Regulation 1 August 1996
No. 380-1-18

Security
TECHNOLOGY TRANSFER, DISCLOSURE OF INFORMATION AND CONTACTS WITH FOREIGN REPRESENTATIVES

Supplementation to this regulation is prohibited except upon proponent's approval. USACE Commanders will submit their request for approval to HQUSACE (CEPM-S-FL), WASH, DC 20314-1000, through chain of command channels.

Section 1 - General

1. Purpose. The purpose of this regulation is to establish security policy, responsibility, and guidance for control of foreign visitors during visits to Corps' facilities, foreign participation in unclassified contracts, foreign liaison officers and/or exchange officers, and the release of USACE information to foreign nationals and governments. This regulation is intended to supplement, but not replace, AR 380-10, Technology Transfer, Disclosure of Information and Contacts with Foreign Representatives, and other governing regulations and laws of the United States.

2. Applicability. This regulation applies to all HQUSACE/OCE elements, subordinate elements, laboratories, field operating activities (FOA), and all civil works projects. OCONUS USACE activities will adhere to local command policies and procedures governing interaction with foreign representatives. Significant conflicts will be resolved at the HQUSACE (CEPM-S-FL) level.

3. References.

Required and related publications are listed in Appendix A.

4. Explanation of Terms. Special terms used in this regulation are explained in the Glossary.

5. Responsibilities of USACE Subordinate Commanders.

a. Each USACE major subordinate command, laboratory or field operating activity will appoint, in writing, a Foreign Disclosure Officer (FDO) for that activity. Specific duties of the FDO include, but are not limited to, the following:

(1) Verify positive identity (visas, picture I.D., etc.) of all Corps' foreign national contractors/subcontractors prior to hiring of the foreign individuals.

(2) Verify positive identity of permanent residents of the United States visiting Corps' facilities. Provide a brief synopsis of each visit to HQUSACE (CEPM-S-FL) on a quarterly basis.

(3) Coordinate all visits of foreign nationals to their activity with HQUSACE (CEPM-S-FL) unless otherwise specified in this regulation.

(4) Coordinate release of Corps' information to foreign nationals with HQUSACE (CEPM-S-FL) unless otherwise specified in this regulation.

(5) Review Invitational Travel Orders (ITO) issued to foreign nationals for appropriateness prior to submission to HQUSACE (CEPM-S-FL).

(6) Furnish copies of DD Form 2345 (Canadian Visits Under the U.S./Canada Joint Certification Program) to HQUSACE (CEPM-S-FL) on a quarterly basis.

(7) Brief contact officers of foreign nationals on their duties.

(8) Assist in the preparation of a Delegation of Disclosure Authority Letter (DDL) to the host supervisor and contact officer for each foreign national assigned to their activity as a liaison officer or under an exchange agreement.

(9) Ensure that visits of NATO representatives pertain to NATO specific information or refer potential NATO visitors to HQUSACE (CEPM-S-FL).

(10) Ensure a letter of request is forwarded through HQUSACE (CEPM-S-FL) to HQDA (DAMI-POC) for approval of all classified meetings that will involve foreign participation.

(11) Ensure DDLs relating to foreign data exchange agreements are forwarded through HQUSACE (CEPM-S-FL) to the appropriate approving authority.

b. Each USACE major subordinate command, laboratory, or field operating activity will follow periodic guidance from

HQUSACE (CEPM-S-FL) regarding transactions with countries of concern.

Section 2 - Visits by Foreign Nationals or Representatives

6. Public Domain Tours. The local commander may approve public domain tours to organizations, agencies, activities, installations, and facilities over which USACE exercises administrative control or security cognizance.

7. Visits by Foreign Nationals who are Permanent Residents of the United States. The local commander may approve public domain/unclassified visits by foreign nationals who have been lawfully admitted to the United States for permanent residence to organizations, agencies, activities, installations, and facilities over which USACE exercises administrative control or security cognizance. Commanders will be responsible for verifying the legal status of such foreign nationals. Information pertaining to each of these visits will be furnished to HQUSACE (CEPM-S-FL) on a quarterly basis. Such information should include the names of the foreign nationals, affiliations, dates of the visit, purpose of the visit, and benefits to the United States. This authorization does not apply to visits during the performance of a contract. The release of controlled-unclassified information is not authorized during these visits. Requests for exceptions must be coordinated with the proponent of the information to be accessed and forwarded to HQUSACE (CEPM-S-FL) for approval.

8. Visits by Other Foreign Nationals or Representatives of a Foreign Country. Visits by foreign nationals or representatives of a foreign country and visits by representatives of the North Atlantic Treaty Organization (NATO) who are visiting for reasons which are other than NATO specific to organizations, agencies, activities, installations, and facilities over which USACE exercises administrative control or security cognizance, which includes visits to commercial firms performing work under contract to USACE, are governed by the provisions of AR 380-10 and shall be referred to HQUSACE (CEPM-S-FL), for approval, unless otherwise specified in this regulation. All requests for such visits must include the following information:

a. Whether a technical briefing for the foreign nationals will be required during the visit; and

b. A statement that the visit will involve only unclassified information with no direct military application.

9. The commander of any USACE activity is empowered to postpone or deny any visit when he or she determines the visitor(s) cannot be accommodated. If the commander recommends the denial of a visit, the local Foreign Disclosure Officer (FDO) will immediately provide the HQUSACE (CEPM-S-FL) notification and justification in order that the embassy involved may be notified.

10. Invitational Travel Orders.

a. Requests for issuance of invitational travel orders (ITO) to foreign nationals must be forwarded to HQUSACE (CEPM-S-FL) for review and approval prior to commencement of travel. Upon concurrence, CEPM-S-FL will return the request to the order issuing authority for final authentication by the designated official.

b. Additional guidance may be found in AR 380-10, paragraphs 5-13 and 5-14.

11. Formal Invitations to Visit - Refer to AR 380-10, paragraph 5-14.

Section 3 - Liaison Officers/Exchange Personnel

12. Liaison Officers. Liaison officers are foreign government officials, either military or civilian employees, who are designated by their governments to act as representatives of that government to an Army component in connection with bilateral or multilateral programs. Issues involving liaison officers are governed by the provisions of AR 380-10 (Section III, paragraphs 5-25 through 5-28) and shall be referred to HQUSACE (CEPM-S-FL) for coordination with and approval of HQDA (DAMI-POC).

13. Foreign Exchange Personnel. Foreign Exchange Personnel are foreign military personnel under the Personnel Exchange Program or civilian and military personnel under the Scientist and Engineer Exchange Program who, with the exception of specific security requirements, are integrated into the Department of the Army (DA) work force to perform either general or highly specialized duties. Issues involving foreign exchange personnel are governed by the provisions of AR 380-10 (Section IV, paragraphs 5-29 through 5-36) and will be referred to HQUSACE (CEPM-S-FL) for coordination with and approval of HQDA (DAMI-POC).

Section 4 - Participation of Foreign Nationals in Contracts Involving Access to Army/Corps' Information

14. General.

a. Title 8, U.S. Code 1324a, makes employment of an unauthorized alien unlawful; this includes use of labor through contract(s). It is the local Commander's responsibility to verify documents establishing the positive identity of potential foreign contractors or subcontractors prior to their hiring of these individuals.

b. Documents that establish both identity and employment eligibility follow:

(1) U.S. Passport (unexpired or expired)

(2) Certificate of U.S. Citizenship (INS Form N-560 or N-561)

(3) Certificate of Naturalization (INS Form N-550 or N-570)

(4) Unexpired foreign passport, with I-551 stamp or attached INS Form I-94 indicating unexpired employment authorization

(5) An Alien Registration Receipt Card with photograph (INS Form I-151 or I-551)

(6) Unexpired Temporary Resident Card (INS Form I-688)

(7) Unexpired Employment Authorization Card (INS Form I-688A)

(8) Unexpired Reentry Permit (INS Form I-327)

(9) Unexpired Refugee Travel Document (INS Form I-571)

(10) Unexpired Employment Authorization Document issued by the INS which contains a photograph (INS Form I-688B)

Commanders should retain a copy of these documents for three years after the date of hiring the individual or one year after the date the individual's employment is terminated, whichever is later.

c. Foreign Participation in Classified Contracts. Refer to AR 380-10, paragraph 3-12.

d. Participation of foreign nationals in contracts when contractors/subcontractors have no access to information (i.e.,

custodial and lawn maintenance contractors) may be approved by local Commanders for ingress/egress.

e. Participation of foreign nationals in classified contracts and in contracts where contractors/subcontractors may come in contact with any information, unclassified or classified, requires approval by HQUSACE (CEPM-S-FL) or higher. Requests for such participation must be submitted to HQUSACE (CEPM-S-FL).

15. Procedures and Requirements. Commanders of USACE activities will ensure the following criteria are met for requests that involve the participation of foreign nationals in unclassified contracts:

a. Information being disclosed during the performance of the contract is not listed on the U.S. Munitions list, which information requires a license to release.

b. Each contract will be reviewed by Counsel for legal sufficiency before submission to HQUSACE (CEPM-S-FL).

c. Paragraph 2-18c, AR 380-19, states that foreign nationals will not be employed in positions that meet the definition of Automated Data Processing (ADP) I or II, unless specifically approved by CDR USACE. A definition of ADP Categories I, II, and III is included in the Glossary of this regulation. Contracts that require ADP access will identify ADP category before submission to HQUSACE (CEPM-S-FL).

d. Paragraph 2-17b, AR 380-19, requires that all consultant and contractor or subcontractor personnel meeting the requirements of an ADP I, II, or III position will, at a minimum, be submitted for a security investigation as listed below. Unless other requirements apply, such as the need to access classified or sensitive material, the investigation need not be completed before the individual is placed in an ADP position, but must be initiated within three working days of being placed in an ADP position. Foreign nationals will be restricted to working on stand-alone systems, without an internal or external modem until a favorable investigation is completed.

(1) ADP-I. Single-Scope Background Investigation.

(2) ADP-II. National Agency Check or National Agency Check with Inquiries.

(3) ADP-III. National Agency Check, Entrance National Agency Check, or National Agency Check with Inquiries.

e. Any requests to visit other U.S. Government or defense contractor facilities or installations must be forwarded for review and approval to HQUSACE (CEPM-S-FL) in accordance with AR 380-10. Requests must be submitted at least 30 days in advance.

f. USACE cameras, video recorder cameras, voice recording devices, notebook or laptop computers, cellular telephones, etc. are not authorized to be removed from the USACE installation/facility by the foreign national.

g. Access to photocopiers, facsimile machines is not authorized.

h. Access to secure telephones is not authorized.

i. Requests for exceptions to this policy must be coordinated with the originator of the information accessed and forwarded to HQUSACE (CEPM-S-FL) for review and approval.

j. Approval of a contract with the participation of a foreign national does not relieve commanders of their responsibilities under the Arms Export Control Act, 22 U.S.C. 2751 et seq. and other laws of the United States.

16. Access to Information.

a. Protected citizens, as defined in the glossary, will be allowed the same access to information as U.S. citizens (e.g., if access to certain information would require an investigation or other clearance for a U.S. citizen, protected citizens would also be required to have this investigation or clearance).

b. It is the responsibility of the Commanders to monitor the status of the alien's application for citizenship by the examination of citizenship documents (i.e., application, naturalization papers, etc.). Aliens not intending to apply for U.S. citizenship on the date of their first eligibility (five years after the date of being lawfully admitted for permanent residence) are not considered protected individuals and, therefore, will not have access to the same information as a U.S. citizen. For example, an individual who has been a permanent resident of the U.S. for 20 years would not be considered a protected individual.

c. Only U.S. information specifically determined to be in the "public domain" or "commercially available" may be disclosed

without prior approval by HQUSACE (CEPM-S-FL). Technical information must contain distribution "A" in accordance with DoD Directive 5230.24 (Distribution Statement on Technical Reports) for release (See Glossary for definitions of different types of software). Proprietary information, unless releasable to the public, must have the written concurrence of the proponent of the information before release can be made.

d. Foreign contractors/subcontractors will only be allowed access to contract-specific information needed for the performance of their duties at USACE facilities. Access to information may be oral, visual, or documentary (written and computer media) "public domain" or "commercially available." Documentary information is not authorized for retention by foreign contractors.

17. Access to USACE Facilities. The following procedures will apply to all foreign nationals participating in unclassified contracts or visiting any USACE facility:

a. A badge or pass will be issued that identifies the bearer as a foreign national and is valid for only the specific facility during normal duty hours.

b. The badge or pass will be displayed on the outer clothing so that it is clearly visible at all times.

c. Such badges authorize unescorted access to necessary work areas and all public areas, i.e., restrooms, cafeteria, etc., Monday through Friday, during normal business hours only, except Federal holidays. Access during other times or to other areas requires the contractor's assigned U.S. Army Contact Officer, described in paragraph 4-6 of this regulation, or their alternate to be present.

d. If the badge or pass is forgotten or lost, unaccompanied access to USACE will be denied. Escorted access only by the U.S. Army Contact Officer or their alternate will be permitted and required.

18. Access to Computers.

a. A foreign national who is a contractor/subcontractor will be restricted to working on stand-alone systems, without an internal or external modem until a favorable investigation is completed. Access to any other computer systems, including any local area network, is unauthorized.

b. A foreign national who is a contractor/subcontractor will only be permitted access to commercially available, public domain, to include computer media, or unclassified information that is within the Corps' purview to release.

c. The removal of computer software, data or other publications from USACE facilities is not authorized without HQUSACE (CEPM-S-FL) written approval and coordination with the U.S. supervisors.

19. Contact Officers\Alternate Contact Officers.

a. Contact officers and alternate contact officers will be designated in writing to control the activities of foreign contractors/subcontractors at USACE elements.

b. Contact officers or their alternates will be physically in the immediate work area of the foreign national who is a contractor/subcontractor during the entire work period.

c. Contact officers/alternate contact officers will:

(1) Ensure the issuance of a foreign contractor badge or pass.

(2) Ensure the foreign national who is a contractor/subcontractor is escorted, when appropriate.

(3) Become familiar with all regulations applicable to foreign nationals who are contractors/subcontractors and disclosure of information.

(4) Be responsible for the foreign national who is a contractor/subcontractor receiving a briefing concerning access limitations and any other requirements within this guidance.

Section 5 - Release of Information to a Foreign National or Government

20. General. Except as provided elsewhere in this regulation, issues involving the release of information to a foreign national or governments are governed by the provisions of AR 380-10 and will be referred to HQUSACE (CEPM-S-FL). The Corps element referring the issue to HQUSACE (CEPM-S-FL) will include a recommendation pertaining to the suitability for release based on both the "need-to-know" from the U.S. viewpoint and the benefit to the U.S. Government. Also included should be

a signed reply addressed to the requester, in duplicate, with appropriate publications recommended for release. If requested publications are unavailable at the time of the reply, provide a specific date when they will be available. When requested information is not recommended for release, the referral to HQUSACE (CEPM-S-FL) will state the reasons for denying the request.

21. Release of Unclassified Information.

a. Direct release of USACE unclassified information (which has been cleared by the local FDO prior to mailing) to a foreign requester is authorized if either release is authorized by approved exchange agreement or protocol, or the foreign requester is certified to the USACE activity and direct release authority is within the terms of their certification. In either case, the following types of information may be released:

(1) Tripartite and standardization material within agreed terms of reference and which is released to duly designated members of Tripartite Working Groups, Correspondence Groups and Committees in accordance with AR 34-1.

(2) Instructional materials for foreign trainees. (NOTE: Students requesting publications that do not pertain to their training should be advised to submit their requests to HQUSACE (CEPM-S-FL) for review.)

(3) Material consisting of brochures, pamphlets and publicity material appropriate for public release.

(4) Material consisting of unclassified plans and/or specifications which are requested from prospective foreign bidders.

(5) Material consisting of unclassified technical information and reports marked Distribution A, "Distribution Unlimited, Approved for Public Release."

b. Foreign nationals will be directed to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, or the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 for any documents these agencies have available for sale.

c. Requests from a foreign book store, mapping agencies, etc. should be referred to HQUSACE (CEPM-S-FL).

22. **Release of Classified Information**. Disclosure or denial of classified military information (CMI) to foreign nationals, foreign governments or international organizations will be submitted in writing through HQUSACE (CEPM-S-FL) to HQDA (DAMI-POC) , Washington, D.C. 20310 for approval. AR 380-10 will serve as guidance.

FOR THE COMMANDER:

2 Appendices
APP A - References
APP B - Glossary

ROBERT H. GRIFFIN
Colonel, Corps of Engineers
Chief of Staff

APPENDIX A - REFERENCES

Section 1
Required Publications

AR 34-1
International Rationalization/Standardization and Interoperability

AR 70-31
Standards for Technical Reporting

AR 70-33
Mutual Weapons Development Data Exchange Program (MWDDEP) and Defense Development Exchange Program (DDEP)

AR 70-58
International Professional (Scientists and Engineers) Exchange Program

AR 380-5
Department of the Army Information Security Program

AR 380-10
Technology Transfer, Disclosure of Information and Contacts with Foreign Representatives

AR 380-19
Information Systems Security

AR 380-67
Personnel Security Program

AR 381-12
Subversion and Espionage Directed Against the U.S. Army (SAEDA)

AR 550-51
Authority and Responsibility for Negotiating, Concluding, Forwarding, and Depositing of International Agreements

AR 614-10
U.S. Army Personnel Exchange Program with Armies of Other Nations; Short Title: Personnel Exchange Program

Section 2
Related Publications

Code of Federal Regulations
Title 8 Aliens and Nationality

AR 12-15
Joint Security Assistance Training (JSAT) Regulation

AR 25-55
The Department of the Army Freedom of Information Act Program

AR 530-1
Operations Security

DoD 5200.1-R
Information Security Program Regulation

DoDD 5230.24
Distribution Statements on Technical Documents

Foreign Assets Control Regulations for the Financial Community

APPENDIX B - GLOSSARY

ADP Position Categories

Critical-sensitive positions

ADP-I positions. Those positions in which the incumbent is responsible for the planning, direction, and implementation of a computer security program; major responsibility for the direction, planning and design of a computer system, including the hardware and software; or, can access a system during the operation or maintenance in such a way, and with a relatively high risk for causing grave damage, or realize a significant personal gain.

Noncritical-sensitive positions

ADP-II positions. Those positions in which the incumbent is responsible for the direction, planning, design, operation, or maintenance of a computer system, and whose work is technically reviewed by a higher authority of the ADP-I category to ensure the integrity of the system.

Nonsensitive positions

ADP-III positions. All other positions involved in computer activities.

Commercially Available Software

Commercial-off-the-shelf software or hardware licensed by author.

Contact Officer

DA official designated in writing to oversee and control all contacts, requests for information, consultations, and other activities of foreign representatives who are assigned to, or are visiting, a DA activity.

Controlled Unclassified Information (CUI)

Information of such a sensitivity as to warrant placing a degree of control over its use and dissemination to further various national interests, but not to the degree required for classified information. Categories of CUI include:

Technical information that relates to research, development, engineering, test, evaluation, production, operation,

maintenance, or employment of military equipment systems that, if disseminated outside of the U.S. Government, would be subject to export controls prescribed in the Arms Export Control Act or Executive Order 12470.

Information which falls under Operations Security (OPSEC), AR 530-1.

Foreign Disclosure Officer

DA member designated in writing to oversee and control coordination of disclosures of CMI and CUI.

Foreign Ownership, Control or Influence (FOCI)

Situation in which a foreign national, firm, or government is assumed to possess dominance of or authority over a U.S. firm to such a degree that the foreign entity may gain unauthorized access to U.S. CMI.

Foreign Representative

Either a foreign national or a representative of a foreign interest.

Freeware

Computer software which may be distributed on Bulletin Board Systems, and for which the author requests no license fee or registration fee.

Individuals Visiting Under the Auspices of the North American Free Trade Agreement (NAFTA)

A citizen of Canada or Mexico who seeks temporary entry to the United States as a business person to engage in business activities at a professional level. These are Canadian or Mexican individuals who have been provided a Form I-94 and admitted to the United States under the classification symbol TN. Definitions pertaining to NAFTA Visas follow:

Temporary entry, as defined in the NAFTA, means entry without the intent to establish permanent residence.

Business Activities at a Professional Level means those undertakings which require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional.

Business Person, as defined in the NAFTA, means a citizen of Canada or Mexico who is engaged in the trading goods, providing services, or conducting investment activities.

Engage in Business Activities at a Professional Level means the performance of prearranged business activities for a United States entity, including an individual. It does not authorize the establishment of a business or practice in the United States in which the professional will be self-employed. They will provide a Form I-94 with the classification symbol TN. These professional individuals will not have a green card.

Integrated Officers/Foreign Exchange Personnel

Foreign military and civilian personnel who are integrated into the DA work force to perform either general or highly specialized duties under the auspices of applicable exchange program regulations.

Protected Individuals

A citizen or national of the United States or a lawfully admitted alien for permanent residence but does not include an alien who fails to apply for naturalization within six months of date the alien first becomes eligible (by virtue of period of lawful permanent residence). Aliens not intending to apply for U.S. citizenship on the date of their first eligibility (five years after the date of being lawfully admitted for permanent residence) are not considered protected individuals and, therefore, will not have access to the same information as an U.S. citizen. For example, an individual who had been a permanent resident of the U.S. for 20 years could not be considered a protected individual.

Public Domain

Unclassified information that has been, is, or can be deemed suitable for disclosure to the public at large, in accordance with AR 70-11 and AR 360-5. Foreign governments can purchase public domain information from the Government Printing Office, Washington, DC and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22151.

Public Domain Software

Computer software on which no copyright exists (usually by a specific statement to that effect by the author), and which may be freely used and distributed.

Shareware

Computer software which is distributed on the "Honor System" which may be freely copied and distributed, but for which a registration fee or payment is required for continued use beyond an initial evaluation period.

Specially Designated Nationals

Usually persons who or which are not nationals of a designated target country, but who nonetheless are treated as nationals or as the government in applying sanctions to their transactions; they are typically front organizations. The term also includes actual nationals who are highlighted as being of special concern to the Treasury Department by being mentioned on the Specially Designated Nationals and Blocked Entities list so that persons subject to the jurisdiction of the United States will know that they are prohibited from dealing with them.