

 UNIVERSITY of DENVER	UNIVERSITY OF DENVER POLICY MANUAL EXPORT CONTROL/TRADE SANCTIONS	
<u>Responsible Department:</u> Office of Research and Sponsored Programs (ORSP) <u>Recommended By:</u> Provost, SVC Business and Financial Affairs <u>Approved By:</u> Chancellor	<u>Policy Number</u> ORSP 1.10.070	<u>Effective Date</u> 6/27/2022

I. INTRODUCTION

This Policy is designed to provide guidance to University personnel in the application of and compliance with the various complex U.S. Export Control laws.

II. POLICY OVERVIEW

A. Background

The University engages in a broad range of innovative and important research and scholarships both in the United States and outside U.S. borders. These activities include the sharing and development of products, goods, hardware, software, or materials (collectively, “items”), as well as research involving technology that may be subject to U.S. Embargo and Export Control laws (Export Control(s)) and regulations.

U.S. Export Control law limits the export of certain technologies, including both actual equipment and knowledge about the equipment and processes to foreign nationals from restricted countries. The civil and criminal penalties to organizations and individuals for violations are severe.

The University takes its responsibility seriously. All personnel are required to comply with U.S. Export Control laws. The University coordinates all export control activities through its Export Control Officer whose office will assist in determining if activities are under the export control regulations, and obtain the necessary approvals, if necessary.

The export of certain technologies, software, and hardware is regulated and controlled by federal law for reasons of national security, foreign policy, prevention of the spread of weapons of mass destruction, and for competitive trade reasons. Export control laws require that a license be obtained prior to providing controlled technologies to foreign nationals from restricted countries. Failure to comply with Export Controls may result in substantial civil and criminal penalties to the University and the specific individual(s) involved, as well as administrative sanctions resulting in potential loss of federal funding and export privileges. Criminal penalties for unlawful export and disclosure of information in violation of Export Control laws may include fines and/or imprisonment.

Under the laws, “export” means not only the physical shipment of items from the U.S. to a foreign country, but also the release of controlled technology to foreign persons within the U.S. or abroad by way of visual inspection, oral transmission, or training (known as “deemed export”). While export control laws affect many activities at a university, the following is a non-exhaustive list of situations that might trigger export control regulations:

1. Shipping tangible items internationally;
2. Sharing proprietary, confidential, or otherwise restricted information or software code with foreign nationals at a university or destinations outside the U.S.;
3. Interactions with countries or organizations/individuals from a country currently subject to sanctions or embargo;
4. Hand carrying laptops, cell phones containing microprocessors, and equipment while traveling to a foreign destination; and/or
5. Exporting or importing items that have been designed, developed, configured, adapted or modified for a military application.

In addition, the trade sanctions/embargo regulations have additional requirements restricting transferring “items of value” to sanctioned countries.

Many of the activities conducted by a university’s faculty and staff are exempt from these complex regulations. The federal regulations provide a broad exemption from export controls for basic or applied academic research that is normally published in the public domain and shared with the general research community. This broad exemption is commonly referred to as the “Fundamental Research Exemption”. This exemption

provides that the conduct, products, and results of fundamental research are to proceed largely unfettered by deemed export restrictions. Research that carries access, participation, or dissemination restrictions **will not** qualify for the fundamental research exemption.

B. Export Control/Trade Sanctions Policy

The Policy of the University is that all personnel, including faculty, staff, visiting scholars/scientists, postdoctoral fellows, students, volunteers, and all other persons retained by or working at the University, comply with all U.S. laws and regulations while teaching, conducting research or providing service activities at or on behalf of the University. All personnel are required to comply with U.S. laws that regulate the transfer of items, information, technology, software, and funds to destinations and persons outside of the U.S., and in some cases, to non-U.S. citizens at the University or in the U.S.

Under no circumstances should the export of controlled items or knowledge take place contrary to U.S. Export Control laws. Sponsorship of University operations/functions by any agency of the U.S. federal government does not mitigate, supersede, or remove the University's responsibility to adhere to U.S. Export Control laws.

C. Scope

The University is committed to fully complying with all U.S. laws and regulations. All University personnel are expected to support this commitment and are responsible for being aware of their obligations and addressing them in a prompt and pro-active manner.

The primary responsibility for ensuring that there has been a good faith and diligent determination as to the application of Export Control laws and compliance with those law rests with individual personnel. The University shall provide assistance and training to personnel in assessing the application of, and compliance with, these laws through its Export Control Program and Export Control Office. The Export Control Officer has University wide authority in all final determinations on the application of or compliance with Export Control laws.

D. Fundamental Research Exemption

The University conducts research in many areas including science and engineering. A general practice of the University is to foster a research environment conducive to the expansion of general knowledge and the open release of knowledge acquired for the public good. Most of the University's research activities fall under the "Fundamental Research Exemption." However, research that carries access, participation, or

dissemination restrictions will not qualify as fundamental research under the exemption. Thus, to the maximum extent possible all research results should be widely and openly published and made available to the academic community in order to qualify for the Fundamental Research Exemption from Export Controls.

It is important to note that while the **results** of fundamental research are exempted from Export Controls, the tangible item, technology, or software under study is not automatically exempt and may be subject to Export Controls.

III. PROCESS OVERVIEW

A. Program

To ensure compliance with these regulations, the University has an Export Control Program that provides Policies and Procedures for personnel and departments to use to identify potential issues and comply with Export Control laws. A copy of this program is available from the Export Control Office and webpage. The Export Control Officer and Office has overall responsibility and authority for this Program. The Export Control laws affect many areas across campus. The management and maintenance of the Program requires the active involvement of many departments including, but not limited to:

1. Academic department administration, faculty, and staff;
2. Office of Research and Sponsored Programs;
3. Office of Internationalization;
4. Human Resources and Inclusive Community;
5. Controller's Office;
6. Office of General Counsel;
7. University Financial Services;
8. Office of Office of Intellectual Property and Technology Transfer;
and
9. Information Technology.

B. Responsibilities and Procedures

All University personnel are responsible for being aware of and complying

with Export Control laws and with the University's Export Control Program. The Export Control Program includes detailed responsibilities and procedures for personnel. The Program also includes a number of screening steps required for exporting or making payments to foreign nationals. In addition, the Program identifies personnel to contact to answer questions on whether and activity raises any export issues. Failure to comply with Export Control laws or the Export Control Program may result in disciplinary action.

All University personnel with managerial or supervisory authority over foreign nationals or projects involving materials or technology subject to Export Controls should view export control compliance as an important part of their day-to-day job responsibilities. It is important to determine early in the process of a research project and/or an international collaboration the potential requirement for export control authorization. Faculty and staff engaged in research shall perform on-going assessments of their research in accordance with the Export Control Program to determine if any aspect is subject to Export Controls.

When Export Controls issues are identified personnel are required to immediately report the issue to their appropriate departmental administrator as defined under the Program. This should also be communicated directly to the Export Control Office. In situations where a possible export control issue exists, the University has a responsibility to:

1. Determine that no export license is required and document the rationale for this determination properly; or
2. Determine that while an export license is required, an exception to that requirement exists and document the rationale for this determination properly;
3. Obtain an export license and document this process properly; and
4. If subject to export controls, implement a proper technology control plan as instructed by the Export Control Office.

The Export Control Office will work with the individuals and departments to make the appropriate determination. The Export Control Officer has authority for all final determinations.

In the event that an export license is required, the University Export Control Office will apply for such a license. It is essential to plan in advance for this possibility so that appropriate time can be allowed. If an export license is not required, the University is still subject to certain documentation requirements.

C. Resources

1. [Export Control Basics](#) – contains additional information on the regulations, definitions and University responsibilities;
2. [Export Control Manual](#);
3. [Export Control Office Webpage](#);
4. Export Control Office; and
5. Executive Director, Research and Export Control Officer.

IV. DEFINITIONS

None

Revision Effective Date	Purpose
<i>07/28/2021</i>	<i>Minor revisions</i>
<i>6/27/2022</i>	<i>Minor revision to change references from Shared Services to University Financial Services</i>