

OFFICE OF SPONSORED PROGRAMS

Policy and Procedures

Date: October 28, 2013

OSP-29-05: Management of Restricted Research Agreements

1. Purpose

To establish procedures for managing Agreements subject to export controls, sanctions, controlled unclassified 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 governing Restricted Research activities and the various types of Controlled Unclassified Information (“CUI”) (see references, section 5).

2. Policy

OSP shall comply with the U.S. laws, statutes, regulations, Executive Orders, U.S. Government-wide policies, and contractual security restrictions governing Restricted Research agreements. The Principal Investigator (“PI”) of a Restricted Research Agreement shall be responsible for complying with U.S. laws, statutes, regulations, Executive Orders, U.S. Government-wide policies, and contractual security restrictions, and preparing and implementing a project specific Technology Control Plan (“TCP”). Each OSP Project Administrator should coordinate with the PI and OESRC to determine if a proposed Agreement is Restricted Research. OESRC and OSP will assist the department, college, or unit (“Unit”) and the PI in determining the applicable restrictions and security measures that may be necessary to prevent unlawful disclosure of Restricted Research.

3. Procedures

- A. The OSP and OESRC are responsible for ensuring that Agreements are executed in compliance with applicable U.S. laws, statutes, regulations, Executive Orders, and U.S. Government-wide policies governing export controls, sanctions, controlled unclassified restrictions, and/or security controls.
- B. The Assistant Vice President for OSP (“AVP OSP”) and the Director, OESRC are responsible for this procedure. The Director OESRC is responsible for issuing requests for export licenses, commodity jurisdiction requests, commodity classifications, and other documents required by applicable U.S. laws, statutes, and regulations governing export controls, sanctions, controlled unclassified restrictions, and/or security controls.
- C. The PI and Unit are responsible for preparing and approving 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 Restricted Research Agreement TCP.
- D. Each OSP Project Pre-Award Administrator or Contracts 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 CUI and notify OESRC.
 2. Identify any Proposal to perform research funded by Department of Defense (“DoD”) or National Aeronautic and Space Administration (“NASA”) (including industry flow-down) and provide the PI with the appropriate attachment, Attachment A: Memo to Faculty Proposing Research Funded by DoD or Attachment B: Memo to Faculty Proposing Research Funded by NASA.
 3. Identify Agreements that meet the following criteria which requires OESRC review:
 - i. All Department of Defense, NASA, or internationally funded Agreements (including industry flow-down).
 - ii. Agreements that contain terms and conditions relating to export controls restrictions, foreign person restrictions, publication restrictions, security language or CUI.
 - iii. Agreements involving international collaboration or international travel.
 4. Provide adequate documentation to OESRC to perform a review. Agreements that meet the criteria identified in 3.D.3 will result in export review by OESRC and 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. 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 Down Terms and Conditions, if applicable
 - v. DoD Source of Funding (e.g. 6.1 Basic Research, 6.2 Applied Research, etc.), if applicable
5. Assist the PI, Unit, and OESRC in negotiating Agreements terms and conditions, including the removal of restrictions on the research results if appropriate.
 6. File a copy of the CJC form and TCP, if required, in the OSP project folder/documentation. Ensure that the Export Control Banner Trade Codes in the CJC form are transferred to the OSP Processor for incorporation into Banner.

E. The Office of Export and Secure Research Compliance will:

1. Assist the Unit, PI, and OSP Project Administrator in determining if an Agreement will be Restricted Research.
2. Prepare, in coordination with the Unit, PI, OSP Project Administrator and if applicable, Sponsor, a self-determined CJC form for Agreements that require OESRC review. In the event that a self-determined CJC cannot be made for a potential Restricted Research Agreement, prepare in coordination with the Unit and/or PI and submit an inquiry to the appropriate government agency, such as a commodity jurisdiction/commodity classification request.
3. If required, advise the Unit, PI, and OSP Project Administrator of the need for a TCP or other protocol (e.g. certification) for Restricted Research Agreements and assist in the preparation and review of the TCP or other protocol.
4. Conduct training for all personnel involved in a Restricted Research Agreement that requires a TCP, unless such training is waived in writing by the Director OESRC. Conduct training for all personnel in a fundamental research Agreement when considered necessary by OESRC and/or OSP to ensure compliance.
5. Notify AVP OSP in writing of any potential export or sanctions violation(s) or noncompliance issues affecting Agreements, and direct OSP to freeze affected Agreement funds if required.
6. Maintain a record of all documentation required by the U.S. laws, statutes, and regulations relating to Restricted Research Agreements.

F. The OSP Processor will:

1. Ensure that Export Control Banner Trade Codes are entered into Banner and a CJC form is documented prior to the release of a PAN for Agreements that require OESRC review, including Agreements funded by CFDA Numbers 12.xxx (DoD) or 43.xxx (NASA) (including industry flow-downs). Refer to Attachment C: OESRC Process for PAN Stops on CFDA 12.xxx or 43.xxx for additional guidance.
2. Check the CJC form to verify if a TCP is required. If required, ensure a TCP is included and place the TCP and CJC in a Red Folder within the OSP project folder/documentation.

G. The OSP Project Post Award Administrator will:

1. Review any Agreement modifications for international collaboration, export control restrictions, foreign person restrictions, publication restrictions, security language or CUI and notify OESRC.
2. Review all new Agreements for a CJC form and TCP (if required). If these documents are included, review to ensure understanding of the restrictions and contact OESRC with any questions. Verify that all DoD and NASA funded Agreements have a CJC form and TCP, if required.
3. Verify that Agreements with a TCP requirement have a red folder containing the TCP and CJC form. Consult with PI and/or OESRC when changes are proposed to an Agreement that has a TCP (e.g., personnel or equipment added; venue or scope of work changed).
4. When directed by AVP OSP, freeze any accounts identified as a source of a potential violation or noncompliance issue.
5. Forward all international travel requests to OESRC for review.

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, and Equipment Transfer Agreements.

Commodity Jurisdiction and Classification (CJC) form: Form documenting OESRC determination concerning the export controls, sanctions, controlled unclassified 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: Agreements subject to export controls, sanctions, controlled unclassified restrictions, and/or security controls.

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 Agreements without an appropriate government approval.

5. References

Assistance to Foreign Atomic Energy Activities Regulations (AFAEAR)	10 CFR §810
BIS Export Management and Compliance	
Controller's Office Procedure 20335a Travel Overview	
Critical Energy Infrastructure Information (CEII)	18 CFR §388.112-113
Critical Infrastructure Information (CII)	6 U.S.C. 131-134
DDTC Compliance Program Guidelines	
DoD Policy Memorandum Contracted Fundamental Research (May 24, 2010)	
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
National Industrial Security Program Operating Manual	
National Security Decision Directive 189	
OSP Policy 29-05 Management of Export Controlled Sponsored Programs	
Protected Critical Infrastructure Information (PCII)	6 CFR §29
Protection of Sensitive Security Information (SII)	49 CFR §1520
Secrecy of Certain Inventions and Licenses to Export (PTO)	37 CFR §5
Unclassified Nuclear Controlled Information (UNCI)	42 U.S.C. 2168
Virginia Tech Technology Control Plan	

Procedure revised October 28, 2013 and approved by the Assistant Vice President of Administration, Office of Sponsored Programs and the Director of Export and Secure Research Compliance.

Attachment A: Memo to Faculty Proposing Research Funded by DoD

Please be advised that 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 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 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 administrator to insert the following language into the cover sheet and/or proposal document:

Virginia Tech as a prime contractor:

The DOD Policy Memo on Fundamental Research dated May 24, 2010 provides 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 and anticipates there will be no publication approval or other requirements in the award that would restrict disclosure of the research results.

Virginia Tech as a subcontractor:

The DOD Policy Memo on Fundamental Research dated May 24, 2010 provides guidance to ensure that DoD personnel will not restrict disclosure of the results of fundamental research. Virginia Tech is submitting this proposal and participating in this project based on the condition that the research can be conducted as fundamental research. It is agreed by both Virginia Tech and the Contracting Officer, contracting activity, and research performer that the work to be subcontracted to Virginia Tech is unclassified research that has been scoped, negotiated, and determined to be fundamental research.

The offeror/prime contractor shall use its best efforts to obtain such certification by the DoD contracting component and shall negotiate provisions in the prime contract to accommodate this subcontract as fundamental research, ensuring that DoD restrictions on the prime contract do not flow down to Virginia Tech.

NEW CHANGES TO INTERNATIONAL TRAFFIC IN ARMS REGULATIONS:

Developmental items produced under Department of Defense funding including specially designed parts, components, accessories, and attachments may be subject to the ITAR (regardless of fundamental research) unless these items are identified in the relevant Department of Defense agreement as being developed for both civil and military applications. If you are creating or modifying equipment or materials under a DoD agreement (grants, cooperative agreements, contracts) and believe that the items have both civil and military applications (i.e. “dual use”), it is strongly recommended that you explicitly state this in the agreement and/or statement of work. You may consider inserting the following language in the statement of work:

It is understood that any developmental items and specially designed parts, components, accessories and attachments generated under this Defense Department agreement are being developed for both civil and military applications.

If the item truly doesn't have civil applications do not try to make the case that it does, just be aware that the item will likely be subject to control under the ITAR and what that will mean for your research team. If the funding agreement does not include this or similar language, any such hardware or materials created or modified under the agreement will need to be handled as “developmental” items subject to ITAR unless Virginia Tech has a Commodity Jurisdiction from the Department of State determining it is not.

If you have questions regarding export controls or fundamental research, please contact the OESRC directly: <http://www.oesrc.researchcompliance.vt.edu/Contacts/>.

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 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 administrator to insert the following language into the cover sheet and/or proposal document:

Virginia Tech is submitting this proposal and participating in this project based on the condition that the research can be conducted as 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: <http://www.oesrc.researchcompliance.vt.edu/Contacts/>.

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 administrator.

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 Trade 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: OVPB software engineers have configured a grant level “stop” on any PAN that is funded by DoD or NASA that does not have Export Control Banner Trade Codes. If a PAN stop occurs for this reason, the first step is to consult the Pre-Award Administrator who completed the Award Acceptance Sheet for verification of export review.

Step 2 – Pre-Award Administrator or Contract Associate: After being notified of the PAN stop by the processor, the Pre-Award administrator will check the project files to ensure an export review has occurred and the Export Control Banner Trade Codes have been correctly identified on the Award Acceptance Sheet. In the event export review never occurred, immediately notify the Associate Director of Pre-Award, Associate Director of Contracts (as applicable) 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 Trade Codes are input by the processors, the PAN stop is removed and submission is enabled.