

How to Identify Publication Restrictions

Introduction

Many types of research based at accredited institutions within the United States, alike to Iowa State University, enjoy the benefits of the **Fundamental Research Exclusion (FRE)** or the freedom from export control regulations. However, the exclusion is lost if your research is subject to: (1) a **publication restriction**, (2) foreign person participation restrictions, or (3) otherwise restricts the dissemination of research results. The loss of the FRE results in additional hurdles in your ability to conduct research and increases your workload to maintain compliance because without the FRE, the research is subject to export control regulations.

NOTE: Export control regulations forbid the sharing of certain controlled information or technologies with foreign nationals and other non-U.S. persons. This could greatly impact the ability for international students or collaborators to participate in any of your research.

Define a Publication Restriction

There are two types of publication assessments, (A) **publication reviews** and (B) **publication restrictions**.

First, a **publication review** is an assessment of your data/materials by another party with the sole goal of removing propriety or confidential information before publishing within 120 days. Unlike a restriction, a publication review does not result in the loss of the Fundamental Research Exclusion as it is not viewed as a restriction on the ability to disseminate your research data.

Example: A sponsor's requirement to pre-review a publication to confirm no proprietary information was erroneously included.

In contrast, a **publication restriction** is a condition: (1) preventing freely publishing without approval, or (2) a purposeful delay in publishing beyond 120 days, or (3) a complete prohibition on your ability to publish. If a publication restriction is in effect, your research is subject to export control regulations and additional legal requirements.

Example: A sponsor's requirement to approve your publication prior to publishing.

Example: A sponsor's requirement to delay publishing by 121 days.

NOTE: Please note that any "side agreement" or "secrecy agreement" outside the original research agreement with another party to delay publication or to allow sponsor preapproval, also destroys the FRE.

Examples of Publication Reviews and Restrictions

Determine if the following examples are **publication reviews** or **publication restrictions**.

1. Contractor may publish or use materials developed as a result of this Contract, subject to confidentiality restrictions only after the Agency has had at least thirty (30) days prior to public disclosure to provide an opportunity to review and comment upon the publication. If the Agency does not object within the thirty (30) day notification period, the Contractor has the right to proceed with public disclosure. Any such publication shall contain a statement that the work was done pursuant to a contract with the Agency and that it does not necessarily reflect the opinions, findings, and conclusions of the Agency.
 - a. Answer: **Publication Review** *The contractual language requires the contractor to submit their publication draft and/or materials developed from their research subject to a 30-day review prior to public disclosure or publishing. 30 days is less than 120 and is not seen as a restriction on publishing but rather a means to ensure no unauthorized intellectual property is unintentionally disclosed.*
2. The Contractor shall not publish in any format any final or interim report, document, form or other material developed as a result of this Contract without the express written consent of the Agency. The Contractor may publish or use materials developed as a result of this Contract, subject to confidentiality restrictions, and only after the Agency has had an opportunity to review and comment upon the publication, within thirty (30) days of receipt of a draft. Any such publication shall contain a statement that the work was done pursuant to a contract with the Agency and that it does not necessarily reflect the opinions, findings, and conclusions of the Agency.
 - a. Answer: **Publication Restriction** *Contractual language requires the contractor to gain express written consent prior to publishing their research. This is a complete and total restriction which is a publication restriction and would result in export control laws and regulations enacted.*
3. Subject to the provisions of *Section X*, *A+ University* shall have the right at its discretion to release information or to publish any material resulting from the Research. *A+ University* will furnish Sponsor with a draft copy of any proposed publication thirty (30) days in advance of proposed publication date. Sponsor agrees to limit circulation and use of such materials to internal distributions within Sponsor and agrees that such distribution will be solely for the purposes of review and comment unless otherwise agreed in writing by *A+ University*. Sponsor may request *A+ University* to delay publishing such proposed publication for a maximum of an additional thirty (30) days in order to protect the potential patentability of any Inventions described therein. Such delay shall not, however, be imposed on the filing or publication of any student thesis or dissertation. *A+ University* shall give Sponsor the option of being acknowledged in such publication for its sponsorship of the Research.
 - a. Answer: **Publication Review** *Contractual language reserves the right to publish without delay but permits the sponsor to review a draft of the proposed publication 30 days prior to publication or an additional 30 days extension. In total 60 days is less than 120 days and is only reviewed for Sponsor review and comment.*
4. *A+ University* reserves the right to publish the results of the Study. *A+ University* will, however, notify Sponsor and will submit a draft of the manuscript to Sponsor for comments at least thirty (30) days prior to submission for publication or oral presentation. Sponsor shall notify *A+ University* in writing within thirty (30) days of receipt of such draft whether such draft contains information deemed to be confidential under the provisions of *Section*, or information that if

published within thirty (30) days would have an adverse effect on a patent application in which Sponsor owns full or part interest, or intends to obtain an interest from *A+ University* pursuant to this Agreement. In the latter case Sponsor has the right to request a delay and *A+ University* agrees to delay said publication for a period not exceeding ninety (90) days. In any such notification, Sponsor shall indicate with specificity to what manner and degree *A+ University* may disclose said information. *A+ University* shall have the final authority to determine the scope and content of any publication, provided that such authority shall be exercised with reasonable regard for the commercial interests of Sponsor. It is the intent of the parties that no publication will contain any confidential information disclosed by Sponsor without Sponsor's prior written permission. Information related to Sponsor's experimental drugs will not be transmitted to nonscientific journals, newspapers, radio, or television without Sponsor's written consent.

- a. Answer: **Publication Review** *Contractual language reserves the right to publish but permits the sponsor to review a draft of the proposed publication 30 days prior to publication to confirm no involuntary confidential or patent related information is included. An additional 90 days is permitted to delay publication for 120 days maximum. So long as the publication delay does not exceed 120 days in the contract or in other side agreements, this review remains a publication review.*
5. ... In order that premature public disclosure of research information does not adversely affect the interests of the parties, the University shall provide Sponsor with a copy of each manuscript pertaining to the Project that is intended for publication. Sponsor may request delay in publication for a period of one hundred eighty (180) days from the date on which Sponsor receives the manuscript. If Sponsor does not make a written request for delay in publication within thirty (30) days after receipt of a manuscript, University shall be free to publish the manuscript at any time after the end of the thirty (30) days. Sponsor's right to request a delay in publication shall not apply to any thesis or dissertation.
- a. Answer: **Publication Restriction** *Contractual language permits the delay of publication by the sponsor exceeding 120 days.*

NOTE: Please note that the above text are only examples, and the actual language can vary based on the specific contract and jurisdiction. Please contact the Office of Sponsored Programs Administration (OSPA) when dealing with contractual matters.

If you believe your research is subject to a publication restriction or export control regulations, please contact our [Export Control team](#) in the Office of Research Ethics.