



## UW SOFTWARE EXPORT GUIDANCE: PLEASE REVIEW ALL SECTIONS

*This guidance is not intended to replace a review of the applicable regulations themselves. It is the responsibility of the exporter to know the licensing requirements of any software shipment, transmission and/or transfer prior to export. Contact [exports@uw.edu](mailto:exports@uw.edu) for questions or concerns regarding this guidance or related exports.*

### Jurisdiction

#### Department of State

Is the software being shared, transmitted, transferred or exported directly related to **defense articles**? <sup>(1)</sup>

Will the USML-listed software to be disclosed, transmitted or transferred to a **foreign person** inside or outside of the US, other than to qualified **University of Washington employees**? <sup>(2)</sup> Will the software be disclosed, transmitted, or transferred to a foreign country?

*A license may be required.*

Is the USML-listed software being shared, transmitted, transferred or exported either **published or generally accessible and available** <sup>(3)</sup> to the public?

*An exclusion from the licensing requirements may be available.*

#### Department of Commerce

Is the software being shared, transmitted, transferred or exported on the **Commerce Control List (CCL)** <sup>(4)</sup> of the Export Administration Regulations (EAR)?

Is the software to be exported to a foreign national inside/outside the US or to a foreign country?

*A license may be required or use of a license exception may be available.*

Is the software: a) educational information, b) a result of fundamental research, or c) otherwise publicly available <sup>(5)</sup>?

*An exclusion from the licensing requirements may be available.*

### Encryption

Are you sharing, transmitting, transferring or exporting UW-developed, non-commercial **encryption software** <sup>(6)</sup> in source code or object code <sup>(7)</sup> (including travel outside the country with such software)?

*A license exception may be available or No License required (NLR)*

For **software and encryption** parameters see footnote <sup>(8)</sup>.

*A license or review by US Department of Commerce may be required*

### License Exceptions Under the EAR

A License Exception under the EAR is an authorization based on a set of criteria, which when met, allows the exporter to circumvent export licensing requirements. License exceptions include Technology and Software Unrestricted (TSU) <sup>(10)</sup>, Temporary Exports (TMP) <sup>(11)</sup>, Encryption Commodities (ENC) <sup>(12)</sup> or Baggage (BAG) <sup>(13)</sup> that may apply and alleviate the need for review or license from the U.S. Department of Commerce.

Even most publicly available encryption code controlled by the Export Administration Regulations (EAR) requires the availability of a License Exception. The release of publicly available encryption code under the EAR is generally authorized by License Exception TSU, whereby the exporter provides the US Government with a "**one-time**" **notification** of the location of the publicly available encryption code prior to or at the time the code is placed in the public domain. Notification after transmission of the code outside the US is an export control violation.

### Sanctions

There are countries and denied entities which are not allowed to receive goods whether tangible or intangible. Currently, software exports to Cuba, Sudan, Syria, North Korea and Iran are prohibited. There are other embargo, sanction and entity restriction programs in place. <sup>(14)</sup>

*Please check with [exports@uw.edu](mailto:exports@uw.edu) for embargo, sanction or restriction programs that may apply to your planned software export.*

**Note 1: Defense article (22 CFR 120.3)**

Is on the US Munitions List (USML, the US State Department ITAR list) or provides the equivalent performance capabilities of a defense article on the USML.

**Note 2 Employee Exemption (22 CFR 125.4(b)(10))**

The ITAR provides for an "Employee Exemption" that allows foreign persons who are "bona fide and full-time regular employees" of University of Washington, and who meet certain qualifying criteria, to receive USML listed information without an export license. These criteria are:

- The employee's permanent abode throughout the period of employment is in the United States, and;
- The employee is not a national of a country to which the ITAR prohibits exports of defense articles and services.

If you are a UW Workforce Member and need to share USML listed information with a foreign national who may qualify as a full-time bona fide employee of the University, you will need to document the Employee Exemption by contacting [exports@uw.edu](mailto:exports@uw.edu).

**NOTE:** Foreign person Research Assistants (RAs) and researchers in J-1 and/or H-4 status are not considered to be bona fide and full-time regular employees of the UW for the purposes of this exemption.

**Note 3 Public Domain (22 CFR 120.34)**

USML-listed software that is generally accessible and available to the public is considered to be in the public domain and excluded from export controls. USML-listed software is released and placed into the public domain through/at one or more of the following:

- Fundamental research in science and engineering at an accredited institution (UW) of higher learning in the US where the resulting information is published and shared broadly in the scientific community.
- Through unlimited distribution at a conference, meeting or seminar
- Through subscriptions which are available without restriction to any individual

**NOTE:** In order for USML-listed information or software resulting from fundamental research to be considered in the public domain, the information or software must have been generated in the course of research performed **within the United States**.

**Note 4: The Commerce Control List (15 CFR 738)**

The Commerce Control List is maintained by the Bureau of Industry and Security (BIS), of the US Department of Commerce, as part of the Export Administration Regulations (EAR).  
<https://www.bis.doc.gov/index.php>

**Note 5 Exclusions from EAR (15 CFR 734.3)**

*Non-encryption* software that is publicly available is not subject to the controls under the Export Administration Regulations. Publicly available means the software is published, is considered educational information, or resulted from fundamental research.

Software is "published" when it becomes generally accessible to the public through electronic media or other vehicle of general distribution. Examples include open source software available on a website without access restrictions.

Software that is released through instruction in catalog courses and associated teaching laboratories at academic institutions is considered educational information and is not subject to export controls.

Software created during or resulting from

fundamental research also qualifies as "publicly available". Fundamental research is defined as 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 due to specific U.S. Government access and dissemination controls.

These exclusions from the regulations do NOT apply to encryption software. See Note 10.

**Note 6 Encryption Software**

The sharing, shipping, transmission or transfer of most encryption software in either source code or object code is subject to US export controls.

**Note 7 Source Code and Object Code**

Source Code is generally understood to mean programming statements that are created by a programmer with a text editor or a visual programming tool and then saved in a file. Object Code generally refers to the equipment executable file that is produced when the Source Code is compiled by a programming system. Operating system or application software is usually in the form of compiled object code.

**Note 8 Software and Encryption**

Products with the following encryption functionality require review: Software employing characteristics equal to or greater than; a symmetric algorithm with a key length in excess of 56-bits and up to 512-bits for asymmetric key exchange algorithms, and 112 bits for elliptic curve or mass market software with key lengths exceeding 64-bits. (5A002 a.1)

Excluding items using only limited cryptographic functionality (Category 5 Part 2, Related Control Note); Short-range wireless; Wireless PAN; or "Ancillary Cryptography" (740.17(b)(4))

**Note 9 Non-Disclosure Agreement**

NDA's may limit or prohibit, for proprietary purposes or security reasons, the disclosure or transfer of disclosed software.

Software received under NDA's with restrictions are permissible ONLY to the extent that they meet the requirements of the University Policy on Proprietary, Classified and Restricted Research: <https://www.washington.edu/admin/rules/policies/P/O/EO8.html>

Research carrying publication, participation and/or dissemination limitations due to NDA restrictions for associated software used on a project may preclude characterization of the research effort as "fundamental research."

When software transferred under an NDA is identified as export-controlled, an export license may be required prior to further transfer to a foreign national or transfer outside the United States.

**Note 10 License Exception TSU Technology and software Unrestricted (15 CFR 740.13)**

Encryption source code that would be considered publicly available under §734.3(b)(3) of the EAR (and the corresponding object code, if it is also made publicly available) does not require review under License Exception ENC for export and reexport once **notification** or a copy of the source code has been provided to BIS.

**Note 11**

**License Exception TMP (Temporary Exports, 15 CFR 740.9)** allows those departing from the US on university business to take with them as "tools of the trade" UW-owned or controlled, retail-level encryption items such as laptops, personal digital assistants (PDAs), and cell

phones and encryption software in source or object code to all countries except Cuba, Iran, North Korea, Sudan and Syria (Group E Countries) as long as the items and software will remain under their "effective control" overseas and are returned to the US within 12 months or are consumed or destroyed abroad.

**Note 12**

**License Exception ENC (Encryption Commodities, Software and Technology, 15CFR 740.17)**

No Notification or Review Required for private end user in countries on Supplement 3 to Part 740 (§740.17(a)(1)) (for internal development of new products, only) to U.S. subsidiaries (§ 740.17(a)(2)) and employees of U.S. companies (internal use).

Commodities and software pending mass market review are authorized for export. After the mass market review is complete, such commodities and software may be exported under ECCNs 5A992 and 5D992 using No License Required (NLR) authority.

**Note 13**

**License Exception BAG (Baggage, 15 CFR 740.14)**

allows individuals departing the US to take with them as personal baggage family-owned retail-level encryption items including laptops, personal digital assistants (PDAs), and cell phones and encryption software in source or object code. The encryption items and software must be for their personal use in private or professional activities. Citizens and permanent resident aliens of all countries except Cuba, Iran, North Korea, Sudan and Syria (Group E Countries) may take with them as personal baggage non-retail "strong" encryption software to all locations except embargoed or otherwise restricted locations.

**Note 14 Restricted Parties and Sanction Programs (Please contact [exports@uw.edu](mailto:exports@uw.edu) for a complete list)**

**[Denied Persons List](#)**

A list of individuals and entities that have been denied export privileges, maintained by BIS.

**[Unverified List](#)**

A list of parties where BIS has been unable to verify the end-user in prior transactions.

**[Entity List](#)**

A list of parties whose presence in a transaction can trigger a license requirement under the Export Administration Regulations.

**[Specially Designated Nationals List](#)**

A list compiled by the Treasury Department, Office of Foreign Assets Control (OFAC).

**[Debarred List](#)**

A list compiled by the State Department of parties who are barred by §127.7 of the International Traffic in Arms Regulations (ITAR).