



Technology Control Plan- Appendices A and B

Appendix A

1.0 Purpose

1.1 The Purpose of this Technology Control Plan(TCP) is to ensure that all Unites States' government regulations, laws, recommendations etc. regarding export control are adhered to by University of Wisconsin-Madison. These regulations include, but are not limited to, Export Administration Regulations(EAR), International Traffic in Arms Regulations(ITAR), and those issued by the Office of Foreign Asset Control and the Department of Defense.

1.2 These regulations prohibit the transfer of Export Controlled Material including technology, data, information, documents, software and any other restricted material to foreign national visitors, students, employees, companies, or governments unless authorized under a fundamental research, public domain, education or employment exception/exemption.

1.2.1 Licensing to allow for the transfer of export controlled data must be obtained through governmental processes BEFORE the transfer of said data occurs.

2.0 Scope

2.1 This Technology Control Plan applies to all University of Wisconsin-Madison staff, departments, colleges, personnel, employees, contractors, post-docs and anyone else who has interaction with foreign staff/students or Export Controlled Material.

2.2 This plan applies to all activities at the University of Wisconsin-Madison that involve information transfer to foreign entities not specifically identified as Fundamental Research, Public Domain, Education or Employment exceptions(as defined in Appendix B).

2.3 Disclosure of information to Foreign Persons/Entities, whether within the United States or abroad, is considered an export of information under 22 CFR§ 120-130 and/or 15 CFR§ 734. Some of this information may require an export license in order to transmit it to a Foreign Person/Entity.

2.4 31 CFR § 500 regulates interactions with sanctioned countries and their citizens. Those wishing to interact with a business, person, citizen, university in a foreign country or a Foreign Entity in the United States in regards to Export Control Material must first contact the Export Control Office to determine if licenses are needed.

3.0 References

3.1 22 CFR § 120-130, ITAR



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3.2 15 CFR § 730-774, EAR

3.3 31 CFR § 500, FACR

3.4 § 38-39 of Arms Export Control Act

3.5 Introduction to Commerce Department Export Controls



Appendix B: Definitions

B.0 Definitions

B.1 Active use: Utilizing information, technology, data, materials etc. at the present moment for a current purpose.

B.2 Data Storage Device: External hard drives, flash drives, floppy discs, CD-ROMs, sim cards and any other device that allows for electronic information to be stored outside a computer.

B.3 Deemed Export: Release of any release of technology, software, items, data, information or source code subject to the EAR, ITAR or other relevant law to a Foreign Person/Entity while they are in the United States.

B.3.1 Such release is deemed to be an export to the home country or countries of the foreign national.

B.4.1 This deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). §734.2(b)(2)(ii)

B.4 EAR: Export Administration Regulations(15 CFR § 730-774).

B.5 Education Exception: No license is required for the transfer of information to Foreign Person/Entity concerning general scientific principles commonly taught in schools, colleges or universities in a classroom setting.

B.5.1 **Please Note** that the provisions of this section do not apply to encryption software classified under ECCN 5D002 on the Commerce Control List, except publicly available encryption object code software classified under ECCN 5D002 when the corresponding source code meets the criteria specified in § 740.13(e) of the EAR. § 734.3(b)(3)(iii) Please contact the Export Control Office if you have any questions regarding this.

B.6 Employment Exception: No license is required to transfer Export Controlled Material(under the ITAR) to a Foreign National if (1) the Foreign Person is a bonafide, full-time employee of UW-Madison, (2) is not a national of certain countries of concern(Cuba, Iran, Syria, Sudan, North Korea), (3) has a permanent residence in the United States while employed by UW-Madison, and (4) has been informed, in writing, not to transfer information to other foreign persons.



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B.7 Export: Any item that is sent from the United States to a foreign destination in any manner, except a person whose personal knowledge includes Export Controlled Data, Information etc.

B.7.1 Exports include:

- a) Mailing items abroad.
- b) Phone calls to colleagues in another country, regardless of whether they are US citizens.
- c) Transmission of e-mails to a person outside of the U.S.
- d) Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the U.S. Munitions List (as governed by ITAR) or the Commerce Control List (as governed by EAR), whether in the United States or abroad.
- e) Disclosing (including oral or visual disclosure) or transferring in the United States any export controlled information to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); disclosing (including oral or visual disclosure) or transferring export controlled data to a foreign person, whether in the United States or abroad.
- F) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad. Per 22 CFR § 120.17, 15 cfr 734.2 (b).

B.8 Export Controlled Material(s): technology, data, information, software, reports, documents, pictures, blueprints, and any other implements that are included on the Commerce Control List (15 CFR § 774, Supplement 1) and/or U.S. Munitions list (22 CFR §121) or any other government document pertaining to exports as having restrictions against transmitting said information, technology, data etc. to foreign persons.

B.9 Export Control Office(ExCO): Office at the University of Wisconsin-Madison campus that handles export control matters.

B.10 Foreign Interest: Any foreign government, agency of a foreign government, representative of a foreign government, business organized, incorporated or chartered in a foreign country or per the laws of a country that is not the United States or its territories.

B.11 Foreign Person/Entity: a foreign person is any one or combination of the following:

- a) An individual who is not a citizen or national of the United States, Northern Mariana Islands or Trust Territory of the Pacific.
- b) Any individual who is not lawfully admitted to the United States for permanent residence or paroled into the United States under the Immigration and Nationality Act (8 USC 1101 et seq.).
- c) Any corporation, company, association, firm, partnership, society, joint stock company, trust, estate and other legal entity, that has its principal place of business located outside the United States.



- d) Any company who is organized or created under the laws of any State but is determined to have a significant interest, substantial control or indirectly held by any foreign person, individual, government or combination therein.
- e) Any foreign corporation, business association, partnership, trust, society, international organizations or any other entity or group that is not incorporated or organized to do business in the United States.
- f) Foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

B.12 Fundamental Research: Research in science, engineering or mathematics, the results of which ordinarily are published and shared broadly within the research community and for which researchers have not accepted restrictions for proprietary or national security reasons.

B.13 Fundamental Research Exemption: Because any information, technological or otherwise, that is publicly available is not subject to the Export Administration Regulations (EAR) (except for encryption object code and source code in electronic form or media) and thus does not require a license, "fundamental research" is not subject to the EAR and does not require a license. Please see 15 CFR § 734.8.

B.14 ITAR: International Traffic in Arms Regulations (22 CFR §120-130).

B.15 Lawfully Admitted for Permanent Residence: The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. 8 USC 1101

B.16 License: Authority issued by the Bureau of Industry and Security, Department of State, or Office of Foreign Asset Control authorizing an export, reexport, or other regulated activity.

B.17 Other Technical Devices: Portable technical devices outside of desktop computers and laptops including phones, cameras, tablets etc.

B.18 Person: Any individual, or any association or organization, public or private, which is organized, permanently established, resident, or registered to do business, in the United States or any foreign country. This includes, but is not limited to, any partnership, corporations, company, branch, or other form of association or organization, whether organized for profit or non-profit purposes; any government, or any department, agency, or commission of any government; any trade association, chamber of commerce, or labor union; or any charitable or fraternal organization.

B.19 Physical Document: Any actual and physical manifestation of information, including, but not limited to, paper documents, photographs, blueprints, schematics, drawings, plans,



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diagrams, models, formulae, tables, engineering designs and specifications, manuals and written instructions.

B.20 Public Domain Exception: No license is required to export information or research that is generally available in the public domain, such as books, journal articles, papers etc. that have been published.

B.21.1 This does not apply to physical equipment, materials, substances etc.

B.21 Public Space: Any space that is open to people without extensive restrictions on who enters the space. This includes places like libraries, unlocked classrooms, and open computer labs.

B.22 Published: Information is “published” when it becomes generally accessible to the interested public in any form, including: (1) publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution; (2) ready availability at libraries open to the public or at university libraries; (3) patents and open (published) patent applications available at any patent office; and (4) released at an open conference, meeting, seminar, trade show, or other open gathering (please see 734.7 for further discussion on open conferences). 15 CFR § 734.7

B.22.1 Software and information is published when it is available for general distribution either for free or at a price that does not exceed the cost of reproduction or distribution.

B.22.2 Please note that published encryption software classified under ECCN 5D002 on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) remains subject to the EAR, except publicly available encryption object code software classified under ECCN 5D002 when the corresponding source code meets the criteria specified in § 740.13(e) of the EAR. Please contact the Export Control Office if you have any questions regarding this.

B.23 Software: A collection of one or more “programs” or “microprograms” fixed in any tangible medium of expression. 15 CFR §772.1.

B.24 TCP: Technology Control Plan

B.25 US Person: An individual who is a citizen of the United States, an individual who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(2), or an individual who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). U.S. person also includes: the government of the United States or any department, agency, or commission thereof, the government of any State of the United



States, its territories or any subdivision, department, agency or commission thereof, any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States, any domestic corporation, partnership etc.'s foreign subsidiary, branch, officer or other permanent foreign establishment that is controlled in fact by a domestic concern.

B.25.1 The term *United States person* does not include an individual United States national who is resident outside the United States and who is either employed permanently or temporarily by a non-United States person or assigned to work as an employee for, and under the direction and control of, a non-United States person.