

# **Export Controls Compliance Manual**



**Responsibility, Integrity, Community, and Excellence**

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## POLICY STATEMENT

TO: All Faculty and Staff  
DATE: June 10, 2016  
FROM: Dr. Yousif Shamoo, Vice Provost for Research  
SUBJECT: Rice University's Commitment to Export Controls Compliance

As a leading research institution, Rice University is committed to the highest standards of academic integrity and compliance with all applicable laws and regulations. One of these laws in particular is export controls, which affects not only research, but all university activities. This memorandum is intended to provide an overview of your obligations, and to remind you of Rice University's commitment to export controls.

Export controls are administered by multiple agencies such as the Department of Commerce and the Department of State and are vital to protect the national security and foreign policy interests of the United States. These laws can restrict shipping goods, software, and materials abroad; sharing (visually, orally, and via email transmission or hard documents) certain technical information with foreign nationals, even those foreign nationals located in the United States; and conducting financial transactions with businesses and individuals on restricted party lists. Violations for export controls include criminal fines of up to \$1 million per violation, civil fines of up to \$500,000 per violation, imprisonment of up to 20 years, and placement on the aforementioned restricted party lists.

Regular classroom instruction and basic science and engineering research are not subject to these restrictions. However, restrictions can apply because of the nature of the material presented or the research (e.g., military or nuclear applications, or biological or chemical agents), the intended use of the research results, the research equipment used, restrictions on publication of the research results, or restrictions on foreign person participation to or access in the material or research.

Rice expects all faculty, students, and staff to comply with export controls, and takes noncompliance very seriously. Under no circumstances will Rice undertake any activity contrary to U.S. export regulations and laws. I encourage everyone in the Rice community to seek help and ask questions when needed. Export controls are complex, and the following individuals are available to guide you through our compliance procedures: Melissa Gambling, Compliance Manager (ext. 3884) and Joe Davidson, Senior Associate General Counsel (ext. 5237). Similarly, I invite you to visit the export controls website at [sparc.rice.edu](http://sparc.rice.edu), which contains background information on your legal obligations and our Rice procedures. Together, we can continue our commitment to compliance with these important laws.



cc: David Leebron, President  
Dr. Marie Lynn Miranda, Howard R. Hughes Provost

## INTRODUCTION

The United States' export control laws and regulations, while complex and nuanced, are an important element in protecting national security. Rice University recognizes the vital part all faculty, staff, and students have in ensuring that its mission to comply with this important area of law. Therefore, this manual outlines procedures and requirements to help all faculty, staff, and students understand their roles and responsibilities with regards to export control compliance. These procedures, together with the good judgment of those on campus, can help reduce the risks of inadvertently acting contrary to these laws.

We encourage everyone to ask questions and provide feedback on this manual and the procedures outlined herein. Questions and suggestions may be addressed to Melissa Gambling, Compliance Manager in the Office of Sponsored Projects and Research Compliance ("SPARC"), at [mgambling@rice.edu](mailto:mgambling@rice.edu) or 713.348.3884.

An electronic copy of this manual will be posted on SPARC's webpage at [sparc.rice.edu](http://sparc.rice.edu). It is advisable to use this link each time you consult the manual so that you can be sure you are using the most current version. SPARC, in coordination with the Office of the General Counsel, will update this manual at least every September, but more frequent updates will be published online as they become available.

## DOCUMENT REVISION SUMMARY

Date/Version	Summary of Changes
June 10, 2016	Original
September 23, 2016	Boycott countries and EAR definitions of "fundamental research" and "published."

# OVERVIEW OF EXPORT CONTROLS<sup>1</sup>

## 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.

These controls generally restrict 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.

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

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<sup>1</sup> Rice University is grateful to The University of Texas at Austin’s Office of Sponsored Projects and David Ivey, Export Controls Officer, for permitting Rice University to use portions of The University of Texas at Austin’s export compliance manual for this document.

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,<sup>2</sup> DDTC administers the export and re-export of defense articles, defense services and related technical data from the United States to 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.<sup>3</sup> 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.<sup>4</sup>

**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,

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

<sup>3</sup> 22 C.F.R. § 120.6.

<sup>4</sup> 22 C.F.R. § 120.10. Note that the ITAR uses the term "blueprints" to cover drawings and assembly instructions.

as well as providing technical data to foreign persons. Defense services also include informal collaboration, conversations, or interchanges concerning technical data.<sup>5</sup>

## **B. THE USML CATEGORIES**

The USML designates particular categories and types of equipment as defense articles and associated technical data and defense services.<sup>6</sup> 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.pmdtc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_121.pdf](http://www.pmdtc.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 and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- VI Surface Vessels of War and Special Naval Equipment
- 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

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<sup>5</sup> 22 C.F.R. § 120.9.

<sup>6</sup> See 22 C.F.R. § 121.1.



### 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.<sup>7</sup> 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.<sup>8</sup>

### 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.”<sup>9</sup> The following are examples of exports:

#### 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 person, in or outside the United States.

#### 2. Extra-territorial transfers

- The re-export or re-transfer of defense articles from one foreign person 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 person 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 person, whether in the United States or abroad, through oral, visual, or other means.

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<sup>7</sup> 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.

<sup>8</sup> Instructions on the content of a CJ and the filing procedure are available at [http://www.pmddtc.state.gov/commodity\\_jurisdiction/index.html](http://www.pmddtc.state.gov/commodity_jurisdiction/index.html).

<sup>9</sup> 22 C.F.R. § 120.17.

- 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.<sup>10</sup> Registration is required prior to applying for a license or taking advantage of some license exemption.<sup>11</sup> 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.

However, university researchers are usually engaged only in the creation of unclassified technical data, or engaged only in the fabrication of articles for experimental or scientific purpose, including research and development. Therefore, the university is not usually required to register with DDTC.<sup>12</sup>

However, 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, below.

## **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, such as China, Cuba, Iran, North Korea, Sudan, and Syria. Additional restrictions apply to other countries; a complete list of U.S. arms embargoes is available online at:

[http://www.pmdtcc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_126.pdf](http://www.pmdtcc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf).

## **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”). 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 agencies focus on “technology transfer” and have been increasingly focused on enforcement. They differ in that the EAR covers a wider range of

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<sup>10</sup> 22 C.F.R. § 122.1.

<sup>11</sup> 22 C.F.R. §§ 120.1(c) and (d); 122.1(c).

<sup>12</sup> See 22 C.F.R. §§ 122.1(b)(3) and (b)(4).

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.<sup>13</sup> 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 apply different standards to technology for “use” of a product than for the technology for the “design” or “manufacture” of the 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,<sup>14</sup> although the

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<sup>13</sup> 15 C.F.R. § 734.

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

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](http://www.access.gpo.gov/bis/ear/ear_data.html).

### CATEGORIES

0. Nuclear related items and miscellaneous items
1. Special materials and related equipment, chemicals, “microorganisms,” and “toxins”
2. Materials processing
3. Electronics
4. Computers
5. pt-1 Telecommunications
5. pt-2 Information security (encryption)
6. Sensors and lasers
7. Navigation and avionics
8. Marine (vessels, propulsion, and equipment)
9. Aerospace and propulsion

### **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.<sup>15</sup>

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.<sup>16</sup> 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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<sup>15</sup> For a complete discussion, see *Overview of Export Controls*, Section III.C above.

<sup>16</sup> 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.** Similarly to the ITAR, the EAR 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.<sup>17</sup>

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.

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<sup>17</sup> 15 C.F.R. § 740.

(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
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:

<u>Control(s)</u>	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.
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 or Sudan.
STA	Strategic Trade Authorization.

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

## 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. 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.<sup>18</sup> 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.<sup>19</sup> In other words, a license from BIS would be required to ship most items to Syria and other OFAC

<sup>18</sup> See <http://www.treas.gov/offices/enforcement/ofac/> for a full list of U.S. sanction programs.

<sup>19</sup> See 15 C.F.R. § 746.

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. Rice 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-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.pmdtc.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.pmdtc.state.gov/embargoed\\_countries/index.html](http://www.pmdtc.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](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, especially in the context of contracts governed by the laws of these countries. As of this writing, Iraq, 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

### **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.

**NOTE:** There are strict reporting requirements even where the U.S. person refuses to participate in a requested boycott action. If you see these red flags or are asked to participate in a boycott, directly or indirectly, please contact Melissa Gambling, SPARC Compliance Manager, at extension 3884 or [mgambling@rice.edu](mailto:mgambling@rice.edu).

### **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 wilful violations of the defense controls can be fined up to \$1,000,000 per violation, or ten years of imprisonment, or both.<sup>20</sup> In addition, the Secretary of State may assess civil penalties, which may not exceed \$500,000 per violation.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup>

While imposing criminal liability is fairly rare, many major U.S. companies have been assessed significant civil penalties in the millions of dollars.<sup>24</sup> For example, in 2007 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.

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

Similarly 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. 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.

## **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.

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

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<sup>20</sup> 22 U.S.C. § 2778(c) and 22 C.F.R. § 127.3.

<sup>21</sup> 22 U.S.C. § 2778(e) and 22 C.F.R. § 127.10.

<sup>22</sup> 22 C.F.R. § 127.6.

<sup>23</sup> 22 U.S.C. § 2778(g) and 22 C.F.R. § 127.7.

<sup>24</sup> For a thorough discussion of penalties imposed under the ITAR, *see* John C. Pisa-Relli, "Monograph on U.S. Defense Trade Enforcement" (February 2007).

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.

## 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.

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

For purposes of defense and dual-use exports, a *U.S. person* is defined as a U.S. entity or a U.S. citizen, a person lawfully admitted for permanent residence in the United States (*i.e.*, green card holder), or a person who is a protected individual under the Immigration and Naturalization Act (8 U.S.C. § 1324b(a)(3) (*i.e.*, certain classes of asylees).<sup>25</sup> A U.S. person may be engaged in activities that are export controlled, unless there are some additional restrictions that limit participation to U.S. citizens.

## III. INFORMATION NOT SUBJECT TO OR EXCLUDED FROM EXPORT CONTROLS

Generally, many activities that typically occur in at a university are not subject to export controls, or even if controlled, do not require licensing. 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. PUBLICLY AVAILABLE

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 two regimes 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*.<sup>26</sup> 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, below.*)

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<sup>25</sup> 22 C.F.R. § 120.15; 15 C.F.R § 734.2(b).

<sup>26</sup> 22 C.F.R. §§ 120.10(a)(5) and 120.11.

- **EAR provision:** The EAR does not control publicly available technology if it is already published or will be published.<sup>27</sup> 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**;
  - readily available at libraries open to the public or university libraries;
  - patents and open patents applications available at any patent office;
  - released at an open conference, meeting, seminar, trade show, or other gathering open to the public; or
  - released to domestic or foreign co-authors, editors, or reviewers of journals, magazines, newspapers or trade publications with the intention that such information will be made publicly available if accepted for publication or presentation.

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.<sup>28</sup>
- **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.<sup>29</sup>

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<sup>27</sup> 15 C.F.R. §§ 734.3(b)(3) and 734.7.

<sup>28</sup> 22 C.F.R. § 120.10(a)(5).

<sup>29</sup> 15 C.F.R. §§ 734.3(b)(3) and 734.9.

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 the fact 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.<sup>30</sup>

### 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.

*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 is not considered *fundamental research* if the university or its researchers accept (at the request, for example, of an industrial sponsor) other restrictions on publication of scientific and technical information resulting from the project or activity. Scientific and technical information resulting from the research will nonetheless qualify as fundamental research once all such restrictions have expired or have been removed.

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

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<sup>30</sup> 15 C.F.R. § 734, Supp. No. 1, Questions C(1) to C(6).



community (*i.e.*, no restrictions on publication / dissemination of the research results);<sup>31</sup>

- 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 fundamental research are not subject to export controls, an export license may be required if during the conduct of the research export controlled technology 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.<sup>32</sup>

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*.

**IMPORTANT NOTE: 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.<sup>33</sup>
- **EAR provision:** fundamental research means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.<sup>34</sup> Under the EAR, university-based research is not considered fundamental research if the university or its researchers 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.<sup>35</sup>

The EAR instructs that prepublication review by a sponsor of research solely to ensure that the publication would not inadvertently divulge proprietary information that the sponsor has

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<sup>31</sup> ITAR § 120.11(a)(8); EAR §§ 734.3(b)(3) and 734.8(a).

<sup>32</sup> 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.)

<sup>33</sup> 22 C.F.R. §§ 120.11(a)(8) and 120.10(a)(5).

<sup>34</sup> EAR § 734.8(c).

<sup>35</sup> EAR § 734.8(b). However, once the sponsor has reviewed and approved the release, the results may be published as fundamental research.

initially furnished, or compromise patent rights, does not constitute restriction on publication for proprietary reasons.

#### 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 regular 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](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.

**This exemption 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. Please seek guidance before applying this exception.**

#### IV. INTERNATIONAL TRAVEL

Travel outside the United States can present export control issues for Rice University faculty, staff, and students. Government regulations affect:

- The country of destination, especially if the country is subject to comprehensive U.S. sanctions (*e.g.*, Iran, Sudan, Cuba);

- Items taken abroad (including hand carried), such as laptops, data and technology, research equipment and specimens;
- Activities abroad, such as supplying certain technologies/data at a “closed” conference (note taking or the making of personal records during the conference is altogether prohibited), and otherwise sharing export controlled information with others abroad;
- Travel to, money transactions, and exchange of goods and services in sanctioned/embargoed countries; and
- Doing business with people or entities on U.S. prohibited party lists.

A license could be required from the Departments of Commerce, State, or Treasury, depending on what you are taking and the country of destination. Fortunately, travel to most countries does not usually constitute an export control problem. In some cases, an exception or exemption to the license requirements is available; however, regulations require the exception/exemption to be documented, and records must be kept for five years.

**If you are traveling outside of the United States with material that might be covered by export controls, please contact Melissa Gambling, Compliance Manager prior to departure.**

# RICE UNIVERSITY EXPORT CONTROL PROCEDURES

## I. ROLES AND RESPONSIBILITIES

### A. Compliance Manager

Rice University's Compliance Manager is responsible for the day-to-day management of Rice's export control compliance procedures. This individual works with the University's Office of the General Counsel to develop and implement policy, respond to export control questions from faculty, staff, and students, and coordinate the filing of license applications when necessary.

The responsibilities of the Compliance Manager include:

1. Serving as one of the University's Empowered Officials<sup>36</sup> for purposes of Department of State registration and license applications;
2. Maintaining and distributing this manual;
3. Developing and maintaining the export controls information on the research compliance website;
4. Developing procedures to ensure the University remains in compliance with applicable export control laws;
5. Handling periodic audits and assessments of the university's export control compliance program;
6. Developing, implementing, and conducting export control and compliance training so Rice employees are knowledgeable about export laws and the university's compliance policies and procedures;
7. Monitoring and interpreting legislation impacting export control laws;
8. Responding to questions regarding export controls from faculty and staff;
9. Screening transactions such as Non Disclosure Agreements (NDAs) and Material Transfer Agreements (MTAs) for export control risks;
10. Reviewing export control provisions in sponsored research agreements, NDAs and MTAs;
11. Assisting Human Resources in completing export control certifications for foreign national employees requiring an H-1B visa;
12. Screening Rice visitors for export control risks prior to providing them access to certain Rice resources;

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<sup>36</sup> Under ITAR §120.25, an "Empowered Official" is a U.S. person who:

- (1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and
- (2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
- (3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and
- (4) Has the independent authority to:
  - (i) Enquire into any aspect of a proposed export or temporary import by the applicant, and
  - (ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and
  - (iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

13. Working with faculty, staff, and academic schools to develop Technology Control Plans (TCPs) when export controlled information, materials, and equipment are in use;
14. Maintaining of all records related to export compliance, such as export control licenses; and
15. Handling, reporting, escalating, and taking corrective action regarding compliance problems and violations.

## **B. OFFICE OF THE GENERAL COUNSEL**

The Office of the General Counsel works with the Compliance Manager in interpreting legal guidelines regarding export controls; developing policies, procedures and training materials; and responding to questions regarding export controls from faculty, staff, and students. In particular, as the university office responsible for vetting contractual risks and obligations for the University, the Office of the General Counsel provides final approval for export control language in sponsored research agreements, NDAs, and industrial contracts, especially in cases where the language deviates from the standard language normally used by the university. The Office of the General Counsel also coordinates with outside counsel to assist in handling complex export control questions and license applications.

## **C. OFFICE OF RESEARCH**

As one of the University's senior officials, the Vice Provost for Research supports the development and enforcement of the University's export control policies and procedures, especially as they relate to research administration. The Vice Provost for Research serves as one of the University's Empowered Officials for purposes of Department of State filings.

The Office of Research, which includes SPARC and Technology Transfer, informs the Compliance Manager of research projects and agreements that may have export control risks. The Compliance Manager then works with these offices and faculty members to screen transactions for these risks and develops TCPs if necessary.

## **D. DEANS' OFFICES AND ACADEMIC DEPARTMENTS**

Personnel from these offices work with faculty and Principal Investigators in notifying the Compliance Manager and the Office of the General Counsel of situations which may present export control risks, such as sponsored research agreements, the receipt of potentially export controlled materials and technology, and the shipment of materials and information abroad. Often having background knowledge of customary research practices and administrative procedures in their schools and departments, deans' offices and departments assist the Compliance Manager and the Office of the General Counsel in developing and enforcing training programs, policies and procedures, and TCPs.

## **E. FACULTY AND PRINCIPAL INVESTIGATORS**

As subject matter experts in their fields of study, faculty and PIs are responsible for working with the Compliance Manager, the Office of the General Counsel and their deans' offices and

departments to help assess export control risks. Primarily, this means notifying the Compliance Manager as to whether export controlled goods or technology will be used or exchanged in a research project or transaction; working with the Compliance Manager to determine whether a specific good or technology is classified in the CCL or USML; and informing the Compliance Manager of foreign nationals who may have access to export controlled goods or technology.

Faculty and PIs will also work with the Compliance Manager to develop TCPs. Faculty and PIs are responsible for day-to-day management and implementation of TCPs, and are responsible for educating their research staff and students of applicable restrictions.

Faculty and PIs should understand all applicable export control restrictions applicable to their research or work at Rice. As such, they should notify the Compliance Manager and Office of the General Counsel when questions arise and seek training when needed.

## **II. TRANSACTION SCREENING**

### **A. SPONSORED RESEARCH AGREEMENTS (SRAS)**

Generally projects sponsored by many government agencies—such as the National Science Foundation and National Institutes of Health—fall under the fundamental research exemption and do not require additional review by the Compliance Manager. However, SPARC and OTT personnel should inform the Compliance Manager or the Office of the General Counsel in certain situations for additional review to determine whether a TCP should be implemented prior to conducting research and whether a license is required prior to conducting research or sharing research results. These situations include:

1. Potential military applications - these agreements may be subject to ITAR restrictions. In these cases, certain members of a proposed research team may not be able to participate unless a deemed export license is granted.
2. Restrictions on foreign national participation and publication restrictions – these restrictions would make the research fall outside the scope of fundamental research. These situations usually occur in industrial contracts and projects sponsored by certain government agencies, such as the Department of Defense and NASA.
3. Classified information – all research activities involving the use of classified information, including the receipt of classified information from sponsors or the generation of classified information here on campus, must receive prior written approval from the Vice Provost for Research.
4. Certain Federal Acquisition Regulation (“FAR”) clauses – the inclusion of certain FAR clauses in SRAs may not allow Rice to take advantage of the fundamental research exemption for that particular project. FAR clauses often appear in subcontracts involving Department of Defense funding, and the research often involves potential military or space applications. FAR clauses requiring special attention include:

- 252.204-7000 Disclosure of Information.
- 252.204-7012 Safeguarding Covered Defense Information . . . .  
(Unclassified Controlled Technical Information)
- 5352.227-9000 Export-Controlled Data Restrictions.<sup>37</sup>

Every effort will be made to structure the grant or contract in a way that does not require these particular clauses. Sometimes, though, one or all of these clauses are required to be in the subcontract, especially with regard to subcontracts and flow-down clauses. In these cases, the Compliance Manager, along with the PI’s dean, will discuss with the PI, prior to accepting the award, the need for a TCP and any restrictions on foreign national participation in the project. Should the project require a license or other government authorization, the Office of the General Counsel should review and approve prior to submission.

**B. NON-DISCLOSURE AGREEMENTS (NDAS) AND MATERIAL TRANSFER AGREEMENTS (MTAS)**

OTT will inform the Compliance Manager, via email, of NDAs and MTAs requested by faculty members. OTT will supply the names of the faculty members and the counterparties (including the name of the recipient or sending institution) and scope of work/discussion or description of materials being sent or received.

The Compliance Manager will first screen the names of the counterparties on Visual Compliance to identify any restricted persons or parties and evaluate the scope of work and/or materials subject to the agreement to determine whether there are any relevant export control restrictions (*e.g.*, a license is required prior to shipping materials or a TCP is required to secure export controlled confidential information). Depending on the information provided, the Compliance Manager may request more information, or may consult the Office of the General Counsel for additional information or clarification. The Compliance Manager will keep copies of correspondence, Visual Compliance screening results, and other research related to each request.

**C. H-1B VISA CERTIFICATIONS**

H-1B is a nonimmigrant visa that allows for the employment of foreign nationals in professional and research occupations. In 2011, the United States Citizenship and Immigration Services (“USCIS”) issued a new Form I-129 that includes a certification as to whether a license from the

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<sup>37</sup> Note that, FAR Clause 252.204-7008 Requirements for Contracts Involving Export-Controlled Items is generally acceptable and this clause does not contain terms which disqualifies the project from the fundamental research exemption.

In terms of Clause 5352.227-9000 (Export-Controlled Data Restrictions), the Compliance Manager can assist SPARC in determining whether the project’s scope involves equipment, materials, or technical data subject to ITAR. If not, an argument can be made that the clause does not apply to the research project and therefore should be deleted from the contract terms.

Departments of Commerce or State is required to release technical data to the proposed employee.

To ensure that the University can make accurate attestations in H-1B visa applications, the foreign national's hiring supervisor must complete the "Certification of U.S. Export Control Regulations" form, which must be signed by the hiring supervisor's department chair/director and responsible dean. The Compliance Manager (or the Assistant Vice Provost for the Office of SPARC, or the Office of the General Counsel, if the Compliance Manager is unavailable) will review the form and accompanying materials to determine the appropriate certification to check in Form I-129. The Compliance Manager will confer with the Office of the General Counsel for questions and cases where it is determined that a deemed export license is needed in order for the employee to work at Rice.

The Compliance Manager, if no other issues are present or after reconciling all questions with the Office of the General, will then check the appropriate certification, sign the form, scan, and email the to the University's Human Resources department. Human Resources will then check the appropriate certification in the official Form I-129 sent to USCIS.

Attachment A contains the "Certification of U.S. Export Control Regulations." The Compliance Manager is responsible for updating this form, and substantive updates must be approved by the Office of the General Counsel.

#### **D. RICE VISITORS SCREENING**

Rice has adopted a series of formal registration processes and operating procedures to regulate how the University extends visitor privileges to use Rice resources. Through [visitor.rice.edu](http://visitor.rice.edu), the visitor and visitor's sponsors provide information about the visitor, his or her scope of work or academic activity, and type of resources requested. Various campus Approval Authorities review this information and approve or deny the visitor's use of requested resources.

The Compliance Manager is responsible for screening each visitor for export compliance risks. In particular, the Compliance Manager screens each individual on Visual Compliance to ensure there are no matches in any of the U.S. restricted party lists. The Compliance Manager will then review the entire visitor's application, paying attention in particular to the following:

- The visitor's nationality and citizenship
- The visitor's scope of work or academic activities
- The sponsor's answers to questions that may identify export control risks, such as access to information, equipment, or materials subject to restrictions on access by U.S. foreign nationals under U.S. export control laws, and description of research and activities on campus.

The Compliance Manager will bring questions to the Office of the General Counsel should there be questions or Visual Compliance matches. The Compliance Manager will approve visitor privileges only if (1) there does not appear to be any export control risks with granting this individual visitor status, based on the information provided; or (2) the visitor's sponsor has agreed to implement a TCP so that the foreign national visitor does not have access to export controlled commodities or technical data; or (3) the visitor's sponsor has agreed to grant the



visitor access to export controlled commodities or technical data only pursuant to a government exception for a license or if an export control license has been obtained.

Should (2) or (3) apply, the visitor's sponsor will work with the Compliance Manager and the Office of the General Counsel to implement the TCP and apply for any applicable export control licenses.

### **E. VISUAL COMPLIANCE**

The University has a Visual Compliance account for the purposes of screening names of individuals and entities to identify restricted persons or parties; screening equipment, materials, and technology on the CCL and USML; and for accessing the most recent versions of the EAR and ITAR. The Compliance Manager maintains the primary account for Visual Compliance, with a back-up account maintained by the Director of the Office of SPARC should the Compliance Manager be unavailable for screening.

### **III. TECHNOLOGY CONTROL PLANS**

TCPs are required whenever individuals on campus—regardless of their citizenship or permanent residency status--have access to export controlled equipment, materials, and technology. TCPs outline security measures that restrict foreign national access to export controlled equipment, materials, and technology. Examples of these measures include password protecting electronic files; filing physical files in a locked cabinet; and ensuring access to a certain laboratory are only by approved persons. TCPs are not limited to research projects; university administrators whose work could potentially involve access to export controlled equipment, materials, and technology may also be asked to sign TCPs.

The Compliance Manager will work with the PI and/or university administrator to draft the TCP. The TCP shall be signed by the above-named individuals, those participating in the research (including graduate students, post-doctoral associates, and research scientists), and staff in the administrator's office who may also potentially have access to the controlled equipment, materials, and technology. The TCP shall then be acknowledged and signed by the Compliance Manager, the Office of the General Counsel, the academic dean (if applicable), and the Vice Provost for Research.

The Compliance Manager is responsible for monitoring compliance to the TCP, although it is the responsibility of the PI and/or the university administrator for day-to-day monitoring and execution of the TCP. The Compliance Manager will keep original copies of executed TCPs.

The university's TCP template may be found at Attachment B. While the TCP template describes various security measures, the list is not exhaustive and the specific measures put in place depend on the facts and circumstances of each case.

### **IV. EXPORT LICENSES AND OTHER GOVERNMENTAL FILINGS**

Due to the sensitivity of governmental filings, the university's use of outside counsel to review such filings, and potential fees associated with such filings, the Offices of Research and of the General Counsel must approve all requests to file for an export license or other governmental

authorization. If such a request is approved, the Compliance Manager will work with the PI or employee to draft the license application. The Office of the General Counsel will also review the filings. Finally, if deemed necessary by the Office of the General Counsel, the university's designated outside counsel will review the documents prior to submission.

The Compliance Manager will keep all copies of licenses, license applications, and other documentation as required by the regulations.

## **V. TRAINING**

Due to the complexity of export control regulations, training is an important component in helping university researchers and staff understand their legal obligations and responsibilities. All faculty and staff involved with controlled research must receive appropriate training.

The university's training opportunities include:

- This manual, which provides an extensive background on export controls, and which may be accessed online by any university employee or personnel;
- Educational materials found on the SPARC website ([sparc.rice.edu](http://sparc.rice.edu));
- Lectures for graduate students and postdoctoral research associates enrolled in UNIV 594: Responsible Conduct of Research;
- In person training sessions;
- Brown bag lunches, which are open to the entire campus; and
- Advanced training for departments and research teams that conduct activities in areas most susceptible to exposure to export controlled information and materials.

## **VI. MONITORING AND AUDITING**

Periodic monitoring and auditing are important to any compliance program so that areas of improvement and violations can be detected and corrected. The following are areas in which the Compliance Manager will conduct reviews:

- TCPs – periodically, the Compliance Manager will meet with the PI and review each security measures of the TCP to ensure compliance.
- Sponsored Research and industrial contracts –the Compliance Manager will review project terms and scopes of work of sponsored research awarded and industrial contracts. This review is to ensure that all projects that should be subject to a TCP have been identified.
- Research laboratories – periodically the Compliance Manager will review the equipment, material, and chemical inventories of laboratories of science and engineering

departments. These reviews are intended to identify laboratories with items and technology subject to export controls and to confirm that TCPs are in place.

## VII. REPORTING AND INVESTIGATING VIOLATIONS

The Rice community is strongly encouraged to report internally any concerns regarding export control risks. BIS, one of the U.S. agencies that administer export controls, notes that employees who have both the conscience and confidence to step forward when actions are suspect are one of the best defenses a company has to ensure that it does not break any export compliance laws.<sup>38</sup>

The following are individuals and offices where potential concerns may be reported:

- Melissa Gambling, Compliance Manager – extension 3884
- The Office of the General Counsel – extension 5237
- Internal Audit – instructions to report potential issues confidentially through a third party hotline and website may be found on the Internal Audit website (under “To File A Report”): <http://internalaudit.rice.edu/>
- Anonymous reports may be made to the Rice University EthicsLine by calling 1-866-294-4633 or online at [www.rice.edu/ethics](http://www.rice.edu/ethics).

As Rice takes its responsibility to comply with export controls very seriously, the university encourages an environment where the community feels free to report suspected export control issues. In support of this policy, Rice Policy 813 (“Whistleblower Protection”) provides the following:

*No University faculty member, staff member or student shall interfere with the good faith reporting to the University of such suspected or actual wrongful conduct. The University prohibits any retaliation against any person for reporting in good faith such a matter through any internal channel or to any appropriate authority. The University will take all appropriate and necessary action to deal with a violation of this policy.*

Upon receiving a report, the Compliance Manager, in coordination with the Office of the General Counsel, will then investigate the issues and document each action taken. The Compliance Manager and the Office of the General Counsel may meet with the reporting party and other individuals involved with the transaction to obtain more information. As needed, relevant deans, supervisors, and/or the Vice Provost for Research may be contacted to determine appropriate disciplinary and corrective actions.

The Compliance Manager will be responsible for documenting and ensuring remedial actions are taken. The Compliance Manager will provide periodic reports to the Office of the General Counsel until all remedial actions are completed, including disclosures to the government.

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<sup>38</sup>“Compliance Guidelines: How to Develop an Effective Export Management and Compliance Program and Manual.” ([http://www.bis.doc.gov/index.php/forms-documents/doc\\_view/7-compliance-guidelines](http://www.bis.doc.gov/index.php/forms-documents/doc_view/7-compliance-guidelines))

## **VIII. CORRECTIVE AND DISCIPLINARY ACTIONS**

In recognition of the seriousness of non-compliance with export controls, the university will address non-compliance in accordance with the applicable policies and procedures, and specific actions will be implemented on a case-by-case basis depending on the severity of the suspected violation. As noted above, relevant deans, supervisors, and/or the Vice Provost for Research may be contacted to determine appropriate corrective and disciplinary actions, including disclosures to the government, if required.

## **IX. RECORDKEEPING**

Rice's policy is to maintain export-related records on a project basis. Unless otherwise provided for, all records shall be retained by the Compliance Manager no less than five years after the project's TCP termination date or license termination date, whichever is later.

BIS has specific record-keeping requirements.<sup>39</sup> Generally, records required to be kept by EAR 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.

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<sup>39</sup> See 15 C.F.R. § 762.6.

ATTACHMENT A: I-129 Certification Form



# Certification of Compliance with U.S. Export Control Regulations

As required for completion of USCIS Form I-129 Petition for a Non Immigrant Worker

**Instructions:** This form must be provided for any foreign national employee who will be sponsored by Rice University for nonimmigrant work visas H-1B, H-1B1, and O-1. Questions may be addressed to [Melissa Gambling](#) [x3884] or [Joe Davidson](#) [x5237]. Send completed and signed forms to Melissa Gambling at MS-16.

Hiring supervisor: \_\_\_\_\_ Department: \_\_\_\_\_

Name of prospective employee: \_\_\_\_\_

Country of birth: \_\_\_\_\_

Country/countries of citizenship and permanent residency: \_\_\_\_\_

Position title: \_\_\_\_\_

Attach to this form one of the following (required, and check which document is attached):

Position or job description (generic position/job descriptions will not be accepted).

Prospective employee’s CV. Attach this document if a specific job description is unavailable.

**\*The checked document(s) must be included when sending completed forms to Melissa Gambling.**

1. Location(s) where research or work will be performed: \_\_\_\_\_

2. Will the individual be engaged in fundamental research? Yes  No

The definition of fundamental research is *basic and applied research in science and engineering, the results of which are ordinarily 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 are restricted for proprietary reasons or for specific U.S. government access and dissemination controls.*

3. Will the individual be participating in research sponsored by any federal or state agencies, private foundations or corporations?

Yes  No  If yes, please identify the sponsor, fund number and type of agreement in the box below. If no, skip to question 4.

a. Are there any other contracts or agreements, funded or unfunded (such as Material Transfer Agreement, Non Disclosure, or Confidentiality Agreement), associated with the work or research to be performed? Yes  No  If yes, identify the type of agreement and the entity with whom the agreement has been negotiated:

b. Do any of the above referenced agreements and/or contracts place any restrictions on publication? For example: Does the sponsor require that it has the right to review all publications resulting from the research? Are there any pre-publication restrictions or any right to withhold permission for publication? Yes  No  If yes, please describe:

c. Do any of the sponsor-provided agreements and/or contracts place restrictions on foreign national access to or participation in the research? Yes  No  If yes, please identify the award by sponsor, sponsor award number and provide the R-fund number:

4. Will the individual be participating in research or activities for which an export control management plan is currently on file?

Yes  No  If yes, please describe:

5. Will the individual have access to (either through Rice or the sponsor) information or source code that is subject to restrictions on access by U.S. foreign nationals under U.S export control laws (e.g., Export Administration Regulations (EAR) or International Traffic in Arms Regulations (ITAR))?

Yes  No  Unsure  If yes or unsure, please describe:

6. Will the individual have access to (either through Rice or the sponsor) information or source code that is confidential or proprietary (i.e., not already or will be published; released by instruction in catalog courses and academic teaching laboratories; or included in patents and open (published) patent applications available at any patent office)?

Yes  No  If yes, please describe:

7. Will the individual have access to encryption technology (i.e., information for the development, production, or use of encryption software or commodities)?

Yes  No  If yes, please explain:

8. Will the individual have access to (either through Rice or the sponsor) any equipment or materials controlled under the ITAR, or otherwise has substantial military applicability and which has been specifically designed, developed, configured, adapted, or modified for military purposes?

Yes  No  If yes, please identify the equipment or material:

9. Will the individual be participating in research or activities intended for any of the following purposes?

Yes  No

(check any that apply)

Military purposes

Nuclear weapons or facilities

Satellite or missile technologies

Biological or chemical agents intended for military purposes.

**CERTIFICATIONS AND APPROVALS**

I hereby certify that the above and foregoing information provided on this form is, to the best of my knowledge, accurate and complete.

Hiring Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

Chair/Director: \_\_\_\_\_ Date: \_\_\_\_\_

Responsible Org Dean: \_\_\_\_\_ Date: \_\_\_\_\_

***\*Note: Please have all three individuals above (or individuals with appropriate signature authority) sign as indicated. This form will not be processed without all three, dated signatures.***

**TO BE COMPLETED BY THE OFFICE OF RESEARCH**

With respect to the technology or technical data Rice University will release or otherwise provide access to the beneficiary, Rice University certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

Please check which one is applicable:

\_\_\_\_\_ A license is *not* required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or

\_\_\_\_\_ A license *is* required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and Rice University will prevent access to the controlled technology or technical data by the beneficiary until and unless Rice University has received the required license or other authorization to release it to the beneficiary.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title



## ATTACHMENT B: TCP Template



# Rice University Technology Control Plan (TCP) Certification

Instructions: You are being asked to complete this form because you are being given access to Export Controlled technology. The information and security measures provided will allow Rice to comply with U.S. regulations governing export controls. Prior to signing the TCP, please email a copy to Melissa Gambling, Compliance Manager, ([mgambling@rice.edu](mailto:mgambling@rice.edu)).

## Part I

Principal Investigator / Faculty Member		
Telephone Number		
E-mail Address		
Brief description of export controlled item or technology		
Description of Controls (EAR/ITAR Category)		
Location(s) Covered by TCP (add additional rows if needed)	Building:	
	Office:	
Project Personnel	List Name(s) below:	List citizenship(s) / Permanent Res. Status: (most recent first)
Personnel who will have access to export controlled subject matter. <b><u>Only those without the nationality restrictions listed in the "Description of Controls" may have access to technology.</u></b>	PI Name	U.S. Citizen
Is sponsored research involved?		
If yes, identify sponsor and title		
Start date and end date of project	Start Date:    End Date:	
Estimated start date of controlled portion of the project, if different from start date above		
Attachments	1. TCP 2. Export Briefing and Certification Form(s) for each person subject to this TCP	
Approvals	_____ Yousif Shamoo Vice Provost for Research	_____ Joe Davidson Senior Associate General Counsel
	_____ [Dean] [School]	_____ Melissa Gambling Compliance Manager
	Date	Date
	Date	Date

**PROJECT PERSONNEL CERTIFICATION:**

*Instructions: Please have each individual named in the Project Personnel box on page 1 sign below. It is recommended that each individual be provided a copy of this TCP for their files.*

I hereby certify that I have read and understand this Briefing, and that I understand and agree to follow the procedures outlined in the TCP. I understand that I could be held personally liable if I unlawfully disclose, regardless of form or format, Export Controlled information, technology, software, or items to unauthorized persons.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

## Part II: Briefing and Certification on the Handling of Export Controlled Information

This project involves the use of U.S. Export Controlled information, equipment, or software. As a result, the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), or other U.S. Export-Control regulations apply to the project.

In general, “Export Controlled” means that activities, items, information, technology, and software related to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, modification, demilitarization, processing, or use of a controlled item requires an export license, or license exception, to physically export from the U.S. **OR** to discuss with or disclose to a person who is not a U.S. citizen or lawful permanent U.S. resident.

Certain information is not Export Controlled. For example, information developed as a result of “fundamental research” (basic and applied research in science and engineering, the results of which are ordinarily 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 are restricted for proprietary reasons or for specific U.S. government access and dissemination controls) **is not** Export Controlled. Further, information already in the public domain—e.g., published materials, educational information—is also not considered Export Controlled under the regulations.

It is unlawful to send or take Export Controlled information, technology, software, or items out of the U.S. without a license from the government. It is also unlawful to disclose, orally or visually (including by email, fax, phone, etc.), or transfer to a foreign person inside or outside the U.S. without prior authorization from the cognizant U.S. government agency. A foreign person is a person who is not a U.S. citizen or lawful permanent resident alien of the U.S. A person lawfully in the U.S. on a visa for work or study **is a foreign person**. The law makes no exceptions for foreign graduate students or visiting scientists.

Researchers may be held personally liable for civil or criminal violations of the U.S. Export-Control Regulations. As a result, you should be clear on the requirements and exercise reasonable care in using and sharing Export Controlled information, technology, software, or items with others. This Technology Control Plan is to help you assess, address, understand your obligations, and control access to the Export Controlled aspects of this project.

The security measures you design and implement should be appropriate to the type, nature, and level of Export Controlled information, technology, software, and/or items involved in the project. Examples of appropriate security measures include (but not limited to):

- Project Personnel - Authorized personnel must be clearly identified.
- Laboratory “work-in-progress” – Plans to protect project data and materials from observation by unauthorized individuals. This would include operating in secured laboratory spaces or during secure time blocks when observation by unauthorized persons is prevented.
- Marking of Export Controlled Information - Export Controlled information must be clearly identified and marked as Export Controlled with a legend appropriate to the applicable control.
- Work Products – Paper data, lab notebooks, reports, and research materials are stored in locked cabinets, preferably located in rooms with key-controlled access.
- Equipment, components, or other Items – Equipment, parts, components, or other tangible items and associated operating manuals, diagrams, etc. containing identified “Export Controlled” information or technology are to be physically secured from unauthorized access.
- Conversations - Discussions about the project or work products are limited to the identified contributing investigators and are held only in areas where unauthorized personnel are not present. Discussions with third party sub-contractors are only to be conducted under signed agreements that fully respect the non-U.S. citizen limitations for such disclosures.
- Phones, PDA’s, Tablets, Computers, MP3 Players, and Other Personal Electronics – No Export Controlled data or information should be loaded to, sent to, or stored on any personal electronic device. See the provision on Information Security below.

# Part III: Technology Control Plan (TCP)

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## 1 Commitment

Rice University is committed to export controls compliance. The Office of Research and the Office of the General Counsel is responsible for implementation of technology control plans as applicable. Melissa Gambling is the main contact for export control issues.

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

Please provide a brief overview of the project. Describe what sensitive data and materials will be provided and how they will be delivered.

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## 3 Physical Security

Please describe the physical security controls that will be used to prevent unauthorized access to secured areas and to protect Export Controlled materials and technology, which may include the following measures:

- Plans to protect materials (physical or digital) and to ensure that project materials not leave the secured areas (including via the network).
- Plans to ensure that work for this project is done within secured areas, such as a secured computer.
- Plans for clearly marking all physical materials (e.g. hardcopy, removable media, etc.) as Export Controlled, propriety, and/or subject to an NDA as appropriate. The plan should provide that materials be physically secured from access when not in use.
- Procedures to ensure that only project members are present in the secured areas when work on this project is being performed.
- Plans to prevent individuals not named as Project Personnel (such as visitors, etc.) from viewing or having access to any project data (physical or digital) or secured area.

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## 4 Information Security

Please explain, in sufficient detail, what information security controls will be used to protect sensitive project data. The following are examples of security controls:

- Any requirements explicitly outlined in the contract/NDA, such as technology controls, data classification, encryption, network access (or lack thereof), non-disclosure, secure destruction, etc., must be adhered to at all times.
- Electronic project data (e.g., electronic copies of progress and final reports, etc) should be password protected.

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## 5 Personnel Screening

All personnel with access to the controlled technology and their nationality are listed in the TCP Certification Form. **Any changes to the approved procedures or personnel having access to controlled information covered under this TCP will be cleared in advance by the Office of Research or the Office of the General Counsel.**

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## 6 Training and Awareness

All personnel with access to Export Controlled information, technology, software, or items on this project have read and understand the “Briefing and Certification on the Handling of Export Controlled Information.” Additional export control training for this project may be conducted by the Office of Research and Office of the General Counsel.

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## 7 Compliance Assessment

As a critical component to the University’s ongoing compliance monitoring, self-evaluation is an internal assessment process whereby procedures are reviewed and any findings reported to the Office of Research or the Office of the General Counsel. These offices may also conduct periodic evaluations (including when the Office of Research or the Office of the General Counsel are notified of additions or changes to the list of Project Personnel) and/or training to monitor compliance of the TCP procedures.

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## 8 Project Termination

Security measures will be required for Export Controlled information and items after the project termination. Please describe how Export Controlled information and items will be handled or disposed of following termination of the project: