Guidelines for the Office of Research Services

The following information has been compiled for employees in the University of Oklahoma’s Office of Research Services (ORS). It is intended to summarize the most common export control issues that will come up in the sponsored research setting, as well as provide resources to help resolve those issues. It will be incorporated into the University’s Export Control Management System (ECMS).

Background ...........................................................................................................13
Infosheet and acknowledgement of export control issues...............................14
Restrictive clauses ...............................................................................................16
Physical exports and international travel .........................................................18
OFAC-sanctioned countries ..............................................................................19
Military or intelligence applications .................................................................20
Sponsored Program Coordinator (SPC) review ................................................21
Conclusion ..........................................................................................................22
Flow chart ..........................................................................................................23
Background

While export controls can impact a variety of activities at the University, one area of particular concern is sponsored research. The University’s commitment to the creation and dissemination of knowledge encourages full and free exchange of information. Open communication in the research setting has always been a cornerstone of academic institutions.

Unfortunately, this type of environment can create export control issues. The enforcement of export control regulations has stepped up in recent years, and the academic community has been subjected to increased scrutiny. Research that once was assumed to be exempt from export controls is now being reassessed by the federal government. It is essential for the University to consider whether sponsored research, whether conducted on or off campus, is subject to export control regulation and whether or not a license is required.
Infosheet

The process of submitting a sponsored research proposal starts with the completion of an electronic document called an Infosheet. The Infosheet captures information provided by the Principal Investigator (PI) regarding key aspects of the research project. It also provides the University with its first opportunity to address the potential for export control issues involved in sponsored research.

The Infosheet currently contains a section identifying the most common types of export control issues involved in research. After acknowledging the potential for these issues and agreeing to work with ORS and the Office of Export Controls (OEC) to resolve them, the PI is allowed to complete the Infosheet and ultimately submit the research proposal. The Infosheet also asks every PI to identify any specific military or intelligence applications that may be involved with their proposal.

Currently, the Export Controls section of the Infosheet states:

Most sponsored research at the University of Oklahoma is not subject to U.S. export control regulations. However, some research projects may trigger export control regulations, particularly those involving:

- **Restrictive contractual clauses** (publication restrictions, citizenship requirements, etc.)
- Physical exports (sending or hand-carrying OU equipment to another country)
- Traveling to or interacting with organizations in **OFAC-sanctioned countries**
- Designing, developing, modifying, or adapting any equipment, software, or technology for **military or intelligence applications**

In the event that a proposed research agreement involves export control issues, you will be required to work with the Office of Research Services, as well as the Office of Export Controls to resolve these issues. The University reserves the right to decline a proposed agreement/award if the export control issues are overly restrictive, ambiguous or otherwise not manageable under the circumstances.

* By checking this box, I acknowledge the information above and agree to work with the Office of Research Services and Office of Export Controls for any proposed agreement involving export control issues.

* 1) Does the current proposal involve designing, developing, modifying, or adapting any item, software, or technology for military, satellite or intelligence applications OR does it involve any foreign military forces or units?
   [Examples of items that may involve military or intelligence applications (often referred to as "defense articles" or "ITAR controlled items") can be found here.]
   □ Yes □ No

* 2) Does the current proposal involve developing encryption products?
[More information can be found on encryption products on the OEC website, http://exportcontrols.ou.edu/guidelines/index.html, under "encryption"]

☐ Yes  ☐ No

* 3) Do you intend to publish, teach, or otherwise share your research with the interested public?

☐ Yes  ☐ No

An electronic record of this acknowledgement, as well as a date and time stamp for submission of the Infosheet is kept in the records of ORS. Any affirmative answers to the question regarding military/intelligence applications will flag the proposal and OEC will be notified.
Restrictive Clauses

ORS can protect the University from potential violations of export control regulations, primarily through watching for restrictive clauses in research agreements. Restrictive clauses, such as those described below, can destroy the exemptions to export control regulation such as the Fundamental Research Exemption (FRE)\(^2\) and the Educational Information Exemption (EIE)\(^3\), thus subjecting a particular research project to regulation. Restrictive clauses that destroy these exemptions should only be accepted if the responsibilities for handling export-controlled issues can be articulated and managed properly.

Review Process

When a research proposal is awarded, the Sponsored Programs Coordinators (SPCs) within ORS will review the agreement for restrictive clauses that may trigger export control regulations. Any such clauses will be flagged and forwarded to the OEC for review. The determination to accept restrictive clauses can only be made by the University Vice President for Research, after taking into consideration advice provided by the Export Control Officer and the Executive Director for the ORS.

Accepting Restrictive Clauses

The University may approve of research agreements that contain special restrictions stemming from export control regulations. Research agreements containing export control clauses will be reviewed on a case-by-case basis. If the University determines that the export control issues with a particular research agreement are manageable, it may accept the agreement.

The following scenarios are examples of research agreements that contain export control clauses that may affect the University’s willingness to accept the agreement:

- A research agreement that indicates that technology, software, or other information required for the performance of the agreement may be subject to export control regulation
- A research agreement that indicates that technology, software, or other information resulting from the performance of the agreement may be subject to export control regulation
- A research agreement in which the sponsor requires identification of non-U.S. citizens involvement on the project prior to their involvement
- A research agreement in which the sponsor reserves the right to approve or disapprove of non-U.S. citizen involvement on the project
- A research agreement in which the sponsor requires a pre-publication review or imposes other publication restrictions

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\(^1\) Restrictive clauses such as those discussed in this section are consistently identified by the U.S. Department of Commerce as triggers for export control regulation in the university research setting.  
\(^2\) 15 CFR 734.8  
\(^3\) 15 CFR 734.9
The University *may also* elect to decline a proposed agreement if the export control clause is deemed to be unreasonable under the circumstances. If the export control clause in a research agreement is overly restrictive or ambiguous the export control issues may not be manageable, and the University may decline the proposed agreement.
Physical Exports/International Travel

ORS can also assist the University and its researchers by screening for physical exports and international travel. Upon award, a research proposal should be reviewed for any clauses that would require physical exports or international travel that could involve hand-carried equipment. If either of these elements is present, OEC will be notified by the SPC^4.

Most commonly, physical exports can be identified by watching for required deliverables (tangible goods). If there are deliverables required, and the sponsoring organization or ultimate destination for the deliverables is located in another country, there is a physical export involved. All physical exports should be screened for export license requirements by OEC.

Additionally, physical exports may be involved with international travel. All equipment shipped or hand-carried to another country constitutes a physical export. In the event that a research agreement provides for international travel, the PI should be notified by the SPC of the potential for export control issues and directed to complete the Export Control Decision Wizard (ECDW) on the export controls website. Upon completion of this interactive series of yes or no questions, OEC will receive a certificate of completion that is electronically time stamped. OEC will communicate to ORS that the ECDW certificate has been received.

^4 Parties to export-related transactions are screened against the lists provided by the U.S. Departments of State, Commerce and Treasury. This screening is performed by OEC. If a matching record is found (known as a “red flag”), the transaction cannot proceed unless the red flag can be resolved.
OFAC-Sanctioned Countries

Certain countries are subject to sanctions administered by the U.S. Department of Treasury’s Office of Foreign Assets Control (OFAC). Interaction with individuals and organizations in these countries can be extremely restricted. For this reason, any research agreement requiring interaction with individuals or organizations physically located in the following countries should be flagged for review by OEC. The Export Controls Analyst will update the following list as necessary:

Balkans
Belarus
Burma
Cote d’Ivoire
Congo
Cuba
Democratic Republic of the Congo
Iran
Iraq
Ivory Coast
Liberia
Myanmar
North Korea
Sudan
Syria
Zimbabwe
Military or Intelligence Applications

All research agreements involving any specific military or intelligence applications should be reviewed by the Export Control Officer prior to award. The following are examples of military and/or intelligence applications that would require review from the Export Control Officer:

- Firearms, close assault weapons, and combat shotguns
- Guns and armament
- Ammunition and ordnance
- Launch vehicles, guided missiles, ballistic missiles, rockets, torpedoes, bombs and mines
- Explosives and energetic materials, propellants, incendiary agents and their constituents
- Vessels of war and special naval equipment
- Tanks and military vehicles
- Aircraft and associated equipment
- Toxicological agents, chemical agents, biological agents, and associated medical diagnostics, treatments, and equipment
- Spacecraft systems, including all satellites
- Nuclear weapons, design, and testing related items
- Classified articles
- Directed energy weapons
- Submersible vessels, oceanographic and associated equipment

Military and intelligence technologies are very highly regulated, so it is necessary to have more than one screening mechanism in place. For this reason, the PI is asked to disclose these types of applications upon submission of the Infosheet. Additionally, upon award, the proposal will be reviewed by the Sponsored Research Coordinators for military and/or intelligence applications, regardless of the PI’s response in the Infosheet.

Any proposal or award involving military or intelligence applications will be forwarded by ORS to the Export Control Officer for review. A fully executed Technology Control Plan (TCP) is required for any project involving these types of applications. TCPs will be drafted by the Export Control Officer, based upon the information provided in the research agreement, as well as input from ORS and the PI. The original TCP shall be kept on file in the OEC, and a copy shall be provided to the PI as well as ORS.
Sponsored Program Coordinator Review

Pursuant to the guidelines above, the following questions should be completed by the SPC of the research agreement, but prior to providing any funds to the PI. If any of the questions are answered in the affirmative, the award is flagged and forwarded to the OEC for review and approval.

Does the contract contain any clause that:

1. References U.S. export control regulations or sanctioned countries?
2. Restricts participation of any person or organization based upon citizenship or geographic location?
   a. Requires notification of or prohibits the hiring of non-U.S. citizens
   b. Restricts access of non-U.S. citizens to project-related information
3. Identifies proprietary information, intellectual property, or trade secret information?
   a. Provides for the signing of a confidentiality agreement, non-disclosure agreement, or proprietary information exchange agreement?
4. Allows for publication restrictions?
5. References “defense articles”, or indicates any military or intelligence specific applications?
6. Requires deliverables (shipment of physical goods) going to another country?
7. Requires the boycott of any other (non-U.S.) country or organizations within a particular country?
8. Requires travel to a foreign country as part of the research agreement?

5 The Export Control Officer shall provide training on identifying military and intelligence applications to all SPCs as needed. If a TCP is warranted, the ECO will also provide the PI with an explanatory briefing (in person or in writing) which describes the need for a TCP, as well as the specific items, software or technology controlled in the award at issue.
Conclusion

ORS is a vital part of the University’s Export Control Management System. By utilizing the proper screening tools, ORS can protect the University and its researchers from violations of export control regulations. Additionally, through these same tools, ORS can raise awareness of the potential for export control regulations, and foster a culture of compliance within the University.

The following document is a flow chart depicting the guidelines for handling the export control issues discussed above. It identifies when screening for the various export control issues should occur, as well as what steps are taken by whom in order to resolve the issue.
1. Places P.I. on notice of potential for export control regulations
2. Requires P.I. to disclose military/intel applications

Reviewed by SRCs for:
1. Restrictive clauses
2. Physical exports
3. Foreign travel
4. OFAC-countries
5. Military/Intel application

Restrictive clauses
Physical exports
Foreign travel
OFAC countries

Must be reviewed by ECO and director of ORS. If clause is negotiable and export controls regs are triggered, requires approval from the VPR. A Technology Control Plan (TCP) may also be required upon award.

Requires review by ECO for export control issues

Requires a Technology Control Plan that must be signed by the P.I., ECO and director of ORS (upon award).