

## EXPORT CONTROL QUESTION GUIDANCE

### I. The Export Control Questions in COEUS are designed with the assumption that the research project being conducted falls under the Fundamental Research Exclusion.

- **Fundamental Research Exclusion (FRE):** The FRE in both EAR and ITAR pertains to basic or applied research in science and engineering performed or conducted at an accredited institution of higher learning in the U.S. where the results will be published and shared broadly in the scientific community (and under the EAR where the resulting information has been or is about to be published). Fundamental research is distinguished from research that results in information restricted for proprietary reasons or national security reasons or pursuant to specific U.S. government access and dissemination controls.

(1) Export controls generally do not apply to information that is already published and widely available from:

- libraries, book stores or newsstands ;
- trade shows, meetings or seminars that are open to the public;
- published patent information;
- web sites that are accessible to the public;
- courses listed in university catalogs.

(2) The Department of Commerce defines this information as “Publicly Available” in the Export Administration Regulations (EAR), while the Department of State defines this information as “Public Domain” in the International Traffic in Arms Regulations (ITAR).

### II. Sponsor Restrictions that May Void the Fundamental Research Exclusion.

- **The Fundamental Research Exclusion may be void if the university or Principal Investigator accepts any of the following conditions, regardless of sponsor:**
  - prepublication reviews, that are for anything more than the protection of patent information and other party’s proprietary information or review periods that are for longer than the customary review period;
  - sponsor approvals or conditions on publication or information;
  - foreign national controls or approvals;
  - access and dissemination controls on the research;
  - national security controls.

### III. Activities that Require Review of the Need for an Export Control License.

The Export Control Questions in COEUS indicate activities that may require an export control license even though there are no sponsor restrictions and the intent of the project is to publish and disseminate the findings. *These activities should be reviewed in conjunction with the campus Export Controls Administrator.*

*The federal regulations and associated lists of controlled items can be found at:*

Department of Commerce, Export Administration Regulations (EAR):  
<http://www.bis.doc.gov/policiesandregulations/index.htm>

Department of State, International Traffic in Arms Regulations (ITAR):  
[http://pmdtc.state.gov/regulations\\_laws/itar.html](http://pmdtc.state.gov/regulations_laws/itar.html)

	Question	Explanation	Policy	Regulation
1	Does this project involve cryptography source code either in that we are developing it or acquiring it as a research tool?	The federal regulations apply special rules are applied to cryptography source code even if the source code is being utilized in the course of fundamental research .	Department of Commerce, Export Control Regulations	EAR 15 CRF 774, Supplement 1
2	Does this project or agreement involve equipment, software, services or technology (technical data) that is on the United States Munitions List (USML) under the International Traffic in Arms Regulations (ITAR)? <a href="http://pmddtc.state.gov/regulations_laws/itar.html">http://pmddtc.state.gov/regulations_laws/itar.html</a>	Access to items subject to the ITAR may require an export control license even if the items are being utilized in the course of fundamental research.	Department of State, International Traffic in Arms Regulations	ITAR 22 CRF 121
3	ITAR Defense Service: Does the project provide for any data or information about an ITAR defense article to a non-US person or are you providing any data or information to a foreign national or foreign entity for military or defense application?	An export control license is required prior to providing any ITAR defense service a foreign national or foreign entity.	Department of State, International Traffic in Arms Regulations	ITAR 22 CRF 121
4	Do you anticipate receiving any Proprietary Data from the sponsor and/or a third party subject to a Non-Disclosure Agreement?	Proprietary Data subject to Non-Disclosure Agreement (NDA) may be export controlled and may require an export control license even if the items are being utilized in the course of fundamental research. Proprietary Data should be reviewed for export controls against the Department of Commerce's Commodity Control List (CCL) and the Department of State's United States Munitions List (USML)	Department of State, International Traffic in Arms Regulations and Department of Commerce, Export Control Regulations	ITAR 22 CRF 121 and EAR 15 CRF 774, Supplement 1
5	Do you anticipate having to export any software or commodity abroad by any means as part of this research (shipment, electronic transmission, etc)?	Export of any software or commodity abroad is NOT covered by the Fundamental Research Exclusion. Any items being shipped off of campus should be reviewed for export control compliance and the applicability of a Material Transfer Agreement.	Department of State, International Traffic in Arms Regulations and Department of Commerce, Export Control Regulations	ITAR 22 CRF 121 and EAR 15 CRF 774, Supplement 1
6	If you are planning on travelling abroad do you anticipate sending laboratory equipment, biologics, materials or bringing hand-carried devices?	Sending laboratory equipment abroad is NOT covered by the Fundamental Research Exclusion. Any items being shipped off of campus should be reviewed for export control compliance. If travelling abroad and hand-carrying devices, a certification must be completed.	Department of State, International Traffic in Arms Regulations and Department of Commerce, Export Control Regulations	ITAR 22 CRF 121 and EAR 15 CRF 774, Supplement 1
7	Does this project or agreement provide data, services or conduct any transaction with an embargoed country as defined by the Office of Foreign Asset Controls (OFAC) as North Korea, Iran, Cuba, Syria or Sudan?	An export control license is required prior to conducting any transaction or providing any data or service to North Korea, Iran, Cuba, Syria or Sudan.	Office of Foreign Assets Control	OFAC Sanctions Programs and Summary
8	Does your work involve any international collaborative relationships? If yes, please specify.	International collaborations should be reviewed for export control compliance and the applicability of a Memorandum of Understanding and/or Material Transfer Agreement	Department of State, International Traffic in Arms Regulations and Department of Commerce, Export Control Regulations and Office of Foreign Assets Control	ITAR 22 CRF 121 and EAR 15 CRF 774, Supplement 1