

## GLOSSARY

### *Glossary of terms for Export Controls:*

The Glossary is a quick reference tool. If you have any questions, please refer to the definitions in the regulations pertaining to the export item that shall control if there is a conflict or confusion. See 15 CFR Part 772.1 ([EAR](#)); 22 CFR Part 120 ([ITAR](#)). Some agencies may have different definitions as well.

**600 Series** refers to items formerly “defense articles” that moved to the CCL after Export Control Reform and still require Licenses from Dept. of Commerce to export them. The 600 series derives its name from the 3<sup>rd</sup> character of the ECCNs in the “xY6zz” format on the Commerce Control List (CCL) that control items on the CCL that were previously controlled on the U.S. Munitions List or that are covered by the Wassenaar Arrangement Munitions List (WAML). The “6” indicates the entry is a munitions entry on the CCL. The “x” represents the CCL category and “Y” the CCL product group. The “600 series” constitutes the munitions ECCNs within the larger CCL.

**Arms Export Control Act (AECA).** The Arms Export Control Act ([22 U.S.C. 2778](#)), as amended, authorizes the U.S. President to control the export and import of Defense Articles and Defense Services. The regulations implementing AECA are at 22 CFR 120 *et. seq.* The President deems the articles/services to be “Defense” and places them on the US Munitions List.

**Code of Federal Regulations (CFR)** is the collection of rules and regulations published in the *Federal Register* by the US federal government executive departments/agencies. The CFR may be viewed online at [eCFR.gov](#).

**Commerce Control List (CCL)** – The CCL identifies specific items subject to the list-based controls of the Export Administration Regulations (EAR), under the export control jurisdiction of the US Department of Commerce, Bureau of Industry and Security (BIS), found in [10 CFR §774](#).

- **Commerce Control List (CCL) Category** – The CCL is divided into 10 categories, numbered 0-9: (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) Group** – Each of the 10 CCL categories is subdivided into five (5) groups/kinds of controlled items, A-E: (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** – Release of technology or source code subject to the EAR to a foreign national in the United States is “deemed” an “export” to the home country of the foreign national under the EAR. ITAR harmonized the definition (9/1/2016) to clarify that disclosing (or transferring) technical data subject to the ITAR to any non-US person is deemed to be an “export” to all countries in which the foreign person holds or has held citizenship or holds permanent residency (whether the foreign person is in the United States or

abroad) ([ITAR §120.17\(a\)\(5\)](#)). This is a central export compliance concern for U.S. universities with international students, scholars, and faculty. See also [Export](#); and 15 CFR §730.5(b) The sending or taking of technical data out of the U.S. to a foreign person employee remains an “export” if under ITAR jurisdiction. (BIS provides the deemed export is to the foreign national’s most recent country of citizenship or country of residency; State provides the deemed export may go back to the foreign national’s place of birth.)

**Defense Article** – Any item or technical data designated in the ITAR's United States Munitions List (USML), including any technical data recorded or stored in any physical form, models, mock-ups, or other items that reveal technical data directly relating to a “defense article” listed in the USML; Defense Article also includes forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles. “Defense Article” does *not include* basic marketing information on function, purpose, or general system descriptions. ([22 CFR §120.6](#)).

**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; 2) furnishing to foreign persons any ITAR-controlled “technical data” anywhere, requires authorization from the State Department; or 3) military training of foreign units & forces (regular & irregular) including formal or informal instruction of foreign persons (in the US or abroad) or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice. ([22 CFR §120.9](#)).

*Note:* While transfer of public domain information is not a defense service, the State Department noted in 2013 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 or Party.** A list of individuals and entities that have been denied export privileges. Any dealings with a party on this list that would violate the terms of its denial order are prohibited. See also [Restricted Party](#).

**Dual-use** – Items that have both commercial and military (e.g., defense) application. Items subject to the EAR are often referred to as “dual-use” civil applications as well as terrorism and military or weapons of mass destruction (WMD)-related applications; MIT identifies that the Dual-Use items in the Commerce Control List is very similar to the “Lists of Dual-Use Goods and Technologies” of the multilateral [Wassenaar Arrangement](#) (export controls for Conventional Arms and Dual Use Goods and Technologies), to which the U.S. and approximately 40 other countries are parties. See EAR, 15 CFR §730.3

**Encryption Items.** *Under EAR*, the phrase encryption items include all encryption commodities, software, and technology that contain encryption features and are subject to the EAR. This does not include encryption items specifically designed, developed, configured, adapted or modified for military applications (including command, control and intelligence applications) that are controlled by the Department of State on the U.S. Munitions List (ITAR). (See 15 CFR 772.1, Definitions; See also Mass Market/Exception)

**End-to-End Encryption** under the EAR is (i) the provision of cryptographic protection of data such that the data are not in unencrypted form between an originator (or the originator’s in-country security boundary) and an intended recipient (or the recipient’s in-country security boundary), and (ii) the means of

decryption are not provided to any third party. The originator and the recipient may be the same person. Transmissions within a cloud service infrastructure also fit within this Safe Harbor provision when the transmission is made from one node or cloud infrastructure element to another, provided that it was appropriately encrypted before any data crossed a national border.

**End-use(r)** – The EAR controls the export of all items subject to the EAR, even those not subject to list-based controls, if they will finally be received by certain entities or used for certain applications.

**Embargo** – The export of defense articles or services may be restricted or banned to certain countries. The Department of State continuously updates the listings. See [Country Policies and Embargoes](#).

**Export** – An *actual shipment or transmission* of items, services, or technical data subject to either [EAR](#) or [ITAR](#) outside of the United States, generally by sending or taking that item out of the US. Alternatively, the *release* (disclosure) of technology (EAR), software source code (EAR), or technical data (ITAR) to a non-U.S. person in the United States may qualify as an export. (See also [Deemed Export](#).) See regulations for EAR @ <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear> or see [eCFR](#).

Technology, software, or technical data is “*released*” or “*disclosed*” through:

1. Visual inspection by a foreign national of U.S. origin equipment and facilities;
2. Oral exchanges of information (e.g. or a demonstration of technology) in the United States or abroad; See 15 CFR §730.5(c)
3. Transfer or shipment via any means (physical or electronic) to a foreign entity (e.g., even the return of a product to a foreign country after repair in the U.S. under the EAR 15 CFR 730.5(C); or the electronic transmission of non-public information received abroad); or
4. Provision of a service (e.g., “defense service”) or the application to situations abroad of personal knowledge or technical experience acquired in the United States.  
See [22 CFR 120.17](#) – Export under ITAR; See also [Re-export](#).

**Export Administration Regulations (EAR)** – The Export Administration Regulations (EAR), 15 CFR §730–774 are promulgated by the Department of Commerce to regulate the export of most items not controlled by the ITAR (defense items). “*Items*” includes products; equipment required to make controlled products or materials; materials required to make controlled products; software required to develop, produce, or use controlled items; and information required to develop, product, or use controlled items. Items specifically not controlled by the EAR include those controlled by another U.S. government department (items to embargoed countries, nuclear reactor items and technology, patent applications) and publicly available information, informational materials, software and technology.

**Export Control Classification Number (ECCN)** – a five-character alphanumeric classification used under the EAR to identify items on the Commerce Control List.

- **EAR 99** - EAR99 is a classification for an item. EAR99 class is used when a particular item is subject to the Export Administration Regulations (EAR), but the item is not listed with a specific Export Control Classification Number (ECCN) on the Commerce Control List (CCL). While the classification describes the item, the authorization for shipment of that item may change, depending on the transaction, or the country or party to which you are shipping the item, or if the end-use is prohibited.

- **600 Series** – The “600 Series” is the ECCN grouping on the Commerce Control List. Items that are controlled under the 600 Series were formerly on the US Munitions List or under the Wassenaar Arrangement Munitions List (WAML) and were moved to the CCL list. The 600 Series includes items that formerly were on the ECCN list in this series and ended in -018. Thus, 600 Series includes munitions that are now on the CCL. Examples may include certain aircraft, gas turbine engines, vessels of war, tanks/military vehicles, submersible vessels, etc.

**Export License** – The approval documentation issued by an export agency authority authorizing the recipient to proceed with the export, re-export, or other regulated activity as specified on the application.

**Foreign National** - The EAR uses, but does not define, "foreign national". "National" is defined in 8 USC 1101(a) (20) as "a person owing permanent allegiance to a state". The net effect of EAR is comparable to the ITAR "foreign person": the deemed export rule, for instance, applies to "foreign nationals," but excludes permanent residents and protected individuals.

**Foreign Person** – Under ITAR, a natural person who is neither a lawful permanent resident (green card holder) nor a protected individual (citizen or national of the U.S., special agricultural worker, admitted refugee, or person granted asylum), a foreign entity (corporations, business associations, partnerships, etc.) not incorporated or organized to do business in the U.S., an international organization, a foreign government or an agency or subdivision of a foreign government. See [22 CFR §120.16](#); *Person* means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision under ITAR does not refer exclusively to a foreign person (§120.16) or U.S. person (§120.15), then it refers to both.

**Fundamental Research** – (basic or applied) research in science, engineering, or mathematics, where the resulting information is ordinarily published and shared broadly in the scientific/research community and for which the researchers have not accepted restrictions on publication for proprietary or national security reasons, is excluded from export controls.

- **FRE under EAR ([15 CFR §734.8](#))**, university research normally will be considered 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 US 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.
- **FRE under 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 information is not generally published and shared broadly within the scientific community (e.g., 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.

**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.

**Import(s)** means all goods physically brought into the United States, including: (1) Goods of foreign origin, and (2) Goods of domestic origin returned to the United States without substantial transformation affecting a change in tariff classification under an applicable rule of origin. See Trade Definitions at the [U.S. Census Bureau](#).

**International Trafficking in Arms Regulations (ITAR)** – The International Trafficking in Arms Regulations (ITAR), [22 CFR §120-130](#), promulgated by the Department of State, control the export of articles, services, and related technical data whose predominant application is defense, as determined by the State Department. These “defense articles,” “defense services,” and related “technical data” are listed on the United States Munitions List ([USML](#)). Satellites and spacecraft are subject to ITAR (since 1999), regardless of application. In November 2014, satellites and spacecraft not providing capabilities listed on the USML moved to EAR control, although under new, more restricted, “500 series” classifications, and still requires analyses.

**Jurisdiction** means the power or authority an agency (or department of the U.S. government) maintains in determining what is allowable under the laws of the U.S. constitution or under statutes enacted by the U.S. Congress.

**License** refers to a government (agency) document or approval authorizing the export of specific items (including technology) in specific quantities to a particular destination(s). A license may be required for most or all exports to some countries, while other countries may only require licenses to export items/technology under special circumstances.

**Mass Market** typically means available widely and at storefronts, through the internet, or otherwise. The **Mass Market Exemption** means that the technology, product, or services qualify for Mass Market status as defined by the Cryptography Note of the CCL. However, some restrictions still exist on cryptography products, especially regarding certain nations or denied persons. Where the product qualifies and there are no other limitations of end-use/user, no further license in respect to EAR is required. Note the first time that the request is made to BIS must be requested through a SNAP-R filing. (Wassenaar formally approved the exemption for use regarding hardware components.)

**Military end use** means incorporation into a military item described on the U.S. Munitions List (USML) (ITAR, 22 CFR part 121); incorporation into a military item described on the *Wassenaar Arrangement* Munitions List (at <http://www.wassenaar.org>); incorporation into items classified under ECCNs ending in “A018” or under “600 series” ECCNs; or for the “use,” “development,” or “production” of military items described on the USML or the *Wassenaar Arrangement* Munitions List, or items classified under ECCNs ending in “A018” or under “600 series” ECCNs. ‘Military end use’ also means deployment of items classified under ECCN 9A991 as set forth in supplement no. 2 to part 744. 15 CFR 744.21(f.)

**Military end use** (EAR, 15 CFR 744.21) the following applies:

- “*use*” means operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing;
- “*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; and
- “*production*” means all production stages, such as: product engineering, manufacturing, integration, assembly (mounting), inspection, testing, and quality assurance.
- “*operation*” means to cause to function as intended;

- “*installation*” means to make ready for use, and includes connecting, integrating, incorporating, loading software, and testing;
- “*maintenance*” means performing work to bring an item to its original or designed capacity and efficiency for its intended purpose, and includes testing, measuring, adjusting, inspecting, replacing parts, restoring, calibrating, overhauling; and
- “*deployment*” means placing in battle formation or appropriate strategic position.

**Military end user** means the national armed services (army, navy, marine, air force, or coast guard), as well as the national guard and national police, government intelligence or reconnaissance organizations, or any person or entity whose actions or functions are intended to support 'military end uses' as defined in paragraph (f) of this section. See 744.21(g)

**Office of Foreign Assets Control (OFAC)** – A part of the U.S. Department of Treasury that administers and enforces economic embargoes 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. OFAC acts under presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under U.S. jurisdiction.

**Public Domain** – Under ITAR (§120.11), public domain means information that is published and that is generally accessible or available to the public through/at the following:

- (1) **sales** at newsstands and bookstores;
- (2) **subscriptions** that are available without restriction to any individual who desires to obtain or purchase the published information;
- (3) **mailing** privileges (second-class) granted by the U.S. government;
- (4) **libraries open to the public** or from which the public may obtain documents, including most university libraries;
- (5) **published patents**;
- (6) **unlimited distribution** at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, **in the United States**;
- (7) **public release** in any form **after approval** by the cognizant U.S. government department or agency; and
- (8) **fundamental research** in science, engineering, and mathematics at **accredited institutions of higher learning in the United States** where the resulting information is ordinarily published and shared broadly in the scientific community. Public domain information is excluded from ITAR technical data controls.

(Public domain information is excluded from control as ITAR technical data.)

**Open Source is not “public domain”** as referenced in intellectual property (IP) rights, because an owner provides the software or technology, although available publicly and generally accessible, it is still only provided under a grant of rights (license). Thus, it cannot be “public domain”

**Publicly Available** –under the EAR, refers to “publicly available technology and software” and does not use the expression “public domain.” To be Publicly Available, and generally excluded from EAR controls, the

- **software and technology** (with limited exception) that (i) are, or will be, published; (ii) arise during, or result from, fundamental research; (iii) are educational; or (iv) are included in certain patent applications. (Publicly available software and technology are excluded from EAR controls, however

published **5D002 encryption software** remains subject to the EAR; some publicly available 5D002 encryption object code may be publicly available 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). See 15 CFR Part 734.3(b)(3).

- **Information** is generally accessible to the interested public in any form and thus not subject to the EAR. See 15 CFR Part 732.

**Published** – Under the EAR, information is “published” when it becomes generally accessible to the interested public in any form, including:

1. 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;
2. ready availability at libraries open to the public or at university libraries;
3. patents and open (published) patent applications available at any patent office; and
4. Release at an open conference, meeting, seminar, trade show, or other open gathering.
5. Software and information is published when either it is available for general distribution 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.

**Re-export or Re-transfer**– Under EAR a re-export refers to an actual shipment or the transmission of items subject to export regulations from one foreign country to another foreign country. For the purposes of the EAR, the export or re-export of items that will transit through a country or countries to a new country, or that are intended for re-export to the new country, are deemed to be [Exports](#) to the new country. See [15 CFR §730.5](#). The transfer of items subject to ITAR jurisdiction between two foreign countries is an export/re-export/re-transfer of defense articles or defense services to an end-use, end-user, or destination not previously authorized by license, written approval or exemption. (Any movement of a defense article between two foreign countries is a “re-export” and requires authorization.) See [22 CFR 120.19](#).

**Release** under EAR covers activities that disclose information to foreign persons. See [15 CFR 734.15](#). Under ITAR ([22 CFR 120.50](#)), activities allowing a foreign person to “inspect” a defense article in a way that reveals technical data to that person and oral/written exchanges of technical data are “releases” and thus under export control laws. (This excludes simple size or weight information, and simple attributes.)

*Technical data is Released (under ITAR) through: (1) Visual or other inspection by foreign persons of a defense article that reveals technical data to a foreign person; or (2) Oral or written exchanges with foreign persons of technical data in the United States or abroad.*

*A foreign person (under EAR) having theoretical or potential access to technology or software is similarly not a “release” because such access, by definition, does not reveal technology or software.*

**Restricted Parties** – Individuals and entities with whom the university and its employees may be prohibited by law, or that require a license or other government approval, to export to or engage in controlled transactions. These include the Denied Persons List, Entity List, and Unverified List (Dept. of Commerce);

the Debarred Parties Lists (Department of State); and the Specially Designated Nationals (SDN) and Blocked Persons List (Department of Treasury).

**Restricted Research** – Defined as university research, development, or testing subject to: (i) publication restrictions; (ii) access and dissemination controls; (iii) federally funded research with contract-specific national security restrictions; (iv) accepting third-party controlled items or information; or (v) 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.

**Sanctioned Countries** – 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](#).

**Significant Military Equipment (SME)** means articles for which special export controls are warranted because of their capacity for substantial military utility or capability. (ITAR)

**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 US 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".

**Statutory** means enacted, regulated, or authorized by statute. E.g., when a government action is required by law, the action is statutory if passed by Congress and signed into law by the President.

**Technical Assistance** – Under the EAR, instruction, skills training, working knowledge, and consulting services, which may involve the transfer of technical data, may be technical assistance This is similar to the ITAR's "defense service" definition and under ITAR there can be Technical Assistance Agreements, which authorize transferring technical data and providing defense services.

**Technical Data** – (22 CFR §120.10) Refers to 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.

**Transfer** - Under ITAR, a “Re-transfer” occurs when there is a change in the item’s end user or end use within the same country. Authorization will still be required to provide a defense article to a subcontractor or intermediate consignees in the same country (unless previously authorized, e.g., via TAA), as that would constitute a change in end user and end use. Certain activities, such as disclosures of technical data to a foreign national abroad, may be covered by the new definitions of both “reexport” and “retransfer.”

**U.S. Munitions List (USML) – (22 CFR §121.1)** The USML includes articles, services, and related technical data designated as defense articles and defense services pursuant to the Arms Export Control Act (AECA).

**U.S. Person** – Under the ITAR, a natural person who is a lawful permanent resident (green card holder) or a protected individual (citizen or national of the U.S., special agricultural worker, admitted refugee or person granted asylum); or any entity (corporation, business association, partnership, etc.) incorporated in the U.S., or any federal, state, or local governmental entity. The EAR is effectively the same, although without explicit definition: the deemed export rule, for instance, applies to "foreign nationals," but excludes permanent residents and protected individuals. (Note that for the purpose of §744.6 Restrictions on Certain Activities of U.S. Persons, the EAR adds "any person in the United States".) *[Usage note: this website uses "non-U.S. person" as an objective counterpart to "foreign person" for clarity when being read by people of all nationalities.]*

**Visual Compliance** refers to the software package that Mines utilizes to review persons or entities that may be on the Denied Persons list as collected from Department of Commerce and other agencies. Contact ORA for questions or access to this tool.

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