WICHITA STATE UNIVERSITY

EXPORT COMPLIANCE MANUAL

List of Abbreviations

BIS	Department of Commerce Bureau of Industry and Security
CCL	Commerce Control List
CJ	Commodity Jurisdiction
DDTC	Department of State Directorate of Defense Trade Controls
EAR	Export Administration Regulations
ECCN	Export Control Classification Number
ITAR	International Traffic in Arms Regulations
OFAC	Department of the Treasury Office of Foreign Assets Control
ORA	Office of Research Administration
PI	Principal Investigator
SDN List	Specially Designated Nationals and Blocked Persons List
TAA	Technical Assistance Agreement
TCP	Technology Control Plan
USML	United States Munitions List
WSU	Wichita State University

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OVERVIEW OF EXPORT CONTROLS

I. INTRODUCTION

The U.S. export control system generally requires export licensing for defense items, for items that have both commercial and military applications, and for exports to sanctioned persons and destinations. U.S. national security, economic interests and foreign policy shape the U.S. export control regime. The export laws and regulations aim at achieving various objectives, such as preventing the proliferation of weapons of mass destruction, advancing the U.S. economic interests at home and abroad, aiding regional stability, implementing anti-terrorism and crime controls, and protecting human rights.

The U.S. export control system restricts the export of products and services based on the type of product and the destination of the export. In both the defense and high-technology sectors, the U.S. Government tightly regulates the export not only of equipment and components, but also of technology. Technology includes technical data, such as blueprints and manuals, as well as design services (including the transfer of "knowledge") and training. U.S. laws assert jurisdiction over U.S.-origin equipment and technology even after it is exported (*i.e.*, restricting the re-export or re-transfer to third parties). In addition to general export licensing, the United States maintains economic embargoes against a number of countries whose governments consistently violate human rights or act in support of global terrorism. Such embargoes bar most transactions by U.S. persons with these countries.

Three principal agencies regulate exports from the United States: the U.S. Department of State Directorate of Defense Trade Controls ("DDTC") administers export control of defense exports; the U.S. Department of Commerce Bureau of Industry and Security ("BIS") administers export control of so-called "dual-use" technology exports; and the U.S. Department of the Treasury Office of Foreign Assets Control ("OFAC") administers exports to embargoed countries and designated entities.

II. EXPORT CONTROLS AND UNIVERSITY RESEARCH

U.S. national security and economic interests are heavily dependent on technological innovation and advantage. Many of the nation's leading-edge technologies, including defense-related technologies, are being discovered by U.S. and foreign national students and scholars in U.S. university research and university-affiliated laboratories. U.S. policymakers recognize that foreign students and researchers have made substantial contributions to U.S. research efforts, but the potential transfer of controlled defense or dual-use technologies to their home countries could have significant consequences for U.S. national interests. The U.S. export control agencies place the onus on universities to understand and comply with the regulations.[1]

Export controls present unique challenges to universities and colleges because they require balancing concerns about national security and U.S. economic vitality with traditional concepts of unrestricted academic freedom, and publication and dissemination of research findings and results. University researchers and administrators need to be aware that these laws may apply to research, whether sponsored or not. However, it also is important to understand the extent to which the regulations do not affect normal university activities.

III. EXPORT OF DEFENSE ARTICLES AND SERVICES – INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

Under the International Traffic in Arms Regulations (ITAR), 22 C.F.R. §§ 120-130,[2] DDTC administers the export and re-export of defense articles, defense services and related technical data from the United States to

[1] *See* GAO Report "Export Controls: Agencies Should Assess Vulnerabilities and Improve Guidance for Protecting Export-Controlled Information at Universities," December 2006, available at http://www.gao.gov/new.items/d0770.pdf.

[2] The ITAR are promulgated pursuant to Section 38 of the Arms Export Control Act, 22 U.S.C. §§ 2778 *et seq*.

any foreign destination, or to any foreign person, whether located in the United States or abroad. Section 121.1 of the ITAR contains the *United States Munitions List* ("USML") and includes the commodities and related technical data and defense services controlled for export purposes. The ITAR controls not only end items, such as radar and communications systems, military encryption and associated equipment, but also the parts and components that are incorporated into the end item. Certain non-military items, such as commercial satellites, and certain chemical precursors, toxins, and biological agents, are also controlled.

A. ITEMS CONTROLLED UNDER THE ITAR

The ITAR uses three different terms to designate export controlled items – defense articles, technical data, and defense services. With rare exceptions, if an item contains any components that are controlled under the ITAR, the entire item is controlled under the ITAR. For example, a commercial radio that would normally not be controlled under the ITAR becomes a controlled defense article if it contains an ITAR-controlled microchip.

1. Defense Article means any item or technical data that is specifically designed, developed, configured, adapted, or modified for a military, missile, satellite, or other controlled use listed on the USML.[3] Defense article also includes models, mock-ups, or other items that reveal technical data relating to items designated in the USML.

2. Technical Data means any information for the design, development, assembly, production, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings or assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed. However, technical data does not include general scientific, mathematical, or engineering principles commonly taught in schools, information present in the public domain, general system descriptions, or basic marketing information on function or purpose.[4]

3. Defense Service means providing assistance, including training, to a foreign person in the United States or abroad in the design, manufacture, repair, or operation of a defense article, as well as providing technical data to foreign persons. Defense services also include informal collaboration, conversations, or interchanges concerning technical data.[5]

B. THE USML CATEGORIES

The USML designates particular categories and types of equipment as defense articles and associated technical data and defense services.[6] The USML divides defense items into 21 categories, listed below. An electronic version of the USML is available on the Department of State website at: http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_121.pdf.

I	Firearms, Close Assault Weapons and Combat Shotguns
II	Guns and Armament
III	Ammunition / Ordnance
IV	Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
V	Explosives, Propellants, Incendiary Agents, and their Constituents
VI	Vessels of War and Special Naval Equipment

[3] 22 C.F.R. § 120.6.

[4] 22 C.F.R. § 120.10. Note that the ITAR uses the term "blueprints" to cover drawings and assembly instructions.

[5] 22 C.F.R. § 120.9.

[6] *See* 22 C.F.R. § 121.1.

VII	Tanks and Military Vehicles
VIII	Aircraft and Associated Equipment
IX	Military Training Equipment
X	Protective Personnel Equipment
XI	Military Electronics
XII	Fire Control, Range Finder, Optical and Guidance and Control Equipment
XIII	Auxiliary Military Equipment
XIV	Toxicological Agents and Equipment and Radiological Equipment
XV	Spacecraft Systems and Associated Equipment
XVI	Nuclear Weapons, Design and Testing Related Items
XVII	Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
XVIII	Directed Energy Weapons
XIX	[Reserved]
XX	Submersible Vessels, Oceanographic and Associated Equipment
XXI	Miscellaneous Articles

C. CLASSIFICATION

While DDTC has jurisdiction over deciding whether an item is ITAR- or EAR-controlled, it encourages exporters to self-classify the item. If doubt exists as to whether an article or service is covered by the USML, upon written request in the form of a Commodity Jurisdiction ("CJ") request, DDTC will provide advice as to whether a particular article is a defense article subject to the ITAR, or a dual-use item subject to Commerce Department licensing.[7] Determinations are based on the origin of the technology (*i.e.*, as a civil or military article), and whether it is predominantly used in civil or military applications. If Wichita State University ("WSU") needs to obtain a CJ determination, the Compliance Specialists in conjunction with the Associate Provost for Research will file the CJ request with DDTC.[8]

D. DEFINITION OF EXPORT UNDER THE ITAR

The ITAR defines the term "export" broadly. The term applies not only to exports of tangible items from the U.S., but also to transfers of intangibles, such as technology or information. The ITAR defines as an "export" the passing of information or technology to foreign nationals even in the United States."[9] The following are examples of exports:

[7] *See* 22 C.F.R. § 120.4. Note that DDTC has jurisdiction over determining whether an item is ITAR- or EAR-controlled. While BIS at Commerce provides assistance with determining the specific ECCN of a dual-use item listed on the CCL, if doubt exists as to whether an item is ITAR- or EAR-controlled, BIS will stay its classification proceeding and forward the issue to DDTC for jurisdiction determination.

[8] Instructions on the content of a CJ and the filing procedure are available at http://www.pmddtc.state.gov/commodity_jurisdiction/index.html.

[9] 22 C.F.R. § 120.17.

1. Exports of articles from the U.S. territory

- Shipping or taking a defense article out of the United States.
- Transferring title or ownership of a defense article to a foreign national, in or outside the United States.

2. Extra-territorial transfers

- The re-export or re-transfer of defense articles from one foreign national to another, not previously authorized (*i.e.*, transferring an article that has been exported to a foreign country from that country to a third country).
- Transferring the registration, control, or ownership to a foreign national of any aircraft, vessel, or satellite covered by the USML, whether the transfer occurs in the United States or abroad.

3. Export of intangibles

- Disclosing technical data to a foreign national, whether in the United States or abroad, through oral, visual, or other means.
- Performing a defense service for a foreign person, whether in the United States or abroad.

E. AUTHORIZATION TO EXPORT

Generally, any U.S. person or entity that manufactures, brokers, or exports defense articles or services must be registered with DDTC.[10] Registration is required prior to applying for a license or taking advantage of some license exemption.[11] Once the registration is complete, an exporter may apply for an export authorization by submitting a relatively simple license application for the export of defense articles or technical data; or a complex license application, usually in the form of a Technical Assistance Agreement ("TAA"), for complex transaction that will require the U.S. entity to provide defense services. Most types of applications also contain additional certifications / transmittal letters, supporting documentation, and in some cases, non-transfer and use certification from the licensee and / or the foreign government of the licensee.

Also, if the university desires to involve foreign nationals in ITAR-controlled research, it must register with the DDTC to apply for a license or take advantage of certain license exemptions. License exemptions specific to universities, as well as licensing procedures, are described in detail in the *Key Issues in University Research* section.

F. EMBARGOED COUNTRIES UNDER DDTC REGULATIONS

ITAR Prohibitions. In general, no ITAR exports may be made either under license or license exemption to countries proscribed in 22 C.F.R. § 126.1. A complete list of U.S. arms embargoes is available online at:

http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf.

[10] 22 C.F.R. § 122.1.

[11] 22 C.F.R. §§ 120.1(c) and (d); 122.1(c).

IV. EXPORT OF COMMERCIAL DUAL-USE GOODS AND TECHNOLOGY – EXPORT ADMINISTRATION REGULATIONS

The Department of Commerce Bureau of Industry and Security ("BIS") regulates the export of commercial products and technology under the Export Administration Regulations, 15 C.F.R. §§ 730-774 ("EAR").[12] While there are some parallels to the ITAR, there also are some major differences in how the regulations and the relevant agencies function.

They are similar in that both BIS and DDTC focus on "technology transfer" and have been increasingly focused on enforcement. They differ in that the EAR covers a wider range of products and technology, the product classification process is highly technical, and most importantly, the need for a license depends not only on the type of product but on its final destination.

A. ITEMS CONTROLLED UNDER THE EAR

Generally, all items of U.S. origin, or physically located in the United States, are subject to the EAR. Foreign manufactured goods are generally exempt from the EAR re-export requirements if they contain less than a *de minimis* level of U.S. content by value. Such *de minimis* levels are set in the regulations relative to the ultimate destination of the export or re-export.

The EAR requires a license for the exportation of a wide range of items with potential "dual" commercial and military use, or otherwise of strategic value to the United States (but not made to military specifications). However, only items listed on the *Commerce Control List* ("CCL") require a license prior to exportation. Items not listed on the CCL are designated as EAR99 items and generally can be exported without a license, unless the export is to an embargoed country, or to a prohibited person or end-use.[13] The following summarizes the types of items controlled under the EAR:

- **Commodities**. Finished or unfinished goods ranging from high-end microprocessors to airplanes, to ball bearings.
- **Manufacturing Equipment**. This includes equipment specifically for manufacturing or testing controlled commodities, as well as certain generic machines, such as computer numerically controlled ("CNC") manufacturing and test equipment.
- **Materials**. This includes certain alloys and chemical compounds.
- **Software**. This includes software specifically associated with particular commodities or manufacturing equipment, as well as any software containing encryption and the applicable source code.
- **Technology**. Technology, as defined in the EAR, includes both technical data, and services. Unlike the ITAR, there is generally no distinction between the two. However, the EAR may

[12] The EAR are promulgated under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420). From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (IEEPA). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001, which has been extended by successive Presidential Notices, has continued the EAR in effect under IEEPA.

[13] 15 C.F.R. § 734.

apply different standards to technology for "use" of a product than for the technology for the "design" or "manufacture" of a product.

B. THE COMMERCE CONTROL LIST CATEGORIES

The CCL provides a list of very specific items that are controlled. The CCL is similar to the "dual-use" list adopted by other countries under the Wassenaar Arrangement,[14] although the CCL has additional items. The CCL is divided into the nine categories below. The CCL is available online at http://www.access.gpo.gov/bis/ear/ear_data.html.

CATEGORIES

0.		Nuclear related items & miscellaneous items
1.		Chemical compounds, microorganisms and toxins
2.		Materials processing
3.		Electronics
4.		Computers
5.	pt-1	Telecommunications
5.	pt-2	Information security (encryption)
6.		Sensors & lasers
7.		Navigation and avionics
8.		Marine (vessels, propulsion, and equipment)
9.		Propulsion systems, space vehicles (includes aircraft & aircraft engines)

C. CLASSIFICATION

As discussed in *Overview*, Section III.C, DDTC has jurisdiction to decide whether an item is ITAR- or EAR-controlled. DDTC encourages exporters to self-classify the product. If doubt exists, a CJ request may be submitted to DDTC to determine whether an item is ITAR- or EAR- controlled.[15]

Once it is determined that an item is EAR-controlled, the exporter must determine its Export Control Classification Number ("ECCN"). BIS has two assistance procedures where the proper ECCN classification or licensing requirements are uncertain.[16] To determine EAR's applicability and the appropriate ECCN for a particular item, a party can submit a "Classification Request" to BIS. To determine whether a license is required or would be granted for a particular transaction, a party can request BIS provide a non-binding "advisory opinion." While BIS provides assistance with determining the specific ECCN of a dual-use item listed on the CCL, if doubt exists as to whether an item is ITAR- or EAR-controlled, BIS will stay its classification proceeding and forward the issue to DDTC for jurisdiction determination.

Unlike the ITAR, for classification purposes BIS generally looks at the classification of the complete product being exported rather than at the classification of each subcomponent of the item (*i.e.*, "black box" treatment), as opposed to the "see through" treatment under the ITAR.

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[14] Information on the Wassenaar Arrangement is available at: http://www.bis.doc.gov/wassenaar/default.htm.

[15] For a complete discussion, *see Overview of Export Controls*, Section III.C above.

[16] *See* 15 C.F.R. § 748.3.

D. DEFINITION OF EXPORT AND RE-EXPORT UNDER THE EAR

1. Export. Export is defined as the actual shipment or transmission of items subject to the EAR out of the United States. The EAR is similar to the ITAR in that it covers intangible exports of "technology," including source code, as well as physical exports of items.

2. Deemed Export. Under the EAR the release of technology to a foreign national in the United States is "deemed" to be an export even though the release took place within the United States. Deemed exports may occur through such means as a demonstration, oral briefing, or plant visit, as well as the electronic transmission of non-public data that will be received abroad.

3. Re-export. EAR and ITAR attempts to impose restrictions on the re-export of U.S. goods, *i.e.*, the shipment or transfer to a third country of goods or technology originally exported from the United States.

4. Deemed Re-export. Finally, the EAR defines "deemed" re-exports as the release of technology by a foreign national who has been licensed to receive it to the national of another foreign country who has not been licensed to receive the technology. For example, ECCN 5E001 technology may be exported to a university in Ireland under the license exception for technology and software, but might require a deemed re-export license authorization before being released to a Russian foreign national student or employee of that university in Ireland.

E. AUTHORIZATION TO EXPORT

Once determined that a license is required, an exporter can apply for export authorization from BIS. Unlike the ITAR, there is no requirement for formal registration prior to applying for export authorization. Additionally, the EAR has no equivalent to the TAA used in ITAR exports.

The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 C.F.R. § 740, as well as review of the notes on applicable license exceptions following the ECCN entry on the CCL.[17]

Each category of the CCL contains ECCNs for specific items divided into five categories, A through E: "A" refers to specific systems or equipment (and components); "B" refers to test, inspection and production equipment; "C" refers to materials; "D" refers to software; and "E" refers to the technology related to that specific equipment. For example, most civil computers would be classified under ECCN 4A994. The "4" refers to Category 4, *Computers*, and the "A" refers to the subcategory, *i.e.*, equipment. Generally, if the last three digits begin with a 'zero' or 'one' (*e.g.*, 4A001), the product is subject to stringent controls, whereas if the last three digits are a "9XX" (*e.g.*, 4A994), then generally there are fewer restrictions on export.

Once an item has been classified under a particular ECCN, a person can determine whether a license is required for export to a particular country. The starting place is the information following the ECCN heading. The "List of Items Controlled" describes the specific items covered or not covered by the ECCN.

(1) *Determine Reason for Controls.* The "License Requirements" section provides notations as to the reasons for control. These reasons include:

AT	Anti-Terrorism	CB	Chemical & Biological Weapons
CC	Crime Control	CW	Chemical Weapons Convention
EI	Encryption Items	FC	Firearms Convention
MT	Missile Technology	NS	National Security
NP	Nuclear Nonproliferation	RS	Regional Security

[17] 15 C.F.R. § 740.

SS	Short Supply	XP	Computers
SI	Significant Items		

The most commonly used controls are Anti-Terrorism and National Security, while other controls only apply to limited types of articles. For example, ECCN 4A994 lists "License Requirements: Reason for Control: AT" (*i.e.*, anti-terrorism) and the following:

Control(s)	Country Chart
AT applies to entire entry	AT Column 1

(2) *Apply Country Chart*. Once an item is identified as meeting the criteria for a particular ECCN, the user can refer to the chart found at 15 C.F.R. § 738, Supp. 1. If the particular control applies to that country, a license is required. For example, Syria has an "X" under AT Column 1, therefore a license would be required unless an exception applied.

(3) *Exceptions*. The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 C.F.R. § 740, as well as review of the notes on applicable license exceptions following the ECCN entry. These exceptions include:

LVS	Items of limited value (value is set under each ECCN).
GBS	Items controlled for national security reasons to Group B countries.
CIV	Items controlled for national security reasons to particular countries where end-user is civilian.
TSR	Certain technology and software to certain countries.
APP	Computer exports to certain countries.
KMI	Encryption exemption for key management.
TMP	Certain temporary exports, re-exports, or imports, including items moving through the U.S. in transit.
RPL	Certain repair and replacement parts for items already exported.
GFT	Certain gifts and humanitarian donations.
GOV	Exports to certain government entities.
TSU	Certain mass-market technology and software.
BAG	Baggage exception.
AVS	Aircraft and vessels stopping in the U.S. and most exports of spare parts associated with aircraft and vessels.
APR	Allows re-export from certain countries.

ENC	Certain encryption devices and software.
AGR	Agricultural commodities.
CCD	Authorization of certain consumer communication devices to Cuba.

License exceptions specific to universities, as well as licensing procedures, are described in detail in *Key Issues in University Research*.

V. OFAC SANCTIONS PROGRAM AND BARRED ENTITIES LISTS

A. SANCTIONED COUNTRIES

U.S. economic sanctions broadly prohibit most transactions between a U.S. person and persons or entities in an embargoed country, including Cuba, Iran, North Korea, Syria, and Sudan.[18] This prohibition includes importation and exportation of goods and services, whether direct or indirect, as well as "facilitation" by a U.S. person of transactions between foreign parties and a sanctioned country. For example, sending a check to an individual in Iran could require an OFAC license or be prohibited. More limited sanctions may block particular transactions or require licenses under certain circumstances for exports to a number of countries, including but not limited to Burma, Liberia, and Zimbabwe.[19] Because this list is not complete and subject to change, please visit http://www.treas.gov/offices/enforcement/ofac/.

While most sanctions are administered by OFAC, BIS has jurisdiction over certain exports prohibitions (via "embargo" regulations), as is the case with exports to Syria. [20] In other words, a license from BIS would be required to ship most items to Syria and other OFAC sanctioned countries or could be prohibited. Economic sanctions and embargo programs are country-specific and very detailed in the specific prohibitions.

B. TERRORIST AND OTHER BARRED ENTITY LISTS

Various U.S. Government agencies maintain a number of lists of individuals or entities barred or otherwise restricted from entering into certain types of transactions with U.S. persons. Particularly since 9/11, U.S. companies are beginning to become more assertive in attempting to place contractual terms with foreign companies related to these lists. Such lists must be screened to ensure that the university does not engage in a transaction with a barred entity. WSU, under a State of Kansas license, uses Visual Compliance™ to expedite screening of these and other lists.

- **Specially Designated Nationals and Blocked Persons List ("SDN List")**. Maintained by OFAC, this is a list of barred terrorists, narcotics traffickers, and persons and entities associated with embargoed regimes. Generally, all transactions with such persons are barred. The *SDN List* is available at: http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml.

- **Persons Named in General Orders (15 C.F.R. § 736, Supp. No. 1).** General Order No. 2 contains the provisions of the U.S. embargo on Syria; General Order No. 3 prohibits the re-

[18] With the exception of the sanctions on Cuba and North Korea, OFAC sanctions are promulgated under the International Emergency Economic Powers Act of 1977, 50 U.S.C. §§ 1701-1706 (IEEPA). The embargoes on Cuba and North Korea are promulgated under the Trading with the Enemy Act of 1917, 12 U.S.C. § 95a (TWEA).

[19] *See* http://www.treas.gov/offices/enforcement/ofac/ for a full list of U.S. sanction programs.

[20] *See* 15 C.F.R. § 746.

exports to Mayrow General Trading and related parties. A link to the General Orders is available at: http://www.access.gpo.gov/bis/ear/pdf/736.pdf.

- **List of Debarred Parties**. The Department of State bars certain persons and entities from engaging in the export or re-export of items subject to the USML (available at: http://www.pmddtc.state.gov/compliance/debar.html). Note that the number of countries subject to a U.S. arms embargo is much broader than those subject to OFAC embargoes. *See* http://www.pmddtc.state.gov/embargoed_countries/index.html.

- **Denied Persons List**. These are individuals and entities that have had their export privileges revoked or suspended by BIS. The *Denied Persons List* is available at: http://www.bis.doc.gov/dpl/Default.shtm.

- **Entity List**. These are entities identified as being involved in proliferation of missile technology, weapons of mass destruction, and related technologies. The *Entity List* is available at: http://www.bis.doc.gov/Entities/Default.htm.

- **Unverified List**. These are foreign persons and entities for which BIS has been unable to verify the nature of their operations. While transactions with these entities are not barred, special due diligence is required. The *Unverified List* is available at: http://www.bis.doc.gov/Enforcement/UnverifiedList/unverified_parties.html.

- **Excluded Parties List**. These are entities that have been barred from contracting with U.S. Government agencies. In general, companies cannot contract with such parties in fulfilling a U.S. Government contract, either as prime or sub-contractor. The *EPLS* is available at: http://www.epls.gov/.

- **Nonproliferation Sanctions** maintained by the Department of State. These lists are available at: http://www.state.gov/t/isn/c15231.htm.

VI. ANTI-BOYCOTT RESTRICTIONS

The anti-boycott rules were implemented to prevent U.S. business from participating directly or indirectly in the Arab League's boycott of Israel. The laws prevent U.S. persons from doing business under terms that would restrict that person's ability to do business with other countries under a boycott not recognized by the U.S. The Arab League's boycott has lessened over the years, but still remains in effect in some countries. These restrictions are enforced by BIS. The applicable regulations are at 15 C.F.R. § 760.

Anti-boycott restrictions are most likely to appear in dealings with entities in certain Arab League countries. As of this writing, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen continue to impose boycott restrictions on Israel and companies that do business with Israel. Iraq is not included in this list, but its status with respect to the future lists remains under review by the Department of Treasury.[21] Egypt and Jordan have ceased participating in the boycott.

Note that there are strict reporting requirements even where the U.S. person refuses to participate in a requested boycott action.

[21] *See* Department of Treasury List of Countries Requiring Cooperation with an International Boycott, 72 Fed. Reg. 60930 (Oct. 26, 2007).

A. JURISDICTION

These laws generally apply to any person or entity in the U.S., and to U.S. persons or entities abroad. As examples, the laws apply to:

- A foreign company's affiliate or permanent office in the U.S.
- A U.S. company's foreign affiliate's transaction with a third-party if that affiliate is controlled by the U.S. company and involves shipment of goods to or from the U.S.

B. RED FLAGS

The Commerce Department has set forth the following red-flags to look for as signs of anti-boycott restrictions:

- Agreements to refuse or actual refusals to do business with Israel or with blacklisted companies.
- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality.
- Furnishing information about business relationships with Israel or with blacklisted companies.
- Furnishing information about the race, religion, sex, or national origin of another person.
- Paying or otherwise implementing letters of credit that include requirements to take boycott-related actions prohibited by the anti-boycott regulations.

These restrictions may appear on pre-printed portions of agreements.

C. EXCEPTION

A major exception to the anti-boycott rules is the provision that permits compliance with the import requirements of a boycotting country. This exception permits firms to comply with import restrictions that prohibit imports from Israel or Israeli firms. The exception does not permit compliance with a boycott of blacklisted firms outside of Israel, nor does it allow for the issuance of a negative certificate-of-origin of any type. Other exceptions allow firms to provide country-of-origin information on the shipping documents, or information required for immigration or employment purposes. The exceptions can be found at 15 C.F.R. § 760.3.

D. REPORTING

Any U.S. person or entity who is asked to enter into an agreement or provide information that would violate anti-boycott laws must report this to BIS using a form BIS-621-P in accordance with 15 C.F.R. § 760.5. Information regarding the reporting of suspected anti-boycott activities can be found at http://www.bis.doc.gov/ComplianceAndEnforcement/index.htm. In addition, the U.S. Internal Revenue Service (IRS) requires U.S. taxpayers to report operations in or relating to boycotting countries and nationals and request to cooperate with boycott activities. *See* IRS Form 5713, located online at: http://www.irs.gov/pub/irs-pdf/f5713.pdf.

These reporting requirements apply even where the U.S. person or entity refuses to participate. Crossing out the boycott language in a proposed contract does not end the matter. The duty to report remains even where the requesting foreign entity accepts the redaction of the boycott language.

For more information on anti-boycott rules see: http://www.bis.doc.gov/complianceandenforcement/antiboycottcompliance.htm. The Office of Boycott Compliance has also set up an advice line for questions about the anti-boycott rules, which can be reached at (202) 482-2381.

VII. PENALTIES FOR EXPORT VIOLATIONS

A. GENERAL OVERVIEW

Generally, any person or entity that brokers, exports, or attempts to export a controlled item without prior authorization, or in violation of the terms of a license, is subject to penalties. Violators may incur both criminal and civil penalties. Although there is a maximum amount for a civil or criminal penalty, the actual penalty imposed is often multiplied. For instance, each shipment might be considered a separate violation, and BIS will often find multiple violations of related restrictions in connection to each shipment (*e.g.*, export without a license, false representation, actions with knowledge of a violation, *etc.*). A series of violations occurring over a period of time may result in hundreds of thousand or even millions of dollars of penalties.

B. DEFENSE EXPORTS

The Arms Export Controls Act and the ITAR provide that willful violations (knowingly violating the regulations) of the defense controls can be fined up to $1,000,000 per violation, or ten years of imprisonment, or both.[22] In addition, the Secretary of State may assess civil penalties, which may not exceed $500,000 per violation.[23] The civil penalties may be imposed either in addition to, or in lieu of, any other liability or penalty. The articles exported or imported in violation, and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition.[24] Finally, the Assistant Secretary for Political-Military Affairs may order debarment of the violator, *i.e.*, prohibit the violator from participating in export of defense items.[25]

While imposing criminal liability is fairly rare, many major U.S. companies have been assessed significant civil penalties in the millions of dollars.[26] For example, an investigation into the export practices of ITT Corporation, the leading manufacturer of military night vision equipment for the U.S. Armed Forces, resulted in the company's Night Vision Division being debarred from export of defense items for three years. In addition, pursuant to a plea agreement ITT agreed to pay a total of $100 million for its violations of defense export laws, one of the largest penalties ever paid in a criminal or civil case.[27]

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[22] 22 U.S.C. § 2778(c) and 22 C.F.R. § 127.3.

[23] 22 U.S.C. § 2778(e) and 22 C.F.R. § 127.10.

[24] 22 C.F.R. § 127.6.

[25] 22 U.S.C. § 2778(g) and 22 C.F.R. § 127.7.

[26] For a thorough discussion of penalties imposed under the ITAR, *see* John C. Pisa-Relli, "Monograph on U.S. Defense Trade Enforcement" (February 2007).

[27] *See* Bureau of Political-Military Affairs; Statutory Debarment of ITT Corporation Pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations, 72 Fed. Reg. 18310 (Apr. 11, 2007). For a detailed account of the ITT Corporation investigation, *see* the U.S. Department of Justice press release "ITT Corporation to Pay $100 Million Penalty and Plead Guilty to Illegally Exporting Secret Military Data Overseas" (March 27, 2007), available at: http://www.usdoj.gov/opa/pr/2007/March/07_nsd_192.html.

C. DUAL-USE ITEMS EXPORTS AND ANTI-BOYCOTT VIOLATIONS

Similar to the ITAR, violations of the EAR are subject to both criminal and administrative penalties. Fines for export violations, including anti-boycott violations, can reach up to $1,000,000 per violation in criminal cases, and $250,000 per violation in most administrative cases. In addition, criminal violators may be sentenced to prison time up to 20 years, and administrative penalties may include the denial of export privileges.[28] A denial order is probably the most serious sanction because such order would bar a U.S. company from exporting for a period of years or bar a foreign entity from buying U.S. origin products for such period.

In most instances, BIS reaches negotiated settlements in its administrative cases, as a result of voluntary self-disclosures of violations by companies and individuals. Voluntary disclosures constitute a major mitigating factor in determining penalties, reducing the amount of penalty by up to 50 percent, provided certain conditions are met, such as the implementing of a comprehensive compliance program.[29]

D. EXPORTS TO A SANCTIONED COUNTRY

Although potential penalties for violations of U.S. export laws vary depending on the country and product involved, an exporter may be subject to a maximum civil penalty of $250,000 per violation under OFAC regulations, with the exception of exports to Cuba.[30] Violations of the Cuban sanctions are subject to a maximum penalty of $65,000 per violation.[31]

The U.S. Government can also seek to criminally prosecute conduct where violations are willful and knowing. Such violations may reach $1,000,000 per violation and imprisonment of up to 20 years. In addition, where there is egregious conduct by the offender, BIS (who assists OFAC in enforcing sanctions) may suspend the export privileges of a company.

In assessing penalties, DDTC, BIS, and OFAC will consider a number of factors, both aggravating and mitigating. Mitigating factors include (1) whether the disclosure was made voluntarily; (2) whether this was a first offense; (3) whether the company had compliance procedures; (4) whether steps were taken to improve compliance after discovery of violations; and (5) whether the incident was due to inadvertence, mistake of fact, or good faith misapplication of the laws. Aggravating factors include: (1) willful or intentional violations; (2) failure to take remedial action after discovery; (3) lack of a compliance program; and (4) deliberate efforts to hide or conceal a violation.

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[28] These violations are based on the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420), and inflation adjustments made in 15 C.F.R. § 6.4. From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (IEEPA). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001, which has been extended by successive Presidential Notices, has continued the EAR in effect under IEEPA. The USA PATRIOT Improvement and Reauthorization Act of 2005, signed into law on March 9, 2006 (Pub. L. No. 109-177, 120 Stat. 192 (2006)), increased the limit of civil penalties available under IEEPA to $50,000. On October 16, 2007, President Bush signed the International Emergency Economic Powers Enhancement Act, Pub. Law No. 110-96, which amends IEEPA by increasing civil penalties up to $250,000 per violation, and criminal penalties up to $1,000,000 per violation.

[29] For a review of BIS investigations and penalties, *see* "Don't Let This Happen to You! Actual Investigations of Export Control and Anti-boycott Violations" at http://www.bis.doc.gov/complianceandenforcement/dontletthishappentoyou-2008.pdf.

[30] Violations of most of the Economic Sanction Regulations are set under the IEEPA. *See* supra note 30.

[31] The OFAC embargo of Cuba was promulgated under the Trading with the Enemy Act (TWEA).

KEY ISSUES IN UNIVERSITY RESEARCH

I. DEEMED EXPORTS

While exports are commonly associated with the shipment of a tangible item across the U.S. border, export controls have a much broader application. One of the most difficult issues with respect to export controls is the fact that an export is defined to include the transfer of controlled *information or services* to foreign nationals even when the transfer takes place within the territory of the United States. Though taking place inside the U.S., the transfer is "deemed" to be an export (as if exporting to the country of the foreign national). The term "deemed export" is unique to the EAR; ITAR uses the term Technology Transfer.

Both the ITAR and the EAR provide for deemed exports, even though in the case of defense exports the regulations generally speak of exports. While the ITAR distinguishes between the transfer of *technical data* and *defense services*, the EAR generally provides for the release of *technology*. Such transfer or release may be made through oral, visual, or other means. An export may occur through:

1. a demonstration;
2. oral briefing;
3. telephone call or message;
4. laboratory or plant visit;
5. presenting at conferences and meetings;
6. faxes or letters;
7. hand-carried documents, hardware or drawings;
8. design reviews;
9. the exchange of electronic communication;
10. posting non-public data on the Internet or the Intranet;
11. carrying a laptop with controlled technical information or software to an overseas destination; or
12. collaborating with other universities / research centers through research efforts.

The issue of deemed exports is particularly relevant to university research because of the activities that normally take place at a university. While a university may be involved in the shipment abroad of equipment or machinery to participate in a conference, a joint project, or equipment loan programs, most often faculty and students are engaged in teaching and research. Whenever teaching or research are related to controlled equipment or technology, foreign students' or researchers' involvement may trigger export control compliance issues.

II. U.S. AND FOREIGN PERSONS

The regulations define foreign national as: A person who is not

- granted permanent U.S. residence, as demonstrated by the issuance of a permanent residence card, i.e., a "Green Card"
- granted U.S. citizenship

- granted status as a "protected person" under 8 U.S.C. 1324b(a)(3), e.g., political refugees, political asylum holders, etc.

This includes students, businesspeople, scholars, researchers, technical experts, etc. BIS looks at the person's most recent citizenship or permanent residence. DDTC looks at the person's country of origin (i.e., country of birth) and all current citizenships.

Note: "Foreign national" is the term used by the Department of Commerce, while "foreign person" is the term used by the Department of State.

III. INFORMATION NOT SUBJECT TO OR EXCLUDED FROM EXPORT CONTROLS

Both the ITAR and the EAR have special provisions relating to **information** that is not subject to export controls, including limited exclusions regarding the release of information in the context of university research and educational activities. Additionally, the embargo regulations have exceptions for certain information and informational materials.

A. PUBLIC DOMAIN

The ITAR and the EAR do not control information which is published and generally accessible or available to the public. Note that even though the regulations have similar scope, the ITAR and the EAR vary in the specific information that qualifies as publicly available.

- **ITAR provision:** The ITAR describes such information as information in the *public domain*.[32] The information in the public domain may be obtained through:
    - sales at newsstands and bookstores;
    - subscription or purchase without restriction to any individual;
    - second class mailing privileges granted by the U.S. Government;
    - at libraries open to the public;
    - patents available at any patent office;
    - unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, **in the United States**;
    - public release in any form after approval of the cognizant U.S. Government agency; or
    - fundamental research in the U.S. (*See Key Issues in University Research,* Section III.C. *Fundamental Research*.)
- **EAR provision:** The EAR does not control publicly available technology if it is already published or will be published.[33] Information is published when it becomes generally accessible to the interested public in any form, including:
    - publication in periodicals, books, print, *etc.*, available for general distribution **free or at cost**;

[32] 22 C.F.R. §§ 120.10(a)(5) and 120.11.
[33] 15 C.F.R. §§ 734.3(b)(3) and 734.7.

- readily available at libraries open to the public or university libraries;
- patents and open patents applications available at any patent office; or
- release at an open conference, meeting, seminar, trade show, or other gathering open to the public.

The EAR requires that the publication is available for distribution free or at price not to exceed the cost of reproduction and distribution; however, the ITAR does not have such a requirement.

Note also that the EAR does not specify where an open conference, meeting, seminar or trade show must take place, and thus allows, for example, participation at a foreign conference so long as the conference is open to all technically qualified members of the public, and attendees are permitted to take notes. Unlike the EAR, the ITAR limits participation in conferences and similar events to those that are taking place in the United States.

B. EDUCATIONAL INFORMATION

Both the ITAR and the EAR address the issue of general educational information that is typically taught in schools and universities. Such information, even if it relates to items included on the USML or the CCL, does not fall under the application of export controls.

- **ITAR provision:** The ITAR specifically provides that the definition of "technical data" does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities.[34]
- **EAR provision:** The EAR provides that publicly available "educational information" is not subject to the EAR, if it is released by instruction in catalogue courses and associated teaching laboratories of academic institutions.[35]

Therefore, a university graduate course on design and manufacture of very high-speed integrated circuitry will not be subject to export controls, even though the technology is on the CCL. The key factor is that the information is provided by instruction in a catalogue course. Foreign students from any country may attend this course because the information is not controlled.

The information will not be controlled even if the course contains recent and unpublished results from laboratory research, so long as the university did not accepted separate obligations with respect to publication or dissemination, *e.g.*, a publication restriction under a federal funding.[36]

C. FUNDAMENTAL RESEARCH

During the Reagan administration, several universities worked with the Federal government to establish national policy for controlling the flow of information produced in federally funded fundamental research at colleges, universities and laboratories resulting in the issuance of the National Security Decision Directive 189 ("NSDD"), National Policy on the Transfer of Scientific, Technical and Engineering Information on September 21, 1985. In a letter dated November 1, 2001, President George W. Bush's administration reaffirmed NSDD 189. NSDD 189 provided the following definition of *fundamental research* that has guided universities in making licensing decisions relative to fundamental research exclusions provided under both the EAR and ITAR.

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[34] 22 C.F.R. § 120.10(a)(5).

[35] 15 C.F.R. §§ 734.3(b)(3) and 734.9.

[36] 15 C.F.R. § 734, Supp. No. 1, Questions C(1) to C(6).

Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.

Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research. University based research may not be considered *fundamental research* if the university or its researchers accept (at the request, for example, of an industrial sponsor) restrictions on publication. Projects with request for publication restrictions need to be reviewed by a Contract Specialist and a Compliance Specialist to ensure the Fundamental Research Exemption is not voided without having proper safeguards in place.

Both the ITAR and the EAR provide that information published and generally accessible to the public through fundamental research is not subject to export controls. However, there are certain restrictions. In order to take advantage of this exemption:

- such information must be produced as part of basic and applied research in science and engineering and must be broadly shared within the scientific community (*i.e.*, no restrictions on publication / dissemination of the research results); [37]

- it is essential to distinguish the information or product that results from the fundamental research from the conduct that occurs within the context of the fundamental research. While the results of the research project may meet the definition of fundamental research and therefore not subject to export controls, if during the course of the project, proprietary (non publishable) technology is provided to Wichita State University an export license may still be required if it is to be released to a foreign national. Such export controlled technology may come from the research sponsor, from a research partner institution, or from a previous university research project.[38]

One major difference is that the ITAR requires that, to qualify as fundamental research, research must be performed at *accredited institutions of higher learning in the United States*. Under the EAR, fundamental research may occur at facilities other than *accredited institutions of higher learning in the United States*.

Under both the ITAR and the EAR, research performed at universities will not qualify as fundamental if the university (or the primary investigator) has accepted publication or other dissemination restrictions.

- **ITAR provision:** the fundamental research exception does not apply to research the results of which are restricted for proprietary reasons, or specific U.S. Government access and dissemination controls.[39]

- **EAR provision:** the fundamental research is distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons.[40] Under the EAR, university-based research is not considered fundamental research if the university or its researchers

[37] ITAR § 120.11(a)(8); EAR §§ 734.3(b)(3) and 734.8(a).

[38] *See* BIS Revisions and Clarification of Deemed Export Related Regulatory Requirements, 71 Fed. Reg. 30840, 30844 (May 31, 2006). (This interpretation of fundamental research by BIS, while not binding, is instructive as to how DDTC might interpret its regulations.)

[39] 22 C.F.R. §§ 120.11(a)(8) and 120.10(a)(5).

[40] EAR § 734.8(a).

accept restrictions (other than review to ensure no release of sponsor-provided proprietary or patent information) on publication of scientific and technical information resulting from the project.[41]

The EAR instructs that prepublication review by a sponsor of university research solely to ensure that the publication would not inadvertently divulge proprietary information that the sponsor has initially furnished, or compromise patent rights, does not constitute restriction on publication for proprietary reasons.

The EAR also has provided examples of "specific national security controls" which will trigger export controls. These include requirements for prepublication review and approval by the Government, with right to withhold permission for publication; restriction on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research.[42]

While the ITAR does not contain such descriptive provisions, the EAR is instructive as to interpreting the limitations on fundamental research.

D. FULL-TIME UNIVERSITY EMPLOYEES

Under a specific exemption, the ITAR allows a university to disclose unclassified technical data in the U.S. to a foreign person who is the university's *bona fide* and full-time employee. The exemption is available only if:

- the employee's permanent abode throughout the period of employment is in the United States;
- the employee is not a national of a country to which exports are prohibited pursuant to ITAR § 126.1 (See current list of countries at http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf);
- the university informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of DDTC; and
- the university documents the disclosure of technical data under the exemption providing: (1) a description of the technical data; (2) the name of the recipient / end-user; (3) the date and time of export; (4) the method of transmission (*e.g.*, e-mail, fax, FedEx); (5) the ITAR reference, *i.e.*, ITAR § 125.4(b)(10), *Full-Time University Employee*.

Note that the "full-time *bona fide* employee" requirement will preclude foreign students and postdoctoral researchers from qualifying for access to technical data under this exemption. Generally, a H1B work visa would be required.

The exemption for full-time employees only applies to the transfer of *technical data* and discussions related to the data. Discussions may occur between the foreign full-time employee and other university employees working on the project. Additionally, the outside company (sponsor of the research) would have to apply for a DSP-5 license to provide technical data directly to the foreign national employee, and if the outside party and the employee are to engage in discussions and interchange concerning the data, then the proper authorization would be a Technical Assistance Agreement (TAA) rather than the DSP-5.

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[41] EAR § 734.8(b)(5). However, once the sponsor has reviewed and approved the release, the results may be published as fundamental research.

[42] EAR § 734.11(b).

WICHITA STATE UNIVERSITY EXPORT COMPLIANCE PROCEDURES

I. COMMITMENT TO EXPORT CONTROL COMPLIANCE

Wichita State University conducts focused research to advance knowledge, enhance student learning experiences, and build its reputation in the scientific and technical communities while providing positive returns on sponsors support. Wichita State University endorses the principles of freedom of inquiry and open exchange of knowledge, while complying with the export control regulations.

The export of certain technologies, software and hardware is regulated and controlled by Federal law for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction and for competitive trade reasons. Wichita State University and all its employees are required to comply with the laws and implementing regulations issued by the Department of State, through its International Traffic in Arms Regulations ("ITAR"), the Department of Commerce, through its Export Administration Regulations ("EAR") and the Department of the Treasury through its Office of Foreign Asset Controls ("OFAC").

In the aftermath of September 11, 2001, and the increased security needs of the United States, the importance and scrutiny of compliance with these regulations has increased, and research contracts and agreements received by universities from sponsors, both Federal and industrial, in which export control provisions are contained, have increased significantly. Export controls regulations apply regardless of the source of funding, both external and internal.

While most research conducted on U.S. college and university campuses is excluded from these regulations under the Fundamental Research Exclusion, university research involving specified technologies controlled under the EAR and/or ITAR, or transactions and exchanges with designated countries, individuals and entities may require Wichita State University to obtain prior approval from the appropriate agency before allowing foreign nationals to participate in controlled research, collaborating with a foreign company, and/or sharing research—verbally or in writing—with persons who are not United States citizens, permanent residents or protected persons. The consequences of violating these regulations can be quite severe, ranging from loss of research contracts and exporting privileges to monetary penalties and jail time for the individual violating these regulations.

Export control regulations affect not only research conducted on campus, but also travel and shipping items outside the U.S. Simply traveling to certain sanctioned countries could require a license from OFAC. OFAC sanctions prohibit transactions and exchange of goods and services in certain countries and with designated persons and entities. Multiple lists of denied individuals and parties are maintained and enforced by federal agencies including the Departments of State, Commerce, and Treasury. Shipping items outside the U.S. as well as taking controlled items on a flight, even if shipping or traveling in the conduct of research, could require a license from these agencies.

Wichita State University is committed to export controls compliance, and the export controls compliance unit of the Office of Research Administration ("ORA") is staffed to advise and assist faculty in conducting activities related to research and sponsored projects. More information and resources regarding these and other regulations that impact university activities can be found at http://webs.wichita.edu/?u=WSURESEARCHADMIN&p=/ExportCompliance/ExportComplianceIndex/ or by contacting the University Compliance Specialist in the Office of Research Administration ("ORA"), at 316-978-3285.

II. KEY ACTORS RESPONSIBLE FOR EXPORT CONTROL COMPLIANCE

A. EMPOWERED OFFICIALS

The Associate Provost for Research is WSU's Empowered Official for export control matters. In this capacity, the Empowered Official has the responsibility to represent the university before the export control regulators in matters related to registration, licensing, commodity jurisdiction requests, or voluntary disclosures. While certain oversight functions may be delegated, only the Empowered Official has the power to sign such paperwork and bind the university in any proceeding before DDTC, BIS, OFAC, or any other government agency with export control responsibilities.

B. UNIVERSITY COMPLIANCE SPECIALISTS

Compliance Specialists report to the Associate Provost for Research. Compliance Specialists have the authority and the responsibility for the implementation of the procedures set forth in this Compliance Manual.

Compliance Specialist works closely with the Associate Provost for Research and ORA in performing his or her responsibilities. Each Compliance Specialist:

1. identifies areas at Wichita State University relative to research and other activities that are impacted by export control regulations;

2. develops control procedures to ensure the university remains in compliance;

3. recommends procedures to the senior Wichita State University administration to strengthen Wichita State University's compliance;

4. educates inventors, principal investigators, centers, and academic units about export control regulations and procedures followed at Wichita State University;

5. educates other units within Wichita State University such as Accounting, Purchasing, Travel, International Programs, Human Resources, and Technology Commercialization about export control regulations and procedures followed at Wichita State University;

6. monitors and interprets legislation;

7. works with others on campus to facilitate understanding and compliance with export controls;

8. conducts training and outreach to Wichita State University Faculty and Staff on export controls;

9. assists investigators, researchers and offices within Wichita State University in obtaining any necessary licenses.

10. seeks legal assistance when uncertain about classification or filing license applications; and

11. develops a Technology Control Plan ("TCP") for each ITAR-controlled project consistent with these procedures to aid the principal investigator ("PI") in meeting his or her export control responsibilities.

C. Office of Research Administration

The ORA provides assistance and expertise with export controls by working closely with the Compliance Specialists and Associate Vice Provost for Research in identifying export control issues and providing support for compliance.

The ORA:

1. provides assistance to PIs in reviewing the terms of a sponsorship agreement or grant to identify restrictions on publication and dissemination of the research results, and to help PIs negotiate removal of such restrictions;

2. will obtain a fully executed proposal routing form for every project and sends them along with supporting documentation to the Compliance Specialists for review;

3. is responsible for maintaining a centralized repository of all documentation relating to a research project or education activity; and

4. in conjunction with the PI's and the Compliance Specialists, ensures that foreign nationals will be appropriately isolated from participation in an export-controlled project in accordance with the Technology Control Plan (TCP), unless the university applies for and obtains a license from the relevant agency.

5. Compliance Specialist will conduct training for the university community and coordinate the maintenance of an export controls website.

D. Key University Managers

Academic deans, directors, and department heads share the responsibility of overseeing export control compliance in their respective schools, departments, centers, or institutes and supporting the implementation of procedures as deemed necessary by the Compliance Specialists for export control compliance.

In addition, the directors of other offices or units on campus including, but not limited to: General Counsel, Accounting, Environmental Health and Safety, Human Resources, International Education, Research Administration, and Travel share the responsibility of overseeing export control compliance in their units and supporting the Compliance Specialist in implementing procedures as deemed necessary by the Compliance Specialist for export control compliance.

E. Principal Investigator ("PI")

PIs have expert knowledge of the type of information and technology involved in a research project or other university activity, such as presenting at conferences, and discussing research findings in class with fellow researchers or collaborators. PIs must ensure that they do not disclose controlled information or transfer controlled articles or services to a foreign national without prior authorization when required. To meet his or her obligations, each PI:

1. must understand his or her obligations under export controls, and participate in regular trainings to help him or her identify export control issues;

2. must assist the Compliance Specialists to classify the technology involved in the research or other university activity;

3. identify foreign nationals that may be involved and, if export control is likely, initiate the process of clearing foreign national participation well in advance to ensure that a license is obtained in a timely manner, or implement proper measures to isolate foreign nationals from participation;

4. must, if undertaking an export controlled project, brief the students and other researchers involved in the project of their obligations under export controls; and

5. cooperate with the Compliance Specialists in developing the TCP (if required) of which the PI has the responsibility to follow and implement.

III. EXPORT CONTROL ANALYSIS

An export control analysis should be performed when a PI submits a proposal, receives an award, or changes the scope of an existing project.

A. INITIAL REVIEW

The Compliance Specialists will conduct an initial export review when a proposal is provided to the Office of Research Administration for submission to a sponsor.

- For all submissions: The Compliance Review area on the Proposal Routing Form must be completed thoroughly to the best of a PI's ability and knowledge. The Proposal Routing Form is attached as Appendix A.
- For Industry Sponsor submissions: In addition to the Proposal Routing Form, The Technical Data Certification (TDC) Form is required along with any other supporting documentation. The Technical Data Certification (TDC) Form is attached as Appendix B.

The Compliance Specialist review will include looking for the following red flags indicating possible export control issues:

1. references to U.S. export regulations (beyond a mere statement to comply with the law);

2. restrictions on publication or dissemination of the research results;

3. pre-publication approval from sponsor;

4. proprietary or trade secret claims on project results;

5. restriction of access or participation to U.S. citizens only;

6. involvement of foreign sponsors or collaborators;

7. travel, shipping, or work performed outside the U.S.;

8. military applications of the project results;

Upon completing the initial review, the Compliance Specialists will advise the PI concerning the export controls which apply to the project, the restrictions on access by foreign persons, and any other relevant requirements pursuant to ITAR and EAR in the form of an Export Determination Letter.

B. FINAL REVIEW

If the project is awarded, the Compliance Specialists will complete a final review based on the award agreement and any supporting documentation. If no changes are required, the initial review export determination

letter will serve as the final review document. However, if changes are required, a new export determination letter will be provided to the PI and any other applicable parties.

IV. TECHNOLOGY CONTROL PLAN

- Compliance Specialists will execute and maintain a departmental standardized Technology Control Plan (TCP).

A. DEVELOPMENT

If Compliance Specialists determine a project is ITAR controlled, the Compliance Specialists will work with the PI to develop and implement a TCP to secure the controlled technology from access by unlicensed non-U.S. citizens. The TCP will include:

1. a commitment to export controls compliance;
2. identification of the relevant export control categories and controlled technologies;
3. identification of the project's sponsors;
4. identification and nationality of each individual participating in the project;
5. appropriate physical and informational security measures;
6. personnel screening measures; and
7. appropriate security measures for and following project termination.

B. APPROPRIATE SECURITY MEASURES

The TCP will include physical and informational security measures appropriate to the export control categories involved in the project. Examples of security measures include, but are not limited to:

- Laboratory Compartmentalization**.** Project operation may be limited to secured laboratory areas physically shielded from access or observation by unauthorized individuals. These areas must remain locked at all times.
- Time Blocking. Project operation may be restricted to secure time blocks when unauthorized individuals cannot observe or access.
- Marking. Export controlled information must be clearly identified and marked as export-controlled.
- Personnel Identification. Individuals participating in the project may be required to wear a badge, special card, or other similar device indicating their access to designated project areas. Physical movement into and out of a designated project area may be logged.
- Locked Storage. Tangible items such as equipment, associated operating manuals, and schematic diagrams should be stored in rooms with key-controlled access. Soft and hardcopy data, lab notebooks, reports, and other research materials should be stored in locked cabinets.
- Electronic Security. Project computers, networks, and electronic transmissions should be secured and monitored through User Ids, password controls, 128-bit Secure Sockets Layer encryption or

other federally approved encryption technology. Database access should be managed via a Virtual Private Network.

- Confidential Communications. Discussions about the project must be limited to the identified and authorized project participants, and only in areas where unauthorized individuals are not present. Discussions with third party sub-contractors must occur only under signed agreements which fully respect the non-U.S. citizen limitations for such disclosures.

C. TRAINING & CERTIFICATION

Before any project member may observe or access the export controlled technology, the PI assigned to the project must brief the project members on the procedures authorized under the fully executed TCP (standard or ITAR).

V. LICENSING

If a project is export controlled and a license is needed to involve a foreign national, the Empowered Official may apply for an export license to allow the disclosure of information to foreign students and researchers. Note that each foreign student must be specifically licensed for each controlled project. Also note that a TCP, as described in Section IV above, must be implemented. The Compliance Specialist in coordination with the AP will prepare the necessary documentation for obtaining a license.

VI. LICENSE EXCEPTIONS AND EXEMPTIONS RELATED TO TRAVEL OUTSIDE THE U.S.

Travel or transmissions to destinations outside the U.S. can also implicate export control regulations. A license may be required depending on which items are taken, which countries are visited, or whether defense services are provided to a foreign person.

A *License Exception or Exemption* may be available to EAR and ITAR controlled technical data but requires a case-by-case review by Compliance Specialist and ORA.

Any individual intending to travel on Wichita State University business or transmit controlled data outside the U.S. should first consult with the Compliance Specialists. All exceptions or exemptions must be documented with the ORA and the record maintained for at least five years after the termination of the project or the travel return date.

VII. TRAINING PROGRAMS

Training is the foundation of a successful export compliance program. Well-informed employees minimize the likelihood that inadvertent violations of the law will occur. The greatest risk of non-compliance of export laws and regulations occurs during casual conversations in person on the telephone, via e-mail, carelessness in regards to laptops, flashdrives, etc. The way to prevent these types of violations is through awareness and training.

Compliance Specialists will prepare training materials based on current regulations and will ensure that employees or students engaged in activities that may be subject to export controls will receive the appropriate training. Compliance Specialist will also maintain records of training provided. General export control information and presentations will be available for the university community online.

Academic deans or department heads will assist the Compliance Specialists in implementing the export control training sessions or briefings relative to their respective schools, departments, centers, or institutes. In addition, the directors of other offices or units on campus including, but not limited to: General Counsel, Accounting, Environmental Health and Safety, Human Resources, International Programs, Technology

Commercialization, and Travel will assist the Compliance Specialists in implementing the export control training sessions or briefings relative to their units.

VIII. RECORDKEEPING

Wichita State University's policy is to maintain export-related records on a project basis. Unless otherwise provided for, all records indicated herein shall be maintained consistent with the Wichita State University record retention policy. EAR regulated projects shall be retained for no less than five years from final invoice date. ITAR regulated projects shall be retained no less than five years after the project's TCP termination date or license termination date, whichever is later.

Records required to be retained:

- Memoranda
- Notes
- Correspondence
- Contracts
- Invitations to bid
- Books of account
- Financial records
- Restrictive trade practice or boycott documents and reports
- Export agency notifications
- Description of the unclassified technical data
- The name of the recipient /end-user
- The date / time of export
- The method of transmission (*e.g.*, e-mail, fax, telephone, FedEx)
- The exemption under which the export took place, if applicable.
- All documentation regarding the use of an exception, exemption or license

ITAR Regulated projects must also retain the following records:

- Technology Control Plan (TCP)
- ITAR Non-Disclosure Agreement (NDA)

Generally, records required to be retained by any export agency must be kept for a period of five years from the project's termination date. However, if BIS or any other government agency makes a request for such records following a voluntary self-disclosure, the records must be maintained until the agency concerned provides written authorization otherwise.

IX. MONITORING AND AUDITING

In order to maintain Wichita State University's export compliance program and ensure consistent adherence to U.S. export laws, the Compliance Specialist conduct internal reviews of all export activities. The purpose of the reviews is: (i) to identify possible violations; and (ii) to identify deficiencies in training, procedures, *etc*., that can be rectified.

X. DETECTING AND REPORTING VIOLATIONS

It is the policy of Wichita State University to voluntarily self-disclose violations as required. Since September 11, 2001, government agencies have dramatically increased the investigation in and successful prosecution of export regulation violations. The penalties for these violations can be very severe, including personal liability, monetary fines, and imprisonment. However, government agencies assign great weight to voluntary self-disclosures as a mitigating factor.

Any individual who suspects a violation shall use My Safe Campus (Coming Soon) to report violations.

XI. DISCIPLINARY ACTIONS

In recognition of the seriousness of non-compliance with export controls, Wichita State University will address non-compliance in accordance with policies and procedures outlined by the Kansas Board of Regents and Wichita State University. Further, all WSU employees must be aware of the substantial criminal and civil penalties imposed for violation of the export regulations including personal liability, monetary fines and imprisonment.

XII. EMPLOYEE PROTECTION

In accordance with Wichita State University Policy and Procedures, no individual shall be punished solely because he or she reported what was reasonably believed to be an act of wrongdoing or export control violation. However, a Wichita State University employee will be subject to disciplinary action if the employee knowingly fabricated, knowingly distorted, or knowingly exaggerated the report.

WSU OFFICE OF RESEARCH ADMINISTRATION
PROPOSAL ROUTING FORM

MAC USERS: Please fill out this form using the latest version of Adobe Reader

Final proposals are due to ORA a minimum of 3 days prior to the Agency Deadline.

Paper submissions and proposals which include cost share require additional processing time, please see website for all due dates.

Principal Investigator (PI): Ext. Agency Deadline
Sponsoring Agency: Solicitation #:
Project Title:

Project Duration: from to

	Year 1	Total Period
Direct Costs		
Indirect Costs		
Total Requested		
Cost Sharing/Matching		

Are WSU Funds committed beyond the grant period? ☐ Yes ☐ No

Is your project related to Homeland Security? ☐ Yes ☐ No

Does this project involve subcontracts? ☐ Yes ☐ No

Indirect (F&A) Rate: Standard: ☐ on campus 46% ☐ off campus 26% Industry: ☐ on campus 69.1% ☐ off campus 31.6%	
Basis is MTDC*? ☐ Yes ☐ No Other basis?:	PI's grant paid effort: Summer Mos Academic Mos
	Release Time?: ☐ Yes ☐ No %
If Sponsor limits F&A, what percentage is permitted? %	Overload pay? ☐ Yes ☐ No Amount $_____ and Percent ____%
*MTDC: Modified Total Direct Costs	

EXPENDITURES for RESOURCE REQUIREMENTS: List only those items which require expenditures for the grant such as new telephone lines, consultants, computing, maintenance, salaries and benefits and indicate the source of any University matching funds.

WSU Department Responsible for Matching Funds	Amount

COMPLIANCE REVIEW:

Check Yes or No for each item below contained in or associated with your research/project

☐ Yes	☐ No	Human Subjects	☐ Yes	☐ No	Biological Materials	☐ Yes	☐ No	Infectious Agents
☐ Yes	☐ No	Hazardous Chemicals/Waste	☐ Yes	☐ No	Clinical Trials	☐ Yes	☐ No	Proprietary Information
☐ Yes	☐ No	Animals	☐ Yes	☐ No	Medical Devices / Drugs	☐ Yes	☐ No	Foreign Nationals
☐ Yes	☐ No	Radioactive Material	☐ Yes	☐ No	Chemicals of Interest	☐ Yes	☐ No	Foreign Travel
☐ Yes	☐ No	Cultural Artifacts	☐ Yes	☐ No	Soil and/or Plants	☐ Yes	☐ No	International Collaborations

Does this project pose a conflict of interest for you or any anticipated project member? ☐ Yes ☐ No

Have you or any anticipated project member been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transactions by a federal department or agency? ☐ Yes ☐ No

Are you or any anticipated project member currently delinquent on any federal debt ? (i.e taxes, student loans, etc...) ☐ Yes ☐ No

As the Principal Investigator, I acknowledge that I have reviewed and considered all terms and conditions (including those that must be accessed electronically), and I understand that said terms and conditions are/may be applicable to any and all work performed should the application be successful. My signature indicates my knowledge of the terms and conditions and my willingness/ability to comply therewith. With respect to any invention, discovery, or copyrightable material produced in the course of activities encompassed by this project, I agree that my rights and those of any Co-Investigator(s) working on this project shall be governed by the University policies relating to research, patents and copyrights as described in the WSU Faculty Handbook, and by the patent policy of the Kansas Board of Regents; and I have read and understand the lobbying restrictions for **FEDERAL** grants, contracts and cooperative agreements attached hereto as page 2:

PI Date CO-PI Date

The validity of the proposed activity and commitment of resources (as noted) are hereby authorized.

Chair Date Additional Endorser Date

Dean/Center Director Date Associate Director for Pre-Award Date

ORA Director Date Associate Provost for Research Date

For proposals with waived indirects and/or cost share

For ORA Use at Time of Award

Distribution: ☐ Compliance ☐ Cost Acct. _____ waived _____ unrecovered

Revised 2/2012

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

The applicant certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the applicant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The applicant shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person

TECHNICAL DATA CERTIFICATION

Name of Sponsor:	**Please Return Via Fax or E-Mail to Principal Investigator PI & WSU Compliance:**
Address:	**PI:**
State, Zip/Province & Country	**PI E-Mail:**
Sponsor Reference Number (e.g. PO, RFQ, SOW):	**PI Fax: Phone:**
	WSU Compliance Office
	E:Mail: compliance@wichita.edu
	Fax: 316-978-3750 Phone: 316-978-6845

The Information requested in this form is intended to assist Wichita State University in complying with U.S. Export Control Laws and Regulations. To properly Classify the Technical Data Results of the Project and ensure compliance, the following information is REQUIRED from your company before any work will be started. If you require any assistance with the information requested in this form, Please contact the Wichita State University Compliance Office.

1. Please describe the Project Commodity, Technology, Material or Software being provided to Wichita State University	
2. Is the Commodity, Technical Data, Material or Software being provided to Wichita State University specifically designed, engineered, modified, or equipped for Military, Missile, Space or Satellite applications? (If Yes, Explain)	
3. Is the Commodity, Technical Data, Material or Software being provided to Wichita State University intended for use in any way with Chemical, Biological or Nuclear Weapons of any type or size? (If Yes, Explain)	
4. Is this Project part of a Defense contract or Defense Service either US or Foreign? (If Yes, are there any flow down requirements or clauses)	
5. What is the Jurisdiction of the Commodity, Technical Data, Material or Software that your company is providing to Wichita State University for this Project?	_____ EAR CFR 15 _____ Dual Use EAR CFR 15 _____ ITAR CFR 22
5. (a) If EAR, What is the ECCN from the Commerce Control List? **(If Composite Coupon Testing, Leave Blank)**	
5. (b) If ITAR, What is the Category Classification from the USML?	
6. Who will be the End-User of the Technical Data that Wichita State University will provide from this Project? **(Composite Coupon Testing Note: If Strictly Material Research, your company is the End-User, Please Note It.)**	
7. What will be the End-Use of the Project Technical Data, as in What Item or Commodity will it help Develop, Engineer or Design? **(Composite Coupon Testing Note: If Strictly Material Research with No End-Use, Please Note It.)**	

I hereby certify the above information associated with the referenced project is true and correct to the best of my knowledge. Should any information change during the course of this project, I will immediately notify the Wichita State University Compliance Office.

_____

Printed Name & Title

_____ _____

Signature **Date**

TDC 10-2011 Rev A

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