

Understanding Export Regulations

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Objective

To provide basic information on export control regulations

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Order of Presentation

Introduction to the EAR

EAR 10 General Prohibitions

The Commerce Control List

Exceptions

Deemed Exports

Obtaining a License

Documents and Record Keeping

Enforcement and Cases

Introduction to Export Controls

- What is an export?
- Defense Items
- Dual-use Items
- Regulatory Agencies

Export Administration Regulations (EAR)

- What is an item?
- What items are subject to the EAR?
- What items are not subject to the EAR?

Making a License Determination

- What is being exported?
- Where is it going?
- Who will receive it?
- What will they do with it?
- What else do they do?

10 General Prohibitions

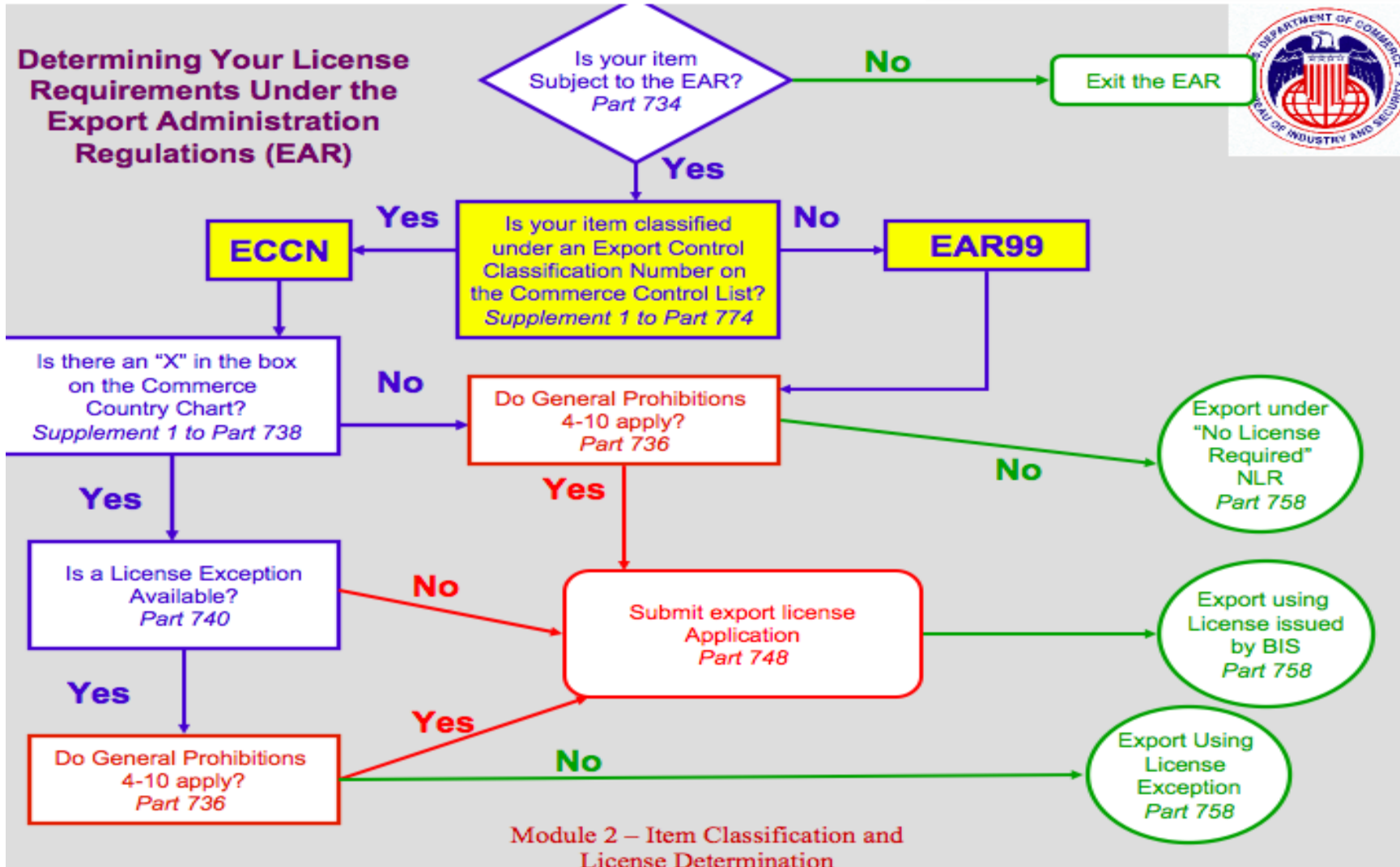
The general rule is that a person may undertake transactions subject to the EAR without a license or other authorization, unless the regulations affirmatively state such a requirement.

10 General Prohibitions

- General Prohibition 1 (Exports and Re-exports)
- General Prohibition 2 (U.S. Content Controls)
- General Prohibition 3 (Foreign-produced Direct Product Re-exports)

10 General Prohibitions (Cont.)

- General Prohibition 4 (Violation of Denial Orders)
- General Prohibition 5 (Prohibited End-users/uses)
- General Prohibition 6 (Exports or Re-exports to Embargoed Countries)
- General Prohibition 7 (Exports or Re-exports in Support of Proliferation Activities)
- General Prohibition 8 (Shipping through Certain countries)
- General Prohibition 9 Countries (Violation of Orders/Terms or Condition)
- General Prohibition 10 (Knowledge of a violation)



- The Commerce Control Chart plays a key role in determining whether an export license is needed from the Department of Commerce.

Commerce Control List Overview and the Country Chart

Commerce Country Chart
Reason for Control

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
	Guyana	X	X		X		X	X	X	X	X	X	X		X	
Haiti	X	X		X		X	X	X	X	X	X	X		X		X
Honduras	X	X		X		X	X	X	X	X	X	X		X		X
Hong Kong	X	X		X		X		X	X	X		X		X		
•Hungary	X					X		X	X							
•Iceland	X			X		X		X	X							

Structure of the Commerce Control List

- 10 Categories (0-9)
- 5 Product Groups (A-E)
- Entries (ECCN)
- Alphabetical Index
- Numerical Index

The Commerce Control list is divided into 10 broad categories and each category is further divided into five product group.

- **Ten categories**

- 0 – Nuclear Materials, Facilities and Equipment and Misc.
- 1 – Materials, Chemicals, Microorganisms and Toxins
- 2 – Materials Processing
- 3 – Electronics
- 4 – Computers
- 5 – Telecommunications and Information Security (Encryption)
- 6 – Lasers and Sensors
- 7 – Navigation and Avionics
- 8 – Marine
- 9 – Propulsion Systems, Space Vehicles and Related Equipment

Five Sub-groups within Each Category

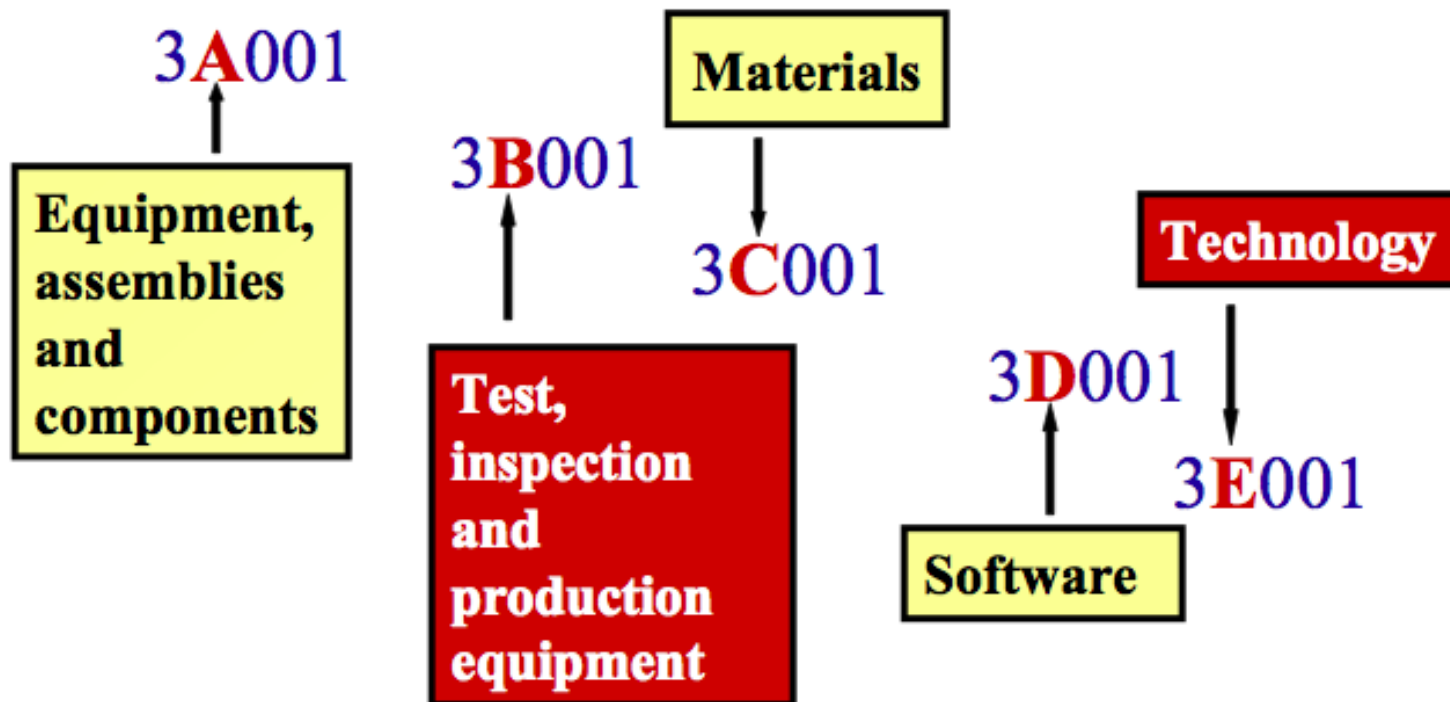
- A – Equipment, Assemblies and Components
- B – Test, Inspection and Production Equipment
- C – Materials
- D – Software
- E – Technology

Five Reasons for Control

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



Product Groups



Deemed Exports

- What is the "deemed export" rule?
 - An export of technology or source code (except encryption source code) is "deemed" to take place when it is released to a foreign national within or outside the United States.

What is a "release" of technology?

- Technology is "released" for export when it is available to foreign nationals for visual inspection (such as reading technical specifications, plans, blueprints, etc.); when technology is exchanged
 - orally; or
 - when technology is made available by practice or application under the guidance of persons with knowledge of the technology.

What is "technology"?

- "Technology" is defined as information necessary for the "development," "production," or "use" of a product.

When do I need to apply for an export license for technology under the "deemed export" rule?

- Assuming that a license is required because the technology does not qualify for treatment under EAR99 and no license exception is available
 - 2 Requirements
 - (1) they intend to transfer controlled technologies to foreign nationals in the United States; and
 - (2) transfer of the same technology to the foreign national's home country would require an export license.

Foreign Nationals Subject to Deemed Export Controls

- Any foreign national is subject to the "deemed export" rule except a foreign national who
 - (1) is granted permanent residence (i.e., "Green Card"); or
 - (2) is granted U.S. citizenship; or
 - (3) is granted status as a "protected person" (i.e., political refugees)

Individuals who are permanent residents or citizens of countries other than those of their nationality

- For individuals who are citizens of more than one foreign country, or have citizenship in one foreign country and permanent residence in another, as a general policy, the last permanent resident status or citizenship obtained governs.
- If, for some reason, the status of a foreign national is not certain, then you should ask the Bureau of Export Administration (BXA), to determine where the stronger ties lie, based on the facts of the specific case.

License Exceptions

- If an export item is:
 - Regulated by the EAR
 - Listed in the CCL
- That item may need a license to export
 - Unless there is an exception

Two Categories of Exceptions

- General Exceptions
 - Specifically defined in regulations
 - Supersede only GP's 1, 2, 3 and 8
- Special Exceptions
 - Remaining “absolute” GP's supersede general exceptions
 - But some exceptions may be granted back:
 - Limited exceptions to GP 5, GP 6 (Government)

Types of Exceptions

- ECCN-Driven
 - Named in particular ECCN if applicable
 - May be general (LVS, GBS, CIV, TRS)
 - May be ECCN specific (1C350 Samples)
- Stand Alone
 - Directly application general regulation
 - Replacement Parts (RPL), Friendly Gov't End-User (GOV), Temporary Export (TMP), Etc.

- Exceptions are self-executing
 - No need for prior approval by BIS
 - But specific recordkeeping requirements may apply
- Use as certification of terms
 - Using an exception certifies that all necessary elements are met
 - Misuse = False Statement to Fed Gov't

Obtaining Export/Re-export Licenses

- Application Process
- Use Form BIS-748P, which can be ordered, but is not available online
- Other EAR Supplemental Forms:
 - <https://www.bis.doc.gov/forms/orderingformsonline.html> or “forms.gov”
 - Link for BIS-748P, redirects to the Simplified Network Application Process (SNAP-R).

The Purpose of the SNAP-R

- Allow exporters to submit
 - Export License applications,
 - Re-export applications,
 - Commodity Classification requests,
 - Agriculture License Exception notices,
 - and related supporting documents to the Bureau of Industry and Security (BIS) through the Internet.

- The process for how to use SNAP-R is as follows:
 - Obtain authorization
 - Obtain a Company Identification Number (“CIN”)
 - Obtain Personal Identification Number (“PIN”)
 - Activate a user account.

- **Step 1 - Submit information**
 - Create a Work Item by filling out the online forms and (if applicable) attaching supporting documentation in PDF format.
 - After submitting BIS will start the review process.
 - BIS will assign the application an Application Control Number (ACN) that begins with the letter 'Z'.

- **Step 2 - Receive acknowledgment**
 - BIS routes an acknowledgment message through SNAP-R to each user authorized to access the Work Item.
 - Message will include the Application Control Number (ACN) mentioned in Step 1.
 - Users can access SNAP-R and see new messages from BIS on the homepage.

- **Step 3 - Check status and messages**
 - Check the status of the applications through SNAP-R.
 - Once users have received the Application Control Number (ACN) from BIS/SNAP-R, they may track the status of the Application via the System for Tracking Export License (STELA).

- **Step 4 - Final action**
 - Acceptance or rejection of a previously submitted application, classification or reporting form can be viewed from SNAP-R.

Application Review

- The BIS analysis looks at the item, where it is being exported to, its end-use, and the reliability of the parties to the transaction.
- If BIS choose to, the application may be sent to other government agencies for review in addition to their own analysis.

Application Approval

- If BIS approves your application, a license only authorizes an explicit transaction, or series of transactions, which is described in the license application and supporting documents.
- May be approved in whole or in part or further limited by conditions

Application Denial

- If BIS intends to deny your license application, BIS will notify you in writing within five days of the decision. The denial notification will include:
 - (1) The intent to deny decision;
 - (2) The statutory and regulatory basis for the denial;
 - (3) To the extent consistent with the national security and foreign policy of the United States, the specific considerations that led to the decision to deny the license application;
 - (4) What, if any, modifications or restrictions to the license application would allow BIS to reconsider the license application;
 - (5) The name of the BIS representative in a position to discuss the issues with the applicant; and
 - (6) The availability of appeal procedures.

Shipper's Export Declaration

- The Shipper's Export Declaration is used by the Bureau of Census to collect trade statistics and by the Bureau of Industry and Security for export control purposes.
- The SED or AES record collects basic information such as the names and addresses of the parties to a transaction; the ECCN , the description, quantity and value of the items exported; and the license authority for the export.

Records, Reports, and Audits

- Must maintain almost all records from transactions
- Must file a Shipper's Export Declaration
- Any agency of the U.S. Government may inspect records at any time

Criminal and Civil Penalties

- Denial of export privileges
- Administrative penalty up to \$250,000 or twice the value of the transaction
- Criminal penalty up to \$1,000,000
- Willful violations face up to 20 years in prison

2008 Enforcement Statistics

- \$2.7 million in criminal fines
- \$3.6 million in administrative penalties
- 218 months of imprisonment

PA, Inc of Houston, Texas

- Nickel alloy pipe to Iran
- Penalty: \$100,000 in fines, 5 year denial of export privileges

Bass Pro, Inc.

- Exports of gun sights to various locations
- Penalty: \$510,000 in fines

EMD Biosciences, Inc. of San Diego, CA

- Illegal export of biotoxins to Canada
- Penalty: \$904,500 in fines, 2 year denial of export privileges

ProChem, Ltd. of South Africa

- Sodium cyanide to South Africa
- Penalty: \$1.54 million in fines

DHL Shipping

- Goods to Syria, Iran, and Sudan
- Penalty: \$9.5 million in fines

3. Hypotheticals

1. A laptop with security information. ECCN 4A001.b



License Decision Making Process

Examine the appropriate ECCN in the CCL. Is the item you intend to export controlled for a single Reason for Control?

If not, review the reasons for control and the Country Chart column identifier .

4A001 Electronic computers and related equipment, having any of the following (see List of Items Controlled), and “electronic assemblies” and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT, NP

b. Having characteristics or performing functions exceeding the limits in Category 5, Part 2 (“Information Security”).

Reason for Control

NS (National Security): Applies to Column 2

MT (Missile Technology): Applies to Column 1 to items in 4A001.a when the parameters in 4A101 are met or exceeded.

AT (Anti-Terrorism): Applies the entire entry in Column 1

NP (Nuclear Nonproliferation): Applies, unless a License Exception is available. See Section 742.3(b) of the EAR for information on applicable licensing review policies.

Commerce Country Chart

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	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
	Burma	X	X	X	X		X	X	X	X	X		X		X	
Burundi	X	X		X		X	X	X	X	X		X		X		
Cambodia	X	X		X		X	X	X	X	X		X	X			
Cameroon	X	X		X		X	X	X	X	X		X		X		
Canada	X										X					
Cape Verde	X	X		X		X	X	X	X	X		X		X		
Central African Republic	X	X		X		X	X	X	X	X		X		X		
Chad	X	X		X		X	X	X	X	X		X		X		
Chile	X	X		X		X	X	X	X	X	X	X		X		
China	X	X	X	X		X	X	X	X	X		X		X		
Colombia	X	X		X		X	X	X	X	X	X	X		X		
Comoros	X	X		X		X	X	X	X	X		X		X		
Congo (Democratic Republic of the)	X	X		X		X	X	X	X	X		X		X		
Congo (Republic of the)	X	X		X		X	X	X	X	X		X		X		

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	Guatemala	X	X		X		X	X	X	X	X	X	X		X	
Guinea	X	X		X		X	X	X	X	X		X		X		
Guinea-Bissau	X	X		X		X	X	X	X	X		X		X		
Guyana	X	X		X		X	X	X	X	X	X	X		X		
Haiti	X	X		X		X	X	X	X	X	X	X		X		
Honduras	X	X		X		X	X	X	X	X	X	X		X		
Hong Kong	X	X		X		X		X	X	X		X		X		
Hungary ³	X					X		X	X							
Iceland ³	X			X		X		X	X							
India	X	X	X	X		X	X	X	X	X		X		X		X
Indonesia	X	X		X		X	X	X	X	X		X		X		
Iran	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Iraq ¹	X	X	X	X	X	X	X	X	X	X		X	X			
Ireland ^{3,4}	X					X		X	X	X		X		X		

License Exceptions

LVS: \$5,000 for 4A001.a; N/A for MT and 4A001.b

GBS: N/A

CIV: N/A

2. Mass Spectrometer ECCN 3A99.b

Mask or reticles or pellicles, stored program controlled inspection equipment	3B991.b.2.e
Mask software	3D003
Masks	8A992.i
Masks, integrated circuits of 3A001	3B001.g
Masks, mask substrates, mask-making equipment	3B991.b.2
Mass spectrometers & ion sources (UF6 enrichment plant)	0B002.g
Mass spectrometers & ion sources (UF6 enrichment plant)	3A233
Mass spectrometers, n.e.s.	3A999.b
Materials for reduced electromagnetic reflectivity	1C101
Matrix, organic	1A002.b
MCT (HgCdTe) crystals & epitaxial wafers	6C002.b
Measurement equipment, radiation	1A999.a
Measurement equipment, underwater velocity	6A001.b

Commerce Control List: 3A999.b

3A999 Specific processing equipment, n.e.s., as follows (see List of Items Controlled).

License Requirements

b. Mass spectrometers n.e.s;

Reason for Control: AT

Control(s)

Country Chart

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT licensing requirements for this entry. See §742.19 of the EAR for additional information.

License Exceptions

LVS: N/A

GBS: N/A

CIV: N/A

Shipment of a Chemical Compound

- John Johnson is a senior researcher developing a number of new chemical compounds.
- John is looking for a post graduate student to help in the lab with his research. He is in discussions with Ali.

- Ali was born in Iran but then immigrated to Germany when he was 5 years old.
- Ali is classified as an international student, he is not a US citizen nor does he have a Greencard.

- Should John hire Ali?
 - Who/What should John refer to regarding this matter?
 - EAR
 - It is important to make sure that item at issue is actually subject to the EAR
 - BIS
 - The Website has essential documents as well as seminars and workshops. OR
 - Call an Export Counselor (numbers listed on website by closest location)

Multiple Citizenship

- Sometimes a foreign national will possess more than one citizenship or country of permanent residence.
- BIS will base the license requirements on his or her most recently established country of citizenship or permanent residency.

Shipping Documentation

- In the case of deemed exports, there are no shipping documents.
- Once the export authorization, either in the form of a license or license exception is received, the foreign national is authorized to receive the controlled technology or software source code.

Fundamental Research

- Fundamental Research is not subject to the EAR
 - Basic and applied research in science and engineering that is ordinarily published and shared broadly within the scientific community are not subject to the EAR.

Fundamental Research

- Fundamental research is covered by a Presidential Policy Directive, NSDD – 189.
- Such research, to the maximum extent feasible, should not be regulated, except by classification or pursuant to statute.

If the Compound is subject to the EAR

Correct classification for technology and source code is vital

- Classified under an ECCN
- If not, then classified as EAR 99
- EAR99 technology can generally be released to foreign nationals from most countries.

End Use Restrictions

- End-use controls may apply to any under EAR jurisdiction.
- Require an exporter to submit an export license application if the exporter “knows” or “is informed” that an export is for a suspect end-use including:
 - nuclear, chemical, and biological weapons
 - missile delivery systems, rocket systems and unmanned air vehicles

Hypothetical Outcome

- After consulting the documents and electronic tools provided by the BIS website John Johnson has decided to call the BIS just to confirm.