

 <b>UNIVERSITY OF DENVER</b>	<b>UNIVERSITY OF DENVER POLICY MANUAL EXPORT CONTROL</b>	
<b>Responsible Department:</b> Office of Research and Sponsored Programs <b>Recommended By:</b> Provost, Senior Vice Chancellor for Business and Financial Affairs, Senior Vice Provost for Research and Graduate Education <b>Approved By:</b> Chancellor	<u><b>Policy Number</b></u> ORSP 1.10.070	<u><b>Effective Date</b></u> 2/15/2024

## I. INTRODUCTION

This Policy is designed to implement a University Export Control Program to govern all University Exports and comply with U.S. Export Control law.

- A. The University engages in a broad range of innovative research and scholastic inquiry both in the United States and around the world. 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 the U.S. Export Control laws, including but not limited to the Arms Export Control Act (22 U.S.C. § 2751 et seq); Export Administration Regulations (15 C.F.R. § 730 et seq); International Traffic in Arms Regulations (22 C.F.R. § 120 et seq) and Treasury Forfeiture Fund (31 U.S.C. § 9705) (“Export Controls”).
- B. Federal law limits the Export of certain goods and services to Foreign Nationals.
- C. Exports and Deemed Exports take many forms and may include, without limitation, the following:
  - 1. Shipping tangible items internationally;
  - 2. Sharing proprietary, confidential, or otherwise restricted information with a Foreign National;
  - 3. Deemed Exports with a Foreign National currently subject to sanction or embargo;
  - 4. The transportation of information technology systems including laptops, cell phones or other technologies while traveling in a foreign destination; and/or
  - 5. Transfer or receipt of goods or services that have been designed, developed, configured, adapted or modified for a military application.

- D. U.S trade sanctions and embargos may contain restrictions on the transfer of an “Item of Value” to a sanctioned or embargoed Foreign National.
- E. Research activities conducted by the University may be exempt from Export Control if such activity is determined to meet the Fundamental Research Exemption.

## **II. POLICY OVERVIEW**

### **A. Scope**

It is the Policy of the University that all Personnel comply with Export Controls.

Sponsorship of University projects, operations, or functions by any agency of the federal government does not mitigate, supersede, or remove the University’s responsibility to adhere to the Export Controls.

As early as possible, Personnel are expected to contact the Export Control Officer to initiate the Export Control Program to make determination(s) regarding compliance with Export Controls (See paragraph II.B below).

### **B. Export Control Program**

The Office of Research and Sponsored Programs (“ORSP”) will designate an Export Control Officer who will develop and coordinate an Export Control Program, overseeing all Export Control compliance. The Export Control Officer has University-wide authority in all determinations regarding the application of, or compliance with, Export Controls.

### **C. Fundamental Research Exemption**

The Fundamental Research Exemption (“FRE”) is established in National Security Decision Directive 189. Exports and Deemed Exports that meet all of the following criteria are exempt from Export Control:

1. The research is basic or applied research in science or engineering;
2. The research is conducted within the United States and not in any other jurisdiction;
3. There are no restrictions on the free and open publication of the research results in journals or other technical literature (regardless of whether there is any actual publication); and

4. There are no sponsor restrictions on the nationality of Personnel involved in the research.

The FRE does not apply to the:

1. Physical shipment of tangible goods;
2. Use of tangible goods controlled by the International Trafficking in Arms Regulations;
3. Specific software with access limitations by the provider;
4. Encryption software or technology; and
5. Research which is not intended for publication.

### **III. PROCESS OVERVIEW**

#### **A. Export Control Program Review**

The Export Control Program will establish procedures for the review of University activities that could be designated an Export or Deemed Export and if so designated, the procedure by which it will be determined if the activity requires approval, authorization, or licensing by the federal government. The Export Control Officer will also provide technical assistance and training on the implementation of Export Control Program procedures.

#### **B. Responsibilities and Procedures**

When Personnel determine there exists a reasonable possibility that a University activity that they oversee could potentially be designated an Export or Deemed Export, including supervision of a Foreign National (whether the Foreign National is an employee or student), they must at the earliest possible opportunity engage the Export Control Officer to make an official determination regarding the activity. The Export Control Officer will evaluate the activity and make one of the following determinations:

1. Determine that no Export or Deemed Export exists, and that no approval, authorization or license is required and document the rationale for this determination;
2. Determine that the activity is an Export or Deemed Export but there exists an exemption to approval, authorization or license and document the rationale for this determination;
3. Determine that Export or Deemed Export does exist, and that approval, authorization, or license is required, in which case, the University must:
  - a. Obtain the appropriate approval, authorization or license and;

- b. Implement an Export Control plan approved by the appropriate government regulator.

In the event that an Export Control approval, authorization or license is required, the Export Control Officer will coordinate the application for such approval, authorization or license.

### C. Screening of Foreign Nationals

The Export Control Officer will screen every Foreign National that seeks to engage in any type of business with the University to determine if engaging with the Foreign National will be determined to be an Export or Deemed Export.

The Export Control Officer may determine that a Foreign National is sanctioned or embargoed by the federal government, in which case the Export Control Officer has authority to restrict or prohibit the Foreign National from engaging in business with the University.

The Export Control Officer will develop procedures by which Foreign Nationals will be screened.

## IV. DEFINITIONS

- A. **“Export”** means the trade or commerce of goods or services produced in the United States which are transported from the United States to another country.
- B. **“Deemed Export”** means the release of goods or services to a foreign national even if the release took place within the United States. Deemed Exports may occur by Foreign National employees or Foreign National student or scholar. Release may be made by demonstration, conference, oral briefing, telephone call or electronic transmission of any non-public information.
- C. **“Foreign National”** means anyone who is not a U.S. Person and includes a non-U.S. citizen or non-U.S. permanent resident. Foreign National also includes any foreign corporation, business organization or group not incorporated or organized under U.S. law as well as any foreign government, agency, or subdivision thereof.
- D. **“Fundamental Research Exemption”** means research which is ordinarily published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted to protect proprietary or national security

interests.

E. **“Personnel”** means all officers, trustees, employees, students, contractors, volunteers or agents of the University.

**V. RESOURCES**

- A. [Arms Export Control Act \(22 U.S.C. § 2751 et seq\)](#)
- B. [Export Administration Regulations \(15 C.F.R. § 730 et seq\)](#)
- C. [International Traffic in Arms Regulations \(22 C.F.R. § 120 et seq\)](#)
- D. [Treasury Forfeiture Fund \(31 U.S.C. § 9705\)](#)

<b>Revision Effective Date</b>	<b>Purpose</b>
<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>
<i>2/15/2024</i>	<i>Revisions to align policy with Export Control Laws</i>