

Deemed Exports & How The Export Control Certification Requirements In the New I-129 Immigration Petition Affect Employers

Presented by

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What You will Learn

- New I-129 Export Control Certification requirements
- U.S. Export Admin Regulations (EAR) Deemed Export Rule and the US ITAR
- Who is a Foreign National for purposes of the rule
- How to classify Technology under the CCL and USML
- How to determine if an export license is required
- Suggestions for establishing a Technology Control Plan (“TCP”).

What's This All About?

- The new I-129 Export Control Certification

Part 6. Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States

(For H-1B, H-1B1 Chile/Singapore, L-1, and O-1A petitions only. This section of the form is not required for all other classifications. See **Page 3** of the Instructions before completing this section.)

Check Box 1 or Box 2 as appropriate:

With respect to the technology or technical data the petitioner will release or otherwise provide access to the beneficiary, the petitioner certifies that it has reviewed the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR) and has determined that:

- 1. A license is not required from either U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the foreign person; or
- 2. A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the beneficiary and the petitioner will prevent access to the controlled technology or technical data by the beneficiary until and unless the petitioner has received the required license or other authorization to release it to the beneficiary.



Bureau of Industry and Security
U.S. Department of Commerce

[What's New](#) | [Sitemap](#) | [Search](#)

Where Industry and Security Intersect

About BIS
News
Policies And Regulations
Key Regulatory Areas
Regional Considerations
Export Administration Regulations
Licensing
Compliance And Enforcement
Seminars And Training
International Programs
Defense Industrial Base Programs

[Home](#) > Policies and Regulations

The Bureau of Industry and Security is charged with the development, implementation and interpretation of U.S. export control policy for dual-use commodities, software, and technology. Dual-use items subject to BIS regulatory jurisdiction have predominantly commercial uses, but also have military applications. In order to accomplish this objective, BIS seeks to promulgate clear, concise, and timely regulations. This section of our Web site provides a link to the Bureau's regulations governing exports of dual-use items (the "Export Administration Regulations"), codified at 15 Code of Federal Regulations, Chapter 7. It also provides discussions of certain key regulatory policy areas, including policies governing exports of high performance computers, exports of encryption products, deemed exports, U.S. antiboycott regulations, special regional considerations, the multilateral export control regimes, and the technical advisory committees.

In addition to the U.S. export control policy for dual-use items, the Bureau of Industry and Security is also charged with the development, implementation and interpretation of the antiboycott provisions of the Export Administration Act. The antiboycott provisions encourage, and in some cases require, U.S. persons to refuse to participate in foreign boycotts that the United States does not sanction. U.S. persons are also required to report receipt of boycott-related requests.

Key Regulatory Areas

[Qs & As for Proposed Rule Establishing License Exception Intra-Company Transfer \(ICT\)](#)

CCL Review Process

- [Establishment of a Regularized CCL Review Process by BIS](#)
- [Basis of CCL controls](#)
- [Guidance for ECCN 3A981 with respect to](#)

- [High Performance Computers](#)
- [Encryption](#)
- [Deemed Exports](#)
- [Antiboycott Regulations](#)
- [Regional Considerations](#)
- [Multilateral Export Regimes](#)
- [Technical Advisory Committees](#)
- [Wassenaar Arrangement](#)

Deemed exports

Quick links to regulations

Commerce Control List



Export Administration Regulations

[Export Administration Regulations](#)

This link will take you to the Export Administration Regulations (Title 15 of the Code of Federal Regulations, Parts 730-774) on the Government Printing Office's (GPO) electronic Code of Federal Regulations (eCFR) website. The files are separated by Part and then further separated by Section and Subsection. You can cut and paste from any of the text in the files. The content is updated within 48 hours of a regulatory amendment being published in the Federal Register. For more information about the e-cfr click [here](#).

[Search the EAR](#)

You can search the entire EAR by going to the simple search page provided by GPO. Type "15" in the "Enter a Title Number" block, and then type the term you would like to search in the "Search For" block. Then click the "submit search" button.

[Commerce Control List Index](#)

This will link you to an index for the Export Administration Regulation Commerce Control List (CCL) in Adobe PDF format that has both a numeric index of Export Control Classification Number (ECCNs) and a non-comprehensive alphabetic list of commodities and where to find them on the CCL.

[Commerce Control List](#)

This link will take you to the Commerce Control List (CCL) on the Government Printing Office's (GPO) electronic Code of Federal Regulations (eCFR) website. The file contains the entire CCL and is searchable (Ctrl + F). You can cut and paste from it, e.g., cut and paste the entire file into MS Word format to carry around with you. The content is updated within 48 hours of being published in the Federal Register. For more information about the e-cfr click [here](#).

Note: Many of the links on this page will take you to other Federal Government Web sites. Since the information collection practices of these sites may differ from ours, you are encouraged to read their Privacy Notice.

Related Links

- [Regulations.gov \(FirstGov\)](#)
- [Advisory Opinions](#)
- [Red Cedar Letter](#)

Additional Resources

File Edit View History Bookmarks Tools Help

http://www.bis.doc.gov/deemedexports/index.html

http://rulings.cbp.gov/ https://www.rcucon... ear_data.html http://apps.cbp.gov/... http://www.cbp.gov... Lexis(R) Total Resear...

U. S. Bureau of Industry and Sec...

Where Industry and Security Intersect

About BIS [Home](#) > [Policies and Regulations](#) > Deemed Export Resources

News

Policies And Regulations **Deemed Export Resources**

Key Regulatory Areas [Deemed Exports FAQ](#)

Regional Considerations [Deemed Export Related Regulatory Requirements Q and A](#)

Export Administration Regulations [Guidelines for Preparing Export License Applications Involving Foreign Nationals](#)

[Deemed Export Licensing Process Improvements](#)

Licensing

Compliance And Enforcement

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Deemed Exports Under the EAR

- **Definition of an export:**
 - What is an “Export” (15 CFR 734.2(b))?
 - an actual shipment or transmission of items subject to the EAR out of the United States, or
 - release of technology or software subject to the EAR to a foreign national while in the United States.

Deemed Exports Under the EAR

- Breaking it down:
 - What is technology?
 - What is a “release”?
 - What does “**subject to the EAR**” mean?
 - Who is a “Foreign National” for purposes of the rule?
- Not all employment situations with a foreign national involve the “release” of “controlled” technology that requires an “export license”.

Deemed Exports Under the EAR

- Question:
 - Does the **position** of employment involve a transfer or **release** of “technology” to a foreign national of a **country** that requires an **export license**?
 - What about the possibility or likelihood of an unintended release or exposure?

EAR Definitions

- “Items subject to the EAR” (Section 734.3 of the EAR) consist of:
 - All items listed on the Commerce Control List (CCL) unless:
 - Excluded under the “publicly available” exception
 - items subject to the jurisdiction of another agency.
 - *Commerce Control List (CCL)*. A list of items (including technology and software) under the jurisdiction of the Bureau of Industry and Security, U.S. Department of Commerce.

EAR Definitions

- Technology (15 CFR 772)
 - “*Technology*” (General Technology Note)--
 - Specific information necessary for the “development”, “production”, or “use” of a product.
 - Can take the form of
 - “technical data” or
 - “technical assistance”

EAR Definitions

- “*Technical data*”
 - Examples: blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.
- *Technical assistance*
 - Can take on various forms, such as: instruction, skills training, working knowledge, and consulting services.

Deemed Exports: Definitions

- **EAR Supplement No. 2 to Part 774**
 - *General Technology Note.*
 - The export of "technology" that is "**required**" for the "development", "production", or "use" of items on the CCL is controlled according to the provisions in each Category of the CCL.
 - "**Use**" is not what you think it is.

Clarification of “Use” Technology

- Information on how to “use” equipment is not a deemed export.
- The regulatory definition of “use” is:

technology for “operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.”
- All six attributes of the definition must be present in order to qualify as controlled “use” technology.

The Deemed Exports Rule

- **Exports of technology or software**
 - Any release of technology or software subject to the EAR in a foreign country; or any release of technology or **source code** subject to the EAR to a foreign national.
 - release is ***deemed*** to be an export to the home country or countries of the foreign national.

Affected Persons

- The “deemed export rule” does **not** apply to:
 - A naturalized citizen
 - Persons lawfully admitted for **permanent residence**
 - persons who are a **protected class** under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)), including:
 - admitted as a refugee
 - granted asylum
- As a general policy, the last permanent resident status or citizenship obtained governs individuals who are citizens of more than one foreign country, or have citizenship in one foreign country and permanent residence in another.

Deemed Exports

- **What is a “release” of technology or software?**
 - Visual inspection by foreign nationals of U.S.-origin equipment and facilities;
 - Oral exchanges of information in the United States or abroad; or
 - The application to situations **abroad** of personal knowledge or technical experience acquired in the United States

Deemed exports

- The Deemed Export rule applies to reexports as well:
 - Release of technology or source code subject to the EAR to a foreign national of another country is a deemed reexport to the home country of the foreign national.
 - The deemed reexport definition does not apply to persons lawfully admitted for permanent residence within that country.

Information That is Excluded From The EAR

- Four categories of Information that are excluded from the EAR:
 - Published Information (EAR 734.7)
 - Fundamental Research (EAR 734.8)
 - Educational information (EAR 734.9)
 - Patent information (EAR 734.10)

PUBLISHED INFORMATION (§734.7)

- Information is “published” when it becomes generally accessible to the interested public, including:
 - Publication may be in any form, including electronic, or 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.

FUNDAMENTAL RESEARCH (§734.8)

- Three general categories
 - University based
 - Corporate
 - Federal Agencies Federally Funded R & D centers

FUNDAMENTAL RESEARCH (§734.8)

- Applies to:
 - basic and applied research the results of which are ordinarily published and shared broadly within the scientific community
- Does not apply to:
 - Proprietary research or from industrial development, design, production, or product utilization which is ordinarily **restricted** for **proprietary reasons** or for **specific national security** reasons.

FUNDAMENTAL RESEARCH (§734.8)

- University based Research
 - Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research, **unless**:
 - Subject to pre-publication review by a sponsor **other than** to prevent
 - Inadvertent disclosure of proprietary information
 - Compromise patent rights
 - University or researchers accept restrictions on publication of scientific or technical information resulting from the activity.
 - University or researchers accept specific national security controls on project sponsored by U.S. Government.

FUNDAMENTAL RESEARCH (§734.8)

- **Corporate Research**

- Research conducted by scientists or engineers working for a business entity will be considered “fundamental research” if:
 - researchers are free to make scientific and technical information resulting from the research publicly available
 - without restriction or delay based on proprietary concerns or
 - No specific national security controls as defined in §734.11(b) apply.

Classifying Technology Under The Commerce Control List

- Understanding the Control List
 - The CCL is found in Supplement No. 1 to part 774 of the EAR.
 - The CCL is divided into 10 Categories and each category is subdivided in to five (5) Groups.
 - Within each group there are individual entries, or “ECCNs” (“Export Control Classification Numbers”)
 - Numbering sequence identifies the main reason for control of items within that entry.

Classifying Technology Under The Commerce Control List

Commerce Control List Categories

- 0 = Nuclear materials, facilities and equipment (and miscellaneous items)
- 1 = Materials, Chemicals, Microorganisms and Toxins
- 2 = Materials Processing
- 3 = Electronics
- 4 = Computers
- 5 = Telecommunications and Information Security
- 6 = Sensors and Lasers
- 7 = Navigation and Avionics
- 8 = Marine
- 9 = Propulsion Systems, Space Vehicles, and Related Equipment

Classifying Technology Under The Commerce Control List

Five Product Groups

- A. Systems, Equipment and Components
- B. Test, Inspection and Production Equipment
- C. Materials
- D. Software (for items described in A or B)
- E. Technology (for items described in A, B, C or D)

Classifying Technology Under The Commerce Control List

- *Reasons for Control*
 - 0: National Security
 - 1: Missile Technology
 - 2: Nuclear Nonproliferation
 - 3: Chemical & Biological Weapons
 - 9: Anti-terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions, etc.

Classifying Technology Under The Commerce Control List

General
Category 4

Reason for
control

4 A 0 01. – Electronic Computers etc.

Group “A”
Systems,
equipment and
components

Numerical
sequence
within
grouping

Classifying Technology Under The Commerce Control List

- ECCN will identify
 - Reasons for control
 - Technical description of items
 - specific **license exceptions** that may apply

5A002 “[⌚]Information security” systems, equipment and components therefor, as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, AT, EI

<i>Control(s)</i>	<i>Country Chart</i>
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NS applies to entire entry	NS Column 1
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AT applies to entire entry	AT Column 1
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EI applies to 5A002.a.1, a.2, a.5, a.6 and a.9. Refer to §742.15 of the EAR.

License Exceptions

LVS: Yes: \$500 for components and spare parts only. N/A for equipment.

GBS: N/A

CIV: N/A

ENC: Yes for certain EI controlled

Supplement 1 to Part 738 of the EAR

Commerce Country Chart

Reason for Control

Reason for controls

List of countries

Countries

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Bahamas, The	X	X		X		X	X	X	X	X	X	X		X		
Bahrain	X	X	X	X		X	X	X	X	X		X		X		
Bangladesh	X	X		X		X	X	X	X	X		X		X		
Barbados	X	X		X		X	X	X	X	X	X	X		X		
Belarus	X	X	X			X	X	X	X	X		X	X			
Belgium ³	X					X		X	X							
Belize	X	X		X		X	X	X	X	X	X	X		X		

EAR License Exemptions

- Some transfers may be **exempt** from license requirements because a license exemption applies
- License exemptions are specified in section 740 of the EAR
- License exemptions apply only if designated in the ECCN for the particular technology

E. TECHNOLOGY

4E001 “Technology” as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, CC, AT, NP

License Exceptions

CIV: N/A

TSR: Yes, except for “technology” for the “development” or “production” of commodities with an “Adjusted Peak Performance” (“APP”) exceeding 0.5 WT.

APP: Yes to specific countries (see §740.7 of the EAR for eligibility criteria).

License Exemptions

- License Exemption TSR
 - Permits release of technology to
 - a national or citizen of **Country Group B** (See Supplement No. 1 to part 740.)
 - Note: China and Russia are in Country Group D
 - When
 - the Commerce Country Chart indicates a license requirement to the ultimate destination for
 - national security reasons only and
 - identified by “TSR - Yes” in entries on the CCL,
 - A written assurance is required from the recipient before releasing technology under this License Exception.

Supplement No. 1 to Part 740

Country Group B

Countries

Afghanistan	El Salvador	Mali	Slovenia
Albania	Equatorial Guinea	Malta	Solomon Islands
Algeria	Eritrea	Marshall Islands	Somalia
Andorra	Estonia	Mauritania	South Africa
Angola	Ethiopia	Mauritius	Spain
Antigua and Barbuda	Fiji	Mexico	Sri Lanka
Argentina	Finland	Micronesia, Federated	Surinam
Aruba	France	States of	Swaziland
Australia	Gabon	Monaco	Sweden
Austria	Gambia, The	Montenegro	Switzerland
The Bahamas	Germany	Morocco	Taiwan
Bahrain	Ghana	Mozambique	Tanzania
Bangladesh	Greece	Namibia	Thailand
Barbados	Grenada	Nauru	Togo
Belgium	Guatemala	Nepal	Tonga
Belize	Guinea	Netherlands	Trinidad & Tobago
Benin	Guinea-Bissau	Netherlands Antilles	Tunisia
Bhutan	Guyana	New Zealand	Turkey
Bolivia	Haiti	Nicaragua	Tuvalu
Bosnia & Herzegovina	Honduras	Niger	Uganda
Botswana	Hong Kong	Nigeria	United Arab
Brazil	Hungary	Norway	Emirates
Brunei	Iceland	Oman	United Kingdom
Bulgaria	India	Pakistan	United States
Burkina Faso	Indonesia	Palau	Uruguay
Burundi	Ireland	Panama	Vanuatu
Cameroon	Israel	Papua New Guinea	Vatican City
Canada	Italy	Paraguay	Venezuela
Cape Verde	Jamaica	Peru	Western Sahara
Central African Republic	Japan	Philippines	Yemen
Chad	Jordan	Poland	Zambia
Chile	Kenya	Portugal	Zimbabwe
Colombia	Kiribati	Qatar	
Comoros	Korea, South	Romania	
Congo (Democratic	Kosovo	Rwanda	
Republic of the)	Kuwait	Saint Kitts & Nevis	
Congo (Republic of the)	Latvia	Saint Lucia	
Costa Rica	Lebanon	Saint Vincent and the	
Cote d'Ivoire	Lesotho	Grenadines	
Croatia	Liberia	Samoa	
Cyprus	Liechtenstein	San Marino	
Czech Republic	Lithuania	Sao Tome & Principe	
Denmark	Luxembourg	Saudi Arabia	
Djibouti	Macedonia, The Former	Senegal	
Dominica	Yugoslav Republic of	Serbia	
Dominican Republic	Madagascar	Seychelles	
East Timor	Malawi	Sierra Leone	
Ecuador	Malaysia	Singapore	
Egypt	Maldives	Slovakia	

Written assurance Requirement

- Recipient will not, without a BIS license or License Exception:
 - **(i)** Release the technology to a national of a country in Country Groups D:1 or E:1; or
 - **(ii)** Export to Country Groups D:1 or E:1 the direct product of the technology, if such foreign produced direct product is subject to national security controls
 - **(iii)** If the direct product of the technology is a complete plant or any major component of a plant, export to Country Groups D:1 or E:1 the direct product of the plant or major component thereof, if such foreign produced direct product is subject to national security controls as identified on the CCL or is subject to State Department controls under the U.S. Munitions List (22 CFR part 121).

How to Determine if A Commerce License Is Required

- Six-part question:
 1. What is the ECCN of the technology that will be released to the prospective employee?
 2. Is the technology exempt from the EAR?
 3. What is the **reason for control** for that ECCN item?
 4. What is the nationality or country of citizenship of the prospective employee?
 5. Is there an “X” in the box of the Commerce Country Chart (Supplement 1 to Part 738)?
 6. Does a License Exception apply?

ITAR Technology Transfers

- ITAR is the “International Traffic In Arms Regulations”
- Administered by the U.S. Department of State’s Directorate of Defense Trade Controls or “DDTC”
- Articles and technology under the jurisdiction of ITAR and DDTC are identified on the U.S. Munitions List (“USML”)
- ITAR articles are excluded from controls under the EAR and the Department of Commerce’s Bureau of Industry & Security
- ITAR regulations are found in sections 120 to 130 of Title 22 of the CFR.



U.S. DEPARTMENT OF STATE DIRECTORATE OF DEFENSE TRADE CONTROLS

- Home
- About DDTC
- Getting Started
- Registration
- DTAS-Online
- DTrade
- Licensing
- Compliance
- Commodity Jurisdiction
- Response Team
- Regulations and Laws
- Country Policies and Embargoes
- Treaties
- FAQs
- Outreach
- Metrics
- Reports
- Federal Register Notices
- Links to Other Web Sites
- DTAG
- Miscellany

DDTC Homepage

Updated 2.09
Printer Friendly Version

Mission:

The U.S. Government views the sale, export, and re-transfer of defense articles and defense services as an integral part of safeguarding U.S. national security and furthering U.S. foreign policy objectives. The Directorate of Defense Trade Controls (DDTC), in accordance with 22 U.S.C. 2778-2780 of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) (22 CFR Part 120-130), is charged with controlling the export and temporary import of defense articles and defense services covered by the United States Munitions List (USML).

! All companies and individuals registered as a broker at any time during calendar year 2010 are reminded to submit an annual brokering report to DDTC by January 31, 2011. Guidance on what must be included in the report can be found in Section 129.9 of the ITAR. Reports should be addressed as follows:

U.S. Dept of State
PM/DTCC
ATTN Annual Brokering Report
2401 E Street NW
SA-1 H1304
Washington, DC 20522

! DDTC has published two notices in the Federal Register, seeking public comment. Comments on both notices are **due to DDTC by February 8, 2011**.
[Click here to read the proposed rule to revise ITAR Category VII.](#)
[Click here to read the advanced notice of proposed rulemaking regarding revising the USML so that it is a positive list.](#)

! **Effective September 3, 2010** DDTC-Policy will no longer accept paper submissions of Commodity Jurisdiction requests. After this date all submissions must be made electronically via EFS utilizing the DS-4076 Commodity Jurisdiction Request Form. For information on submitting CJs electronically please refer to the [instructions](#) provided on this website.

• **Web Notice:** GMV Space Systems Inc. Address Change (2/09/11)

U.S. v. Roth, 6th Cir. Slip Op. 09-5805 (January 5, 2011).

- on January 5, the Sixth Circuit U.S. Court of Appeals upheld retired University of Tennessee professor John Roth's 4 year imprisonment for allowing Chinese and Iranian national students to work with defense trade technical data and sharing defense related technical data while in China.

What is an ITAR Item?

- **§ 120.6 Defense articles**
 - Means any item or technical data designated in §121.1 (USML)
 - Includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in USML
 - Does not include basic marketing information on function or purpose or general system descriptions

ITAR § 120.3 Defense Articles

- An article or service may be designated a defense article or defense service if it:
 - Is **specifically** designed, developed, configured, adapted, or modified for a military application, and
 - Does **not** have predominant civil applications, and
 - Does **not** have performance equivalent (defined by form, fit and function) to those of an article or service used for civil applications
- The **intended use** of the article or service after its export (*i.e.* , for a military or civilian purpose) is **not relevant** in determining whether the article or service is subject to the controls of this subchapter

ITAR § 120.9 Defense services

- *Defense service* means:
 - The furnishing of assistance (including training) to foreign persons, **whether in the United States** or abroad in
 - The design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;
 - The furnishing to foreign persons of any ITAR technical data, whether in the United States or abroad

§ 120.10 Technical data

- “Technical Data” means
 - Information which is required for the:
 - Design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles.
 - Includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.

§ 120.10 Technical data

- *Technical Data* does not include:
- information concerning:
 - General scientific, mathematical or engineering principles commonly taught in schools, colleges and universities
 - Information in the **public domain** as defined in §120.11.
 - Does not include basic **marketing information** on function or purpose or general system descriptions of defense articles.

ITAR § 120.11 Public domain

- **Public domain** means information which is published and generally accessible or available to the public:
 - Through sales at newsstands and bookstores;
 - Through subscriptions which are available without restriction;
 - Through second class mailing;
 - At libraries open to the public or from which the public can obtain documents;
 - Through patents available at any patent office;
 - Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, **generally accessible to the public**, in the United States;

ITAR § 120.11 Public domain

- Fundamental research means
 - 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 specific U.S. Government access and dissemination controls.

ITAR § 120.11 Public domain

- University research will not be considered fundamental research **if**:
 - The University or its researchers accept other **restrictions** on publication of scientific and technical information resulting from the project or activity, or
 - The research is **funded** by the U.S. Government and specific access **and** dissemination controls protecting information resulting from the research are applicable.

ITAR § 120.16 Foreign persons

- *Foreign person* means:
 - any natural person who is **not** a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3).
 - Any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States
 - international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

ITAR § 125.2 Exports of unclassified technical data

- Unless otherwise expressly exempted, a license is required for:
 - the oral, visual or documentary disclosure of technical data by U.S. persons to foreign persons.
 - A license is required regardless of the manner in which the technical data is transmitted (e.g., in person, by telephone, correspondence, electronic means, etc.).
- Exemptions exist for certain plant visits, but the plant visit must be approved in advance by DDTC.

Technology Control Plans

- Companies and institutions should:
 - Designate a Technology Control Officer (“C” or “D” Level) with written authority to oversee process
 - Establish Technology Control Team (“TCT”) consisting of:
 - Engineers and or technical staff
 - Operations staff (trained and familiar with BIS and/ or ITAR Licensing)
 - HR representative
 - IT representative
 - IP representative
 - Security representative
 - Establish a formal process to review, categorize and classify design or development projects, commodities, and technical data before disclosure to foreign nationals

Technology Control Plans

- Categorize and classify products and technical data:
 - Train and educate engineers or technical staff to recognize, categorize, and classify commodities or technical data under the ITAR or EAR
 - Develop and maintain a record of classifications that can be shared and updated, as needed.
 - When in doubt as to the correct category or classification, seek guidance from the appropriate agency (State or BIS), using the requisite forms (CJ or BIS form)

Technology Control Plans

- HR Issues
 - Job positions should be pre-screened by TCT for possible disclosure of “controlled technology” issues
 - Job postings should (where applicable) alert potential applicants that offers are conditional successful licensing or otherwise limited to U.S. citizens or permanent residents, etc.
- Firewalls & Safeguards (see Nunn Report)
 - Company needs to develop both physical and IT firewalls for “controlled technology”
 - Color coded physical documents and badging
 - Access controls (physical, IT and e-mail)

Technology Control Plans

- Prohibition of discrimination based on national origin or citizenship
 - 8 USC §1324b(a)(2)(c) Exception
 - discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

Additional Resources

- **NUNN-WOLFOWITZ TASK FORCE REPORT: INDUSTRY “BEST PRACTICES” REGARDING EXPORT COMPLIANCE PROGRAMS**
- **<http://www.kslaw.com/library/pdf/nunnwolfowitz.pdf>**

NUNN-WOLFOWITZ TASK FORCE REPORT

<i>I. INTRODUCTION</i>	<i>1</i>
<i>II. TASK FORCE INVESTIGATION METHODOLOGY</i>	<i>2</i>
<i>III. EXPORT LAWS AND REGULATIONS</i>	<i>3</i>
A. STATE DEPARTMENT REGULATIONS	3
B. COMMERCE DEPARTMENT REGULATIONS	4
C. FOREIGN ASSETS CONTROL REGULATIONS	6
D. CUSTOMS REGULATIONS	6
E. OVERALL POLICY CONTEXT	6
<i>IV. INDUSTRY “BEST PRACTICES” RELATED TO 12 KEY AREAS OF EXPORT COMPLIANCE</i>	<i>7</i>
A. MANAGEMENT COMMITMENT	8
1. Communicating the Commitment	8
2. Being Actively Involved in Export Compliance.....	9
3. Providing Resources to Develop and Implement the Program.....	10
4. Evaluating and Ensuring the Effectiveness of the Program.....	10
B. COMPLIANCE COUNCIL	11
1. Chaired by a Senior Executive	11
2. Includes Appropriate Personnel.....	12
3. Meets at Least Quarterly	12