

## **DOE O 486.1A, *Foreign Government Sponsored or Affiliated Activities***

### **Frequently Asked Questions**

1. Q: Why is this Order necessary?

A: This Order is needed to protect the DOE research complex from potential exploitation in the interest of U.S. economic and national security while preserving international research collaboration and DOE's broad scientific mission.

2. Q: Regarding support service contracts: Does this apply to Laboratory sub-contracts to universities? If so, how would these guidelines extend to the university staff?

A: Yes, the Order requirement prohibiting participation in a foreign country of risk talent recruitment program applies to university staff if they come on to a DOE site to perform R&D work. The Order requirements related to Other Foreign Government Sponsored or Affiliated Activity do not apply to these individuals. The Contractor Requirements Document (CRD), Attachment 1, paragraph 1, addresses flow down requirements for on-site R&D subcontracts. Contracts administered at Headquarters are reviewed by Heads of Departmental Elements to determine if the Order applies, and if so, must be modified to include the CRD or its requirements, as explained in Section 5.p.(2), page 7.

3. Q: Does the Order apply to laboratory scientists performing research as participants in scientific international collaborations or government-to-government programs that include as participants entities from a Country of Risk? This would include activities such as travel funded by, or titled appointment as members of the collaboration.

A: Laboratory contractor employees are subject to the Order, however, the described activity may fall under the exemption for a DOE-program sponsored collaboration and within a DOE or Government international agreement. See Attachment 2, paragraph 9.b.(5)(b), page 2-3.

4. Q: Does the Order require revisions of laboratory agreements for SPP/CRADA activity where the vendor has an onsite presence?

A: No. The Contractor's requirements with respect to Contractor Personnel, which includes current and future SPP, CRADA, and ACT partners performing on-site R&D work, are implemented by the laboratory through CRD and does not require any changes to these agreements.

5. Q: The Order exempts users conducting research under a DOE User Facility Agreement. Does it also exempt laboratory staff performing work with or for Users as a part of their job?

A: The exemption only applies to users doing research under an approved user agreement; all laboratory staff are subject to the Order.

6. Q: Do subcontractor employees now have to report any business ties to foreign countries of risk?

A: No. R&D subcontractor employees working on site are prohibited from participating in a foreign country of risk talent recruitment program, but are not covered by the Other Foreign Government Sponsored or Affiliated Activity requirements in the Order.

7. Q: Do laboratory scientists receiving travel honoraria for attendance at scientific conferences, including those sponsored by professional societies, with multiple conference sponsors including foreign countries of risk, need to report this as an Other Foreign Government Sponsored or Affiliated Activity?

A: Where there are multiple sponsors and the foreign country of risk entity is not the majority (greater than 50%) sponsor of the conference, no disclosure is required. However, it must be reported if the foreign country of risk entity is providing the honoraria directly to the laboratory scientists.

8. Q: Does a laboratory researcher have to report postdocs or students (who are not contractor employees) provided "free" of cost but in actuality funded by foreign country of risk entities?

A: Yes, this activity must be disclosed by the laboratory employee and an exemption must be pursued to cover all future postdocs or student's contributing to a laboratory employee's research. Those postdocs or students approved prior to the required date of implementation of this Order are not required to request an exemption for the duration of their current approved appointment, but must still be disclosed to DOE. If that postdoc/student requests any additional time after their current approved appointment that request must obtain an exemption as required by the Order.

9. Q: Is a collaborator from a European institution who is coming on site to perform research subject to this Order?

A: All individuals conducting research on site are covered by the requirements of this Order unless specifically excluded or exempted in the Order. In addition, any site access concerns are covered by the Foreign Visits and Assignments Order.

10. Q: Is a university researcher with a courtesy appointment at the laboratory who performs all their research off-site from the laboratory required to disclose activities related to foreign country of risk talent programs or Foreign Government Sponsored or Affiliated Activity?

A: The Order does not apply to this situation. The university researcher is subject to the reporting requirements of their institution.

11. Q: Does co-authorship of a paper with an author supported by a foreign country of risk talent program have to be reported if the laboratory author is not collaborating with the individual?

A: In-kind support under a fundamental research collaboration for the sole purpose of co-authorship to be made publicly available is not a restricted Other Foreign Government Sponsored or Affiliated Activity (Attachment 2, paragraph 9.b.(5)(a), page 2-3).

12. Q: For laboratory employees with university appointments, are activities through the university subject to this Order?

A: Yes, as a laboratory employee you must report all relevant activities for review.

13. Q: What foreign countries are currently identified as Foreign Countries of Risk?

A: The list of Foreign Countries of Risk can change over time. As of August, 2021, the countries of risk list is limited to China, Russia, Iran and North Korea.

14. Q: Can the "Countries of Risk" list be disclosed to employees, 'personnel,' and external applicants interested in applying to become employees or personnel?

A: Yes.

15. Q: For activities sponsored by a foreign country that is not identified as a Foreign Country of Risk, what is the process if this country is identified as Foreign Country of Risk in the future?

A: The Secretary will communicate any changes to the list of Foreign Countries of Risk to laboratory leadership.

16. Q: Does a scientist coming to a DOE laboratory to attend a workshop or conference need to disclose Foreign Government Sponsored or Affiliated Activity?

A: No, the Order does not apply to non-research activities such as workshop or conference attendance at the laboratory. These individuals must be performing R&D on-site to be covered by the Order.

17. Q: Does the DOE User Facility Agreement vetting process fully cover the CRD requirements, or will a supplementary determination also be necessary?

A: No. Users are exempt from the Order.

18. Q: Is there a de minimis amount associated with the reporting requirements under DOE O 486.1A?

A: There is no de minimis exception in the Order.

19. Are strictly honorary titles, such as those received for giving an invited talk, required to be disclosed?

A: Honorary titles or other forms of recognition that are bestowed on an individual in the general course of a public presentation or for their contribution to the open scientific community, and without the expectation of a contribution of work to be performed by the individual for the Country of Risk-affiliated organizations granting the title, are required to be disclosed but no further action is necessary (e.g., no exemption request is needed). Titles that are associated with work previously performed or to be performed for such organizations, or with specific expectations of contributions to such organizations, need to be disclosed and must undergo the exemption process.

20. Clarification on Peer Review Panels, Journal Editorial Boards, and Conference organizations.

Q: Does a laboratory researcher have to report uncompensated activities that constitute or are intended to be a service to the open scientific community, when other participants on those boards, panels or organizing committees involve a sponsor or entity from a country of risk?

A: When the laboratory researcher's activity falls into the following scenarios, such activity does not need to be reported or undergo the exemption process unless otherwise noted.

- Work on a journal editorial board with participants from a country of risk as such work is specifically intended to enable work by other researchers to be shared for publication.
- Serving on a proposal review panel or PhD examination or thesis committee for a university with participants from a country of risk or other foreign entity, so long as such work is to enable research that is intended to be published and will benefit the open scientific community.
- Serving as a conference co-organizer, even if a conference sponsor or other co-organizers are from a country of risk. But for conferences that are majority sponsored by a country of risk, then the individual must disclose the activity and undergo the exemption approval process. (see FAQ #7)