



Export Controls and University Research

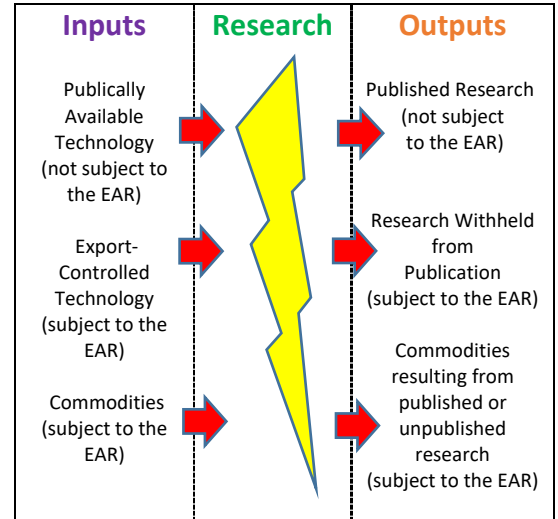
UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY

How do export controls impact universities?

Export controls primarily impact universities in the area of research and the transfer (release) to foreign nationals of technology subject to the EAR that is associated with the research.

Research:

In the university context, research in which foreign nationals participate may implicate export controls. As a general matter, a university may need to obtain an export license from BIS to release technology or source code subject to the EAR to a foreign national in the U.S. in the context of research activities. Under the EAR, such an export is a “deemed export” (“deemed” to be an export to the most recent country of citizenship or permanent residency.) However, information arising during or resulting from **fundamental research and that is intended to be published** is not subject to the EAR, and therefore its export does not require prior authorization from BIS.



BUREAU OF INDUSTRY AND SECURITY

MISSION

The Bureau of Industry and Security (BIS) advances U.S. national security, foreign policy, and economic objectives by ensuring an effective export control and treaty compliance system and promoting continued U.S. strategic technology leadership.

WHO WE ARE

BIS’s responsibilities include implementing and enforcing the Export Administration Regulations (EAR), which primarily regulate the export and reexport of dual-use items (commodities, software, technology) that have both commercial and military or proliferation applications and certain relatively less-sensitive military items.

AUTHORITY

The Export Control Reform Act of 2018 (ECRA), 50 U.S.C. §§ 4801-4852, as implemented in the EAR.

WHAT ITEMS DO WE REGULATE?

- Dual-use items – items that have both commercial and military or proliferation applications.
- Less-sensitive military items – military items that do not provide the United States with a critical military or intelligence advantage.
- Purely commercial items

IMPORTANT BIS EXPORT CONTROL TERMS

WHAT IS AN ITEM?

1. Commodity – Any article, material or supply.
2. Software – A collection of one or more “programs” or “microprograms” fixed in any tangible medium of expression.
3. Technology – Specific information necessary for the “development,” “production,” “use,” operation, installation, maintenance, repair, overhaul, or refurbishing of an item.

WHAT IS AN EXPORT?

An export is the shipment or transmission of items out of the United States or the release of technology or source code to a foreign person in the United States (deemed export).

WHAT IS SUBJECT TO THE EAR?

Items that are not exclusively controlled for export by another U.S. government agency are likely subject to the EAR. The authorization required will depend on the item’s classification (e.g., ECCN), where the item is going or to whom it is going.

WHAT IS AN ECCN?

Export Control Classification Numbers (ECCNs) categorize and describe items subject to the EAR based on their technical parameters - capabilities, functionality, and technical level. The Commerce Control List (CCL), Supp. No. 1 to part 774 of the EAR, specifies items by ECCN that are subject to the EAR. Some items subject to the EAR are not identified on the CCL. These items are “EAR99” items. Depending on their intended end user or end use, EAR99 items may require export licenses from BIS.

WHAT IS A FOREIGN PERSON?

A foreign person is any natural person who is not a lawful permanent resident of the United States, citizen of the United States, or any other protected individual as defined by 8 U.S.C. 1324b(a)(3).

WHAT IS A DEEMED EXPORT?

A deemed export is the release of technology or source code subject to the EAR to a foreign person (national) in the United States. Such release is “deemed” to be an export to the foreign person’s most recent country of citizenship or permanent residency. A BIS license may be required prior to such a release. With certain exceptions specified in the EAR, “technology” and “software” are “released” through: visual or other inspection by a foreign person of items that reveals “technology” or source code subject to the EAR to a foreign person; or oral or written exchanges with a foreign person of “technology” or source code in the United States. Note that any act causing the “release” of “technology” or “software,” through use of “access information” or otherwise, to another person requires an authorization to the same extent an authorization would be required to export or reexport such “technology” or “software” to that person.

TERMS RELATED TO ITEMS NOT SUBJECT TO THE EAR

Fundamental Research:

Under the EAR, fundamental research means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons. Under the EAR, “technology” or “software” that arises during, or results from, fundamental research and is intended to be published is not subject to the EAR. See § 734.8 of the EAR. Note also that fundamental research may occur in both academic and in private sector/industry settings.

Published:

Under the EAR, most unclassified “software” and “technology” that is “published” is not subject to the EAR. Publication may occur when such information has been made available to the public without restrictions upon its further dissemination through any of the following means: subscriptions; public libraries and other public collections; unlimited distribution at a conference, seminar meeting, etc., that is generally accessible to the interested public; public dissemination in any form; or submission to specified organizations with the intention that the information will be made publically available if accepted for publication or presentation. Note that exceptions apply; see §734.7 of the EAR for additional information.

FREQUENTLY ASKED QUESTIONS

(Additional related FAQs can be found at <https://www.bis.doc.gov/index.php/policy-guidance/faqs>)

I teach a university graduate course on design and manufacture of very high-speed integrated circuitry. Many of the students are foreigners. Do I need a license to release information in this course to my foreign national students?

No. Release of information by instruction in catalog courses and associated teaching laboratories of academic institutions is not subject to the EAR. See § 734.3 (b)(3)(iii) of the EAR.

I plan to publish in a foreign journal a scientific paper describing the results of my research, which is in an area listed in the EAR as requiring a license to all countries except Canada. Do I need a license to send a copy of the paper to my publisher abroad? Would the answer differ depending on where I work or where I performed the research?

No. This transaction is not subject to the EAR. The EAR do not cover technology that is already published or is intended to be published (including by publication in a journal) (See §§ 734.3 and 734.7 of the EAR). Your research results would be made public by the planned publication. The answer would not differ depending on where you work or performed the research (e.g., academia or the private sector).

My research sponsor will review the results of my research before I publish. Does this review affect whether my results are subject to the EAR?

It depends on the nature of the prepublication review. (See § 734.8(b) of the EAR.) Prepublication review by a sponsor of university research to ensure that the publication would not compromise patent rights or inadvertently divulge proprietary information that the sponsor has furnished to the researchers does not affect whether the research would qualify as fundamental research for EAR purposes. If the result of the review is to restrict publication, the information for which publication is restricted may be subject to the EAR.

Why Should I Comply?

Violators of the EAR, (15 C.F.R. Parts 730-774), may be subject to criminal and administrative penalties. Under the Export Control Reform Act of 2018 (50 U.S.C. §§ 4801-4852) (ECRA), criminal penalties can include up to 20 years of imprisonment and up to \$1 million in fines per violation, or both. Administrative monetary penalties can reach up to approximately \$307,000 per violation or twice the value of the transaction, whichever is greater.

HELPFUL RESOURCES

BIS Export Counseling Desks:

To speak with an export counselor, please call:

(202) 482-4811 – Washington, DC – open Monday-Friday,
8:30am-5:00pm ET

(949) 660-0144 – Irvine, CA – open Monday-Friday,
8:00am-5:00pm PT

(408) 998-8806 – San Jose, CA – open Monday-Friday,
8:00am-5:00pm PT

or e-mail your inquiry to: ECDOEXS@bis.doc.gov

BIS Website Resources:

BIS website guidance: www.bis.doc.gov

The Export Administration Regulations:
<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

Short, animated videos on a variety of export control topics:
<https://www.bis.doc.gov/index.php/online-training-room>

This Guidance does not create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, organization, party, or witness in any administrative, civil, or criminal matter.

Please refer to the Export Administration Regulations in their entirety for more complete guidance.

This guidance is intended to serve as a simplified introduction to those regulations.