

Identifying and Managing Restricted Research

Policies

University of Missouri-Columbia Export Compliance Management Program
MU Standard Operating Procedure "OEC Coordination with Office of Sponsored Programs"

Overview

As a public university, the University of Missouri (MU) conducts the majority 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 MU academic community and/or the free and open disclosure of research results. Therefore, MU 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, MU 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 MU's ability to manage restricted research projects:

- The large population of non-U.S. Persons at the University, particularly in regards to 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 Controls (OEC), the Principal Investigator (PI), and the Office of Sponsored Programs Administration (OSPA) through the life cycle of all sponsored projects in order 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 MU and the individuals involved. Universities have been fined and, in one case, a PI was sentenced to prison for violating export control regulations.¹

Procedures

In support of each other and the research enterprise at MU—and to ensure compliance with the law—the PI, the OEC and OSPA will work collaboratively to perform export control analyses for all sponsored activities at the proposal stage, when an award is being negotiated and/or is accepted, and during the administration and closeout of a restricted research project. OSPA will review proposals and agreements for referral to the OEC prior to proposal submission or award set-up according to the processes set out in **Appendix 1: OSPA Referral to Office of Export Controls**. The OEC will conduct a comprehensive review, with input from the PI or OSPA as needed, to determine whether a project qualifies as restricted research. If a Technology Control Plan (TCP) is needed to manage a restricted research project, one will be developed by 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>

OEC with input from the PI and implemented prior to award set-up. The OEC will provide a copy of a final TCP to OSPA, signaling award set-up may proceed.

Responsibilities

Below is an outline of responsibilities as they relate to the identification and management of restricted research at MU.

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 OSPA 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, or the National Aeronautics and Space Administration (NASA)
- Assist the OEC 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 in the development of a TCP, if required, and implement the research security measures outlined therein.
- Provide technical assistance and advice to the OEC during the process of drafting and submitting any license applications needed to conduct a restricted research project.
- Notify the OEC 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 has determined that an exclusion applies or an export license has been obtained.

OEC Responsibilities

- Review proposals and agreements, with input from the PI and OSPA, to determine if a project will be conducted as fundamental or restricted research.
 - Assist OSPA, with input from the PI, in negotiating agreements to remove restrictive award clauses when possible.
 - 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.
 - If required, advise the PI and OSPA of the need for a TCP, consult with the PI during the preparation and review of the TCP, and conduct training for PIs and research staff working on projects subject to a TCP.
 - Notify OSPA to assign the export control attribute in PeopleSoft to a restricted research project.
 - Document the review process and outcome for each proposal and award referred to the OEC.
- Screen non-U.S. persons and entities involved in sponsored research activities against government lists of prohibited parties.
- Conduct training for OSPA 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 in regards to restricted agreements.

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

OSPA responsibilities

- Identify and notify the OEC of any solicitation or proposal involving any of the following red flags:
 - International collaboration (a foreign sponsor, subcontractor, consultant, etc.)
 - *Specific* export control restrictions that indicate that the proposal or the project (once awarded) will be subject to export control or sanctions regulations²
 - 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
 - Publication restrictions *unrelated to third party proprietary or confidential information*³ that prohibit or otherwise require sponsor approval of any publications resulting from or related to the project
 - 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 or rocket technology
 - Nuclear, energy, propulsion
 - Unmanned / autonomous vehicles, systems, or aircraft
 - Infrared (“night”) vision
 - 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) in order to perform work on the project
 - Export control markings (i.e., Controlled Unclassified Information / CUI or Controlled Technical Information / CTI)⁴ appear on the solicitation and/or proposal documents, or will be required on technical documents, reports, publications, etc. upon award
- Identify proposals for work to be funded by the DoD or a component agency, an intelligence agency, 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.

² A statement that MU is required to comply with export and sanctions regulations is not an access or dissemination restriction.

³ 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 MU to protect that information or otherwise limit publication of research results.

⁴ 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/category-list>

- Identify and notify the OEC 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").⁵ Exhibit A.
 - 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 or other 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 OSPA for work to be performed on a classified contract
- Provide to the OEC adequate documentation and information to perform a review. As appropriate and available, this may include:
 - Solicitation
 - Proposal, including statement of work and budget
 - Award
 - Prime award
 - Signed NASA Nonstandard Terms and Conditions Form
- Negotiate agreements, as appropriate and with input from the PI and the OEC, to remove restrictive award clauses.
- Ensure that the OEC 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) prior to processing an award for setup, issuance of a MoCode, expenditure of funds, etc.
- Notify the OEC when a restricted project (under a TCP and/or or marked with the Export Control attribute) is beginning or has completed the close-out process.

Need Help?

Contact OSPA at grantsdc@missouri.edu or (573) 882-7560 Contact OEC at exportcontrols@missouri.edu or (573)-884-9954

Creation Date

04/21/2020

Office of Sponsored Programs Administration
 115 Business Loop 70W | Columbia, MO 65211-0001 573-882-7560 | grantsdc@missouri.edu



⁵ Including any indicator or statement that an award will contain the DFARS 252.204-7012 Clause (Safeguarding Covered Defense Information and Cyber Incident Reporting)

Exhibit A: NASA NONSTANDARD TERMS AND CONDITIONS

A signed acknowledgement from the PI and the Department Chair of the NASA "China Rule" NonStandard Terms and Conditions is required prior to the release of grant funds for spending.

NONSTANDARD TERMS AND CONDITIONS

PROJECT TITLE _____

PI NAME: _____

MU PROJECT NUMBER _____

NASA is restricted from using funds appropriated in the DoD Appropriations Acts (Public Law 112-10 Section 1340(a) and Public Law 112-55, Section 539) to enter into or fund any grant or cooperative agreement of any kind with China, or any Chinese-Owned company. The Office of Sponsored Programs Administration 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 at a Chinese institution or a Chinese-owned company.
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 by NASA.

Please indicate your acceptance of and agreement to adhere to these restrictions by signing below.

The below hereby consents to these nonstandard terms and conditions on this award. I understand that OSPA may freeze my accounts under this contract or take other actions as appropriate in the event I fail to abide by these terms and conditions.

Principal Investigator

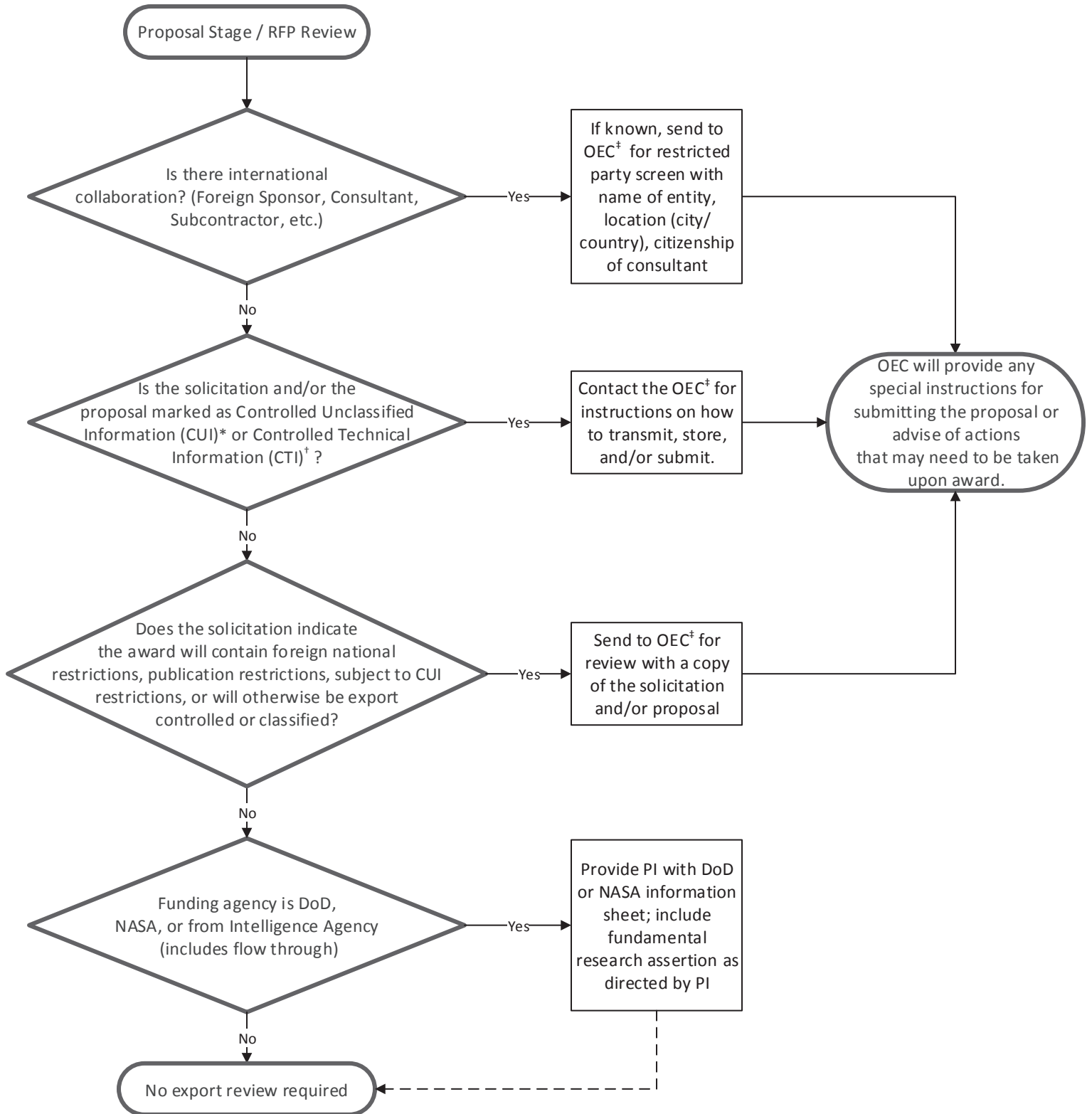
Date

Department Chair

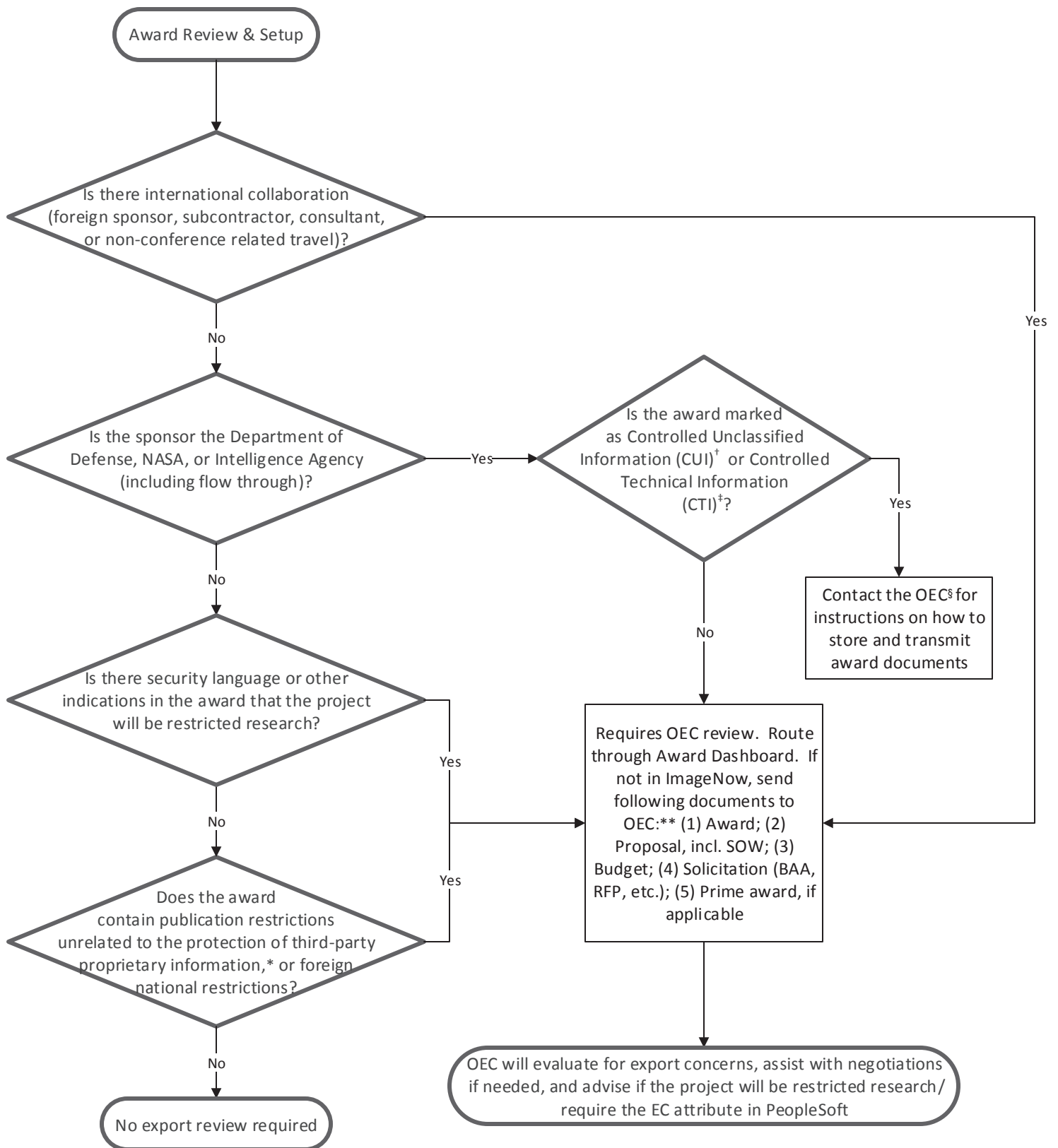
Date

For internal use only. Not to be sent to sponsor

Appendix 1: OSPA Referral to Office of Export Controls



* Controlled Unclassified Information (CUI) markings (i.e., 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)
 ‡ 573-884-9954 or exportcontrols@missouri.edu



* 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. Third party proprietary or confidential information relating to the following research areas and/or key words requires review: (1) Military, intelligence, or munitions; (2) Unmanned / autonomous vehicles, systems, or aircraft; (3) Infrared ("night" vision); (4) Encryption or source code; (5) Pathogens, viruses, bacteria, toxins, or select agents; (6) Nano or composite materials

† Controlled Unclassified Information (CUI) markings (i.e., 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)

§ Distribution A does not require OEC notification

** 573-884-9954 or exportcontrols@missouri.edu