Export Control Policy

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US export controls exist to protect the national security and foreign policy interests of this country. Export controls govern the shipment, transmission, or transfer of regulated items, information and software to foreign countries, persons or entities. The U.S. government maintains two primary sets of export control regulations that may impact university research. The Export Administration Regulations ("EAR") regulate exports of commercial items with potential military applications (so called "dual-use" items). The International Traffic in Arms Regulations ("ITAR") regulates exports of items and services specifically designed for military applications.

In addition to these export control regulations, university activities also may be subject to the U.S. government's economic sanctions against certain countries, entities and individuals. These economic sanctions programs are administered by the Treasury Department's Office of Foreign Asset Controls ("OFAC").

Since 9/11, the U.S. government has increased its scrutiny of universities and industry to make sure they are complying with these often-complicated regulations. As a result, researchers whose work may have export control implications, particularly those who perform research on behalf of the Department of Defense or defense contractors, must be aware of and comply with applicable laws and regulations.

CSUEB relies on proper documentation in order to make use of exclusions and exemptions from licensing requirements. Recordkeeping is important if you are involved in research efforts where it may be necessary to ship research articles outside the U.S. or share export-controlled information provided by third parties, such as vendors, subcontractors, or collaborators.

Commerce Control List Categories:
1. Nuclear & Miscellaneous (Nuclear Technology)
2. Materials, Chemicals, Microorganisms and Toxins
3. Materials Processing (Material Technology)
4. Electronics (Robotics)
5. Computers (Advanced Computer/Microelectronic Technology)
6. Telecommunications (Networking)
7. Information Security (Encryption)
8. Sensors and Lasers (Sensor Technology, Laser, Directed Energy Systems, Remote Sensing, Imaging, and Reconnaissance)
9. Navigation and Avionics (Flight Control)
10. Marine (Marine Technology)
11. Aerospace and Propulsion (Propulsion System and Unmanned Air Vehicle Subsystems)

Research that impacts any area of the control list categories is subject to this policy. Proper approvals must be established prior to engaging in the research activities of the project.

Exclusion - Fundamental Research:
CSUEB usually conducts research that qualifies as *fundamental research*. This is defined as basic and applied research in science and engineering that is ordinarily published and shared broadly within the scientific community and is distinguished from proprietary research and from industrial development, design, production and product utilization. Research will not be considered fundamental research if there are restrictions on the publication of scientific and technical information resulting from the project.

No license is required to disclose to foreign persons information that is "published and which is generally accessible or available to the public through fundamental research in science and engineering at universities where the resulting information is ordinarily published and shared broadly in the scientific community."

The fundamental research exclusion is nullified by any clause (regardless of sponsorship – federal, state, private, nonprofit, etc) that:
- Gives the sponsor the right to approve publications
- Restricts participation of foreign nationals in conduct of research by precluding access to research results
- Otherwise operates to restrict participation in research and/or access to and disclosure of research results.

The fundamental research exclusion will not apply if the university accepts any restrictions on the publication of resulting information, other than a brief (~90 day) advance review by sponsors to:
- Prevent divulging propriety information provided to the investigator by the sponsor
- Ensure that publication will not compromise patent rights of the sponsor

Public Domain/Public Policy definition:
ITAR: information which is already published and generally accessible to the public is not subject to ITAR. Information that is available through books, periodicals, patents, open conferences in the United States, websites accessible to the public with no access controls, or other public release authorized by the U.S. government, is considered in the public domain.

EAR: publicly available technology and non-encryption software, such as information that is the subject of an open patent application, published in a book or periodical, released at an open conference anywhere, available on a website accessible by the public with no access controls or information that will be published is not subject to the EAR. This includes submission of manuscripts to journals for consideration with the understanding that the article will be published if favorably received.

How to handle Export Control Items:
PIs must take the following steps to assure that they do not violate the export regulations and become personally liable for the substantial civil and criminal penalties:
- Prior to shipment of any commodity out of the U.S., determine if the commodity requires an export license and assist in securing such license, when required.

- Secure license approval or verify license exception PRIOR to shipment for all controlled items. Contact the Office of Research and Sponsored Programs for guidance on verifying license exceptions and submission of license applications.
- Assure that all technical data about export-controlled commodities qualify as "publicly available." under the above-described criteria (e.g., publish early and often).
- Do not accept publication controls or access/dissemination restrictions (such as approval requirements for use of foreign nationals), enter into 'secrecy agreements', or otherwise agree to withhold results in research projects conducted at CSUEB or that involve CSUEB facilities, students, or staff.
- Do not accept proprietary information from another that is marked "Export Controlled". Return to the manufacturer any materials they provide to you about export-controlled equipment that is marked "Confidential". Review any Confidentiality/Non-Disclosure Agreements to insure that CSUEB and you are not assuming the burden of restricting dissemination based on citizenship status or securing licenses
- Do not attend meetings that foreign nationals are prohibited from attending. Do not sign the DD2345, Militarily Critical Technical Data Agreement, as a condition of attending a conference or receiving materials from the government.
- Do not travel to conduct research or educational activities to the embargoed countries of the Balkans, Burma, Cote d'Ivoire (Ivory Coast), Cuba, Iran, Iraq, Liberia, North Korea, Sudan, Syria, or Zimbabwe without first checking with ORSP to ascertain whether a license from the Department of Treasury, Office of Foreign Assets Control, is required.

Contact the ORSP for assistance if you encounter problems in any of the above areas. We will help you to resolve the matter so that your research may proceed in a manner that avoids violation of the export regulations.