IDENTIFYING AND MANAGING RESTRICTED RESEARCH

Policies

University of Missouri (UM) Export Compliance Management Program

Overview

As a public university, Missouri University of Science and Technology (Missouri S&T) conducts most of its research activities outside of the scope of export control and sanctions regulations, and other regulatory restrictions that would limit the full participation of the Missouri S&T academic community and/or the free and open disclosure of research results. Therefore, Missouri S&T takes the position that the research conducted by its staff, faculty, and students is in the public domain and is considered "fundamental research" as that term is defined by the Department of Defense and in export control regulations administered by the Departments of State and Commerce. However, Missouri S&T occasionally accepts restricted research projects that are subject to export controls, sanctions, controlled unclassified restrictions, security controls, and/or other regulations. Restricted research often entails limitations on publication, access and dissemination controls, national security restrictions, or other measures that may require government approval in the form of a license for foreign national participation.

Several factors have the potential to complicate Missouri S&T's ability to manage restricted research projects:

- The large population of non-U.S. Persons at the University, particularly regarding students participating in research through a Graduate Research Assistantship.
- A growing interest in defense, space, intelligence, and energy research.
- Increased participation in international collaborations.

The following procedures document the responsibilities of the Office of Export Control/Sr. Compliance Manager (OEC/CM), the Principal Investigator (PI), the Office of Sponsored Programs (OSP) and Vice Chancellor of Research (VCR) through the life cycle of all sponsored projects to ensure that sponsored research activity is conducted in accordance with applicable regulations and University policies.

Risk

Failure to comply with regulations can result in severe penalties for Missouri S&T and the individuals involved. Universities have been fined and, in one case, a PI was sentenced to prison for violating export control regulations.[1] In another case, the University of Massachusetts was charged for violating export control laws in connection with the export of atmospheric testing device and related equipment. [2]

Procedures

In support of each other and the research enterprise at Missouri S&T—and to ensure compliance with the law—the PI, the OEC/CM and VCR will work collaboratively to perform export control analyses for all sponsored activities at the

---

[1] Dr. J. Reece Roth of the University of Tennessee was sentenced to 4 years in prison for export control violations. For more information, see http://www.bloomberg.com/news/articles/2012-11-01/why-the-professor-went-to-prison

[2] University charged with export violations - Lexology

proposal stage, when an award is being negotiated and/or is accepted, and during the administration and closeout of a restricted research project. OSP will review proposals and agreements for referral to the OEC/CM prior to proposal submission or award set-up. The OEC/CM will conduct a comprehensive review, with input from the PI and OSP as needed, to determine whether a project qualifies as restricted research. If a Technology Control Plan (TCP) and/or a System Security Plan (SSP) is needed to manage a restricted research project, a TCP template will be sent to PI. The PI will complete relevant information and send to OEC/CM for review. The TCP is a collaborative document between the PI and OEC/CM. A completed TCP will be implemented prior to the beginning of the project. If a SSP is needed, the SSP template will be sent to the PI by the OEC/CM. The SSP will be coordinated with the PI, OEC/CM, and IT Security Officer to assure Missouri S&T follows NIST 800-171 r 2 (3.12.4) and/or other security initiatives. The SSP must be completed prior to a project beginning. Final copies of implemented TCP and SSP's will be kept in an electronic file by the OEC/CM in the VCR Office.

Responsibilities

Below is an outline of responsibilities as they relate to the identification and management of restricted research at Missouri S&T.

PI Responsibilities

- Identify all foreign national participants, including faculty, staff, students, visiting scholars, subcontractors, collaborators, volunteers, etc. prior to submitting proposal (if known) or upon award.
- Coordinate with OEC/CM to determine whether a fundamental research assertion should be included in a research proposal prior to submission when the sponsor (including flow through) is the Department of Defense (DoD) or a component agency, an intelligence agency, the National Aeronautics and Space Administration (NASA), or the Department of Energy (DoE).
- Assist the OEC/CM in determining if the technology involved in the research is specified or enumerated on the U.S. Munitions List (ITAR) or the Commerce Control List (EAR), as needed.
- Collaborate with the OEC/CM in the development of a TCP/SSP, if required, and implement the research security measures outlined therein prior to the award beginning.
- Provide technical assistance and advice to the OEC/CM during the process of drafting and submitting any license applications needed to conduct a restricted research project.
- Notify the OEC/CM when new staff (students, postdocs, visiting scholars, etc.) are added to a restricted research project, or there is a change in the scope of work.
- Prevent unauthorized access to export-controlled technology or data until the OEC/CM has determined that an exclusion applies, or an export license has been obtained.

OEC/CM Responsibilities

- Review proposals and agreements, with input from the PI and OSP, to determine if a project will be conducted as fundamental or restricted research.
    - o Assist OSP, with input from the PI, in negotiating agreements to remove restrictive award clauses as needed.

- o Collaborate as needed with the PI to determine whether the technology involved in a research project is specified on the ITAR USML or the EAR CCL.
- o If required, advise the PI and OSP of the need for a TCP and/or SSP, consult with the PI and IT Security Officer during the preparation and review of the TCP and/or SSP, and assure training is completed for PIs and research staff working on projects subject to a TCP and/or SSP.
- o Notify OSP to assign the export control attribute in PeopleSoft to a restricted research project.

• Screen persons and entities involved in sponsored research activities against government lists of prohibited parties. If an agreement requires foreign national (FN) persons to be reported to the award entity or to a third-party vendor data base for screening, <u>this screening process could take up to 90 days</u>, the FN cannot work on the project until screening is complete, as directed by the awarding entity.

• Provide educational material and training for OSP and other University personnel involved in research administration on their roles and responsibilities in relation to export control regulations and University policies and procedures.

• Maintain documentation required by applicable laws, regulations, and University policies regarding restricted agreements.

• Assist OSP with security documents for subcontracts associated with classified contracts (i.e., subcontract DD-254 / Contract Security Classification Specification).

OSP responsibilities

• Identify and notify the OEC/CM of any solicitation or proposal involving any of the following red flags:
- o International collaboration (a foreign sponsor, subcontractor, consultant, etc.)
- o *Specific* export control restrictions that indicate that the proposal or the project (once awarded) will be subject to export control or sanctions regulation[3]
- o Foreign person restrictions that would limit the participation of non-U.S. persons or non-U.S. citizens in the project, including any sponsor requirement to pre-approve foreign participation or a specific "U.S. persons only" requirement
- o Publication restrictions *unrelated to third party proprietary or confidential information*[4] that prohibit or otherwise require sponsor approval of any publications resulting from or related to the project
- o Publication restrictions that (1) prohibit or otherwise require sponsor approval of any publications resulting from or related to the project and (2) pertain to third party proprietary or confidential information relating to the following research areas and/or key words:
  - ▪ Military, intelligence, or munitions
  - ▪ Space, satellite, missile, sensors, laser, or rocket technology
  - ▪ Nuclear, energy, propulsion
  - ▪ Unmanned / autonomous vehicles, systems, or aircraft

---

[3] A statement that S&T is required to comply with export and sanctions regulations is not an access or dissemination restriction.

[4] Third-party or sponsor provided proprietary or confidential information that is financial or business information, clinical trial or human subjects data, or demographic information is not export controlled technology that requires export control review in order to accept a contractual requirement for S&T to protect that information or otherwise limit publication of research results.

- - - Infrared ("night") vision
    - Information Security, Encryption, or source code
    - Pathogens, viruses, bacteria, toxins, or select agents
    - Nano or composite materials
  - Security language such as a DoD Contract Security Classification Specification (DD-254) or other indications that the project will be classified for national security purposes, or that project staff will be required to obtain a Personnel Security Clearance (PCL) to perform work on the project.
  - Export control markings (i.e., Controlled Unclassified Information (CUI) or Controlled Technical Information (CTI)[5] appear on the solicitation and/or proposal documents, or will be required on technical documents, reports, publications, etc. upon award[6]

- Identify proposals for work to be funded by the DoD or a component agency, an intelligence agency, DoE, or NASA (including flow-through).
  - Provide PIs with the appropriate fundamental research information sheet, based on sponsoring agency.
  - Include fundamental research language in proposal as directed by the PI or departmental research staff.

- Identify and notify the OEC/CM of any agreements or modifications requiring review:
  - Agreements for projects that involve international collaborations and/or international travel
  - Any agreement funded by the DoD, a DoD component agency, NASA, or an intelligence agency (including flow through)
  - For NASA (including flow through) obtain a Nonstandard Terms and Conditions form signed by PI and Department Chair indicating acceptance and agreement to adhere to NASA restrictions related to funding appropriated in the DoD Appropriations Acts ("China Rule").
  - Agreements containing references to (CUI/CTI)
    - Award documents are marked with CUI or CTI markings
    - Award requires CUI or CTI markings on technical reports or other project deliverables
    - Award requires IT Security controls to protect CUI.
  - *Specific* export control restrictions, such as foreign national or publication restrictions *unrelated to certain third party proprietary or confidential information*, or security language
  - Modifications such as no-cost time extensions, changes in the scope of work, or international travel not included in the original proposal to any project under a Technology Control Plan or marked with the Export Control attribute in PeopleSoft
  - Any subcontract or consulting agreement to be issued by OSP for work to be performed on a classified contract[6]

- Provide to the OEC/CM adequate documentation and information to perform a review. As appropriate and available, this may include:

---

[5] CUI is information that requires safeguarding or dissemination controls but is not classified; examples of markings include Export Control / EXPT; For Official Use Only / FOUO, Protected Critical Infrastructure Information / PCII; Critical Energy Infrastructure Information / CEII; or Sensitive Security Information / SSI); or Controlled Technical Information (CTI) markings (i.e., Department of Defense Distribution Statements B, C, D, E, or F). More information available at https://www.archives.gov/cui/registry

[6] Including any indicator or statement that an award will contain the DFARS 252.204-7012 Clause (Safeguarding Covered Defense Information and Cyber Incident Reporting)

o Solicitation
o Proposal, including statement of work and budget
o Award
o Prime award
o Signed NASA Nonstandard Terms and Conditions Form

• Negotiate agreements, as appropriate and with input from the PI and the OEC/CM, to remove restrictive award clauses.

• Ensure that the OEC/CM has completed its review, communicated a final determination of whether a project will be considered restricted research, and provided any required compliance documents (i.e., a Technology Control Plan (TCP) / System Security Plan (SSP)) prior to processing an award for setup, issuance of a MoCode, expenditure of funds, etc.

• Notify the OEC/CM when a restricted project (under a TCP or SSP, marked with the Export Control attribute) is beginning or has completed the close-out process.

Need Help?

Contact OSP at research@mst.edu or (573) 341-4134.
Contact OEC at mstexportcontrols@mst.edu or (573) 341-4124

▪ Office Vice Chancellor of Research
▪ Sr. Compliance Manager
202 Centennial Hall | Rolla, MO 65211-0001
573-341-4124 | caeqmb@mst.edu

Updated/Revised 10_2021 CAE