

importer, importing company, customs broker or importer's agent will be required to provide general information. This information will include: The filer's company name, employer identification number (EIN) or CBP ID number (where no EIN is available), U.S. street address, telephone number, contact information and e-mail address for both the company headquarters and any branch offices that will be applying for Mexican cement import licenses. This information will not be released by Commerce, except as required by U.S. law.

**§ 360.203 Automatic issuance of import licenses.**

(a) *In general.* Mexican cement import licenses will be issued to registered importers, customs brokers or their agents through an automatic Mexican cement import license issuance system. The licenses will be issued automatically after the completion of the form.

(b) *CBP entry number.* Filers are not required to report a CBP entry number to obtain an import license but are encouraged to do so if the CBP entry number is known at the time of filing for the license.

(c) *Information required to obtain an import license.* (1) The following information is required to be reported in order to obtain an import license (if using the automatic licensing system, some of this information will be provided automatically from information submitted as part of the registration process):

- (i) Applicant company name and address;
- (ii) Applicant contact name, phone number, fax number and e-mail address;
- (iii) Importer name;
- (iv) Exporter name;
- (v) Manufacturer name;
- (vi) Country of origin;
- (vii) Country of exportation;
- (viii) Expected date of export;
- (ix) Expected date of import;
- (x) Expected port of entry;
- (xi) Sub-Region of Final Destination:

Indicate the Sub-region where either the Mexican Cement will be consumed by an affiliated company to make concrete or concrete products or the Sub-region of the first unaffiliated purchaser of the Mexican Cement.

(xii) *Final Destination:* Indicate the complete name and address (including county) of either the affiliated company that will consume the Mexican Cement or the first unaffiliated purchaser of the Mexican Cement. If either is not known when the Import License is issued, indicate the address (including county) where the Mexican Cement will be

silored/warehoused until the time of shipment to the first unaffiliated purchaser.

- (xiii) CBP entry number, if known;
- (xiv) Current Harmonized Tariff System of the United States (HTSUS) number (from Chapter 25 of the HTSUS);
- (xv) Quantity (in metric tons);
- (xvi) Customs value (U.S. \$);
- (xvii) Whether the entry is made pursuant to the disaster relief provisions of the Agreement; and
- (xviii) Mexican Export License Number.

(2) Certain fields will be automatically filled out by the automatic license system based on information submitted by the filer (e.g., product category, unit value). Filers should review these fields to help confirm the accuracy of the submitted data.

(3) Upon completion of the form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After submitting the completed form, the system will automatically issue a Mexican cement import license number. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the "license form"). Filers can print the license form only at that time. For security purposes, users will not be able to retrieve licenses from the license system at a later date for reprinting. If needed, copies of completed license forms can be requested from Commerce during normal business hours.

(d) *Duration of the Mexican cement import license.* The Mexican cement import license can be applied for up to 30 days prior to the expected date of importation and until the date of filing of CBP Form 7501, or in the case of FTZ entries, the filing of CBP Form 214. The Mexican cement import license is valid for 60 days; however, import licenses that were valid on the date of importation but expired prior to the filing of CBP Form 7501 will be accepted.

(e) *Correcting submitted license information.* Due to data security issues, it will not be possible to alter an existing license electronically once it has been issued. However, prior to the entry date listed on CBP Form 7501, filers will be able to cancel previously issued licenses and file for a new license with the correct information. If the filer prefers to have Commerce personnel change the license, there will be a telephone/fax option.

**§ 360.204 Fees.**

No fees will be charged for obtaining a user identification number, issuing a Mexican cement import license.

**§ 360.205 Hours of operation.**

The automatic licensing system will generally be accessible 24 hours a day, 7 days a week but may be down at selected times for server maintenance. If the system is down for an extended period of time, parties will be able to obtain licenses from Commerce directly via fax during regular business hours.

Dated: May 22, 2006.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E6-8402 Filed 5-30-06; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 734 and 772**

[Docket No. 050316075-6122-03]

RIN 0694-AD29

**Revisions and Clarification of Deemed Export Related Regulatory Requirements**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Withdrawal of advance notice of proposed rulemaking.

**SUMMARY:** The Bureau of Industry and Security (BIS) has reviewed the public comments received in response to the "Advance Notice of Proposed Rulemaking: Revision and Clarification of Deemed Export Related Regulatory Requirements" (ANPR) published in the **Federal Register** on March 28, 2005. The ANPR identified recommendations contained in the U.S. Department of Commerce Office of Inspector General (OIG) Report entitled "Deemed Export Controls May Not Stop the Transfer of Sensitive Technology to Foreign Nationals in the U.S." (Final Inspection Report No. IPE-16176—March 2004). This action discusses concerns raised by the OIG and summarizes public comments received in response to the ANPR. This document also states that the current BIS licensing policy related to deemed exports is appropriate and confirms that the existing definition of "use" adequately reflects the underlying export controls policy rationale in the Export Administration Regulations (EAR). As such, BIS is withdrawing the ANPR. In addition, this action addresses comments on the scope of the

fundamental research provisions in the EAR.

**ADDRESSES:** Although there is no official comment period for this document, you may submit comments, identified by Docket No. 050316075–6122–03, by any of the following methods:

- E-mail:

[publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov). Include “050316075–6122–03” in the subject line of the message.

- Fax: (202) 482–3355.

- Mail or Hand Delivery/Courier: U.S.

Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: Docket No. 050316075–6122–03.

**FOR FURTHER INFORMATION CONTACT:**

Alexander Lopes, Director of the Deemed Exports and Electronics Division, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, telephone: (202) 482–4875 or e-mail: [alopes@bis.doc.gov](mailto:alopes@bis.doc.gov) or Marcus Cohen, Bureau of Industry and Security, telephone: (202) 482–2440 or e-mail: [mcohen@bis.doc.gov](mailto:mcohen@bis.doc.gov). Copies of the referenced OIG Report are available at: <http://www.oig.doc.gov/oig/reports/2004/BIS-IPE-16176-03-2004.pdf>. Public comments received by BIS in response to the ANPR are available at: <http://efoia.bis.doc.gov/>.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Bureau of Industry and Security (BIS) has reviewed public comments received in response to the “*Advance Notice of Proposed Rulemaking: Revision and Clarification of Deemed Export Related Regulatory Requirements*” (ANPR) published in the **Federal Register** on March 28, 2005 (70 FR 15607; comment period extended, 70 FR 30655). The ANPR described recommendations contained in the U.S. Department of Commerce Office of Inspector General (OIG) Report entitled “*Deemed Export Controls May Not Stop the Transfer of Sensitive Technology to Foreign Nationals in the U.S.*” (Final Inspection Report No. IPE–16176–March 2004).

In its report, the OIG concluded that existing BIS policies under the Export Administration Regulations (EAR) could enable foreign nationals from countries and entities of concern to access otherwise controlled technology. These concerns prompted the OIG to recommend the following:

(1) Base the requirement for a deemed export license on a foreign national’s country of birth and not on country of citizenship or permanent residency;

(2) Revise the definition of “use” in Section 772.1 of the EAR; and

(3) Modify regulatory guidance in Supplement No. 1 to Part 734 regarding licensing of technology to foreign nationals involved with academic research and government-sponsored research projects.

Adopting certain of the OIG’s recommendations would entail regulatory changes to the EAR. Accordingly, the ANPR requested comments from industry, the academic community, and U.S. government agencies involved in research on the potential impact the proposed revisions would have on their activities. In response to the ANPR, BIS received 311 comments from 88 academic institutions (many academic institutions submitted more than one comment), 22 companies, 25 trade associations, 14 individuals, 20 academic associations, 6 law firms and legal associations, 4 U.S. national laboratories, 4 U.S. agencies, 3 members of Congress, and 2 foreign governments. All public comments received by BIS in response to the ANPR are currently posted on the EFOIA page of the BIS Web site.

Based upon a thorough review of the public comments and a review of foreign immigration requirements, BIS has determined that the current licensing requirement based upon a foreign national’s country of citizenship or permanent residency is appropriate. The current deemed export licensing policy, based on a foreign national’s most recent country of citizenship or permanent residency, recognizes the significance of declarative assertion of affiliation over the mere geographical circumstances of birth. BIS has also concluded that the existing definition of “use” in Section 772.1 of the EAR should remain unchanged. The existing definition of “use” appropriately implements the underlying export control policy rationale in the EAR. Finally, BIS intends to expand outreach to help the regulated community understand the questions and answers in Supplement 1 to Part 734 of the EAR. Moreover, the public should be aware that BIS provides guidance on fundamental research on its Web site. (See Deemed Export FAQ’s at <http://www.bis.doc.gov/policiesandregulations/index.htm>).

In sum, BIS is not adopting those recommendations of the OIG which would have required regulatory changes to the EAR and, accordingly, is withdrawing the ANPR.

A review of the public comments, as well as BIS’s response to the recommendations of the OIG and to

certain issues raised in the public comments, follows.

*Scope of Agency Action*

The current review focused on recommendations made by the OIG, and was not intended to address broader issues related to the operation of the deemed export rule. For example, some comments suggested that the deemed export rule should simply be abolished. Others suggested reforms of U.S. export control policies that would extend far beyond the deemed export rule, while still others questioned the constitutionality of the deemed export rule. Such criticisms and suggested reforms were beyond the scope of the review of the public comments related to this notice, but like all issues of deemed export policy, they will be subject to review by the Deemed Export Advisory Committee (DEAC). For further information related to the establishment of the DEAC, see the notice entitled “*Establishment of Advisory Committee and Clarification of Deemed Export-Related Regulatory Requirements*,” published in the **Federal Register** on May 22, 2006 (71 FR 29301).

All of the public comments received in response to the ANPR, including those public comments that raised issues beyond the scope of review related to this notice, will be made available to members of the Deemed Export Advisory Committee (DEAC). All aspects of the deemed export policy will be subject to review by the DEAC.

In general, the comments focused on the OIG’s recommendations regarding the proposal that deemed export license requirements be based on a foreign national’s country of birth and a proposed revision to the definition of “use.” While few of the public comments received directly addressed the OIG’s recommendation to revise the regulatory guidance in Supplement No. 1 to Part 734 of the EAR, many comments indirectly discussed the potential effect of such regulatory modifications on fundamental research. The general themes expressed in the public comments, as well as BIS’s response to the recommendations of the OIG and to certain issues raised in the public comments, are described in more specificity below.

*A. Public Comments Received in Response to the ANPR*

*Country of Birth*

Almost without exception, the comments stated clear opposition to the OIG’s recommendation that deemed export licenses be based on a foreign

national's country of birth rather than country of citizenship. (See 15 CFR 734.2(b)(2)(ii)) Comments from all sources stressed that deemed export controls must take into account the integral and critical contribution of foreign nationals to U.S. fundamental research.

Numerous comments expressed concern that excessive and bureaucratic requirements will foster a perception among foreign students and researchers that the United States does not welcome foreign nationals in its high-technology research community. Many comments observed that the decrease in the number of foreign nationals in U.S. academic institutions and U.S. industry has already been detrimental to the economy of the United States. These comments argued that a change in the deemed export licensing policy from country of citizenship to country of birth would further adversely impact the United States.

Various comments discussed other methods by which prospective foreign national students and employees are screened. Comments from both academia and industry noted that their organizations rely on existing U.S. visa requirements as a means of guarding against the unlawful release of technology. Many of these comments recommended that the deemed export licensing policy should operate in conjunction with other established systems of screening foreign nationals.

Comments also expressed concerns related to potential conflicts of laws. Some comments noted that if forced to apply a country of birth criteria to their employees, companies might run afoul of both U.S. and foreign anti-discrimination and privacy laws. Comments from companies that operate on a global scale stated that the recommendation by the OIG would present formidable legal and operational hurdles.

Another trend among the comments was a concern about the fundamental unfairness of the change recommended by the OIG. Many comments suggested that the current deemed export licensing policy which focuses on a foreign national's country of citizenship is more appropriate because obtaining citizenship demonstrates an affirmative declaration of affiliation and loyalty toward a particular sovereign entity in ways that the circumstance of a person's birth does not. Further, many comments argued that the OIG failed to present any evidence to support the recommended change in licensing policy and that the envisioned improvements to national security have not been persuasively presented.

#### Definition of "Use"

The OIG recommended that BIS revise the definition of "use" in Section 772.1 of the EAR. The OIG effectively recommended replacing the word "and" with the word "or," as follows: "'Use' (All categories and General Technology Note)—Operation, installation (including on-site installation), maintenance (checking), repair, overhaul, *or* refurbishing." (*Emphasis added*)

The public comments voiced general opposition to this recommendation as well. Many comments stated that revising the definition with the disjunctive "or" would capture too many routine operations carried out by students/employees, and thus constitute a large (and generally unnecessary) compliance burden on organizations. In addition, many comments argued that the OIG failed to proffer any evidence to support the recommended change in licensing policy and, further, that envisioned improvements to national security have not been satisfactorily presented in the OIG's report.

The general theme among comments from the academic community was that the conjunctive reading of the "use" definition properly reflects the policy rationale that currently underlies the controls on the transfer of use technology to foreign national students and researchers. These comments argued that the current "use" definition correctly requires the presence of technology relating to all six activities (*i.e.*, operation, installation, maintenance, repair, overhaul, and refurbishing) because it is the totality of those activities that triggers the requirement for a deemed export license.

Many comments asserted that by changing "and" to "or" in the definition, mere operation of a controlled item by a foreign national would trigger a requirement for a deemed export license. Numerous comments stressed that the proposed revision would thus result in a large expansion of deemed export license applications submitted to BIS. They claim that this will impose a substantial financial and administrative burden on their respective organizations and will also increase the licensing burden on BIS. While many comments cited the number or percentage of foreign nationals in the commenters' organizations, the comments generally do not provide the actual number of items for which "use" technology is controlled within their respective organizations.

Some of the comments from industry suggested that OIG's recommended change would have little practical impact. Those comments reflect that many companies already interpret the definition of "use" in the disjunctive and, further, that the current definition could reasonably be interpreted to be an illustrative list of activities constituting use. As such, they stated that the suggested definition revision would have minimal, if any, effect on business operations.

However, organizations from all sectors appear concerned that a change in the definition would restrict the scope of fundamental research by capturing more routine activities that are currently not subject to the EAR. Many public comments noted that such narrowing of the scope of fundamental research would have a chilling effect on U.S. research efforts conducted by industry and universities alike.

In addition, several comments note that although the OIG speculated in its report that many academic and Federal laboratories might need to seek deemed export licenses, the OIG failed to offer evidence in support of this claim. These comments pointed out that the report contained no findings that controlled "use" technology has been illegally transferred to foreign nationals, either in Federal laboratories, university facilities, or within industry.

#### Regulatory Guidance Related to Fundamental Research

Supplement No. 1 to Part 734 of the EAR provides guidance in the form of questions and answers to further elucidate the deemed export regulations. In its report, the OIG found two of the answers therein may be inaccurate or unclear. The OIG recommended modification to guidance (answers to Questions A(4) and D(1), respectively) covering the following topics:

(1) Whether prepublication clearance by a government sponsor would void the publishability exemption in the EAR and trigger the deemed export rule; and

(2) Whether a license would be required for a foreign graduate student to work in a laboratory.

A large percentage of public comments addressed the OIG's proposed revisions to the answers provided in the deemed export guidance. Although less than 2% of the public comments received directly addressed the OIG's recommended modifications, a significant number of comments discussed the suggested revisions in relation to the possible effect such guidance would have on the

scope of fundamental research as discussed in Section 734.8 of the EAR.

Only a few of the comments focused on the impact of prepublication clearance by a government sponsor as it relates to Section 734.7(a)(4)(iii) of the EAR. Even within that small number, there was no unanimity of opinion. Some agreed with the OIG that research results that are subject to prepublication clearance of a government agency are subject to the EAR. However, other comments noted that Section 734.11 should itself be understood as an exemption to the EAR and, as such, the answer to Question A(4) is correct as currently stated. Still other comments noted that while the answer to Question A(4) is essentially correct, slight modification of the answer is required for purposes of clarification.

With regard to the OIG's suggested revision of the answer to Question D(1), the comments highlighted a theme of serious concern about the effect as it relates to the jurisdictional scope of fundamental research. While only a handful of comments addressed Question D(1) directly, those that did so noted that the apprehension regarding the OIG's revision stems in large part from the OIG's proposed change in the definition of "use." It appears that many in the research community view the revised answer to Question D(1) as a codification that mere operation of a piece of controlled laboratory equipment by a foreign national student will trigger the requirement for a deemed export license. Thus, comments from all sectors appeared to reflect concern that the OIG's recommended modification to the guidance in Supplement No. 1 to Part 734 in conjunction with a disjunctive reading of the "use" definition will either significantly erode or abolish the exemption for fundamental research in the academic laboratory environment.

#### *B. BIS Response to the Recommendations of the OIG and the Public Comments Received in Response to the ANPR*

As a result of the extensive nature of the public comments, BIS is establishing a Deemed Export Advisory Committee (DEAC) under the terms of the Federal Advisory Committee Act (FACA) (Pub. L. 92-463, 5 U.S.C., App. 2). The DEAC will serve as forum to address complex questions related to an evolving deemed export control policy. Specifically, the DEAC will be charged with reviewing the current deemed export policy and determining whether to recommend any changes to that policy. For further information related to the establishment of the DEAC, see the notice entitled

"Establishment of Advisory Committee and Clarification of Deemed Export-Related Regulatory Requirements," published in the **Federal Register** on May 22, 2006 (71 FR 29301).

#### Country of Birth

While the deemed export rule plays a crucial role in preventing foreign nationals from countries of concern from obtaining controlled U.S. technology, BIS also recognizes that export controls must take into account the integral and critical contribution of foreign nationals to U.S. fundamental research. U.S. research institutions play a vital role in advancing science and technology for future generations. Part of the vitality of the research enterprise is the contribution made by foreign national students, faculty, and visiting scientists.

There are substantial concerns associated with the OIG's recommendation to adopt the "country of birth" of foreign nationals as policy for deemed export license determinations. Due in large measure to the concerns raised in the public comments received in response to the ANPR, BIS has determined that the current licensing requirement related to deemed exports is appropriate.

BIS recognizes that many individuals may have ethnic ties to a particular nation, but bear no loyalty towards states where they were born. Further, BIS notes that an individual's act of obtaining citizenship or permanent residency adequately demonstrates affiliation and allegiance to the adoptive nation. Thus, the current deemed export licensing requirement, based on a foreign national's most recent country of citizenship or permanent residency, recognizes the importance of declarative assertion of affiliation over the mere geographical circumstances of birth.

BIS recognizes concerns that may arise in instances where a foreign national maintains dual citizenship or multiple permanent residence relationships. The deemed export rule accounts for the possibility of a foreign national maintaining dual citizenship and specifies that a release of technology or source code subject to the EAR to a foreign national is "deemed to be an export to the home country or countries of the foreign national." (*Emphasis added*) (15 CFR 734.2(b)(2)(ii)) Under existing interpretations of this provision, a home country is a country in which a foreign national is a citizen or permanent resident. If the status of a foreign national is not certain, exporters can request the assistance of BIS to determine where the stronger ties lie,

based on the facts of the specific case. In response to such a request, BIS will look at the foreign national's country, family, professional, financial, and employment ties.

Based upon the recommendations of the OIG, a thorough review of the public comments, and a detailed analysis of the deemed export rule and its impact on the regulated community, BIS has determined that the current licensing requirement based upon a foreign national's country of citizenship or permanent residency is appropriate.

#### Definition of "Use"

After thorough review, BIS has concluded that the existing definition of "use" in Section 772.1 of the EAR should remain in the conjunctive. As such, the word "and" is appropriate and the definition of "use" remains unchanged: All six activities in the definition of "use" must be present to trigger a license requirement. Changing "and" to "or" in the definition, as suggested by the OIG, would lead to a situation in which mere operation of a controlled item by a foreign national could trigger the requirement for a deemed export license. Consequently, BIS has determined that revision to the existing definition would result in an expansion of deemed export license applications imposing a substantial licensing burden on the regulated community, without a corresponding benefit to national security. Hence, the definition of "use" remains unchanged.

Moreover, the conjunctive word "and" in the current "use" definition reflects the policy rationale that underlies the controls on the release of controlled "use" technology to foreign nationals. The current "use" definition lists all six activities (i.e., operation, installation, maintenance, repair, overhaul, & refurbishing) because the totality of those activities would provide the foreign national with enough knowledge to replicate or improve the performance capabilities of the controlled item. As such, all of the activities listed in the definition of "use" are required to trigger a license requirement.

"Use" controls are predicated on Cold War-era reverse-engineering concerns. Under the Coordinating Committee on Multilateral Export Controls (COCOM), the multilateral organization that cooperated in restricting strategic exports (conventional and dual use items) to Eastern Bloc (communist-governed) countries, export controls on technology were based on the concern that the release of technical information to a foreign national of an Eastern Bloc country would enable a controlled item

to be replicated by an Eastern Bloc country. The Wassenaar Arrangement (WA), the successor to COCOM, was established to address post-Cold War security concerns. However, the Cold War-inspired "use" definition was adopted by WA without revision and subsequently included in Part 772 of the EAR.

The OIG highlighted inconsistent interpretations of "use" that exist throughout industry, academia, and within BIS. However, a regulatory revision of the definition of "use" from the conjunctive to the disjunctive is not the most appropriate vehicle for resolving disparate interpretations. Instead, BIS is clarifying that the definition of "use" is properly read in the conjunctive. This clarification resolves the inconsistency suggested by the OIG Report and restates a coherent, bright line rule, which will resolve any misunderstanding and increase compliance with the regulations.

#### Regulatory Guidance Related to Fundamental Research

As noted in many of the comments, there has been some misapprehension as to the scope of the existing regulations as they relate to academic and research institutions. While the domain of items subject to the EAR is large, it is not infinite. There are four broad classes of items that are not subject to the EAR: (1) Items controlled for export exclusively by another agency of the U.S. government, (2) products such as books, movies, magazines, and recordings; (3) publicly available technology and software; and (4) foreign-made items that have less than a *de minimis* percentage of controlled U.S. content.

Although the OIG Report refers to an "exemption" for fundamental research, the EAR generally does not refer to items or activities that are not subject to the EAR as "exemptions." As outlined in Part 734, items and activities are either subject to the EAR or they are not subject to the EAR. (See 15 CFR 734.2 & 734.3) In Part 734, the EAR addresses the jurisdictional scope of fundamental research and sets forth specific parameters and limitations that would take such activities and products resulting from fundamental research outside of the scope of the EAR.

Section 734.8 states that the information resulting from fundamental research is usually not subject to the EAR if the intent is to make the information resulting from the fundamental research publicly available. As such, a product of basic and applied fundamental research would often be captured within the

broader category of items that are "publicly available," and thus is not subject to the EAR. Such research can be distinguished from proprietary research and from research related to industrial development, design, and production, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons. (See 15 CFR 734.8(a) & 734.11(b)).

It is essential to distinguish the information or product (which may be in the form of a scientific paper or publication that describes and/or details the results of the fundamental research) that results from fundamental research from the conduct that occurs within the context of the fundamental research. While the product of the fundamental research is not subject to the EAR because the results of that research are intended for publication and dissemination within the scientific community, authorization may be required if during the conduct of the research controlled technology is released to a foreign national.

The regulated community has expressed concern that the deemed export rule is inconsistent with National Security Decision Directive 189 (NSDD-189). The stated purpose of NSDD-189 is as follows:

"This directive establishes national policy for controlling the flow of science, technology and engineering information produced in federally funded fundamental research at colleges, universities, and laboratories. Fundamental research is defined as follows:

'Fundamental research' means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.'" (*Emphasis added*) (NSDD-189, section II, Policy)

The description of fundamental research found in Section 734.8 of the EAR closely mirrors this section of NSDD-189. Further, the directive clarifies that the product that results from fundamental research is distinct from the conduct involved in the research itself. NSDD-189 also distinguishes proprietary research from basic and applied research.

The regulated community has expressed concerns that license requirements within the EAR for the release of controlled technologies to foreign nationals from countries of concern are in opposition to the Administration's stated policy with respect to fundamental research. However, NSDD-189 expressly notes

that the United States government may place restrictions on the release of controlled information. The pertinent section of NSDD-189 states as follows:

"No restriction may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, *except as provided in applicable U.S. Statutes.*" (*Emphasis added*) (NSDD-189, section II, Policy)

The Export Administration Act (EAA) and the International Emergency Economic Powers Act (IEEPA), the principal statutes authorizing dual-use export controls, constitute applicable U.S. statutes within the meaning of NSDD-189. Pursuant to the EAA, the EAR implement U.S. government restrictions related to fundamental research when the conduct of the research involves the transfer of controlled technologies to foreign nationals. As such, there is no inconsistency between the technology controls listed in the EAR and the type of restrictions on fundamental research specified in NSDD-189.

Based on the extensive and varied public comments received, BIS has concluded that expanded outreach is required to clarify the guidance provided in the questions and answers in Supplement 1 to Part 734 of the EAR. Furthermore, as indicated by the findings of the OIG, the extensive and varied response to the ANPR, and the number of questions and issues that have been raised in recent outreach efforts, it is apparent that an expanded outreach program must be supplemented by a collaborative effort between BIS and the regulated community to ensure that the deemed export policy is consistent with evolving technologies and national security concerns.

Dated: May 24, 2006.

**Matthew Borman,**

*Deputy Assistant Secretary of Commerce for Export Administration.*

[FR Doc. E6-8370 Filed 5-30-06; 8:45 am]

BILLING CODE 3510-33-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[R06-OAR-2005-NM-0003; FRL-8175-5]

### Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County

**AGENCY:** Environmental Protection Agency (EPA).