

# OFFICE OF SPONSORED PROGRAMS

Policy and Procedures

Date: September 24, 2018

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## OSP-29-05: Management of Restricted Research Agreements

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### 1. Purpose

To establish procedures for managing Agreements subject to export controls, sanctions, controlled unclassified information restrictions, and/or security controls (“Restricted Research”). The Office of Export and Secure Research Compliance (“OESRC”) supports Virginia Tech and the Office of Sponsored Programs (“OSP”) in complying with these U.S. laws, statutes, regulations, Executive Orders, and U.S. Government-wide policies (“laws and regulations”) governing Restricted Research activities.

### 2. Policy

Virginia Tech shall comply with the laws and regulations governing Restricted Research. OSP shall be responsible for following this procedure and will coordinate with the Principal Investigator (“PI”) and OESRC to determine if a proposed Agreement will include or intersect with Restricted Research. The PI of a Restricted Research Agreement shall be responsible for preparing and implementing a project specific Technology Control Plan (“TCP”). OESRC shall assist the department, college, or unit (“Unit”), the PI and OSP in determining the applicable restrictions and security measures that may be necessary to prevent unlawful disclosure of Restricted Research.

The Director of Sponsored Programs and the Director of OESRC are responsible for this procedure. The Director of OESRC is responsible for issuing requests for export licenses, commodity jurisdiction requests, commodity classifications, and other documents required by the laws and regulations.

### 3. Procedures

#### A. Each OSP Pre-Award Associate will:

1. Identify any proposal or solicitation which involves an international collaboration, export control restrictions, foreign person restrictions, publication restrictions, security language or includes restrictive markings indicating a form of controlled unclassified information (“CUI”) and notify OESRC.
2. Ensure that the PI or Unit answers the OESRC questions within the SUMMIT proposal system.
3. Notify OESRC of any international organizations or physical exports identified in SUMMIT.
4. Validate that SUMMIT issues the appropriate memo: Attachment A: Memo to Faculty Proposing Research Funded by DoD or Attachment B: Memo to Faculty Proposing Research Funded by NASA, when required.
5. Ensure that a fundamental research determination is documented within SUMMIT for all DoD and NASA proposals. If applicable, include the requested language within the cover sheet and/or proposal document.

#### B. Each OSP Contracts Associate will:

1. Identify Agreements that meet the following criteria which requires OESRC review:
  - i. All funded and non-funded Department of Defense (“DoD”), National Aeronautic and Space Administration (“NASA”), or international collaborations. This step includes all industry flow-through and subawards.
  - ii. Agreements that contain terms and conditions relating to export controls restrictions, foreign person restrictions, publication restrictions, security language or CUI.
2. Provide adequate documentation to OESRC to perform a review. In order to facilitate the OESRC review process, OSP will provide the following documents to OESRC:
  - i. Agreement/Award
  - ii. Proposal, including the Statement of Work and Budget
  - iii. Solicitation (e.g. Broad Agency Announcement, Request For Proposal (“RFP”), etc.), if applicable
  - iv. Federal Flow-Through Terms and Conditions, if applicable
  - v. Any information or correspondence provided by the sponsoring agency that may assist OESRC in completing the CJC form, if applicable.

- Agreements that require OESRC review will result in the issuance of a Commodity Jurisdiction and Classification (“CJC”) form. OSP will ensure that a CJC form is obtained prior to the release of a Project Authorization Notice (“PAN”). If OESRC indicates on the CJC form that a TCP is required, OSP will ensure that the TCP is obtained prior to the release of a PAN.
3. Assist the PI, Unit, and OESRC in negotiating Agreements terms and conditions, including the removal of restrictions on the research results, if appropriate.
  4. File a copy of the CJC form and TCP in the appropriate OSP project folder. Ensure that the Export Control Banner Codes in the CJC form are transferred to the OSP Processor for incorporation into Banner.
- C. The PI and Unit will:
1. Prepare and approve a project-specific TCP for any Restricted Research Agreement, when required by OESRC. The PI and Unit shall comply with the security measures in the TCP and complete an annual certification of compliance to OESRC for each active TCP.
- D. The Office of Export and Secure Research Compliance will:
1. Assist the Unit, PI, and OSP Associates in determining if an Agreement will be Restricted Research.
  2. Prepare a CJC form for Agreements that meet the criteria in 3.B.1 and require OESRC review. If necessary, prepare a commodity jurisdiction/commodity classification request or export license to be submitted to the appropriate government agency.
  3. When required, advise the Unit, PI, and OSP Associates of the need for a TCP or other protocol (e.g. OESRC Faculty Agreement) for Restricted Research Agreements and assist in the preparation and review of the TCP or other protocol.
  4. Conduct annual training for OSP and biennial training for all personnel involved in a Restricted Research Agreement that requires a TCP, unless such training is waived in writing by the Director of OESRC.
  5. Notify Director of OSP in writing of any potential export or sanctions violation(s) or noncompliance issues affecting Agreements, and direct OSP to freeze affected sponsored funds, if required.
  6. Maintain a record of all documentation required by the laws and regulations relating to Restricted Research Agreements.
- F. The OSP Processor will:
1. Check the Agreements Tracking setup sheet to verify if Export Control Banner Codes are entered into Banner prior to the release of a PAN, including Agreements funded by CFDA Numbers 12.xxx (DoD) or 43.xxx (NASA) (including industry flow-throughs). Refer to Attachment C: OESRC Process for PAN Stops on CFDA 12.xxx or 43.xxx for additional guidance.
- G. The OSP Post Award Associate will:
1. Review any Agreement modifications for international collaboration, export control restrictions, foreign person restrictions, publication restrictions, security language or CUI and forward to a Contracts Associate for review. The Contracts Associate will review the modification and notify OESRC accordingly.
  2. Review all new Agreements for Export Control Banner Codes. If these codes are included, review the CJC and TCP (if required) to ensure understanding of the restrictions. Contact OESRC with any questions. Verify that all DoD, NASA, and international Agreements have a CJC form and TCP, if required.
  3. Verify that Agreements with a TCP requirement have a red folder/electronic red bar indicating a TCP.
  4. Consult with OESRC for all modifications to an Agreement that has a TCP.
  5. When directed by Director of OSP, freeze any funds identified as a source of a potential violation or noncompliance issue.

#### **4. Definitions**

Agreements: Funded and non-funded agreements processed and managed by OSP. This definition includes but is not limited to Grants, Cooperative Agreements, Contracts, Material Transfer Agreements, Confidentiality Disclosure Agreements, Nondisclosure Agreements, Teaming Agreements, Equipment Transfer Agreements, and Subawards.

Commodity Jurisdiction and Classification (CJC) form: Form documenting OESRC determination concerning the export controls, sanctions, controlled unclassified information restrictions, and/or security controls on an Agreement.

Controlled Unclassified Information (CUI): Unclassified information designated by the U.S. Government executive branch that requires safeguarding or dissemination controls, pursuant to and consistent with applicable U.S. laws, statutes, regulations, Executive Orders, and U.S. Government-wide policies (see references, section 5).

Restricted Research: University research, development, or testing subject to export controls, sanctions, controlled unclassified information restrictions, and/or security controls. Research becomes restricted when the University accepts (i) publication restrictions, (ii) federally funded agreements with access and dissemination controls on the results, (iii) federally funded research agreements with contract specific national security restrictions; (iv) third party controlled items or information, or (v) access to, or defense services on, a defense article. Restricted research may be subject to EAR and ITAR regulations, and a license or other government approval may be required for foreign national participation.

Technology Control Plan (TCP): A plan, prepared by PI, reviewed by OESRC, and approved by the Unit, for ensuring that there will be no unauthorized access to Restricted Research without an appropriate government approval.

## 5. References

Assistance to Foreign Atomic Energy Activities Regulations (AFAEAR)	10 CFR §810
Controlled Unclassified Information	32 CFR §2002
<a href="#">CUI Registry</a>	
Executive Order 13526 Classified National Security Information	
Executive Order 13556 Controlled Unclassified Information	
Export Administration Regulations (EAR)	15 CFR §§730-774
Export and Import of Nuclear Equipment and Material Regulations (EINEMR)	10 CFR §110
Foreign Assets Control Regulations (FACR)	31 CFR §§500-599
Importation of Arms, Ammunition and Implements of War	27 CFR §447
International Traffic in Arms Regulations (ITAR)	22 CFR §§120-130
Secrecy of Certain Inventions and Licenses to Export (PTO)	37 CFR §5
<a href="#">National Industrial Security Program Operating Manual</a>	
<a href="#">Virginia Tech Technology Control Plan</a>	

Procedure revised September 24, 2018 and approved by the Director of OSP and the Director of OESRC.

## **Attachment A: Memo to Faculty Proposing Research Funded by DoD**

Please be advised that all Department of Defense (DoD) funded research agreements are reviewed by the Office of Export and Secure Research Compliance (OESRC) due to the high risk of intersection with export control laws, particularly the International Traffic in Arms Regulations (ITAR). OESRC recommends that faculty review the solicitation carefully for references to export controls, security, fundamental research, and/or restricted research. If you believe the proposed research meets the definition of fundamental research, which is excluded from the licensing requirements of export controls, we should state these intentions in the proposal documentation. Fundamental research is defined in 22 CFR 120.11 as:

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.

Engaging in Non-Fundamental research creates intersection with export control laws such as the ITAR and places students graduate thesis work at risk, as well as their ability to graduate. Export controlled, Non-Fundamental research projects may require the establishment of a Technology Control Plan, export control training for all researchers, and implementation of security measures to protect the research results from inadvertent disclosure to unauthorized personnel. If you feel that this research proposal supports Fundamental Research, it is very important to notify the OSP Pre-Award Associate to insert the following language into the cover sheet and/or proposal document:

***National Security Decision Directive 189 and the May 24, 2010 DOD Policy Memo on Fundamental Research provide guidance to ensure that DoD personnel will not restrict disclosure of the results of fundamental research. Virginia Tech considers the scope of the proposed research to be fundamental research with both civil and military applications and requests that the research be scoped and negotiated by the contracting activity with the contractor and research performer to be fundamental research. Virginia Tech anticipates there will be no publication approval or other requirements in the award that would restrict disclosure of the research results.***

If you have questions regarding export controls or fundamental research, please contact the OESRC directly: <https://www.research.vt.edu/oesrc/contact-us.html>.

## Attachment B: Memo to Faculty Proposing Research Funded by NASA

Please be advised that National Aeronautics and Space Administration (NASA) funded research agreements are reviewed by the Office of Export and Secure Research Compliance (OESRC) due to the high risk of intersection with export control laws, particularly the International Traffic in Arms Regulations (ITAR). OESRC recommends that faculty review the solicitation carefully for references to export controls, security, fundamental research, and/or restricted research. If you believe the proposed research meets the definition of fundamental research, which is excluded from the licensing requirements of export controls, we should state these intentions in the cover sheet and/or proposal document. Fundamental research is defined in 22 CFR 120.11 as:

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.

Engaging in Non-Fundamental research creates intersection with export control laws such as the ITAR and places students graduate thesis work at risk, as well as their ability to graduate. Export controlled, Non-Fundamental research projects may require the establishment of a Technology Control Plan, export control training for all researchers, and implementation of security protocols to protect the research results from inadvertent disclosure to unauthorized personnel. If you feel that this research proposal supports Fundamental Research, it is very important to notify the OSP Pre-Award Associate to insert the following language into the cover sheet and/or proposal document:

***Virginia Tech considers the scope of the proposed research to be fundamental research and anticipates there will be no publication approval or other requirements in the award that would restrict disclosure of the research results.***

If you have questions regarding export controls or fundamental research, please contact the OESRC directly: <https://www.research.vt.edu/oescr/contact-us.html>.

**Restrictions on Funding Activities with China:** NASA is restricted by specific applications of Section 1340(a) of The Department of Defense and Full-Year Appropriations Act, Public Law 112-10 and Section 539 of the Consolidated and Further Continuing Appropriation Act of 2012, PL 112-55, from using funding appropriated in the Acts to contract to participate, collaborate or coordinate bilaterally in any way with China or any Chinese-owned company, at the prime contract or any tier subcontract level. The Office of Sponsored Programs has compiled the below guidance from the law itself and from interpretations provided by NASA Headquarters:

1. No person on a J-1 Visa from China may work on any NASA award, including collaboration agreements and agreements where no funds are exchanged.
2. No person (regardless of nationality) with an affiliation with a Chinese institution, including adjunct faculty, may work on a NASA award. Determinations of whether or not status of "honorary faculty" with a Chinese institution is an "affiliation" shall be determined on a case by case basis by NASA.
3. Those persons on J-1 Visas from China, and those with a Chinese affiliation, may not use equipment, software etc. purchased using NASA funds on a restricted project.
4. Although commercial items of supply may be procured in and from China as needed, no subcontracts are allowed for research or consulting.
5. NASA funds cannot be used for travel costs or otherwise to support direct collaboration between an investigator and any person employed by a Chinese institution; no matter what their citizenship. The cost of attending multi-national conferences held in China may be acceptable, but should be pre-approved.

If you have questions regarding The China Rule, please contact the OSP Pre-Award or Contracts Associate.

## **Attachment C: OESRC Process for PAN Stops on CFDA 12.xxx or 43.xxx**

Federally funded sponsored research programs from Department of Defense (DoD, CFDA 12.xxx) or National Aeronautics and Space Administration (NASA, CFDA 43.xxx) are considered high risk agreements for intersection with export control laws. Therefore, OSP Policy 29-05 mandates the review of any such agreement by the Office of Export and Secure Research Compliance (OESRC). To ensure this policy requirement is met, no OSP Project Authorization Notice (PAN) funded by DoD or NASA shall be released unless OESRC has reviewed and provided Export Control Banner Codes. This document provides guidance to all parties in the event a PAN is stopped because an export review has not been completed.

**Step 1 - Processor:** OVPRI has configured a grant level “stop” on any PAN that is funded by DoD or NASA that does not have Export Control Banner Codes. If a PAN stop occurs for this reason, the first step is to consult the Post Award or Contracts Associate for verification of export review.

**Step 2 – Post Award Associate or Contract Associate:** After being notified of the PAN stop by the Processor, the Post Award Associate will check the project files to ensure an export review has occurred and the Export Control Banner Codes have been provided. In the event export review never occurred, immediately notify the Director of Post Award and/or the Director of Contracts and the Export and Secure Research Program Manager. OESRC will expedite review as quickly as possible before the PAN is released.

**Step 3 –** Once the Export Control Banner Codes are input by the Processors, the PAN stop is removed and the PAN can be released.