

## NMSU: Export Control Briefing: University Administrative Counsel 03-12-19

### 1. Summary of federal regulatory objectives:

- Federal export control regulations govern:
  - What scientific instruments, technologies, software and biological materials can be accessed and/or used by foreign nationals<sup>1</sup> studying, visiting, or working in the U.S.
  - What items can be transferred abroad to certain destinations based on the type of item, end use, end user and country destination
  - Treasury Department's OFAC regulations govern travel, academic, research and business transactions with certain sanctioned countries<sup>2</sup>
- Government agencies restrict engagement (including but not limited to export transactions) with certain individuals and entities identified in the Federal Register, thereby requiring restricted party screening
- "Foreign Influence" security concern: Procurement from Huawei Technologies and other entities listed on NDAA; China-related research and academic exchange programs; IP/Spin-off partners

### 2. Current enforcement environment:

- Increased focus on Higher Ed and non-academic scientific research institutions
- Penalties include federal debarment, monetary penalties, criminal prosecution, revocation of export privileges: Enforced at institutional and/or individual levels
- Investigations re Chinese scholars and collaborative programs/technology transfer (FBI, NIH, DOE)

### 3. Compliance management among Higher Educational Institutions: current standard:

- Dedicated export control oversight function (Export Officer/Empowered Official)
- Ability to effectively interface with key operational functions and all academic/research areas triggering export requirements
- Campus-wide recognition as the "go-to" resource for export control matters
- Authority to suspend transactions potentially in violation of the regulations

### 4. Key message to faculty and staff: compliance processes are intended to be:

- Proportionate to risks; *supportive of* (not impeding) research, academic and business activities
- Sufficiently flexible to accommodate NMSU's increased number of federally-funded, export restricted programs, data security requirements and international initiatives.

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<sup>1</sup> For export control purposes, foreign nationals are defined as those individuals who are not U.S. citizens, Permanent Residents ("Green Card" holders) or recipients of Political Asylum status. Hence, foreign nationals are individuals with temporary immigrant visa status including but not limited to H1-B, J-1, F, and B-visa beneficiaries.

<sup>2</sup> In addition to the Departments of State, Commerce and Treasury, other agencies also regulate exports, for example Nuclear Regulatory Commission, NASA, and USDA.

## 5. Who We Will Focus On for Assessment Purposes

- Research Faculty/Staff: Federal, Industry, and University-sponsored science/engineering-based research; fundamental and restricted research; industry service contracts; international collaborative work; academic and Humanities-based programs with international scope
- Core Operational/Business Functions: (e.g. HR, Procurement, IT, EHS, International Academic Programs/Visa Services, Sponsored Research, Core Labs/Specialized Research Centers (e.g. PSL), Finance, Property Control, Tech Transfer, etc.)

## 6. Key Requirements/Areas that Export Assessment Will Address

- Export Policy or Commitment Statement that reflects NMSU's compliance program
- Recognizable export oversight function with sufficient visibility into export transactions
- Strategy for accepting export restricted programs; DFARS 7012 data security requirements
- Restricted Party Screening as a well-defined, distributed function
- Classification of international transfers: pre-shipment license determination
- Export licensing of commodities (as needed) + Shipping/Recordkeeping
- Identification of ITAR Items and Dual Use Technology through Procurement process (potential foreign national access restrictions resulting from ITAR release and/or deemed exports)
- Technology Control Plans (TCPs) and foreign national licenses (as needed)
- EH & S compliance overlap: BSL-contained materials and risk-sensitive instruments/materials
- I-129B Export Certification (H-1/O-1); J-1/F-1 export-sensitive research assignments
- NDAs and MTAs: advance notification requirements to identify controlled inputs
- International travel with Laptops (stored export controlled data) and tools of trade
- External party use of laboratories/proprietary service contracts
- Training and Notification Procedure for suspected violations

## 7. How can NMSU *proactively* support export compliance program post assessment?

- Develop and implement recommended compliance processes on a priority basis
- Disseminate Export Compliance Policy/Commitment Statement campus-wide, highlighting requirements; go-to resources; training module (digital and in-person)
- Create robust Export Working Group/Advisory Committee; designate "Export Liaisons" among process owners (research and administration) to help implement program

## 8. Conclusion: Q & A

