



# OLD DOMINION UNIVERSITY

## University Policy

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**Policy # 5340**

### **EXPORT CONTROL POLICY**

**Responsible Oversight Executive:** Vice President for Research

**Date of Current Revision or Creation:** October 1, 2020

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#### **A. PURPOSE**

This policy is to ensure that the Old Dominion University Office of Research (ODUOR), the Old Dominion University Research Foundation (ODURF), principal investigators (PIs) and other individuals involved in both funded and unfunded research collaborate to assess the application of export control regulations and assist with determining measures necessary for compliance.

#### **B. AUTHORITY**

[Code of Virginia Section 23.1-1301, as amended](#), grants authority to the Board of Visitors to make rules and policies concerning the institution. Section 6.01(a)(6) of the [Board of Visitors Bylaws](#) grants authority to the President to implement the policies and procedures of the Board relating to University operations.

[Export Administration Regulations - Title 15 CFR Parts 730-774](#)

[International Traffic in Arms Regulations – Title 22 CFR Parts 120-130](#)

#### **C. DEFINITIONS**

Controlled Technology – Controlled Technology is any technology listed on the Commerce Control List (CCL) or the United States Munitions List (USML).

Deemed Export – A deemed export is a release of technology or source code to a foreign national in the United States and is used often to preclude the participation of foreign national students and scientists in research that involves controlled technologies without first obtaining a license from the appropriate government agency. The official definition of export under the Export Administration Regulations and the International Traffic in Arms Regulations should be consulted when determining whether a specific act constitutes an export.

Export - Export control regulations define “export” to include an actual shipment, transfer or transmission of items controlled under the Export Administration Regulations or International Traffic in Arms Regulations out of the United States; any written, oral or visual release or disclosure of controlled technology, information or software to a foreign national either in the United States or outside the United States, or any use or application of controlled technology on behalf of or for the benefit of any foreign entity or person anywhere.

Export Administration Regulations (EAR) – The EAR controls technologies and products that serve primarily civil purposes, but may also have military applications. These regulations are promulgated and enforced by the Bureau of Industry and Security in the Department of Commerce under Title 15, sections 730-774 of the Code of Federal Regulations (CFR). Technologies and products that are controlled under the EAR are identified on the [Commerce Control List \(CCL\), Title 15 CFR 774, Supp. 1](#), and divided into categories to include: Nuclear Materials, Facilities and Equipment, and Miscellaneous; Materials, Chemicals, “Microorganisms,” and Toxins; Materials Processing; Electronics Design, Development and Production; Computers; Telecommunications and Information Security; Sensors; Navigation and Avionics; Marine; and Propulsion Systems, Space Vehicles, and Related Equipment; and encryption source code and object code software.

Foreign National - Both the EAR and ITAR define “foreign national” as any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States as well as international organizations, foreign governments and any agency or subdivision of foreign governments, and any person who is not a citizen or lawful permanent resident of the United States (as defined by [8 U.S.C. 1101\(a\)\(20\)](#)) or who does not qualify as a protected individual (as defined by [8 U.S.C. 1324\(a\)\(3\)](#)).

Fundamental Research - As defined in EAR, Fundamental Research means basic and applied research in science and/or engineering where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental Research is distinguished from research where the results are restricted for proprietary or specific national security reasons. No University research, whether funded or unfunded, will qualify as Fundamental Research if: the University or researcher accepts any restrictions on the publication of the information resulting from the research, other than limited prepublication reviews by research sponsors to prevent inadvertent disclosure of their proprietary information or the compromise of the patent rights of sponsors; or the research is federally funded and the University and/or the researcher accepts specific access and dissemination controls regarding the resulting information. The EAR definition of Fundamental Research is available at [15 CFR § 734.8](#). The equivalent definition under ITAR, Public Domain, is located at [22 CFR § 120.11](#).

International Traffic in Arms Regulations (ITAR) – The ITAR control technologies, products and information that primarily serve military purposes. These regulations are promulgated and enforced by the Office of Defense Trade Controls in the Department of State. Technologies, products and information that are controlled under ITAR are identified on the [United States Munitions List \(USML\), 22 CFR § 121.1](#).

Office of Foreign Asset Control (OFAC) – OFAC is an Office in the U.S. Department of Treasury which administers and enforces economic and trade sanctions based on US foreign policy and national security goals and provides a list of government-identified targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.

Principal Investigator (PI) – An employee who is responsible for the design, conduct, and reporting of research. The PI for any research activity conducted at a University facility must be a University employee or Old Dominion University Research Foundation (ODURF) employee, or, under appropriate circumstances, a student.

Public Domain – Public Domain Is defined in the ITAR ([22 CFR 120.11](#)) as information that is “published and generally accessible or available to the public: through sales at newsstands and bookstores; through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information; through second class mailing privileges granted by the U.S. Government; at libraries open to the public or from which the public can obtain documents; through patents available at any patent office; through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States; through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency; and through fundamental research.” The EAR definition of Public Domain is located at [15 CFR 734.8](#)

Technology Control Plan (TCP) – A TCP Is a document prepared by the Principal Investigator and approved by the Office of Research and the Old Dominion University Research Foundation. This document details the type of export-controlled information associated with a research project and the measures taken by the PI to ensure access to the export-controlled information is managed.

#### **D. SCOPE**

This policy applies to all employees, students, volunteers, and employees of affiliated organizations who are paid through the University, and vendors. Employees include all staff, administrators, faculty, full- or part-time, and classified or non-classified persons who are paid by the University. Students include all persons admitted to the University who have not completed a program of study for which they were enrolled; student status continues whether or not the University’s programs are in session. Volunteers include individuals who perform services in support of the University’s mission without promise, expectation, or receipt of compensation for services rendered. Affiliated organizations are separate entities that exist for the benefit of the University through an operating agreement and include the Foundations, the Community Development Corporation, and the Alumni Association.

Pursuant to the Memorandum of Understanding between Old Dominion University and the Old Dominion University Research Foundation, employees of the Research Foundation are to adhere to this policy.

#### **E. POLICY STATEMENT**

Individual researchers (including Principal Investigators) have primary responsibility for complying with laws and regulations related to export control. The consequences of violating these regulations are severe and detrimental to individual members of the campus community as a whole, ranging from loss of research contracts to monetary penalties to jail time for the individual violating these regulations. In order to meet this responsibility, researchers should work with ODUOR and ODURF, as applicable, to:

- Determine the applicability of export control requirements to research before starting any research or if any changes to the research requires further action;
- Notify both offices of any changes in the scope or staffing of research projects that could alter initial determinations about the applicability of export control regulations;
- Notify both offices well in advance of sending scientific or computational equipment, including GPS equipment, and encrypted software out of the country in order to determine if a license is required;

- Send all nondisclosure agreements to ODUOR for review and modification of any provisions that could eliminate institutional exclusions from export control requirements; and
- Contact both offices before engaging in research activities with persons in countries subject to OFAC boycott programs.

Although primary responsibility for compliance rests with individual researchers, the ODUOR and ODURF will assist researchers in assessing the application of export control regulations and OFAC boycotts to specific projects.

## **F. PROCEDURES**

1. For specific research contracts, nondisclosure agreements, and teaming agreements, the responsibility for determining the relevance of export control regulations will be shared among grant and contract administrators, PIs and others as follows:
  - If the PI knows that a research contract, nondisclosure agreement or material transfer agreement may or will require shipping scientific or computational equipment out of the country or transmitting technology to foreign persons abroad, the PI should prominently disclose those facts when submitting the proposal to ODURF. The grant and contract administrator will work with the PI and the ODUOR to review the applicability of the EAR or ITAR and take appropriate steps as discussed below.
  - The designated grant and contract administrator will work with the ODUOR to work with ODURF to review the research contract, nondisclosure agreement or material transfer agreement for any terms or provisions that restrict access to the research or research information, limit the participation of foreign persons in the research, restrict the release of research results, or otherwise render inapplicable the exclusion for fundamental research conducted in the public domain.

No export license will be required as a condition of releasing research results or granting foreign persons access to the research if the project qualifies as fundamental research and research results will be publishable and generally accessible or available to the public.

- If the grant and contract administrator, in consultation with ODUOR, determines that provisions of the contract render the fundamental research and public domain exceptions inapplicable, and/or if such provisions cannot be eliminated through negotiation, the grant and contract administrator will consult with ODUOR and the PI to determine whether the technology or other material to be used in research is controlled under the CCL or the USML. In consultation with ODUOR, ODURF will make a final determination as to whether export control regulations apply to the project and will provide written notice of the determination to the PI, the department chair, the dean, and the Vice President for Research.
- In situations where a technology is arguably covered by both the EAR and ITAR, the University and ODURF may submit a Commodity Jurisdiction Request to the Office of Defense Trade Controls to decide whether Commerce or State has jurisdiction.
- If the decision is that a license is required, ODURF will send written notice of that decision to the PI, Vice President for Research, University Counsel and the appropriate dean and department chair along with recommendations on how to proceed. Ultimately, the PI will decide whether to seek contract modifications to eliminate the need for a license, to

reject the contract, to seek an exception to University policy to allow the project to continue, or take other appropriate actions. The grant and contract administrator will work with ODUOR and the PI and other appropriate parties to implement the determination.

- All export control decisions will be documented and kept on file by both ODUOR and ODURF.
2. Research involving ITAR -controlled items, software, or technology requires submission of and adherence to a Technology Control Plan (TCP). The Principal Investigator is responsible for the construction and implementation of a TCP. ODUOR will provide guidance by assessing the adequacy of the TCP. This plan will detail the type of export-controlled information associated with the research project and will detail the means by which access to the export-controlled items will be managed. The TCP should detail the following:
- Listing of all personnel working on the research project
  - Sponsor information
  - Description of the export-controlled items
  - Details of the physical security in place to control access to the export-controlled items
  - Details of the information security surrounding the export-controlled items
  - Assurance that appropriate personnel screening and training has taken place.

Approval of the TCP by the Assistant Vice President for Research Compliance and the Executive Director of ODURF is required before export-controlled work can commence.

3. Research projects that involve international travel for the purposes of presenting research findings must undergo export control review by ODUOR and ODURF prior to travel to ensure that controlled technical information is not being disclosed. If a determination was made at the beginning of a project that export control regulations do not apply, no further review is required prior to travel unless the methodology or scope of the project changed since the initial review.
4. Collaborative research efforts with foreign nationals must be assessed by ODUOR to determine the relevance of export control regulations. If these regulations apply to the research project, actions taken may include:
- Assessing the project to determine whether or not a fundamental research exclusion applies
  - Determining the need for a license to allow the foreign national access to project technology
  - Vetting of proposed international visiting scholars to determine if they are on any sanction lists maintained by OFAC.
5. Training on export control regulations is required for all individuals working on projects involving controlled technology. Completion of online training through CITI (<http://www.citiprogram.org/>) is mandatory for all projects. Other training may be necessary based upon the type of technology being used and the security that surrounds the use of that technology. The Principal Investigator will consult with the Assistant Vice President for Research Compliance to determine what additional training will be required and make arrangements to obtain that training for his/her research team.

**G. RECORDS RETENTION**

Applicable records must be retained and then destroyed in accordance with the [Commonwealth's Records Retention Schedules](#).

**H. RESPONSIBLE OFFICER**

Assistant Vice President for Research Compliance

**I. RELATED INFORMATION**

[U.S. Department of Commerce, Bureau of Industry and Security \(BIS\)](#)

[U.S. Department of Treasury, Office of Foreign Asset Control](#)

[Visiting Scholar/Volunteer Policy](#)

[Old Dominion University Research Foundation Export Control List](#)

[Defense Technology Security Administration](#)

**POLICY HISTORY**

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**Policy Formulation Committee (PFC) & Responsible Officer Approval to Proceed:**

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Responsible Officer \_\_\_\_\_  
Date

**Policy Review Committee (PRC) Approval to Proceed:**

/s/ Donna W. Meeks September 24, 2020  
Chair, Policy Review Committee (PRC) Date

**Executive Policy Review Committee (EPRC) Approval to Proceed:**

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Responsible Oversight Executive \_\_\_\_\_  
Date

**University Counsel Approval to Proceed:**

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University Counsel \_\_\_\_\_  
Date

**Presidential Approval:**

/s/ John R. Broderick October 1, 2020  
President Date

**Policy Revision Dates:** June 12, 2013; October 1, 2020

**Scheduled Review Date:** October 1, 2025