

EXPORT CONTROL

Review and Documentation Checklist

For Definitions of terms used in these questions, please see page 6.

SECTION A – NATURE OF POTENTIAL EXPORT

Please complete the following; **all questions must be answered:**

1. Does the intended or current research require the delivery of hardware, software, materials or biologicals to a foreign national/person? (This would include postdocs, staff, or GRAs involved in development of, or work with, hardware, software, materials or biologicals.)
 Yes - Complete SECTIONS B & C No

2. Does the intended or current research involve training an employee/representative of a foreign national/person?
 Yes - Complete SECTIONS B & C No

3. Does the intended or current research involve travel to a foreign country?
 Yes - Complete SECTIONS B & C No

4. Does the intended or current research involve anyone from a foreign country visiting ODU?
 Yes - Complete SECTIONS B & C No

5. Does the intended or current research involve the verbal or written exchange of data/reports with a foreign national/person? (This could include foreign graduate students sharing lab space where the project is being conducted.)
 Yes - Complete SECTION B No

If you've answered "No" to all five of the above questions, proceed to SECTION E.

SECTION B – FUNDAMENTAL RESEARCH APPLICABILITY

Please review and determine whether the intended or current research qualifies as Fundamental Research as defined by International Traffic and Arms Regulations (ITAR [22 CFR §120.11](#)) and Export Administration Regulations (EAR [22 CFR §734.8](#)) (see additional information under DEFINITIONS starting on page 6) and check the appropriate box below.

(Check one)

- Qualifies as Fundamental Research under ITAR _____
 Does Not Qualify as Fundamental Research under ITAR _____

(Check one)

- Qualifies as Fundamental Research under EAR _____
 Does Not Qualify as Fundamental Research under EAR _____

Based on your responses above, please explain in the space below why you think the project does or does not qualify as fundamental research (attach additional pages as needed):

Now please complete the following:

- 1 In SECTION A, did you answer “Yes” to Question 1, 2, 3 or 4?
 - Yes - Skip the following Questions #2 and 3 and complete SECTION C
 - No – Answer the following Question #2

- 2 In SECTION A, did you answer “No” to Questions 1 through 4 and “Yes” to Question 5?
 - Yes - Answer the following Question #3.
 - No - Answer the following Question #3.

- 3 Did you check “Qualifies as Fundamental Research” under **both** ITAR and EAR in SECTION B?
 - Yes - Complete SECTION E
 - No - Complete SECTION C.

SECTION C – EXPORT CONTROL LIST REVIEW

Please review the [United States Munitions List](#) (22 CFR § 121) and the [Commerce Control List](#) (15 CFR § 774, Supp. 1). Indicate below whether or not the research involves any items that are regulated:

U.S. Munitions List (State Dept.)	Yes	No
Aircraft and related articles	<input type="checkbox"/>	<input type="checkbox"/>
Amphibious vehicles	<input type="checkbox"/>	<input type="checkbox"/>
Apparatus and devices under Category IV©	<input type="checkbox"/>	<input type="checkbox"/>
Cartridge and shell casings	<input type="checkbox"/>	<input type="checkbox"/>
Chemical agents	<input type="checkbox"/>	<input type="checkbox"/>
End-items, components, accessories, attachments,	<input type="checkbox"/>	<input type="checkbox"/>
Parts, firmware, software and systems		
Firearms	<input type="checkbox"/>	<input type="checkbox"/>
Forgings, castings and machined bodies	<input type="checkbox"/>	<input type="checkbox"/>
Military demolition blocks and blasting caps	<input type="checkbox"/>	<input type="checkbox"/>
Military explosives and propellants	<input type="checkbox"/>	<input type="checkbox"/>
Military fuel thickeners	<input type="checkbox"/>	<input type="checkbox"/>
Vessels of war and special naval equipment	<input type="checkbox"/>	<input type="checkbox"/>

Commerce Control List (Commerce Dept.)	Yes	No
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The Old Dominion University Research Foundation will provide you with a final determination. Please do not begin work on the project until you have received approval to begin from the Research Foundation. If it is determined that the scope of the intended research does fall within the export control regulations the Research Foundation will initiate the necessary paperwork to obtain the appropriate export license. If you have any questions please contact your grant and contract administrator.

SECTION E - ACKNOWLEDGEMENT

Principal Investigator Name: _____

Sponsor: _____

Project Title: _____

Agreement No.: _____

By signing below, I certify that I have read this document and completed the appropriate sections to the best of my knowledge and belief:

Principal Investigator Signature _____

Date _____

Please return completed form to: _____

DEFINITIONS

Export: In general an export includes any: (1) actual shipment of any covered goods or items; (2) the electronic or digital transmission of any covered goods, items or related goods or items; or (3) any release or disclosure, including verbal disclosures or visual inspections, of any technology, software or technical data to any Foreign National/Person. An export may also include the actual use or application abroad of personal knowledge or technical experience acquired in the United States. Complete definitions of the term “Export” are contained within the regulations cited below. These regulations should be consulted when determining whether a particular course of action will constitute an export under those regulations. (Remember, discussion of the material with a Foreign National/Person, regardless of the country of which the individual is a citizen, constitutes export.)

Deemed Export: Disclosure in written, oral, visual, or electronic form (or in some combination of these forms) of controlled information related to any covered goods or items to any Foreign National/Person in the United States. Also includes provision of specific types of services, e.g. training, to a Foreign National/Person in the United States.

Person: Person means a natural person as well as a corporation, business association, society, trust, or any other entity, organization or group, including government entities.

U.S. Person: U.S. person means a natural person who is a lawful permanent resident of the U.S. Thus, a U.S. Person is any citizen of the United States, any citizen of a foreign country who has been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, or who is a protected individual. (A lawful permanent resident is a citizen of the U.S. or is a citizen of a foreign country who has been issued a “green card” by the U.S. government.)

Foreign National/Person: The term Foreign National/Person means a person (natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including government entities) who is not a lawful permanent resident of the U.S., i.e. has not been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws or who is not a protected individual. (A Foreign National/Person is a person that has not been issued a “green card” by the U.S. government, or who possesses only a student visa.)

International Traffic in Arms Regulations (ITAR): The ITAR is composed of published regulations and guidelines concerning the Department of State review of regulated exports. ITAR applies to defense articles and services, including any technical data associated with such defense articles and services. The ITAR generally refers to items that have military usage only. A list of regulated defense articles is contained in ITAR, and is commonly referred to as the U.S. Munitions List (USML). ITAR and the USML are updated and re-published annually in the Code of Federal Regulations. The current ITAR is published in [22 CFR §§ 120-125](#) (Foreign Relations). The complete USML is published in 22 [CFR §121.1](#). Additional provisions in ITAR further define and categorize the items listed in the USML. The complete text of ITAR and the USML are available online at the at <http://fas.org/spp/starwars/offdocs/itar/p121.htm>.

Export Administration Regulations (EAR): The EAR is composed of published regulations and guidelines concerning the Department of Commerce review of regulated exports. The EAR generally refers to items that have “dual use,” i.e. both military and commercial applications. Goods and services that are regulated by the EAR are listed in the Commerce Control List (CCL). The EAR and CCL are updated and re-published annually in the Code of Federal Regulations. The current EAR is published in [15 CFR §§ 730-774](#)

(Commerce and Foreign Trade). The complete CCL is published in [15 CFR § 774, Supp. 1](#). The complete text of the EAR is available online at <http://www.gpoaccess.gov/cfr/index.html>. The CCL can be found at: http://www.access.gpo.gov/bis/ear/ear_data.html. [Instructions: Go to Part 774 on the page and look at categories 0 through 9 to view list].

Commodity Jurisdiction Ruling: Where an article is arguably covered by both the EAR and ITAR, a request can be made to the State Department to determine which agency will have jurisdiction over the export of the article.

FUNDAMENTAL RESEARCH DEFINITIONS

ITAR - Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will **not** be considered fundamental research if:

- (i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
- (ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

Note: The fundamental research exemption does not cover the actual physical export of covered equipment, software, materials or biological agents.

EAR - Fundamental research. Paragraphs (b) through (d) of 15 CFR [Sec. 734.8](#) and [Sec. 734.11](#) of this part provide specific rules that will be used to determine whether research in particular institutional contexts qualifies as “fundamental research”. The intent behind these rules is to identify as “fundamental research” basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community. Such research can be distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary reasons or specific national security reasons as defined in [Sec. 734.11\(b\)](#) of this part. Note that the provisions of this section do not apply to encryption software controlled under ECCN 5D002 for “EI” reasons on the Commerce Control List (refer to [Secs. 740.13\(e\)](#) and [740.17\(a\)\(5\)\(i\)](#) of the EAR for release under license exception).

From 15 CFR 734.8:

- (b) University based research.
 - (1) Research conducted by scientists, engineers, or students at a university normally will be considered fundamental research, as described in paragraphs (b) (2) through (6) of this section. (“University” means any accredited institution of higher education located in the United States.)
 - (2) Prepublication review by a sponsor of university research solely to insure that the publication would not inadvertently divulge proprietary information that the sponsor has furnished to the researchers does not change the status of the research as fundamental research. However, release of information from a corporate sponsor to university researchers where the research results are subject to prepublication review, is subject to the EAR. (See Supplement No. 1 to this part, Questions D(7), D(9), and D(10).)
 - (3) Prepublication review by a sponsor of university research solely to ensure that publication would not compromise patent rights does not change the status of fundamental research, so long as the review causes no more than a temporary delay in publication of the research results.
 - (4) The initial transfer of information from an industry sponsor to university researchers is subject to the EAR

where the parties have agreed that the sponsor may withhold from publication some or all of the information so provided. (See Supplement No. 1 to this part, Question D(2).)

(5) University based research is not considered “fundamental research” if the university or its researchers accept (at the request, for example, of an industrial sponsor) other restrictions on publication of scientific and technical information resulting from the project or activity. Scientific and technical information resulting from the research will nonetheless qualify as fundamental research once all such restrictions have expired or have been removed. (See Supplement No. 1 to this part, Question D(7) and D(9).)

(6) The provisions of Sec. 734.11 of this part will apply if a university or its researchers accept specific national security controls (as defined in Sec. 734.11 of this part) on a research project or activity sponsored by the U.S. Government. (See Supplement No. 1 to this part, Questions E(1) and E(2).)

Note: The fundamental research exemption does not cover the actual physical export of covered equipment, software, materials or biologicals.