

## **UW RESEARCHER'S GUIDE FOR EXPORT OF COMPUTERS, COMPUTER SOFTWARE AND ASSOCIATED DATA**

This guide is intended to assist UW computer users in complying with applicable U.S. export control laws when exporting computers, computer software, and associated data outside the United States. It also provides users with contact information if further questions about compliance may arise.

On-campus interactions with computers<sup>1</sup>, computer software<sup>2</sup>, and associated technical data<sup>3</sup> are NOT generally subject to U.S. export control laws because of the “fundamental research exclusion” (FRE). However, the FRE does NOT cover exports of tangible items outside the United States or software and technical data that are not the result of fundamental research. An export includes either sending or taking (including hand-carrying) such items or materials outside the United States. This Guide addresses questions you may have regarding such an export.

### **CHECKLIST**

An individual who proposes to export a UW computer, computer software or associated technical data must treat each item separately and ask all of the following questions for each:

1. Will the item be exported to an embargoed person or place?
2. Is the item listed on the “Commerce Control List” (CCL) of the Export Administration Regulations (EAR)? If so, does the EAR indicate that I must obtain a license due to the specific person or place to which I am exporting?
3. If the item is subject to export licensing under the EAR for the person or place, does the export of the item nonetheless qualify to be exported under a license exception that would preclude the need to seek such an export license?
4. Alternatively, is the item listed on the “U.S. Munitions List” (USML) and therefore subject to the export licensing provisions under the International Traffic in Arms Regulations (ITAR)?

In order to answer these questions, please read the sections below. If you have questions after reading this guide, please contact Carol Rhodes, Export Control Specialist (ECS), Office of Sponsored Programs, at (206) 543-2139 or [carhodes@u.washington.edu](mailto:carhodes@u.washington.edu).

### **EMBARGOES**

The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has imposed legal embargoes on specific countries, organizations and as well as specific people, listed as Specially Designated Nationals (SDNs). For the most updated list of embargoed countries and the SDN list, please see the OFAC website at: <http://www.ustreas.gov/offices/enforcement/ofac/>. If any user proposes to export a computer, computer software or associated data to any of the embargoed countries, please contact the ECS prior to making the export. A user should not assume that the export cannot take place and the ECS can assist with evaluating the regulations and providing guidance. The OFAC embargoes

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<sup>1</sup> “Computer” is any type of electronic computing device that contains a central processor, internal memory and any combination of input/output interfaces or devices. These include desktops (with or without displays/keyboards) and laptops.

<sup>2</sup> “Software” means any type of software program or application program, whether in source code (programming language) or object code (machine-readable language) and whether loaded on a computer or separate media such as an e-mail attachment file, CD, or flash drive. Note some encryption software will not fall within the fundamental research exclusion even if developed on a fundamental research project. Please check with the Export Control Specialist if you plan to export encryption software.

<sup>3</sup> “Associated Technical Data” means data produced by the operation of a computer, such as models, formulae, analyses, text, graphics or other output. General scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities or information that is otherwise publicly available or in the public domain is not controlled “technical data”.

only affect exports to such specifically embargoed countries and SDNs. If the proposed export is to any other destination or person, the OFAC regulations are not relevant to your export.

### EXPORT ADMINISTRATION REGULATIONS AND AN ECCN

The Export Administration Regulations (EAR), administered by the U.S. Department of Commerce Bureau of Industry and Security (BIS), regulate the export of “dual use” items, which are items that are civilian in nature (such as computers) but also capable of military application. The EAR contains a list of controlled items within its Commerce Control List (CCL) (Part 774, Supplement 1). If an item is listed, it will have an associated Export Control Classification Number (ECCN). This ECCN will provide reasons that BIS determined the item should be controlled. Such reasons include anti-terrorism, national security, and regional stability.

It is the computer user’s responsibility to determine if any given computer, computer software or associated data would be regulated for export under an ECCN. In many instances, the original supplier or manufacturer of the computer or computer software will be able to provide on-line classifications for its products that can tell the user the correct ECCN. If an item is not listed within the CCL, then, with some exceptions, the EAR rules will not be relevant, the item can be designated “EAR 99” (a catch-all designation for items not listed), and UW will not need to obtain approval by BIS for that export.

The EAR, including the CCL, is found at: [http://www.access.gpo.gov/bis/ear/ear\\_data.html](http://www.access.gpo.gov/bis/ear/ear_data.html). You may also contact the UW ECS for assistance.

### ECCN AND DESTINATION

If a UW user concludes that the computer, the computer software and/or the associated technical data ARE listed on the CCL, the second consideration is the national destination of the proposed export.

The EAR sets out individualized, country-by-country requirements within a “Country Chart” matrix found within Supplement No. 1 to Part 738. The UW user must cross reference the ECCN of the item to be exported with the country of destination. This will reveal whether BIS has determined that the reason to control the item applies to that particular country (or end-user from that country). If so, there will be an “X” in the Country Chart matrix for that destination and that reason for control.

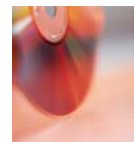
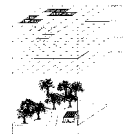
If the UW user has concluded that the item is controlled AND the proposed destination for that controlled item requires an export license, the user must then proceed with obtaining a license unless a license exception applies.

#### ARE YOU EXPORTING TECHNICAL DATA IN ADDITION TO YOUR COMPUTER?

A UW researcher exports “associated technical data,” in several ways. For example, a researcher traveling with a laptop to a project site outside the U.S. exports data contained on the laptop. Although on the laptop, the data is considered a discrete item for purposes of export control compliance. In other cases, the researcher simply sending data files outside the U.S. (e.g., physically sending off a CD ROM containing the data or sending an email with an attached data file) is exporting such data.

A researcher who is uncertain about whether given software or technical data is controlled should contact the ECS for assistance. As noted in footnote 3 in these guidelines, information or software that is commonly taught in the classroom is NOT controlled. In addition, information or software is NOT controlled if it is in the public domain (ITAR) or publicly available (EAR). This includes fundamental research results.

Much of the data UW researchers include on a laptop or CDs, flash drives, or e-mail file attachments will qualify under this education exclusion or public domain/publicly available exclusion.



## LICENSE EXCEPTIONS

Part 740 of the EAR contains several limited license exceptions. The following license exceptions are likely to be most useful to UW users who want to export a computer, computer software or associated data:

- Temporary Imports, Exports, and Re-Exports (TMP): The UW user will maintain physical custody and control over the exported UW computer, software or technical data while it is outside the United States and only intends a temporary export thereof<sup>5</sup>. In addition, the destination country is not among those expressly excluded under Part 740.9.
- Civilian End-Use (CIV): The ECCN controlling the item authorizes the license exception “CIV” and the destination country is eligible under Part 740.5 for a “CIV” export and the intended use in the destination country will not be for military uses or military end-users.
- Computers (APP): The relevant ECCN controlling the technology is ECCN 4A003 (which covers computers, electronic assemblies and specially designed components), the destination country is not Cuba, Iran, North Korea, Sudan or Syria, and the equipment or components in question do not exceed the applicable technical limitations in Part 740 for three tiers of countries.
- Technology/Software - Restricted (TSR): The relevant ECCN controlling the technology authorizes the license exception “TSR”, the destination country is eligible under Part 740.6 for a “TSR” export, and the non-U.S. recipient of the export (if any) provides a specific “written assurance” to UW.
- Technology and Software - Unrestricted (TSU): The relevant ECCN controlling the technology authorizes the license exception “TSU”, the destination country is eligible under Part 730.13, the item is within the kind and quantity indicated under Part 740.14 and the software is not encryption software as defined in Part 740.13(e)(2).
- Baggage (BAG): The user intends to use the computer, software or technical data as a tool of trade for personal use (trade, occupation, employment, vocation or hobby) for themselves or immediate family, the item is within the kind and quantity indicated under Part 740.14 and is owned by the individual.

If you intend to rely on a license exception, please contact the ECS as soon as is practicable before the export takes place. The ECS will assist you with evaluating this option. Only one exception can apply to each export and some exceptions are very narrowly defined.

## EXPORT LICENSING

If a user and the ECS determine that a license exception does not fit the circumstances of the proposed export, then the ECS will prepare and submit to BIS an appropriate export license application. Please allow at least 8 weeks to process through the UW and BIS system. UW requires that all such license applications be filed directly by the ECS.

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<sup>5</sup> A “temporary” export is defined in Part 740.9(a)(1) of the EAR. The export will end as soon as practicable but not more than one (1) year from the date of the original export, and the item is returned to its original country from which the export began. Review all exceptions with your UW ECS prior to deciding which applies to your situation.

## INTERNATIONAL TRAFFIC IN ARMS REGULATIONS

The U.S. Department of State's Directorate of Defense Trade Controls (DDTC) administers the International Traffic in Arms Regulations (ITAR), which regulate the export of "defense articles" and "defense services" to any "foreign person." The DDTC website is at: <http://www.pmddtc.state.gov/>.

Such items are narrowly defined and listed on the U.S. Munitions List (USML). USML items are for a specific military application and will not have a predominant civilian application. Within the UW environment, USML items will likely be rare. If a user is in doubt about whether a given computer, computer software or associated data may be regulated under the ITAR because it would qualify as a USML item, please contact the ECS to determine if confirmation should be obtained from DDTC prior to any export. If such an item is not listed on the USML, then the ITAR rules will not be relevant to the UW export and will not require any approval by DDTC for that export.

For further assistance, please contact Carol Rhodes, Export Control Specialist, Office of Sponsored Programs at: (206) 543-2139 or [carhodes@u.washington.edu](mailto:carhodes@u.washington.edu).