

Approved by: Vice-Chancellor Business & Finance

Date: May 26, 2023



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## **EXPORT CONTROLS**

### **OP-12-23-2**

#### **PREAMBLE**

There are several activities that have potential export control implications for employees and researchers at UW-Green Bay. Certain federal regulations may require the University to obtain permission from the Department of State, the Department of Commerce, or the Office of Foreign Assets Control before allowing foreign nationals to participate in research involving specific technologies or before sharing research information with persons who are not citizens of the United States or permanent resident aliens. These export control regulations have the potential to limit the research opportunities of University researchers and their students, affect publication rights, and/or prevent international collaboration. In addition, violations of these export control regulations can result in the loss of research contracts, monetary fines, or prison.

Export controls apply in a university setting if:

- (1) Research results cannot be published until approved by the sponsor, or
- (2) Items or information have been received from an outside source under a confidentiality agreement.

#### **POLICY**

Export controls primarily refers to the federal [International Traffic in Arms Regulations \(ITAR\)](#) and the [Export Administration Regulations \(EAR\)](#).

The ITAR governs the export of “defense articles” and “defense services”. The EAR governs the export of “dual-use” technologies—items that are used, or have the potential to be used, for military and non-military purposes if such export could adversely affect the national interests of the U.S. Under the ITAR the term “export” means the transfer of items, information or services overseas, or their provision to a foreign person inside the U.S. (including, for example, a student in a classroom or a colleague in a research lab).

The definition of “export” under the EAR is very similar to the definition under the ITAR. Both sets of regulations apply only to items and information that are not publicly available; therefore, the results of academic research are generally exempt from both the ITAR and the EAR provided that the results have been published (ITAR) or are intended for publication (EAR).



The above cited regulations do not apply to information that is in the public domain or to information that is the result of fundamental research activities, as defined by federal law. Therefore, it is the policy of the UW-Green Bay to pursue its mission in teaching, research, and service in a manner that enables the University to claim the benefit of public domain or fundamental research exemptions from federal export regulations whenever possible, while always complying with such regulations.

If the research is to be conducted under export control restrictions without an export license, the Principal Investigator shall certify (ITAR EAR Certification Form) that controls are in place to protect the restricted items or data from disclosure to non-resident foreigners and from export out of the country.

If a research sponsor requests publishing or security restrictions after a grant agreement (without such restrictions) has been executed, the Principal Investigator shall contact ORSP before agreeing (formally or informally) to any such publishing or security restrictions.

#### **REVIEW PROCEDURE:**

The Office of Grants and Research (OGR), the Associate Vice-Chancellor of Policy & Compliance and the Principal Investigators (PI) associated with the contracts and/ or sponsored programs must conduct a thorough review of research projects and contract and grant provisions to determine the applicability of export control regulations and confirm if any exemption exists to the regulation.

1. The Principal Investigator will disclose in their submission to the Office of Grants and Research.
  - a. Knowledge of any restrictions on access to or publication of research and technical data
  - b. Limitations on the participation of foreign nationals in the research effort, or other restrictions rendering exemption from export control regulations inapplicable.

Disclosure of awareness of restrictions will not result in rejection of the protocol or project. OGR will work with the PI, sponsoring agency and others as necessary to assess the impact of the restrictions or limitations and determine appropriate mitigation.

2. Upon receiving notice of award, the OGR will review the terms of all contracts, letters of commitment or grants for provisions that;
  - Restrict access to or publication of research and technical data
  - Limit the participation of foreign nationals in the research effort
  - Which otherwise may render the exemptions from the export control regulations inapplicable.

The results of this review must be recorded by OGR and provided to the PI.

#### **ASSESSMENT**

If the results of the two above stated reviews indicate that an exemption from the export control regulations may not be available, the PI and OGR will discuss the alternatives including modification of the terms of agreement or contracts; restrictions on involvement of applicable foreign nationals in the project; or rejection of the project.



If mitigation is not available through these methods OGR will forward the assessment and supporting documentation to the Office of General Counsel. General Counsel will review the assessment provided to confirm the lack of availability of an exemption. OGR, the PI and a representative of the Office of General Counsel will confer and together they will determine if the research falls into one of the categories of technology designated by the Department of State or the Department of Commerce as export controlled, or if the restrictions imposed by the Office of Foreign Assets Control apply.

If the research contract or grant falls under the terms of any of these regulations, OGR under direction of the Office of General Counsel, will contact the research sponsor to attempt to negotiate the removal or modification of the provisions in the contract or grant that affect the University's exemption from export control regulations. If such negotiation does not result in the removal or modification of the identified clauses consideration for the application of a license will be made.

#### **APPLICATION FOR A LICENSE**

If the above process does not result in mitigation to obtain an exemption, the Director of OGR will determine if the University will apply for an export control license; conduct the research under export control restrictions; or reject the research effort.

If the Director of OGR determines to apply for a license, they will work with the Office of General Counsel to apply for an export control license. If requested by the OGR and approved by the Office of General Counsel an application shall be made through legal counsel.

Neither the PI, nor any other person may conduct any work under a contract or grant, or proposed contract or grant until this process has been completed and any required export control license has been issued.