



SOCIETY FOR INTERNATIONAL AFFAIRS

Fundamental Research According to the ITAR

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Frequently Asked Questions

U.S. Department of State

Is fundamental research controlled under the ITAR?

What are the limits of the fundamental research
exemption in the ITAR?

Are “Universities” exempt from the ITAR?



Definitions

U.S. Department of State

- Defense Service is defined in §120.9(a)
 - (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, 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.



Definitions

U.S. Department of State

- Technical Data is defined in §120.10(a)
 - (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; (design, logic flow, algorithms, programs, operating systems, and support software for implementation, test, operation, diagnosis and repair)
 - (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.



Defense Services

U.S. Department of State

- The provision of defense services using exclusively public domain information **IS** controlled by the ITAR
 - There is no references to fundamental research in the definition of defense services in §120.9
 - Per §124.1(a): “The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services... (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter pursuant to §125.4).”



Defense Services

U.S. Department of State

- Provision of defense services for items exported by U.S. institutions of higher learning **IS** controlled by the ITAR
 - §125.4(d)(1) contains a licensing exemption for the provision of such defense services (with certain limits)
 - Countries of §123.16(b)(10)(i) and such nationals doing international fundamental research under aegis of an accredited U.S. institution; and
 - Direct support of fundamental research at U.S. institutions or qualified institutions/research centers within same countries within §123.16(b)(10)(i)
 - Only discussions on assembly or integration into scientific... satellite
 - Does NOT cover launch activities, MTCR articles or SME, or Tech Data/SW
 - Otherwise an export license or agreement is required



So What's the Answer?

U.S. Department of State

#1 - Is fundamental research controlled under the
ITAR?

Predominately YES

The **only** part of fundamental research that **is not** controlled by the ITAR is the published information that meets the definition of public domain.

The research itself **is** controlled by the ITAR if it involves the provision of a defense service.

The hardware generated **is** controlled by the ITAR if it is considered a defense article as defined in §121.



So What's the Answer?

U.S. Department of State

#2 – What are the limits of the fundamental
research exemption in the ITAR?

TRICK QUESTION

There is **NO** such thing in the ITAR as a “fundamental research exemption.”

There are two exemptions related to fundamental research (§123.16(b)(10) for hardware and §125.4(d) for defense services) but both have restrictions.

Those situations not meeting the exemption requirements are subject to licensing.