

WAYNE STATE  
UNIVERSITY

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DIVISION OF RESEARCH

EXPORT CONTROL COMPLIANCE PROGRAM AND MANUAL

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## 1.0 INTRODUCTION

The Export Management Compliance Program (EMCP) <sup>1</sup> and Manual is intended to promote awareness and understanding of U.S. Export Control Laws and Regulations to ensure compliance by Wayne State University (WSU) faculty, academic officers, employees, students, and administrators pertaining to export controlled activities and/or issues resulting from those activities. This manual also provides the WSU community with essential aspects of the laws and regulations concerning export controls, and to determine how and when export control issues arise, explain how to protect the fundamental research exclusion, and promote the open transfer and sharing of information in and outside the United States with students, researchers and others who are foreign nationals.

U.S. Export Control Laws and Regulations prohibit disclosure of certain information, technology and products to designated persons or entities, whether on U.S. soil ("deemed exports") or outside the U.S. Lists of sanctioned, prohibited, or regulated activities and entities are generated by the Departments of Commerce, Treasury, and State. Even though these laws may conflict with the University's tradition of academic freedom, they carry severe *criminal* and *civil* penalties for noncompliance by individuals and the University. The penalties can apply both to the individual(s) and the institution involved in a violation. Therefore, it is imperative that all WSU personnel familiarize themselves with these Export Control Laws and Regulations and understand how these laws apply to their activities. These regulations are very broad and difficult to manage on an individual basis; therefore, the Office of Research Compliance Export Control has drafted this manual to assist the WSU community in complying with the regulations.

## 2.0 APPLICABLE UNITED STATES EXPORT CONTROL LAWS AND REGULATIONS

U.S. Export Control laws are federal regulations that control the conditions under which certain information, technologies, and commodities can be transmitted or shipped overseas to anyone (including U.S. citizens) or disclosed, released, or transferred to a foreign national on U.S. soil ("deemed export"). There are severe penalties for violation(s) of these laws or failure to comply with WSU's export control policies and procedures.

The federal laws forming the basis for these controls are administered by three governmental agencies and are universally described via acronyms:

- **EAR:** Export Administration Regulations - U.S. Commerce Department - Bureau of Industry and Security (BIS)
- **ITAR:** International Traffic in Arms Regulations - U.S. Department of State - Directorate of Defense Trade Controls (DDTC)
- **OFAC:** Office of Foreign Assets Control - U.S. Department of the Treasury

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<sup>1</sup> This document is not intended for, and should not be used as, formal legal advice.

## Commerce Department

The Export Administration Regulations (EAR) are set forth in parts 730-774, of Title 15 of the Code of Federal Regulations (CFR), and issued by the Department of Commerce, Bureau of Industry and Security (BIS) to implement the Export Administration Act (EAA) and other statutory requirements. The EAR is amended by rules published in the Federal Register. The BIS is charged with the development, implementation and interpretation of U.S. export control policy for dual-use commodities, software, and technology. The Commerce Control List (CCL) regulates commercial items, including these "dual-use" items that have commercial, military or proliferation applications.

In addition, BIS is also responsible for the development, implementation and interpretation of the Antiboycott provisions of the Export Administration Act. The Antiboycott provisions encourage, and in some cases require, U.S. persons to refuse to participate in foreign boycotts that the United States does not sanction. U.S. persons are also required to report receipt of boycott-related requests. ([http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html)).

## Export Administration Regulations (EAR)

### Penalties

#### Criminal Sanctions for "Willful Violations"

- **University** - A fine of up to the greater of \$1,000,000 or five times the value of the exports for each violation;
- **Individual** - A fine of up to \$250,000 or imprisonment for up to ten years, or both, for each violation.

#### Criminal Sanctions for "Knowing Violations"

- **University** - A fine of up to the greater of \$50,000 or five times the value of the exports for each violation;
- **Individual** - A fine of up to the greater of \$50,000 or five times the value of the exports or imprisonment for up to five years, or both, for each violation.

**Civil (Administrative) Sanctions:** The imposition of a fine of up to \$12,000 for each violation, except that the fine for violations involving items controlled for national security reasons is up to \$120,000 for each violation. Additionally, for each violation of the EAR any or all of the following may be imposed:

- The denial of export privileges; and/or
- The exclusion from practice; and/or
- Seizure/Forfeiture of goods

## State Department

The Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs (PM), in accordance with 22 U.S.C. 2778-2780 of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), is charged with Presidential control of exports and (temporary) imports of defense articles, and defense services, covered by the United States Munitions List (USML). The State Department also provides guidance on policy, designation of USML and issuance of export licenses. Any manufacturer or exporter of articles or services found on

the USML is required to register with the DDTC, which helps to validate entities engaged in the defense trade. ([www.pmdtcc.state.gov](http://www.pmdtcc.state.gov)).

## International Traffic in Arms Regulations (ITAR)

### Penalties

#### Criminal Sanctions:

- *University* - A fine of up to \$1,000,000 for each violation;
- *Individual* - A fine of up to \$1,000,000 or up to ten years in prison, or both, for each violation.

#### Civil Sanctions:

- *University* - A fine of up to \$500,000 for each violation;
- *Individual* - A fine of up to \$500,000 for each violation.

Additionally, for any violation of the ITAR either or both of the following may be imposed:

- The denial of export privileges; and/or
- Seizure/Forfeiture of goods.

### Treasury Department

The Office of Foreign Assets Control (OFAC), 31 C.F.R. § 500-599 administers and enforces economic and trade sanctions that have been imposed against specific countries for reasons of foreign policy, national security, or international agreements. Full descriptions of all countries currently subject to boycott programs are available at <http://www.ustreas.gov/offices/enforcement/lists/>. The U.S. Department of the Treasury oversees U.S. economic sanctions and embargoes through OFAC. Empowered by the *Trading with the Enemy Act* and the *International Emergency Economic Powers Act*, OFAC enforces trade, anti-terrorism, narcotics, human rights and other national security and foreign policy based sanctions prohibiting the provision of anything of value, either tangible or intangible, to sanctioned countries, organizations or individuals. The pertinent regulations provide OFAC with broad authority to block or interdict vaguely defined "prohibited transactions" involving restricted destinations or parties.

## Office of Foreign Assets Control (OFAC)

### Penalties

#### Criminal Sanctions:

- *University* - A fine of up to \$1,000,000 for each violation;
- *Individual* - A fine of up to \$1,000,000 or up to twenty years in prison, or both, for each violation.

#### Civil Sanctions:

- *University* - A fine of up to \$55,000 for each violation;
- *Individual* - A fine of up to \$55,000 for each violation.

Additionally, for any violation of the OFAC regulations, seizure and forfeiture of goods may result.

### 3.0 WAYNE STATE UNIVERSITY EXPORT CONTROL COMPLIANCE POLICY STATEMENT

It is the policy of Wayne State University (WSU) to comply fully and completely with all United States export control laws and regulations. It is WSU's policy that all employees, faculty, visiting scientists, postdoctoral fellows, students, and other persons retained by or working at or for WSU (collectively "WSU Personnel") conduct their affairs in accordance with these laws.

WSU Personnel shall not export any items or technology contrary to U.S. export control laws and regulations. Under these laws and regulations, export is defined as the following: 1) actual shipment of any controlled goods or items; 2) the electronic or digital transmission of any controlled goods, items or technology or services related to controlled goods; 3) any release or disclosure, including verbal disclosures or visual inspections, of any controlled technology, software or technical data to certain foreign nationals<sup>2</sup>; or 4) actual use or application of controlled technology on behalf of or for the benefit of any foreign entity or person regardless of where they are located.

While WSU recognizes the valuable contributions of our foreign researchers and students, there are certain conditions under which the export of information or technology to a foreign national is either prohibited by law or requires license from the U.S. Government. This policy has been enacted to establish, document and implement procedures needed to ensure that WSU, and its Personnel, remain in full compliance with all rules and regulations and specifically those administered by the U.S. Department of Commerce through the Export Administration Regulations, (EAR) <http://www.bis.doc.gov/>, the U.S. Department of State through the International Trafficking in Arms Regulations, (ITAR) <http://www.pmdtdc.state.gov/> and the U.S. Department of Treasury through the Office of Foreign Assets Control (OFAC) <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>.

#### Contact Information

The majority of activities do not require government licenses. Due to the complex nature of these laws, WSU has established an Export Control Office to assist with ensuring compliance with export-control obligations. You are strongly encouraged to call, if you are planning to export materials abroad according to any of the definitions listed above, to engage in international collaborations that will involve the transfer of materials, equipment, or information; have research contact with students or colleagues from any of the countries covered by these regulations; or have any questions about the application of export controls to activities in which you are involved.

Please contact the Export Control Compliance Office at (313) 577-9064 or mail inquiries to Wayne State University, Office of Research Compliance, 5057 Woodward, Suite 6305, Detroit, MI 48202.

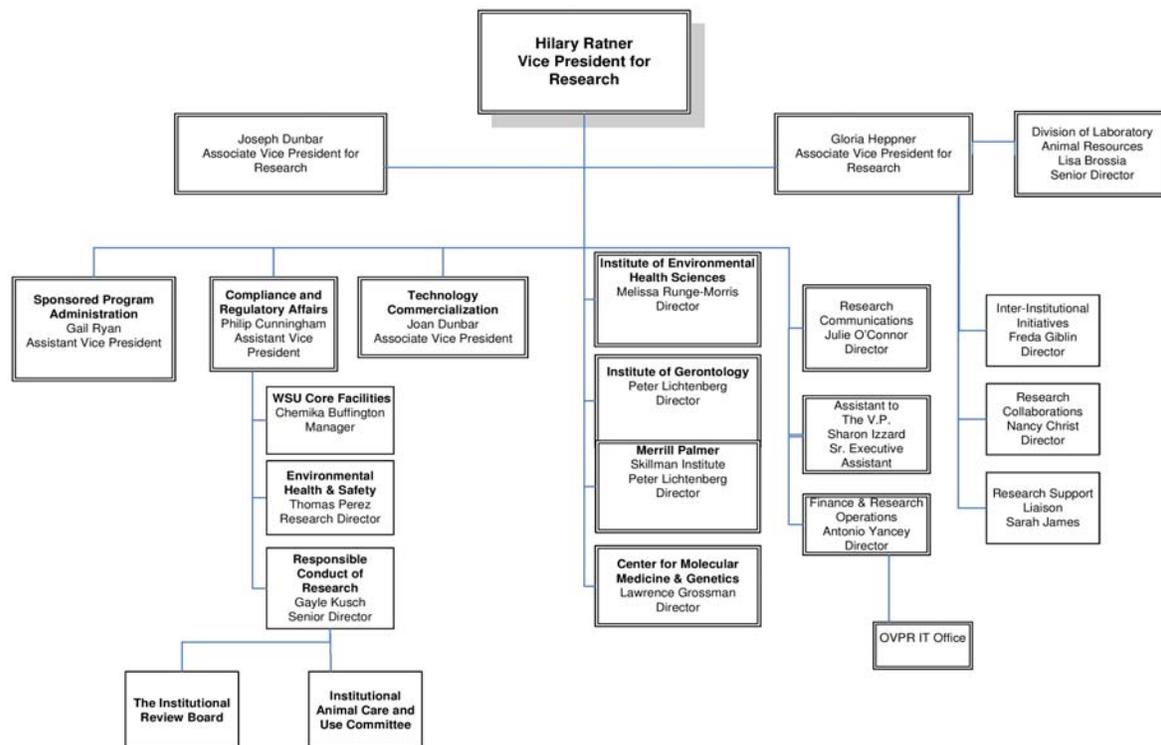
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<sup>2</sup> Per 8 U.S.C. 1324b (a) (3) of the Immigration and Naturalization Act, a foreign national is any person who is not a citizen or Permanent Resident Alien of the U.S.

## 4.0 PROGRAM ORGANIZATION, PERSONNEL AND RESPONSIBILITIES

### ORGANIZATIONAL CHART

#### Division of Research Office of the Vice President for Research



### Assistant Vice President for Research

To implement this policy, the Vice President for Research has designated the Assistant Vice President for Research Compliance as the “Empowered Official” (EO) for all export control issues. The EO is responsible for implementing WSU’s export control policies and procedures.

### Office of Research Compliance Export Control

The Board of Governors at WSU has approved and funded the establishment of an Export Control Office within the Office of Vice President for Research (OVPR).

### Export Control Manager

The Export Control Manager is responsible for providing regulatory knowledge by adhering to US export laws and regulations to support WSU Personnel with export control matters. The Export Control Manager works closely with the Assistant Vice President for Research, Sponsored Program

Administration (SPA), and the Export Control Advisory Committee and additionally coordinates ongoing educational training and compliance activities.

### Export Control Advisory Committee

The Export Control Advisory Committee is responsible for the oversight and stewardship of the University's policies and procedures pertaining to the U.S. Export Control Laws and Regulations. The Committee reports to the Associate Vice President for Research. The Export Control Advisory Committee shall review and recommend the procedures for the implementation of the Institution's policy and procedures for compliance with export control laws and regulations. This committee shall make recommendations for promoting awareness of and compliance with export control statutes and regulations; and to assure prompt and expeditious handling, evaluation, and resolution of export control issues. The Advisory Committee will also undertake an annual review of this manual of procedures to ensure it remains current and reflects any changes in the laws.

### Office of General Counsel (OGC)

The Office of General Counsel (OGC) acts as a consultant to the Empowered Official and the Export Control Advisory Committee on export control issues that are related to WSU activities.

## **5.0 INTERACTION WITH OTHER UNIVERSITY UNITS**

### Office of Environmental Health and Safety (OEHS)

The Office of Environmental Health and Safety (OEHS) provides services to the university community that encompass environmental stewardship (hazardous waste management) and occupational health and safety, which include areas such as laboratory/chemical safety, radiation safety, and biological safety. OEHS also provides training in these areas to researchers and their staff, students, and other personnel as appropriate.

The Director of OEHS has access to the Visual Compliance database and search engine and designates other OEHS personnel to utilize this resource to help determine the export control classification of materials and technology that fall under their purview. The Export Control Office contacts OEHS when necessary to assist them with these determinations as needed. OEHS provides administrative support to the Institutional Biosafety Committee (IBC), which is an important source of identifying potential export control issues through the review of proposed research that utilizes biohazardous agents. The OEHS liaison to this committee consults with the Export Control Office on any potential issues that arise from the IBC reviews or other relevant activities.

### Human Investigation Committee (HIC)

Wayne State University (WSU) operates its human research protection program under a [Federal Wide Assurance \(FWA\)](#) with the Department of Health and Human Services. The core of this program is the Institutional Review Boards (IRB), known as the Human Investigation Committee (HIC) at WSU. The HIC administrative staff works closely with the Export Control Office to identify any potential issues with proposed international human participant research.

## Sponsored Program Administration (SPA)

The Sponsored Program Administration (SPA) Office within the Division of Research is responsible for the institutional oversight of WSU's externally sponsored programs. SPA plays a role throughout the lifecycle of a grant or contract, which includes proposal review and submission (pre-award) and the administration of an award (post-award). SPA personnel work closely with the Export Control Office when they identify a grant or contract with potential export control considerations, including restrictions on participation of foreign nationals and/or publication of results, or any provisions that nullify the fundamental research exclusion (FRE). Military-related grants and contracts are carefully screened for equipment, technology and other items that might be on the USML or other control lists. When a project is identified for export control review, the Export Control Office works with SPA, the Office of General Counsel (OGC), and the Principal Investigator (PI) to determine the appropriate management of the issues.

Any "side" arrangements, contracts, terms or clauses that were negotiated between the researcher and sponsor without the express knowledge of the OGC or ECO, may jeopardize the university's fundamental research exclusion. WSU will normally not honor, recognize or be bound by any such arrangements, contracts, terms or clauses.

## Technology Commercialization

The Technology Commercialization Office handles technology transfer, new venture creation, and facilitating interactions between industry and WSU faculty. The Technology Commercialization Office is responsible for the protection, marketing, and licensing of Intellectual Property (IP) developed by WSU Faculty. Technology Commercialization reviews all Non-Disclosure Agreements (NDA), Confidentiality Disclosure Agreements (CDA), and outgoing Material Transfer Agreements (MTA), License and Option Agreements (LOA) and other miscellaneous agreements. If any export control issues arise from this review, the ECO is consulted and OGC will assist with these reviews as deemed appropriate.

## Purchasing

The Purchasing agent(s) review agreements for evidence that equipment is subject to export control restrictions or whether contractors are in boycotted countries or on any banned persons lists. The Purchasing Department will notify the ECO when equipment is determined to be export controlled. The ECO works with the investigator(s) and relevant Chair(s), Dean(s) or other unit Director(s), as applicable, to ensure that no violation of the U.S. Export rules will occur if the item(s) is purchased and used at WSU. Procurement has access to the e-Customs Visual Compliance database system to screen vendors in an effort to perform export control due diligence. The ECO provides this department with the necessary training on e-Custom Visual Compliance.

## Office of International Students and Scholars (OISS)

The mission of the Office of International Students and Scholars (OISS) is to support and enhance the educational, cultural, and social experiences of WSU international students and scholars. It serves as a primary link to the University, the community, the federal government, and public and private agencies and organizations. In addition, it provides international and cross-cultural educational programs to the University and its community.

The OISS performs routine searches via the eCustoms Visual Compliance (VC) database in order to screen prospective foreign students or researchers who may study or work at WSU. If a match is found on the Restricted Party Screening (RPS), OISS immediately notifies the ECO. The ECO contacts the

relevant governmental authorities to help determine the authenticity of the VC match, and provide additional guidance on how to proceed with the applicant.

OISS also processes various immigration forms, including the new version of the U.S. Citizenship and Immigration Services' (USCIS) Form I-129, which was mandated for H-1B, H-1B1, L-1, or O-1A workers. USCIS has added two specific questions to the I-129 Petition for a Non-Immigrant Worker relating to compliance with federal export control regulations. The applicable regulations involve "deemed exports" that occur when a federally controlled technology, technical data, software or other item is shared with an unauthorized foreign national. It may be necessary to request a license from the Departments of State or Commerce before the work can proceed. The licensing process takes time and may involve a fee, and *the request can be denied*. Only the Empowered Official in the Export Control Compliance Office can request a license. Additional guidance can be found at; <http://www.oiss.wayne.edu/forms/h-1b-temp-worker.php> and [http://research.wayne.edu/export-control/I-129\\_Petition\\_for\\_Non-Immigrant\\_Worker.php](http://research.wayne.edu/export-control/I-129_Petition_for_Non-Immigrant_Worker.php).

### Computing & Information Technology (C&IT)

The Information Security Office (ISO) in Wayne State University's Computing & Information Technology (C&IT) organization works with the campus community to provide a safe computing environment for students, faculty, and staff.

Using administrative and academic computer systems, the campus community communicates and shares information and knowledge for research, learning, and creativity – on and off campus and with our global neighbors. The ISO is responsible for protecting the confidentiality, integrity and availability of that information. The ECO consults with C&IT on any relevant export control issues that arise.

### International Travel

While most foreign travel does not require an export license, travel to certain foreign locations may be governed by export control laws. For example, the U.S. Department of the Treasury regulations restricts certain financial transactions with specific countries (<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>). Traveling abroad with certain controlled tangible items, software, technology or information may also require an export license. Individuals traveling to restricted, sanctioned, or embargoed countries are responsible for notifying the Export Control Office, who will work with the individual to determine whether approval or licenses are necessary.

Once outside the US or upon the return to the US, individuals' laptops may be subject to search or may be seized without probable cause, suspicion or warrant. It is important that WSU travelers safeguard personal, sensitive, export controlled, and proprietary data appropriately. Please review the International Travel Tips which are located on the export control website at; [http://www.research.wayne.edu/export-control/International\\_Travel.php](http://www.research.wayne.edu/export-control/International_Travel.php).

When preparing for International travel, additional guidance can be found at [www.travel.state.gov](http://www.travel.state.gov).

### Principal Investigators

The Principal Investigator (PI) is the primary individual in charge of a research grant, cooperative agreement, training or public service project, contract, or other sponsored project. The PI is ultimately responsible for complying with export control regulations and any compliance plan provided by the ECO for managing export-controlled research or materials, technology, etc. Both the individual and the institution can be sanctioned for violations of the Export Control Regulations, so they must act in

concert to comply with these rules. The PI will cooperate with the University's efforts to promote the acceptance and conduct of fundamental research projects. The PI will notify the ECO whenever he/she believes that conditions of an award could pose an export control issue. Similarly, the PI should consult with the ECO whenever equipment, technical data, software or personnel might pose an export control issue.

## **6.0 OFFICIAL COMMUNICATIONS WITH REGULATORY AGENCIES: REQUESTS FOR ADVISORY OPINIONS, LICENSE APPLICATIONS, AND TECHNICAL ASSISTANCE AGREEMENTS**

Official requests for guidance regarding the interpretations of either the Export Administration Regulations (EAR), or the International Traffic and Arms Regulations (ITAR) are commonly referred to as "Advisory Opinions". Requests must be made by the Empowered Official in writing, contain all available information on the parties to the transaction, and the proposed end-use or end-user, provide details regarding the equipment or related technical data, its usage, the security classification (if any), and the country or countries involved. The ECO, in consultation with the PI, will identify activities for which an advisory opinion might be appropriate. All Advisory Opinions (and license applications—see below) will be processed through the Export Control Office, and when deemed appropriate, can be submitted only by the Empowered Official. Additional guidance and further explanation of these regulations can be found at; EAR §748.3 and ITAR's Section 126.9.

If it is determined that a controlled technology or item may require a license or a technical assistance agreement (TAA) in order for it to be shared with, disseminated or exported to foreign nationals at WSU or abroad, then the Empowered Official will decide whether to apply for the license or TAA. All requests for licenses or TAA's must be made through the ECO. The processing time for a license is normally four to six months after the application is submitted, and any associated fees may be the responsibility of the requesting individual who needs the license or TAA.

## **7.0 TECHNOLOGY CONTROL PLAN**

In some situations it is possible to put a Technology Control Plan (TCP) in place instead of applying for a license. A Technology Control Plan (See Appendix III) is a formal document that outlines the procedures to secure controlled technology, (e.g., technical information, data, materials, software, or hardware) from use and observation by unlicensed non-U.S. citizens. TCP's are developed through the joint efforts of the ECO and the PI(s) in order to specify the controlled items or conditions and the management of those items to ensure compliance with the export control regulations.

All authorized personnel listed on the TCP must be screened in e-Customs Visual Compliance. The finalized TCP shall be reviewed and approved by the University Empowered Official for export controls. The PI must review the TCP with all project personnel before they begin work on the project, and the TCP must be signed by the PI or designee and other relevant personnel. Periodic audits of the TCP will be conducted, and amended when a new member of the research team has been approved, or if the scope of work changes.

*If a contract or other agreement contains language restricting the publication of research results beyond 90 days, and/or for reasons other than the review of patent or proprietary sponsor information, a TCP may also be required. If applicable, the TCP must include a signed certification by the PI and participating graduate student(s) acknowledging that the publication restrictions on this project may adversely affect their ability to complete a thesis/dissertation.*

Training of all personnel involved is mandatory. If it is not possible to manage an export-controlled situation through a TCP, then a license or TAA would be needed.

It is important to note that it is not always possible to obtain a license or TAA, or to develop an appropriate TCP, so that there are some proposed activities that cannot be accommodated at WSU. The Empowered Official will make the final decision in such cases.

## **8.0 TRAINING**

The Export Control Office (ECO) provides education and training to the WSU community on export control regulations, compliance, and related issues. The WSU website has export control information at <http://www.research.wayne.edu/export-control/index.php/>. Didactic sessions can be arranged for groups of any size by contacting the ECO. In order to comply with federal guidelines on record-keeping, the ECO maintains an attendance log that records the training type, date, names of attendees, and other relevant information. The ECO may also recommend or require specific training for specific situations, such as those that require a Technology Control Plan.

## **9.0 RECORDKEEPING**

The Export Control Office is responsible for maintaining a centralized recordkeeping system of all export control transactions for not less than five years following the date of the action to which they pertain (such as an agency license(s) expiration, completion of a project or other approval). The ECO ensures that the recordkeeping system is compliant with regulatory guidelines. Per EAR §762.2 and ITAR §130.14, regular internal review of files is required in order to ensure proper practices and procedures by persons reporting to top management.

## **10.0 INTERNAL REVIEWS**

The Export Control Office will conduct periodic audits of its own program, individual researchers' or research groups' programs, or other university activities to ensure the integrity and efficacy of WSU's export control compliance program. These reviews may include any or all of the following:

- Monitoring all executed Technology Control Plans (TCPs), which will be audited on an annual basis and/or as needed to ensure compliance
- Examination of ECO organizational structure, reporting relationships, and individuals assigned to export controls process within ECO as well as other relevant University offices, at least annually.
- Periodic review and tracing of documentation and processes, including review of internal recordkeeping, communications, document transfer, maintenance and retention.
- Evaluation of educational outreach efforts and achievements.

## 11.0 VIOLATIONS AND REPORTING

The penalties for violating the export control laws are severe; therefore, all violations will be investigated immediately by the Export Control Office. The violation will be documented, reviewed, and reported to the proper governmental agency. The individual responsible for the known violation must suspend their work effort until a known course of action is determined by the Empowered Official and/or the United States Government. The ECO will communicate the seriousness of the violation to the individual(s) involved and recommend that they take the necessary steps to correct the violation. The ECO will address what corrective actions that is necessary in order to be compliant. Every effort will be made to conduct this process in a fair and reasonable manner.

APPENDIX I

*Terms and Definitions*

Term	Definition
<b>Commerce Control List (CCL)</b>	A list of items under the export control jurisdiction of the U.S. Department of Commerce. The CCL is divided into ten categories: (0) Nuclear Category Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Chemicals, "Microorganisms," and Toxins; (2) Materials Processing; (3) Electronics Design, Development and Production; (4) Computers; (5) Telecommunications; (6) Sensors; (7) Navigation and Avionics; (8) Marine; (9) Propulsion Systems, Space Vehicles, and Related Equipment.
<b>Deemed Export</b>	Release or transmission of information or technology subject to export control to any foreign national in the U.S., including graduate students and training fellows. Such a release of information is considered to be an export to the person's home country.
<b>Defense Article</b>	A defense article is any item designated in the United States Munitions List (USML). Examples include specified chemical agents, cameras designated for military purposes, specified lasers, and GPS equipment as noted above. It also means any technical data recorded or stored in any physical form, models, mock-ups, or other items that reveal technical data directly relating to the particular item or "defense article" listed in the USML.
<b>Defense Service</b>	A defense service means the furnishing of assistance (including training) anywhere (inside the United States or abroad) to foreign nationals in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles, and the furnishing of any controlled "technical data" (see definition below) to foreign nationals anywhere.
<b>Dual-Use</b>	"Dual use" describes tangible items, software, and/or technology that have both a civilian and military use.
<b>ECCN</b>	An Export Control Classification Number (ECCN) is found in 15 C.F.R. §774, Supplement 1, and all ECCNs are listed in the Commerce Control List (CCL). An ECCN is a five-character alpha number classification used in the CCL to identify items for export control purposes.
<b>Educational Information</b>	"Educational information" is a phrase used by the Department of Commerce in §734.9 of the EAR. "Educational information" is not subject to the EAR if it is released by instruction in catalog courses and associated teaching laboratories of academic institutions. Certain types of information related to encryption software cannot be considered "educational information" and is subject to the EAR even if they are released "by instruction in catalog courses and associated teaching laboratories of academic institutions."
<b>Encryption</b>	The process of encoding a message so that it can be read only by the sender and the intended recipient.

Term	Definition
<b>Encryption Software</b>	Software whose main task is encryption and decryption of data, usually in the form of files on hard drives and removable media, or email messages sent over computer networks or the Internet.
<b>End-Use</b>	A detailed description of how the ultimate consignee intends to use the commodities being exported.
<b>End-User</b>	The person abroad that receives and ultimately uses the exported or reexported items. The end-user is not a forwarding agent or intermediary, but may be the purchaser or ultimate consignee.
<b>Export Administration Regulations (EAR)</b>	The Export Administration Regulations are a set of federal regulations that regulate the export and re-export of most commercial items.
<b>Export Controls</b>	“Export Controls” generally describes federal regulations that restrict the release of certain items, information and software to foreign nationals in the United States and abroad. Those regulations are the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR), as well as regulations administered by the Office of Foreign Assets Control (OFAC).
<b>Export Control Classification Number (ECCN)</b>	An export control classification number is an alpha-numeric code, e.g., 3A001, used by the Department of Commerce to classify most commercial items. An ECCN describes a particular item or type of item, and shows the controls placed on that item. All ECCNs are listed in the Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR).
<b>Empowered Official (EO)</b>	An Empowered Official is authorized by a business enterprise to sign and process license applications on behalf of the company, therefore, he/she understands the provisions of ITAR (22 C.F.R. Part 120 .25). This individual has the company authority to inquire into any aspect of a proposed export and to verify the legality and accuracy of the information submitted for a transaction. An EO also has the authority to <i>refuse</i> to sign “any” license application <u>without</u> retribution from his/her company. This is important because an empowered official is held liable for any violations of ITAR. Also responsible for INTERNAL AUDIT
<b>Foreign National</b>	A “foreign national” is anyone who is not a “U.S. person.” A “U.S. person” is any one of the following: U.S. citizen, lawful permanent resident alien (green card holder), refugee, protected political asylee or someone granted temporary residency under the amnesty provision.  <i>NOTE: Any foreign entity not incorporated or organized to do business in the United States falls within the definition of a foreign national. This includes any branch of a foreign government and also can include universities and research laboratories in other countries.</i>
<b>Fundamental Research (FR)</b>	“Fundamental research” is defined by the Department of Commerce as basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community. The State Department has a similar definition, although it can be interpreted more narrowly. Under the narrower interpretation, “fundamental research” can only describe <i>information</i> and <i>technology</i> that already is in existence and in the public domain.

Term	Definition
<b>Fundamental Research Exclusion (FRE)</b>	The Fundamental Research Exclusion <i>applies only to the dissemination of research data and information, <u>not</u> to the transmission of material goods.</i> The Fundamental Research Exclusion is destroyed if; the university accepts any contract clause that forbids the participation of foreign persons, gives the sponsor a right to approve publications resulting from the research; or otherwise operates to restrict participation in research and/or access to and disclosure of research results.
<b>International Traffic in Arms Regulations (ITAR)</b>	The ITAR is a set of federal regulations used primarily to control the import and export of defense articles and defense services.
<b>Open Meeting</b>	Used to describe a conference, seminar or other gathering where all technically qualified members of the public are eligible to attend and attendees are permitted to take notes or otherwise make a personal record of the proceedings and presentations.
<b>Patent Information</b>	“Patent information” describes information contained in a patent application, or an amendment, modification, supplement or division of an application. Such information is not subject to the EAR pursuant to §734.10 and §734.7(a) 3.
<b>Published Information and Software</b>	“Published information and software” can be used to describe information that has become generally accessible to the interested public in any form. Pursuant to §734.7 this type of information is not subject to the EAR. Examples of published information and software include the following: Information published in print or electronic media available for general distribution, information readily available at public or university libraries, and/or Information released at an open conference, meeting or seminar.
<b>Re-export</b>	"Re-export" means an actual shipment or transmission of controlled tangible items, software or information from one foreign country to another foreign country. The export or re-export of controlled tangible items, software or information that will transit through a country or countries, or will be unloaded in a country or countries for reloading and shipment to a new country, or are intended for re-export to the new country, are deemed to be exports to the new country.
<b>Technical Assistance</b>	Technical assistance may take forms such as instruction, skills training, working knowledge, consulting services, and may also involve the transfer of technical data.
<b>Technical Assistance Agreement</b>	An agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles.
<b>Technical Data</b>	“Technical data” is a term used by the State Department to describe information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. Technical data includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation, as well as information covered by an invention secrecy order or certain kinds of classified information. The term “technical data” can include software directly related to defense articles, but does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and

	universities. It also does not include information in the public domain or basic marketing information on function or purpose or general system descriptions.
<b>Term</b>	<b>Definition</b>
<b>Technology</b>	Any specific information and know-how (whether in tangible form, such as; models, prototypes, drawings, sketches, diagrams, blueprints, manuals, software, or in intangible form, such as training or technical services) that is required for the development, production, or use of a good, but not the good itself.
<b>United States Munitions List (USML)</b>	The United States Munitions List includes articles, services and related technical data designated as defense articles and defense services. The State Department has stated that the USML is illustrative only, meaning that the absence of an item on the USML does not conclusively rule out the possibility of it being a defense article or defense service.
<b>U.S. Person</b>	An individual who is a citizen of the United States or a foreign national with a visa status of Legal Permanent Resident (LPR). An LPR is also known as a Permanent Resident Alien (PRA).

## APPENDIX II

### GOVERNMENT AGENCY WEBSITES

#### **Commerce Department**

Introduction to Commerce Department Export Controls

<http://www.bis.doc.gov/licensing/exportingbasics.htm>

Definition of Terms

<http://www.access.gpo.gov/bis/ear/pdf/772.pdf>

Denied Persons List

<http://www.bis.doc.gov/dpl/thedeniallist.asp>

Denied Entity List

<http://www.access.gpo.gov/bis/ear/pdf/744spir.pdf>

Unverified List

[http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified\\_parties.html](http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html)

Export Administration Regulations Database

[http://www.access.gpo.gov/bis/ear/ear\\_data.html#ccl](http://www.access.gpo.gov/bis/ear/ear_data.html#ccl)

Commerce Control List Overview and the Country Chart

<http://www.access.gpo.gov/bis/ear/pdf/738.pdf>

Commerce Country Chart

<http://www.access.gpo.gov/bis/ear/pdf/738spir.pdf>

Embargoes and Other Special Controls

<http://www.access.gpo.gov/bis/ear/pdf/746.pdf>

The Commerce Control List

Nuclear Materials, Facilities & Equipment (and Miscellaneous Items)

<http://www.access.gpo.gov/bis/ear/pdf/ccl0.pdf>

Materials, Chemicals, "Microorganisms," and Toxins

<http://www.access.gpo.gov/bis/ear/pdf/ccl1.pdf>

Materials Processing

<http://www.access.gpo.gov/bis/ear/pdf/ccl2.pdf>

Electronics

<http://www.access.gpo.gov/bis/ear/pdf/ccl3.pdf>

Computers

<http://www.access.gpo.gov/bis/ear/pdf/ccl4.pdf>

Telecommunications and "Information Security"

<http://www.access.gpo.gov/bis/ear/pdf/ccl5-pt1.pdf>

## GOVERNMENT AGENCY WEBSITES

Information Security

<http://www.access.gpo.gov/bis/ear/pdf/ccl5-pt2.pdf>

Sensors and Lasers

<http://www.access.gpo.gov/bis/ear/pdf/ccl6.pdf>

Navigation and Avionics

<http://www.access.gpo.gov/bis/ear/pdf/ccl7.pdf>

Marine

<http://www.access.gpo.gov/bis/ear/pdf/ccl8.pdf>

Propulsion Systems, Space Vehicles and Related Equipment

<http://www.access.gpo.gov/bis/ear/pdf/ccl9.pdf>

General Technology and Software Notes

[http://www.access.gpo.gov/bis/ear/pdf/774\\_sup2.pdf](http://www.access.gpo.gov/bis/ear/pdf/774_sup2.pdf)

High Performance Computer Export Controls

<http://www.bis.doc.gov/hpcs/default.htm>

Commercial Encryption Export

<http://www.bis.doc.gov/encryption/default.htm>

Statement of Understanding: Medical Equipment

[http://www.gpo.gov/bis/ear/pdf/774\\_sup3.pdf](http://www.gpo.gov/bis/ear/pdf/774_sup3.pdf)

### **State Department**

Directorate of Defense Trade controls

[http://pmddtc.state.gov/consolidated\\_itar.htm](http://pmddtc.state.gov/consolidated_itar.htm)

The United States Munitions List

<http://www.fas.org/spp/starwars/offdocs/itar/p121.htm>

Debarred Parties List

<http://www.pmddtc.state.gov/debar059.htm>

Excluded Parties List System

<http://www.epls.gov/>

### **Treasury Department**

Office of Foreign Assets Control

<http://www.treas.gov/offices/enforcement/ofac/>

Specially Designated Nationals and Blocked Persons List

<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>

OFAC Countries Sanctions Programs

<http://www.treas.gov/offices/enforcement/ofac/programs/>

## APPENDIX III

### TECHNOLOGY CONTROL PLAN (TCP) TEMPLATE

#### Part I

##### 1. Purpose

Wayne State University is committed to compliance with export control laws. The Principal Investigator (PI) of an export controlled Sponsored Project shall be responsible for complying with applicable export control regulations, and preparing and implementing a project-specific TCP. The finalized TCP shall be reviewed and approved by the University Empowered Official for export controls. The individual responsible for and committed to ensuring compliance with this TCP is Insert PI name/title.

This TCP will establish procedures to be followed during the course of Sponsored Projects subject to International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), Office of Foreign Assets Control Regulations (OFAC) and other applicable export control regulations.

##### 2. Background and Description of the Use of Controlled Items and Information

*(PI to insert information here)*

##### 3. Physical Security

*(PI to insert description of how equipment, technology, data, and other controlled information will be shielded from unauthorized persons—including descriptions of relevant security systems, and other types of building access restrictions).*

##### 4. Information Security

In compliance with export control laws, Wayne State University researchers are to ensure that sensitive digital research data is appropriately protected. All project data and other related digital materials will be strongly password-protected and encrypted using commercially available encryption technology. The computer(s) on which this data will be stored shall not be connected to any networks. When this computer has reached its usable life, the hard drive will be forensically erased or destroyed using hard drive destruction services.

*(PI to insert an outline of additional measures that will be taken to ensure that information access controls will be utilized and the requirements are being met. This should include the use of passwords and encryption protection. Data discard procedures should also be included, as well as other plans for controlling access to information. These procedures should address system back-up, who will have access, transmission procedures, how computers storing sensitive digital data will be sanitized upon completion of the project, and other procedures necessary to provide the required security. Due to their portable nature, the use of laptops for storage of research data must be justified and will require additional security procedures.)*

**5. Personnel Screening**

The names and nationalities of all personnel with access to the controlled technology shall be listed. *PI to insert this information, including the proof obtained to verify US citizenship status.*

**6. Training and Awareness**

All personnel with access to controlled information on this project must read and sign the "Briefing and Certification on the Handling of Export-Controlled Information" certification. *(PI to attach all executed Certifications to this TCP).*

**7. Compliance Assessment**

As a critical component to the University's ongoing compliance monitoring, self-evaluation is an internal assessment process whereby procedures are continually reviewed and findings are reported to the Empowered Official. Any changes to the approved procedures or personnel having access to controlled information covered under this TCP must be cleared with the Empowered Official.

**8. Project Termination**

Security measures as deemed appropriate will remain in effect after the project has ended in order to protect the export-controlled information, unless earlier terminated when the information has been destroyed or determined to no longer be export-controlled.

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*Principal Investigator's Signature*

Date

## Briefing and Certification on The Handling of Export-Controlled Information

### Part II

This project involves the use of Export-Controlled Information and technology. As a result, the project implicates either the International Traffic in Arms Regulations (ITAR) under the jurisdiction of the Department of State, the Export Administration Regulations (EAR) under the jurisdiction of the Department of Commerce, or the regulations of the Office of Foreign Assets Control (OFAC) under the jurisdiction of the Department of Treasury.

It is unlawful under ITAR to send or take export-controlled information out of the United States, OR to disclose or transfer, either orally or visually, export-controlled information to a foreign person *inside or outside* the United States, without proper authorization from the federal government. Under ITAR and EAR, a license may be required or prior authorization from the appropriate government agency for foreign nationals to access export-controlled information. A foreign person is a person who is not a United States citizen or permanent resident alien of the U.S. *The laws make no exceptions for foreign graduate students.*

In general, export-controlled information means activities, items, and information related to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, modification, demilitarization, destruction, processing, or use of items with a capacity for military application. It does not matter if the actual *intended* end use of export-controlled information is military or civil in nature.

Researchers may be held personally liable for violations of the U.S. export control laws. Both civil and criminal penalties, including incarceration, may be imposed for unlawful export and disclosure of export-controlled information. As a result, extra caution is required when sharing export-controlled technology with others. All technology generated from this project, including technical information, data, materials, software and hardware, must be secured from use and observation by unlicensed, non-U.S. citizens (including students).

#### Certification:

I hereby certify that I have read and understand this Briefing, and that I understand and agree to follow the procedures outlined in the Technology Control Plan. I understand that I could be held personally liable if I unlawfully disclose, regardless of form or format, export-controlled information to unauthorized persons.

---

Name

Date

## APPENDIX IV

### How Can You Determine Whether Your Proposed Activities May be Subject to the Export Control Regulations?

If you answer “YES” to any of the questions on the checklist below, there **could** be a problem that needs to be resolved before you begin your activity. Please contact the Export Control Compliance Office\* for more information.

#### EXPORT CONTROL CHECKLIST

YES	NO	
<input type="checkbox"/>	<input type="checkbox"/>	Does a contract or agreement allow the sponsor the right to approve publications resulting from the research or review them for <b>over</b> 90 days?
<input type="checkbox"/>	<input type="checkbox"/>	Does a contract or agreement restrict the participation of foreign persons?
<input type="checkbox"/>	<input type="checkbox"/>	Is there any shared technical information that is <b>NOT</b> in the public domain?
<input type="checkbox"/>	<input type="checkbox"/>	Will you be sharing technical data or research information with a foreign national on an activity being conducted outside of a University catalog course or associated lab? (Check websites below for regulated technology, information and commodities). <a href="http://www.fas.org/spp/starwars/offdocs/itar/p121.htm">http://www.fas.org/spp/starwars/offdocs/itar/p121.htm</a> <a href="http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf">http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf</a>
<input type="checkbox"/>	<input type="checkbox"/>	Will any of the research or teaching activities be conducted outside the United States?
<input type="checkbox"/>	<input type="checkbox"/>	Are you traveling to a sanctioned country? (Check website below for sanctioned/embargoed countries) <a href="http://www.treas.gov/offices/enforcement/ofac/programs/">http://www.treas.gov/offices/enforcement/ofac/programs/</a>
<input type="checkbox"/>	<input type="checkbox"/>	Will you be providing training to nationals or entities in a sanctioned country or to foreign nationals/entities from a sanctioned country? Check website below for sanctioned/embargoed countries) <a href="http://www.treas.gov/offices/enforcement/ofac/programs/">http://www.treas.gov/offices/enforcement/ofac/programs/</a>
<input type="checkbox"/>	<input type="checkbox"/>	Will you be shipping equipment, materials, or data to a foreign country, foreign national or entity? <a href="http://www.treas.gov/offices/enforcement/ofac/programs/">http://www.treas.gov/offices/enforcement/ofac/programs/</a>
<input type="checkbox"/>	<input type="checkbox"/>	Will you be providing payments or anything of value to sanctioned countries or foreign nationals/ entities from any sanctioned country? (e.g. training, humanitarian aid, fees). (Check website below for sanctioned/embargoed countries) <a href="http://www.treas.gov/offices/enforcement/ofac/programs/">http://www.treas.gov/offices/enforcement/ofac/programs/</a>
<input type="checkbox"/>	<input type="checkbox"/>	Do you have any agreements or collaborations with embargoed countries or nationals from those countries? (including peer review of journal articles) (Check website below for sanctioned/embargoed countries) <a href="http://www.treas.gov/offices/enforcement/ofac/programs/">http://www.treas.gov/offices/enforcement/ofac/programs/</a>
<input type="checkbox"/>	<input type="checkbox"/>	Are you sharing, shipping, transmitting or transferring <b>encryption software*</b> in source code or object code (including travel outside the country with such software)?

		<a href="http://www.fas.org/spp/starwars/offdocs/itar/p121.htm">http://www.fas.org/spp/starwars/offdocs/itar/p121.htm</a> <a href="http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf">http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf</a>
<input type="checkbox"/>	<input type="checkbox"/>	<p>Does an external sponsor, vendor, collaborator or other third party, under a Non-disclosure or Confidentiality agreement, provide an item, information or software from the list below to be shared, shipped, transmitted or transferred?</p> <p>Check all that apply:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Nuclear materials, facilities</li> <li><input type="checkbox"/> Material, Chemicals, Micro-organisms or Toxins</li> <li><input type="checkbox"/> Materials Processing</li> <li><input type="checkbox"/> Telecommunications and Information Security</li> <li><input type="checkbox"/> Lasers and Sensors</li> <li><input type="checkbox"/> Navigation and Avionics</li> <li><input type="checkbox"/> Marine</li> <li><input type="checkbox"/> Propulsions Systems, Space Vehicles or related items</li> <li><input type="checkbox"/> Equipment, Assemblies and Components</li> <li><input type="checkbox"/> Test, Inspection or Production Equipment</li> <li><input type="checkbox"/> Software</li> <li><input type="checkbox"/> Technology</li> </ul> <p> <a href="http://www.fas.org/spp/starwars/offdocs/itar/p121.htm">http://www.fas.org/spp/starwars/offdocs/itar/p121.htm</a>  <a href="http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf">http://www.access.gpo.gov/bis/ear/pdf/indexccl.pdf</a> </p>

If you answered "YES" to any of the above questions, or have questions about other activities that you think could be problematic, please contact:

\*WSU Export Control Compliance Office  
Office of the Vice President for Research  
Wayne State University  
313 577-9064

*Export Control Compliance Coordinator:*

Lorry Sabo B.S., Paralegal  
[lsabo@wayne.edu](mailto:lsabo@wayne.edu)  
(313) 577-5046