

## Export Control Definitions and Commonly Used Phrases

**Commerce Control List (CCL):** The U.S. Department of Commerce list of all export restrictions. Each item on the CCL is categorized by its type and function. The CCL classifies items into 10 categories and 5 groups. If an item is not listed on the CCL, then it is considered "EAR99" which has minimal export restrictions.

**Commerce Control List (CCL) Categories:** (0) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Chemicals, "Microorganisms," and Toxins; (2) Materials Processing; (3) Electronics; (4) Computers; (5) Telecommunications and Information Security; (6) Lasers and Sensors; (7) Navigation and Avionics; (8) Marine; and (9) Propulsion Systems, Space Vehicles, and Related Equipment.

**Commerce Control List (CCL) Groups:** Each of the 10 CCL categories is subdivided into five groups representing the types of controlled items: (A) Equipment, Assemblies, and Components; (B) Test, Inspection and Production Equipment; (C) Materials; (D) Software; and (E) Technology

**Controlled Country:** Under the EAR, may refer to one of the countries subject to *§746 Embargoes and Other Special Controls*, or to a country included in one of the *Country Groups defined in Supplement No. 1 to §740* and used in conjunction with §740 license exceptions. Under the ITAR, may refer to a country identified in *ITAR §126.1, Prohibited Exports, Imports, and Sales to or from Certain Countries*.

**Deemed Export:** In addition to actual shipment of a commodity out of the country, the export regulations also control the transfer, release or disclosure to foreign persons in the United States of controlled commodities. The "deemed export" regulation states that a transfer of source code or "technology" (EAR term) or "technical data" (ITAR term) to the foreign person is "deemed" to be an export to the home country of the foreign person. This deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C.1324b(a)(3)). Accordingly, for all controlled commodities, a license or license exception is required prior to the transfer of "technology" or "technical data" about the controlled commodity to foreign persons inside the U.S. See [BIS Deemed Export Resources](#) for additional information and a Q&A.

**Defense Article:** Any item or technical data (these include military and commercial satellite and space related items, equipment, vehicles, instrumentation, software, and materials), designated by the Department of State in the International Traffic in Arms Regulations. This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items on the United States Munitions List. It does not include basic marketing information on function or purpose or general system descriptions.

**Defense Service:** Furnishing assistance (including training) anywhere (inside the United States or abroad) to foreign nationals in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles; or furnishing ITAR-controlled "technical data" to non-U.S. persons anywhere, requires authorization from the State Department. (22 CFR §120.9). While transfer of public domain information is not a defense service, the State Department has said that "it is seldom the case that a party can aggregate public domain data for purposes of application to a defense article without using proprietary information or creating a data set that itself is not in the public domain." [78 FR 31445].

**Denied Persons List** - a list of specific persons that have been denied export privileges, in whole or in part. As part of compliance to the EAR and/or ITAR, the Office of Research Administration cross-checks names of individuals that are participating or have access to EAR- or ITAR-regulated objects and data to this list.

**Dual-use:** Items that have both commercial and defense application. Items subject to the EAR are often referred to as "dual-use" (though commercial-only items also are subject to the EAR), perhaps because the Commerce Control List is very similar to the "Lists of Dual-Use Goods and Technologies" of the multilateral Wassenaar Arrangement, to which the U.S. is a party.

**EAR:** Export Administration Regulations are issued by the United States Department of Commerce, Bureau of Industry and Security (BIS) under laws relating to the control of certain exports, reexports, and activities related to dual use items on the Commerce Control List.

**EAR99:** If your item falls under U.S. Department of Commerce jurisdiction and is not listed on the CCL, it is designated as EAR99. EAR99 items generally consist of low-technology consumer goods and do not require a license in many situations. However, if your proposed export of an EAR99 item is to an embargoed country, to an end-user of concern, or in support of a prohibited end-use, you may be required to obtain a license.

**ECCN (Export Control Classification Number):** The five-character alphanumeric classification that is used to identify items on the Commerce Control List

**Educational Information Exclusion:** No license is required to share with foreign persons “information concerning general scientific, mathematical or engineering principles commonly taught in universities or information in the public domain.”

ITAR does not apply to information concerning “general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities.”

EAR does not apply to “educational information” released by instruction in catalog courses and associated teaching laboratories.

The exclusion includes courses available globally on-line (“distance learning”) – but not to OFAC-embargoed countries. As a general rule, no license is needed for classroom/lab teaching of foreign persons registered for classes in U.S. universities. Foreign students using controlled equipment to conduct research should be registered for a research credit class. The exclusion does not apply to encrypted software.

**Embargo:** A government-mandated sanction that restricts trade with a foreign country; a government prohibition against the shipment of certain products to a particular country for economic or political reasons.

**Employment Exclusion:** No license is required to share controlled technical information with a foreign person who is a full-time, bona fide university employee and has a permanent address in the U.S. while employed, provided that the person is not a national of certain countries; and is advised in writing not to share controlled information with other foreign persons.

An ITAR license is not required for universities to share information in the U.S. with Foreign Persons who are Regular and Full Time Employees of U.S. Institutions of Higher Education.

They are eligible to receive, without a license, controlled data IF:

1. the employee’s permanent abode throughout the period of employment is in the U.S.; and
2. the employee is not a national of a country to which exports are prohibited; and
3. the institution informs the employee that the data may not be further disclosed to another foreign person without the prior written approval of the State Department

Note that most graduate students would not be considered full time employees. This exemption will apply mostly to foreign persons in H-1B status.

**End-Use and End-User:** How will the item ultimately be used and who will ultimately use the item.

**Export:** An actual shipment or transmission of items, services, or technical data subject to either the EAR or the ITAR out of the United States, or the release of technology or software source code (EAR), or technical data (ITAR), to a non-U.S. person in the United States. Technology, software, or technical data is “released” for export through:

1. Visual inspection by a foreign national of U.S. origin equipment and facilities
2. Oral exchanges of information in the United States or abroad
3. Transfer or shipment via any means (physical or electronic) to a foreign entity
4. Provision of a service, or the application to situations abroad of personal knowledge or technical experience acquired in the United States

**Export Controls:** U.S. laws and regulations that restrict the flow (shipment, transmission or transfer) of certain materials, devices and technical information related to such materials and devices outside the United States or to foreign persons in the United States. They apply to all activities, including internally and externally funded. Do not assume that unsponsored activities are exempt.

**Export License:** The authorization by an export agency authority to proceed with a regulated activity (e.g. export, reexport). Export licenses can take up to a year to receive.

**Foreign National** - Any person who is not a citizen or Permanent Resident Alien of the U.S. The term applies to “persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals (i.e. has been admitted as a refugee or granted asylum). The term also applies to any foreign corporation, partnership, trust, non-profit organization, or any other organization not incorporated to do business in the U.S., international organizations, foreign governments, or diplomatic entities.

**Fundamental Research:** Basic or applied research in science and engineering where the resulting information is ordinarily published and shared broadly in the scientific community, is excluded from export controls.

- Under the EAR (15 CFR §734.8), university research normally will be considered as fundamental research unless the university or its researchers accept sponsor restrictions on the publication of scientific and technical information resulting from the project or activity. Research at companies or outside the U.S. can qualify as fundamental research

when there are no restrictions on publishing the results. The EAR specifically permits limited prepublication reviews by research sponsors to prevent the inadvertent divulging of proprietary information provided to the researcher by the sponsor or to ensure that publication will not compromise the patent rights of the sponsor.

- Under the ITAR (22 CFR §120.11(8)), only research at accredited institutions of higher learning in the U.S. can qualify as fundamental. University research will not qualify as fundamental research if: (1) the university or its researchers accept any restrictions on the publication of scientific and technical information resulting from the project or activity; or (2) the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher.

“Side deals” between a researcher and a sponsor destroy the Fundamental Research Exclusion and may also violate university policies on openness in research. A “side deal” may occur where the researcher enters into a private agreement with a sponsor that they will conduct their research project in a manner which will permit the sponsor the right to approve a publication and/or to restrict foreign persons on a research project to comply with the sponsor’s requirements. Such actions can destroy the fundamental research exclusion and expose both the individual researchers on the project and the university itself to penalties.

**Fundamental Research Exclusion:** The EAR provides that university research normally will be considered as fundamental research unless the university or its researchers accept sponsor restrictions on publication of scientific and technical information resulting from the project or activity. The EAR specifically permits limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to insure that publication will not compromise patent rights of the sponsor. The ITAR states that university research will not be deemed to qualify as fundamental research if:

1. the university or its researchers accept any restrictions on publication of scientific and technical information resulting from the project or activity; or
2. the research is federally funded and specific access and dissemination controls protecting information resulting from the research have been accepted by the university or the researcher.

**Generally Authorized:** DoE's 10 CFR 810 and OFAC's sanctions programs identify activities which are in the scope of the controls, but are already determined to be acceptable and can be conducted without additional approval as "generally authorized". The DoE regulations require the use of a general license to be reported.

**Information** can include technical data such as models, formulae, engineering designs and specifications, or technical assistance such as training or instruction.

**Informational Materials Exclusion:** Informational materials are excluded from U.S. export controls, including deemed export controls as follows:

- Information in the public domain;
- Basic marketing information on function or purpose; or
- General system descriptions of defense articles.
- All other informational materials are excluded from export controls if they fall within any of the following categories:
  - Publicly available information
  - Prerecorded phonograph records reproducing in whole or in part, the content of printed books, pamphlets, and miscellaneous publications, including newspapers and periodicals;
  - Children’s picture and painting books;
  - Newspaper and periodicals, unbound, excluding waste;
  - Music books;
  - Sheet music;
  - Calendars and Calendar blocks, paper
  - Maps, hydrographical charts, atlases, gazetteers, globe covers and globes (terrestrial and celestial);
  - Exposed and developed microfilm reproducing, in whole or in part, the content of any of the above;
  - Exposed and developed motion picture film and soundtrack; or
  - Advertising printed matter exclusively related thereto.

**ITAR:** International Traffic in Arms Regulations are issued by the Department of State, which has responsibility for the control of the permanent and temporary export and temporary import of defense articles and services.

**Item:** Refers to any tangible thing, equipment or hardware.

**OFAC Regulations:** The Office of Foreign Assets Control regulations are issued by the U.S. Department of the Treasury, which administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.

**Public Domain:** Applies only to ITAR. Information that is published and generally accessible or available to the public in the following places:

- Newsstands and bookstores
- Subscriptions that are available without restriction to any individual who desires to obtain or purchase the published information
- Second-class mailing privileges granted by the U.S. government
- Libraries open to the public or from which the public may obtain documents, including most university libraries
- Published patents
- Unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public in the United States
- Public release in any form after approval by the cognizant U.S. government department or agency
- Through *fundamental research* in science and engineering at accredited institutions of higher learning in the United States where the resulting information is ordinarily published and shared broadly in the scientific community.

**Publicly Available:** Applies only to EAR. Software and technology (except 5D002 encryption software) that:

- is or will be published,
- arises during, or result from, fundamental research,
- is educational,
- is included in certain patent applications.

Publicly available software and technology are excluded from EAR controls — but note that published 5D002 encryption software remains subject to the EAR, except publicly available 5D002 encryption object code when the corresponding source code is publicly available. For software and technology in the scope of the EAR, it may be made publicly available by a person with the right to do so without further authorization from the Commerce Department (except 5D002 encryption software).

**Public Domain Exclusion:** The Public Domain Exclusion applies to information and research results already published and actually available through:

- Libraries, bookstores, newsstands;
- Trade shows, meetings, and/or seminars open to the public;
- Websites open to the public; or
- Courses listed in the university catalog of a general nature.

The exclusion applies to a project:

- That does not involve equipment, encrypted software, listed-controlled chemicals or bioagents or toxins, and
- In which there is no reason to believe that any information or non-encrypted software being released will be used for a weapon of mass destruction, and
- For which any information or software involved in the project is already published.

Dissertation research must meet the standards for “fundamental research” to qualify as “publicly available”. If the research falls under the Public Domain Exclusion, there would be no further concerns about the need for an export license.

**Published:** Applies only to EAR. Information that is generally accessible to the interested public in any form, including:

- Periodicals, books, print, electronic, or any other media available for general distribution to any member of the public or to a community of persons interested in the subject matter, such as those in a scientific or engineering discipline, either free or at a price that does not exceed the cost of reproduction and distribution;
- Ready availability at libraries open to the public or at university libraries;
- Patents and open (published) patent applications available at any patent office; and
- Release at an open conference, meeting, seminar, trade show, or other open gathering. Software and information is published when it is available for general distribution either for free or at a price that does not exceed the cost of reproduction and distribution.

**Note:** published 5D002 encryption software remains subject to the EAR, except publicly available 5D002 encryption object code when the corresponding source code is publicly available.

**Reexport:** An actual shipment or the transmission of items subject to export regulations from one foreign country to another foreign country.

**Restricted Parties:** Individuals and entities with whom the university and its employees may not to export to or engage in controlled transactions. These include the Denied Persons List, Entity List, and Unverified List (Department of Commerce); the Debarred Parties Lists (Department of State); and the Specially Designated Nationals and Blocked Persons List (Department of Treasury).

**Restricted Research:** University research, development, or testing subject to:

- publication restrictions
- access and dissemination controls
- federally funded research with contract-specific national security restrictions
- accepting third-party controlled items or information
- providing access to, or defense services on, a defense article.

Restricted research is subject to EAR and ITAR regulations, and a license or other government approval may be required for foreign national participation.

**OFAC Sanctioned Countries:** Countries designated by OFAC as having trade sanctions imposed by the United States for reasons of anti-terrorism, non-proliferation, narcotics trafficking, or other reasons. Sanctions vary among the countries.

**Ordinarily Resident In:** There is no specific definition of "ordinarily resident in" under the OFAC regulations. "Ordinarily Resident In" generally includes:

- Individuals, regardless of nationality, residing in an embargoed country.
- Individuals holding an embargoed country passport and a non-permanent visa (student, visitor, temporary, business) for any country outside the U.S.
- Individuals holding an embargoed country passport and a non-permanent visa (visitor, temporary, business) for the U.S.

Other indicators might include:

- paying taxes in the country
- immigration status in the country
- having a year round residence in the country having a residence in the country
- the percentage of the year spent in the country

**Sanctions:** Coercive measures, such as boycotts and trade embargoes, taken by one or more nations against another guilty of violating international law.

**Sanctioned Country:** Countries designated by OFAC as having limited or comprehensive trade sanctions imposed by the United States for reasons of anti-terrorism, non-proliferation, narcotics trafficking, or other reasons. See [OFAC website](#).

**Select Agent:** Select agents and toxins are high consequence agents that pose a severe threat to public health and safety as determined by the Centers for Disease Control and the United States Department of Agriculture.

**Software:** refers to a collection of one or more computer programs or microprograms in either source code (programming statements) or object code (machine-readable instructions).

**Specially Designated Persons and Blocked Persons List:** A list of individuals and entities, maintained by OFAC, identified as terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. This list has more than 13,000 entries. See [OFAC website](#).

**Specially Designed:** Some items are subject to the ITAR or the EAR if they have properties, as a result of development, that meet or exceed the criteria in the U.S. Munitions List (ITAR) or the Commerce Control List (EAR) — this is the "catch" — and are not a fastener or other low-control item — this is the "release". There are web tools for the [ITAR](#) and the [EAR](#) to help determine whether an item is "specially designed".

**Technical Assistance:** Instruction, skills training, working knowledge, and consulting services, which may involve the transfer of technical data. Applies only to EAR.

**Technical Data:** Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled articles. This includes information in the form of blueprints, drawings, plans, instructions, diagrams, photographs, etc. It may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, and manuals and instructions written or recorded on other media or devices such as disk, tape, or read-only memories. The ITAR definition does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain.

**Technology:** Any specific information and know-how (whether in tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, manuals, or software—or in intangible form, such as training or technical services) that is required for the development, production, or use of a good, but not the good itself.

**Technology Control Plan (TCP)** - The Technology Control Plan is a vehicle which FSU uses to manage access to EAR- and ITAR-controlled objects, services, and technical data. The TCP must be kept current while the controlled objects, research, or data is at FSU.

**U.S. Munitions List (USML):** Articles, services and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act (including satellites and spacecraft).

**U.S. person:** is a citizen of United States, a lawful permanent resident alien of the U.S., (a “Green Card” holder), a refugee or someone here as a protected political asylee or under amnesty. U.S. persons also include organizations and entities, such as universities, incorporated in the U.S. The general rule is that only U.S. persons are eligible to receive controlled items, software or information without first obtaining an export license from the appropriate agency unless a license exception or exclusion is available.

**“Use” Technologies** – The routine “use” of controlled equipment by foreign persons (e.g., using it in the ordinary way specified in the user manual, in such a manner that does not disclose technical information about the equipment beyond what is publicly available), does not require a license. However, a license may be required if a foreign person is “using” the equipment in such a way as to access technical information beyond what is publicly available (for example, accessing the source code of software or modifying a piece of equipment in such a way as to gain non-publicly available technical information about its design.)

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