

HOWARD UNIVERSITY POLICY

POLICY ADDENDUM A

EXPORT CONTROL DEFINITIONS LIST

The following include expanded definitions, hyperlinks and citations related to the Export Control Policy.

- A. **Access Information** – Information that allows access to encrypted technology or encrypted software in an unencrypted form. Examples include decryption keys, network access codes, and passwords (15 CFR 772).
- B. **Bureau of Industry and Security (BIS)** - An agency of the Department of Commerce that administers and enforces the Export Administration Regulations (EAR).
- C. **Commerce Control List (CCL)** - List of items under the Bureau of Industry and Security (BIS) 's export control jurisdiction of the Department of Commerce. The CCL is found in Supplement 1 to Part 774 of the EAR.

The CCL is divided into ten categories: (0) Nuclear Materials, Facilities and Equipment, and Miscellaneous; (1) Materials, Chemicals, "Microorganisms," and Toxins; (2) Materials Processing; (3) Electronics Design, Development, and Production; (4) Computers; (5) Telecommunications; (6) Sensors; (7) Navigation and Avionics; (8) Marine; (9) Propulsion Systems, Space Vehicles, and Related Equipment.

Every CCL category is subdivided into the same five groups, designated by the letters A through E: (A) Equipment, assemblies, and components; (B) Test, inspection, and production equipment; (C) Materials; (D) Software; and (E) Technology.

- D. **Controlled Unclassified Information (CUI (32 CFR Part 2002))** - Is defined as Information the government creates or possesses, or that an entity creates or possesses for or on behalf of the government, that a law, regulation, or government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls. CUI does not include classified information or information a non-executive branch entity possesses or maintains in its own systems that did not come from, or was not created or possessed by, or for, an executive branch agency or an entity acting for an agency. Specific details on types of information considered CUI can be found in NARA's final rule, 32 CFR Part 2002, as amended. https://ocio.commerce.gov/sites/default/files/media/files/2019/doc_cui_policy_v2_-_august_2019.pdf (see a comprehensive list under the CUI Registry). CUI is divided into two broad groups: i) **CUI Basic**: It is required that relevant CUI be safeguarded,

handled, disseminated, marked, and destroyed per the basic or “default” requirements delineated in the Code of Federal Regulations at 32 CFR Part 2002; ii) **CUI Specified:** For this category of CUIs, there are existing laws, regulations, or government-wide policies addressing specific approach to safeguarding and handling. CUI Specified is not inescapably a higher level of CUI, but rather that specific requirements for handling and protecting related data, information, or material are delineated in specific regulations or policies. Also, CUI does not include information (a) already in the public domain or (b) that is generated during an activity that qualifies as “Fundamental Research,” not subject to publication restrictions, and intended for publication and broad dissemination.

(See CUI category list: <https://www.archives.gov/cui/registry/category-list>)

- E. **Deemed Export** - Release or transmission of information or technology subject to export control to any foreign national in the U.S., including graduate students and training fellows. Such a release of information is considered an export to the person’s home country.
- F. **Defense Article** - Any item designated in the U.S. Munitions List. These items consist of articles specifically designed, developed, configured, adapted, or modified for military applications and related technical data. Examples include specified chemical agents, cameras designated for military purposes, specified lasers, some GPS equipment, and any directly related technical data (ITAR 120.6).
- G. **Defense Service** - Furnishing of assistance, including training, anywhere (inside the United States or abroad) to foreign persons in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a defense article, and the furnishing of any related technical data (22 CFR §120.9). The Bona Fide Employee Exemption [ITAR 125.4(b)(10)] does not apply to where the employee will be provided a Defense Service.
- H. **Debarred Parties List** - List of individuals denied export privileges under ITAR and maintained by the State Department. Information can be accessed from <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>.
- I. **Denied Persons’ List** - A list of persons who have been issued a denial order from the Commerce Department’s Bureau of Export Administration (BXA). U.S. exporters and third parties in general, are prohibited from dealing with these persons in transactions involving U.S. items. The list can be accessed at <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list>
- J. **Dual-Use** - Items that have both civilian and military or proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also “subject to the EAR” (see §734.2(a) of the EAR). Items with no specific ECCN are designated as “EAR99.”

- K. **Educational Information** - Information that is normally released by instruction in catalog-listed courses and associated teaching laboratories of academic institutions is considered “Educational Information” and is not subject to Export Controls.
- L. **Entity List** – Exports to foreign end-users engaged in proliferation activities are usually prohibited without a license. These are administered on a case-by-case basis. The list can be accessed at <http://www.bis.doc.gov/entities/default.htm>
- M. **Export** - Any item (i.e., commodity, software, technology, equipment, or information) sent from the U.S. to a foreign destination is considered an export. Examples of exports include the actual shipment of goods and the transfer of written documents or information via email, phone, fax, internet, and verbal conversations.
- N. **Export Administration Regulations (EAR)** - Regulations promulgated and implemented by the Department of Commerce that regulate the export of goods, software, and related technology identified on the Commodity Control List (CCL), Title 15 CFR 774, and Supplement 1. The EAR also includes export restrictions, sanctions, and embargoes to specified persons, entities, and countries.
- O. **Export Controls Act of 2018:** This bill grants the U.S. President authority to control: (1) the export, reexport, and transfer of items (commodities, software, or technology), whether by U.S. persons (including corporations) or by foreign persons, wherever located to protect national security; and (2) the activities of U.S. persons, wherever located, relating to specific nuclear explosive devices, missiles, chemical or biological weapons, whole plants for chemical weapons precursors, foreign maritime nuclear projects, and foreign intelligence services. A license shall be required to export, reexport, or transfer items to a country if the Department of State has made specified determinations concerning support for international terrorism. The U.S. President shall establish and lead a regular ongoing interagency process to identify emerging critical technologies not identified in any list of items controlled for export. <https://www.congress.gov/bill/115th-congress/house-bill/5040>

Anti-Boycott Act of 2018: The U.S. President shall issue regulations prohibiting specified actions concerning foreign boycotts against a country that is friendly to the United States and may impose civil penalties for violations of boycott prohibitions. The U.S. President shall impose specified sanctions: (1) upon determining that a U.S. person knowingly exports, reexports, or transfers of any item on the Guidelines and Equipment and Technology Annex of the Missile Technology Control Regime (MTCR); and (2) on a foreign person who engages in a specified activity involving MTCR equipment or technology transfers, where such person has knowingly and materially contributed through the export from the United States of any item subject to U.S. jurisdiction involving the efforts by a foreign country, project, or entity to acquire chemical or biological weapons. <https://www.congress.gov/bill/115th-congress/house-bill/5040>

- P. **Export Control Classification Number (ECCN)** - Identifies the Commerce Control List classification and related export requirements of commodities, software, and technology subject to the export licensing authority of the Department of Commerce, BIS. All commodities, software, and technology not specifically identified on the CCL are classified as “EAR99.”
- Q. **Export License** - A written authorization provided by the appropriate governing regulatory authority detailing the specific terms and conditions under which the export or re-export of Export Controlled items is allowed.
- R. **Export License Exception** - An Export License Exception is an authorization that allows a person to export or re-export, under very specific conditions, items that would normally require a license. Export License Exceptions are detailed in EAR § 740 (<http://www.access.gpo.gov/bis/ear/pdf/740.pdf>).
- S. **Foreign National** - A Foreign National is defined as anyone who is not a U.S. citizen, not a lawful permanent resident of the U.S., or does not have refugee or asylum status in the U.S. Any foreign corporation, business association, partnership, trust, society or any other foreign entity or group, as well as international organizations and foreign governments are considered “Foreign National(s).” Even when a foreign person is in the U.S., the individual may still be subject to export control restrictions, regardless of their employment or visa status.
- T. **U.S. Nationals or Permanent Residents Working for a Foreign Company in a Foreign Country**: Individuals working for a foreign company in a foreign country would adopt the nationality of the foreign entity regardless of citizenship or residence. Transfer of technical data, excluding “fundamental research” data to a foreign person/company/country is deemed an export.
- U. **Fundamental Research** - As defined by National Security Decision Directive 189 (NSDD 189), Fundamental Research is any “basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community...” Information that results from Fundamental Research is not subject to Export Control.
- V. **Public Domain** (22 CFR 120.11) – Under the ITAR, information that is published and that is generally accessible or available to the public is not export controlled. Examples include (a) sales at newsstands and bookstores; (b) subscriptions that are available without restriction to any individual who desires to obtain or purchase the published information; (c) second-class mailing privileges granted by the U.S. government; (d) libraries open to the public or from which the public can obtain documents; (e) published patent applications and issued patents; (f) unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the public, in the United States; (g) any public release after approval by the cognizant U.S. government agency; and (h) 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. 22 CFR 120.11

- W. **Publicly Available** (15 CFR 734.7) – The EAR uses the term “publicly available” rather than “public domain.” Under the EAR, information is publicly available when it becomes generally accessible to the public. Additionally, the EAR specifically provides that software that is available for general distribution is publicly available (except for encryption software with a symmetric key length exceeding 64 bits). Published encryption software classified under ECCN 5D002 remains subject to the EAR unless it is publicly available encryption object code software classified under ECCN 5D002 and the corresponding source code meets the criteria specified in § 742.15(b) of the EAR. <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734/section-734.7>
- X. **Re-Export** – A re-export occurs whenever any item (i.e., commodity, software, technology, equipment, or information) is sent from one foreign country to another foreign country. It is an actual shipment or transmission of items from the United States.
- Y. **Release** – A release is defined in the EAR (15 CFR 734.15) as visual or other inspection or “releasing” the technology that reveals EAR-controlled technology or source to a foreign person regardless of location.
- Z. **Sanctioned Country** – Even when exclusions to EAR or ITAR apply, the U.S. Treasury Department, Office of Foreign Assets Control may prohibit payment, travel, and the transfer of items, assets, and services of value to sanctioned nations. The latest information about embargoed countries can be viewed at www.treas.gov/ofac.
- AA. **Specially Designated Nationals (SDN)** - Any person who is determined by the U.S. Secretary of the Treasury to be a specially designated national for any reason under regulations issued by the Office of Foreign Assets Control. U.S. persons are prohibited from having transactions with those listed in the Specially Designated Nationals List. The list is located at <http://www.treas.gov/offices/enforcement/ofac/sdn/>
- BB. **Subject to the Export Control Regulation (EAR)** – This describes those items and activities over which the Bureau of Industry and Security (BIS) exercises regulatory jurisdiction. The CCL categorizes items with an alpha-numeric sequence called an Export Control Classification Number (ECCN). The sequence has three primary parts: the category (first digit), the product group (second digit), and the level of restriction or type control (last three digits). The ECCN may also include subparts that identify detailed characteristics of an item.
- CC. **Technical Assistance** - Technical assistance may take the form of instruction, skills training, working knowledge, and consulting services and may also involve the transfer of technical data.

- DD. **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, models, formulae, tables, engineering designs and specifications, 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, general system descriptions, or basic marketing information on function or purpose (ITAR Ch. 120.10).
- EE. **Technology** - Any specific information and know-how (whether in tangible forms, such as models, prototypes, drawings, sketches, diagrams, blueprints, manuals, 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. The information takes the form of technical data or technical assistance. See the definition of “use” below.
- FF. **Transfer:** Transfer includes but not limited to shipping, mailing, emailing, and traveling with export-controlled items