

THE FUNDAMENTAL RESEARCH EXEMPTION

Fundamental research, as used in the export control regulations, includes basic or applied research in science and/or engineering at an accredited institution of higher learning in the United States where the resulting information, in some cases, is ordinarily published and shared broadly in the scientific community and, in other cases, where the resulting information has been or is about to be published. Fundamental research is distinguished from research that results in information that is restricted for proprietary reasons or pursuant to specific U.S. government access and dissemination controls. University research will not be deemed to qualify as fundamental research if (1) the university accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent divulging of proprietary information provided to the researcher by the sponsor or to insure that publication will not compromise patent rights of the sponsor; or (2) the research is federally funded and specific access or dissemination controls regarding the resulting information have been accepted by the university or the researcher.

K-State, in some cases, is the recipient of information from our sponsor(s) that is considered by the sponsor to be proprietary or confidential. However, most of information utilized in our laboratories originates from open, public sources. Normally, information received from K-State's federal sponsors is generally not proprietary or confidential in nature and does not have use restrictions, unless specified. K-State develops new information from publicly available sources that is published in the open scientific community. Pre-publication reviews are therefore limited, primarily to avoid inadvertently divulging a sponsor's proprietary information, or for the identification of patentable subject matter, the premature disclosure of which would jeopardize its patentability and these types of "pre-publication reviews" are not considered a "specific national security control". The results of basic and applied research that are widely published therefore meets the "fundamental research" and "publicly available" exemptions. In some cases, specific contract language will require that K-State acknowledge that it will comply with export control laws requirements should K-State agree to accept controlled technical data or limited use information provided by the sponsor or the federal government, whatever the case may be, that is subject to these laws.

K-State exerts tremendous effort to secure its faculty and student's rights provided under the Fundamental Research Exemption by reviewing contract language very closely, whether presented by corporate sponsors or as a result of governmental regulations. In some cases, certain contract verbiage, or government regulations are not open to negotiation, in which case, K-State will be required to develop a Technology/Export Control Plan or to obtain security clearance licenses from the federal government prior to the commencement of the research effort.

In summary, the key point to remember about the Fundamental Research Exemption is in regards to the nature of the specific information that is restricted from public dissemination. The restrictions placed on the release of sponsor owned confidential information in itself does not cancel the Fundamental Research Exemption. However, if K-State has otherwise agreed to restrictions placed on the public disclosure of the **results** of its basic or applied research activities, then the Fundamental Research Exemption no longer applies to that activity and as such, K-State would have to insure that it is in full compliance with all Export Control Regulations prior to the commencement of the work to avoid violation of such regulations.