

**(MONTANA STATE UNIVERSITY
CERTIFICATION ON THE HANDLING OF EXPORT CONTROLLED INFORMATION**

Research Project Title: _____

OSP Proposal # _____

Sponsor: _____

The research project identified below will involve the receipt and/or use of technical data that is controlled under United States export control laws: the Export Administration Act and Export Administration Regulations (“EAR”), enforced by the Bureau of Industry and Security in the Department of Commerce or the Arms Export Control Act and its Implementing regulations, the International Traffic in Arms Regulations (“ITAR”), enforced by the Office of Defense Trade Controls in the State Department.

ITAR: The ITAR regulations control the export of equipment, technology and technical data that are primarily military in nature. It is unlawful under the ITAR regulations to send ITAR controlled technical data to any foreign persons outside the United States or to disclose – in written, oral or visual form -- ITAR-controlled technical data to any foreign persons in or outside the United States unless one of several exclusions applies or the State Department has issued a license authorizing the disclosure or export of the technical data to specific foreign persons.

EAR: The EAR regulations control the export of equipment, technologies (including software), and technical data that serve primarily civil uses. The prohibition on the export or disclosure of technical data controlled under the EAR regulations is determined on a country-by-country basis for each disclosure of controlled technical data. As a result, it is unlawful to export technical data out of the US or to disclose technical data in or outside the US to foreign persons of certain countries for which a license is required as a condition of making such exports and disclosures.

Definitions:

A “**foreign person**” is anyone who is “not a lawful permanent resident” of the United States (i.e., not a green card holder) or does not have refugee or asylum status.

In general, **export controlled technical data** is specific information that is needed to develop, produce, maintain, manufacture, assemble, test, repair, operate, modify, process or otherwise use equipment or technologies that are on the control lists of the EAR or the ITAR. Controlled technical data may take the form of “blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.” Basic marketing information on function or purpose of equipment; general system descriptions; general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities and related information, and information that is in the public domain -- commonly available to interested persons – does not qualify as controlled technical data under the export control laws. The export laws and regulations determine if technical data is controlled, not your intended or actual use of the information.

Obligations: Recipients of export controlled technical data may be held personally liable for disclosures of export-controlled technical data to unauthorized foreign persons. As a result, researchers must take reasonable measures to prevent the disclosure to and use and access of export-controlled technical data by unauthorized, unlicensed foreign persons. What qualifies as reasonable depends on the circumstances.

Examples of measures researchers should consider adopting include clearly marking “controlled” technical data that is controlled, identifying personnel who may lawfully access the technical data, storing hard copies of controlled technical data in locked cabinets or desks, securing access to electronic copies of and communications containing controlled technical data by passwords, user ids, or other controls; storing technical data in a single location; making only that number of copies of technical data as is necessary, and requiring all persons with lawful access to controlled technical data to sign this certification.

Penalties: Individual liability for the disclosure of controlled technical data to unauthorized foreign persons under the ITAR includes fines up to \$500,000 per violation for civil violations and up to ten years imprisonment and penalties up to \$1,000,000 per violation for criminal violations. Liabilities under the EAR may involve fines ranging from \$10,000 to \$120,000 for each civil violation and fines ranging from \$50,000 to \$1,000,000 for each criminal violation and 10 years imprisonment. Individual researchers and the university also face loss of export privileges and debarment from federal contracts and grants.

Certification: I certify that I am familiar with the export control issues summarized above and have read and understand this certification. I understand that I could be held personally liable if I unlawfully disclose export controlled technical data to foreign persons and agree to take reasonable measures to prevent unauthorized foreign persons from having access to or using any export controlled technical data I may receive under the contract identified below. I agree to take appropriate security measures and to contact OSP or Legal Counsel before making any type of disclosure of controlled technical data to any foreign person.

Signature of Researcher:

_____ Date: _____

Department: _____

Submit completed certification to Leslie Schmidt, OSP, Room 309, Montana Hall.

For additional information on export controls, contact OSP or visit the Bureau of Industry and Security web site at <http://www.bxa.doc.gov/policiesandregulations/index.htm> for information on EAR, the Office of Defense Trade Controls web site at http://www.pmdtc.org/itar_index.htm for information on ITAR.