sponsored Research Services, for the following activities without limitation: execution of agreements to be performed outside the United States; non-credit bearing study abroad courses; and making payments to Foreign Persons. The office of Sponsored Research Services or other office(s) with an export area coordinator, in coordination with the Office of the Dean of the Graduate School and Research, are responsible for developing and implementing procedures to screen international programs and activities for compliance with export control laws and regulations.

3.3.3.1 Students Studying Abroad

The Study Abroad Office is responsible for performing Restricted Party Screening on all students enrolled in WTAMU credit bearing programs outside the United States. Restricted Party Screening is required when the student:

- (a) is a Foreign Person;
- (b) has not previously attended WTAMU; and
- (c) is not enrolled as a continuing student at a college or university based in the United States.

3.3.4 Distance Education

Those responsible for offering distance education courses, in cooperation with the Vice President for Academic Affairs, will screen courses as appropriate for purposes of compliance with export control laws and regulations.

3.3.5 Purchasing and Financial Transactions

It is the responsibility of the Division of Business and Finance, in coordination with the Vice President for Business and Finance, to develop and implement procedures to screen vendors as appropriate for compliance with export control laws and regulations.

3.3.6 Training

The Export Control Official, in cooperation with other appropriate offices, will authorize and assign approved WTAMU training. WTAMU employees with managerial or supervisory authority over Foreign Persons or projects involving Controlled Information or Controlled Physical Items are required to take Texas A&M University System export control training once every two years. Depending on the nature of an individual's activities and/or job functions, a WTAMU employee may be required to take supplemental export control training as deemed appropriate by the individual's supervisor and/or the Export Control Official.

3.3.7 Shipping

It is the responsibility of WTAMU personnel or students who are shipping items outside the United States (including hand-carrying items such as research equipment, materials, data, biological materials) to comply with export control laws and regulations in coordination with the Export Control Official and other appropriate offices. WTAMU personnel and students should contact the shipping export coordinator for assistance if needed prior to shipping items outside the United States.

The approved WTAMU international shipment export controls form must be signed and must accompany international shipment paperwork.

4. Offices Responsible for Export Control Compliance

- 4.1 The Export Control Official, in cooperation with other appropriate offices, are responsible for monitoring WTAMU's export control compliance program and for implementing procedures and/or guidelines to comply with federal export control laws and regulations.
- 4.2 When requested, the Export Control Official will determine, or assist other offices and employees in determining compliance obligations and the applicability of the Fundamental Research Exclusion or other exclusions as described in System Policy 15.02, *Export Controls*. The Export Control Official, or the Director of SRS, will also assist with Restricted Party Screening and consult with the Texas A&M University System Office of General Counsel on export control matters as appropriate.

5. Possible Violations

- 5.1 Each WTAMU employee and student has the responsibility to report possible violations of export control laws or regulations. Suspected violations and the details of the suspected violation should be reported to the Export Control Official. Suspected violations may also be reported via the Ethics and Compliance hotline at [Ethics](#) Point. Possible violations of United States export control laws or regulations will be investigated by the Export Control Official with assistance

from the Director of SRS. The Export Control Official is authorized to suspend or terminate a research, teaching, testing or other activity if the Export Control Official determines that the activity is not in compliance, or will lead to noncompliance, with export control laws and regulations.

6. Record Keeping

6.1 Records required to be maintained by export control laws and regulations shall be kept for the longer of:

- (a) the record-retention period required by the applicable export control regulations (see 15 C.F.R. Part 762 (ITAR); 22 C.F.R. §§ 122.5, 123.22 and 123.26 (EAR); and 31 C.F.R. § 501.601(OFAC)), or
- (b) the period required for the retention of records as set forth in The Texas A&M University System policies and regulations and University rules.

Records will be maintained by the Export Control Official and/or the appropriate office responsible for the export or activity.

References and Related Information

- WTAMU Academic and Research Environmental Health and Safety – SOP #37, Export Controls
- International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130
- Export Administration Regulations (EAR), 15 C.F.R. §§ 700-799
- Office of Foreign Assets Control (OFAC), 31 C.F.R. §§ 500-599
- National Security Decision Directive 189, <http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm>
- Atomic Energy Act of 1954, 42 U.S.C Section 2011, et seq., and Nuclear Regulatory Commission Regulations, 10 C.F.R. Part 110
- System Policy 15.02, *Export Controls*

CONTACT FOR INTERPRETATION: WTAMU Export Control Official

APPROVAL:



President/CEO

April 1, 2013
Date

Definitions

Each of the following terms used in this Rule is defined in System Policy 15.02, *Export Controls* (Definitions):

- Controlled Information
- Controlled Physical Items
- Export
- Foreign Person

Other terms used in this Rule have the meanings set forth below:

- Deemed Export – The transfer of Controlled Information or Controlled Physical Items, or the provision of defense services to a Foreign Person in the United States is deemed to be an Export to the home country or countries of the Foreign Person, and is subject to the export control laws and regulations.
- Empowered Official – The Empowered Official is defined in 22 C.F.R § 120.25. The Empowered Official has independent authority to: (i) inquire into any aspect of a proposed export or temporary import by the University, (ii) verify the legality of the transaction and the accuracy of the information to be submitted; and (iii) refuse to sign any license application or other request for approval without prejudice or other adverse recourse.
- International Visitors – International Visitors are Foreign Persons having a residence in a foreign country, who are not WTAMU employees or enrolled students and are coming to WTAMU on a temporary basis as a result of an invitation from a WTMU faculty member, researcher or administrator.
- Restricted Party Screening – The process of determining whether a person or entity is included on the Specially Designated Nationals and Blocked Persons List.