

Commerce Export Controls Impacting University Research



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Commerce Export Controls

- Dual-use items
 - subject to BIS regulatory jurisdiction
 - predominantly commercial/academic uses
 - could also be used in military applications
 - Listed in Export Administration Regulations (EAR) by Export Control Classification Number (ECCN)
 - Commerce Control List (CCL)
- May require export license
- Other Controls - USML, “600 series”
- License exceptions may be available

Jurisdiction Order of Review

- Is the item subject to the ITAR (e.g. is the item a defense article enumerated on the USML, Category XIV)?
- Is the item a 600 series item moved from the ITAR to the CCL? (see definition of “specially designed” in EAR, Part 772)
- If not, review remainder of CCL (e.g. 1C351, 1C353)

Export Control Research Related Topics

- Commodities (Items)
- Technology
- Deemed Export
- Fundamental Research exemption
- Export Control Reform

Commerce Control List (CCL)

Part 738

- The primary tool for determining license requirements.
- Lists items under the jurisdiction of BIS by technical parameters.
- Each five-digit alpha-numeric entry is called an Export Control Classification Number (ECCN).
- Items not listed are classified EAR99.
- Each ECCN lists the reasons the items are controlled (National Security, Nuclear Nonproliferation, etc.).
- These reasons for control are then cross-referenced with the destination on the Commerce Country Chart

Key Export Questions

- What is the classification of the item?
- What is the destination?
- Who is the recipient?
- What is the end use?

Biological Examples

- Biological agents and genetic elements (1C351, 1C353, 1C354) – CB1 (ww); some toxins STA elig
- Vaccines (1C991) – AT1 (limited countries)
- Biological processing equipment (2B352) – CB2 (all but AG members)
- Technology (Development, Production, Use)
 - 1E001 (dev or prod of 1C351-4) (CB1), 2E001 (dev of equip 2B350-352), 2E002 (prod of equip 2B350-352), 2E301 (use of equip 2B350-352)(CB2)
- Foreign nationals in US facility (deemed export)
- Re-exports (as well as deemed re-exports)
- License exceptions: GOV, STA, TSU

Technology

Subject to the EAR (734.3)

(a) Products and technology of U.S. origin and items located in the U.S., not regulated by another agency.

(b) Necessary for

- **“Development”**
- **“Production”**
- **“Use”**

Technology for Dual Use Items

“Development” is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.

Technology Definition Continued

“Production” means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.

Technology Definition Continued

“Use” includes all of the following:

- Operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing
- Definition of “Use” differs for 600 series items

Technology NOT Subject to the EAR (734.3)

- Publicly Available Technology and Software
- Already published or will be published (734.7)
- Arise during fundamental research (734.8)
- Educational (734.9)
- Included in certain patent applications (734.10)

Deemed Exports

- Export of controlled technology or source code
 - To a foreign national
 - Except for green card holders, permanent residents, or protected persons
 - Inside the United States
 - See EAR 734.2(b)(3)
 - <http://www.bis.doc.gov/index.php/policy-guidance/deemed-exports/deemed-exports-faqs>

Deemed Export

“Release” of controlled technology or source code, subject to the EAR to foreign persons in the U.S., or in a third country, through:

Visual inspection of U.S. origin equipment and facilities

Oral exchanges of information in the U.S. or abroad

Application of personal knowledge or technical experience acquired in the U.S

Fundamental Research

§734.8 §734.11

- “Fundamental research” is basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community.
- “Fundamental research” does not include government sponsored or proprietary research the results of which ordinarily are restricted for proprietary reasons or specific national security reasons as defined in §734.11(b)

Export Control Reform

- ITAR to EAR
- Revisions to Definitions in EAR and ITAR

ITAR to EAR

- Category XIV – Toxicological Agents
- Category XVIII – Directed Weapons
- Proposed rules close Monday August 17

Top CAT XIV Question

Q. Will removal of the “medical carve out” language for civil applications (e.g., medical or environmental use) make any public health research ITAR?

A. NO

- Must modify Controlled Agent as described in paragraph b.
- Funding must come directly from DOD
- NOW is the time to comment on any unclear or unreasonable language

Definitions – Proposed Rules

- EAR and ITAR amendments published concurrently June 3, 2015 (80 FR 31505 and 80 FR 31525, respectively)
- Comment period closes August 3, 2015

Public Comments Welcome

- Gaps, overlaps, or contradictions between the EAR and the ITAR, or among various provisions within the EAR
- Definitions of fundamental research and applied research, and whether basic and applied research definitions are needed
- Whether the Qs & As in existing Supp. No. 1 to part 734 have criteria that should be retained in part 734

More Questions

- Should the ITAR and EAR have different ‘end-to-end encryption’ standards, and do the standards adequately address transmission and storage issues
- Whether “peculiarly responsible” effectively explains how items may be “required” or “specially designed” for particular functions
- Effective date of the rule

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Contact Information

600 Series Licensing and Classification Requests: Munitions Control Division

- Director: Todd Willis, todd.willis@bis.doc.gov
- Deputy Director: Elena Love, elena.love@bis.doc.gov
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Technical Product Questions on Aircraft and Gas Turbine Engines

- Office of National Security and Technology Transfer Controls: Gene Christiansen, gene.christiansen@bis.doc.gov
- Munitions Control Division: Jeff Leitz, jeffrey.leitz@bis.doc.gov

Regulatory Interpretation and Transition Guidance

- Regulatory Policy Division: rp2@bis.doc.gov , 202-482-2440
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