

IMPORT AND EXPORT CONTROL

Overview:

The California State University's mission of education and research and the international nature of science and academic discourse require that the CSU system maintain an open academic environment without regard to citizenship or nationality status. Recently, federal officials have expressed concern about academic research that could result in the disclosure of information that would be harmful to national security interests of the United States. In addition, all international shipments of research materials must strictly comply with U.S. export control laws. Therefore, the California State University system, through its faculty and staff, must ensure that it performs its research in a manner that complies with both governmental regulations and University policy.

U.S. national security, economic interests and foreign policy dictate that there be appropriate export control of goods and technology that could contribute to the military potential of US adversaries. 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. The export laws and regulations aim at achieving various objectives, such as preventing

Each set of regulations has its own rules that govern how one may export an item on the list or share information with a foreign

with a sponsored research project.

- ITAR U.S. Munitions List can be found at: http://www.pmdtc.state.gov/regulations_laws/itar.html

(2) How do I obtain a license?

- See ITAR § 123 for information relating to obtaining a license to export defense articles. License procedures vary based on how the item is being exported and where it is going.
- See ITAR § 124 for information related to obtaining a license for defense services.
- See ITAR § 125 for information relating to obtaining a license for the export of technical data and classified defense articles.

VI. What exceptions are there under ITAR?

There are two main exceptions under ITAR, the Public Domain exception and the Fundamental Research Exclusion.

The Public Domain exclusion means that one does not need to obtain a license under ITAR for information that “is published and which is generally accessible or available to the public.”³ For instance, professors teaching “general scientific, mathematical, or engineering principles commonly taught in colleges and universities” falls under the public domain.⁴ For specific information see ITAR § 120.11.

“Fundamental Research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly.”

Questions to Ask:

(1) What am I exporting?

Does the item I am exporting have a specific Export Control Classification Number (“ECCN”)? An ECCN is a code that corresponds to a particular item listed in the Commerce Control List. The Commerce Control List is located in Supplement Number 1 of Part 774 of EAR.

o How to determine the ECCN number Example: “Assume that you have polygraph equipment that is used to help law enforcement agencies. What would be your ECCN?”⁹

Start by looking in the Commerce Control List under the category of electronics (Category 3) and product group that covers equipment (Product Group A).¹⁰ Then read through the list to find whether your item is included in the list.

Categories:

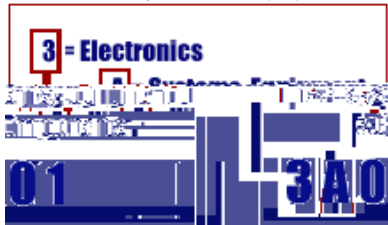
- o 0 = Nuclear Materials, Facilities and Equipment
- o 1 = Materials, Chemicals, Microorganisms, and Toxins
- o 2 = Materials Processing
- o 3 = Electronics
- o 4 = Computers
- o 5 = Telecommunications and Information Security
- o 6 = Sensors and Lasers
- o 7 = Navigation and Avionics
- o 8 = Marine
- o 9 = Propulsion Systems, Space Vehicles, and Related Equipment

Product Groups:

- o A = Systems, Equipment, and Components
- o B = Test, Inspection, and Production Equipment
- o C = Material
- o D = Software
- o E = Technology

Example: ECCN= 3A001

- o “3” = Electronics (Category)
- o “A” = Systems, Equipment, and Components (Product Group)



(Above picture taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>)

³ ITAR § 120.11, ⁴ ITAR § 120.10, ⁵ ITAR § 120.15, ⁶ ITAR § 120.15, ⁷ ITAR § 120.15, ⁸ ITAR § 125.4

⁹ Taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>

2) Where is the item going?

a. (1) “Once you have classified an item, the next step is to determine whether you need an export

license based on the 'reasons for control' of the item and the country of ultimate destination."¹¹
This information is listed under the item's ECCN number under reason for control.

i. Example: 1. ECCN 3A981 POLYGRAPHS

3A981 Polygraphs (except biomedical recorders)

ii. Then locate the

Commerce Country Chart

Reason for Control

Country	Chemical & Biological		Nuclear		National		Missile		Denial of Access		Other	
	CB	NS	FC	CC	AT	CB	NS	NP	NS	NP	NS	NS
Guyana	X	X	X	X					X	X	X	X
Honduras	X	X	X	X					X	X	X	X
Indonesia	X	X	X	X					X	X	X	X
Iran	X	X	X	X					X	X	X	X
North Korea	X	X	X	X					X	X	X	X
Sudan	X	X	X	X					X	X	X	X
Syria	X	X	X	X					X	X	X	X
Cuba	X	X	X	X					X	X	X	X
Other Countries												

1. "Yes. 3A981 is controlled for Crime Control (CC) reasons under CC Column 1 and the Country Chart shows that such items requires a license for Honduras"¹⁹

(3) Who will be the end-user (i.e. who is the final destination)?

a. "Although a relatively small percentage of all United States exports and re-exports require a BIS license virtually all exports and many re-exports to embargoed destinations and countries designated as supporting terrorist activities require a license. These countries are Cuba, Iran, North Korea, Sudan and Syria. Part 746 describes embargoed destinations and refers to certain additional controls imposed by the OFAC"²⁰

(4) Applying for a License

a. If the item you are exporting does require a license you must apply for a license You can apply for a license online at www.bis.doc.gov/snapt/index.htm. You may also submit a "Multipurpose Application Form" (Form BIS-748F). The requirements for this form are located in Part 748 of EAR

VIII. What exceptions are there under EAR

Not all exports require a license under EAR. Some exports qualify for an exception as discussed above, some items qualify under the Fundamental Research Exclusion, some items qualify under the Publicly Available exception, and some items are not on the Commerce Control List.

The Publicly Available exclusion means that one does not need to obtain a license under EAR for information that is already widely published or widely available. For instance, this exception excludes license requirements for information released by "instruction in catalog courses and associated teaching laboratories of academic institutions."²¹ For specific information see Part 734.3(b)(3); 734.7-734.11.

18 Taken from [http:// www.bis.doc.gov/licensing/exportingbasicshtm](http://www.bis.doc.gov/licensing/exportingbasicshtm)

19 Taken from <http:// www.bis.doc.gov/licensing/exportingbasicshtm>

20 Taken from <http:// www.bis.doc.gov/licensing/exportingbasicshtm>

21 EAR Part 734.9

Fundamental Research is defined as the “basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product

22 EAR Part 734.8

23 Taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>

24 Taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>

25 Taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>

26 Taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>

27 Taken from www.bis.doc.gov/compliancean-0.0iao

intention that all interested and technically qualified persons should be able to attend (§734.7(a)(4)(ii) of this part).

Question 5: Would it make any difference if the conference were to take place in another country?

Answer: No.

Question 6: Must I have a license to send the paper I propose to present at such a foreign conference to the conference organizer for review?

Answer: No. A license is not required under the EAR to submit papers to foreign organizers of open conferences or other open gatherings with the intention that the papers will be delivered at the conference, and so made publicly available, if favorably received. The submission of the paper is not subject to the EAR (§734.7(a)(4)(iii) of this part).

Question 7: I teach a university graduate course on design and manufacture of very high speed integrated circuitry. Many of the students are foreigners. Do I need a license to t

researchers. However, if your company and the researchers have agreed to a prohibition on publication, then you mus

Answer: You probably do need a license (§7348(d) of this part). However, if the only restriction on your publishing any of that information is a prepublication review solely to ensure that publication would compromise no patent rights or proprietary information provided by the company to the researcher your research may be considered “fundamental research,” in which case you may be able to share information because it is not subject to the EAR. Note that the information will be subject to the EAR if the prepublication review is intended to withhold the results of the research from publication.

Question 18: I am a professor at a U.S. university, with expertise in design and creation of submicron devices. I have been asked to be a consultant for a “third-world” company that wishes to manufacture such devices. Do I need a license to do so?

Answer: Quite possibly you do. Application abroad of personal knowledge or technical experience acquired in the United States constitutes an export of that knowledge and experience that is subject to the Export Administrative Regulations. If any part of the knowledge or experience your export or re-export deals with technology that requires a license under the EAR, you will need to obtain a license or qualify for a License Exception.