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**Subject: Export and Sanctions Compliance Policy**

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## **1.0 Purpose**

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

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

This policy has been enacted to establish, document, and implement procedures needed to ensure that the university, and its employees and students, remain in full compliance with International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), Export and Import of Nuclear Equipment and Materials Regulations (EINEMR), Assistance to Foreign Atomic Energy Activities Regulations (AFAEAR), Foreign Assets Control Regulations (FACR), Importation of Arms, Ammunition and Implements of War, and/or other applicable export control or sanction related regulations.

## **2.0 Policy**

It is the policy of Virginia Tech to comply with applicable export and sanctions regulations in all university activities.

## 2.1 Applicability of Policy

This policy, its amendments and additions, apply to all university activities which may result in an export or sanctioned transaction with a foreign national, entity, or country.

## 2.2 Activities Covered

Regulated exports and sanctioned transactions subject to this policy include but are not limited to:

### EAR exports

Shipment or transmission of tangible equipment, items, software, materials, or technology listed on the Commerce Control List outside of the United States.

Release of non-public software (source code) or specific information “required” for the “development”, “production”, or “use” of a Commerce Control List item to a foreign national, entity, or country (in the United States) (“deemed export”). This release of source code or technology does not include source code or technology that is:

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

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

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

### ITAR exports and Imports

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

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

In the United States or abroad, allowing a foreign person access to, or providing technical data related to a defense article (including oral, written, electronic, and visual disclosure) subject to the U.S. Munitions List. Restrictions on disclosure of technical data/ do not include information that is:

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

In the United States or abroad, performing a defense service

### Importation of Arms, Ammunition and Implements of War

Permanently importing a defense article subject to the U.S. Munitions Import List.

### **EINEMR Exports and Imports**

Physically transferring nuclear equipment or material to a person or an international organization in a foreign country; or from a person or organization in a foreign country to the United States.

### **AFAEAR Assistance**

Participating in activities or training, directly or indirectly, involving production of Special Nuclear Materials (SNM), sensitive nuclear technology, or involving production reactors, accelerator-driven subcritical assembly systems, enrichment, reprocessing, fabrication of nuclear fuel containing plutonium, production of heavy water, or research reactors, or test reactors.

### **FACR Transactions**

Conducting international collaborations or academic exchanges (e.g., financial transactions and exportation and importation of goods and services of value) with sanctioned countries, entities, and individuals including:

- Transactions involving designated foreign countries or their nationals; including in some cases travel (e.g., Cuba);

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

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

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

Sanctions are country, entity, individual, and transaction specific (e.g., travel to Cuba; financing consultants in a sanctioned foreign country; providing or receiving research services in a sanctioned foreign country or with sanctioned individuals; taking Commerce Control List commodities, software, or technology to a sanctioned country).

### **National Security Related Research**

National security related transactions involving the facility clearance, personnel clearances, and access to classified materials and equipment subject to the NISPOM, other applicable national security issuances, and Executive Orders for the protection of classified information.

## **2.3 Export Management and Compliance Program**

This Policy, the Virginia Tech [Technology Control Plan](#), and subordinate procedures serve as Virginia Tech's Export Management and Compliance Program.

## **3.0 Procedures**

### **3.1 Office of Export and Secure Research Compliance**

The functional administrative unit at Virginia Tech that is charged with the responsibility for oversight of compliance for all applicable exports and/or regulated transactions with sanctioned individuals, entities, and countries is the Office of Export and Secure Research Compliance (OESRC). OESRC is under the supervision of the Associate Vice President for Research Compliance (and when required the Assistant Vice President for Finance and Controls), who report to the Vice President for Research. The Vice President for Research is the designated Virginia Tech Empowered Official. To assist the Virginia Tech Empowered Official the Director of OESRC has been designated an Empowered Official under the International Traffic in Arms Regulations. The OESRC manages the Virginia Tech facility clearance and accreditation of facilities necessary to conduct national security related academic and research activities.

### **3.2 Faculty, Staff, and Students**

Virginia Tech's faculty, staff, and students are responsible for ensuring that their educational, research, and other business activities involving international collaborations and foreign exchanges are conducted properly and in compliance with U.S. export and sanctions regulations and any procedures identified herein or in the Technology Control Plan. If faculty, staff, or students are involved in restricted research, or international collaborations or foreign exchanges with risk of export or sanction regulation violation, they will comply with the provisions of any license, government approval, policy, or OESRC-directed certification, technology control plan, or other procedure.

## **4.0 Procedures**

### **4.1 Conducting Export Assessments**

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

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

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

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

### 4.3 Providing Export and Sanctions Guidance for International Travel and International Visitors

The OESRC reviews Virginia Tech personnel's proposed international business travel, and proposed business visits by international visitors. The OESRC provides export and sanctions related guidance to internationally traveling personnel and sponsors of international visitors.

### 4.4 Providing Export and Sanctions Awareness Training

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

The OESRC provides a minimum monthly classroom training for all faculty, staff, and students involved in conducting restricted research, and periodic awareness training tailored to specific college, department, center, and administrative unit needs.

### 4.5 Conducting Institutional Self-Assessments

The OESRC will conduct periodic self-assessment of university export- or sanction- restricted activities and report its findings to the Vice President for Research, and the Vice Presidents for International Affairs or Finance, as appropriate.

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

## 5.0 Definitions

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

***Controlled Unclassified Information (CUI)*** – *Unclassified information designated by the U.S. Government executive branch that requires safeguarding or dissemination controls, pursuant to and consistent with applicable U.S. laws, statutes, regulations, Executive Orders, and U.S. Government-wide policies.*

***Controlled Technical Information (CTI)*** – *Controlled technical information is technical data, computer software, and any other technical information covered by DoD Directive 5230.24, Distribution Statements on Technical Documents, at <http://www.dtic.mil/whs/directives/corres/pdf/523024p.pdf>, and DoD Directive 5230.25, Withholding of Unclassified Technical Data from Public Disclosure, at <http://www.dtic.mil/whs/directives/corres/pdf/523025p.pdf>.*

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

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

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

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

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

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

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

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

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

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

*Key Management Personnel (KMP)* – Senior management personnel designated by the Board of Visitors to manage the facility clearance.

*Publication or Dissemination Restrictions*–Acceptance in research and development of any prohibition or approval authority over publication or any other dissemination of research results, excepting, sponsor or collaborator.

*Restricted Parties*- Individuals and entities with whom the university and its employees may be prohibited by law, or who require a license or other government approval, to export to or engage in controlled transactions. These includes but is not limited to the Department of Commerce Denied Persons List, Entity List, and Unverified List; the Department of State Debarred Parties List and Designated Terrorist List; and the Department of Treasury Specially Designated Nationals and Blocked Persons List.

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

*Sanctioned Countries* –Countries designated under the Foreign Access Control Regulations or through Executive Orders as having limited or comprehensive trade sanctions imposed by the United States for reasons of anti-terrorism, non-proliferation, narcotics trafficking, or other reasons.

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

## **6.0 References**

Assistance to Foreign Atomic Energy Activities Regulations (AFAEAR)	10 CFR §810
<u><a href="#">BIS Export Management and Compliance</a></u>	
<u><a href="#">Controller’s Office Procedure 20335a Travel Overview</a></u>	
Critical Energy Infrastructure Information (CEII)	18 CFR §388.112-113
Critical Infrastructure Information (CII)	6 U.S.C. 131-134
<u><a href="#">DDTC Compliance Program Guidelines</a></u>	
<u><a href="#">DoD Policy Memorandum Contracted Fundamental Research (May 24, 2010)</a></u>	
Executive Order 13526 Classified National Security Information	
Executive Order 13556 Controlled Unclassified Information	
Export Administration Regulations (EAR)	15 CFR §§730-774
Export and Import of Nuclear Equipment and Material Regulations (EINEMR)	10 CFR §110
Foreign Assets Control Regulations (FACR)	31 CFR §§500-599
Importation of Arms, Ammunition and Implements of War	27 CFR §447
International Traffic in Arms Regulations (ITAR)	22 CFR §§120-130
<u><a href="#">National Industrial Security Program Operating Manual</a></u>	
<u><a href="#">National Security Decision Directive 189</a></u>	
<u><a href="#">OSP Policy 29-05 Management of Export Controlled Sponsored Programs</a></u>	
Protected Critical Infrastructure Information (PCII)	6 CFR §29
Protection of Sensitive Security Information (SII)	49 CFR §1520

Secrecy of Certain Inventions and Licenses to Export (PTO)  
Unclassified Nuclear Controlled Information (UNCI)  
[Virginia Tech Policy 12115 Accepting and Reporting Gifts-in-Kind](#)  
[Virginia Tech Technology Control Plan](#)

37 CFR §5  
42 U.S.C. 2168

## **7.0 Approval and Revisions**

Approved August 24, 2011 by Vice President for Research, Robert W. Walters.

- Revision 1

Revised to reflect current practice:

- Includes a reference to compliance with Importation of Arms, Ammunition and Implements of War in section 1.0
- Added a paragraph on National Security Related Research in Section 2.2
- Added detail about the facilities clearance and accreditation of facilities in Section 3.1.
- Added Section 4.3: Providing Export and Sanctions Guidance for International Travel and International Visitors

Approved January 21, 2015 by Vice President for Research, Robert W. Walters.