

University of Virginia

**Export Compliance Management Program
Manual**

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ACRONYMS

AECA	Arms Export Control Act
BIS	Bureau of Industry and Security
CFR	Code of Federal Regulations
DDTC	Directorate of Defense Trade Controls
EAA	Export Administration Act
EAR	Export Administration Regulations
ITAR	International Traffic in Arms Regulations
OEC	Office of Export Controls
OFAC	Office of Foreign Assets Control
PL	Public Law
RPS	Restricted Party Screening
TCP	Technology Control Plan
USC	United States Code

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FOREWARD

The University of Virginia's principal and best tools for ensuring compliance with export controls are to 1) keep listed materials off Grounds if it would require a license for use by foreign national students and employees; and 2) ensure that all physical exports from the U.S. are appropriately screened, and when necessary licensed. However, the University has determined that it can and will accept export control-listed materials as well as export controlled or publication restricted projects on a case-by-case basis. When the University decides to allow listed materials on Grounds a strong control program is essential to assure continuing compliance with regulatory requirements.

It is the Office of Export Controls' responsibility to assist university personnel with export control and licensing in support of authorized university activities to the extent permitted and allowed by the applicable laws and regulations. It is not the role of the Office of Export Controls to determine what research or other activities university research and academic personnel may or may not engage in; that determination shall fall to the individual's department, school, and the Office of the Vice Provost for Research (research activities including graduate studies) or Provost (academic activities).

This Manual has been developed by the Office of Export Controls to describe and formalize the internal policies and procedures that comprise the University of Virginia's Export Compliance Management Program and is intended for internal use and distribution only. Any inconsistency between the content of this manual and U.S. export control laws and regulations is unintentional; in all cases the requirements of the applicable law or regulation shall take precedence.

It is important to note that any export from the U.S. is an import to another country. It is the responsibility of the individual exporter to identify and comply with the applicable import laws and regulations of other countries when exporting on behalf of the University.

General Notes

The University Export Control Management Program and this Manual are designed for compliance with multiple regulatory schemes; therefore, general terms are sometimes used in place of regulation specific terms. For example, the terms "export control-listed materials" and "listed materials" are used to refer to any information/data, commodity, material, technology, software, etc., subject to export control, other than those designated as EAR99, although EAR99 materials, information, software or technology are also subject to a minimal level of export controls in certain instances. When regulation specific terms are used in this Manual the applicable citation is provided as a parenthetical reference.

A list of common acronyms used in the manual are provided on page 2.

CHAPTER 1: OVERVIEW OF U.S. EXPORT REGULATIONS

Introduction

The United States (U.S.) has numerous laws and regulations governing the export of a wide variety of materials, goods and services; often referred to collectively as (U.S.) export controls. The responsibility to regulate and enforce export controls is a distributed function within the U.S. government involving multiple departments and agencies. Export controls apply equally to all types of institutions, organizations and individuals in the U.S. and in some instances U.S. jurisdiction extends to U.S. origin items and U.S. persons physically located outside the U.S. Foreign items may also become subject to U.S. jurisdiction once they enter U.S. commerce.

Before discussing individual export control regulations it is critical to have an understanding of what constitutes an “export”. In general terms, an export occurs whenever something leaves the boundaries of the U.S.; this obviously includes physical shipments of items and materials, but it also includes the transfer, regardless of means or method, of information. The export of information may occur during conversations (in-person, telephonic or electronic) or by e-mail, standard mail, fax, web postings, or deposit in shared servers (cloud computing) to name a few examples. When information is provided to a foreign national in the U.S. it is deemed to be an export to the individual’s country of citizenship and/or residency; such transfers are often referred to as “deemed exports”. The term “deemed export” is not universally used in the regulations, but the concept is consistent.

Understanding who constitutes a U.S. versus a foreign person is also critical to determining export control and licensing requirements. Generally speaking, the export regulations define a “person” to include both natural persons and companies, government agencies, and other organizations. A natural person is a “U.S. person” if they are a U.S. citizen, a person lawfully admitted for permanent residence in the U.S. (i.e., green card holder), or a person who is a protected individual under the Immigration and Naturalization Act¹ (i.e., certain classes of asylees); the term “U.S. person” also means any entity, organization or group that is incorporated to do business in the United States, including governmental entities (federal, state or local). Although the terms are similar among the export regulations it is important to always use the specific definition provided in a given regulation when making an assessment.

The most extensive export control regulations are those associated with technology and certain types of associated technical data. U.S. law and presidential delegation of authority have assigned the control of technology exports to three principal agencies: the Directorate of Defense Trade Controls, Department of State; Bureau of Industry and Security, Department of Commerce; and the Office of Foreign Assets

¹ 8 USC § 1324b(a)(3)

Control, Department of the Treasury. Each agency has its own scope of authority and implementing regulations which are briefly discussed below.

International Traffic in Arms Regulations (ITAR)²

The ITAR implement authority granted to the President by §38 of the Arms Export Control Act (AECA)³, subsequently delegated to the Secretary of State⁴, to regulate international trade involving military technology. Items are subject to the ITAR when they meet the policy criteria identified in ITAR §120.3 and are specifically designated by the Department of State with the concurrence of the Department of Defense. The list of designated defense articles constitutes the U.S. Munitions List (USML)⁵.

The ITAR are issued and administered by the Directorate of Defense Trade Controls (DDTC) and regulate the export of the following: [PLEASE NOTE THAT AS OF FEBRUARY 10, 2016, THE FOLLOWING DEFINITIONS ARE CURRENTLY BEING REVISED AND WILL BE PUBLISHED FOR PUBLIC COMMENT IN THE NEAR FUTURE AS PART OF EXPORT CONTROL REFORM. Please check the regulatory citation for the most recent definition.]

- **Defense Articles⁶** - means any item or technical data that is specifically listed on the USML as well as including any forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles. Technical data may be data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items on the USML. It does not include basic marketing information on function or purpose or general system descriptions.
- **Technical Data⁷** - means any information, other than software, which is required for the design, development, assembly, production, manufacture, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings, blueprints, photographs, plans, assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed. However, technical data does not include general scientific, mathematical, or engineering principles commonly taught in schools, information present in the public domain, general system descriptions, or basic marketing information on function or purpose. It should be noted that if a U.S. government contractor makes the determination that an effort is controlled under the ITAR, all work and technical data generated for that project is subject to the ITAR, regardless of whether it may have previously existed in the public domain. Technical data also includes classified information relating to

² 22 CFR Parts 120 – 130.

³ 22 USC 2778, Chapter 39

⁴ Executive Order 11958

⁵ ITAR § 121

⁶ ITAR § 120.6

⁷ ITAR § 120.10

defense articles and defense services on the USML and “600-series” items controlled by the Commerce Control List of the Export Administration Regulations (EAR). Information covered by an invention secrecy order and software directly related to defense articles are also considered technical data controlled under the ITAR.

- **Defense Services**⁸ - means providing assistance, including training, to a foreign person in the United States or abroad in the design, development, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of a defense article, as well as providing technical data to foreign persons wherever located. Defense services also include informal collaboration, conversations, or interchanges concerning technical data. Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

Items Controlled Under the ITAR

The USML designates particular categories and types of equipment as defense articles and associated technical data and defense services⁹. The USML divides defense items into 21 categories, listed below.

- Category I: Firearms, Close Assault Weapons and Combat Shotguns
- Category II: Guns and Armament
- Category III: Ammunition / Ordnance
- Category IV: Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- Category V: Explosives and Energetic Materials, Propellants, Incendiary Agents, and their Constituents
- Category VI: Surface Vessels of War and Special Naval Equipment
- Category VII: Ground Vehicles
- Category VIII: Aircraft and Related Articles
- Category IX: Military Training Equipment and Training
- Category X: Personal Protective Equipment
- Category XI: Military Electronics
- Category XII: Fire Control, Range Finder, Optical and Guidance and Control Equipment
- Category XIII: Materials and Miscellaneous Articles
- Category XIV: Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- Category XV: Spacecraft Systems and Related Articles

⁸ ITAR § 120.9

⁹ See ITAR § 121.1

- Category XVI: Nuclear Weapons Related Articles
- Category XVII: Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- Category XVIII: Directed Energy Weapons
- Category XIX: Gas Turbine Engines and Associated Equipment
- Category XX: Submersible Vessels and Related Articles
- Category XXI: Articles, Technical Data, and Defense Services Not Otherwise Enumerated

An electronic version of the USML is available on the Department of State website under ITAR 22 CFR Part 121 at: http://www.pmddtc.state.gov/regulations_laws/itar.html .

Commodity Jurisdiction

Although DDTC has jurisdiction over deciding whether an item is ITAR- or EAR-controlled, it encourages exporters to self-classify items. If any doubt exists as to whether an article is covered by the USML or an activity constitutes a defense service, upon written request in the form of a Commodity Jurisdiction (CJ) request, DDTC will render a decision as to the appropriate regulatory jurisdiction (EAR or ITAR)¹⁰. Determinations are based on the origin of the technology (i.e., as a civil or military article), and whether it is predominantly used in civil or military applications. University employees and students should contact the Office of Export Controls for assistance when classifying an item or preparing a CJ request.

Getting the jurisdiction correct is essential to continuing compliance with the export regulations. When BIS recognizes that a Commodity Classification request involves potentially ITAR-controlled technology it will suspend the Commodity Classification review and forward the information to DDTC for a jurisdiction determination.

Exports Under the ITAR

The ITAR defines the term “export” broadly, applying it not only to exports of tangible items from the U.S., but also to transfers of intangibles, such as technology or information¹¹. The following are examples of exports:

- Tangible Exports and Transfers
 - Shipping or taking a defense article or technical data out of the United States (this includes the electronic download of technical data from a server in the U.S. to a laptop located outside of the United States).

¹⁰ ITAR § 120.4. Instructions and required information for filing a CJ request (Form DS-4076) are available at http://www.pmddtc.state.gov/commodity_jurisdiction/index.html. You can check the status of pending CJ requests at <https://dtas-online.pmddtc.state.gov/MARY/index.cfm> .

¹¹ ITAR § 120.17

- Transferring title or ownership of a defense article to a foreign person, in or outside the United States.
- The re-export or re-transfer of defense articles from one foreign person to another, not previously authorized (i.e., transferring an article that has been exported to a foreign country from that country to a third country).
- Transferring the registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite covered by the USML, whether the transfer occurs in the United States or abroad.
- Intangible Exports
 - Disclosing technical data to a foreign person, whether in the United States or abroad, through oral, visual, or other means.
 - Performing a defense service for a foreign person, whether in the United States or abroad.

Export Authorizations

Registration¹² with DDTC is required for any U.S. person or entity that manufactures, brokers, or exports defense articles or services. Only registered persons or entities may applying for a license or take advantage of certain license exemptions. Once registered, an exporter may apply for an export authorization by submitting a license application for the export of defense articles, technical data; or defense services. Most types of applications require the inclusion of various certifications and other supporting documentation depending on the specific defense article(s) to be exported, defense services to be provided, and other facts of the export.

University researchers typically become subject to the ITAR when a defense article or technical data is necessary for the conduct of research. If the university intends to involve foreign nationals in ITAR-controlled research, it must apply for a license or take advantage of certain license exemptions. Results generated using a defense article or technical data (as background or supporting information) that are not related to the further design, development, modification or use of the defense article will not themselves be subject to the ITAR if the university does not accept restrictions on dissemination of the results or the involvement of foreign nationals. In such cases the research results may be considered to be fundamental and may be accessed and used by foreign nationals. Should the university accept dissemination or foreign national restrictions on the research then the resulting data or product may also be subject to the ITAR.

The ITAR contain some exemptions from the general applicability of license requirements (§125.4), but their applicability and usefulness for university purposes is relatively limited. University researchers wishing to use an ITAR exemption should consult with the OEC and receive a written determination of the exception prior to the export.

¹² ITAR § 122.1

Prohibited Destinations

The ITAR specifically prohibits issuance of a license or use of a license exception for the export of defense articles or services to certain proscribed countries (§126.1); this prohibition includes transfers to nationals of prohibited countries. Proscribed countries, as of the date of this revision, include Belarus, Cuba, Eritrea, Iran, North Korea, Syria and Venezuela. Additionally §126.1 prohibits exports of defense articles and services to countries subject to a U.S. arms embargo, which, as of the date of this revision, includes Burma, China and the Republic of Sudan. Exports of items or technical data controlled under the ITAR are also prohibited to nationals of countries subject to United Nations Security Council embargoes. The countries currently listed under those embargoes include Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Somalia, and The Republic of Sudan. Exports to nationals of countries which the Secretary of State has determined repeatedly provide support for acts of international terrorism are also prohibited and currently, Cuba, Iran, the Republic of Sudan and Syria are currently included in that list. The list of proscribed countries changes from time to time, so the current DDTc list should be checked prior to initiating any export transaction; the list may be accessed online at: http://www.pmdtdc.state.gov/embargoed_countries/

Import of Defense Articles

It is important to note that the ITAR also regulate the temporary import of defense articles. However, authority to regulate the permanent import of arms, ammunition and implements of war falls under the jurisdiction of the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The list of items subject to import regulation is called the U.S. Munitions Import List (USMIL)¹³ which differs from the USML. All designations of articles subject to import control under §414 of the Mutual Security Act of 1954, as amended, have the concurrence of the Secretary of State and the Secretary of Defense.

Export Administration Regulations (EAR)¹⁴

The EAR are issued by the U.S. Department of Commerce, Bureau of Industry and Security (BIS) under the Export Administration Act (EAA) of 1979, as amended¹⁵. The EAA is not permanent legislation and has been in lapse since August 21, 2001; since that time the authority of the EAR has been extended by

¹³ 27 CFR, Part 447, Subpart C.

¹⁴ Codified at 15 CFR Chapter VII, Subchapter C (<https://www.gpo.gov/fdsys/pkg/CFR-2012-title15-vol2/pdf/CFR-2012-title15-vol2-subtitleB-chapVII-subchapC.pdf>); also accessible via the Electronic Code of Federal Regulations (eCFR); <http://www.ecfr.gov/cgi-bin/text-idx?SID=ef813ca6919f3acd1304181276b615f5&mc=true&tpl=/ecfrbrowse/Title15/15CVIIsubchapC.tpl>).

¹⁵ Public Law (PL) 96-72.

Presidential Executive Orders issued under authority granted by the International Emergency Economic Powers Act (IEEPA)¹⁶.

The EAR control the export of both items and “technology”. Under the EAR, “technology” is defined as the “specific information necessary for the ‘development’, ‘production’, or ‘use’ of a product. The information takes the form of ‘technical data’ or ‘technical assistance’. Controlled ‘technology’ is defined in the General Technology Note and in the Commerce Control List.” The General Technology Note (GTN)¹⁷ states “(t)he export of ‘technology’ that is ‘required’ for the ‘development’, ‘production’, or ‘use’ of items on the Commerce Control List is controlled according to the provisions in each Category.”

“Required”, “Development”, “Production”, “Use”, “Technical data”, and “Technical assistance” are all defined terms under the EAR¹⁸ and may **not** have the same meaning as they do in common usage or as used in export control regulations promulgated by other federal agencies.

- **Required** (as used in the GTN and CCL Categories 4, 5, 6, and 9) – that portion of “technology” or “software” which is peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics or functions.
- **Development** – all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.
- **Production** – means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, and quality assurance.
- **Use** (as used in all CCL categories (except for 600 series items which are most rigorously controlled and for which only one of the types of “use” will be necessary to constitute “technology”) and the GTN) – information required for the development, production, operation, installation (including on-site installation), maintenance (checking), repair, overhaul **and** refurbishing.
- **Technical data** – may take forms such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions written or recorded on other media or devices such as disk, tape, read-only memories.
- **Technical assistance** – May take forms such as instruction, skills training, working knowledge, consulting services. May involve the transfer of “technical data”.

Items Controlled Under the EAR

The term “dual-use”, which refers to items that have both military and civilian applications, has often been used to describe the scope of technologies that are subject to the EAR but that term is not entirely

¹⁶ PL 95-223; 50 USC 1701 *et seq.*

¹⁷ EAR § 774, Supplement No. 2

¹⁸ EAR § 772

accurate as the EAR also control items with purely civilian applicability and military items that have been formally transferred from the ITAR. Items or technologies are subject to the regulatory authority of the EAR if described in §734.2 through 734.5.

Generally, all items of U.S.-origin, or physically located in the United States, are subject to control under the EAR unless subject to the jurisdiction of another agency. Foreign manufactured goods are generally exempt from the EAR re-export requirements provided they contain less than a *de minimis* level of U.S. content by value (10% to embargoed countries; 25% to all other destinations).

Items subject to specific control and licensing policies are identified in an Export Control Classification Number (ECCN) on the Commerce Control List (CCL). Each ECCN is composed of five alpha-numeric characters; a number, followed by a letter, followed by three additional numbers. The first number designates which one of the ten CCL categories of technology captures the item:

- Category 0 - Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]
- Category 1 - Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins"
- Category 2 - Materials Processing
- Category 3 - Electronics
- Category 4 - Computers
- Category 5 (Part 1) - Telecommunications
- Category 5 (Part 2) – Information Security
- Category 6 - Sensors and Lasers
- Category 7 - Navigation and Avionics
- Category 8 - Marine
- Category 9 - Aerospace and Propulsion

The first letter in the ECCN (second alpha-numeric character) indicates the type of item controlled. Within each of the nine ECCN categories listed above the controlled items are divided into the following five (A through E) groups:

- Group A - Equipment, Assemblies and Components. These are essentially saleable commodities; finished or unfinished goods ranging from high-end microprocessors to airplanes, to ball bearings.
- Group B - Test, Inspection and Production Equipment. These items are generally referred to as manufacturing equipment. This includes equipment specifically for manufacturing or testing controlled commodities, as well as certain generic machines, such as computer numerically controlled ("CNC") manufacturing and test equipment.
- Group C - Materials. This includes certain alloys and chemical compounds. It also includes controlled biologics and toxins.

- Group D - Software. This includes software specifically associated with particular controlled commodities or manufacturing equipment, as well as any software containing encryption and the applicable source code.
- Group E - Technology. As defined in the EAR, “technology” includes both technical data, and services. Unlike the International Traffic in Arms Regulations, no distinction is made between technical data and “know how” or assistance. However, the EAR may apply different standards to technology for “use” of a product than for the technology for the “development” or “manufacture” of the product.

The third character or second digit listed in the ECCN is a number from the following categories of “Reasons for Control”, listed below, which designate the type of controls associated with the items contained in the particular entry.

- 0: National Security reasons (including Dual Use and Wassenaar Arrangement Munitions List) and Items on the NSG Dual Use Annex and Trigger List.
- 1: Missile Technology reasons
- 2: Nuclear Nonproliferation reasons
- 3: Chemical & Biological Weapons reasons
- 5: Items warranting national security or foreign policy controls at the determination of the Department of Commerce.
- 6: “600 series” controls items because they are on the Wassenaar Arrangement Munitions List (WAML) or formerly on the U.S. Munitions List (USML).
- 9: Anti-terrorism, Crime Control, Regional Stability, Short Supply, UN Sanctions, etc.

Reasons for Control are not mutually exclusive so numbers are assigned in order of precedence. So, if an item is controlled for both National Security and Missile Technology reasons, the entry’s third digit will be a “0”. If the item is controlled only for Missile Technology the third digit will be a “1”.

Items that are subject to the EAR but not to any specific control or licensing policies are not described by a specific ECCN on the CCL; such items are designated EAR99. Items or technologies identified as EAR99 are subject to the lowest level of control, meaning they can be exported to **most** countries (i.e. those not subject to an embargo) without a license provided they are not going to a prohibited or restricted end-user or being used for a prohibited end-use.

When licensing requirements exist for items listed on the CCL, they may often be overcome by one or more of the license exceptions (essentially pre-authorization to export) carved out in the EAR (Section 740). However, significant due diligence and recordkeeping is required to insure compliance with applicable requirements.

Licensing and license exceptions are discussed in more detail in later sections.

Exports Under the EAR

The EAR control both the actual shipment or transmission of controlled items out of the U.S. (export) and any subsequent transfer of controlled items originally exported from the U.S. to a third country (re-export)¹⁹. The terms “deemed export” and “deemed re-export” are used respectively to refer to the release of “technology” to a foreign national in the U.S. and the release of technology by a foreign national who has been licensed to receive it to the national of another foreign country. Such transfers are “deemed” to be exports to the foreign national’s home country regardless of the fact that they occur in the U.S. or abroad, in the case of deemed re-exports.

Export Authorizations

Once it has been determined that a license is required, an exporter can apply for export authorization from BIS through their online licensing system SNAP-R or take advantage of an available license exception. The University has an institutional registration for SNAP-R that is managed by the Office of Export Controls which submits license applications in support of University activities.

The EAR contain a number of exceptions. Determining whether a particular exception applies requires review of the specific application as detailed in 15 C.F.R. § 740, as well as review of the notes on applicable license exceptions following the ECCN entry on the CCL.

Once an item has been classified under a particular ECCN heading, the next step is to determine whether a license is required to export the specific item to the destination country. The following three steps describe the process by which a user can first determine licensing requirements and then whether or not an exception is available.

(1) Determine Reason for Controls. The "License Requirements" section provides notations as to the reasons for control. These reasons include:

- Anti-Terrorism (AT)
- Chemical & Biological Weapons (CB)
- Crime Control (CC)
- Chemical Weapons Convention (CW)
- Encryption Items (EI)
- Firearms Convention (FC)
- Missile Technology (MT)
- National Security (NS)
- Nuclear Nonproliferation (NP)
- Regional Security (RS)
- Short Supply (SS)
- Surreptitious Listing (SL)
- Significant Items (SI)
- United Nations Embargo (UN)

¹⁹ EAR § 772

The most commonly used controls are Anti-Terrorism and National Security, while other controls only apply to limited types of articles. For example, ECCN 4A994 lists “License Requirements: Reason for Control: AT” and indicates that the control applies to the entire entry “AT Column 1” which refers to the Country Chart²⁰. Items may be controlled for more than one reason so it is important to identify all applicable reasons for control.

(2) Apply Country Chart. Once an item is identified as having specific control criteria for a particular ECCN, the user can refer to the chart found at 15 C.F.R. § 738, Supp. 1. If the particular control applies to that country, a license is required. For example, Syria has an “X” under AT Column 1; therefore a license would be required unless an exception applies.

(3) Assess License Exceptions²¹. The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application details, as well as the notes on applicable license exceptions following the ECCN entry. Possible license exceptions include:

- LVS - Items of limited value (value is set under each ECCN).
- GBS - Items controlled for national security reasons to Group B countries²².
- CIV - Items controlled for national security reasons to particular countries where end-user is civilian.
- TSR - Certain technology and software to certain countries.
- APP - Computer exports to certain countries.
- TMP - Certain temporary exports, re-exports, or imports, including items moving through the U.S. in transit.
- RPL - Certain repair and replacement of parts for items already exported.
- GFT - Certain gifts and humanitarian donations.
- GOV - Exports to certain government entities.
- TSU - Certain mass-market technology and software.
- BAG - Baggage exception.
- AVS - Aircraft and vessels stopping in the U.S. and most exports of spare parts associated with aircraft and vessels.
- APR - Allows re-export from certain countries.
- ENC - Certain encryption devices and software.
- AGR - Agricultural commodities.
- CCD - Authorization of certain consumer communication devices to Cuba.
- STA - Strategic Trade Authorization which allows for exports to or for ultimate end use by the governments of close allies.
- SCP – Support for the Cuban People

²⁰ Supplement No. 1 to EAR § 738

²¹ EAR § 740

²² Supplement No. 1 to EAR 740 contains the Country Group Listings (A:1-6; B; C (reserved); D:1-5; and E:1-2)

Each license exception is unique, so it is imperative to examine each closely to determine whether or not it fits the circumstances of the proposed export. Exceptions particularly useful to universities, as well as licensing procedures, are described in detail in “Areas of Continuing Impact on Academic Pursuits and Activities” below. University researchers wishing to use a license exception should consult with the OEC and receive a written determination of the exception prior to the export.

Treasury Sanction Programs and Barred Entities²³

The U.S. is a party to a wide range of embargoes and trade sanctions. In some cases the U.S. may issue an embargo or sanctions regulations solely in support of U.S. foreign policy (e.g. Cuban Assets Control Regulations), while in other cases they implement of U.S. responsibilities under a multilateral agreement (e.g. United Nations and North Atlantic Treaty Organization sanctions or initiatives). Treasury sanction programs may be list-based (e.g. narcotics trafficking, weapons of mass destruction proliferation, and global terrorism) or country-based (e.g. Iran, Cuba, and North Korea). U.S. embargoes and trade sanctions are administered and enforced primarily by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC).

U.S. economic sanctions broadly prohibit most transactions between a U.S. person and persons or entities in an embargoed country, including Cuba, Iran, North Korea, Syria, and Sudan.

OFAC sanctions are issued under the authority of the International Emergency Economic Powers Act of 1977 (IEEPA)²⁴, with the exception of the embargoes on Cuba and North Korea which are issued under the authority of the Trading with the Enemy Act of 1917 (TWEA)²⁵. The prohibition includes importation and exportation of goods and services, whether direct or indirect, as well as "facilitation" by a U.S. person of transactions between foreign parties and a sanctioned country. For example, sending a check to an individual in Iran could require an OFAC license or be prohibited. More limited sanctions may block particular transactions or require licenses under certain circumstances for exports to a number of countries, including but not limited to Burma, Liberia, and Zimbabwe; this list is not complete and is subject to change in response to new foreign policy decisions or directives, please visit <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx> and click the “Resources” tab for a full list of U.S. sanction programs managed by OFAC.

While most sanctions are administered by OFAC, BIS has jurisdiction over certain export prohibitions (via “embargo” regulations), such exports to Syria.²⁶ In other words, a license from BIS would be required to ship most items to Syria and other OFAC sanctioned countries or could be prohibited. Each sanction or embargo program in the FACR is independent and unique. You cannot expect that sanctioned activities identified in the Iranian Assets Control Regulations will be the same as those identified in the Sudanese

²³ 31 CFR Subtitle B, Chapter V

²⁴ 50 USC §§ 1701-1706

²⁵ 12 USC § 95a

²⁶ 15 CFR § 746

Sanction Regulations. Similarly, an activity that may be eligible for a general license under one sanction regulation may not be licensable or may require a specific license in another.

Other Export Regulations

Other agencies with regulatory authority over exports include, but are not limited to, the following:

- Department of Justice, Drug Enforcement Administration, Office of Diversion Control
 - Scope: drugs (of abuse), chemicals and precursors
 - Regulations: 21 CFR Parts 1311-1313
 - Agency Website: <http://www.dea.gov/diversion>

- Food and Drug Administration
 - Scope: drugs, biologics, medical devices and investigational drugs
 - Regulations: 21 U.S.C. 301 et seq. and 21 CFR 312.1106
 - Agency Website: <http://www.fda.gov/>

- Department of the Interior, Chief Office of Management Authority, Fish and Wildlife Service
 - Scope: endangered species
 - Regulations: 50 CFR 17.21, 17.22, 17.31, 17.32.
 - Agency Website: <http://www.fws.gov/>

- Nuclear Regulatory Commission, Office of International Programs
 - Scope: nuclear materials and equipment
 - Regulations: 10 CFR part 110
 - Commission Website: <http://www.nrc.gov/> and <http://www.nrc.gov/about-nrc/ip/export-import.html>

- Department of Energy, Office of Export Control Policy & Cooperation
 - Scope: Nuclear Technologies and Services Which Contribute to the Production of Special Nuclear Material
 - Regulations: 10 CFR part 810
 - Agency Website: not available

Items exclusively controlled for export or re-export by the Departments of State, Treasury, and Energy as well as those controlled by the Nuclear Regulatory Commission and the Patent and Trademark Office are excluded from the scope of the EAR²⁷. Control by a single federal agency is typical; however, situations may arise where licenses from two or more agencies may be required to support for the same University activity.

²⁷ EAR § 734.3(b)(1)

CHAPTER 2: OTHER RESTRICTIONS

Anti-boycott Restrictions

The anti-boycott rules are found in the 1977 amendments to the Export Administration Act (EAA)²⁸ and the Ribicoff Amendment to the 1976 Tax Reform Act (TRA)²⁹ and were implemented to prevent U.S. business from participating directly or indirectly in the Arab League's boycott of Israel. The laws prevent U.S. persons from doing business under terms that would restrict that person's ability to do business with other countries under a boycott not recognized by the U.S. The Arab League's boycott has lessened over the years, but still remains in effect in some countries. These restrictions are enforced by BIS and the applicable regulations are at 15 C.F.R. § 760. The TRA does not prohibit specific conduct; rather, it denies tax benefits for certain types of boycott related activities³⁰.

Anti-boycott restrictions are most likely to arise in dealings with entities in Arab League countries. As of this writing, Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen continue to impose boycott restrictions on Israel and companies that do business with Israel; Iraq is not currently listed, but its status with respect to the future remains under review by the Department of Treasury³¹. Egypt and Jordan have ceased participating in the boycott. There are strict reporting requirements even where the U.S. person refuses to participate in a requested boycott action; forms for reporting requests for restrictive trade practices are available on BIS's Anti-boycott webpage³².

Jurisdiction

The anti-boycott laws generally apply to any person or entity in the U.S., and to U.S. persons or entities abroad. As examples, the laws apply to:

- A foreign company's affiliate or permanent office in the U.S.
- A U.S. company's foreign affiliate's transaction with a third-party if the affiliate is controlled by the U.S. company and the transaction involves shipment of goods to or from the U.S.

What is Prohibited?

The U.S. Commerce Department has set forth the following red-flags to look for as signs of anti-boycott restrictions:

- Agreements to refuse or actual refusals to do business with Israel or with blacklisted companies.

²⁸ PL 95-52 § 201(a)

²⁹ The Ribicoff Amendment to the Tax Reform Act (PL 94-455) added Section 999 to the Internal Revenue Code (26 USC § 1 et seq.).

³⁰ See 26 CFR § 7.999-1 for the Implementing tax regulations.

³¹ See list published annually by the Department of Treasury. As of this writing, Federal Register, Vol. 81, No. 17, p. 4739, 27 January 2016, was the most recent publication (<https://www.federalregister.gov/articles/2016/01/27/2016-01622/list-of-countries-requiring-cooperation-with-an-international-boycott> and <https://www.gpo.gov/fdsys/pkg/FR-2016-01-27/pdf/2016-01622.pdf>).

³² See <http://www.bis.doc.gov/index.php/enforcement/oac>.

- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality.
- Agreements to furnish or actual furnishing of information about business relationships with Israel or with blacklisted companies.
- Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person.
- Paying or otherwise implementing letters of credit that include requirements to take boycott-related actions prohibited by the anti-boycott regulations.

These restrictions may appear on pre-printed portions of agreements.

Exceptions

A major exception to the anti-boycott rules is the provision that permits compliance with the import requirements of a boycotting country. This exception permits firms to comply with import restrictions that prohibit imports from Israel or Israeli firms. The exception does not permit compliance with a boycott of blacklisted firms outside of Israel, nor does it allow for the issuance of a negative certificate-of-origin of any type. Other exceptions allow firms to provide country-of origin information on the shipping documents, or information required for immigration or employment purposes. The exceptions can be found at 15 C.F.R. § 760.3.

Reporting Requirements

The EAR requires U.S. persons to report requests they have received to comply with, further, or support an unsanctioned foreign boycott on a quarterly basis³³. Links to the required report forms as well as the regulations and examples of boycott requests are available on BIS's Anti-boycott Compliance webpage (<http://www.bis.doc.gov/index.php/enforcement/oac>). The Office of Antiboycott Compliance has also set up an advice line for questions about the anti-boycott rules, which can be reached at (202) 482-2381. The U.S. Internal Revenue Service (IRS) also requires U.S. taxpayers to report operations in or relating to boycotting countries and nationals and requests to cooperate with boycott activities³⁴.

These reporting requirements apply even where the U.S. person or entity refuses to participate. Crossing out the boycott language in a proposed contract does not end the matter. The duty to report remains even where the requesting foreign entity accepts the redaction of the boycott language.

³³ EAR § 760.5

³⁴ See IRS Form 5713, available at <https://www.irs.gov/uac/Form-5713,-International-Boycott-Report>.

Restricted Parties

Several U.S. Government agencies maintain one or more lists of individuals or entities that are barred or otherwise restricted from entering into certain types of transactions with U.S. persons. The following lists are specifically applicable to export controls and must be screened to ensure that the university does not engage in a transaction with a barred entity.

- **Specially Designated Nationals and Blocked Persons List (“SDN List”).** Maintained by OFAC, this is a list of barred terrorists, narcotics traffickers, and persons and entities associated with embargoed regimes. Generally, all transactions with such persons are barred. The SDN List is available at: <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>.
- **Persons Named in General Orders**³⁵. As of this writing, General Order No. 1 establishes a 24-month validity period for all reexport authorizations; General Order No. 2 contains the provisions of the U.S. embargo on Syria. The controls for exports and reexports to Syria are set forth in §746.9 of the EAR; General Order No. 3, dated July 22, 2015, provides that all conditions that apply to Country Group E:1, as specified in Supplement N. 1 to part 740 of the EAR, on licenses issued prior to July 22, 2015 and that are in effect on that date, are revised to apply to Country Groups E:1 and E:2 as specified in Suppl. No 1 to part 740 of the EAR ; General Order No. 4 is “reserved”; and General Order No. 5, dated April 16, 2013, provided authorization for items the President Determines No Longer Warrant Control under the USML which will be transferred to the Commerce Control List (CCL) as final rules become published. A link to the General Orders is available at: http://www.bis.doc.gov/index.php/forms-documents/doc_view/413-part-736-general-prohibitions .
- **AECA Debarred List.** Issued by the Department of State, this list identifies entities and individuals prohibited from participating directly or indirectly in the export of defense articles, including technical data and defense services. The list is available at: <http://www.pmdrtc.state.gov/compliance/debar.html>. Note that the number of countries subject to a U.S. arms embargo is not the same as those subject to OFAC embargoes. See for a list of embargoes http://www.pmdrtc.state.gov/embargoed_countries/index.html .
- **Denied Persons List.** Identifies those individuals and entities that have had their export privileges revoked or suspended by BIS. Dealing with a party on this list is prohibited only if it would violate the terms of the denial order. The list includes a reference to the Federal Register notice publishing the denial order and is available at: <http://www.bis.doc.gov/dpl/default.shtm>. It is important to note that denial orders may be either “standard” or “non-standard” with “standard” orders issued after 27 August 2002 conforming to the language posted at <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list/12-policy-guidance/list-parties-of-concern/321-the-denied-persons-list-standard-order> . As

³⁵ EAR § 736, Supplement No. 1

the name implies, “non-standard” denial orders contain different terms so reviewing the full denial order is critical when evaluating a proposed transaction involving a party subject to a “non-standard” order. All denial orders are published in the Federal Register, which is accessible at <http://www.gpo.gov/fdsys/>.

- **Entity List.** Parties whose presence in a transaction can trigger a license requirement beyond those identified elsewhere in the Export Administration Regulations (EAR). The list provides the specific license requirements and policy that apply to each listed party. The list is available at: <http://www.bis.doc.gov/entities/default.htm>.
- **Unverified List.** These are foreign “persons” for which BIS has been unable to verify the nature of their operations. Dealings with these entities are not prohibited; however, their presence in a transaction is a “red flag” and should be resolved before proceeding with the transaction. The list is available at: http://www.bis.doc.gov/enforcement/unverifiedlist/unverified_parties.html.
- **Nonproliferation Sanctions.** These are sanctions against foreign individuals, private entities, and governments that engage in proliferation activities. The Department of State maintains a list of current sanctions at: <http://www.state.gov/t/isn/c15231.htm>.

To facilitate the restricted party screening process the U.S. Government has created a Consolidated Screening List that incorporates the entries on all of the lists identified above. The Consolidated Screening List is available for download at http://export.gov/ecr/eg_main_023148.asp.

In addition to screening against export-related restriction lists, the University must also screen parties against the **Excluded Parties List System** when the activity or transaction involves Federal funds. The parties on the EPLS are entities that have been barred from contracting (procurement, non-procurement, and reciprocal programs) with U.S. Government agencies. All companies and universities contracting with the U.S. Government, either as prime or subcontractors, must comply with these prohibitions. The EPLS was available up until 2012 at: <http://www.epls.gov/> but then moved to the System for Award Management (SAM).³⁶

The University of Virginia uses Visual Compliance™, a product of eCustoms Inc., to expedite screening of these and other lists. Visual Compliance maintains an audit trail of all restricted party screenings and has a dynamic screening function that rescreens all entries daily and provides a notification if there is ever a change in the status of a previously screened party. The Director, Office of Export Controls, is the Visual Compliance Account Manager for UVA and receives all change of status notifications and has access to all prior screening transactions for audit purposes.

³⁶ The EPLS may be accessed at <https://catalog.data.gov/dataset/system-for-award-management-sam-exclusions-extract-data-package>.

CHAPTER 3: POTENTIAL PENALTIES FOR VIOLATIONS

Generally, any person or entity that brokers, exports, or attempts to export a controlled item without prior authorization or in violation of the terms of a license is subject to penalties. Violators may incur criminal penalties, civil penalties, or both. Although maximum penalties are identified in the regulations, the listed figures are per violation providing the opportunity for the actual penalty imposed to be multiplied. For instance, each shipment might be considered a separate violation, and BIS will often find multiple violations of related restrictions in connection to each shipment (e.g., export without a license, false representation, actions with knowledge of a violation, etc.). A series of violations occurring over a period of time may result in hundreds of thousand or even millions of dollars of penalties.

Defense Articles & Technical Data

The Arms Export Controls Act (AECA)³⁷ and the ITAR³⁸ provide that willful (i.e. criminal) violations of the defense controls can be fined up to \$1,000,000 per violation, or twenty years of imprisonment, or both. The Secretary of State may also assess civil penalties, which may not exceed \$500,000 per violation.³⁹ Civil penalties may be imposed either in addition to, or in lieu of, any other liability or penalty. The articles exported or imported in violation, and any vessel, vehicle or aircraft involved are subject to seizure, forfeiture and disposition.⁴⁰ Additionally, the Assistant Secretary for Political-Military Affairs may order debarment of the violator, i.e., prohibit the violator from participating in export of defense items.⁴¹

While criminal prosecution is relatively rare, many major U.S. companies have been assessed significant civil penalties.⁴² For example, following an extensive export investigation ITT Corporation, a leading manufacturer of night vision equipment for the U.S. military, received a three-year debarment of the company's Night Vision Division. As part of their consent agreement ITT also agreed to pay a total of \$100 million for violations of defense export laws.⁴³ To date, this is one of the largest penalties ever paid in a criminal or civil case.

The Department of State encourages persons that believe they may have violated any export control provision of the AECA or any regulation, order, license, or other authorization issued under its authority

³⁷ 22 USC § 2778(c)

³⁸ 22 CFR § 127.3

³⁹ 22 USC § 2778(e) and 22 CFR § 127.10

⁴⁰ 22 CFR § 127.6

⁴¹ 22 USC § 2778(g) and 22 CFR § 127.7

⁴² A thorough discussion of penalties imposed under the ITAR is available in "Monograph on U.S. Defense Trade Enforcement" by John C. Pisa-Relli (Feb 2007).

⁴³ The Directorate of Defense Trade Controls (DDTC) has made the 2007 Consent Agreement and Order available on the DDTC website at http://www.pmdtc.state.gov/compliance/consent_agreements/ITTcorp.htm.

to voluntarily disclose the information to DDTC.⁴⁴ Voluntary disclosure may serve as a mitigating factor in the determination of administrative penalties.

EAR Controlled Technology & Anti-boycott

Violations of the EAR are subject to both criminal and administrative penalties. Fines for export violations, including anti-boycott violations, can be as high as \$1,000,000 per violation in criminal cases, and \$250,000 per violation in most administrative cases. In addition, criminal violators may be sentenced to up to 20 years in prison, and administrative penalties may include the denial of export privileges.⁴⁵ For many violators a denial order is probably the most serious sanction as it would bar a U.S. company from exporting or bar a foreign entity from buying U.S. origin products for a specific period of time, typically several years.

In most instances, BIS reaches negotiated settlements in its administrative cases, as a result of voluntary self-disclosures of violations by companies and individuals. Voluntary disclosures constitute a major mitigating factor in determining penalties, reducing the amount of penalty by up to 50 percent, provided certain conditions are met, such as the implementing of a comprehensive compliance program.⁴⁶

OFAC Sanctions

Exporter may be subject to a maximum civil penalty of \$250,000 per violation under OFAC regulations, with the exception of exports to Cuba.⁴⁷ Violations of the Cuban sanctions are subject to a maximum penalty of \$65,000 per violation.⁴⁸ The U.S. Government may also pursue criminal prosecution if violations are willful and knowing. Penalties for criminal violations may reach \$1,000,000 per violation and imprisonment of up to 20 years. In addition to OFAC penalties, egregious conduct by the violator may result in BIS suspending export privileges.

⁴⁴ 22 CFR § 124.12

⁴⁵ These violations are based on the Export Administration Act of 1979, as amended (50 USC app. §§ 2401-2420), and inflation adjustments made in 15 CFR § 6.4. From 21 August 1994 through 12 November 2000 the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, continued the EAR in effect under the International Emergency Economic Powers Act (50 USC §§ 1701-1706 (IEEPA)). On November 13, 2000, the Act was reauthorized by P.L. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through 20 August 2001. Since 21 August 2001 the Act has been in lapse and the President, through Executive Order 13222 of 17 August 2001 which has been extended by successive Presidential Notices, has continued the EAR in effect under IEEPA. The USA PATRIOT Improvement and Reauthorization Act of 2005, signed into law on 9 March 2006 (P.L. 109-177, 120 Stat. 192 (2006)), increased the limit of civil penalties available under IEEPA to \$50,000. On October 16, 2007, President Bush signed the International Emergency Economic Powers Enhancement Act, P.L. 110-96, which amends IEEPA by increasing civil penalties up to \$250,000 per violation, and criminal penalties up to \$1,000,000 per violation.

⁴⁶ The Bureau of Industry and Security issues an annual publication entitled “Don’t Let This Happen to You! Actual Investigations of Export Control and Antiboycott Violations” on its website (<http://www.bis.doc.gov/index.htm>); the July 2015 edition is the most recent and is available at <http://www.bis.doc.gov/index.php/compliance-a-training/export-management-a-compliance>, click on the title “Don’t Let This Happen to You” under the Recommended Links on the left side of the web page.

⁴⁷ Most economic sanction regulations penalties are set under IEEPA. See supra note 22.

⁴⁸ The embargo of Cuba was promulgated under the authority of the Trading with the Enemy Act (TWEA).

Penalty Assessment

DDTC⁴⁹, BIS⁵⁰, and OFAC consider a number of factors, both aggravating and mitigating, when assessing penalties. Mitigating factors include:

- (1) whether the disclosure was made voluntarily;
- (2) whether this was a first offense;
- (3) whether the company had compliance procedures;
- (4) whether steps were taken to improve compliance after discovery of violations; and
- (5) whether the incident was due to inadvertence, mistake of fact, or good faith misapplication of the laws.

Aggravating factors include:

- (1) willful or intentional violations;
- (2) failure to take remedial action after discovery;
- (3) lack of a compliance program; and
- (4) deliberate efforts to hide or conceal a violation.

The weight given to any given factor is left to the discretion of the agency or judge assessing the final penalty.

⁴⁹ ITAR §§ 127.2(a) and 127.12(a)

⁵⁰ EAR § 766, Supplement No. 1

CHAPTER 4: INTERSECTION OF EXPORT CONTROLS AND UNIVERSITY ACTIVITIES

University Activities Excluded From or Not Subject to Export Control

The EAR, ITAR and sanctions regulations specifically exclude or exempt certain types of information and data from the scope of regulatory oversight. Many of these carve-outs are directly applicable to University research and instructional activities. Although the specific terminology varies among the regulations, they generally exclude information that is published or provided in catalog listed courses. Most university research and academic activities fall within these exclusions and are therefore not subject to export control; however, some university activities are NOT covered by these exclusions. The exclusions that most often apply to university activities are covered in the following paragraphs, while university activities that ARE subject to export control are covered in the following section.

Publicly Available (EAR); Public Domain (ITAR); or Information and Informational Materials (OFAC)

“Information and Informational Materials” are generally excluded from the licensing requirements of most, if not all, of the OFAC country sanctions. The exclusion applies to “publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.”⁵¹

The EAR contain an exclusion similar to OFAC’s provision in § 734.3(b)(2)⁵². However, the EAR go on to exclude additional items as not subject to the EAR because they are publicly available technology and software. Publicly available technology and software includes those items that are already published or will be published; arise during, or result from, fundamental research; are educational; or are included in certain patent applications⁵³. These subcategories of publicly available technology and software are further described in §§ 734.7, 734.8, 734.9 and 734.10, respectively (http://www.bis.doc.gov/index.php/forms-documents/doc_view/412-part-734-scope-of-the-export-administration-regulations). In general, information is published when it becomes generally accessible to the interested public in any form, including:

- publication in periodicals, books, print, *etc.*, available for general distribution for free or at cost;
- readily available at libraries open to the public or university libraries;

⁵¹ Similarly, but not identically, defined in each country-specific sanction regulation issued by OFAC; the specific quote provided in the text of this paragraph is taken from the Iranian Transaction Regulations (31 CFR Part 560.315).

⁵² Prerecorded phonograph records reproducing in whole or in part, the content of printed books, pamphlets, and miscellaneous publications, including newspapers and periodicals; printed books, pamphlets, and miscellaneous publications including bound newspapers and periodicals; children’s picture and painting books; newspaper and periodicals, unbound, excluding waste; music books; sheet music; calendars and calendar blocks, paper; maps, hydrographical charts, atlases, gazetteers, globe covers, and globes (terrestrial and celestial); exposed and developed microfilm reproducing, in whole or in part, the content of any of the above; exposed and developed motion picture film and soundtrack; and advertising printed matter exclusively related thereto.

⁵³ EAR § 734.3(b)(3)

- patents and open patent applications available at any patent office; or
- release at an open conference, meeting, seminar, trade show, or other gathering open to the public.

Fundamental research and educational information are discussed in more detail, below.

As discussed previously in this manual, the ITAR control the export of defense articles, which by definition includes any technical data designated in the USML. Information in the “public domain” is excluded from the scope of control of the ITAR (unless provided as part of a defense service) by its exclusion from the definition of technical data⁵⁴. In the ITAR “public domain” means “information which is published and which is generally accessible or available to the public”⁵⁵. The definition provides a list of ways information may be considered generally accessible or available to the public, including:

- 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;
- Through fundamental research (see discussion below)

Interestingly, the ITAR do not currently recognize publication via electronic means (i.e. internet) other than through public release following agency approval.

Also of note is the fact that only information released at conferences, meetings, etc. occurring “**in the United States**” are eligible to be considered to be in the public domain.

Fundamental Research (EAR & ITAR)

During the early and mid-1980’s the Federal government and several universities worked together to establish national policy related to the control of information generated in Federally-funded research at colleges, universities and laboratories. This work resulted in the issuance of National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical and Engineering Information on 21 September 1985. In the wake of the September 11th terrorist attacks, NSDD 189 was reaffirmed in a letter from Condoleezza Rice, Assistant to the President (George W. Bush) for National

⁵⁴ ITAR § 120.10

⁵⁵ ITAR § 120.11

Security Affairs, date 1 November 2001. At the core of NSDD 189 is the following definition of fundamental research:

"... basic and applied research in science and engineering, the results of which ordinarily are 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 for proprietary or national security reasons."

Since the issuance of NSDD 189 in 1985 universities have used this definition to guide their licensing decisions relative to the exclusions provided under the EAR and ITAR.

The "fundamental research" definition in the EAR⁵⁶ is consistent with that in NSDD 189. Publicly available technology and software that arises during, or results from, fundamental research is excluded from the scope of the EAR's regulatory authority⁵⁷. Under the EAR, the results of fundamental research are excluded from the scope of the EAR regardless of whether or not they are published.

The ITAR includes "fundamental research" within the definition of public domain⁵⁸ (see prior section) and therefore the resulting information will fall outside the scope of regulation, except when provided as part of a defense service. University research will not be considered fundamental under the ITAR if the University or its researchers accept other restrictions on publication of the resulting scientific and technical information; or the research is funded by the U.S. Government and specific access and dissemination controls apply to the results.

Although the definition of fundamental research in the ITAR varies slightly from that expressed in NSDD 189 it has essentially the same meaning. However, given the placement of the definition within "public domain" and its express limitation to "information which is published and which is generally accessible to the public" unpublished fundamental research results may not be considered to be in the public domain unless approved for unlimited public release by the cognizant U.S. government agency⁵⁹.

Another major difference between how the ITAR and EAR address fundamental research is that the ITAR restricts it to performance at "accredited institutions of higher learning in the United States". Under the EAR fundamental research may occur at facilities other than U.S. universities. However, only university fundamental research is restricted to performance within the United States.

Educational Information (EAR) and General Principles in Science and Engineering (ITAR)

EAR § 734.3(b) identifies specific items which are not subject to the EAR, including publicly available technology and software that are "educational". "Educational information" is not subject to the EAR if it is "released by instruction in catalog courses and associated teaching laboratories of academic

⁵⁶ EAR § 734.8

⁵⁷ EAR § 734.3(b)(3)(ii)

⁵⁸ ITAR § 120.11

⁵⁹ ITAR § 120.11(a)(7)

institutions”⁶⁰. It is important to note that this exclusion does not apply to mentoring and instruction provided outside of the classroom, e.g. to students performing research.

The ITAR controls defense articles, which by definition includes technical data designated on the USML⁶¹. However, “information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities” is specifically excluded from the definition of technical data under the ITAR⁶².

The following is one example of how these definitions apply to university activities. The university offers a catalog listed course in very high-speed integrated circuit design and manufacturing. The course is open to any University student who has completed the necessary prerequisite courses. In this case the material presented in the class will not be subject to export controls despite the fact that very high-speed integrated circuits are on the CCL. The key factors here are that the information is provided in a catalog listed course and the course is open to any qualified individuals regardless of nationality. This is not the case when instruction is related to a defense article subject to the ITAR (see “*Defense Services in Educational/Training Situations* on page 32).

Areas of Continuing Impact on Academic Pursuits and Activities

Physical Export of Items, Including Technical Data, or Technology

The University may ship equipment, machinery or supplies abroad for a variety of purposes; including participating in a conference or other meeting, to conduct research, to participate in a collaborative or joint program, or to loan equipment to another institution.

The physical shipment of items abroad is an export from the U.S. The purpose of the shipment (i.e. to conduct fundamental research or to provide academic instruction) is irrelevant in determining whether or not it is subject to control under the export regulations. Both the USML and CCL are lists of items and technologies not the intended use. Licensing requirements are the same for commercial exports and those conducted in support of University activities. That said, the applicability of certain license exceptions or exemptions may be impacted by the purpose and duration of the export.

When no license exception or exemption is available to cover a proposed export and the recipient foreign party is otherwise eligible to receive the intended export, the Office of Export Controls will apply for export authorization from the appropriate U.S. Government agency (BIS, DDTC or OFAC). No export will occur unless and until agency approval is granted and the University has confirmed with the individuals involved that they can and will apply with all provisos and conditions associated with use of the license or other authorization.

⁶⁰ EAR § 734.9

⁶¹ ITAR § 120.6

⁶² ITAR § 120.10

“Deemed” Exports and Technical Data Exports in the U.S.

While exports are commonly associated with the shipment of a tangible item across the U.S. border, export controls have a much broader application. One of the most difficult issues with respect to export controls is the fact that an export is defined to include the transfer of controlled information or services to foreign nationals even when the transfer takes place within the territory of the United States⁶³. Though taking place inside the U.S., the transfer is “deemed” to be an export (as if exporting to the country of the foreign national)⁶⁴. Both the ITAR and the EAR provide for deemed exports, even though in the case of defense exports the term “deemed export” is not used in the regulations. While the ITAR distinguishes between the transfer of technical data and providing a defense service in the definition of “export”⁶⁵, the EAR generally provides for the release of technology. Such transfer or release may be made through oral, visual, or other means. The following are examples of how an export may occur:

1. allowing virtual or physical access*;
2. a demonstration, briefing or presentation;
3. a conversation (in-person or telephone);
4. laboratory or plant visit;
5. faxes or letters;
6. hand-carried documents, hardware or drawings;
7. design reviews;
8. the exchange of electronic data or communication;
9. posting non-public data on the Internet or the Intranet;
10. carrying a laptop or other electronic device with controlled technical information or software to an overseas destination; or
11. collaborating with other universities / research centers through research efforts.

**The EAR and ITAR differ in controls related to access. Under the ITAR providing a foreign national the ability to touch, see or use a defense article would be an export if such access provides technical data, while under the EAR it would only be an export if it released technology or software subject to the EAR as described in 734.2(b)(2). Note, however, that foreign national licensing guidance provides that any “access” by a foreign person to a defense article would require a license. [In the event an unlicensed foreign person had unrestricted access to a defense article, it would be difficult, if not impossible, to show that the foreign national did not obtain technical data by deconstructing, examining or reverse engineering the defense article.]*

The issue of deemed exports is particularly relevant to university research because of the activities that normally take place at a university, largely, teaching and research. Whenever teaching or research activities are related to controlled equipment or technology, the involvement of foreign students or researchers may trigger export control compliance issues.

As with physical exports, most transfers of technical information at universities do not require a license. One reason for this is that technology controls do not apply to many of the items on the CCL. A second

⁶³ ITAR § 120.17(a)(3-5) and EAR § 734.2(b)(1)

⁶⁴ EAR § 734.2(b)(2)(ii)

⁶⁵ ITAR § 120.17(a)(4) addresses technical data transfers; ITAR § 120.17(a)(5) covers provision of defense services.

reason is that access to controlled (as identified on the CCL) “development” or “production” or “use” technology is rarely required to conduct university activities. Although it may seem likely that universities would frequently need to transfer “use” technology to foreign nationals, the fact that the definition of “use” involves more information than would normally be available in an operation or owner’s manual⁶⁶ actually makes exports of “use” technology relatively infrequent. Even when a license requirement does exist based on the specific ECCN and Country Chart⁶⁷, a license exception may be available to overcome the license requirement for the proposed deemed export.

The ITAR provides one broad license exemption specifically for universities which may be useful for some projects; this is often referred to as the Bona Fide Employee Exemption (BFEE)⁶⁸. This exemption permits disclosures of unclassified technical data in the U.S. by U.S. institutions of higher learning to foreign persons who are their “bona fide and full time regular employees” when certain criteria are met. This exemption may not be used for employees who are nationals of a country to which exports of defense articles and services are prohibited⁶⁹. The BFEE may be used for nationals of other countries provided the employee resides in the U.S. throughout the period of employment⁷⁰ and the university informs the foreign national in writing that the technical data may not be transferred to other foreign nationals without the prior written approval of DDTC. It is important to note that this license exemption is not available for students, trainees, collaborators, consultants, or individuals who are not both full time and regular employees of the university.

“Defense Services” in Educational/Training Situations

As mentioned previously, the ITAR differentiates between the export of technical data to a foreign person in the U.S. and the provision of defense services. While the BFEE may be used to permit the University to share an ITAR-controlled blueprint or technical specification document, it does NOT allow a U.S. person to provide instruction or consultation related to the information contained in the document. Likewise, the BFEE does not permit a U.S. person to demonstrate or provide instruction in the operation of a defense article. Such activities are considered defense services⁷¹ and would require specific authorization from DDTC. It is important to note that a defense service can be performed even when the information provided is already in the public domain; this is made clear by the following statement:

“... The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in §120.9(a) of

⁶⁶ EAR § 772 defines “use” to include all of the following six elements “operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing”. Note that for “600 series” items on the CCL, only one element may be necessary to constitute “use”.

⁶⁷ EAR § 738, Supplement No. 1

⁶⁸ ITAR § 125.4(b)(10)

⁶⁹ ITAR § 126.1

⁷⁰ Email clarification from Charles Shotwell, Office of Defense Trade Controls Policy, to the University of Oklahoma. 16 December 2011. In summary, the email states that the term “permanent abode” used in 125.4(b)(10) was intended to mean “residence” and that the wording of the visa is not necessarily determinative.

⁷¹ ITAR § 120.9

this subchapter (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from licensing requirements of this subchapter pursuant to §125.4 of this subchapter)...”⁷²

This statement is taken from the section of the ITAR that addresses manufacturing license agreements (MLA) and technical assistance agreements (TAA). In the absence of some other applicable exemption, the University would have to obtain authorization (typically in the form of an approved TAA rather than an MLA for University activities) from DDTC before providing a defense services to a foreign national, whether or not an employee.

Therefore, although “information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities and information in the public domain” are not “technical data”⁷³ and do not require a license for export, providing the same information ***in relation to a defense article*** is a defense service and would require prior approval by DDTC⁷⁴. There is no exclusion or exemption available to cover such exchanges when they occur in the context of a university course or fundamental research activity.

When no license exception or exemption is available to cover a proposed deemed export, technical data transfer, or defense service, and the recipient foreign party is otherwise eligible to receive the intended export, the Office of Export Controls will apply for export authorization from the appropriate U.S. Government agency (BIS, DDTC or OFAC). No export will occur unless and until agency approval is granted and the University has confirmed with the individuals involved that they can and will apply with all provisos and conditions associated with use of the license or other authorization.

⁷² ITAR § 124.1

⁷³ ITAR § 120.10 definition of technical data

⁷⁴ ITAR § 124.1(a) Manufacturing license agreements and technical assistance agreements, Approval.

CHAPTER 5: UNIVERSITY OF VIRGINIA EXPORT CONTROL POLICY & RESPONSIBLE PARTIES

Institutional Commitment

The University of Virginia conducts research to advance knowledge, engage students, enhance learning, and build its reputation in the scientific and technical communities by providing excellent return for investment on sponsored awards. The participation of students in research activities is central to the University mission. The research activities conducted at the University of Virginia are overwhelmingly fundamental in nature, including both basic and applied activities. The University does not normally accept restrictions on the publication of research results or participation of foreign nationals in the conduct of the research. In rare cases, exceptions may be made to permit externally funded research with limits on publication or foreign national restrictions, of which export controls are one example. Each request to accept restrictions will be reviewed on its own merits. Among the factors that will be considered in determining whether a particular activity is acceptable to the University are the following:

- academic merit of the proposed activity;
- compatibility of the proposed activity with the mission of the University;
- nature of the restrictions; and
- contribution of the activity to the benefit of humanity.

The University of Virginia has formalized its commitment to compliance with U.S. export control laws and regulations through the adoption of Financial Policy #043 (FIN-043) on November 29, 2011, with the most recent revision approved August 8, 2017. This policy sets forth both institutional expectations for compliance and identifies the institutional executives and offices responsible for oversight and administration. The current policy can be found in Appendix I of this document or may be accessed electronically through the University's publicly available Policy Directory (<http://uvapolicy.virginia.edu/policy/FIN-043>).

Empowered Officials

The individuals in the positions of Vice President for Finance, Director of Finance Outreach and Compliance, and Export Controls Manager have been designated as "Empowered Officials" pursuant to the University's ITAR registration with DDTC with all of the responsibilities and authorities implied by that designation including, but not limited to, the authority to stop any export that may be in violation of U.S. export control regulations and when necessary to submit voluntary disclosures to the appropriate regulatory agency(ies) on behalf of the University.

Export Controls Function

Broadly speaking, the role of the *Office of Export Controls* (OEC) is to serve as a central resource for export control information and to coordinate the overall export compliance management program for

the University. The Key University Offices & Roles listed in the following section are those that, together with the OEC, are central to assuring institutional compliance with U.S. export controls.

The export controls policy ([FIN-043](#)) identifies the roles and responsibilities of the Director of Finance Outreach and Compliance; Office of Export Controls; Faculty members; and All University faculty, staff, trainees and volunteers related to export controls.

The *Director of Finance Outreach and Compliance* is responsible for:

- Providing general oversight of the export controls function (Office of Export Controls) and the direct supervision of the export controls staff;
- Serving as an empowered official as defined in §120.25 of the ITAR; and
- Signing and submitting export compliance documents to Federal agencies and other parties on behalf of the institution.

The role of the *Office of Export Controls* is to facilitate the University's research, teaching, service and patient care missions by administering a program of activities to support FIN-043. Specifically, the Office of Export Controls is responsible for:

- Developing and delivering outreach and training materials for University faculty, staff, students, and trainees to increase export control awareness;
- Providing tools to the University community to assist in the identification and management of export control issues;
- Acting as the University's principle point of contact for University faculty, staff, students, and trainees as well as agencies with regulatory or enforcement authority under export control regulations;
- Preparing and submitting requests for export authorization or regulatory clarification to Federal agencies on behalf of the institution as necessary and appropriate to support University activities;
- Establishing and administering forms, procedures, and processes to facilitate compliance with this policy;
- Advising individuals with Institutional Signature authority on export control issues related to contracts ([FIN-036](#)) and academic program agreements ([FIN-035](#));
- Managing the University's registrations and online accounts with regulatory agencies; and
- Performing or supporting the conduct of compliance monitoring, risk assessments, and investigations as directed by the Director of Finance Outreach and Compliance, the Office of General Counsel, or Internal Audit.

Faculty members are responsible for:

- Consulting with and providing assistance to the Office of Export Controls to ensure that:
 - Controlled technology, regardless of whether it is instructional or research technology, used or produced by them or under their supervision is categorized correctly under export control regulations;

- Controlled activities are identified, approved, and licensed if necessary; and
- All exports of controlled technology, both physical and deemed, including those associated with international travel, are conducted in compliance with applicable export control, census, and customs requirements;
- Knowing and complying with the terms and conditions of their funding awards and other agreements, including export controls and limitations on publication of research data and results;
- Assisting the University in preventing unauthorized exports and applying for government licenses where appropriate;
- When applicable, developing a technology control plan, submitting the plan for approval, and following the requirements of the approved plan;
- Seeking advice from the Office of Export Controls when acquiring proprietary (non-public) information or items via a mechanism other than procurement/purchase; and
- Ensuring that staff, students, trainees, volunteers under their supervision, and visitors are made aware of any applicable requirements (e.g., University, regulatory, or sponsor imposed) and receive adequate training in conducting their activities in compliance with those requirements.

All University faculty, staff, trainees, and volunteers are responsible for:

- Knowing and complying with any requirements applicable to their activities;
- Seeking assistance from the Office of Export Controls prior to performing any export of controlled technology (examples include temporary exports associated with international travel, international shipping, and deemed exports); and
- Reporting any suspected non-compliance with export control regulations or this policy to the Office of Export Controls.

Key Cooperating Offices & Roles

Office of Sponsored Programs

The Office of Sponsored Programs (OSP) assists OEC with the identification of export control risks in proposals, funding award terms and conditions, and other sponsored research agreements including, but not limited to, nondisclosure agreements, licensing agreements and material transfer agreements. OSP personnel are offered training, tools and guidance to help them identify possible export control risks and to know when to route agreements to OEC for additional review.

Office of the Vice President for Research

The Office of the Vice President for Research has the final authority to determine whether or not the University of Virginia will accept research restrictions, including those associated with export controls. The University's organizational structure is such that all researchers ultimately report to the VPR. The

VPR's office assists OEC with outreach and is involved with all inquiries related to suspected non-compliance with University policy or export control regulations.

Human Resources

The Compliance and Immigration Services (CIS) group within University Human Resources manages visa applications, including modifications and renewals, for institutionally sponsored employees. Although most foreign national University employees are in the U.S. on H1B visas there are a small number holding other visa types. CIS files all I-129 (Petition for a Nonimmigrant Worker) applications on behalf of the University, but requires each sponsoring department or supervisor to include an Advisory Letter from OEC stating the appropriate response to Part 6 (Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States). In order for OEC to perform the necessary review, the sponsoring department or supervisor must complete the University's I-129 Export Certification Request Form and submit it to OEC for review. Instructions for completion of the request form are contained in the H-1B Packet available provided by CIS (<http://www.hr.virginia.edu/forms/all-forms/cis-forms/>). Information is also available on the Office of Export Controls website (<http://export.virginia.edu/i-129-export-certification>).

Financial Operations

The Director of Tax Compliance & Operational Contracts serves as institutional signatory on Academic Agreements not involving sponsored research and ensures that all proposed agreements and foreign parties are screened by OEC prior to executing the final contract.

University purchasing or procurement functions are managed by Procurement & Supplier Diversity Services (PSDS). PSDS assists with the University's export control program by screening new vendors and requesting export control information from vendors when they are acquiring technology; this is typically for purchases valued at \$5000 or more. Smaller purchases may be made by research or departmental personnel using a Purchase Order in the UVA Marketplace or a University Travel & Expense Card (T&E Card). Annually all T&E Card users are provided basic information on export controls and reminded of their responsibility to assure that vendors provide notification to the Office of Export Controls before delivering defense articles to the University. Similarly, the University's [Purchasing Terms and Conditions](#) require that vendors provide written notice via email, and receive prior written authorization from the Office of Export Controls, before delivery to the University, for any items it will be providing to the University that are controlled under the International Traffic in Arms Regulations. The University's Surplus Property Program is governed by [PRM-016 Surplus Property Disposal](#) and managed by PSDS. Information on the Surplus Property Program may be accessed at <http://www.procurement.virginia.edu/pagesurplushome>.

International Studies Office

The International Studies Office (ISO) manages visa applications for students and scholars. The International Students and Scholars Program staff in ISO provide programming and services to support the adjustment and integration of international students and scholars the U.S. and the university community. ISO provides OEC with citizenship and immigration status for foreign national students and scholars proposed for addition to export controlled projects or programs.

Office of the General Counsel

The University General Counsel has appointed an Associate Counsel to advise the Office of Export Controls on legal matters. In addition, all requests for outside counsel must be approved by the Office of the General Counsel prior to going to the Attorney General's Office of the Commonwealth of Virginia for final approval and appointment.

Export Controls Advisory Committee

The Export Controls Advisory Committee (ECAC) is an *ad hoc* committee that provides input on elements of the Export Control Management Program (ECMP) that impact their area(s) of responsibility and assist with the dissemination of ECMP information to the University community. The OEC may also consult the ECAC to assist in the assessment of the factors that contributed to an incident of non-compliance with University policy and procedures or violation of U.S. export controls and recommend a course of action to prevent similar incidents in the future. The ECAC membership is comprised of representatives from each of the Key University Offices listed above.

Organizational Structure

A current version of the University's organization structure is available on the Institutional Assessment & Studies at <http://ias.virginia.edu/university-organizational-chart>.

CHAPTER 6: UNIVERSITY OF VIRGINIA PROCESSES & PROCEDURES

Export Control Analysis of Research Projects/Programs

Purpose: The pre-award and contracting staff in the Office of Sponsored Programs (OSP) review sponsored research project proposals, grants, contracts and other contractual arrangements relating to sponsored research for potential export control issues of concern. The Office of Export Controls (OEC) reviews all projects that are forwarded by OSP staff after their initial review.

Initial Review

The staff in the Office of Sponsored Programs perform an initial assessment of all research related agreements to determine if additional review by the Office of Export Controls is warranted. The following are examples of red flags that might indicate potential export control issues:

- References to U.S. export control regulations, beyond a simple statement that parties must comply with applicable U.S. laws and regulations;
- Restrictions on publication or dissemination of research results, including but not limited to, prior **approval** by the sponsor;
- Assertions that project results will be proprietary or trade secret;
- Restrictions on access or participation based on citizenship or nationality;
- Involvement of foreign sponsors or collaborators, other than foreign national employees of U.S. persons;
- funding, **direct or indirect via subcontract**, from the “high risk sponsors”, examples include the following:
 - Department of Defense, including all agencies, labs, and branches of the armed services;
 - Department of Energy;
 - Department of Homeland Security;
 - National Aeronautics and Space Administration; or
 - Intelligence Agencies
- Military applications of the project results; or
- International travel, international shipping, or performance sites.

If the reviewer identifies any “red flags” they forward all relevant information to the Office of Export Controls for review and export control guidance prior to final execution of the agreement or acceptance of the award. When red flags are identified in funding agreements, University accounts (PTAOs) should not be set-up and no work should start until the red flags are resolved unless authorized by the Office of Export Controls.

Office of Export Control Review

- Thoroughly review agreement terms for
 - References to export controls, including restrictions on participation by foreign nationals
 - Publication or dissemination restrictions, e.g., DFARS 252.204-7000, that could make the use of the Fundamental Research exemption problematic
 - For DOD agreements and awards
 - DFAR 252.204-7012 clause and presence of controlled technical information
 - Lack of “being developed for both civil and military applications” language
 - Government or sponsor furnished equipment that could be ITAR-controlled
- Examine the proposal budget for indications of
 - Foreign travel, performance sites, or subcontractors
 - Purchases of potentially ITAR-controlled equipment
- Examine the project statement of work.
 - Collaborations with parties in foreign countries, or with foreign nationals domestically on non-fundamental research
 - Work being performed in sanctioned countries
 - Plans to ship items to international locations
 - Use of sponsor or Government furnished property
 - Access to proprietary or government restricted technical information, e.g., technology (EAR), technical data (ITAR), sensitive nuclear technology (NR), or controlled technical information (on agreements subject to DFARS 252.204-7012)
 - Use of defense articles
 - Exports of other than fundamental research results
 - Development of items that may be captured in USML catchall entries
- Prior to accepting restrictions on publication or dissemination of research results, OSP staff must have authorization from the principal investigator, department chair, dean’s office, and the Office of the Vice President for Research.
- Prior to accepting the DFARS 252.204-7012 when controlled technical data is present, OSP staff must assure that IT security requirements can be fulfilled by working with the Information Technology Services – Information Security and appropriate school, department, or other IT support staff.
- If foreign travel is indicated, notify the principal investigator of their responsibilities as an employee traveling internationally on University business.
 - If work includes travel to sanctioned countries, determine license requirements and work with principal investigator to prepare license application(s).
 - If work requires permanent or temporary export of University items determine licensing requirements, assess applicability of license exceptions/exemptions, and apply for licenses, if needed.
- If any work potentially includes ITAR-controlled defense articles or export-controlled technical information, work with the principal investigator to
 - determine its export control jurisdiction and classification;

- develop a Technology Control Plan (TCP) (full or lite);
- train project personnel; and
- apply for any necessary export authorizations (e.g., licenses or technology assistance agreements).

Note: Whenever possible an approved TCP should be put in place prior to the generation or acceptance of export controlled materials arrive on Grounds.

Export Control Analysis of International Academic Agreements

All academic agreements with foreign institutions will be reviewed by the Office of Export Controls to ensure they do not involve restricted parties or export controlled activities, including the provision of defense services or assistance to foreign atomic energy activities. If exports are required to support academic agreements, the OEC will work with the involved UVA department and personnel to assure that any required export authorizations are obtained and the use of any license exception or exemption is documented.

Assessment: Identification, Marking and Tracking of Listed Materials

Purpose: There are many inventions and innovations generated at the University. These materials should be assessed for export control status and classification. Records of the assessment process must be kept.

University Developed Items, Including Technical Data (ITAR) or Technology (EAR)

Assessment of University developed items will use the following tools and guidance provided by the Directorate of Defense Trade Controls (DDTC) and Bureau of Industry and Security (BIS), beginning with the DDTC Order of Review:

- DDTC Tools
 - Order of Review: http://www.pmddtc.state.gov/licensing/dt_OrderofReview.htm
 - Specially Designed: http://www.pmddtc.state.gov/licensing/dt_SpeciallyDesigned.htm
 - Part 130: http://www.pmddtc.state.gov/licensing/dt_Part130.htm
- BIS Tools
 - CCL Order of Review: <https://www.bis.doc.gov/index.php/export-control-classification-interactive-tool>
 - Specially Designed: <https://www.bis.doc.gov/index.php/specially-designed-tool>
 - STA: <https://www.bis.doc.gov/index.php/statool>

Note: STA is the Strategic Trade Authorization license exception.

- De minimis and Direct Product Rules: <https://www.bis.doc.gov/index.php/de-minimis-direct-product-rules-decision-tool>

The Office of Export Controls will record jurisdiction and classification information from self-assessments and those provided by other parties in “Inventory” in Visual Compliance. Self-assessment documentation will be retained as part of the associated export controls files.

Outgoing International Shipments

University personnel are responsible for contacting the Office of Export Controls (OEC) for a technology and export control assessment prior to exporting any item out of the U.S. The request may be submitted on the Export Assessment Request form (Appendix V and available at <http://export.virginia.edu/sites/export.virginia.edu/files/Export-Assessment-20150701-distributed.pdf>).

The OEC will assist University exporters with determining if any export regulations apply to their shipment, outlining the proper course of action to assure compliance, and applying for government authorizations if necessary.

OEC will use the same tools identified in the *University Developed Items, Including Technical Data (ITAR) or Technology (EAR)* section above to self-assess items for export or may rely on manufacturer/supplier provided status in making licensing assessments.

OEC may use license exceptions (EAR) or exemptions (ITAR) to overcome license requirements in some instances.

Procurement Activities

Whenever possible the University prefers to rely on manufacturers to provide the export control status of items and software being obtained through a procurement activity. Purchasers within Procurement and Supplier Diversity Services handle all procurements valued at \geq \$5000 or requiring a contract with the University; smaller value purchases are handled by purchasers in research, academic, or support offices.

The University’s [purchasing terms and conditions](#) include a term requiring vendors to notify the Office of Export Controls (OEC) and receive written authorization from OEC prior to delivering any defense article to the University. University purchasers are instructed to require all vendors, whether or not contracted, to identify defense articles prior to delivery. If purchasers have reason to believe items they are procuring will subsequently be exported, they are directed to request the ECCN or USML category from the vendor to facilitate the export assessment and, if necessary, licensing process.

In cases where the vendor does not know the export control status of an item (e.g. when the vendor is not the manufacturer) or refuses to provide export control information to the University, the Office of

Export Controls will perform a self-assessment based on the available information. In cases where doubt exists as to the jurisdiction of the item(s), the University will either decline to purchase or will proceed with the purchase and protect the item as a defense article until it is conclusively shown to be subject to the EAR (e.g. through a formal response to a commodity jurisdiction or advisory opinion request).

Purchases valued at <\$5000 may be made by using a UVA Travel and Expense Card if otherwise eligible under institutional policy and procedures. All individuals issued a Travel and Expense Card are required to complete initial and annual refresher training; this training informs them of their responsibility to request export control information from vendors prior to placing an order and to notify the Office of Export Controls prior to proceeding with the purchase of any ITAR controlled items (defense articles).

Surplus of University Property

All surplus of University property must comply with Surplus Property Disposal policy ([PRM-016](#)) and associated procedures issued by Procurement and Supplier Diversity Services (<http://www.procurement.virginia.edu/pagesurplusprocedure>). The University surplus procedures are compliant with the general principles expressed by BIS in their advisory opinion on public sales in the US⁷⁵; no ITAR controlled items may be surplussed without the express authorization of the Office of Export Controls. University surplus may not be exported, directly or indirectly (i.e. provided to an individual or entity when there is reason to believe that it will subsequently be exported), without the authorization of the Office of Export Controls.

Other Agreements for Incoming Items, Including Technical Data (ITAR) or Technology (EAR)

The University may acquire materials (intellectual property, equipment loans, biological materials, software, etc.) from other parties in a variety of ways other than through a purchase or procurement activity, the following are examples:

- Sponsored Agreements – some funding awards may include access to or the loan of items by the sponsor or other party to the agreement in order for the University to conduct its defined scope of work. Such arrangements are reviewed and negotiated by UVA Office of Sponsored Programs as previously described (see [Export Control Analysis of Research Projects/Programs](#)).
- Material Transfer Agreements (MTA) – typically used for the transfer of biological specimens, these agreements are reviewed and negotiated by University contract negotiators in the Office of Sponsored Programs. Although MTAs may not be associated with a Sponsored Agreement,

⁷⁵ *Public sale of US equipment to a foreign national and the "deemed export" rule*; Bureau of Industry and Security, US Department of Commerce, Advisory Opinion dated 12/6/2004, available at <http://www.bis.doc.gov/index.php/policy-guidance/advisory-opinions>.

they are reviewed similarly for export control issues but with particular attention focused on identifying select agents and export controlled biologics or toxins.

- License Agreements – Institutional license agreements are subject to the same review process as indicated in the previous section, *Procurement Activities*, although the terms and conditions are negotiated by University contract negotiators. The OEC will advise the University contract negotiator and, when needed, communicate with the vendor regarding export control language and terms in the license agreement.
- Nondisclosure Agreements, Confidentiality Agreements, and Data Use Agreements – used for the exchange of protected personal (e.g., under HIPAA⁷⁶ or FERPA⁷⁷), proprietary, or U.S. government restricted information; typically information will be provided in the form of oral disclosure or documents (hard copy or electronic) rather than items or materials. Such arrangements are reviewed and negotiated by the Office of Sponsored Programs as described previously (see Export Control Analysis of Research Projects/Programs).
- Donations – Occasionally the University receives donations of equipment or other material, these donations will be subjected to the same review process as described for *Procurement Activities*, above.
- Equipment Loans, other than as part of a Sponsored Award – are subject to the same review process as indicated in the previous section, *Procurement Activities*. In fact equipment loans that are not part of a Sponsored Award must be submitted as zero dollar purchase orders to ensure proper negotiation, marking, protection, insurance, and return of loaned equipment.

Restricted Party Screening

The purpose of restricted party screening (RPS) is to determine if any parties to University activities are currently subject to U.S. government restrictions making them either ineligible to receive or participate in exports or subjecting them to additional export licensing requirements. To this end, the University maintains a license with eCustoms for the use of Visual Compliance, a web-based screening service. In addition to screening user entries against all U.S. export and sanction program restriction or denial lists, Visual Compliance can screen against additional government lists (e.g., GSA non-procurement, FBI most wanted, and politically exposed persons). Visual Compliance can be provided to anyone on Grounds with a legitimate business need for the service at no additional charge, or OEC can perform the check and provide the results to requestors upon request.

Restricted party screening for export control purposes will be performed on the following parties:

- All non-UVA parties proposed to be part of an export (e.g. receiving party, end-user, consignee, shipper, or freight forwarder);
- All parties prior to their being added to a Technology Control Plan;

⁷⁶ The Health Insurance Portability and Accountability Act of 1996; P.L. 104-191; enacted August 21, 1996. The HIPAA Administrative Simplification Rules are located at 45 CFR Parts 160, 162 and 164.

⁷⁷ The Family Educational Rights and Privacy Act of 1974 (a.k.a. the Buckley Amendment) codified at 20 USC § 1232 with implementing regulations at 34 CFR Parts 99.

- Foreign parties to an international academic agreement;
- Foreign parties to a sponsored award or contract, including subcontractors;
- Parties to a foreign financial transaction;
- Foreign national employees as part of the University's internal review process for all I-129, *Petition for a Nonimmigrant Worker*, applications being submitted to the U.S. Customs and Immigration Service. (See related information).
- Foreign parties (and the organizations they are employed by) visiting UVA in an official capacity should be screened before arriving on Grounds.

When screening in Visual Compliance, it is essential that the screener complete the comment section to describe the reason for screening the entity or individual, in simple and consistent terms. Below are a few examples of search reasons to be entered on the comment line.

- I-129 Export Certification
- Outgoing Shipment
- Vendor Review
- SCPS Program Participants

All screenings should be set to Fuzzy Level 2. While this may result in more false positives, it is necessary as many foreign names and organizations are not translated consistently.

Any "red flags" identified during the restricted party screening must be resolved before proceeding with the planned export. Continuing compliance is an additional feature of the University's Visual Compliance subscription. This feature includes re-screening of all previously screened parties against updated lists with change notifications being emailed to the person who originally performed the screening as well as the UVA account administrator for Visual Compliance.

Should the status of an entity change such that they are no longer eligible to receive or have access to export controlled items or information or a new licensing requirement becomes applicable, the entity will immediately be blocked from any export activities until a license or other authorization is obtained, if that is an option under the specific terms of the restriction. Even when an option to apply for a license exists, the University may make a business decision not to pursue a license and to maintain the internal restrictions on participation and access.

Technology Control Plan

A Technology Control Plan is the formalization of the processes and procedures University project personnel will use to ensure that any subject items and information are not disclosed to unauthorized personnel or exported without any necessary export authorizations. The Office of Export Controls has created template TCPs (Appendix II and Appendix III) to serve as a starting point, with the intention that it be adapted first and foremost to comply with the specific U.S. regulatory requirements and secondly to accommodate the needs and structure of the University project or program.

TCP Development

It is the responsibility of the Principal Investigator or program leader, who is identified on the TCP as the “Responsible Person”, to develop, manage and enforce compliance with the terms of the TCP. The Office of Export Controls will assist with development and determine whether or not it is sufficient to adequately protect the subject items and information from unauthorized access and export. The TCP will include the following:

1. A commitment to export controls compliance;
2. Identification of the relevant export control categories and controlled technologies;
3. Identification of the project’s sponsor(s);
4. Identification and nationality of each individual participating in the project;
5. Physical and information security measures appropriate to the subject items and information;
6. Personnel screening measures; and
7. Instructions pertaining to disposition of subject items and information (hard copy and electronic) at the end of the project or program.

Security Measures

The physical and information security measures to prevent unauthorized access and export must be included in the TCP. Examples of security measures include, but are not limited to, the following:

- Compartmentalization. Project operation may be limited to laboratory areas that are physically shielded from access or observation by unauthorized individuals. Such areas must remain secured at all times when subject items or information are in use.
- Time Blocking. Project operation may be restricted to specific time blocks when access will be limited to authorized personnel. Unauthorized individuals shall not be permitted to observe project operations or have access to the space during this time.
- Marking. Export controlled information must be clearly identified and marked.
- Personnel Identification. Authorized individuals may be required to wear a badge, special card, or similar device indicating their permission to access project areas. Physical movement into and out of designated project area may be logged or otherwise monitored.
- Secure Storage.
 - Tangible items should be stored in controlled access rooms or storage devices that prevent visual disclosure as well as physical access. Access keys or cards may only be issued to authorized personnel.
 - Soft and hardcopy data, laboratory notebooks, reports, and other research materials should be stored in locked storage devices. Keys may only be issued to authorized personnel.

- Electronic Security.
 - Project computers, networks, and electronic files should be secured and monitored through User Ids, password controls, and encryption technology (128-bit or better). Database access should be managed via a Virtual Private Network.
 - Electronic communications (email, text and instant messaging) containing controlled information should be either explicitly prohibited or specifically addressed in the TCP procedures.
 - Verification IT security provisions by ISPRO or approved designees may be required at OEC's discretion.
- Project Communications. Discussions about the project must be limited to the individuals identified and authorized under the TCP and occur only in areas where unauthorized individuals are not present and cannot reasonably overhear. Discussions with non-UVA parties must occur only under signed agreements which fully respect non-U.S. person limitations for such disclosures.

Required Training

Before any individual may be added to a TCP and have access to items or information controlled and protected under a TCP, he/she must complete the initial training requirement, be informed of the procedures authorized under and receive a copy of the TCP, certify his or her agreement to comply with all security measures contained in the TCP, and be authorized by the Office of Export Controls. Training is provided by the OEC. Although training is required for anyone listed on the TCP, export controls training is available to anyone at the University free of charge from the Office of Export Controls or through the Collaborative Institutional Training Initiative (CITI), a contract vendor.

TCP Recertification

All TCP's must be recertified by the Responsible Person on an annual basis. OEC has established a schedule for the review of each TCP, and will contact the Responsible Person to begin the process of recertification. This process insures that TCPs for projects that are no longer active are terminated (*Note: TCP's can only be terminated if there are no export controlled materials in the possession of the any of the project members.*) Recertification also ensures that the project personnel and subject items/information lists are kept up to date, and that the project is still operating within the original parameters set forth in the original TCP.

Details of the recertification process should be logged in the OEC tracking log. Any TCP's that are terminated should be moved from the folder for active projects to the closed projects folder.

Export Authorization (Licensing)

University policy ([FIN-043](#)) authorizes the Office of Export Control staff and other Empowered Officials to submit license applications on behalf of the University; both BIS and DDTC require institutional authorization and individual access accounts in order to submit license application. Each individual foreign national whose participation requires a license must be specifically identified in the license and licenses are situation or case specific; open or generic licenses are not available. Similarly, export licenses for international shipments or transfers, including hand-carries, are limited to the specific parties and items identified and authorized on the license. It is important to note that a TCP, as described above, must be implemented for all projects when access or participation in the project would require foreign national licensing.

The Office of Export Controls, at the request and with the assistance of the principal investigator, will prepare and sign the necessary documentation for obtaining a license. The request should be submitted on the Export Assessment Request (Appendix V and available at <http://export.virginia.edu/sites/export.virginia.edu/files/Export-Assessment-20150701-distributed.pdf>). Alternatively, the shipper/exporter may follow the Step-By-Step Instructions for Exporters (Appendix VI and available at <http://export.virginia.edu/sites/export.virginia.edu/files/Instructions-for-Exporters.pdf>). The principal investigator, his/her department, and the School are responsible for all costs associated establishing and maintaining security as required under the TCP and all costs associated with project or program activities.

International Travel Reviews and Travel Related License Exceptions and Exemptions

Travel to destinations outside the U.S. with controlled items, including controlled information (e.g. UVA or third party proprietary or confidential, U.S. government restricted), may also implicate export control regulations. A license may be required depending on which items are taken, which countries are visited, the purpose of the trip, the specific individual or entity the traveler will be visiting or whether services are provided to a foreign person. It is important to note that presenting results at a scientific conference OUTSIDE of the U.S. may be an export (ITAR or EAR) or regulated service (sanction programs) depending on the material to be presented, openness of the conference, location, and sponsor(s) and in some cases may require a license; this is particularly true in the case of conferences and other activities that are held in sanctioned countries or sponsored by restricted parties. The OEC can determine whether, for those UVA faculty, staff, students or others traveling internationally on University business and/or with University-owned property, their travels will invoke U.S. export controls or sanction programs, and whether they may need a license to proceed and, if so, whether or not a license exception (EAR) or exemption (ITAR) is available to overcome the requirement.

Reviews of international travel on University business

- UVA faculty, staff, students or others traveling on University business or with University-owned property should contact the Office of Export Controls well in advance of any planned international travel. This includes personal trips where University-owned property is taken.
 - If traveler is going to a country or region subject to comprehensive sanctions by the US Government (Iran, North Korea, Cuba, Syria, the Republic of Sudan, and the Crimean region of Ukraine), the traveler should complete the Sanctioned Country Review Request form (Appendix VII and available at <http://export.virginia.edu/international-travel>). Other countries are subject to more limited sanctions; for a complete list of current country-based sanction programs see http://www.pmdtdc.state.gov/embargoed_countries/index.html.
 - If the traveler is taking University-owned items, including UVA or third-party proprietary, confidential or U.S. government restricted information, UVA-owned intellectual property or UVA-owned equipment, the Temporary Export Request Form should be completed by the traveler and returned to OEC for review. This form may be accessed on the OEC website at <http://export.virginia.edu/international-travel>.

License Exceptions and Exemptions

A License Exception⁷⁸ may be available for temporary exports of EAR-controlled items, technology, or software if the individual travelling outside the U.S. can certify that he or she:

1. will ship or hand-carry the items, technology, or software for University business only;
2. will return or certify the destruction of the items, technology, or software within 12 months of leaving the U.S.;
3. will keep the items, technology, or software within his or her effective control;
4. will take necessary security precautions to protect against the unauthorized export of the technology; and
5. will not ship or hand-carry the items, technology, or software to a Iran, Syria, Cuba, North Korea, or Sudan⁷⁹ without first consulting with the Office of Export Controls.

A License Exemption⁸⁰ may be available for ITAR controlled technical data transmitted outside the U.S., in certain limited situations. The OEC will assess the availability of exemptions on a case-by-case basis.

Please note that other exceptions or exemptions may be available.

Any individual intending to travel or transmit export controlled items, technical data (ITAR) or technology (EAR) outside the U.S. must first consult with the Office of Export Controls. The Office of Export Controls has the final authority on the applicability of the proposed license exception or exemptions and may consult with counsel if necessary in making that determination. All exceptions or

⁷⁸ EAR § 740.1

⁷⁹ This list is current as of the date of this writing, but is subject to change. A current list is available at EAR § 742.1.

⁸⁰ ITAR § 125.4

exemptions must be documented and the record maintained for at least five years⁸¹ from the date of export.

Training & Information

Providing general awareness information and training is the foundation of a successful export compliance program. Well-informed personnel minimize the likelihood that inadvertent violations of the law will occur. The greatest risk of non-compliance with export laws and regulations occurs during casual conversations in person, on the telephone, or via e-mail. The way to prevent these types of violations is through awareness and training.

The OEC collaborates and coordinates with academic and central units to offer area or function specific training on an as needed basis.

General Awareness

The Office of Export Controls (OEC) is responsible for increasing general awareness on Grounds of export controls and sanction program requirements. OEC employs the following procedures to increase general awareness of export controls and sanction program requirements:

- Maintaining current content on the export website: <http://export.virginia.edu/>.
- General awareness information and contact information for the Office of Export Controls is provided to new employees via email within their first month of employment or within the first month after they activate their University email account.
- An annual reminder email from executive leadership is distributed to all University employees. These emails provide topical information and include contact information for the Office of Export Controls, including a link to the OEC website where faculty, staff and students may access additional information on export controls.
- The OEC offers generalized and tailored export controls presentations at department meetings, informational sessions open to the entire University, to lab groups and for any other gathering where a brief talk about export controls would be useful to the audience.
- Online export controls training is accessible from the OEC website and is available to all University community members.

⁸¹ ITAR § 125.6 and EAR § 762

Personnel Listed on a TCP

All personnel listed on a TCP must complete initial training prior to being authorized for access to items and information subject to the TCP. This training is customized by OEC staff to fit the specific needs and scope of the project and the terms of TCP.

Project or Program Specific

The Office of Export Controls will provide area, function, project or program specific training to address identified needs or upon request. Individuals wishing to request training should contact the Office of Export Controls directly at 434-982-5725 or export-controls@virginia.edu.

Export Control Certification for I-129 Foreign National Employee Petition

As part of the I-129 Foreign National Employee Petition/Petition for a Nonimmigrant Worker application, the U.S. Customs and Immigration Service requires that UVA review new foreign national employees that are applying for an H-1B, H-1B1, L-1 or O-1A visa to certify that it has reviewed the U.S. export control regulations and has determined that (a) an export license is not required to release technology to the prospective employee; or (b) if an export license is required, it will not release controlled technology to the foreign national employee until it has received a license or other authorization to do so. This certification is mandatory. More information may be found on the USCIS website by going here: <http://www.uscis.gov/i-129>.

The UVA Human Resources Compliance and Immigration Services (CIS) group has information on their website, such as an H-1B visa packet (see <http://www.hr.virginia.edu/forms/all-forms/cis-forms/>). CIS requires an advisory letter from OEC indicating the appropriate certification as part of the H-1B packet submitted by the sponsoring unit. Units may obtain an advisory letter by submitting a completed I-129 Export Certification Request Form (Appendix IV and available at <http://export.virginia.edu/i-129-export-certification>) to the OEC. Normal processing time is 2 business days.

Recordkeeping

The University's policy is to maintain export-related records on a project basis. Unless otherwise provided for, all records indicated herein shall be maintained consistent with the University record retention policy, and shall be retained for no less than five years after the project's TCP termination date, last date of export, license termination date, or other time-point identified in the applicable regulations. Should a discrepancy exist between the University's retention policy and an applicable export regulation, documents will be retained for the longer period.

A copy of the approved TCP will be maintained by the Office of Export Controls. Documentation associated with OEC reviews, technology assessments, agency submissions (e.g. commodity classification, commodity jurisdiction, export authorization, and advisory opinion requests) and other processes will be maintained by the OCE. Records associated with physical exports shall be retained by the University office or unit initiating the shipment (i.e. performing the export).

Under the ITAR, when an exemption is claimed for the export of unclassified technical data, the exporter must maintain a record of each such export. The business record should include the following information: a description of the unclassified technical data, the name of the recipient end-user, the date and time of the export, and the method of transmission⁸². Note that this section of the ITAR does not specify a required retention period.

BIS has identified specific record-keeping requirements in the EAR⁸³. Generally, records required to be kept by EAR must be kept for a period of five years from the project's termination date. However, if BIS or any other government agency makes a request for such records following a voluntary self-disclosure, the records must be maintained until the agency concerned provides written authorization otherwise.

Internal Monitoring

In order to maintain the University's export compliance program and ensure consistent adherence to U.S. export laws and regulations, the OEC may conduct internal reviews of TCPs and certain projects as deemed appropriate. The purpose of such reviews is to identify (1) possible violations; (2) deficiencies in training, procedures, etc. that can be corrected or improved; and (3) assure that projects remain in compliance when there are changes to the applicable regulations or sponsor terms and conditions.

Violations

Since September 11, 2001, U.S. government agencies have dramatically increased the investigation into and successful prosecution of export control regulation violations. The penalties for these violations can be very severe, may lead to civil or administrative proceedings as well as criminal prosecution. Potential consequences for the University include fines, debarment and imposition of mandated corrective actions. Personal liability may be imposed upon the individual(s) charged with committing the violation and the penalties include monetary fines, imprisonment, or both, depending upon whether the violation was willful, grossly negligent or inadvertent. The University is committed to fulfilling all mandatory disclosure requirements. In addition to mandatory disclosure requirements, government agencies assign great weight to voluntary self-disclosures of violations as a mitigating factor. The University makes decisions regarding voluntary disclosure on a case-by-case basis.

⁸² ITAR § 123.26

⁸³ EAR § 762.6

Any individual who suspects a violation has occurred should immediately notify the Office of Export Controls⁸⁴. The University takes all such reports seriously; in response, OEC will consult with the Office of General Counsel (OGC) who will determine if further investigation under privilege is warranted. If the initial review determines that the allegation or concern is not actually related to export control, is not a violation, or lacks merit, OEC will inform the reporter and, if appropriate, internally transfer the report to the proper office for further review and resolution. If the initial review supports the allegation, OGC will direct OEC to conduct a comprehensive internal review and the University may submit an initial notification about the suspected violation to the cognizant government agency⁸⁵. The internal review will include gathering information about the circumstances, personnel, items, and communications involved and performing a detailed regulatory assessment. Once the internal review is complete, OEC staff will prepare a final report detailing their findings for OGC. OEC and will collaborate with OGC and, if appropriate, the Export Controls Advisory Committee to develop specific recommendations to strengthen the University's internal controls to prevent similar violations in the future for consideration by University leadership. If an initial disclosure was made to the cognizant regulatory agency, a final narrative report detailing the following will be submitted:

1. the project's description and background;
2. a description of the suspected violation;
3. which items and controlled categories were involved;
4. which dates the violations occurred on;
5. which countries were involved;
6. who was involved and their citizenships;
7. an explanation of why the violation occurred; and
8. any corrective actions taken; and
9. affirming the University's ongoing commitment to export controls compliance.

Once the initial notification and/or final narrative have been sent, OEC will follow the government agency's instructions.

⁸⁴ See responsibilities of the responsibilities assigned to University employees, trainees and students in University of Virginia Policy: *Managing Exports of Controlled Technology to Foreign Persons and Destinations in Support of Research and Scholarship* (Policy ID: FIN-043).

⁸⁵ EAR § 764.5 and ITAR § 127.12(c)

APPENDIX I: UVA POLICY

- [Search UVA](http://www.virginia.edu/search/)(<http://www.virginia.edu/search/>)
- [Maps](http://www.virginia.edu/Map)(<http://www.virginia.edu/Map>)
- [Calendar](http://calendar.virginia.edu)(<http://calendar.virginia.edu>)
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UNIVERSITY
of VIRGINIA

FIN-043: Managing Export and Sanction Compliance in Support of University Activities

Date: 11/29/2011 **Status:** Final

Last Revised: 08/08/2017

Policy Type: University

Contact Office: [Export Controls \(Office of\)](http://export.virginia.edu/) (<http://export.virginia.edu/>)

Oversight Executive: Vice President for Finance, Vice Provost for Research , Executive Vice President and Chief Operating Officer

Applies To: Academic Division, the Medical Center, and the College at Wise.

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Reason for Policy:

The conduct of certain University research, teaching, service and patient care activities is subject to control under Federal export control or sanction regulations.

Controls may be applicable due to the use or generation of controlled technology or the conduct of controlled activities which may occur inside or outside the U.S.

This policy serves two purposes: 1) a formal expression of the University's commitment to compliance with U.S. export control and sanction requirements; and 2) describes the general framework the University has established to support that commitment.

Definition of Terms in Statement:

- **Controlled Activity:**

An activity involving the export of controlled technology or that due to its nature or the parties involved is otherwise subject to U.S. government export controls or sanctions requirements.

- **Controlled Technology:**

For purposes of this policy, this term includes any item, component, material, software, source code, object code, or other commodity specifically identified on the Commerce Control List [Part 774 of the Export Administration Regulations (EAR)]; U.S. Munitions List [Part 121 of the International Traffic in Arms Regulations (ITAR)]; or other similar list maintained by the U.S. government. This term also includes information to the extent required in the applicable regulations.

- **Export and "Deemed Export":**

An export is the permanent or temporary shipment or transmission of controlled technology out of the U.S. The release of controlled information to a foreign national in the U.S. is deemed to be an export to the individual's home country, also known as a "deemed export."

- **Export Control Regulations (Export Controls):**

Specific government imposed restrictions and limitations on the dissemination of controlled technology and other goods (e.g., tissue samples, agricultural products, plants and animals) or services to foreign persons or destinations. This includes the Export Administration Regulations (EAR); the International Traffic in Arms Regulations (ITAR); Assistance to Foreign Atomic Energy Activities regulations; and any other U.S. government regulations that similarly govern exports and are applicable to University activities.

- **Foreign Person:**

A natural person who is not a U.S. citizen, lawful permanent resident (green card holder) or protected individual (formally granted asylum or refugee status). It also means 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 (e.g. diplomatic missions). An equivalent term used by the Department of Commerce is "foreign national".

- **Sanction Regulations (Sanctions):**

Includes all of the embargoes and trade sanction regulations administered by the Office of Foreign Assets Control (OFAC), U.S. Department of the Treasury. Sanctions programs are typically country-based (e.g., those imposed against the governments of Iran, Cuba, and North Korea) or list-based (e.g., Counter Terrorism and Counter Narcotics).

- **Technology Control Plan (TCP):**

A document that sets forth the specific physical, electronic and procedural controls that will be taken to prevent unauthorized access to or export of controlled technology. (A template TCP is available on the forms page of the Office of Export Controls website.)

Policy Statement:

The University discourages any restriction on the ability of its students, faculty and staff to communicate unclassified information to any individuals, including foreign persons, engaged in research at the University or in the international community of scholars. However, the University recognizes that in some instances restrictions on access, dissemination/publication, or services may be necessary to comply with Federal regulatory requirements. The University does not prohibit acceptance of dissemination/publication restrictions or the conduct of controlled activities. However, those wishing to engage in such activities must assist the University in preventing regulatory violations. The University has determined that projects proposing to use or produce controlled technology or that involve the provision or receipt of regulated services require special review and authorization to ensure that they will not interfere with the University's mission.

1. Activities Subject to U.S. Export Controls:

The University shall decide whether to sponsor or support a particular controlled activity on its own merits. Among the factors to be considered in determining whether or not to proceed with a particular activity are its academic merit, the compatibility with the mission of the University, the nature of the restrictions, and the contribution of the activity to the benefit of humanity. The review will also consider whether adequate time exists to assess the activity and, if necessary, obtain licenses or other required authorizations.

The University will only go forward with a controlled activity once the necessary export license or other authorization has been obtained from the appropriate regulatory agency.

The University shall not engage in business relationships with entities identified on any restriction list nor shall it engage in activities subject to sanctions, without the explicit authorization of the Office of Export Controls.

Foreign nationals shall be allowed access to controlled technology and may participate in controlled activities to the extent necessary to perform their assigned duties provided such access and participation is permitted by the regulations or authorized in an export license or other authorization issued by the appropriate regulatory agency.

Faculty members wishing to use (or authorize students or staff to use) controlled technology or work on a project intended to generate controlled technology, regardless of funding source, must develop a Technology Control Plan (TCP) and have it approved by the Office of Export Controls. (Note: A TCP may not be required if the project only involves EAR-controlled items, does not involve controlled source code or proprietary technical information, and the work will be conducted exclusively in the U.S.)

Faculty members wishing to engage in research subject to publication/dissemination restrictions or approval requirements must obtain the approval of their department chair, dean and the Vice President for Research (or their respective designees) and receive clearance from the Office of Export Controls before the Office of Sponsored Programs may accept the restriction and finalize the research funding agreement. Approval is to be gained serially and each position must support the request for it to move forward in the process. No procurement, grant, contract or other agreement to conduct controlled activities, or to produce or obtain controlled technology may be finalized until the TCP has been approved and the required University authorizations have been obtained.

International travel with controlled technology is an export and subject to this policy. Controlled technology includes, but is not limited to, University laptops, cell phones, and other devices as well as technical information subject to publication or dissemination restrictions, which may include research results.

2. Thesis or Dissertation Submissions:

A thesis or dissertation submitted in fulfillment of a degree program requirement must not contain information that is subject to export control regulations. Should a student choose to participate in an export controlled activity, any resulting information may be used in a thesis or dissertation only after approved for unlimited public release or dissemination by the appropriate regulatory agency. Students wishing to include controlled technology in their thesis or dissertation will be required to work with their graduate advisor to develop a TCP or modify an existing approved TCP to detail how all degree requirements will be met while preventing unauthorized exports of controlled

technology. This new or revised TCP must be submitted by the student's graduate advisor to the Office of Export Controls for review and approval. Following approval of the TCP by the Office of Export Control, the graduate advisor must submit a request that the student be allowed to prepare a thesis or dissertation containing export controlled technology to the department chair and the dean of the student's degree program and receive their support. The Vice President for Research (or designee) must give final approval of any plan to include controlled technology in a student thesis or dissertation.

3. **Promotion and Tenure Review:**

Decisions regarding the inclusion or exclusion of export controlled activities as part of the promotion and tenure review process shall be determined by the faculty member's academic department, school, and when applicable, the Provost. However, controlled technology may not be submitted for consideration of promotion and tenure unless and until one of the following has occurred:

- a. the information is approved for unlimited public release or dissemination by the appropriate regulatory agency; or
- b. the Office of Export Controls has performed an export assessment, provided any necessary training to individuals requiring access to the controlled technology, and documented that one or more of the following permits all proposed exports associated with the promotion and tenure review process:
 - i. that an export license is not required;
 - ii. a valid license exception exists and any conditions are fulfilled; or
 - iii. an export license or other authorization has been obtained by the University and that any attached provisos or conditions can be met.

4. **Sanctioned Countries:**

Certain countries are subject to a comprehensive or near comprehensive program of embargoes and trade sanctions by the U.S. government. The broad scope and applicability of these programs necessitates that all University activities that will be conducted in, involve the participation of parties located in, or benefit a sanctioned country be reviewed and authorized by the Office of Export Controls. The following are examples of activities that are subject to control under these regulations:

- Import of goods originating in a sanctioned country;
- Direct or indirect export of goods, including both controlled technology and items that are not specifically listed on the CCL or USML (e.g. research samples, basic lab and office supplies) to a sanctioned country;
- University travel to a sanctioned country;
- Provision of a service of value (e.g. research, testing and advisory/consulting services) to a party in a sanctioned country; and
- Obtaining services from a party located in a sanctioned country.

The countries currently subject to a comprehensive or near comprehensive program of sanctions include the following: Cuba, Iran, North Korea, Sudan and Syria. A near comprehensive program of sanctions also applies to the Crimean region of Ukraine.

5. Responsibilities:

The **Director of Finance Outreach and Compliance** is responsible for:

- Providing general oversight of the export controls function (Office of Export Controls) and the direct supervision of the export controls staff;
- Serving as an empowered official as defined in §120.25 of the ITAR; and
- Signing and submitting export compliance documents to Federal agencies and other parties on behalf of the institution.

*The role of the **Office of Export Controls** is to facilitate the University's research, teaching, service and patient care mission by administering a program of activities to support this policy; to that end, the **Office of Export Controls** is responsible for:*

- *Developing and delivering outreach and training materials for University faculty, staff, students and trainees to increase export control and sanctions awareness;*
- *Providing tools to the University community to assist in the identification and management of export control and sanctions issues;*
- *Acting as the University's principal point of contact for University faculty, staff, students and trainees as well as agencies with regulatory or enforcement authority under export control and sanctions regulations;*
- *Preparing and submitting requests for export or sanctions authorization or regulatory clarifications to Federal agencies on behalf of the institution as necessary and appropriate to support University activities;*
- *Establishing and administering forms, procedures and processes to facilitate compliance with this policy;*
- *Advising individuals with Institutional Signature authority on export control and sanctions issues related to contracts ([FIN-036](http://uvapolicy.virginia.edu/policy/FIN-036) (<http://uvapolicy.virginia.edu/policy/FIN-036>)) and academic program agreements ([FIN-035](http://uvapolicy.virginia.edu/policy/FIN-035) (<http://uvapolicy.virginia.edu/policy/FIN-035>));*
- *Managing the University's registrations and online accounts with regulatory agencies; and*
- *Performing or supporting the conduct of compliance monitoring, risk assessments, and investigations as directed by the Director of Finance Outreach and Compliance, the Office of University Counsel or Internal Audit.*

Faculty members are responsible for:

- *Consulting with and providing assistance to the Office of Export Controls to ensure that:*

- *controlled technology, regardless of whether it is instructional or research technology, used or produced by them or under their supervision is categorized correctly under export control regulations;*
- *controlled activities are identified, approved, and licensed if necessary; and*
- *all exports of controlled technology, both physical and deemed, including those associated with international travel are conducted in compliance with applicable export control, sanctions, census, and customs requirements;*
- *Knowing and complying with the terms and conditions of their funding awards and other agreements, including export controls, sanctions, and limitations on dissemination/publication of research data and results;*
- *Assisting the University in preventing unauthorized exports and/or sanctions violations and applying for government licenses where appropriate;*
- *When applicable, developing a technology control plan, submitting the plan for approval, and following the requirements of the approved plan;*
- *Seeking advice from the Office of Export Controls when acquiring proprietary (non-public) information or items via a mechanism other than procurement/purchase; and*
- *Ensuring that staff, students, trainees, and volunteers under their supervision, and visitors are made aware of any applicable requirements (e.g., University, regulatory, or sponsor imposed) and receive adequate training in how to conduct their activities in compliance with those requirements.*

All University faculty, staff, trainees, and volunteers are responsible for:

- *Knowing and complying with any requirements applicable to their activities;*
- *Seeking assistance from the Office of Export Controls prior to performing any controlled activities (examples include temporary exports associated with international travel, international shipping, and deemed exports); and*
- *Reporting any suspected non-compliance with export controls, sanctions, or this policy to the Office of Export Controls.*

6. Compliance with Policy:

Failure to comply with the requirements of this policy may result in violations of federal export control laws and regulations for which substantial individual and/or institutional penalties may be assessed; penalties may be civil, criminal, or both. In addition, failure to comply with the requirements of this policy may result in disciplinary action up to and including termination or expulsion in accordance with relevant University policies.

Questions about this policy should be directed to the Contact Office.

Procedures:

Export control procedures, forms and templates are posted on the [Office of Export Controls](http://export.virginia.edu/)(<http://export.virginia.edu/>) website.

- [Information Transfers](http://export.virginia.edu/information-transfers)(<http://export.virginia.edu/information-transfers>)
- [Technology Control Plan](http://export.virginia.edu/technology-control-plan)(<http://export.virginia.edu/technology-control-plan>)
- [I-129 Certification](http://export.virginia.edu/i-129-export-certification)(<http://export.virginia.edu/i-129-export-certification>)
- [Shipping](http://export.virginia.edu/international-shipping)(<http://export.virginia.edu/international-shipping>)
- [Travel](http://export.virginia.edu/international-travel)(<http://export.virginia.edu/international-travel>)
- [Procurement](http://export.virginia.edu/procurement)(<http://export.virginia.edu/procurement>)

Related Information:

General information about U.S. export control regulations as well as links to regulations and regulatory agencies are available on the [Office of Export Controls](http://export.virginia.edu/) (<http://export.virginia.edu/>) website.

Information about export controls training is available on the Office of Export Controls - Restricted Parties. This includes information related to the mandatory training required for all personnel listed on a Technology Control Plan.

Information on Restricted Party Screening (RPS) can be found on the Office of Export Controls [Restricted Parties](http://export.virginia.edu/restricted-party-screening-export-control-compliance)(<http://export.virginia.edu/restricted-party-screening-export-control-compliance>) web site. This includes access to the restriction lists issued by various U.S. government agencies that must be consulted prior to any export as well as information about the University's contracted web-based screening service/tool.

Human Resources, Compliance and Immigration Services, [Visa Application Materials](http://www.hr.virginia.edu/forms/all-forms/cis-forms/)(<http://www.hr.virginia.edu/forms/all-forms/cis-forms/>) (H-1B and O-1 packets contain instructions on how to obtain the required export certification).

Major Category: Finance and Business Operations

Category Cross Reference: Research Administration

Next Scheduled Review: 08/08/2020

Approved by, Date: Executive Vice President and Chief Operating Officer, 11/29/2011

Revision History: Updated 8/8/17, 7/1/16, 5/5/15, 4/4/2013, 3/13/2012.

Supersedes (previous policy):

FIN-043, Managing Exports of Controlled Technology to Foreign Persons and Destinations in Support of Research and Scholarship

APPENDIX II: TEMPLATE TECHNOLOGY CONTROL PLAN

Technology Control Plan

Statement of Institutional Commitment

The University of Virginia is committed to complying with applicable export control, embargo and trade sanction laws and regulations in all university activities. This commitment is articulated in University policy FIN-043 *Managing Exports of Controlled Technology to Foreign Persons and Destinations in Support of Research and Scholarship* and the associated Export Control Management Program. This Technology Control Plan (TCP) identifies the specific measures that will be taken by Responsible Person, a UVA executive or faculty member unless prior approval is obtained from the Office of Export Controls (OEC), and all project personnel to ensure compliance with those requirements.

Responsible Person

Department

Covered Items and Information

The following items or information have been determined to be subject to export control requirements which require that the University place limitations on who may have access to or use the items or information, hereinafter called *Covered Items and Information*. A variety of factors must be taken into account to determine who may have access to *Covered Items and Information*; for this reason, only individuals who are identified below and have been approved by the Office of Export Controls may have access.

A list of the *Covered Items and Information* that will be protected under this TCP is provided in the table below:

#	Name or Description	Type	Jurisdiction	Classification*
1		Select One	Select One	
2		Select One	Select One	
3		Select One	Select One	
4		Select One	Select One	
5		Select One	Select One	
6		Select One	Select One	
7		Select One	Select One	
8		Select One	Select One	

** Provide the applicable US Munitions List category and subparagraph if subject to the ITAR, the Export Control Classification Number (ECCN) if subject to the EAR, or the paragraph and subparagraph if subject to the DoE nuclear regulations.*

Note: If more than eight entries are needed, additional space is provided on the last page of this document.

As a result of this determination, the Responsible Person, identified above, has worked with OEC to develop this TCP to ensure that *Covered Items and Information* are adequately protected from disclosure to foreign persons without an approved license, valid license exception, or other written government approval.

Security Overview

“One Lock” is the principal of securing items and information by using at least one mechanism to prevent access by unauthorized persons. This is the minimum requirement for safeguarding the *Covered Items and Information*, listed above. Methods for obtaining at least “one lock” are described in the physical and information security sections below. Project personnel are responsible for safeguarding *Covered Items and Information* at all times by having “one lock”; this includes preventing visual access if such access could provide technical information about an item.

Physical Security

Work Area. Locations where work is to be performed with *Covered Items and Information* shall have restricted access. Restricted access is defined as having a clearly defined perimeter, which is adequate to protect against oral, in the case of discussions involving *Covered Information*, and visual disclosure of the *Covered Items or Information*. Physical barriers are strongly recommended but are not required as long as oral and visual disclosure can be prevented. Project personnel within the Restricted Area shall be responsible for challenging all persons who may lack appropriate access authority.

Specify the location(s) where work will be performed with the covered items and information.

Storage. All export *Covered Items and Information* (hard copies) will be secured in a locked room, storage device or container when not in the personal possession of approved project personnel. Keys or combinations to storage containers used to secure *Covered Items and Information* will only be issued to the approved project personnel authorized on this TCP. Electronic devices containing *Covered Items and Information* must be physically secured or in the possession of an approved user at all times. *Note: Security of electronic files should be addressed in the Information Security section, below, rather than here.*

Specify the location(s) where the covered items and information (hard copies) will be stored when not in use.

Marking. Whenever possible *Covered Items and Information* should be clearly marked with an appropriate warning, for example: *WARNING - This contains ITAR controlled technical data. Access or dissemination in violation of the ITAR may result in severe administrative (institutional) and criminal (individual) penalties. Contact the UVA Office of Export Controls (x2-5725 or export-controls@virginia.edu) if you find this item/document unsecured.* When physical space is limited, an abbreviated warning may be used, for example: *Export Controlled - ITAR.* Watermarks, headers or footers may be used to mark electronic documents.

Describe the markings or warnings that will be placed on covered items and information or explain why they are not practical or possible.

Information Security

Computer. All computers used to access or store *Covered Items and Information* must run Microsoft Windows XP, Windows 7, Vista, Mac OS X, or Linux with the latest security service pack and patches; similar requirements apply to servers and other devices. Generally speaking only approved project personnel should be designated users of computers and servers used to access or store *Covered Items and Information* and a valid account and password must be provided to gain access. Only approved project personnel retain this login information and no other login accounts are created. Both failed and successful logins are logged internally. Firewalls are installed on all computers to secure and monitor network access to/from the computer. If the firewall must be disabled to allow proper data collection, wired and wireless internet connections must be disabled. *Note: Administrative access by central, school or departmental IT personnel must be limited to US persons (citizens, permanent residents or protected individuals).*

List all IT resources (computers, servers, systems, etc.) that will be used to store or process Covered Items and Information.

List all individuals with administrative access to IT resources who are not Project Personnel.

Describe any project specific security methods, devices or procedures that will be employed to assure computer security.

Data Storage and Transmission. External portable hard drives or flash drives, rather than shared central servers, are recommended for data storage provided physical storage is employed when they are not in use. Drives and devices used to store *Covered Items and Information* must be password protected or encrypted. For data storage on drives with network access or backup servers, the *Covered Items and Information* must be secured by encryption and password protection. Email may not be used for the transfer of *Covered Items or Information* subject to the ITAR or EAR. A secure file transfer method (SSH/SCP/SFTP/SSL) or mailing a disk or flash drive are preferred methods to transfer *Covered Items and Information* in electronic format. *Note: Emailing Covered Items or Information subject to control regimes other than the EAR and ITAR will be considered on a case-by-case basis, but is not authorized unless specified below; when authorized to use email, the sender's is responsible for ensuring that the recipient is physically present in the US at the time of transfer.*

Describe any project specific security methods or procedures that will be employed for data storage and transmission.

Supercomputing and Cloud Computing. Unless specified below no supercomputing or cloud computing facilities or services will be used to store, process or transfer *Covered Items or Information*.

Describe any intended use of supercomputing or cloud computing facilities or services.

Export Control Risks

Award Terms. When the terms of an award contain explicit export control requirements; foreign national restrictions; or require that the sponsor's approval be obtained prior to publication or dissemination of research results, UVA will typically treat the project as subject to US export controls. In such cases, the research results must be identified as *Covered Items and Information*, above.

Export Control Risks (cont.)

Nondisclosure/Confidentiality. In most cases, proprietary information provided to UVA under confidentiality conditions will be presumed to be subject to US export controls and may not be shared with foreign nationals without the approval of OEC.

Student Involvement. Student participation on projects that require the sponsor's permission to publish or where results are subject to US export controls must be limited to work which is not required for the completion of their degree or program without the explicit approval of the student's Department Chair, Dean's Office and the Office of the Vice President for Research. Students may have access to background proprietary information only to the extent permitted by the applicable export control regulations.

Project Specific Export Authorizations

Specify any intended exports of *Covered Items and Information* in the section below. Inclusion in this section does NOT, in and of itself, constitute approval to export; it is rather an indication to OEC that an export license or other authorization may be needed. This prohibition on exports includes, but is not limited to, exports to foreign nationals in the US, as well as the permanent or temporary shipment or transfer of *Covered Items and Information* out of the US.

Specify any planned exports of *Covered Items and Information*.

Special Notes

Use the space below to provide any project specific notes or clarifications.

List any other project specific requirements or conditions in the space provided.

Project Personnel Requirements

Identification: All project personnel needing access to *Covered Items and Information* must be identified in *Appendix 1: Personnel List* and sign an *Acknowledgement of Responsibilities*. The Responsible Person may request the addition or removal of project personnel at any time by submitting a *Revised TCP* to the OEC (export-controls@virginia.edu).

Training. All project personnel are required to complete the University's export control training program prior to having access to *Covered Items and Information* or participating in any export controlled aspect of this project. Annual refresher training is required for all project personnel. As part of training, project personnel are made aware of what constitutes an export, their responsibilities to prevent both active and inadvertent disclosures of *Covered Items and Information*, and of the criminal and civil penalties (including prison sentences of up to 10 years and fines of up to \$1M per violation) for failure to comply with US export control laws.

Screening. The OEC will screen all project personnel against the applicable lists of restricted parties and will determine licensing requirements based on their country(ies) of citizenship, nationality, or permanent residence. The Responsible Person shall not allow project personnel access to *Covered Items and Information* until the individual has signed *Attachment A*, completed the required training, and been authorized by the OEC. Foreign nationals will only be authorized by OEC once any license requirements have been fulfilled through documentation of an applicable exemption or license exception, or by receipt of an approved export license.

Recordkeeping

US export control regulations require retention of records associated with all exports, use of license exceptions, and certain other activities. The Responsible Party or Department shall be responsible for keeping records for the required five years from the date of the last related activity or longer if necessary to comply with regulatory requirements or the terms and conditions of the award.

End of Project Requirements

Upon completion of this project all *Covered Items and Information* must be disposed of in accordance with applicable sponsor terms and US export control requirements. Hard copies will be disposed of by cross-cut shredding, incineration or return to the provider; an export license or other authorization may be required for foreign providers. Electronic files will be destroyed by using current "wiping" software. Contact OEC or your department information technology/security administrator for information on effective solutions for wiping. Hardware and equipment can be disposed of properly by contacting OEC; no *Covered Items and Information* may be surplussed without prior approval of OEC. This TCP must be maintained as long as *Covered Items and Information* are retained by UVA.

Associated Agreements

It is important that the OEC be able to link this TCP to any associated sponsored programs and other agreements to assure compliance with their terms and conditions. List all agreements, both funded and unfunded, associated with the acquisition and use of the Covered Items and Information in the table below:

#	Title or Description	Sponsor or Other Party	Type of Agreement	IT Security Clause (if any)	UVA Project-Award #
1			Select One		
2			Select One		
3			Select One		
4			Select One		
5			Select One		
6			Select One		
7			Select One		

Internal Notification & Assessment

Notification. The Responsible Person shall notify OEC (1) prior to adding new personnel; (2) when the scope of the project changes; (3) to request modifications to the approved TCP; and (4) when there is a change in funding, or in the award terms or conditions. The Department shall notify the OEC if (1) the Responsible Person resigns, retires or otherwise ends their employment at UVA; (2) if there is a change in the Principal Investigator on a sponsored award associated with this TCP; or (3) it becomes aware of any deviations from the requirements of this TCP.

Re-Certification. The Responsible Person shall certify annually, or at any time upon the request of OEC, to the following: 1) the accuracy of the TCP or if needed provide any necessary updates; 2) that all activities involving *Covered Items and Information* are being conducted in compliance with the approved TCP; 3) that all personnel have completed any required training; and 4) the current status of the project, i.e. completed or ongoing, which necessitated the development of the TCP. Failure to comply with requests for re-certification in a timely manner will result in revocation of approval and notification of the appropriate Department Chair, Dean, and Office of the VP for Research or Provost, as appropriate. Failure to comply with re-certification requirements or with the terms of the TCP may also result in denial of access to sponsored funds for work involving *Covered Items and Information* and may constitute a violation of US export controls.

Assessment. The Responsible Person and Department agree to cooperate fully with any compliance checks initiated by the OEC. Checks may be conducted for cause or as part of a random assessment process.

Submitted By: Date: Signature:

If submitted via e-mail from the Responsible Person's UVA account a signature is not required

OEC Approval By: Date: Signature:

OEC Assigned TCP #

Appendix 1 (required)
Personnel List

No.	Full Name	US Status	Country(ies) of Citizenship/Residency <i>(only required for Non-Immigrants)</i>
1		Select One	
2		Select One	
3		Select One	
4		Select One	
5		Select One	
6		Select One	
7		Select One	
8		Select One	
9		Select One	
10		Select One	
11		Select One	
12		Select One	
13		Select One	
14		Select One	
15		Select One	
16		Select One	
17		Select One	
18		Select One	
19		Select One	
20		Select One	

Appendix 2 (optional)
Additional Covered Items and Information

#	Name or Description	Type	Jurisdiction	Classification *
9		Select One	Select One	
10		Select One	Select One	
11		Select One	Select One	
12		Select One	Select One	
13		Select One	Select One	
14		Select One	Select One	
15		Select One	Select One	
16		Select One	Select One	
17		Select One	Select One	
18		Select One	Select One	
19		Select One	Select One	
20		Select One	Select One	
21		Select One	Select One	
22		Select One	Select One	
23		Select One	Select One	
24		Select One	Select One	
25		Select One	Select One	
26		Select One	Select One	
27		Select One	Select One	
28		Select One	Select One	
29		Select One	Select One	
30		Select One	Select One	

Attachment A:
Acknowledgement of Responsibilities for

TCP No.

By my signature below I acknowledge the following:

1. I have been provided a copy of the Technology Control Plan (TCP), have read and understand its provisions, and intend to abide by its terms and conditions including, but not limited to, only permitting project personnel who have been authorized by the Office of Export Controls (OEC) to access *Covered Items and Information*.
2. I have completed or will complete prior to accessing any *Covered Items and Information* the required export control training program specified by the OEC and agree to complete required refresher training for as long as I have access to *Covered Items and Information*.
3. I understand that I can be held personally responsible for any unlawful disclosures or exports, including transfers to foreign nationals in the United States, of *Covered Items or Information*. I further understand that individual per violation fines and penalties of up to \$1,000,000 and 20 years imprisonment are possible for violations of US export control laws.
4. I understand that my obligation to protect *Covered Items and Information* continues beyond the end of my participation on this project and my affiliation with the University of Virginia.
5. I understand that if I have questions or concerns regarding the content and implementation of this TCP or about US export control requirements that I should immediately contact the OEC (x2-5725 or export-controls@virginia.edu) for assistance.

and certify that the personal information provided below is accurate and complete.

Full Name:

UVA Computing ID:

(e-mail address for non-UVA personnel)

Signature:

Signature may be electronic or manual.

Date:

If manually signed.

Return signed form to the Office of Export Controls via email to export-controls@virginia.edu .

APPENDIX III: TEMPLATE TECHNOLOGY CONTROL PLAN – LITE



DATE

RESPONSIBLE PERSON, TITLE
DEPARTMENT
SCHOOL

Re: Export Control Notice for Intel License Agreement

Professor RESPONSIBLE PERSON;

At your request, the Office of Sponsored Programs is entering into an agreement with PROVIDER for you to have access to their proprietary items and associated proprietary technical information (“technology”) which are controlled for export under the Export Administration Regulations (15 CFR Parts 730-774) and as such are either described by a specific Export Control Classification Number (ECCN) entry or, if not specifically described, are designated as EAR99.

Item Name	Item ECCN	Technology ECCN(s)	Comments

Note: “Technology” includes proprietary (i.e. not publicly available) technical information required for the “development,” “production,” and/or “use” of an export controlled product as well as software source code. If sponsor approval is required prior to publishing or disseminating research results they may also qualify as controlled “technology”.

Access Control – Items

Physical access to the items, including executable versions of software, by foreign nationals in your laboratory is not subject to any restrictions.

Permanent or temporary export of the item(s) from the US requires prior authorization from the Office of Export Controls and may require a license from the Bureau of Industry and Security. Export license requirements are based on the ECCN, country of destination, end-user and end use of the item or technology.

Access Control – Technology

Access to the technology listed above must be strictly limited to authorized personnel; this includes administrative access to electronic/digital files. The following individuals have been authorized by the Office of Export Controls to have access to the identified development, production and/or use technology:

Name	Computing ID	Country(ies) of Citizenship/Nationality	Authorization

Note: “NLR” means no license required. “TSU” means authorized under the license exception for technology and software unrestricted (EAR 740.13).

Access by any other individual(s), US or foreign, requires prior authorization from the Office of Export Controls.

Responsibilities

As the requesting faculty member, it is your responsibility to ensure that appropriate precautions are taken to prevent unauthorized exports and other access to the technology, in any format, and to assure that all authorized individuals understand and comply with those precautions.

The [Office of Export Controls](#); [Information Security, Policy, and Records Office](#); and your local IT administrators are available to answer questions and provide assistance with the implementation of adequate security measures.

Any unauthorized exports or disclosures of technology must be immediately reported to the Office of Export Controls at export-controls@virginia.edu.

Sincerely,



Kelly Hochstetler, Director
Finance Outreach and Compliance

PI Acknowledgement: By my signature below, I acknowledge that I have read, understand and intend to comply with the requirements detailed above. I further understand that any questions or requests for changes should be submitted to the Office of Export Controls (export-controls@virginia.edu).

Signature

Date

APPENDIX IV: I-129 EXPORT CERTIFICATION REQUEST

Export Certification Request Form
Foreign National Employee (H-1B, H-1B1, Chile/Singapore, and O-1A) Petitions

Instructions: On 11/23/10 the USCIS released a revised I-129 application form that includes the requirement for an export certification for each foreign national employee. This form is intended to provide the Office of Export Controls (OEC) with information necessary to start the export assessment processes. It is anticipated that an export license will **not** be required in most cases and that need for export licenses will typically be associated with sponsored research. Should additional information be needed to complete the assessment, the OEC will work directly with the Sponsor/Supervisor identified below. Once OEC has completed the export assessment an advisory letter will be provided to the Sponsoring Department for inclusion in the visa application packet to be submitted to Human Resources.

Section A: Employee Information

First Name	<input type="text"/>	Middle Name	<input type="text"/>	Last Name	<input type="text"/>
Country of Birth	<input type="text"/>	Reason for Application	<input type="text" value="New Hire - initial visa request"/>		
Country of Citizenship/Residency	<input type="text"/>				
Other Citizenship/Residency	<input type="text" value="Overwrite with the name of other country(ies) where the employee is a citizen or resident."/>				
Current Physical Address	<input type="text"/>				
Permanent Address	<input type="text" value="Overwrite with the employee's address in their home country."/>				
E-mail Address	<input type="text"/>	<i>Provide the UVA e-mail for a current employee; any active e-mail address is acceptable if the UVA e-mail has not been assigned.</i>			

Section B: Position Information

Job Title (employee's)	<input type="text"/>
Sponsoring Department	<input type="text"/>
Supervisor Name	<input type="text"/>
Supervisor E-mail Address	<input type="text"/>

This should be the Faculty Supervisor or Principal Investigator for Research Scholars or Post-Doctoral Fellows. For faculty or staff positions this should be the employee's direct supervisor.

List the sources of funding that will be used to support the employee's salary and, if applicable, their research. *Include the UVA award and project number for current funding or, if not yet set-up, the UVA proposal number assigned by OSP.*

Will the employee have access to technology (software, equipment or materials) specifically designed or developed for military (e.g. night vision, GPS Y-code, shielding, UAVs or targeting algorithms) or space (e.g. rockets, missiles, satellites, space telescopes or probes) applications? *If yes, provide a list the military or space technology below.*

Will the employee require access to U.Va., sponsor or third party export controlled, confidential or proprietary information, software, equipment or technical data? This would include information about the design, manufacture or repair of standard laboratory equipment that is not in the public domain (i.e. available on the company's public web site); it does NOT include basic operation or use instructions. *If yes, provide a brief description of the information, software, equipment or technical data below.*

Section C: Research Information

Is research is part of the employee's job description? *If yes, provide a brief description of the research project or program in the space below. If a specific project or program has not been determined, describe the specific areas of interest and inquiry that the employee is expected to pursue.*

Will the employee be involved in any research or other scholarly activity that is NOT intended for public dissemination? *If yes, summarize the export controls, contract terms, publication restrictions, citizenship restrictions, etc. associated with the project below.*

Section D: Certification

Name of Person Completing This Form

Phone No. E-mail Date

E-mail submission is required.

The form is designed to self-populate a database, so please do not print the form and then mail, scan or fax it.

You may either use the "submit" button, below, or save the completed form as a pdf and then attach it to an e-mail directed to export-controls@virginia.edu. If you do not use the "submit" button please put "I-129 Export Certification Request" in the subject line of your e-mail.

Section E: OEC Use ONLY

Reviewer Start Date End Date Review Type

Additional Materials Reviewed:

None - This form only.
Directory Listing
Export Regulations
Follow-Up Correspondence
Funding Terms & Conditions
Job Description
Referenced Technology
Restricted Party Screening
Resume / Curriculum Vita
Announcement or Solicitation

Review Notes:

Recommendation

APPENDIX V: EXPORT ASSESSMENT FORM

Export Assessment Request

Instructions: Use this form to request an Export Assessment from the Office of Export Controls (OEC) for a funding announcement, draft proposal, scope of work, international material transfer agreement, inventory for an international shipment/transfer, or other potentially export controlled activity.

For the purposes of this form, "export" means the transmission, shipment or transfer of technology or technical data controlled under the EAR or ITAR to a foreign destination or to a foreign person or entity no matter where they are located.

Section A: UVA Exporter Information

Name of Exporter

First and Last name of the person preparing the material for shipment or transferring the information.

Phone

Contact number for the exporter.

E-mail

E-mail address for the exporter.

Department

Section B: Material Description

Which of the following are you requesting be reviewed? *(highlight all that apply and attach any associated documents to the e-mail submission)*

Shipping Inventory
Proposal or Scope of Work
Funding Announcement
Award (grant or contract)
Non-Financial Agreement
Software or Source Code
Research Data or Results
Other

Which of the following describes the type(s) of export activities that are planned or anticipated? *(highlight all that apply)*

Export of Hardware, Equipment, Materials or Software for >1 Year
Export of Hardware, Equipment, Materials or Software for <1 Year
Transfer of Technical Data to a Person Outside the U.S.
Transfer of Technical Data to a Foreign Person Inside the U.S.
Storage of known or potentially controlled material at UVA

Which of the following best describes the materials to be exported? *(highlight all that apply)*

Software or source code
Hardware or Equipment
Biological materials
Technical Data
Chemicals
Proprietary or Confidential Information

Provide a description of Materials to be exported:

Which of the following best describes the source of the material? *(check all that apply)*

- Produced at UVA Provided by Sponsor Provided by Vendor Provided by Collaborator or Sub

Section C: Funding / Sponsor

UVA Sponsor's Name (agency, company or institution)

UVA Proposal or Project/Award Number

Principal Investigator's Name

Complete the following two fields only if UVA is receiving this funding under a subaward or subcontract.

Prime Sponsor's Name

Prime Award Number

Section D: Recipient Information

Recipient Organization

Physical Address

Contact Person

Phone

Fax

E-mail

Country of Destination*

Destination Address

* For deemed exports this should be the country of citizenship of the recipient(s). List all currently held citizenship / residency statuses. Example: A researcher at a French university might be both an Iranian citizen and a permanent resident of France.

Proposed Date of Export**

** Required for all proposed permanent or temporary exports. Not required for deemed exports.

Section E: Certification

By submitting this form, I certify that the information provided in the form and any associated attachments is current and factual to the best of my knowledge and belief. I understand that changes to the information provided (e.g. different controlled materials, destination country, or recipient) may alter the results of this assessment, as may changes to US foreign policy. I agree to apprise OEC of any changes and obtain a new assessment prior to engaging in or directing others to engage in any export (physical or deemed). I understand that failure to comply with US export control laws and regulations may result in administrative and criminal charges carrying substantial individual (monetary fines and imprisonment) and institutional (monetary fines and debarment) penalties.

Name of Person Completing This Form

Phone No.

E-mail Address

E-mail submission is required.

The form is designed to self-populate a database, so please do not print the form and then mail, scan or fax it.

You may either use the "submit" button, below, or save the completed form as a pdf and then attach it to an e-mail directed to export-controls@virginia.edu. If you do not use the "submit" button please put "Export Assessment Request" in the subject line of your e-mail.

APPENDIX VI: STEP-BY-STEP INSTRUCTIONS FOR EXPORTERS

Step-by-Step Instructions for Exporters

International Transfers & Shipments

1. DATA ACCUMULATION: Collect all pertinent information regarding the export including the following:

- What will be transferred or shipped to the international destination?
- Who will be receiving or using the exported items or information?
- Where will the items or information be going (i.e., institution/company/organization, city and country)?
- Why are the items or information being exported (i.e. what will they be used)?
- How long will the items be out of the United States? *Note: All exports of information are treated as permanent exports.*
- Who does the information or item belong to and is their permission required for export? *Note: This may be specified in the terms and conditions of the grant, contract, non-disclosure or material transfer agreement under which it was provided.*

2. EXPORT ASSESSMENT: You have two choices:

- Ask the Office of Export Controls (OEC) for an Export Assessment - best done by submitting the request form (http://www.virginia.edu/sponsoredprograms/forms/Export_Assessment_Request_distributed.pdf); or
- Perform the export assessment yourself by following steps A-H, below.

A) **Restricted Party Screening:** Are any of the parties to the export on a US export restriction or denial list? *Note: The parties to the export include, but are not limited to, the exporter, recipient institution/entity, shipping company, freight forwarder, consolidator, end-user and any transport company.*

Methods:

- Visual Compliance (any time before the day of export) – contact OEC for an account and training in the use of Visual Compliance
- Manual check of the Consolidated List (at minimum on the day of export)

Results:

- If yes, contact OEC immediately and do not proceed with the export.
- If no, continue with Export Assessment process

Documentation: Record the date and method of restricted party screening.

B) **Prohibited End Use:** Will your item or information be used for a prohibited end-use? You are required to determine what the end-use is.

Prohibited End Uses: Exports in support of activities related to the following are generally prohibited without a license:

- Nuclear Explosives, Power (reactors) or Propulsion
- Rocket/Missile, Space Launch Vehicles, or Unmanned Air Vehicles Activities
- Chemical and Biological Weapons
- Weapons of Mass Destruction
- Use on Foreign Vessels or Aircraft

Results:

- If the end-use involves any of the above, contact OEC immediately and do not proceed with the export.
- If the end-use does not involve any of the above, continue with Export Assessment.

Documentation: Retain all documents provided by UVA personnel and/or foreign recipients indicating the end-use of the items or information.

- C) Embargoes and Trade Sanctions:** Are you exporting to or for the benefit of someone in one of the comprehensively sanctioned countries? *Note: The following countries are currently subject to comprehensive sanctions: Cuba, Iran, North Korea, Sudan and Syria.*

Results:

- If yes, contact OEC immediately and do not proceed with the export.
- If no, no special documentation is required.

- D) Regulatory Jurisdiction:** What is the regulatory jurisdiction of your item or information? *Note: Different items or pieces of information in your shipment may be subject to different jurisdictions.*

Jurisdictions: The following are the most common ones for University items or information.

- International Traffic in Arms Regulations (ITAR) – Directorate of Defense Trade Control
- Export Administration Regulations (EAR) – Bureau of Industry and Security
- Nuclear Controls – Nuclear Regulatory Commission or Department of Energy

Results:

- If you can confidently determine the jurisdiction, continue with the assessment.
- If you need help making the jurisdiction determination, contact OEC and do not proceed with the export.

Documentation: Indicate how you arrived at your determination (e.g., self-determination, information provided by the manufacturer, commodity jurisdiction or commodity classification)

- E) Export Control Status:** What is the specific control status of each item or piece of information?

Options: The following describe the way status is indicated for the jurisdictions listed above

- ITAR – US Munitions List Category Number including applicable paragraph and subparagraph designations
- EAR – Export Control Classification Number (ECCN)
- Nuclear Controls – specific controlling regulatory citation (10 CFR 110 or 810)

Results:

- If you can confidently determine the export control status, continue with the Export Assessment.
- If you need help determining the export control status, contact OEC and do not proceed with the export.

Documentation: Record the export control status for each item and type of information.

- F) License Determination:** Is a license generally required to export your item or information to the country of destination?

Results:

- If no, you may export the item or information without a license. Skip to H).
- If yes, continue with the Export Assessment.

Documentation: Record whether or not a license is required for each item and type of information.

- G) License Exception/Exemption:** Is there an applicable license exception, exemption or general authorization to overcome the license requirement for all of your items and information to be exported?

Results:

- If yes, you can export the item or information (all of them) without a license so long as you can comply with all stated requirements for the exception(s) or exemption(s).

- If no, contact OEC for assistance applying for an export license or other authorization.

Documentation: Abide by all documentation and recordkeeping requirements associated with the license exception or exemption to be used.

H) Census and Customs Filing: Determine whether or not you are required to file an Electronic Export Information (EEI) form, a.k.a. Shippers Export Declaration (SED), with AES for the shipment. If yes, will the shipper or freight forwarder be filing the on the University's behalf?

Note 1: In order for another party to file on behalf of the University they have to be designated as our "agent". This is commonly done through a Shippers Letter of Instruction (SLI) or a Limited Power of Attorney (LPA). University signatory authority is required to sign an SLI or LPA; since international shipping or freight forwarding is the procurement of a service, the appropriate signatory is Eric Denby, Director of Procurement and Supplier Diversity Services (erd@virginia.edu or x4-4019).

Note 2: If you will be temporarily (less than one year) exporting an item ask the shipper or freight forwarder about using an ATA Carnet. ATA Carnets ease the temporary importation of commercial samples, professional equipment, and goods for exhibitions and fairs. They are accepted in about 80 countries and facilitate international business by avoiding extensive customs procedures, eliminating payment of duties and value-added taxes (minimum 20% in Europe, 27% in China), and replacing the purchase of temporary import bonds. TECRO/AIT Carnets are similar to ATA Carnets but are only used between the US and Taiwan and only apply to commercial samples and professional equipment.

Results:

- If yes, complete the EEI/SED with the shipper or freight forwarder. Ask the shipper or freight forwarder to provide proof of AES filing.
- If no, contact OEC for assistance filing the AES paperwork (e.g., for hand-carries and US mail shipments or when the shipping company does not have a limited power of attorney to file on behalf of the University).

Documentation: Retain copies of all documents filed with or provided by the shipper or freight forwarder.

3. RECORDKEEPING: All records associated with the export must be retained as required by the applicable export control regulation. Retention time is typically five years from the date of export for permanent exports and five years from the date of return for temporary exports.

APPENDIX VII: SANCTIONED COUNTRY REVIEW REQUEST

Planned Activities Involving Sanctioned Countries Review Request

BACKGROUND: University policy ([FIN-043](#)) requires that "all University activities that are to be conducted in, involve the participation of parties located in, or will benefit a sanctioned country" be reviewed and authorized in advance by the Office of Export Controls (OEC). The purpose of this review is to ensure that the proposed activities comply with the requirements of the applicable sanction program and U.S. export control regulations. The information requested on this form will allow OEC to initiate a review and determine if a license is required. OEC will work with the University faculty, staff or student to ensure that planned activities are authorized by the applicable regulations or, if not generally authorized, to work with them to obtain the necessary authorizations from the U.S. Government. *Note: Depending on the U.S. Government agency involved, the processing time for license applications involving sanctioned countries can be lengthy (several months) so please provide as much advance notice as possible.*

SANCTION PROGRAMS: The U.S. Government currently maintains comprehensive or near comprehensive sanction programs against the following countries: **Cuba, Iran, North Korea, Sudan and Syria**. The following limited sanction programs are also in place: **Belarus-Related, Burma (Myanmar), the Central African Republic, Cote d'Ivoire (Ivory Coast)-Related, Democratic Republic of the Congo-Related, Iraq-Related, Lebanon-Related, Libya, Somalia, Sudan, South Sudan-Related, Ukraine-Related (includes entities in Russia), Yemen-Related, and Zimbabwe**. Generally speaking, the "related" sanctions programs do not apply to the named country, but rather to internal or external elements attempting to destabilize the named country or region; for example, the Ukraine-Related sanctions program includes several Russian nationals and entities.

GENERAL INFORMATION:

Submitter's Name E-mail Phone

Sponsoring Department or Unit:

Sanctioned Country(ies) Involved:

Anticipated Source(s) of Funding:

Describe the planned activity(ies) including the location(s) where the activities will occur. To the best of your knowledge at this time, identify all parties (individuals, institutions, companies, agencies, etc.) located in the sanctioned country(ies) that will be part of the planned activities and identify all foreign nationals of the sanctioned country(ies) that will be participating in the planned activities.

Section for Office of Export Controls Use ONLY

Reviewer

Start Date

End Date

Restricted Party Screening Results:

Additional Comments on Restricted Party Screening:

Implicated Sanction Programs:

- Balkans-Related Sanctions
- Belarus Sanctions
- Burma (Myanmar) Sanctions
- Central African Republic Sanctions
- Cote d'Ivoire (Ivory Coast)-Related Sanctions
- Counter Narcotics Trafficking Sanctions
- Counter Terrorism Sanctions
- Cuba Sanctions
- Democratic Republic of the Congo-Related Sanctions
- Former Liberian Regime of Charles Taylor Sanctions
- Iran Sanctions
- Iraq-Related Sanctions
- Lebanon-Related Sanctions
- Libya Sanctions
- Magnitsky Sanctions
- Non-Proliferation Sanctions
- North Korea Sanctions
- Rough Diamond Trade controls
- Somalia Sanctions
- Sudan Sanctions
- South Sudan-Related Sanctions
- Syria Sanctions
- Transnational Criminal Organizations
- Ukraine-Related Sanctions
- Yemen-Related Sanctions
- Zimbabwe Sanctions

Other Implicated Export Regulations:

- Export Administration Regulations
- International Traffic in Arms Regulations
- Nuclear Technology (10 CFR 110)
- Nuclear Assistance (10 CFR 810)
- Other (identify below)

Export Control Reference Information:

Additional information requested to complete review:

Final Results:

OEC Signature

Additional Comments:

