

Export Control

University Operations – Administrative

EWU Policy 201-10

Authority: EWU Board of Trustees

Effective: May 29, 2020

Proponent: Vice Presidents for Academic Affairs & Business & Finance

Summary: This policy establishes standards for complying with federal laws regarding export controls.

Applicability: This policy applies to all students, employees, volunteers, and visiting scholars at Eastern Washington University.

History: This policy revises and supersedes EWU Guideline 201-10. It was adopted by the Board of Trustees on May 29, 2020.

1. FEDERAL REQUIREMENTS

The purpose of this policy is to identify federal export control regulations and identify how these may apply at EWU. Export control laws may be implicated in a wide-variety of situations including, but not limited to:

- Shipping or transporting tangible items internationally
- Travelling or working outside the United States
- Sharing certain science or technology-based information with non-US citizens or non-US permanent residents regardless of where the receiving person is located
- Interactions with embargoed or sanctioned countries, organizations, or individuals
- Entering into a contract or grant regarding science or technology
- Employing non-US citizens or permanent residents

EWU, its students, employees, volunteers, and visiting scholars are required to comply with all federal export control laws and regulations. This includes:

- **Export Administration Regulations (EAR):** these regulations regulate the export of certain items, including those that may have both a commercial and military application. These regulations are administered by the Department of

Commerce and are located at 15 C.F.R. Sections 730-744.

- **International Traffic in Arms (ITAR):** these regulations apply to items or information that may have a military purpose and fall within the definition of a “defense article” under the US Munitions List, 22 C.F.R. section 121. These regulations are administered by the State Department and are found at 22 C.F.R. sections 120-130.
- **Office of Foreign Assets Control:** these regulations contain trade, anti-terrorism, narcotics, human rights, and other national security and foreign policy-based sanctions prohibiting the provision of anything of value to sanctioned countries, organizations, or individuals. These regulations are administered by the US Department of Treasury’s Office of Foreign Assets Control and are contained in 31 C.F.R. beginning at section 500 and in executive orders.
- **Other:** several other federal agencies regulate specific types of exports, such as the Nuclear Regulatory Commission and the Drug Enforcement Administration. This list is by no means exhaustive. Employees are encouraged to contact EWU’s Export Control Officer for assistance in determining whether other regulations may apply in a particular situation.

2. DEFINITIONS

Deemed Export: A deemed export occurs when information or technology subject to export control is released, disclosed, or transmitted to anyone within the US who is not a US citizen or permanent resident. Such a release, disclosure, or transmission is considered to be an export to the country of citizenship of the non-US citizen or permanent resident.

Educational Information: Information released in academic catalog-listed courses or in teaching labs associated with those courses.

Empowered Official: An empowered official is someone directly employed by EWU who is legally empowered in writing to sign export license applications or other requests for approval for exports on behalf of EWU. The empowered official has the independent authority to: (1) inquire into any aspect of a proposed export by EWU; (2) verify the legality of the transaction and the accuracy of the information contained in the application; and (3) refuse to sign any license application or other request for approval without prejudice or other adverse recourse. The Provost or designee serves as EWU's empowered official.

Export: An export occurs when an item is transferred physically from the US to a foreign country whether by shipment, personal delivery, electronic transmission, or verbal conversation.

Fundamental Research: Any research in science, technology, engineering, or mathematics, the results of which are ordinarily published and shared broadly with the research community and for which the researchers have not accepted restrictions for proprietary or national security reasons. Technology or software that arises during, or results from, Fundamental Research, is not subject to export control regulations.

Item(s): Any material, technology, equipment, technical data, software, source code, or commodity, and any information useful to, or used for, the development, production, or use of

any material, technology, equipment, technical data, software, source code, or commodity.

Prohibited Party: An individual or entity who is on one of the lists published by the Departments of Commerce, State, or the Treasury.

Public Domain: Information that is published and that is generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions that are available without restriction to any individual who desires to obtain or purchase the published information; (3) through second class mailing privileges granted by the US government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the US; (7) through public release (i.e. unlimited distribution) in any form (not necessarily published) after approval by the cognizant federal agency; and (8) through Fundamental Research.

3. TRAVEL & TRANSPORTING

Before traveling internationally or transporting items internationally (whether by physical or electronic means), students, employees, volunteers, and visiting scholars are responsible for determining whether or not any export control regulations apply. If an item is subject to export controls, an export license from the U.S. Department of Commerce or U.S. Department of State is generally required. If a person is traveling internationally with university-issued technology (such as a laptop, smartphone, etc.), the employee should contact the Director of Risk Management for assistance in determining whether or not export control laws apply. If federal export control laws require EWU to obtain a license to travel with or ship certain technology, the license request must be approved by EWU's Empowered Official.

4. RESEARCH AND TEACHING

A. Research & Teaching Activities

Export control regulations also apply to the sharing of certain science or technology-based information with non-US citizens or non-US permanent residents within the US. These situations are referred to as “deemed exports” and disclosure may be limited unless an exception applies.

Export control laws and regulations generally do not apply to research, teaching, and service activities conducted by EWU employees or visiting scholars within the US when the item:

- (1) is already in the public domain or is otherwise publicly available;
- (2) is educational information; or,
- (3) forms a part of fundamental research.

For activities to be exempt from such laws, research must be conducted free of any publication restrictions or access or dissemination controls. Any restriction on the publication of scientific or technical information resulting from research, other than (1) limited pre-publication reviews by research sponsors to prevent inadvertent disclosure of proprietary information provided by the research sponsor or to ensure that publication will not compromise the intellectual property rights of the research sponsor; or, (2) specific access and dissemination controls when the federal government is sponsoring the research, will subject the activity to export control requirements.

B. Hiring Process

If a department wishes to hire an employee or volunteer who is not a US citizen or US permanent resident, the department must contact Human Resources. Human Resources will gather information about the person and the position to determine whether or not export control regulations may apply and whether the potential employee falls under chapter 6 of this policy. Human Resources will then assist the Empowered Official in determining whether or not to hire such person and, if so, whether a Technology Control Plan is required. The Technology Control Plan will manage the receipt,

creation, security, and transfer of export-controlled information.

C. Visiting Scholars

Similarly, the School of Global Learning is responsible for gathering information about visiting scholars and the type of research they may be conducting while in the United States. If export control laws apply, the School of Global Learning will work with the Empowered Official to determine whether or not to sponsor a visiting scholar and, if so, whether a Technology Control Plan is required.

D. International Students

Departments are responsible for ensuring that international students do not conduct research that is proprietary, has publication-restrictions, or that may otherwise be subject to export control restrictions unless the department has verified with Chief Information Officer or Director of Risk Management that the student's access is not limited by export control regulations.

5. GRANTS AND CONTRACTS

Export control regulations may be implicated when EWU engages in a transaction that involves proprietary or confidential information from a third party, such as a vendor, consultant, or contractor. Personnel involved in the purchase or acquisition of items, technology, and/or software are responsible for screening prospective and actual vendors, suppliers, and partners to ensure such transactions comply with export control regulations.

Personnel involved in making payments or awarding grants to non-university parties are responsible for screening such parties to ensure such transactions are not prohibited by OFAC.

6. SANCTIONED/EMBARGOED COUNTRIES

EWU employees are prohibited from engaging in a sanctioned transaction unless the transaction is approved in advance by the Empowered Official (Provost or designee). Sanctioned transactions include, but are not limited to:

- Any agreement with a sanctioned and/embargoed country or individual or organization within a sanctioned/embargoed country
- Hiring employees from sanctioned and/or embargoed countries
- Making payments to individuals or entities who are in a sanctioned and/or embargoed country; or,
- Hosting visitors from sanctioned and/or embargoed countries.

7. VIOLATIONS

All EWU students, employees, and visiting scholars are personally responsible for safeguarding export-controlled items from disclosure to anyone if such disclosure would violate federal law. Furthermore, all employees are required to comply with federal laws regarding export controls.

Failure to comply with export control laws and regulations may result in substantial civil and criminal penalties to the specific individual(s) involved and, separately, to EWU. Administrative sanctions such as potential loss of federal funding and revocation of export privileges may apply. In addition, failure to comply with this policy may result in disciplinary action, up to and including termination of employment, enrollment, or affiliation with EWU.