

§ 734.8

“technology” to produce the firearm frame or receiver or complete firearm.

[81 FR 35602, June 3, 2016, as amended at 81 FR 64668, Sept. 20, 2016; 85 FR 4172, Jan. 23, 2020]

§ 734.8 “Technology” or “software” that arises during, or results from, fundamental research.

(a) *Fundamental research.* “Technology” or “software” that arises during, or results from, fundamental research and is intended to be published is not subject to the EAR.

NOTE 1 TO PARAGRAPH (a): This paragraph does not apply to “technology” or “software” subject to the EAR that is released to conduct fundamental research. (See § 734.7(a)(5)(ii) for information released to researchers that is “published.”)

NOTE 2 TO PARAGRAPH (a): There are instances in the conduct of research where a researcher, institution or company may decide to restrict or protect the release or publication of “technology” or “software” contained in research results. Once a decision is made to maintain such “technology” or “software” as restricted or proprietary, the “technology” or “software,” if within the scope of § 734.3(a), becomes subject to the EAR.

(b) *Prepublication review.* “Technology” or “software” that arises during, or results, from fundamental research is intended to be published to the extent that the researchers are free to publish the “technology” or “software” contained in the research without restriction. “Technology” or “software” that arises during or results from fundamental research subject to prepublication review is still intended to be published when:

(1) Prepublication review is conducted solely to ensure that publication would not compromise patent rights, so long as the review causes no more than a temporary delay in publication of the research results;

(2) Prepublication review is conducted by a sponsor of research solely to insure that the publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers; or

(3) With respect to research conducted by scientists or engineers working for a Federal agency or a Federally Funded Research and Development Center (FFRDC), the review is con-

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ducted within any appropriate system devised by the agency or the FFRDC to control the release of information by such scientists and engineers.

NOTE 1 TO PARAGRAPH (b): Although “technology” or “software” arising during or resulting from fundamental research is not considered intended to be published if researchers accept restrictions on its publication, such “technology” or “software” will nonetheless qualify as “technology” or “software” arising during or resulting from fundamental research once all such restrictions have expired or have been removed.

NOTE 2 TO PARAGRAPH (b): Research that is voluntarily subjected to U.S. government prepublication review is considered “intended to be published” when the research is released consistent with the prepublication review and any resulting controls.

NOTE 3 TO PARAGRAPH (b): “Technology” or “software” resulting from U.S. government funded research that is subject to government-imposed access and dissemination or other specific national security controls qualifies as “technology” or “software” resulting from fundamental research, provided that all government-imposed national security controls have been satisfied and the researchers are free to publish the “technology” or “software” contained in the research without restriction. 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.

(c) *Fundamental research definition.* *Fundamental research* means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

[81 FR 35603, June 3, 2016]

§ 734.9 Foreign-Direct Product (FDP) Rules.

Foreign-produced items located outside the United States are subject to the EAR when they are a “direct product” of specified “technology” or