Subject: Export and Sanctions Compliance Policy

Definitions

1.0 Policy

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

Deemed Export – Release of Export Administration Regulation regulated source code or controlled technology to a foreign national in the United States 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, reexports, and activities related to dual use items on the Commerce Control List.

Empowered Official – A U.S. person who is legally empowered in writing by the university to sign 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.

**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 as 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.

**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.

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

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

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

**Sanctioned Countries** –Countries designated by OFAC as having limited or comprehensive trade sanctions imposed by the United States for reasons of anti-terrorism, non-proliferation, narcotics trafficking, or other reasons.
**Specially Designated Nationals and Blocked Persons List** – A list of individuals and entities, maintained by OFAC, identified as terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. This list has more than 13,000 entries.

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

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) and/or other applicable export control or sanction related regulations.

1.1 Applicability of Policy

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

Exports and sanctioned transactions include:

**EAR exports**

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

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

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

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

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

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

ITAR exports

Sending or taking of a defense article outside of the United States, or temporarily 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, providing a defense service on, or providing technical data related to a defense article (including oral, written, electronic, and visual disclosure). Restrictions on disclosure of technical data/information does not include information that is:

– in the public domain;
– information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information; or
– basic marketing information on function or purpose
– “information that advances the state of the art of articles on the U.S. Munitions 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 exchanges (e.g., financial transactions and providing 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 (Cuba & the Republic of the Sudan);

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

Importation of and dealings in certain merchandise; and

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

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

Sanctions are country, entity, 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 or software to a sanctioned country)

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

2.1 The Functional Unit: Export and Secure Research Compliance

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

2.2 Conducting Export Assessments

When requested, 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 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, or recommend security measures (e.g., a technology control plan) or other protocols (e.g., certifications) needed to ensure compliance with export and sanction regulations.

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

Virginia Tech, in implementing its policy for compliance with export and sanction regulations, cooperates with those governmental agencies with license and enforcement responsibilities. 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.

2.4 Providing Awareness Training

The OESRC will consult with appropriate university administrative and academic units to assure provision of instructional resources considered necessary to the understanding of export and sanctions regulations and implementation of policy. These resources will 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.

2.5 Conducting Institutional Self-Assessments

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

2.6 Potential Compliance Violations

In consultation with the Office of Legal Counsel, OESRC will investigate any potential compliance violation and report the results of the investigation to the Empowered Official (Vice President of Research), and/or the Vice President for Finance as appropriate.

2.7 Recordkeeping

Export records shall be maintained in electronic format for a period of no less than five (5) years from the time of the export, re-export, or deemed export, or as required by applicable law, policy, or procedure, whichever period is longer. When OESRC is the custodian of an export record, OESRC will comply with the Commonwealth of Virginia Records Retention Policy.
2.8 OESRC Personnel

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

Director, OESRC oversees all export and secure research compliance for international collaborations, export of nuclear, chemical, and biological materials, activities and financial transactions with sanctioned countries and entities, and is a university Empowered Official and the Facilities Security Officer. The Director is responsible for reviewing and updating the Virginia Tech Technology Control Plan as required by the NISPOM and approved by Virginia Tech’s Cognizant Security Agency (CSA). The Director uses the Virginia Tech Technology Control Plan for guidance in resolving issues regarding export and sanctions regulations, and classified information.

Export and Secure Research Program Manager (ESRPM) applies his/her knowledge of export compliance regulations and related administrative processes to insure institutional compliance with applicable federal laws, regulations, and policies. The ESRPM oversees export compliance programs for restricted research in sponsored programs, engineering, and technology centers. The ESRPM manages the office staff and conducts ongoing assessments of the accuracy, timeliness, and completeness of the records created and maintained by the OESRC staff, including Export and Secure Research Administrators and Administrative Assistant Specialists.

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

3.0 Responsibilities of University Officials, Departments, Faculty, Staff, and Students

Virginia Tech’s faculty, staff, and students are responsible for ensuring that their business activities involving international collaborations and foreign exchanges are conducted properly and in compliance with U.S. export and sanctions regulations. 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, other government approval, policy, or OESRC-directed certification, technology control plan, or other procedure.

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

1. University Administration

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

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

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

3. Controller

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

In accordance with Controller’s Office Procedure 20335a Travel Overview, OESRC shall review all international travel requests for export and sanctions compliance and provide travel advisories with export and sanctions compliance related information to advise the travelling employees.

Sponsored Programs.

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

5. Outreach and International Programs

In coordination with OESRC, ensure that all international collaborations and foreign exchanges are in compliance with export and sanction laws. If requested, designate an administrator/responsible person to coordinate development and implementation of export compliance procedures with OESRC.

In accordance with International Affairs’ Operational Guidelines for Visitors At Virginia Tech in B-1 or B-2 Visa Status, International Support Services provides information regarding a pending international business visit, OESRC will review and make recommendations regarding export compliance related to the visit at Virginia Tech.

United States Customs and Immigration Service’ Form I-129 requires employers to make an export license determination for nonimmigrant employees in visa categories H-1B, H-1B1, L-1, and O-1A. In accordance with International Affairs’ request, OESRC will review faculty and beneficiary provided information and make recommendations regarding export compliance related to the beneficiary’s at Virginia Tech.
6. Cranwell International Center

In accordance with the Cranwell International Center’s procedure for processing J-1 Student Intern Program Applicants, when Cranwell Center provides information regarding a pending international J-1 student intern, OESRC will review the provided materials and make recommendations regarding export compliance related to the internship at Virginia Tech.

7. Virginia Tech Intellectual Properties

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

8. Virginia Tech Foundation

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

9. Legal Counsel

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

4.0 Policy Function and Responsibility

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

1. Delegation of Responsibilities

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

2. Approval of Restricted Activities

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

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

4. Special Procedures:

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

5. Violations of Laws, Regulations, and Policies

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

5.0 References

- Nuclear Regulatory Commission 10 CFR §110
- Export Administration Regulations (EAR) 15 CFR §§734-774
- International Traffic in Arms Regulations (ITAR) 22 CFR §§120-130
- Bureau of Alcohol, Tobacco, and Firearms 27 CFR §444-555
- Foreign Assets Control Regulations (FACR) 31 CFR §§500-599
- Office of Patents and Trademarks (PTO) 37 CFR §5
- National Security Decision Directive 189
- OSP Policy 29-05 Management of Export Controlled Sponsored Programs
- Virginia Tech Technology Control Plan
- DDTC Compliance Program Guidelines
- BIS Export Management System Guidelines
- 2010 Virginia Tech Statement of Business Conduct Standards
Appendix A: Organizational Diagram – Export and Secure Research Compliance

Office of Export And Secure Research Compliance