KEY DEFINITIONS AND CONCEPTS RELATING TO EXPORT CONTROL

INTERNATIONAL TRAFFIC IN ARMS REGULATIONS (ITAR):

The ITAR 22 CFR § 120 – 130, are promulgated and implemented by the Department of State, in conjunction with the Department of Defense, to regulate defense articles and services and related technical data. This information is identified on the U.S. Munitions List (USML), 22 CFR § 121.1. On-line versions of the ITAR and USML are available at (http://www.access.gpo.gov/nara/dr).

Any article or service may be designated or determined in the future to be a defense article or defense service if it:

- Is specifically designed, developed, configured, adapted, or modified for a military application, and
  - Does not have predominately civil applications, and
  - Does not have performance equivalent to those of an article or service used for civil applications; or
- Is specifically designed, developed configured, adapted, or modified for a military application, and has significant military or intelligence applicability such that control under ITAR is necessary.

§ 120.6 DEFENSE ARTICLE

“Defense article means any item or technical data designated in §121.1 of this subchapter. The policy described in §120.3 is applicable to designations of additional items. 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 designated in §121.1 of this subchapter. It does not include basic marketing information on function or purpose or general system descriptions. “
http://pmddtc.state.gov/regulations_laws/documents/consolidated_itar/2008/Part _120.doc

§ 120.9 DEFENSE SERVICE

“(a) Defense service means:

(1) 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;

(2) The furnishing to foreign persons of any technical data controlled under this subchapter (see §120.10), whether in the United States or abroad; or

(3) Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice. (See also §124.1.)

(b) [Reserved]


http://pmddtc.state.gov/regulations_laws/documents/consolidated_itar/2008/Part_120.doc

§ 120.10 TECHNICAL DATA

“(a) Technical data means, for purposes of this subchapter:

(1) Information, other than software as defined in §120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.

(2) Classified information relating to defense articles and defense services;

(3) Information covered by an invention secrecy order;

(4) Software as defined in §121.8(f) of this subchapter directly related to defense articles;

(5) This 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 as defined in §120.11. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

(b) [Reserved]
§ 120.11 PUBLIC DOMAIN

“(a) Public domain means information which is published and which is generally accessible or available to the public:

(1) Through sales at newsstands and bookstores;

(2) Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;

(3) Through second class mailing privileges granted by the U.S. Government;

(4) At libraries open to the public or from which the public can obtain documents;

(5) Through patents available at any patent office;

(6) Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;

(7) Through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency (see also §125.4(b)(13) of this subchapter);

(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean 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. University research will not be considered fundamental research if:

(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

(b) [Reserved]

http://pmddtc.state.gov/regulations_laws/documents/consolidated_itar/2008/Part_120.doc

§ 120.16 FOREIGN PERSON

“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). It also means 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, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

[71 FR 20537, Apr. 21, 2006]"

http://pmddtc.state.gov/regulations_laws/documents/consolidated_itar/2008/Part_120.doc

§ 120.17 EXPORT

“(a) Export means:

(1) Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or

(2) Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the U.S. Munitions List, whether in the United States or abroad; or

(3) Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g., diplomatic missions); or

(4) Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad; or
(5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.

(6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes (see §126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.

(b) [Reserved]"

http://pmddtc.state.gov/regulations_laws/documents/consolidated_itar/2008/Part_120.doc

EXPORT ADMINISTRATION REGULATIONS (EAR):

The EAR regulations, 15 CFR § 730-774 (http://www.access.gpo.gov/bis/ear/ear_data.html), are administered by the U.S. Department of Commerce and they regulate the export of “dual use” items (i.e. technology designed for commercial purposes and with potential military applications, such as computers, software, aircraft, and pathogens as well as the reexport of items. The list of EAR-controlled items {Commerce Control List (CCL)} is the list of items subject to EAR control, and it is published at 15 CFR § 774, Supplement 1 – (http://www.access.gpo.gov/bis/ear/pdf/738.pdf).

Unless an exclusion or exemption applies, a license is required to export goods and technologies listed on the CCL.

REASONS FOR CONTROL

“Reasons for Control are: Anti-Terrorism (AT), Chemical & Biological Weapons (CB), Crime Control (CC), High Performance Computer (XP), Missile Technology (MT), National Security (NS), Nuclear Nonproliferation (NP), Regional Stability (RS), Short Supply (SS), and United Nations sanctions (UN). Items controlled within a particular ECCN may be controlled for more than one reason. “


§ 730.3 DUAL USE EXPORTS

“The convenient term “dual use” is sometimes used to distinguish the types of items covered by the EAR from those that are covered by the regulations of certain other U.S. government departments and agencies with export licensing responsibilities. In general, the term dual use serves to distinguish EAR-
controlled items that can be used both in military and other strategic uses (e.g., nuclear) and commercial applications. In general, the term dual use serves to distinguish EAR-controlled items that can be used both in military and other strategic uses and in civil applications from those that are weapons and military related use or design and subject to the controls of the Department of State or subject to the nuclear related controls of the Department of Energy or the Nuclear Regulatory Commission. Note, however, that although the short-hand term dual use may be employed to refer to the entire scope of the EAR, the EAR also apply to some items that have solely civil uses.”


OFFICE OF FOREIGN ASSETS CONTROL (FAC) or (OFAC)

“The office at the Department of the Treasury responsible for blocking assets of foreign countries subject to economic sanctions, controlling participation by U.S. persons, including foreign subsidiaries, in transactions with specific countries or nationals of such countries, and administering embargoes on certain countries or areas of countries. (see 31 CFR parts 500 through 590.)”


FUNDAMENTAL RESEARCH

"Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons." National Security Decision - Directive 189 http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm

DEEMED EXPORT

“(ii) Any release of technology or source code subject to the EAR to a foreign national. Such release is deemed to be an export to the home country or countries of the foreign national. 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)). Note that the release of any item to any party with knowledge a violation is about to occur is prohibited by §736.2(b)(10) of the EAR. “ http://www.access.gpo.gov/bis/ear/pdf/734.pdf
REEXPORT

“‘Reexport’ means an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country. For purposes of the EAR, the export or reexport of items subject to the EAR that will transit through a country or countries, or be transshipped in a country or countries to a new country, or are intended for reexport to the new country, are deemed to be exports to the new country. (see §734.2(b) of the EAR.) In addition, for purposes of satellites controlled by the Department of Commerce, the term “reexport” also includes the transfer of registration of a satellite or operational control over a satellite from a party resident in one country to a party resident in another country.”


Media: This definition includes both tangible media such as paper, computer discs, CDs, thumb drives; and also electronic access to data regardless of location and/or storage methodology.