

WAYNE STATE UNIVERSITY
POLICY ON REQUESTING A WAIVER FOR
RESTRICTED AND PROPRIETARY RESEARCH

Background: Open dissemination of research results is a cornerstone of academic integrity, as embodied in Wayne State University (WSU) Statute 2.41.01.140. There are certain circumstances, however, in which WSU faculty have the opportunity to participate in research that limits or abrogates the right to free and open disclosure. Examples include some forms of industry-sponsored research, in which industries that lack sufficient research and development staff to carry out restricted or proprietary research, rely on university faculty to undertake this research. Additionally, some governmental agencies seek the expertise of university faculty to participate in classified research related to national security. The purpose of this Policy and Procedure is to define the terms used to describe such restricted research, and to identify both guidelines and a process whereby faculty may petition for a waiver of WSU Statute 2.41.01.140.

Scope: The academic mission of a university includes the development and dissemination of new knowledge by its faculty, staff and students. Specifically, the mission of Wayne State University is "...to discover, examine, transmit and apply knowledge that contributes to the positive development and well-being of individuals, organizations, and society. Wayne State University is a national research institution dedicated to preparing students to excel in an increasingly advanced and interconnected global society." Research is an integral part of this mission.

This Policy and Procedure for Requesting a Waiver of WSU Statute 2.41.01.140 applies to all grants or contracts under review by the University that would restrict or prohibit the WSU Principal Investigator's (PI) freedom to publish or otherwise disseminate the research results beyond a 90-day review period.

On a case-by-case basis, WSU will consider accepting such a research contract or agreement if the proposed work can be accommodated without compromising the University's pursuit of its academic mission, if the academic value of the research can be justified by the PI, and provided that the proposed restrictions do not cause the University or the PI to violate any state or federal regulations that might be implicated as a result of the restrictions. For instance, accepting sponsor-mandated publication restrictions can sometimes create significant negative tax consequences, or subject the research to "export control" regulations. Export control regulations are federal laws that impose strict access, dissemination, and participation restrictions on the transfer of certain items, software, and information to foreign nationals (generally, foreign nationals include anyone who is *not* a U.S. citizen or legal, permanent U.S. resident). Sponsor-mandated publication restrictions in excess of 90 days can cause the research to fall outside of the export control definition of "fundamental research," and therefore subject to regulation.

Definitions:

1. **Restricted Research** is defined as sponsored research in which one or both of the following conditions of publication are stated by the sponsor as a condition of the award of a grant or contract:

- a. Clauses allowing the sponsor to delay the publication of research results for more than 90 days, and/or
- b. Clauses stipulating that publication is conditional upon the approval or agreement of the sponsor.

2. **Proprietary Research** is defined as sponsored research for which the sponsor imposes data ownership restrictions that limit publication of the results in excess of 90 days from the date of submission to the sponsor for review.

3. **Classified Research** is defined as research that bears a security classification from the federal government, such as “top secret,” “secret,” or “confidential.” Classified Research restricts some or all of the results, procedures, and personnel working on the project under rules established by the federal government agency for which the research is being conducted.

4. **Fundamental Research** refers to basic and applied research in science and engineering in which the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research in which the results are restricted for proprietary reasons, national security concerns, or specific U.S. government access and dissemination controls. University research is not considered Fundamental Research if:

- (i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
- (ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

The definition of Fundamental Research and associated information can be found in 22 CFR Part 120 and 15 CFR 734.8.

Guiding Principles for the Conduct of Research at Wayne State University:

1. A fundamental principle is that WSU engages in research that is of academic value; meets high ethical standards throughout the conceptualization, proposal, conduct, reporting and follow-up phases of the work; and maintains the public’s trust that the University engages in research in an ethical as well as socially and fiscally responsible manner. Further, it is expected that:

- The research results are disseminated publically without restrictions or delay.
 - The research enhances the PI's body of work and is available for use by peers and experts in judging merit and academic value when the PI is being considered for promotion or tenure.
 - Students and other trainees participating in research will reasonably anticipate that their contributions are publishable. These publications provide evidence of their contributions, knowledge mastered and skills learned and, if applicable, also may partially fulfill requirements for an advanced degree. It is inappropriate for the student's entire project to be Classified, Restricted or Proprietary.
2. Under circumstances in which a sponsor provides Proprietary Research data to the PI, it is permissible for a sponsor to have 90 days to review the report of research results in order to protect access and use of the proprietary information (i.e., assure that proprietary information is not inadvertently disclosed). However, sponsors may not restrict or prohibit the full dissemination of scholarly information that was generated during the conduct of the research. In addition,
- Sponsors must clearly describe or identify data or materials, in writing, considered proprietary, prior to the start of the research.
 - Sponsors may not place Wayne State University in a position of assuming any financial liability.
 - Sponsors may not suppress negative results, such as those resulting from a clinical trial or drug study.
 - Sponsors may not proscribe citation of their organization in publications.
 - Sponsors may not prohibit similar research being conducted under the auspices of other sponsors.

Information for Potential Petitioners to Waive WSU Statute 2.41.01.140 to consider:

Faculty who petition to waive WSU Statute 2.41.01.140 *shall continue* to abide by the WSU fundamental principles of research, i.e., the research has academic value, it adheres to high ethical standards and it maintains the public trust. Any faculty, staff or student who wishes to participate in Restricted, Proprietary, or Classified Research should be aware of the following provisions, limitations, ramifications and consequences of these types of research, such as the following:

- Research whose results are disseminated following a delay of greater than 90 days (imposed by the sponsor), or research whose results are prohibited from being disseminated publically fall *outside* of the definition of Fundamental Research. This means that the researchers must comply with applicable Export Control Regulations. As a result, some or all of the following may occur: students or other personnel from certain countries may not participate in the research; members of the public may not be allowed access to certain parts of the laboratory or the entire laboratory; and physical

barriers may need to be erected. Technical data may need to be segregated physically and/or electronically from other data.

- Because of publication restrictions, the research might not be available in the researcher's dossier to provide evidence during peer and professional assessments and recommendations leading to promotion or tenure.
- If a student is delayed in or prohibited from disseminating the research such that there is a lack of evidence of progress towards an advanced degree, his/her candidacy for an advanced degree might be jeopardized in part or in whole.
- There may be other issues or characteristics of the contract (beyond the restrictions on dissemination of data) that would cause Wayne State University to not accept the award.
- Once a waiver is approved, it is the responsibility of the Principal Investigator to ensure that no proprietary or confidential data or information is shared inappropriately. The PI and all other participating personnel must sign a Technology Control Plan, which may be audited at any time by the Office of the Vice President for Research.
- In the event that the researcher who has been approved to conduct Classified, Restricted or Proprietary research has a dispute with the sponsor, the following situations may apply:
 - ✓ If the PI believes the industry sponsor has acted improperly, he/she should file a complaint with the company's compliance office and Wayne State's Sponsored Program Administration.
 - ✓ If the PI believes there is a breach of contract, he/she should notify the Office of the General Counsel.
 - ✓ Authorship disputes are not governed by WSU policy.

Procedure for Requesting a Waiver of WSU Statute 2.41.01.140:

The PI must request a waiver of WSU Statute 2.41.01.140, in writing and containing the items listed below, in order for the University to consider accepting a grant or contract with the types of publication restrictions described earlier in this document. This request must contain a specific and compelling justification for WSU to accept the publication restriction based on the academic value of the proposed work, and contain the signature and a statement of approval by the Dean of the School/College of the PI. The memo should be addressed to the Vice President for Research (VPR), who will review the request within seven (7) business days, in consultation with the WSU Export Control Office, the Office of the General Counsel, and/or other University officials as needed. If the VPR determines that the research is proposed to take place in a bond-financed building, OVPR will consult the Vice President for Finance and the Office of the General Counsel. If the request is denied by the VPR, this decision is final and the contract in question will not be accepted by WSU. **If the request is approved, then the steps outlined under "Participation by Students and Trainees," "Screening of Project Personnel," and "Management of Controlled Research" below must be completed before work on the project can begin.**

1. Project title.

2. Project director/Principal investigator(s).
3. Granting agency or company/Sponsor.
4. Justification for the waiver.
5. Proposed funding level.
6. Specify whether the proposed research is Classified Research, Proprietary Research, or Restricted Research. Also specify the total period and portion involving Classified Research, Proprietary Research, or Restricted Research, if not the entire period.
7. Beginning and ending dates of the proposed research.
8. The location of the proposed research. Include street address or building name as well as room/lab numbers of specific areas where research will be conducted. Also indicate whether the specific location will be used exclusively for the proposed research or whether other activities (research, teaching, etc.) will also be conducted in the same location during the period in which the proposed research will be conducted.
9. Time deadlines for the proposal.
10. Unclassified summary of the proposed research expressed in non-technical terms and suitable for public dissemination and understanding.
11. The academic value and intellectual content of the proposed research. That is, the extent to which the research may lead to significant new knowledge and the importance to the University's principal mission of creating and disseminating knowledge.
12. The relationships between the proposed research and the openness of the academic environment. Specifically,
 - (a) The extent and duration of special security arrangements (if applicable).
 - (b) The extent to which portions of the campus or foreign personnel will have restricted access (if applicable).
 - (c) The extent to which students and faculty involved in the research will be allowed to discuss their results with students and faculty not involved in the research.
 - (d) The restrictions that will be applied to publication of results.
13. The impact of the proposed research on the resources of the University (funds, equipment, personnel, space, etc).
 - (a) The extent to which the research project will contribute new resources that can be applied to unclassified or unrestricted work.
 - (b) The extent to which the research project will require the dedication of resources that would otherwise be available for unrestricted work.
14. Student, postdoctoral researcher and/or non-tenured faculty involvement in the proposed research; including a detailed contingency plan that ensures timely completion of student degree requirements and the ability to publish study results critical to career advancement.

If the Request is Denied by the Vice President for Research:

If the request is denied by the VPR, the contract in question will not be accepted by WSU. If the PI chooses, however, he/she may appeal this decision, within three (3) days of notification, through a standing "2N" committee established for this purpose upon the recommendation of the Policy Committee of the Academic Senate and the Office of the Vice President for Research. The membership of the committee shall not exceed four (4), with two (2) alternates.

The appeal will be made to the VPR who will notify the committee upon receipt of the appeal and convene the committee for a final decision within seven (7) business days of receipt of the appeal. The committee's decision must be approved by three of the four members.

Once the waiver has been approved and *before* work can begin, the following must occur:

The PI shall sign a statement certifying that he/she is aware that any data resulting from that project might not be allowed to be used to fulfill any requirements leading to promotion and/or tenure, thereby potentially precluding the faculty from attaining tenure or the next higher rank of Associate Professor or Professor.

Participation by Students and Trainees: All students and other trainees working on the project must sign a form, prepared by the PI using a template available from the Export Control Office, which (i) fully discloses the impact on the student or trainee of participating in Classified Research, Proprietary Research, or Restricted Research (including a clear statement to the effect that the results of the student's or trainee's research might not be usable in that person's thesis or dissertation and might not count towards that person's graduation requirements), and (ii) includes an acknowledgment by the student or trainee that she/he fully understands the publication restrictions, agrees to comply with all such restrictions, and acknowledges and accepts the potential impact that participating in the research may have on her/his academic progress. The completed, signed form must be approved by the VPR or designee.

The PI shall submit a signed statement to the Dean of the Graduate School or his/her designee certifying that:

- The student/trainee has been informed that the research project is restricted, and that any data resulting from that project might not be allowed to be used to fulfill any academic requirements, including use in a thesis or dissertation, thereby potentially precluding the student from normal progress to, including not being awarded, a master's or doctoral degree;
- The student/trainee has been informed of the reason(s) that this project would be beneficial to the student's career; and
- The student/trainee has been presented with alternate research projects in order to fulfill academic requirements but has voluntarily agreed to work on the restricted project.

Permission must be obtained in writing from the Dean of the Graduate School or his/her designee ***before*** the student/trainee shall be permitted to commence work on any restricted project.

In addition, for international students and/or international staff or faculty:

- The PI must contact the Export Control Office to determine whether any student, staff member, or faculty member who is a foreign national will be able to participate in the project. Foreign nationals, generally, are individuals who are ***not*** either U.S. Citizens or

legal, permanent U.S. residents. Names, citizenship, place of birth, and date of birth may be required for each foreign national in order to make this determination. Some foreign nationals may not be permitted to participate, but in some cases, it may be possible to obtain a license to allow their participation. The WSU Empowered Official has the final authority to decide whether to apply for a license. If a license application is to be made, the PI will be responsible for any fee(s) associated with the license.

Continuing Responsibilities to Conduct Controlled Research: The PI utilizing export controlled technology is responsible for complying with applicable export control regulations, and preparing and implementing a comprehensive Technology Control Plan (TCP) before work begins on a controlled project (i.e. any project involving Classified, Proprietary, or Restricted Research). A TCP describes the physical and technological (e.g., IT) security needs for the project. The TCP must be amended when a new member of the research team is added, or if the scope of work changes. The provisions of the security plan will be signed by the PI, the PI's Dean or Director or suitable designee, and the VPR or designee. The PI must agree to review the TCP with all project personnel before they begin work on the project. A signed copy of the TCP will be kept on file in the PI's office or lab, and a copy will be retained in the Export Control Office for at least 5 years after the project termination. Audits of the project will be conducted by the Export Control Office in order to ensure compliance with the TCP on an annual basis or as needed.