

EXPORT CONTROL REVIEW CHECKLIST FOR AGREEMENTS

The U.S restricts items, software, technology, and information exports for a variety of reasons, including defense, national security, and nonproliferation. This includes providing access to restricted equipment, materials, software, technology, or information to foreign persons in the U.S (“deemed export”). In keeping with its land-grant heritage, Colorado State University accepts restricted research under certain circumstances. Following review, CSU may need to take measures to protect restricted technologies, the researchers and labs engaged in this research, and the university.

Review by Secure and Global Research (SGR) is required for any agreements that contain non-standard export control language; publication restrictions (includes sponsor approval prior to publishing); certain information security requirements; foreign national restrictions and approval; includes transfer of items, technology, or software outside the U.S.; or indicates the project has a military end-use.

Your answers to the questions below will help SGR determine whether any aspect of the activity will be subject to export control regulations. If SGR determines a Technology Control Plan (TCP) and/or export license is needed, the project cannot begin until a TCP has been signed and/or license is received, if applicable. SGR will notify the PI and the Office of Sponsored Projects (OSP) when required actions are completed.

Key information that will be provided in Kuali by departments at the point of Proposal Development:

If the proposed activity will take place internationally or involve foreign collaborators. Specifically, in the sanctioned countries of Cuba, Iran, North Korea, or Syria, and/or involves a sponsor or other individuals/entities located in those countries.

If the research involves classified research activities/items or export controlled research activities/items.

If the research will be sponsored by a defense agency or contractor, or deals with military items/topics.

If the proposed activity involves research, provision of services, or transfer of technology, software, material, equipment or information in a scientific, engineering, or high technology field. This includes space sciences, chemistry, physics, materials science, geosciences, engineering, electronics, computer science, management information systems, instrumentation design and use, and related fields.

Procedures for OSP:

1. The department and/or OSP will complete the Checklist, and add the PropDev number and/or Award number. If any export control concerns are checked, forward completed Checklist, agreement, and pertinent documentation such as the scope of work to SGR for review. Completed checklists shall remain with the account file.
The SGR does not need to review if
 - all questions are answered “NO”; *or*
 - only number 1 on the checklist is “YES”.

2. SGR will notify OSP if a TCP is required on a given funded agreement.

SGR Review Process:

1. SGR will review the Checklist, agreement, and other documentation and answer the Export Determination.
2. The completed checklist will be forwarded to the appropriate College/Department Administrator and OSP.
3. If a TCP is required, SGR will notify College/Department and OSP upon completion.

EXPORT CONTROL REVIEW CHECKLIST FOR AGREEMENTS

CSU PropDev or Award #		Sponsor:	
PI (Principal Investigator):		Prime Sponsor:	
College / Dept. and Admin Contact			
OSP Contact			

General Project Information:	YES	NO
1. Does the activity include participation of non-U.S. persons in the U.S.? <i>Note: A non-U.S. person is an individual (including collaborators) who is not a U.S. citizen or a U.S. Permanent Resident.</i>	<input type="checkbox"/>	<input type="checkbox"/>
2. Will the activity take place in a foreign country other than Cuba, Iran, North Korea or Syria? If yes, where? <input style="width: 200px; height: 20px;" type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Will the CSU recipient(s) be receiving equipment or technical data / technology ; e.g., blueprints, diagrams, models, formulae, engineering designs and specifications, other design data, configuration design, integration design, manuals, instructions, etc.?	<input type="checkbox"/>	<input type="checkbox"/>
4. Is the prime sponsor or other party a defense agency , a defense contractor, or military-related (i.e., missiles, explosives, military training, military vehicles, vessels, equipment)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Does the activity include participation of persons or companies located outside the U.S., or is the sponsor or other party located outside the U.S. (a foreign entity)?	<input type="checkbox"/>	<input type="checkbox"/>
6. Does the activity involve the transfer of goods, services, information or technology abroad?	<input type="checkbox"/>	<input type="checkbox"/>
7. Is this activity related to nuclear, chemical, biological weapons, missile or space/space technology (excluding astronomical observation)?	<input type="checkbox"/>	<input type="checkbox"/>
8. Will CSU receive, produce or develop encryption source code, or source code incorporating encryption functionality?	<input type="checkbox"/>	<input type="checkbox"/>
Specific Agreement Information:	YES	NO
9. Identified a match in Visual Compliance Restricted Party Screening for non-CSU personnel as listed in the agreement, supporting documents, or activity?	<input type="checkbox"/>	<input type="checkbox"/>
<i>If response to screening result is an exact match ("hit") check "YES" and stop the export control review and forward project information and screening result to SGR for verification and advisement. If no matching record found, check "NO".</i>		
<i>If you're unsure whether there is a match, leave the above boxes blank and check this box</i>		<input type="checkbox"/>
<i>If there are no non-CSU personnel listed, check this box</i>		<input type="checkbox"/>
10. Does the agreement reserve for the Sponsor the right to approve/disapprove publication (excluding reasonable reviews for possible patents and/or sponsor proprietary information) or restrict the dissemination of research results; i.e., contains clauses such as DFARS 252.204.7000?	<input type="checkbox"/>	<input type="checkbox"/>
11. Does the agreement contain special security, safeguarding or access requirements, or a clause from a government agency such as NASA or DHS that requires an IT Security Plan; i.e., clauses such as DFARS 252.204-7012?	<input type="checkbox"/>	<input type="checkbox"/>
11a. If "yes," did Prime's Contracting Officer provide written confirmation to the Sponsor that the CSU's effort is considered "Fundamental Research"?	<input type="checkbox"/>	<input type="checkbox"/>
12. Does the agreement have export language beyond a mere adherence to abide by U.S. export regulations, such as DFARS 252.204-7008?	<input type="checkbox"/>	<input type="checkbox"/>
13. Does the agreement prohibit involvement of non-U.S. persons, or persons from certain countries, and/or require CSU to identify or seek Sponsor prior approval for foreign national participation?	<input type="checkbox"/>	<input type="checkbox"/>



EXPORT CONTROL REVIEW CHECKLIST FOR AGREEMENTS

Export Determination:	Reviewed by: _____ on _ / ___ / ___ for SGR	YES	NO
<ul style="list-style-type: none">A Technology Control Plan (TCP) is required prior to beginning project?		<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none">Controlled Unclassified Information (CUI) applicable?		<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none">A license or other government authorization required?		<input type="checkbox"/>	<input type="checkbox"/>

Optional Notes:

EXPORT CONTROL REVIEW CHECKLIST FOR AGREEMENTS

Below is a list of common clauses and language found in sponsored agreements that require export compliance review, as referenced in the checklist. These are coded by color to align with questions 10-13 above. Please note, this list is **not all-inclusive**. Sponsored agreements should be reviewed carefully to identify any restrictions on publications, safeguarding requirements, references to export regulations, and involvement of foreign nationals.

Clauses or Language to Flag:	Present
Publication Restrictions	
ARL 52.005-4401 – Release of Information	<input type="checkbox"/>
CAR 1352.227-70 – Rights in Data	<input type="checkbox"/>
DFARS 252.204-7000 – Disclosure of Information	<input type="checkbox"/>
DFARS 252.227-7025 – Limitations on the Use or Disclosure of Government Furnished Information Marked with Restrictive Legends	<input type="checkbox"/>
FAR 52.227-14 – Rights in Data	<input type="checkbox"/>
FAR 52.227-17 – Rights in Data – Special Works	<input type="checkbox"/>
DoD Distribution Statements other than “A”	<input type="checkbox"/>
Export Control Warning Label	<input type="checkbox"/>
Information protected by Non-Disclosure Agreement	<input type="checkbox"/>
Marked Proprietary by the Sponsor	<input type="checkbox"/>
Specific Publication Approval Language	<input type="checkbox"/>
Security, Access and Dissemination Controls	
32 CFR 2002 – Controlled Unclassified Information	<input type="checkbox"/>
CAR 1352.239-72 – Security Requirements for Information Technology Resources	<input type="checkbox"/>
DEAR 952.204-2 – Security Clause	<input type="checkbox"/>
DFARS 252.204-7012 – Safeguarding of Unclassified Controlled Technical Information	<input type="checkbox"/>
DFARS 252.239-7010 / 7999 – Cloud Computing Services	<input type="checkbox"/>
FAR 52.204-21 – Basic Safeguarding of Covered Contractor Information Systems	<input type="checkbox"/>
FAR 52.239-1 – Privacy or Security Safeguards	<input type="checkbox"/>
NIST 800-171 – Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations	<input type="checkbox"/>
This project requires access to export controlled technology or controlled unclassified (CUI) information.	<input type="checkbox"/>

EXPORT CONTROL REVIEW CHECKLIST FOR AGREEMENTS

Explicit Export Control Terms and Conditions	
DFARS 252.204-7008 – Export-Controlled Items (JUL 2008, only)	<input type="checkbox"/>
This project will generate export-controlled technology.	<input type="checkbox"/>
Foreign National Restrictions	
AFMC 5352.227-9000 – Export Control Data Restrictions	<input type="checkbox"/>
ARL 52.004-4400 – Foreign Nationals Performing under Contract	<input type="checkbox"/>
Army Corps of Engineers 52.0000-4017 – Approval of Foreign Nationals performing under contract required	<input type="checkbox"/>
CAR 1352.237-70 – Security Processing Requirements	<input type="checkbox"/>
DEAR 952.204-71 – Sensitive Foreign Nations Controls	<input type="checkbox"/>
FAR 52.204-2 – Security Requirements <i>Note: this is not a direct restriction but can cause foreign national restriction</i>	<input type="checkbox"/>
No foreign national may work on this project (with/or without prior approval).	<input type="checkbox"/>
Foreign nationals may not have access without appropriate licenses from the State or Commerce Department.	<input type="checkbox"/>

EXPORT CONTROL REVIEW CHECKLIST FOR AGREEMENTS

Specific Clause Detail		
Clause	Why problematic	Alternate Clause or Notes
DFARS 252.204-7000 Disclosure of Information	Possible Publication Restriction. There are two versions of this clause and U.S. academic institutions conducting fundamental research should be careful to ensure that the clause included in their agreements is the most current version.	DFARS 252.204-7000 (DEC 1991) - Disclosure of Information. -- Prevents the release of any data without sponsor approval. Attempt to remove or replace with current version dated AUG 2013. DFARS 252.204-7000 (AUG 2013 and newer) - Disclosure of Information. -- The newest version of this clause is included as boilerplate for most DOD contracts. This clause does have a section, which allows publishing for fundamental research performed at U.S. academic institutions. <i>If this clause is included, the project will need to be classified as fundamental research in writing from the DOD program officer to allow publication and dissemination of information without restriction.</i>
DFARS 252.204-7008 Export Controlled Items DFARS 252.225-7048 Export Controlled Items	Explicit Export Control Restriction. Requirements for Contracts Involving Export-Controlled Items. There were two earlier versions of this clause that were ultimately replaced with DFARS 252.225-7048 and organizations should be careful to ensure that the clause they are accepting is the most current clause.	DFARS 252.204- 7008 - Requirements for Contracts Involving Export-Controlled Items (JUL 2008) -- Stipulates that export-controlled items will be created. DFARS 252.204- 7008 - Export-Controlled Items (April 2010) -- Stipulates that the organization must comply with applicable U.S. export laws. DFARS 252.225- 7048 (June 2013) Export-Controlled Items -- Stipulates contractor will comply with all applicable U.S. export control laws.
DFARS 252.204-7012 Safeguarding of Unclassified Controlled Technical Information (NOV 2013)	Security, Access and Dissemination Restriction. This clause is mandatory in all new DOD contracts and results in the requirement of additional IT security controls if unclassified controlled technical information is exchanged during the course of the contract. This is a strong indication that the work will be export controlled and require a Technology Control Plan.	Send contracts containing this clause to CSU Academic Computing and Network Services (ACNS) for further review.
DFARS 252.227-7025 Limitations on the Use or Disclosure of Gov. Furnished Info. Marked with Restrictive Legends	Publication Restriction.	Flag contracts with this clause for export review.

EXPORT CONTROL REVIEW CHECKLIST FOR AGREEMENTS

FAR 52.204-2 Security Requirements	Possible Foreign National or Export Control Restriction. This allows for changes to security classification during the contract performance period.	Substitute Alt I specific for universities which allows for termination of contract if security classification cannot be met.
FAR 52.227-14 Rights in Data	Possible Publication Restriction. If clause is accepted as is, will need the prior expressed written consent of the Government to establish claim in copyrightable data first produced or delivered under the contract.	Per prescribing clause 27.409 (e) ask for FAR 52.227-14 Rights in Data Alt IV
FAR 52.227-17 Rights in Data Special Works	Publication Restriction. If clause is accepted, will need prior written authorization from contracting officer before publishing information produced by research under the contract	52.227-14 (alt IV) - Rights in Data – General. Allows a university to assert copyright in almost any data first produced in the performance of a contract.
Miscellaneous Supplemental Agency Clauses		
ARL 52.005-4401 Release of Information	Publication Restriction.	Flag contracts with this clause for export review. Possible negotiation solution: Get it deleted in favor of alternate language: “The Parties agree to confer and consult with each other prior to publication or other disclosure of the results of work under this Agreement to ensure that no classified or proprietary information is released. Prior to submitting a manuscript for publication or before any other public disclosure, each Party will offer the other Party ample opportunity (not to exceed 60 days) to review such proposed publication or disclosure, to submit objections, and to file application letters for patents in a timely manner.”
ARL 52.004-4400 Foreign Nationals Performing under contract	Foreign National Restriction. Requires sponsor approval of foreign persons performing under contract	Flag contracts with this clause for export review.
AFMC 5352.227-9000 Export Control Data Restrictions	Foreign National Restriction. Equipment and technical data generated controlled by ITAR. Export license required before foreign nationals can work on research project.	Flag contracts with this clause for export review.
DEAR 952.204-71 Sensitive Foreign Nations Controls (March 2011)	Foreign National Restriction.	Flag contracts with this clause for export review.

Thanks to the following universities for use of their forms and resources:

University of Arizona
University of Southern Florida
University of Alabama
Stanford University

University of Nebraska-Lincoln
University of Louisville
Weill Cornell Medical College
Virginia Tech University

University of Rochester
University of North Texas
Duke University