



INSTITUTIONAL POLICY: R-07

Category:	Research
Subject:	Export Control
Effective Date:	November 5, 2018
Last Updated:	N/A

R 07-1. Authority

W. Va. Code § 18B-1-6

R 07-2. Purpose

The purpose of this document is to provide a policy governing the Export Compliance Program (“ECP”) for the West Virginia School of Osteopathic Medicine (“WVSOM”) in order to ensure compliance with US export control laws and regulations. These laws generally relate to research products, materials, hardware, software, and technology but may also relate to education and service. WVSOM is committed to export compliance and to ensuring compliance with the variety of federal laws that govern export of these items and information.

R 07-3. Applicability and Scope

All WVSOM employees, students, and affiliates to include those engaged by or visiting the institution are subject to this policy. All WVSOM researchers, employees, and those acting on WVSOM’s behalf are responsible for ensuring that WVSOM activities are conducted in compliance with the requirements of US export control laws and regulations and the rules and procedures set forth in this policy. It is particularly important for WVSOM, which does not frequently work with international researchers and collaborators, to identify early on in the process any activity or information that may require export control authorizations. This will provide sufficient time to ensure all necessary licenses and applications are procured and approved prior to the initiation of the project or delivery of information. This requires full and timely disclosure of all relevant facts in a transaction in a clear, straightforward, and comprehensible manner.

R 07-4. Definitions

- 4.1 “Controlled item or information” means any tangible good or information/data subject to the Export Administration Regulations. These include items on the Commerce Control List (CCL) (<https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>) and goods and information on the US Munitions List (<https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=70e390c181ea17f847fa696c47e3140a&mc=true&r=PART&n=pt22.1.121>).
- 4.2 “Deemed export” means releasing or otherwise transferring export-controlled technology, information, or source code to a foreign national located in the U.S. (EAR 2016).

- 4.3 “Export” means controlled items and information (as defined in the EAA) that leave the country and controlled items and information that are shared within the borders of the U.S. with foreign nationals subject to the EAA (“deemed export” defined in the EAA).
- 4.4 “Export Administration Act (EAA)” means the suite of federal regulations concerning export control, including but not limited to 31 CFR 500-599 (Foreign Assets Control Regulations), 15 CFR 730-774 (Export Administration Regulations) and 22 CFR 120-130 (International Traffic in Arms Regulations).
- 4.5 “Foreign national or person” means any natural person who is not a lawful permanent US resident or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society, or other entity or group that is not incorporated or organized to do business in the United States. In addition it includes international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).
- 4.6 “Fundamental research” means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the scientific community, and for which the researchers have not accepted restrictions for proprietary or national security reasons. (EAR 2016) Research which meets the standard of fundamental research qualifies for the fundamental research exclusion (FRE), exempting it from export controls. However, FRE determination should be made in consultation with the Export Compliance Manager (“ECM”).
- 4.7 “International collaboration” means any work with persons who are foreign nationals.

R 07-5. Export Control Laws and Regulations Overview

- 5.1 Federal export control laws primarily consist of three separate sets of regulations administered in turn by three independent agencies:
 - 5.1.1 Department of Commerce Regulations: [Export Administration Regulations \(EAR\)](#)
Administered by the U.S. Department of Commerce Bureau of Industry and Security. EAR covers "dual use" civilian/military items and technology and some items that have solely civilian use.
 - 5.1.2 Department of State Regulations: [International Traffic in Arms Regulations \(ITAR\)](#)
Administered by the U.S. Department of State Directorate of Defense Trade Controls. ITAR regulates items and services related to military/defense applications, including spacecraft and satellites.
 - 5.1.3 Department of the Treasury Regulations: [Office of Foreign Assets Control \(OFAC\)](#)
Administered by the U.S. Department of the Treasury, OFAC covers restrictions due to foreign trade embargoes and economic sanctions. It also has regulatory authority over travel and the transfer of funds, services, and items to certain countries, entities, and individuals.
- 5.2 It is important to note that the transfer or sharing of controlled data, information, software, or items within the U.S. (even to a foreign student, colleague, or visitor at WVSOM) would still fall under the export control regulations. Such situations would be classified as a

“deemed export” and defined in the EAR as “a release of export-controlled technology, information, or source code to a foreign national located in the U.S.”. To illustrate, it is obvious to most who are familiar with export control regulations that controlled bio-sensory equipment would need an export license before it could be shipped internationally. However, a *“deemed export license”* would be needed for a foreign student who is working with the same apparatus in the U.S. It is an often overlooked area, but one that has extremely serious repercussions if not paid attention to.

R 07-6. Export Compliance Program

- 6.1 WVSOM maintains an ECP that is responsible for ensuring that the institution carries out the purpose of this policy. The ECP shall:
 - 6.1.1 Affirm WVSOM’s commitment to export compliance annually, or more often if necessitated by personnel, management or regulatory changes;
 - 6.1.2 Explain the basic purpose of export controls and its importance in protecting national security and foreign policy interests for the United States;
 - 6.1.3 Monitor sales to ensure no violation, or potential violation, of U.S. export regulations and laws;
 - 6.1.4 Provide annual training for employees and initial training for entering students on export controls as a method of ensuring compliance;
 - 6.1.5 Review all international travel and/or collaborations by WVSOM employees and students; and
 - 6.1.6 Maintain records pertaining to export transactions for at least five years from the latest of the events defined in the EAA.
- 6.2 The ECP is implemented by the Export Control Compliance Committee (ECCC) and the Financial Reporting Manager. The ECCC is described in the ECP manual and chaired by the ECM. The financial Reporting Manager monitors sales as described in Section 6.1.3 above. The ECCC consists of the Vice President for Administration and External Affairs (VPAER); the Associate Dean for Research and Sponsored Programs, who serves as the Export Compliance Manager (ECM); the Chief Technology Officer; the Institutional Compliance Officer; the Vice-President for Human Resources; and the Associate Dean for Predoctoral Clinical Education.

R 07-7. Administration of the ECP

- 7.1 The Office of Research and Sponsored Programs (ORSP) shall oversee the day to day administration of the ECP and ensure that communication is maintained among employees, students, the ECCC, and the Financial Reporting Manager.
- 7.2 The ORSP shall be equipped with the necessary resources to perform the administrative functions of the ECP, including:
 - 7.2.1 Maintenance of records;
 - 7.2.2 Scheduling meetings of the ECCC as needed;

- 7.2.3 Initiating review of the ECP every three (3) years or as new or modified regulations are promulgated;
 - 7.2.4 Facilitating sponsored program applications involving international collaborations; and
 - 7.2.5 Accessing and distributing current regulatory and guidance information to relevant parties as needed to maintain an export control process of excellence.
- 7.3 The Associate Dean for ORSP will serve as the ECM and point of contact for employees, students, visitors, and all others with questions about the ECP.

R 07-8. Institutional Commitment

- 8.1 WVSOM will affirm its commitment to export compliance annually or more often if necessitated by personnel, management, or regulatory changes.
- 8.2 The annual Management Commitment Statement will include the following:
 - 8.2.1 A statement affirming the Institution's commitment to export compliance and commitment of appropriate resources to compliance;
 - 8.2.2 An explanation of the basic purpose of export controls and its importance in protecting national security and foreign policy interests for the United States;
 - 8.2.3 A statement that no sale under any circumstances will be made that violates or potentially violates the U.S. export regulations and laws;
 - 8.2.4 A description of the importance of employees being familiar and compliant with export controls, so that employees understand possible noncompliance scenarios and specific risks as they relate to the Institution's products, technology, destinations and activities;
 - 8.2.5 A description of the risk of unauthorized transfers for even low-level technology which could potentially jeopardize national security or further the development of weapons of mass destruction;
 - 8.2.6 A description of the possible penalties that the Institution and individual could face for non-compliance, including loss of export privileges, disciplinary action, damage to the individual and Institution's reputation, criminal penalties and administrative/civil penalties and fines; and
 - 8.2.7 The name and contact information of the Export Compliance Manager in the case of questions.

R 07-9. Review and Approval of International Travel and/or Research

- 9.1 All international travel (research and non-research related) will be reviewed and authorized by the ECM to ensure compliance with the federal regulations. International travel that has been approved by the ECM may be subject to modification as more information is provided or if the EAA changes.

- 9.2 All sponsored projects (research and non-research) involving international collaborations (both outside and within U.S. borders) will be reviewed and approved by the ECM to ensure compliance with the federal regulations. Sponsored projects that have been approved by the ECM may be subject to modification as more information is provided or if the EAA changes.
- 9.3 The ECM will independently make routine decisions about travel and sponsored projects as they relate to export control compliance. More complex or possibly high-risk matters will be directed onto the ECCC for review and authorization.
- 9.4 The ECCC will be informed regarding all reviews and decisions made by the ECM on a bi-monthly basis through a summary report.

R 07-10. Record Keeping

Export Administration Regulations require export transactions to be kept for a minimum of five (5) years from the latest of:

- 10.1 The date of the export from the US of the items in question;
- 10.2 The date of any known re-export, transshipment, or diversion of the items in question;
- 10.3 The date of termination of the transaction, whether formally in writing or by other means;
or
- 10.4 If the transaction involves restrictive trade practices or boycotts, the date WVSOM receives the boycott-related request or requirement.

R 07-11. Procedures

WVSOM's ORSP shall maintain an ECP Standard Operating Procedures manual (ECP SOP) to implement this policy. Such operating procedures must be approved by the ECCC following the requirements set forth in WVSOM's Procedure for the Adoption, Amendment, or Repeal of Institutional Operating Procedures.

R 07-12. Implementation of Policy

This policy will be implemented using applicable WVSOM policies and procedures, including the ECP Standard Operating Procedures.

R 07-13. References

- 13.1 Export Administration Act and EAR, ITAR, and OFAC Regulations
- 13.2 WVSOM ECP Standard Operating Procedures