

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 the 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. The 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 the proliferation of weapons of mass destruction, advancing the U.S. economic interests at home and abroad, aiding regional stability, implementing anti-terrorism and crime controls, and protecting human rights.

These controls generally restrict the export of products and services based on the type of product and the destination of the export. In both the defense and high-technology sectors, the U.S. Government tightly regulates the export not only of equipment and components, but also of technology. Technology includes technical data, such as blueprints and manuals, as well as design services (including the transfer of "knowledge") and training. U.S. laws assert jurisdiction over U.S.-origin equipment and technology even after it is exported (*i.e.*, restricting the re-export or re-transfer to third parties). In addition to general export licensing, the United States maintains economic embargoes against a number of countries whose governments consistently violate human rights or act in support of global terrorism. Such embargoes bar most transactions by U.S. persons with these countries.

I. What are Export Controls?

Export controls are United States government regulations that control the mechanism and destination of export of certain information, technologies, and commodities to other countries and how persons share certain information with foreign persons in the United States. There are three main sets of regulations. First, the Department of State regulates defense articles and defense services under the International Traffic in Arms Regulations ("ITAR"). The controlled items are listed in the United States Munitions List ("USML"). The USML is composed of items specifically designed for military use or spacecraft systems. Second, the Department of Commerce regulates items that have both commercial and military/strategic use under the Export Administration Regulations ("EAR"). The controlled items are listed in the Commerce Control List ("CCL"). Items subject to EAR are items that have both a civil and military use. Those items are called "dual-use items." Third, the Treasury Department controls who an item is exported to by issuing trade sanctions and embargoes under the Office of Foreign Assets Control ("OFAC").

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 person about an item on the list. Most items on the list require one to apply for a special license before sending an item to another country or sharing information about an item with a foreign person.

II. Do these regulations affect professors?

Yes. Recently professors at numerous universities have made the news because they have been charged with export control violations. For instance, last year, a professor at the University of Tennessee was convicted of violating export control regulations. The professor allowed two foreign national students to access information regarding a United States Air Force project. Later, these foreign national students took the data to China. In his trial, the professor tried to argue “ignorance of the law” as his defense, but the judge did not allow this argument. The professor has been sentenced to four years in jail.

As the example above illustrates, the consequences of not following export control regulations is severe. If one violates ITAR, one faces civil penalties up to \$500,000 per violation, criminal penalties up to \$1,000,000 per violation, and imprisonment for up to ten years. If one violates EAR, one faces civil penalties up to \$120,000, criminal penalties ranging from \$50,000 to \$1,000,000, and imprisonment for up to 10 years. Lastly, if one violates OFAC, one faces civil penalties up to \$250,000, criminal penalties ranging from \$50,000 to \$10,000,000, and imprisonment up to 30 years.

III. What is an Export?

An export constitutes the transfer of information, commodities, software, or the shipment of an item to a foreign country. Exports may be transferred through email, mail, by using a freight forwarder, face to face, on a website, by allowing a visual inspection which presents export controlled information to a foreign person, conferences, or through hand carried items such as laptops that have export controlled information in them.

Additionally, under ITAR the exchange of information “required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of an export controlled item” is called technical data and is considered an export.¹ Further, the “furnishing of assistance, (including training) to Foreign Persons” related to an item on the USML, either in the United States or abroad, is considered defense service and is an export.²

¹ ITAR § 120.10

² ITAR § 120.9

Export Guidance: Traveling Out of the Country with Laptops and Other Equipment

You need to comply with United States export statutes and regulations whenever you take equipment, devices, computer software or technical data on a trip outside of the country.

Please contact the ORSP Research Compliance Office if you have any questions or need assistance with regard to taking an electronic device or equipment out of the country in relation to activities associated

with a sponsored research project.

In most situations, you will not need to obtain permission from the government to take the items with you and you likely will not need to take any special actions to comply with the export rules. Most of the equipment and data that you are likely to take with you are not specially controlled to most countries. As discussed in greater detail below, there is a broad exception to the export rules for taking tools of trade, with only a requirement of maintaining control; and the export rules generally will not restrain you from taking commercially available laptop computers and standard software to most countries.

If you will be temporarily traveling (less than one year) outside of the United States, you may take with you for activities related to your travel laptop computers, other portable computing devices, data storage devices and other equipment that people in your discipline would generally recognize as tools of trade as long as you maintain **effective control** of those items while you are outside of this country **AND** you are not traveling to an embargoed country (Cuba, Iran, North Korea, Syria or Sudan). You maintain effective control over an item when you either retain physical possession of the item or you secure the item in such an environment as a hotel safe, a bonded warehouse, or a locked or guarded meeting or conference facility.

Maintaining *effective control* of the items and the limit of one year do not apply if **ALL** of the following apply:

- The laptops and other computing and data storage devices are standard, off-the-shelf products that are broadly available; and
- The operating system and any encryption capabilities are of the kind that are preloaded on the computers and do not allow for user revisions to enhance communications security capabilities; and
- All of the application programs are general, commercially available software that either do not perform technical analyses; or, are general purpose scientific or engineering programs that are commercially available (e.g., for electric field calculations not aimed at a specific product); and
- All of the data stored on the computers or storage devices is publicly available (e.g., published in journals or on the web). Data and analyses from research that ordinarily would be published and are not restricted by contract from general dissemination can be treated as publicly available; and
- The travel is not to a country with special strong export controls, currently Cuba, Iran, North Korea, Syria or Sudan; and
- You have no reason to believe that there are export constraints on any of the equipment, software, data or information that would apply to your intended travel.

There are many other devices and equipment for which there are minimal constraints under the export rules. If you have an issue with regard to maintaining effective control over an item, you might check with the people identified in the first paragraph above.

You should not take with you ANY of the following without first obtaining specific advice:

- Data or information received under an obligation of confidentiality.
- Data or analyses that result from a project for which there are contractual constraints on the dissemination of the research results.
- Computer software received with restrictions on export to or on access by foreign nationals.

- Devices or equipment received with restrictions on export to or on access by foreign nationals.
- Private information about research subjects
- Devices, systems or software that was specifically designed or modified for military or space applications.
- Classified information

You should keep in mind and be prepared for the potential that customs inspectors in countries that you may visit, and in the United States when you return, may require that you allow them access to inspect the devices and equipment you have with you and all of the contents of the computers and storage devices. In the United States, the inspectors may take possession of those items for various periods of time, and even permanently depending upon the circumstances. The inspectors in other countries might do so as well.

IV. Who is a Foreign Person?

A Foreign Person is someone who is: (1) not a United States citizen; (2) has not been granted political asylum; and (3) is not a United States person employed or representing a foreign entity.

V. What steps do I take to determine if my export falls under ITAR?

Questions to Ask:

(1) What am I exporting?

Check the USML (ITAR § 121) to see if the item you are exporting is listed. The Munitions List is split into specific categories. Determine which category your item falls under and then look under that specific category to see if your item is listed. If the item is on the list below, a license will be required.

1. I = Firearms
2. II = Artillery Projectors
3. III = Ammunition
4. IV = Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
5. V = Explosives and Energetic Material, Propellants, Incendiary Agents, and their Constituents
6. VI = Vessels of War and Special Naval Equipment
7. VII = Tanks and Military Vehicles
8. VIII = Aircraft and Associated Equipment
9. IX = Military Electronics
10. XII = Fire Control, Range Finder, Optical, Guidance, and Control Equipment
11. XIII = Auxiliary Military Equipment
12. XIV = Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
13. XV = Spacecraft Systems and Associated Equipment
14. XVI = Nuclear Weapon Design and Related Equipment
15. XVII = Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
16. XVIII = Reserved
17. XIX = Reserved
18. XX = Submersible Vessels, Oceanographic and Associated Equipment
19. XXI = Miscellaneous Articles (Software, Components, etc.)

- 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?

- a. 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.
- b. See ITAR § 124 for information related to obtaining a license for defense services.
- c. 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 within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls.”⁵ This means that one does not need to apply for a license “where the resulting information is ordinarily published and shared broadly in the scientific community.”⁶ But, the Fundamental Research Exclusion is destroyed if a contract contains: (1) “restrictions on publication of scientific and technical information resulting from the project or activity;” or (2) “the research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.”⁷ For more specific information see ITAR § 120.

Further, “disclosures of unclassified technical data in the U.S. by U.S. institutions of higher learning to foreign persons who are their bona fide and full time regular employees” is allowed if: (1) the “employee’s permanent abode through the period of employment must in the United States;” (2) the “employee must not be a national of a country to which exports are prohibited pursuant to ITAR § 126.1;” and (3) “the institution informs the individual in writing that the technical data may not be transferred to other foreign persons without the prior written approval of the Office of Defense Trade Controls.”⁸ For more specific information see ITAR § 125.

VII. What steps do I take to determine if my export falls under EAR?

- EAR Commerce Control List: <http://www.bis.doc.gov/policiesandregulations/ear/index.htm>

Questions to Ask:

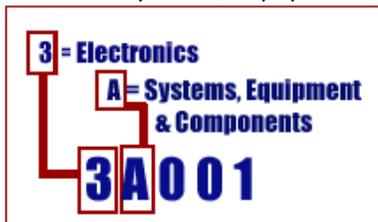
(1) What am I exporting?

- 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 designed for use in medical facilities for monitoring biological and neurophysical responses); fingerprint analyzers, cameras and equipment, n.e.s.; automated fingerprint and identification retrieval systems, n.e.s.; psychological stress analysis equipment; electronic monitoring restraint devices; and specially designed parts and accessories, n.e.s.	
License Requirements	
Reason for Control: CC	
Control(s) CC applies to entire entry	Country Chart CC Column 1
License Exceptions LVS: N/A GBS: N/A CIV: N/A	
List of Items Controlled Unit: Equipment in number Related Controls: N/A Related Definitions: N/A The list of items controlled is contained in the ECCN heading.	

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

b. (2) Compare the ECCN number with the Commerce Country Chart, which is located in Supplement Number 1 to Part 738. “These taken together define the items subject to export controls based solely on the technical parameters of the item and the country of ultimate destination.”¹²

i. For the example above, the reason for control is “CC” (crime control). “Below the main heading for each ECCN entry, you will find ‘Reason for Control’.”¹³

1. Reason for control list:
 - a. CB= Chemical & Biological Weapon
 - b. NP = Nuclear Non-Proliferation
 - c. NS = National Security
 - d. MT = Missile Technology
 - e. RS = Regional Stability
 - f. FC = Firearms Control
 - g. CC = Crime Control
 - h. AT = Anti-Terrorism
 - i. CW = Chemical Weapons
 - j. EI = Encryption Items
 - k. SS = Short Supply
 - l. UN = United National Embargo
 - m. SI = Significant Items
 - n. SL = Surreptitious Listening

ii. Then locate the Commerce Country Chart and cross reference the “specific control codes for your ECCN” against the country of final destination.¹⁴ “If there is an ‘X’ in the box based on the reason(s) for control of your item and the country of destination, a license is required, unless a license exception is available.”¹⁵

1. “Check the ‘license exceptions’ heading that appear after the ‘license requirements’ section for the ECCN. See EAR Part 740 for all license exceptions.

Common exceptions:”¹⁶

- a. LVS = Limited value shipment (Part 740.3)
- b. CIV = civil end user (Part 740.5)
- c. TSR = Technology & Software Under Restriction (part 740.6)
- d. CTP = Computers (Part 740.7)
- e. TMP = Temporary Imports, Exports, and Re-Exports (Part 740.9)
- i. See EAR Part 740.9(a)(2)(i) for “tools of the trade” exception, which includes personal use of your laptop abroad when your laptop contains export-controlled information.
- f. TSU = Technology and Software Unrestricted (Part 740.13)
- g. BAG = Baggage (Part 740.14)
- h. ENC = Encryption Commodities and Software (Part 740.17)

iii. “If there is no ‘X’ in the control code column(s) specified under your ECCN and the country of destination, you will not need an export license unless you are exporting to an end-user or end-use concern.”¹⁷

iv. Example: “You have polygraph equipment classified as 2A981 for export to Honduras. Would you be required to obtain an export license from the Department of Commerce before selling and shipping it to your purchaser?”¹⁸ (Below picture taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>)

¹² Taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>

¹³ Taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>

¹⁴ Taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>

¹⁵ Taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>

¹⁶ Taken from <http://www.bis.doc.gov/licensing/exportingbasics.htm>

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti Terror
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1
	Guyana	X	X		X		X	X	X	X	X	X	X		X
Haiti	X	X		X		X	X	X	X	X	X	X		X	
Honduras	X	X		X		X	X	X	X	X	X	X		X	
Hong Kong	X	X		X		X		X	X	X				X	
Hungary	X					X		X	X						
Iceland	X			X		X		X	X						
India	X	X	X	X	X	X	X	X	X	X		X		X	
Indonesia	X	X		X		X	X	X	X	X		X		X	

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/snap/index.htm. You may also submit a "Multipurpose Application Form" (Form BIS-748P). 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/exportingbasics.htm>

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

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

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 utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons.”²² For more specific information see Part 734.8.

IX. Do I need to check anywhere else?

Before sending your item to another country always cross-reference the lists below for the specific end-user and specific country the item is being exported to:

a. Entity List (Part 744 of EAR, Supplement 4): A list of organizations identified by BIS (“Bureau of Industry and Security”) as engaging in activities related to the proliferation of weapons of mass destruction. Depending on your item, you may be required to obtain a license to export to an organization on the Entity List even if one is not otherwise required.”²³

b. OFAC Sanctioned Countries (<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>)

c. United States State Department Prescribed Countries (http://pmdtdc.state.gov/embargoed_countries/index.html)

d. Treasury Department Specially Designated Nationals and Blocked Persons List (Part 746 of EAR, Supplement 3): A list maintained by the Department of Treasury’s Office of Foreign Assets Control comprising individuals and organizations deemed to represent restricted countries or known to be involved in terrorism and narcotics trafficking.”²⁴

e. The Unverified List (<http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/unverified-list>): “List composed of firms for which BIS was unable to complete an end-use check. Firms on the unverified list present a ‘red flag’ that exporters have a duty to inquire about before making an export to them.”²⁵

f. Denied Persons (<http://www.bis.doc.gov/index.php/the-denied-persons-list>): “You may not participate in an export or re-export transaction subject to the EAR with a person whose export privileges have been denied by the BIS. If you believe a person whose export privileges have been denied wants to buy your product in order to export it, you must not make the sale and should report the situation to BIS’s Office of Export Enforcement.”²⁶

g. Debarred List (ITAR § 127.7): A “list compiled by the State Department of parties who are barred by §127.7 of the ITAR from participating directly or indirectly in the export of defense services for which a license or approval is required by the ITAR.”²⁷

h. Nonproliferation Sanctions: “Several lists compiled by the State Department of parties who have been sanctioned under various statutes. The Federal Register notice imposing sanctions on a party states the sanctions that apply to that party. Some of the sanctioned parties are subject to BIS’s license application denial policy described in Part 744.19 of EAR.”²⁸

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 <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>

28 Taken from <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>

X. Frequently Asked Questions Related to EAR (Taken from EAR Part 734 Supplement Number 1)

Question 1: My Ph.D. thesis is on technology, listed in the EAR as requiring a license to all destinations except Canada, which has never been published for general distribution. However, the thesis is available at the institution from which I took the degree. Do I need a license to send another copy to a colleague overseas?

Answer: That may depend on where in the institution it is available. If it is not readily available in the university library (e.g. by filing in open stacks with a reference in the catalog), it is not “publicly available” and the export or re-export would be subject to the EAR on that ground. The export or re-export would not be subject to the EAR if your Ph.D. research qualified as “fundamental research” under §734.8 of this part. If not, however, you will need to obtain a license or qualify for a License Exception before you can send a copy out of the country.

Question 2: I have been invited to give a paper at a prestigious international scientific conference on a subject listed as requiring a license under the EAR to all countries, except Canada. Scientists in the field are given an opportunity to submit applications to attend. Invitations are given to those judged to be the leading researchers in the field, and attendance is by invitation only. Attendees will be free to take notes, but not to make electronic or verbatim recordings of the presentations or discussions. Some of the attendees will be foreigners. Do I need a license to give my paper?

Answer: No. Release of information at an open conference and information that has been released at an open conference is not subject to the EAR the conference you describe fits the definition of an open conference (§734.7(a) of this part).

Question 3: Would it make any difference if there were a prohibition on making any notes or other personal record of what transpires at the conference?

Answer: Yes. To qualify as an “open” conference, attendees must be permitted to take notes or otherwise make a personal record (although not necessarily a recording). If note taking or the making of personal records is altogether prohibited, the conference would not be considered “open”.

Question 4: Would it make any difference if there were also a registration fee?

Answer: That would depend on whether the fee is reasonably related to costs and reflects an

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 teach this course?

Answer: No. Release of information by instruction in catalog courses and associated teaching laboratories of academic institutions is not subject to the EAR (§734.9 of this part).

Question 8: Would it make any difference if some of the students were from countries to which export licenses are required?

Answer: No.

Question 9: Would it make any difference if I talk about recent and as yet unpublished results from my laboratory research?

Answer: No.

Question 10: Even if the research is funded by the government?

Answer: Even then, but you would not be released from any separate obligations you have accepted in your grant or contract.

Question 11: Would it make any difference if I were teaching at a foreign university?

Answer: No.

Question 12: Do I need a license in order for a foreign graduate student to work in my lab?

Answer: Not if the research on which the foreign student is working qualifies as “fundamental research” under §734.8 of this part. In that case, the research is not subject to the EAR.

Question 13: Our company has entered into a cooperative research arrangement with a research group at a university. One of the researchers in that group is a PRC national. We would like to share some of our proprietary information with the university research group. We have no way of guaranteeing that this information will not get into the hands of the PRC scientist. Do we need to obtain a license to protect against that possibility?

Answer: No. The EAR do not cover the disclosure of information to any scientists, engineers, or students at a US university in the course of industry-university research collaboration under specific arrangements between the firm and the university, provided these arrangements do not permit the sponsor to withhold from publication any of the information that he provides to the

researchers. However, if your company and the researchers have agreed to a prohibition on publication, then you must obtain a license or qualify for a License Exception before transferring the information to the university. It is important that you as the corporate sponsor and the university get together to discuss whether foreign nationals will have access to the information, so that you may obtain any necessary authorization prior to transferring the information to the research team.

Question 14: My university will host a prominent scientist from the PRC who is an expert on research in

engineered ceramics and composite materials. Do I require a license before telling our visitor about my latest, as yet unpublished, research results in those fields?

Answer: Probably not. If you performed your research at the university, and you were subject to no contract controls on release of the research, your research would qualify as “fundamental research” (§734.8(a) of this part). Information arising during or resulting from such research is not subject to the EAR (§734.3(b)(3) of this part). – But you should probably assume that your visitor will be debriefed later about anything of potential military value he learns from you. If you are concerned that giving such information

to him, even though permitted could jeopardize U.S. security interests, the Commerce Department can put you in touch with appropriate government scientists who can advise you. Send written communications, via courier to: Department of Commerce, Bureau of Industry and Security, Room 2705, 14th Street and Pennsylvania Ave., N.W., Washington, DC 20230.

Question 15: I would like to correspond and share research results with an Iranian expert in my field, which deals with technology that requires a license to all destinations except Canada. Do I need a license to do so?

Answer: Not as long as we are still talking about information that arose during or resulted from research that qualifies as “fundamental” under the rules spelled out in §734.8(a) of this part.

Question 16: Suppose the research in question were funded by a corporate sponsor and I had agreed to prepublication review of any paper arising from the research?

Answer: Whether your research would still qualify as “fundamental” would depend on the nature and purpose of the prepublication review. If the review is intended solely to ensure that your publications will neither compromise patent rights nor inadvertently divulge proprietary information that the sponsor has furnished to you, the research could still qualify as “fundamental.” But if the sponsor will consider as part of its prepublication review whether it wants to hold your new research results as trade secrets or otherwise proprietary information (even if your voluntary cooperation would be needed for it to do so), your research would no longer qualify as “fundamental.” As used in these regulations it is the actual and intended openness of research results that primarily determines whether the research counts as “fundamental” and so is not subject to EAR.

Question 17: I am doing research on high powered lasers in the central basic research laboratory of an industrial corporation. I am required to submit the results of my research for prepublication review before I can publish them or otherwise make them public. I would like to compare results with a scientific colleague from Vietnam and discuss the results of the research with her when she visits the United States. Do I need a license to do so?

Answer: You probably do need a license (§734.8(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 Exceptions.