

**Old Dominion University Research Foundation**

**EXPORT CONTROL CHECKLIST  
for Sponsored Programs**

**PI:** \_\_\_\_\_ **College/Dept.** \_\_\_\_\_

**Project Title:** \_\_\_\_\_

**Sponsor:** \_\_\_\_\_ **Sponsor a Foreign Entity? Yes** \_\_\_\_ **No** \_\_\_\_

ODU Research Foundation review is required prior to the acceptance of any sponsored research agreement, award, or Non-Disclosure Agreement (or similar agreement) that contains language regarding export controls, publication restrictions, the restriction in any way the involvement of foreign nationals, or includes the transfer of any information or items out of the United States. Your responses to the following questions will help the Research Foundation determine whether any aspect of your sponsored research project will be subject to export control regulations. Export control definitions can be found in Attachment 2 to this form. **(If you have questions about this form, please contact the Office of Research at 757-683-3460.)**

	YES	NO
1. Does your research involve encryption software?	<input type="checkbox"/>	<input type="checkbox"/>
2. Does your research involve activities that could be related to the proliferation of nuclear, chemical, or biological weapons or missile technology?	<input type="checkbox"/>	<input type="checkbox"/>
3. Does your research involve any sanctioned countries? Follow these links for listings: <a href="http://www.treas.gov/offices/enforcement/ofac/programs/">http://www.treas.gov/offices/enforcement/ofac/programs/</a> <a href="http://pmdtc.state.gov/embargoed_countries/index.html">http://pmdtc.state.gov/embargoed_countries/index.html</a>	<input type="checkbox"/>	<input type="checkbox"/>

If you have answered yes to any of the above, it is likely that a license would be required or that a license may not be possible. Please contact the Research Foundation to discuss whether your proposed research can proceed.

	YES	NO	Unknown
4. Does your research involve items/articles, software or technology listed on the EAR/Commerce Control List or the ITAR/U.S. Munitions List (see Attachment 1 of this form for general categories on each list).	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**If yes, and if known, please list EAR ECCN or ITAR USML Category:**

\_\_\_\_\_

**If you checked “Unknown,” what items/articles, software, or technology are involved in your research? Please be as specific as possible.**

\_\_\_\_\_

	YES	NO
5. Does your research contract include (check each that applies):		
a. restrictions on publication (including reporting of the research results) or presentations at conferences?	<input type="checkbox"/>	<input type="checkbox"/>
b. restrictions on the participation of foreign nationals?	<input type="checkbox"/>	<input type="checkbox"/>
c. export control clauses or references to ITAR and/or EAR?.	<input type="checkbox"/>	<input type="checkbox"/>

	YES	NO
6. Does your research (check each that applies): a. require participation of foreign nationals in the U.S. or b. transfer of goods, services, information or technology abroad, or c. travel outside of the U.S.?		

If you have answered yes to any of the above questions, 4, 5, or 6, your answers to the next set of questions will assist the Research Foundation in determining if one of the following exclusions/exemptions described below applies. Please note that the exclusions below apply only to technical data and information, and, in some cases, software associated with the research. They do not apply to equipment, articles, services, or encryption software.

<b>PUBLIC DOMAIN EXCLUSION</b>	YES	NO
7. Is all the information or software involved in your research published and generally accessible to the public through one or more of the following: <ul style="list-style-type: none"> <li>• publication in periodicals, books, print, electronic, or any other media available for general distribution to any member of the public;</li> <li>• subscriptions that are available without restriction to any individual who desires to obtain or purchase the published information;</li> <li>• websites available to the public free of charge or at a cost which does not exceed the cost of reproduction and distribution;</li> <li>• libraries open to the public, including most university libraries;</li> <li>• patents and open (published) patent applications;</li> <li>• instruction in general science, math, and engineering principles commonly taught at schools, colleges and universities, and conveying information through courses listed in course catalogues and in associated teaching laboratories of academic institutions; or</li> <li>• release at an “open” conference, meeting, seminar, trade show or other open gathering in the U.S., which is generally accessible by the public for a fee reasonably related to the cost and where attendees may take notes and leave with notes.</li> </ul> <p><b>Note: If the release occurs outside the U.S., please indicate here:</b></p> <p>_____</p>		

<b>FUNDAMENTAL RESEARCH EXCLUSION</b>	YES	NO
8. Does the information and software involved in the research meet the following criteria: <ul style="list-style-type: none"> <li>• results from basic and applied research in science and engineering conducted at an accredited institution of higher education located in the U.S.;</li> <li>• is ordinarily published and shared broadly within the scientific community; and</li> <li>• is <u>not restricted</u> (either by written agreement or by informal understanding) for proprietary reasons or specific national security controls, or subject to specific U.S. Government access and dissemination controls.</li> </ul>		

By signing this checklist, I acknowledge that I have completely answered the questions to the best of my knowledge and belief based on the most accurate and reliable information available as of the date of the signing of this checklist. I also acknowledge I will inform the Research Foundation if there is a change in my research project that may result in a need to re-evaluate and/or revise the answer to any of the checklist questions.

An accurate narrative description of my research project or statement of work is attached to this form.

**Principal Investigator:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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**ODURF USE ONLY**

**This form and narrative description of the research project/statement of work must be sent to the Office of Research for review.**

**Did the Office of Research indicate that an export license is required? Yes  No**

**Explanation** (attach backup documentation as appropriate):

**ODURF Approval:**

\_\_\_\_\_ **Date:** \_\_\_\_\_  
**Director of Sponsored Programs**

## Attachment 1

### EAR AND ITAR CONTROL LISTS BY MAJOR CATEGORIES

#### Commerce Control List (CCL)

#### Export Administration Regulations (EAR)

<https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

#### See Part 774, Supplement 1

<https://www.bis.doc.gov/index.php/documents/regulation-docs/435-part-774-the-commerce-control-list/file>

Category 0	Nuclear Materials, Facilities & Equipment (and Miscellaneous Items)
Category 1	Materials, Chemicals, Microorganisms, and Toxins
Category 2	Materials Processing
Category 3	Electronics
Category 4	Computers
Category 5	(Part 1) – Telecommunications; (Part 2) Information Security
Category 6	Sensors and Lasers
Category 7	Navigation and Avionics
Category 8	Marine
Category 9	Propulsion Systems, Space Vehicles, and Related Equipment

#### U.S. Munitions List (USML)

#### International Traffic in Arms Regulations (ITAR)

<https://www.ecfr.gov/cgi-bin/text-idx?node=22:1.0.1.13.58&rgn=div5>

#### See Part 121.1

Category I	Firearms, Close Assault Weapons and Combat Shotguns
Category II	Guns and Armament
Category III	Ammunition/ Ordnance
Category IV	Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
Category V	Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
Category VI	Vessels of War and Special Naval Equipment
Category VII	Tanks and Military Vehicles
Category VIII	Aircraft and Associated Equipment
Category IX	Military Training Equipment and Training
Category X	Protective Personnel Equipment and Shelters
Category XI	Military Electronics
Category XII	Fire Control, Range Finder, Optical and Guidance and Control Equipment
Category XIII	Auxiliary Military Equipment
Category XIV	Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
Category XV	Spacecraft Systems and Associated Equipment
Category XVI	Nuclear Weapons, Design and Testing Related Items
Category XVII	Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
Category XVIII	Directed Energy Weapons
Category XIX	Reserved
Category XX	Submersible Vessels, Oceanographic and Associated Equipment
Category XXI	Miscellaneous Articles

## Attachment 2

### 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 <https://www.ecfr.gov/cgi-bin/text-idx?node=22:1.0.1.13.58&rgn=div5>**

**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 and the CCL is available online at <https://www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear>

**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:

1. The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
2. 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.