

Determination of Restricted or Controlled Activities

Early identification of restricted or controlled activities allows the University time to perform the reviews required when any of the following conditions exist. Disclosure of possible export concerns now at proposal phase will not delay your proposal submission, but it will help minimize delays when setting up the award. **To facilitate this timely review, indicate each of the following that apply to this proposal or project activity:**

- Does the project or sponsor **restrict dissemination or publication** of scientific or technical data?
- Does the hardware, software or technology related to or resulting from this project have a **military end-use**?
- Does this project have a **foreign sponsor** (such as a foreign government, business, or non-profit)?
- Will **foreign nationals** be working or collaborating on this project (including graduate students)?
- Do you anticipate any **international travel** for field research, testing, or collaboration specifically for this project? This does not include open academic conferences.
- Do you anticipate any **international shipments** (including but not limited to: component testing and repair or hand-carrying instruments or computing devices for field research) specifically for this project?
- Are there **restrictions on participants** (e.g. require a clearance, restriction on foreign national participation)?
- Involve travel, transactions, or collaborations with [Office of Foreign Assets Control \(OFAC\)](#) restricted countries (**Cuba, Iran, North Korea, Sudan, Syria**)?

The OEC must review the project prior to the start of the project activities and prior to the release of award funds. If any of the above apply, contact the CU-Boulder Office of Export Controls (OEC) at exportcontrol@colorado.edu or 303-492-2889/303-492-2427. For further information to assist in addressing these questions, see [UCB Export Controls Primer for Researchers](#).

- Restrict dissemination or **publication** of scientific or technical data?
 - The restriction on publication undermines the “**fundamental research**” exclusion of the ITAR and EAR. “Fundamental research” is defined as “**basic or applied research** in science and engineering, the results of which ordinarily are **published and shared broadly within the scientific community**.”¹
 - **Basic research** is experimental or theoretical work undertaken to acquire new knowledge of fundamental principles or observable facts
 - **Applied research** normally follows basic research, but attempts to determine potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, and techniques, or attempts to advance the state of the art.
 - **Proprietary research** defined as sponsored research that results in intellectual property that is owned by entities other than University of Colorado. Such entities may wish to market products derived from

¹ This is separate from proprietary research and from industrial development, design, production, and product utilization.

inventions or ideas that are developed at the university. They might, therefore, desire to fund projects which restrict access to data and to discussions about work in progress to individuals with a “need to know,” and to seek, for a specified period of time, a delay in publication of research results or data needed to verify results. Such entities may also provide access to proprietary material, which researchers must agree not to include in publications.

- **Classified research** defined as research that bears a security classification from the federal government, such as top secret, secret, or confidential. Classified research restricts some or all of the results, procedures, and personnel working on the project under rules established by the agency for which the research is being conducted. Note the section below describing special considerations for classified research.
 - Any restrictions or limitations on publication may have not only export compliance concerns, but also may be subject to review by the **Standing Committee for Restricted, Proprietary, and Classified Research**.²
- Does the hardware, software, or technology related to or resulting from this project have a **military end-use**?
 - Hardware, software, or technology with explicit military end-use, or built to military specifications (MIL-SPEC) are **likely to be subject to United States export control regulations** such as the [International Traffic in Arms Regulations \(ITAR\)](#) and the [Export Administration Regulations \(EAR\)](#).
 - The purpose of export control regulations is to **protect sensitive technologies from unauthorized foreign national access**. Export control regulations apply to US government entities, businesses, and institutions of higher learning like CU Boulder.
 - Any research or technology involving export controlled technology will **require a license or exemption in order to allow for foreign national participation or export to a foreign country**.
 - Licenses can take **four months or longer to obtain**. License application and submittal requires advanced planning.
 - Hardware and technology that could be subject to export controls include but are not limited to: **aerospace technologies** (such as satellites, integrated propulsion, and star trackers), **electro-optical remote sensing capabilities, lasers and laser components, Unmanned Aerial Systems (UAS) or Autonomous Underwater Systems (AUS), toxins or bio-agents, Global Positioning Systems (GPS), and seismographic equipment**.
 - Does this project have a **foreign sponsor** (government, business, or non-profit)?
 - The United States Government and associated export control regulations prohibit US persons and entities from doing business with parties that have **been debarred or are subject to sanctions**.
 - All foreign sponsors must be screened against **restricted party lists** such as OFAC’s Specially Designated Nationals (SDN) list.

² Please see the following link for CU System’s Restricted Research policy: <https://www.cu.edu/ope/policy/aps-1023-restricted-proprietary-and-classified-research>

- The screening and adjudication **must be done before the proposal is submitted to the foreign sponsor**. The OCG proposal team will conduct the initial screen of the sponsor at time of proposal submission. OEC will conduct an **additional screening at the time of award**.
- Will **foreign nationals** be working or collaborating on this project (including graduate students)?
 - Certain hardware, software, and technical data **may be restricted to foreign nationals**. While fundamental research is exempt from export controls, the **hardware and software associated with fundamental research may still be subject to export control regulations** and require access restrictions.
 - If the University is going to receive export controlled technology (see above), a **technology control plan (TCP)** may be necessary.³
 - A TCP creates and formalizes the processes and procedures that University personnel will use to ensure that any controlled items or information will not be accessed or exported without US government authorization.
 - TCPs generally include processes and procedures for the following:
 - Physical security
 - Facilities and facilities access
 - Information Technology (IT) security
 - Document marking and classification
 - Personnel security to include authorized personnel identification and training
 - Additionally, Office of Information Technology or the department's own information technology team need to be **aware of requirements for both export controlled information and controlled unclassified information**⁴.
- Do you anticipate any **international travel** for field research, testing, or collaboration specifically for this project? This does not include open academic conferences.
 - Under CU policy, international travel must be approved by the traveler's supervisor. **High-risk destinations may require additional approval** by the Chancellor.
 - Certain countries present **cybersecurity threats** in addition to export control restrictions. OEC and OIT must review international travel in furtherance of sponsored research to **ensure compliance with CU policy and federal regulations**.
 - Open academic conferences are conferences that are intended to have a broad, open academic audience. These conferences have **no restriction on participation, no restrictions on publication, and no restrictions on note-taking**.
- Do you anticipate any **international shipments** (for example: instrument testing, hand-carrying equipment for field research, etc.) specifically for this project?

³ Please see the Office of Export Control's [website](#) for more information regarding TCPs and example TCPs.

⁴ Controlled unclassified information refers to unclassified information that is to be protected from public disclosure. This can include proprietary information, Personally Identifiable Information (PII), and unclassified information regarding the United States nuclear program.

- Even temporary **exports of hardware, software, and technical data require authorization** under export control regulations. These authorizations can include export licenses or license exemptions.
 - International shipping requires extensive paperwork. Last minute international shipments are risky and could result in **large fines or high duties and tariffs**.
 - Even hand-carrying **hardware or software in baggage** may require export controls review.
 - The overall value of the item rarely affects export control requirements. **Even items of no value (such as testing equipment or proof-of-concept) can be subject to export controls.**
- Are there **restrictions on participants** (e.g. require a clearance, restriction on foreign national participation)?
 - The **restriction or prior approval of foreign nationals** in a contract suggests export controlled materials or information.
 - Restriction on participants **undermine the fundamental research exclusion of the ITAR and EAR.**
 - Additionally, some countries have **strict arms embargoes which limits specific technical data or hardware** from being exported to these countries.
 - The NASA China restriction does not restrict individual involvement based on citizenship or nationality. Rather, it is targeted towards **personnel associated with the People's Republic of China (China's government) or a Chinese-owned business** or other entity. For example, a Chinese citizen may work on a NASA project, but an individual affiliated with the Chinese government will be subject to restriction.⁵
 - By definition, **classified research is not fundamental**, as the results are not intended to be shared widely. Additionally, only US citizens can obtain a clearance.
 - Involve travel, transactions, or collaborations with [Office of Foreign Assets Control \(OFAC\)](#) restricted countries (**Cuba, Iran, North Korea, Sudan, and Syria**)?
 - OFAC maintains **broad prohibition on travel and activities** to Cuba, Iran, North Korea, Sudan, and Syria.
 - Proposals containing research that is to be conducted with nationals from these countries, or being conducted in any of these countries, **MUST be approved by the Office of Export Controls prior to proposal submittal.**
 - While some activities may be authorized under general OFAC licenses, specific activities and collaborations may require a specific license authorization from OFAC. **These specific licenses can take up to 18 months to obtain.**

⁵ <http://science.nasa.gov/researchers/sara/faqs/prc-faq-roses/>