

# Virginia Tech Policy Governing Compliance with U.S. Export and Sanction Laws

produced by the  
Virginia Tech Office of Export and  
Secure Research Compliance

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## Definitions

**Commerce Control List**- A list of “dual use” items, materials, software, and technology, subject to export regulation, maintained by the Department of Commerce that can be used both in military and other strategic uses (e.g., nuclear) and commercial applications. In general, the term “dual use” serves to distinguish Export Administration Regulation -controlled items that can be used both in military and other strategic uses and in civil applications from those that are weapons and military related use or design and subject to the controls of the Department of State or subject to the nuclear related controls of the Department of Energy or the Nuclear Regulatory Commission.

**Deemed Export** – Release of Export Administration Regulation regulated source code or controlled technology to a foreign national in the United States is “deemed” to be as if it were released to that foreign national’s country of origin.

**Defense Article**- Any item or technical data (these include military and commercial satellite and space related items, equipment, vehicles, instrumentation, software, and materials), designated by the Department of State in the International Traffic in Arms Regulations. This term includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items on the United States Munitions List. It does not include basic marketing information on function or purpose or general system descriptions.

**Defense Service**- Furnishing technical data or assistance (including training) to foreign persons (i.e., foreign nationals), whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; or, military training of foreign units and forces.

**EAR** –Export Administration Regulations are issued by the United States Department of Commerce, Bureau of Industry and Security (BIS) under laws relating to the control of certain exports, reexports, and activities related to dual use items on the Commerce Control List.

**Empowered Official** –A U.S. person who is legally empowered in writing by the university to sign export license applications or other requests for approval on behalf of the Virginia Tech; who understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations.

The Empowered Official has the independent authority to: (i) Enquire into any aspect of a proposed export or temporary import by the applicant, (ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and (iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

**Foreign National-** Persons who are not U.S. citizens, aliens who are “Lawful Permanent Residents” (Green Card), (8 USC § 1101(a)(20)) or other “Protected Individuals” under the Immigration and Naturalization Act (8 USC §1324b(a)(3)) designated an asylee, refugee, or a temporary resident under amnesty provisions. A foreign national also means any foreign corporation, business association, partnership or any other entity or group that is not incorporated to do business in the US. Under ITAR, the term “foreign person” is used, but has the same definition as “foreign national” herein.

**Fundamental Research** – “Basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly...as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security concerns.”-[National Security Decision Directive 189](#)

**ITAR** –International Traffic in Arms Regulations are issued by the Department of State, which has responsibility for the control of the permanent and temporary export and temporary import of defense articles and services.

**OFAC Regulations** -The Office of Foreign Assets Control regulations are issued by the US Department of the Treasury, which administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.

**Publication or Dissemination Restrictions**—Acceptance in research and development of any prohibition or approval authority over publication or any other dissemination of research results, excepting, sponsor or collaborator may include provisions for review of results, with a short (30-90 day) review period to remove some company/collaborator business proprietary or pre-patentable information.

**Restricted Parties-** Individuals and entities with whom the university and its employees may be prohibited by law, or require a license or other government approval, to export to or engage in controlled transactions. These include the Denied Persons List, Entity List, and Unverified List (Department of Commerce), the Debarred Parties Lists (Department of State), and the Specially Designated Nationals and Blocked Persons List (Department of Treasury).

**Restricted Research-** University research, development, or testing subject to (i) publication restrictions, (ii) access and dissemination controls, (iii) federally funded research with contract specific national security restrictions; (iv) accepting third party controlled items or information, or (v) providing access to, or defense services on, a defense article. Restricted research is subject to EAR and ITAR regulations, and a license or other government approval may be required for foreign national participation.

**Sanctioned Countries** –Countries designated by OFAC as having limited or comprehensive trade sanctions imposed by the United States for reasons of [anti-terrorism](#), [non-proliferation](#), [narcotics trafficking](#), or [other reasons](#).

**Specially Designated Nationals and Blocked Persons List** –A list of individuals and entities, maintained by OFAC, identified as terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. This list has more than 13,000 entries.

**United States Munitions List** - Articles, services and related technical data designated by the Department of State as defense articles and defense services pursuant to the Arms Export Control Act.

## 1.0 Statement of Policy and Principles

Innovation, research, and development of critical technologies are central to the technological superiority of the United States and to the protection of significant economic interests of the country. Although academic research normally is conducted openly and most research activities are not subject to export control regulation, there are certain conditions under which the export of critical technologies, which include certain technical and scientific data, software, or tangible items, is either prohibited by law or requires an export license or other government approval.

Virginia Tech continues to expand its technological research and other collaborative efforts with foreign countries and their entities (e.g., universities, companies, or agencies) and their citizens. At the same time, Virginia Tech is also growing its research collaborations with industry and the federal government that are subject to export restrictions. The presence of these activities at university facilities, both in the United States and abroad, increases the risk of being out of compliance with federal laws and regulations governing exports and foreign exchanges. Violations of these laws are punishable by severe civil and criminal penalties and fines, including imprisonment.

This policy has been enacted to establish, document, and implement procedures needed to ensure that the university, and its employees and students, remain in full compliance with International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), Office of Foreign Assets Control (OFAC) regulations and/or other applicable export control or sanction related regulations.

### 1.1 Applicability of Policy

This policy, its amendments and additions, apply to all university activities which may result in an export or sanctioned transaction with a foreign national, entity, or country requiring an export license or other government approval (e.g., license exemptions (ITAR/OFAC) and license exceptions (EAR)) prior to the activity taking place.

Exports and sanctioned transactions include:

#### **EAR exports**

Actual shipment or transmission of tangible equipment, items, software, or materials listed on the Commerce Control List outside of the United States to a foreign national, entity, or country.

Release of non-public source code or specific information necessary for the “development”, “production”, or “use” of a Commerce Control List item to a foreign national, entity or country.

This release of source code or information does not include source code or information that which is:

- *published information;*
- *educational information- if it is released by instruction in catalog courses and associated teaching laboratories of academic institutions., or*
- *information resulting from fundamental research*

Sharing, shipping, transmitting or transferring any item, information, or software that will support the design, development, production, stockpiling or use of a nuclear explosive device, chemical or biological weapons, or missiles; and

Sharing, shipping, transmitting or transferring encryption software in source code or object code

### **ITAR exports**

Sending or taking of a defense article outside of the United States, or temporarily or permanently importing a defense article.

Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite identified as a defense article, whether in the United States or abroad;

In the United States or abroad, allowing a foreign national access to, providing a defense service on, or providing technical data related to a defense article (including oral and visual disclosure). Disclosure of information does not include information that is:

- *in the public domain;*
- *information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information;* or
- *basic marketing information on function or purpose*

### **OFAC prohibited transactions**

Conducting international collaborations or exchanges (e.g., financial transactions and providing goods and services of value) including:

Transactions involving designated foreign countries or their nationals; including in some cases travel (Cuba & Sudan);

Transactions with respect to securities (e.g., shares of stock) registered or inscribed in the name of a designated national;

Importation of and dealings in certain merchandise; and

Holding of certain types of blocked property in interest-bearing accounts (e.g., bonds or securities drawn on banks of a sanctioned country).

Transactions with specific entities or individuals found in the Specially Designated Nationals and Blocked Persons List ("SDNL")

## **2.0 Compliance Oversight - Functions, Activities & Responsibilities of the OESRC**

### **2.1 The Functional Unit: Export and Secure Research Compliance**

The functional administrative unit at Virginia Tech that is charged with the responsibility for oversight of compliance and recordkeeping of all applicable exports and regulated transactions with sanctioned individuals, entities, and countries is the Office of Export and Secure Research Compliance (OESRC), a unit under the Associate Vice President for Research Compliance. The Director of OESRC has been designated as the university's Empowered Official under the International Traffic in Arms Regulations.

### **2.2 Conducting Export Assessments**

When requested, OESRC will determine, or assist other units, departments, and centers in export assessments to determine if activities involving foreign nationals, entities, or countries are subject to export or trade sanction regulations. Typical export determinations include (i) whether or not an activity is restricted or fundamental research, (ii) a commodity jurisdiction determination (under what law an export is regulated), a commodity classification determination (under what entry on the CCL the export is regulated and what nations/foreign nationals are restricted for export), (iii) a determination of whether an international collaboration or foreign exchange involves transactions subject to trade sanctions (including nationality and restricted party screening), and/or (iv) whether parties involved in the transaction are restricted.

If an export assessment determines that an activity is subject to export or sanction regulations, OESRC will assist the affected party in obtaining necessary licenses or other government approvals, or recommend security measures (e.g., a technology control plan) or other protocols (e.g., certifications) needed to ensure compliance with export and sanction regulations.

### **2.3 Communicating with and Obtaining Licenses or Other Government Approvals from Federal Agencies**

Virginia Tech, in implementing its policy for compliance with export and sanction regulations, cooperates with those governmental agencies with license and enforcement responsibilities to insure compliance with applicable laws. The Director, OESRC serves as the university's point of contact with those agencies. OESRC will assist any unit, department, or center, in filing for any license or other government approval necessary to conduct a university approved activity.

### **2.4 Providing Awareness Training**

The OESRC will consult with appropriate university administrative and academic units to assure provision of instructional resources considered necessary to the understanding and implementation of policy. These resources will include written and web-based material, formal and informal course offerings, and individualized consultation.

The OESRC provides monthly classroom training for all participants in restricted research, and periodic awareness training tailored to specific college, department, center, and administrative unit needs. When

notified of international travel plans, OESRC provides travel advisories to faculty, staff, and students on potential export and sanction issues related to that travel.

## **2.5 Conducting Institutional Self-Assessments**

The OESRC will conduct periodic self-assessment of university export or sanction restricted activities and report its findings to the Vice President of Research or the Vice President and Chief Executive Officer, as appropriate.

## **2.6 OESRC Personnel**

If you have read through this policy and supporting materials and still have a question or need an export or sanction issue clarified, contact the staff at the OESRC.

Director, OESRC oversees all export and secures research compliance for international collaborations, chemical and biological materials, activities with sanctioned countries and entities, financial transactions, and is the university's Empowered Official.

Export Control Program Manager (ECPM) applies his/her knowledge of export compliance regulations and related administrative processes to insure institutional compliance with applicable federal laws, regulations, and policies. The ECPM oversees export compliance programs for restricted research in sponsored programs, engineering, and technology centers. The ECPM serves as the university's Technology Control Plan Officer with responsibility. The ECPM manages the office staff and conducts ongoing assessments of the accuracy, timeliness, and completeness of the records created and maintained by the OESRC staff.

Administrative Assistant Specialist provides secretarial and database support services, is responsible for international travel advisories, restricted party screenings, records maintenance, and export compliance certifications.

## **3.0 Responsibilities of Faculty, Staff, and Students**

Faculty, staff, and students are responsible for complying with U.S. export and sanctions regulations in all university activities involving international collaborations and foreign exchanges, and understand that violations of these laws are punishable by severe civil and criminal penalties and fines, including imprisonment. If faculty, staff, or students are involved in restricted research, international collaborations or foreign exchanges with risk of export or sanction regulation violation, they will comply with the provisions of any license, other government approval, policy or OESRC-directed certification, technology control plan, or procedure.

## 4.0 Policy Implementation

The organizational structure for the implementation of these policies is centered in the Office of Export and Secure Research Compliance, and includes the following administrative, advisory, and auxiliary relationships.

### 1. University Administration

The Vice President for Research and the Executive Vice President and Chief Executive Officer are the university officials with final responsibility for compliance with export and sanction related regulations. The Vice President for Research assists the University President in maintaining continuing relationships with federal agencies.

### 2. Vice Presidents, Deans, Department Heads and Directors

Establish effective processes and controls to ensure compliance with this policy. Departments or programs must keep soft or hard copies of all export documentation, including financial records, shipping documentation (Commercial Invoices, Shipper's Export Declarations), and appropriate OESRC certifications in their files for a period of five years from the date of the export, reexport or deemed export. Originals of any OESRC required certification will be forwarded to OESRC for record retention. Some software-generated determinations are automatically forwarded to OESRC. If requested, designate an administrator/responsible person to coordinate development and implementation of export compliance procedures with OESRC.

The Director, OESRC shall serve as the administrator/ responsible person for the Office of the Vice President of Research.

### 3. Controller

In coordination with OESRC, develop policies and procedures to (i) screen international financial transactions for compliance with applicable OFAC regulations, and (ii) track purchase, custody, and disposal of ITAR-restricted defense articles, and other export regulated items as determined necessary by the Office of the Controller and OESRC. If requested, assign an administrator/responsible person to coordinate development and implementation of export compliance procedures with OESRC.

### 4. Sponsored Programs

In coordination with OESRC, ensure that all sponsored projects are managed in accordance with Management of Export Controlled Sponsored Projects Policy 29-05. If requested, designate an administrator/responsible person to coordinate development and implementation of export compliance procedures with OESRC.

### 5. Outreach and International Programs

In coordination with OESRC, ensure that all international collaborations and foreign exchanges are in compliance with export and sanction laws. If requested, designate an

administrator/responsible person to coordinate development and implementation of export compliance procedures with OESRC.

6. Virginia Tech Intellectual Properties

In coordination with OESRC, ensure that all technology transfer of university intellectual property is in compliance with export and sanction laws. If requested, designate an administrator/responsible person to coordinate development and implementation of export compliance procedures with OESRC.

7. Virginia Tech Foundation

In coordination with OESRC, develop policies and procedures to (i) screen international financial transactions for compliance with applicable OFAC regulations, and (ii) ensure that all Foundation funded activities are in compliance with export and sanction laws. If requested, designate an administrator/responsible person to coordinate with OESRC.

8. Legal Counsel

When requested, provide legal guidance and interpretation of export and sanction regulations and laws.

#### **4.1 Policy Function and Responsibility**

The Vice President for Research has the responsibility to determine an appropriate policy for the compliance with export and sanction laws at Virginia Tech and to recommend this policy to the University President.

1. Delegation of Responsibilities

The Director, OESRC will specify the additional responsibilities necessary for compliance with export and sanction laws, and delegates these responsibilities to appropriate groups and individuals.

2. Approval of Restricted Activities

All restricted research activities, and international collaborations; or activities or involving third party controlled items or information, export of tangible items, or defense articles will be reviewed through the Office of Export and Secure Research Compliance, or approved designee.

3. Standard Procedures

When required by OESRC, each unit, department, or center engaging in export or sanction regulated activities will file with the OESRC documents describing the routine management and compliance procedures to prevent inadvertent violation of export or sanction regulations.

#### 4. Special Procedures

When an export or sanction related activity introduces high risk of inadvertent export or sanction regulations violation, affected administrative unit and OESRC will develop special procedures or certifications to prevent inadvertent violation of export or sanction regulations.

#### 5. Violations of Laws, Regulations, and Policies

Possible violations of governmental laws/regulations will be investigated by a university Empowered Official or designee. Action will be taken according to the nature, severity, and scope of the offense. The university Empowered Official(s) have the authority to suspend or terminate a research, teaching, testing, or other export activity if the Empowered Official determines that the activity is not in compliance, or will lead to noncompliance with existing export or sanction laws or policy.

## 5.0 References

<a href="#">Nuclear Regulatory Commission</a>	10 CFR §110
<a href="#">Export Administration Regulations (EAR)</a>	15 CFR §§734-774
<a href="#">International Traffic in Arms Regulations (ITAR)</a>	22 CFR §§120-130
<a href="#">Bureau of Alcohol, Tobacco, and Firearms</a>	27 CFR §444-555
<a href="#">Office of Foreign Assets Control (OFAC)</a>	31 CFR §§500-599
<a href="#">Office of Patents and Trademarks (PTO)</a>	37 CFR §5
<a href="#">National Security Decision Directive 189</a>	
<a href="#">OSP Policy 29-05 Management of Export Controlled Sponsored Programs</a>	
<a href="#">Virginia Tech Technology Control Plan</a>	
<a href="#">National Industrial Security Program Operating Manual</a>	
<a href="#">DDTC Compliance Program Guidelines</a>	
<a href="#">BIS Export Management System Guidelines</a>	

## Appendix A: Organizational Diagram – Export and Secure Research Compliance

### Virginia Polytechnic Institute and State University Office of Export and Secure Research Compliance

