

§ 734.11

§ 734.11 Government-sponsored research covered by contract controls.

(a) If research is funded by the U.S. Government, and specific national security controls are agreed on to protect information resulting from the research, § 734.3(b)(3) of this part will not apply to any export or reexport of such information in violation of such controls. However, any export or reexport of information resulting from the research that is consistent with the specific controls may nonetheless be made under this provision.

(b) Examples of "specific national security controls" include requirements for prepublication review by the Government, with right to withhold permission for publication; restrictions on prepublication dissemination of information to non-U.S. citizens or other categories of persons; or restrictions on participation of non-U.S. citizens or other categories of persons in the research. A general reference to one or more export control laws or regulations or a general reminder that the Government retains the right to classify is not a "specific national security control". (See Supplement No. 1 to this part, Questions E(1) and E(2).)

§ 734.12 Effect on foreign laws and regulations.

Any person who complies with any of the license or other requirements of the EAR is not relieved of the responsibility of complying with applicable foreign laws and regulations. Conversely, any person who complies with the license or other requirements of a foreign law or regulation is not relieved of the responsibility of complying with U.S. laws and regulations, including the EAR.

SUPPLEMENT NO. 1 TO PART 734—QUESTIONS AND ANSWERS—TECHNOLOGY AND SOFTWARE SUBJECT TO THE EAR

This Supplement No. 1 contains explanatory questions and answers relating to technology and software that is subject to the EAR. It is intended to give the public guidance in understanding how BIS interprets this part, but is only illustrative, not comprehensive. In addition, facts or circumstances that differ in any material way from those set forth in the questions you an-

15 CFR Ch. VII (1–1–10 Edition)

swers will be considered under the applicable provisions of the EAR. Exporters should note that the provisions of this supplement do not apply to encryption software classified under ECCN 5D002 for "EI" reasons on the Commerce Control List or to mass market encryption software with symmetric key length exceeding 64-bits classified under ECCN 5D992. This Supplement is divided into nine sections according to topic as follows:

Section A: Publication of technology and exports and reexports of technology that has been or will be published.

Section B: Release of technology at conferences.

Section C: Educational instruction.

Section D: Research, correspondence, and informal scientific exchanges.

Section E: Federal contract controls.

Section F: Commercial consulting.

Section G: Software.

Section H: Availability in a public library.

Section I: Miscellaneous.

Section A: Publication

Question A(1): I plan to publish in a foreign journal a scientific paper describing the results of my research, which is in an area listed in the EAR as requiring a license to all countries except Canada. Do I need a license to send a copy to my publisher abroad?

Answer: No. This export transaction is not subject to the EAR. The EAR do not cover technology that is already publicly available, as well as technology that is made public by the transaction in question (§§ 734.3 and 734.7 of this part). Your research results would be made public by the planned publication. You would not need a license.

Question A(2): Would the answer differ depending on where I work or where I performed the research?

Answer: No. Of course, the result would be different if your employer or another sponsor of your research imposed restrictions on its publication (§ 734.8 of this part).

Question A(3): Would I need a license to send the paper to the editors of a foreign journal for review to determine whether it will be accepted for publication?

Answer: No. This export transaction is not subject to the EAR because you are submitting the paper to the editors with the intention that the paper will be published if favorably received (§ 734.7(a)(4)(iii) of this part).

Question A(4): The research on which I will be reporting in my paper is supported by a grant from the Department of Energy (DOE). The grant requires prepublication clearance by DOE. Does that make any difference under the Export Administration Regulations?

Answer: No, the transaction is not subject to the EAR. But if you published in violation of any Department of Energy controls you