



Virginia Commonwealth University

Export Compliance Manual

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I. Introduction

Export control laws are a complex set of federal regulations designed to protect the United States' (U.S.) national security interests without unnecessarily restraining trade or stifling the legitimate international exchange of ideas and technologies. Export control laws govern which tangible items, information, and technologies can be transmitted freely across borders and which require U.S. government permission in the form of a license. Less intuitively, export control laws also regulate what items, information, and technologies foreign nationals are permitted to access when they are physically present in the U.S. In addition, export control laws prohibit exports to “restricted parties”—individuals and entities tied to terrorism, drug trafficking, previous export control violations, or other disqualifying factors.

American individuals and organizations are required to comply with all applicable export control laws, and can be subject to harsh administrative, civil, or even criminal penalties if they violate those laws. The U.S. government does not always mitigate the severity of the penalties it assesses for noncompliance due to ignorance or misinterpretation of the export control laws. While much of the activity at a research university like VCU is not regulated by export control laws or falls under an allowable exemption or exclusion, many common activities may be subject to export controls. Risk areas include, but are not limited to, research involving military or “dual-use” technologies, VCU faculty and staff traveling abroad, hiring foreign nationals as VCU employees, hosting foreign visitors, and international shipping.

The purpose of this Export Compliance Manual is to give the reader a sense of the breadth and scope of the export control laws and to highlight risk areas specific to VCU. The reader is not expected to become an overnight expert in the area of export compliance. In fact, VCU has a dedicated Export Compliance Program, reachable at exportctrl@vcu.edu, that is always available to help identify export control concerns and respond to export control questions. Rather, this Export Compliance Manual is intended to raise awareness of potential export control issues that may affect members of the VCU community and provide resources that can be used to help address those issues.

II. Organizational Commitment Statement



VCU

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P. Srirama Rao, Ph.D.
Vice President for Research and
Innovation

September 2023

To: VCU Faculty, Staff and Students

Re: Export Compliance Policy Statement

Virginia Commonwealth University (VCU) is committed to compliance with all United States export control laws and regulations including the Export Administration Regulations (15 C.F.R. Parts 730-774) administered by the Department of Commerce, the International Traffic in Arms Regulations (22 C.F.R. Parts 120-130) administered by the Department of State, and the Office of Foreign Assets Control sanctions programs administered by the Department of the Treasury.

Failure to comply with these regulations may result in the imposition of criminal and/or civil fines and penalties, including jail time and monetary penalties. Employees will be subject to disciplinary action and/or termination.

VCU is committed to "research and discovery that advances knowledge, inspires creativity and improves human health." VCU's Export Compliance Program works diligently to ensure that compliance obligations are satisfied with the minimum amount of restrictions on sharing research data and collaborating with external partners. Only in limited circumstances does VCU accept restrictions on scientific publications for national security reasons.

I ask each of you to take these matters very seriously, and to support the university in this effort. Compliance with these policies, laws, and regulations is a group effort with responsibility resting on every member of the VCU community. Our senior leadership fully supports the efforts outlined in VCU's Export Compliance Manual and the Export Compliance and Research Security Policy.

If you have any questions concerning the legitimacy of a transaction or potential violations, please contact the Export Compliance Program at exportctrl@vcu.edu.

Regards,

P. Srirama Rao, Ph.D.
Vice President for Research and Innovation

III. Export Control Regulations Overview

A. Department of State Regulations

The U.S. Department of State, Directorate of Defense Trade Controls (DDTC), administers and implements the International Traffic in Arms Regulations (ITAR). Under the ITAR, DDTC regulates the export of “defense articles” and “defense services,” military-focused items, technologies, and services further discussed below. The ITAR contains the U.S. Munitions List (USML), a listing of the defense articles controlled under the ITAR.

Regulatory Authority and Scope

The Arms Export Control Act, [22 U.S.C. § 2778](#), grants authority to the President of the United States to designate and control the import and export of defense articles and services. [Executive Order 11958](#) delegates this responsibility to the Secretary of State. DDTC administers this authority through implementation of the ITAR, codified at [22 C.F.R. parts 120-130](#).

The ITAR contains the USML, which lists defense articles and related technical data that are controlled for export purposes. In addition, the USML lists constituent parts and components of defense articles that are controlled under the ITAR as standalone items. For example, military aircraft are listed on the USML, as are their engines, electronic controls, and inertial navigation systems, even though such components may have other applications. If a commodity contains a part or component that is controlled under the ITAR, such as a controlled inertial navigation system, then that commodity is also controlled under the ITAR, regardless of whether or not that commodity has an inherently military purpose. Thus, an autopilot system used in basic robotics research may be controlled under the ITAR.

Many items designed for military use are also used for research completely unrelated to that military use. For example, night vision goggles can be used in a variety of non-military experiments designed to measure variables in low light conditions. Night vision goggles are controlled under the ITAR even when they are not being used for a military application. It is important to understand that the ITAR designation is unrelated to the nature of VCU’s use of a controlled item.

Important ITAR Definitions

In order to understand the requirements of the ITAR, it is important to understand terminology specific to the regulation such as “defense article,” “technical data,” and “defense service.” Additionally, it is important to understand how the ITAR defines “fundamental research” and “public domain” information.

Defense Article is defined in [22 C.F.R. § 120.6](#). It means any item or technical data that is specifically designed, developed, configured, adapted, or modified for a controlled use listed on the USML. In addition to the items on the USML, models or other items that reveal technical data related to USML items are also considered to be defense articles. Defense articles do not include basic marketing information on function or purpose or general system descriptions.

Technical Data is defined in [22 C.F.R. § 120.10](#). Technical data includes information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This information includes blueprints, drawings, photographs, plans,

instructions and documentation. ITAR technical data also includes classified information relating to defense articles and defense services, information covered by an invention secrecy order, and software directly related to defense articles.

Defense Service is defined in [22 C.F.R. § 120.9](#). The definition includes furnishing of assistance, including training, to a foreign person, 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. It also includes providing any foreign person any technical data as defined above.

Public Domain is defined in [22 C.F.R. § 120.11](#). Public domain information is information which is published and which is generally accessible or available to the public. The ITAR describes means by which public domain information might be available, which in addition to libraries, subscriptions, newsstands, and bookstores, include published patents and public release at conferences, meetings, and trade shows in the United States where those venues are generally accessible to the public. Information that meets ITAR’s definition of public domain information is exempt from ITAR’s licensing requirements.

Fundamental Research is defined in [22 C.F.R. § 120.11](#). It is defined as basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if: (i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project activity, or (ii) the research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.

The ITAR considers fundamental research in science and engineering at accredited institutions of higher learning in the United States to be in the public domain, and therefore, no export license is needed to export the resulting information abroad or share it with foreign nationals in the United States. However, this exemption does not apply to physical items used to perform, or resulting from, fundamental research. Such items are still subject to ITAR’s licensing requirements if they fall into one of the USML categories.

The USML Categories

The USML defines 21 classes of defense articles. The USML is found at [22 C.F.R. § 121.1](#). In the interest of brevity, only the main headings of the USML categories are listed here. For detailed descriptions of what is included in each category, the ITAR may be accessed online [here](#). Note that category XXI is reserved for use by DDTC for controlling new technologies under the ITAR.

United States Munitions List Categories	
I	Firearms, Close Assault Weapons and Combat Shotguns
II	Guns and Armament
III	Ammunition/Ordnance
IV	Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
V	Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents
VI	Surface Vessels of War and Special Naval Equipment
VII	Ground Vehicles

VIII	Aircraft and Related Articles
IX	Military Training Equipment and Training
X	Personal Protective Equipment
XI	Military Electronics
XII	Fire Control, Laser, Imaging, and Guidance Equipment
XIII	Materials and Miscellaneous Articles
XIV	Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
XV	Spacecraft Systems and Related Articles
XVI	Nuclear Weapons Related Articles
XVII	Classified Articles, Technical Data, and Defense Services Not Otherwise Enumerated
XVIII	Directed Energy Weapons
XIX	Gas Turbine Engines and Associated Equipment and Associated Equipment
XX	Submersible Vessels and Related Articles
XXI	Articles, Technical Data, and Defense Services Not Otherwise Enumerated

Exporting under the ITAR

An export as defined under the ITAR includes sending or taking a defense article out of the United States, disclosing (including oral or visual disclosure) technical data to a foreign person whether in the U.S. or abroad, or performing a defense service on behalf of a foreign person whether in the U.S. or abroad. (See [22 C.F.R. § 120.17](#) for the ITAR’s complete definition of export.) This definition is extremely broad. It includes taking controlled technical data out of the United States on a laptop computer, regardless of whether or not that information is viewed or accessed while abroad. It also includes allowing a foreign person to view or use a defense article while physically present in the United States. Most exports of defense articles and defense services must be licensed by DDTC. Unauthorized exports of defense articles or defense services can be subject to severe civil, administrative, or criminal penalties.

Generally, a U.S. person that manufactures, brokers, or exports defense articles or services must be registered with DDTC. Registration is required prior to applying for a license or taking advantage of some license exemptions. Registered entities may apply for licenses, or permission, to export defense articles and defense services. DDTC reviews license requests on an individual basis and consults with other agencies, such as the Department of Defense, in consideration of the request. Exports of ITAR-controlled items are prohibited to some countries and individuals. DDTC’s country-specific policies may be found [here](#).

Commodity Jurisdiction

The DDTC has the authority to determine if an item or technology falls within the scope of the ITAR or if the item/technology is under the jurisdiction of the Department of Commerce for the purposes of export controls. While it is possible for VCU export compliance staff to self-classify an item, DDTC should be consulted if there is significant doubt as to whether an article or service is subject to the ITAR. At VCU, the Export Compliance Program will assist with the submission of commodity jurisdiction requests as well with the determination of any export licensing requirements.

B. Department of Commerce Regulations

The Export Administration Regulations (EAR) are administered by the U.S. Department of Commerce, Bureau of Industry and Security (BIS), which regulates the export of “dual use” items and some less sensitive military items. Dual use items have primarily commercial purposes but may have potential military or space applications. Examples of dual use items include certain chemicals, microorganisms, laboratory equipment, computers, and software.

In general, any physical item made in the United States will be subject to the EAR unless the item qualifies for an exception (as discussed [below](#)), or is regulated under another jurisdiction, such as the ITAR. In addition to physical items, the EAR also controls technical data, such as blueprints, plans, models, tables, designs, and manuals. While almost every item located within the U.S. is controlled under the EAR, most do not require an export license.

Items and technical data that are subject to the EAR are listed on the Commerce Control List (CCL). Controlled items are categorized by an Export Control Classification Number (ECCN) based on 10 categories and 5 product groups. While ITAR items are controlled to all foreign countries and foreign nationals, EAR items are controlled to specific countries and vary depending on the reasons for control. The CCL is found in [Supplement 1 to part 774](#) of the EAR.

Regulatory Authority and Scope

The EAR controls the export of some less sensitive military items as well as “dual-use” items, which are items that have civilian uses but that may also have military or other strategic applications. Common, real-life examples from VCU include certain chemicals, microorganisms, vectors, and toxins; laboratory equipment such as centrifuges, analyzers, and mass spectrometers; and fabrication equipment, such as milling machines and etching equipment for electronics. These items are classified on the CCL. The EAR also controls the export of purely commercial commodities not listed on the CCL. Purely commercial items are classified as “EAR99,” meaning that they are subject to the EAR but are not individually listed on the CCL and are thus subject to minimal export restrictions.

Many items and activities are not subject to the EAR. Activities subject to the exclusive authority of another agency (*e.g.*, the export of a defense article that is controlled under the ITAR) are not subject to the EAR. In addition, the EAR lists several exclusions from its jurisdiction. These include published information, information resulting from fundamental research, educational information, and the export or reexport of items with less than de minimis U.S. content (where applicable). It is important to understand the definitions and limitations of each of these exclusions in order to correctly evaluate their applicability to specific activities.

Important EAR Definitions and Concepts

Export is defined in [15 C.F.R. § 734.13](#) as an actual shipment or transmission of items subject to the EAR out of the United States as well as the release of technology or software subject to the EAR in a foreign country or to a foreign national either in the United States or abroad.

Deemed Export is defined in [15 C.F.R. §§ 734.13\(a\)\(2\) and 734.13\(b\)](#). A deemed export is any release of technology or source code subject to the EAR to a foreign national, regardless of location. The release is deemed to be an export to the home country or countries of the foreign national. For the

purposes of the EAR, legal U.S. permanent residents, naturalized citizens, and individuals protected under the Immigration and Naturalization Act ([8 U.S.C. § 1324b\(a\)\(3\)](#)) are not considered to be foreign nationals.

Reexport is defined in [15 C.F.R. § 734.14](#) as an actual shipment or transmission of items subject to the EAR from one foreign country to another foreign country. It also includes a deemed reexport, or the release of technology or software subject to the EAR to a foreign national outside the United States or their home country.

De Minimis U.S. Content is the amount of U.S. content, as determined by percentage of value of the U.S. content in the end item, required to make a foreign-produced item subject to the EAR. For some items, there is no de minimis content threshold, meaning that any U.S. content will subject the foreign-produced item to the EAR's requirements. For other items, the de minimis U.S. content threshold for foreign-produced items may be 10% or 25% of the total value. See [15 C.F.R. § 734.4](#) for a complete discussion of the de minimis U.S. content rules.

Published is defined in [15 C.F.R. § 734.7](#). Information is published when it is accessible to the interested public in any form. Publications may take the form of periodicals, books, print, electronic, public web sites, or any other media available for general distribution. General distribution may be defined as available to an interested community, such as a technical journal available to scientists in a relevant field, so long as the price charged for the publication does not exceed the cost of reproduction and distribution. Articles submitted to journals for consideration for publication are considered to be published, regardless of whether or not they are accepted. Published information also includes information readily available in libraries (including university libraries), as well as patents and published patent applications. Finally, release of information at a conference open to the participation of all technically qualified persons is considered to be publication of that information. Software is considered published when it is available for general distribution either free or at the cost of distribution. However, strong encryption software remains controlled, regardless of general availability. Published information is not subject to the EAR.

Information and software that are released by instruction in a catalog course or associated teaching laboratory of an academic institution are not subject to the EAR ([15 C.F.R. § 734.3\(b\)\(3\)\(iii\)](#)). Educational Information is information released as part of a course listed in the university's course catalog, and through instruction in the classroom or teaching laboratory. Participation in the course should be open to any qualified student enrolled at the academic institution. Educational information is not subject to the EAR, even if the faculty member is teaching the class at an institution outside the United States.

Fundamental Research is defined in [15 C.F.R. § 734.8\(c\)](#) as research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons. The complete definition and discussion of fundamental research, including university-based research is found at [15 C.F.R. § 734.8](#). Fundamental research is not subject to the EAR. University research is considered to be fundamental to the extent that researchers do not accept restrictions on the publication of scientific and technical information resulting from the research. Temporary delays in publication for the protection of sponsor proprietary information do not remove research from the

fundamental domain. However, if that sponsor’s proprietary information is subject to the EAR, then that information remains subject to the EAR in the conduct of the research.

The Commerce Control List

The CCL is found at [Supplement 1 to 15 C.F.R. § 774](#). Items included on the CCL are assigned an export control classification number (ECCN) based on a category and product group. There are 10 categories, numbered 0-9, and five product groups, labeled A-E, within each category. The category and product group generally describe the item being classified, and the remaining three digits of the ECCN relate to the item specifications. An ECCN follows the nomenclature of “#α###”, where the first “#” is the category, “α” is the product group, and “###” identifies the reasons for control. As an example, a plasmid with certain genetic characteristics has an ECCN of 1C353. In general, “###”, with lower numbers are controlled to more destinations than those with higher numbers. The categories and product groups are as follows:

Commerce Control List Categories	
0	Nuclear and Miscellaneous Items
1	Materials, Chemicals, Microorganisms, and Toxins
2	Materials Processing
3	Electronics
4	Computers
5 (Part 1)	Telecommunications
5 (Part 2)	Information Security
6	Sensors and Lasers
7	Navigation and Avionics
8	Marine
9	Aerospace and Propulsion

Commerce Control Lists Product Groups	
A	Systems, equipment and components (finished or unfinished goods)
B	Test, inspection and production equipment (manufacturing equipment)
C	Material
D	Software
E	Technology

The EAR export licensing regime is much more flexible than that of the ITAR. Under the EAR, licensing requirements for export activities depend on what is being exported, the export destination, who will be using it, and what it will be used for. ECCN entries include a listing of the reasons for control that can be used in determining if an export license is necessary. While the most common controls are for anti-terrorism and national security, many other potential controls exist. The complete list of controls is found in [15 C.F.R. Part 742](#). The control list can be matched to the country chart to determine whether an export is subject to a license requirement and if an applicable license exception is available.

License Exceptions

While the CCL is much more extensive than the USML, many fewer licenses are required for items controlled under the EAR than under the ITAR. This is due to the many license exceptions available for EAR-controlled exports. It is important to understand that there are limitations on the use of license exceptions (see [15 C.F.R. § 740.2](#)), and that the use of a license exception may have an associated recordkeeping and notification requirement. More than one license exception may be available for a proposed activity. In such cases, the use of the exception with the fewest restrictions on use and least notification and recordkeeping requirements minimizes compliance burden. Members of the VCU community should consult with the Export Compliance Program when making decisions as to the applicability of EAR license exceptions for proposed export activities.

A complete listing of EAR license exceptions may be found in [15 C.F.R. Part 740](#). Exceptions commonly applicable to members of the VCU community traveling abroad include exception BAG, which applies to personally owned items taken abroad for personal use while abroad, and exception TMP, which applies to the temporary export of VCU-owned equipment, including laptop computers and other equipment listed on the CCL, for work-related activities, including professional presentations, teaching, and field research. It is important to note that there are limitations on the use of the TMP license exception; items must be returned to the United States within 1 year of export, or if not returned, documentation of disposal is required. Items exported using the TMP license exception must be kept under the effective control of the traveler while abroad. Additionally, TMP is not applicable to some restricted locations, such as Cuba.

Commodity Classification

BIS encourages exporters to use the detailed descriptions in the CCL to self-classify items to be exported. However, in the event of an incorrect classification, the exporter is liable for any resulting violations of the EAR and may be subject to civil and administrative penalties. Self-classification can be particularly difficult in the university environment where cutting edge-research pushes the boundaries of existing technologies, and in fact may not precisely meet the technical specifications as described in the existing CCL listings. When unsure about a self-classification, the exporter may submit the item/technology to BIS for a formal classification. Members of the VCU community who need assistance with classifying items should contact the Export Compliance Program at exportctrl@vcu.edu.

Anti-Boycott Restrictions

The EAR contains “anti-boycott” provisions designed and implemented to disallow American exporters from participating in foreign governments’ boycotts of countries friendly to the United States. The provisions were originally implemented in response to the Arab League boycott of Israel. Currently, several countries including Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, and Yemen may attempt to influence foreign individuals and organizations conducting business within their borders to agree to boycott specified governments, businesses, people, or products.

The EAR’s anti-boycott provisions are found in [15 C.F.R. part 760](#). The provisions apply to any person or entity in the United States as well as to U.S. persons or entities abroad. For example, VCU counts as a “U.S. person” for anti-boycott purposes because its main campus is located in the U.S. and it is

organized under U.S. law. The anti-boycott provisions specifically prohibit U.S. persons and entities from participating in the following activities:

- Agreeing to refuse or actually refusing to do business with a boycotted country or a blacklisted person
- Agreeing to discriminate or actually discriminating against persons based on race, religion, sex, national origin, or nationality (for example, agreeing to refuse to hire Israeli nationals)
- Providing a third party with information about the race, religion, sex, or national origin of another person
- Furnishing a third party with information about an organization or individual's business relationships with boycotted countries or blacklisted persons (for example, providing information about a company's current or previous business in Israel)
- Furnishing a third party with information about an organization or individual's membership in or associations with charitable and fraternal organizations
- Paying or otherwise implementing letters of credit containing prohibited conditions or requirements

Exceptions to these prohibitions exist but are limited. Additionally, U.S. persons asked to engage in prohibited boycott activities are required to report the request to BIS. If you encounter boycott language in the course of your VCU duties, please contact the Export Compliance Program at exportctrl@vcu.edu for assistance in determining whether an exception is applicable and if reporting to BIS is required.

C. Department of Treasury Regulations

The Office of Foreign Assets Control (OFAC) is within the U.S. Department of Treasury. OFAC is responsible for maintaining and enforcing U.S. economic and trade sanctions. OFAC maintains trade sanction programs against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States. The severity of the restrictions imposed by an existing sanction program can vary greatly, and may be influenced by foreign relations and national security concerns.

Regulatory Authority and Scope

OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security interests. Many of the sanctions are based on United Nations and other international mandates. Sanctions are country/program specific, and are subject to frequent change based on the changing geopolitical landscape. In addition to foreign countries and regimes, OFAC imposes sanctions on individuals, such as people the U.S. government deems to be terrorists and narcotics traffickers. The implementing regulations for the OFAC sanctions are found in [31 C.F.R. parts 500-599](#), the Foreign Asset Control Regulations.

The OFAC sanctions broadly prohibit most transactions between a U.S. person and persons or entities in an embargoed country or those who have been declared specially designated nationals (SDNs). The prohibition generally applies to importation and exportation of goods and services as well as related financial transactions or engaging in business activities with SDNs. Currently, OFAC sanctioned

countries include the Balkans, Belarus, Burma, Burundi, Central African Republic, China, Cuba, the Democratic Republic of Congo, Hong Kong, Iran, Iraq, Lebanon, Libya, Mali, Nicaragua, North Korea, Russia, Somalia, Sudan, Syria, Ukraine, Venezuela, Yemen, and Zimbabwe. Additional activity-based sanctions programs include Counter Narcotics Trafficking, Counter Terrorism, Non-Proliferation, and Transnational Criminal Organizations sanctions, among others. The activity-based sanctions programs are implemented through the designation of individuals engaging in the banned activities as SDNs. The OFAC sanctions program can change rapidly, so it is important to check for updates periodically.

OFAC Licensing for Country Based Programs

It is important to review the specific sanctions program before conducting activities with an OFAC-sanctioned entity or person, or in an OFAC-sanctioned country. The individual sanctions specifically describe what activities are exempt from the embargo (*e.g.*, personal communications, exchange of informational materials, etc.) as well as what activities may be permitted under an applicable license. Activities that are permitted under a general license do not require specific permission from OFAC prior to engaging in the activity; however, the conditions of a general license must be carefully reviewed and the use of the general license documented. Activities that do not fall under an available general license may be eligible for a specific license from OFAC. Specific license requests must be submitted and approved by OFAC prior to engaging in the sanctioned activity. Activities conducted under both general and specific licenses are subject to OFAC audit, and records must be maintained for five years after the conclusion of the activity. Please contact the Export Compliance Program at exportctrl@vcu.edu when considering any proposed OFAC-sanctioned activities.

D. Additional Considerations

Records/Record Retention

The ITAR, EAR, and OFAC regulations all stipulate recordkeeping requirements for regulated export activities. Under each of these sets of regulations, exporters must retain records for 5 years after the completion of an export activity and must make those records available to the regulating authority upon request. Exporters are required to retain all memoranda, notes, correspondence (including email), financial records, shipping documentation, and any other information related to the export activities. Additionally, when an exporter applies a license exception (EAR) or license exemption (ITAR), additional records documenting the applicability of the exception/exemption may be required and, in some cases, there may be additional reporting requirements.

Shipment of items controlled under the ITAR or EAR should be clearly marked as controlled with the appropriate regulatory control cited. Any licensed export, as well as exports with a dollar value greater than \$2,500, must be entered into the Department of Census Automated Commercial Environment (ACE) prior to the export of the item or information. While commercial freight forwarders will usually handle the ACE entry, the Export Compliance Program is able to assist the VCU community with the export of items being hand-carried or technical data being mailed or electronically transmitted.

Penalties for Export Violations

Violation of the export control laws can result in both civil and criminal penalties, including fines and imprisonment. Although there is a maximum amount for a civil or criminal penalty, the actual penalty is often multiplied. For instance, if multiple unauthorized shipments of the same item to the

same end user were completed, each individual shipment could potentially incur the maximum penalty. Even a single unauthorized export may result in multiple violations (*e.g.*, export without a license, false representation on shipping documents, acting with knowledge of a violation, etc.). Maximum penalties for violations under the OFAC, ITAR, and EAR can be \$1,000,000 or more and criminal prison sentences can be up to 20 years for individuals engaging in the violations. Violation of the export control laws may result in the loss of future export privileges (EAR) or even from debarment from participation in future federal contracts (ITAR).

In assessing penalties, DDTC, BIS, and OFAC will consider mitigating factors. Mitigating factors include whether the disclosure of the violation was made voluntarily, whether the violation is an isolated incident or part of a pattern of continuing behavior, whether the organization had a compliance program in place at the time of the violations, whether steps were taken to improve the compliance program after the discovery of the violation and whether the violation was due to inadvertence, mistake of fact, or a good faith misinterpretation of the laws.

Violations of export control laws discovered at VCU must be reported to the Export Compliance Program at exportctrl@vcu.edu or to the [VCU Compliance Helpline](#). If there is a question as to whether an activity would be a violation of the export control laws, it is important to consult with the Export Compliance Program prior to engaging in the activity.

IV. VCU Export Compliance Resources and Procedures

A. *Export Compliance at VCU*

VCU must comply with all applicable export control laws. The vast majority of teaching and research activity at VCU falls within one or more of several exemptions and exclusions from licensing requirements. However, it is important to understand how the laws apply to activities at VCU as well as the corresponding compliance obligations, which may extend to documenting the applicable licensing exception(s).

The U.S. government defines exports to include not only tangible or “physical” items, such as biological materials, chemicals, and equipment, but also intangible information, which may include research data, formulae, engineering designs, and ideas. Furthermore, an export is defined not only as an actual physical shipment, but also includes electronic and voice transmissions out of the United States (*e.g.*, email or a phone call to a colleague at a foreign institution or remotely accessing controlled documents while traveling internationally). Exports also include the release of technology to foreign nationals within the United States, the provision of training or services involving controlled equipment to foreign nationals in the United States or abroad, and engaging in transactions or providing services to entities and individuals who are on embargo or specially designated nationals lists.

As addressed [above](#), exports are regulated by multiple federal agencies. Each agency has its own procedures for enforcement, but violations of any of these regulations can result in significant institutional and personal penalties including fines of up to or exceeding \$1,000,000 per violation, incarceration for up to 20 years, and the loss of future exporting privileges.

VCU is committed to the preservation of academic freedom. However, the University recognizes its obligation to comply with the U.S. export control regulations. Fortunately, most, but not all, research activities on campus fall under the “fundamental research exemption,” which provides that basic and applied research activities not subject to publication or access restrictions will not be subject to export controls. Other exemptions apply to information shared in the context of teaching activities on campus in the United States as well as to information that is already publicly available. The export regulations are complex and continually changing, so it is important to consider each activity on an individual basis.

The VCU Export Compliance Program is responsible for helping the community understand and comply with the export control laws, and apply for export licenses when necessary. Please see <https://research.vcu.edu/integrity-and-compliance/compliance/export-compliance/> for additional information including analytical tools to assist you in determining if and how the regulations apply to an activity, as well as points of contact for assistance with export control matters. Please see [VCU’s Export Compliance and Research Security policy](#) for further information on how the Export Compliance Program works. Questions regarding export control laws or procedures for compliance at VCU may be addressed to the Export Compliance Program at exportctrl@vcu.edu.

B. *Roles and Responsibilities*

Export Compliance Program

The Export Compliance Program is housed in the Office of the Vice President for Research and Innovation, and consists of the Export Compliance Officer and the Assistant Director. The Export

Compliance Officer reports directly to the Associate Vice President for Research Administration. The Export Compliance Program is responsible for:

- Identifying areas at VCU that are impacted by export control laws
- Developing export control procedures and guidance to assure VCU complies fully with all applicable export control laws
- Educating the VCU community about export control laws and procedures
- Responding to the VCU community's export-related inquiries
- Monitoring and interpreting export control legislation
- Assisting investigators, researchers, departments, and offices at VCU when research involves export-controlled equipment or information
- Assisting principal investigators in developing technology control plans for research involving export-controlled items or information
- Verifying that international parties involved in research at VCU are not restricted parties or specially designated nationals
- In conjunction with the Empowered Official, applying for export licenses and requesting commodity jurisdictions and commodity classifications where appropriate
- Advising and assisting with recordkeeping of export-controlled activities at VCU
- Maintaining VCU's [Export Compliance website](#)

Empowered Official

The Associate Vice President for Research Administration serves as VCU's Empowered Official for export compliance purposes. In the context of export control laws, an Empowered Official has the authority to represent the university before the export control regulators in matters related to registration, licensing, commodity jurisdiction and classification requests, and voluntary or directed disclosures. While certain oversight functions may be delegated, only an Empowered Official may sign paperwork and bind the university in any proceeding before DDTC, BIS, OFAC, or any other government agency with export control responsibilities.

Division of Sponsored Programs

VCU's Division of Sponsored Programs is the University's central office authorized to submit extramural proposals to and accept awards from all funding sources on behalf of the University. The Division of Sponsored Programs is the official contact for the University on administrative award-related matters. The Division of Sponsored Programs also negotiates confidentiality non-disclosure, material transfer, and data use agreements.

The Division of Sponsored Programs works closely with the Export Compliance Program to identify and address export control issues related to the research performed at VCU. The Division of Sponsored Programs is responsible for:

- Reviewing terms of sponsored program agreements, material transfer agreements, and other non-monetary agreements to identify restrictions on publication and dissemination of research results and negotiate out such restrictions
- Aiding Principal Investigators in identifying potential export control issues in sponsored program agreements

- Communicating identified potential export control issues to the Export Compliance Program and affected Principal Investigators
- Informing the Export Compliance Program about changes in awards or project scope that necessitate additional export compliance reviews

Safety and Risk Management Office

VCU's Safety and Risk Management Office works collaboratively to ensure that VCU is a safe workplace that meets or exceeds all applicable regulatory standards. In the context of export control, the Safety and Risk Management Office trains VCU faculty and staff on shipping best practices. The Safety and Risk Management Office provides dangerous goods shipping training, and assists the Export Compliance Program in responding to VCU faculty and staff's international shipping questions and concerns.

Principal Investigators

Principal Investigators have expert knowledge of the type of information and technology involved in a research project or other university activity, such as presenting at conferences and discussing research findings with fellow researchers or collaborators. Principal Investigators must ensure that they do not disclose controlled information, such as information that has been provided to them under a corporate non-disclosure agreement, or transfer controlled articles or services to a foreign national without prior authorization as required. Each Principal Investigator is responsible for:

- Understanding his/her obligations under the export control laws
- Assisting the Export Compliance Program in correctly classifying items and technology that are subject to export control laws
- Assisting in the development and maintenance of the conditions of a technology control plan for any activity, data, or equipment where the need for such a plan is identified
- Ensuring that research staff and students have been trained on any applicable export control regulations or technology control plan requirements
- Periodically re-assessing export control risks associated with his/her research projects (see [Appendix 9](#))

VCU Faculty and Staff

VCU's faculty and staff are amongst the institution's most valuable assets. The faculty and staff provide the labor and expertise that make VCU one of the premier research universities in Virginia. Faculty and staff play a vitally important role in the export compliance process. In the context of export compliance, each faculty and staff member is responsible for:

- Understanding his/her obligations under the export control laws
- Adhering to the requirements of [VCU's institutional policy regarding international travel](#) when traveling abroad
- Submitting an entry in [VCU's ECO System](#) to allow for a visa review if designated as a VCU sponsor of an employee or visiting scholar who is not a United States citizen or green card holder

- Completing [dangerous goods shipping training](#) and reviewing [VCU’s international shipping export checklist](#) before shipping items abroad (for further information, see the “International Shipping” dropdown section on [VCU’s Export Compliance webpage](#))
- Directing all export-related questions to the Export Compliance Program at exportctrl@vcu.edu

C. *Risk Mitigation Procedures*

Export Control Analysis

As addressed [above](#), the Export Compliance Program is responsible for analyzing VCU faculty and staff’s proposed actions to determine whether they are subject to export control laws, and if so, whether they are subject to licensing requirements. While the in-depth portions of the analysis are usually performed by the Export Compliance Program, export control analysis is a collaborative process and requires buy-in from the entire VCU community to function properly. The general stages of the analysis process are as follows:

Identification of potential export control issues. The Export Compliance Program relies upon VCU’s faculty and staff to assist in the identification of potential export control issues. International shipping, the hiring of international faculty and staff members, and the hosting of international visitors are all areas that present potential export control issues. In addition, some research projects can include aspects that may require export control analysis. For instance, projects where the research agreement restricts publication, restricts international participation, or prohibits deliverables from being disclosed or delivered to foreign countries or persons present potential export control issues. When a member of the VCU community identifies a potential export control issue, that person should refer the issue to the Export Compliance Program at exportctrl@vcu.edu. For further information on this topic, please see [Appendix 1](#) and [Appendix 8](#) below, or visit the “Do Export Control Laws Apply to Me” dropdown section on [VCU’s Export Compliance webpage](#).

Analysis of whether export laws apply. Once a potential export control issue has been referred to the Export Compliance Program, export compliance personnel will perform an in-depth review of the issue to determine whether the action or item at issue is export controlled. Each review is unique, but this process will commonly include:

- Self-classification of items and technologies
- Item-specific research on manufacturers’ websites
- Review of contracts for terms that may negate the fundamental research exemption/exclusion
- Review of relevant statutes and regulations
- Communications with Principal Investigators, the Division of Sponsored Programs, and other relevant subject matter experts
- Use of specialized export compliance software

If the review results in the finding that the proposed action at issue is not export controlled, the Export Compliance Program will promptly inform the referring party. If the review indicates that the action is export controlled, the Export Compliance Program will move on to determining whether a license is required.

Determination of whether a license is required. Once a proposed action has been determined to be export controlled, the Export Compliance Program will review all potentially applicable licensing

exemptions and exclusions. If an exemption or exclusion applies, the Export Compliance Program will inform the referring party, and will explain any limitations or recordkeeping requirements relevant to the applicable exemption or exclusion. If no exemption or exclusion applies, the Export Compliance Program will engage the referring party and VCU's Empowered Official and, where appropriate, assist in the process of acquiring a license from the relevant government agency. See below for further information regarding [recordkeeping](#) and [licensing](#).

Technology Control Plans

When export-controlled equipment, data, or technology is identified for a project, the Export Compliance Program will work with the Principal Investigator to develop and implement a Technology Control Plan to appropriately secure the equipment, data, or technology from access by unlicensed non-U.S. persons (see [Appendix 5](#) for VCU's Technology Control Plan template). The TCP will include:

- A statement affirming VCU's commitment to export control compliance
- An identification of the applicable export controls
- An identification of the items or technologies subject to the controls
- A description of the agreed upon security measures to control the items or technologies at issue, including as appropriate:
 - Laboratory compartmentalization
 - Time blocking
 - Marking
 - Locked storage
 - Electronic security
 - Confidential communications
- The name and nationality of each individual who will have access to the controlled item or technology
- A description of the personnel screening measures to be used for granting access to the controlled item/technology
- A description of the appropriate security measures for disposal of the item/technology when use is complete

Before any individual may have access to export-controlled items or technology, he or she must be informed of the conditions of the Technology Control Plan and agree to comply with the security measures outlined in the Technology Control Plan.

Training

Training is the foundation of a successful export compliance program. Well-informed employees minimize the likelihood that inadvertent violations of the law will occur. Non-compliance with export control laws can occur in many unexpected settings, such as 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.

Each Principal Investigator is responsible for completing an export control module provided by the CITI program before being assigned to a research protocol. In addition, the Export Compliance Program will prepare updated training materials and will ensure that employees or students engaged in

export-controlled activities receive the appropriate briefing. The office will also maintain records of training or briefings provided.

International Shipping

International shipping is subject to numerous export controls and regulations. Failure to comply with applicable international shipping controls can lead to fines, confiscation, or incarceration. VCU's Business Services office as well as all standard carriers (USPS, UPS, FedEx, etc.) require completed paperwork prior to accepting a package for shipment internationally. VCU is the shipper of record — not the shipping agent or the customs broker — no matter who fills out the forms.

It is important to understand that everything that crosses the United States' border is an export, even if the item is abroad only temporarily or if it will be used for research.

Most hardware, and some software and information, are export-controlled to some degree. Some entities, people, and uses are restricted — approval must be obtained prior to shipping any item or information. See [Appendix 3](#), [Appendix 4](#), and the “International Shipping” dropdown section on [VCU's Export Compliance webpage](#) for best practices related to international shipping in general. See [Appendix 10](#) for VCU's rules related to international shipping of biological materials.

Agreements with Foreign Institutions or Persons

VCU has embraced its role as an international center for scholarship, and the Export Compliance Program enthusiastically supports VCU's efforts to be inclusive of diverse scholarly viewpoints. While there are many benefits to international academic collaborations, the agreements that outline those collaborations must comply with U.S. Government regulations.

The U.S. Government has created a list of individuals and entities that have been designated as conducting activities that are contrary to U.S. national security and foreign policy. The Export Compliance Program provides support in determining if any potential business partners or collaborators are on that list and will identify the specific restrictions associated with those entities.

The University is also prohibited from supporting unsanctioned boycotts of other countries. VCU faculty and staff should submit any international agreements to the Export Compliance Program or the Division of Sponsored Programs to review for compliance with the U.S. Anti-boycott regulations.

To aid University personnel in identifying and conducting these reviews, the Export Compliance Program has created an [“International Agreements Pre-Screening Form”](#) to be completed by the individuals negotiating these agreements. This form asks for biographical information on the parties to the agreement and some information on the type of relationship being formed under the agreement. This information will greatly aid in a quick and accurate determination by the Export Compliance Program. For further information, please visit the “Agreements with Foreign Governments or Persons” dropdown section on [VCU's Export Compliance webpage](#).

International Travel

The Export Compliance Program tracks and provides advice for international travel in several ways:

RAMS-ECO System: [RAMS-ECO](#) is an automated database the Export Compliance Program uses to ensure that VCU’s international travelers are not at risk of violating export control laws while abroad. It imports relevant travel information from VCU’s travel reimbursement programs (*i.e.*, Chrome River and College Travel Planners) and automatically notifies VCU personnel by email when they are required to enter additional information. Click [here](#) for further information on how to use [RAMS-ECO](#).

High Risk Travel: For international travel to certain countries deemed “high risk” by the U.S. Government, the Export Compliance Program has established an automated review checkpoint in the Chrome River system for any pre-approvals entered for travel to those countries. The Export Compliance Program will reach out to the individual traveling and ask for:

- The entities or institutions the individual will be working with while abroad
- Some background information on the reason for the travel

The Export Compliance Program does this in order to conduct background screenings on entities VCU plans to work with and to provide the traveler with export compliance guidance that fits their specific needs.

If you plan to travel to Cuba, Iran, Sudan, North Korea, or Sudan, contact the Export Compliance Program at exportctrl@vcu.edu in advance of your travel.

Other International Travel: The Export Compliance Program tracks all other international travel through the College Travel Planners system and highly recommends that individuals use College Travel Planners for all travel including travel that is not reimbursed by the University.

The Export Compliance Program, in conjunction with VCU Technology Services, currently offers a travel laptop program. To request a travel laptop please contact the Export Compliance Program.

If you plan to travel to any destination with research data or technology, contact the Export Compliance Program in advance of your travel. For further information regarding international travel, please visit the “International Travel” dropdown section on [VCU’s Export Compliance webpage](#).

International Visitors

Federal regulations require VCU to monitor international individuals on campus to ensure that their presence does not lead to any export control violations. Export control laws limit foreign persons’ access to export-controlled articles and related information, and such access may require a license or license exemption or exclusion. All international employees and visitors must be processed through VCU’s Global Education Office. An export control review will be performed on all foreign persons regardless of employee or visitor status. International visiting nonemployee scholars are required to complete and submit the [Visiting Nonemployee Scholar Agreement](#). For further information on international visitors, please visit the “Hosting International Visitors on Campus” dropdown section on [VCU’s Export Compliance webpage](#).

Internal Reviews and Risk Assessments

In order to ensure maximum compliance with export control laws, the Export Compliance Program conducts annual and ad-hoc internal reviews and risk assessments. Internal reviews focus on inherently risky areas such as adherence to technology control plans, recordkeeping compliance, and

unreported international travel. The purpose of the reviews is to identify and address any areas of non-compliance as well as to identify opportunities for improving export compliance procedures. Risk assessments involve identifying all items and activities at VCU that present a potential export compliance risk, and identifying all mitigating measures that can and should be taken in response. The Export Compliance Program shapes its ongoing policies and procedures based on information obtained through internal reviews and risk assessments.

D. Licensing

While most activities at VCU are not export controlled, or fall under an applicable exemption or exclusion, some activities may be subject to licensing requirements. For example, international university activities in embargoed countries may be prohibited without a license. In addition, licenses from the Department of State or the Department of Commerce may be required for the physical export of VCU-owned items or in order for foreign nationals to access controlled items or technology at VCU. As addressed [above](#), VCU's Empowered Official is the individual at VCU authorized to apply for licenses from DDTC, BIS, and OFAC. In the event that a license is required, the Empowered Official will consult with the Export Compliance Program and, where appropriate, will prepare and submit a license request to the proper agency. The Export Compliance Program will be responsible for maintaining records associated with license requests.

VCU personnel who have questions or concerns about whether an activity requires an export license should consult with the Export Compliance Program prior to engaging in the activity. See [Appendix 2](#) for further details.

E. Recordkeeping

VCU is committed to maintaining export-related records in the fashion and for the time period required by all applicable export control regulations. Unless otherwise provided for or instructed by the Office of the General Counsel, all records shall be maintained consistent with the VCU record retention policy, and shall be retained no less than five years after the technology control plan termination date or license termination date, whichever is later.

If ITAR-controlled technical data is exported under an exemption, certain records of the transaction must be kept beyond the 5-year retention period. Those records include:

- A description of the unclassified technical data
- The name of the recipient/end-user
- The date/time of export
- The method of transmission (*e.g.*, email, fax, telephone, FedEx, etc.)
- The exemption under which the export took place

Note that information that meets the criteria of being in the public domain, being educational information, or resulting from Fundamental Research is not subject to export controls under the ITAR. Therefore, the special requirement for recordkeeping when using an exclusion, exception, or exemption may not apply. However, it is a good practice to provide such description for each export to establish a record of compliance.

BIS has specific record-keeping requirements. Generally, records required to be kept by the EAR must be kept for a period of 5 years from the last export 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.

F. Incident Reporting

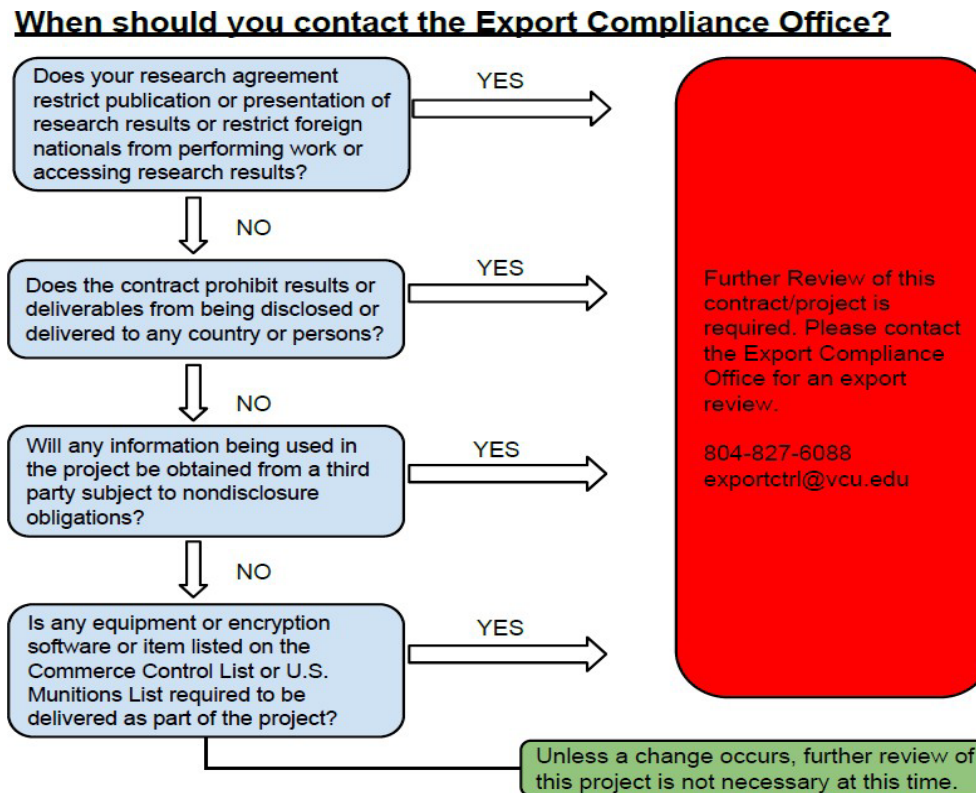
Any individual who suspects a violation has occurred must immediately take steps to prevent any further violations and notify the Export Compliance Program (exportctrl@vcu.edu) or the VCU Compliance Helpline (1-888-242-6022 or www.vcuhelpline.com). The Export Compliance Program will determine the appropriate follow-up to the notification, which may include a voluntary self-disclosure to the government. VCU's empowered official may send an initial notification about the suspected violation to the appropriate government agency. The Export Compliance Program will conduct an internal review of the suspected violation by gathering information about the circumstances, personnel, items, and communications involved. Once the review is complete, the Export Compliance Officer may provide the government agency with a supplementary letter with a thorough narrative account of:

- The project's description and background
- A description of the suspected violation(s)
- Which items and controlled categories were involved
- Dates on which the violation(s) occurred
- Which countries were involved
- Who was involved and their citizenships
- An explanation of why the alleged violation(s) occurred
- Any corrective actions taken
- VCU's commitment to export controls compliance and the Export Compliance Program's enactment of all of the elements recommended by the Commerce Department's Bureau of Industry and Security for an effective export compliance program

Once the initial notification and supplementary letter have been sent, VCU will follow the government agency's instructions.

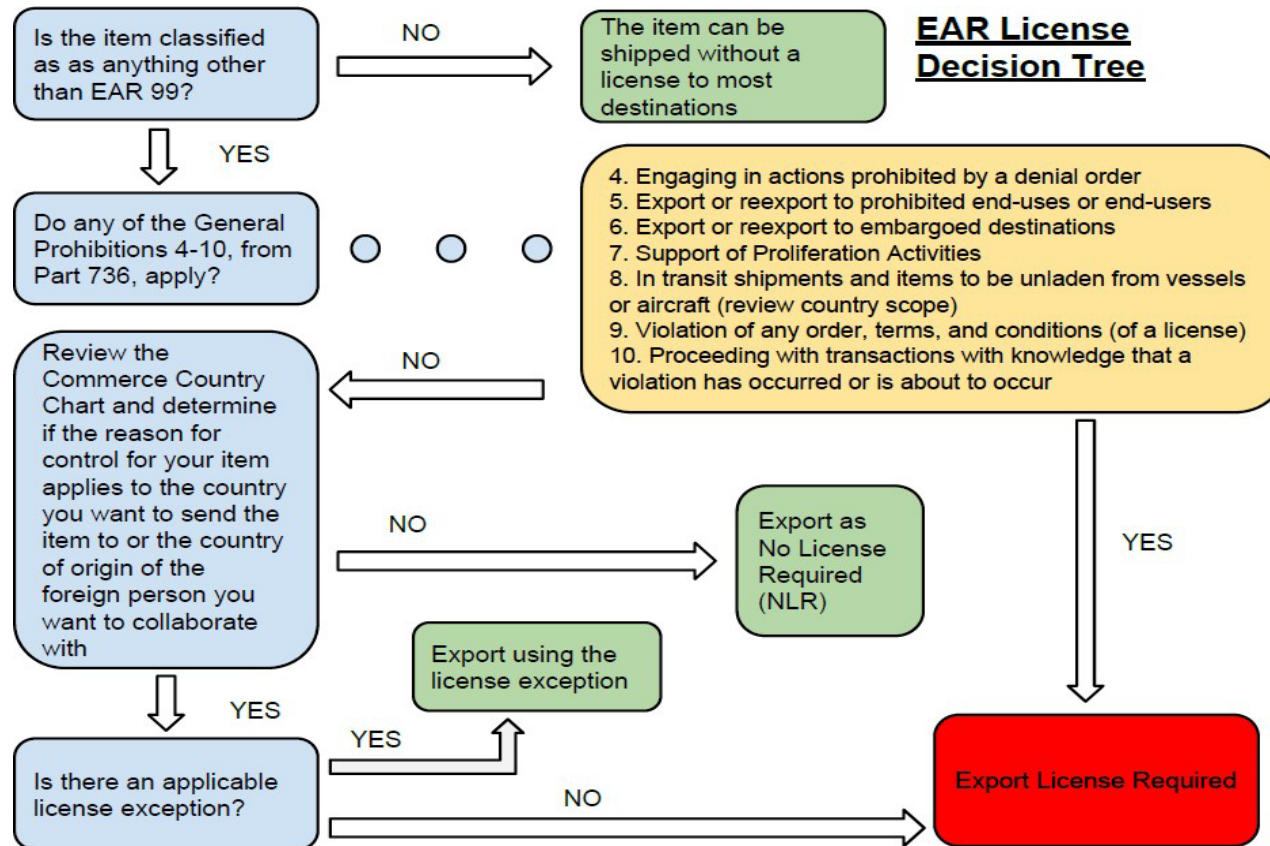
V. Appendices

Appendix 1 – Export Control Issue Identification Decision Tree



*Available online at https://research.vcu.edu/media/office-of-research-and-innovation/exportcontrol/decision_tree.pdf

Appendix 2 – Export Control Licensing Decision Tree



*Available online at https://research.vcu.edu/media/office-of-research-and-innovation/exportcontrol/ear_decision_tree.pdf

Appendix 3 – International Shipping Decision Tree



Available online at <https://research.vcu.edu/media/office-of-research-and-innovation/exportcontrol/ShippingFlowchart.jpg>

Export Checklist

Restrictions on shipments leaving the US

Depending on the shipment, who will receive it and in what country, and how they will use it, it may require a license from the Commerce Department (EAR: Export Administration Regulations), the State Department (ITAR: International Trafficking in Arms Regulations), or the Treasury Department (OFAC: Office of Foreign Assets controls).

Step 1

Determine the Export Classification and Tariff Code - The export classification and the tariff code are two completely separate systems for identifying exports.

Tariff code

The Harmonized Tariff Schedule (HTS) of the United States assigns a ten-digit classification code to each of about 17,000 descriptions of goods. This number is used to determine an item's tariff schedule, as well as providing a basis for reporting trade statistics. The HTS is based on the World Customs Organization's six-digit Harmonized Commodity Coding and Classification System, as are the tariff schedules for other countries. The HTS is always used for import into the U.S. It can also usually be used for exports from the U.S., supplanting the earlier Schedule B. HTS and Schedule B are similar but not always the same -- the Census Bureau has a list of [HTS numbers that cannot be used for export](#). [Click here for More information on Schedule B and Harmonized System](#).

- The best source of tariff code for a purchased item is the vendor or manufacturer.
- The Census Bureau offers a [Schedule B Search Engine](#) and a tool [to browse or validate a number](#).
- An [HTS search engine](#) is available, or you may download the entire HTS.

Export classification (ITAR)

The State Department's International Trafficking in Arms Regulations (ITAR) control the export of items, technical data, and services that are either on the [US Munitions List](#) or were "specifically designed, developed, configured, adapted, or modified for a military application". All ITAR-controlled exports require a license from the State Department, unless they qualify for one of several exemptions.

Export classification (EAR)

If an item is not subject to the ITAR, then it is likely subject to the Commerce Department's Export Administration Regulations (EAR). If an item subject to the EAR is on the [Commerce Control List](#) (CCL, an [Index](#) is also available), it will have a five-digit Export Control Classification Number (ECCN). If it is subject to the EAR and not on the CCL, its ECCN is EAR99. All EAR items are subject restrictions based on the end use, end user, and country. In addition, all EAR items except EAR99 are subject to list-based controls, specified in the CCL, which consider the item and destination country.

Determining whether an item is subject to ITAR or EAR is critical, and determining the correct ECCN for EAR items is very important. Mistakes here can have serious consequences to VCU and to individual shippers.

- The best source of export classification for a purchased item is the vendor or manufacturer.
- If it cannot be gotten from the vendor or manufacturer, then it will be necessary in all but the most obvious cases to consult the Export Control Officer.

Step 2

Determine whether a [license](#) is required

ITAR

If an item is ITAR-controlled and no exemptions apply, it will need an ITAR license. The application for an ITAR license is a detailed summary of what the item is, who will be using it and for what, the identities of individuals and entities who will have custody on its way to the end user, its value, and other information. Once submitted, it can take 14-60 days to receive a license.

- When making an ITAR shipment, consult the Export Control Officer.

EAR

If an item is EAR-controlled, it may need a license based on its ECCN, destination country, the end user and the end use, if no exceptions apply. The application for an EAR license is a detailed summary of what the item is, who will be using it and for what, the identities of individuals and entities who will have custody on its way to the end user, its value, and other information. Once submitted, it can take 14-60 days to receive a license.

- When making an EAR shipment of low-tech items, and the ECCN, destination country, end user and end use have been determined, work with the forwarder/broker or use a package delivery service's online tool to determine whether a license is needed. If it is, consult the Export Control Officer to start the application process.
- Otherwise, consult the Export Control Officer to determine whether a license is needed and start the application process if needed.

Step 3

Check the receiving individuals and entities

Restrictions on shipments entering the destination country

Countries control imports to protect their citizens, control internal affairs, and influence foreign affairs. Animals, plants, pathogens, genetic material, drugs, radioactive materials, electronic devices with encryption may be restricted (prior approval, quarantine, inspection, prohibition). The shipment will need to satisfy the destination country's requirements.

- Determine the Destination Country requirements – the first step is to contact the recipient. They may know what will be required or who to contact for help.
 - It may be advisable for the receiving party to designate a forwarder/broker in the destination country.
 - Exercise judgment when using a package delivery service. Their business is simple shipments, and they may not look for complications.
 - Export.gov has a high-level summary of [Foreign Standard and Certification Information](#)
 - FedEx has very detailed [Country Profiles](#)
 - Countries may have a useful web page – Google “<countryname> import” and look for a government link
- Determine the methods and terms

Packaging and labeling

Any shipment needs to be packaged for protection against damage in transport. Some items will require special packaging to protect the contents (e.g., biological samples packaged with dry ice). Other items will require special packaging and labeling to protect the transport system (e.g., hazardous materials).

- [Shipping Dangerous Goods](#)

Logistics

Packages (up to 150 pounds) and freight (over 150 pounds) can be handled by the international networks of delivery services like FedEx Express International, FedEx Freight International, DHL or UPS. There are some restrictions; for instance, some FedEx services will not handle carnets for temporary import. If the shipment will need individual attention, a broker/forwarder may be necessary.

A freight forwarder/customs broker can assemble the right combination of carriers, clearances, and documentation for more complicated shipments.

- Determine which forwarder/broker will handle the shipment

Forwarders and Brokers

Customs brokerage is the role of facilitating items through customs, and includes submitting documentation, paying taxes and duties, and working with importers to identify and get necessary clearances (FDA, USDA, Fish & Wildlife, etc.). In the U.S., customs brokers are licensed by Customs & Border protection.

Freight forwarding is the role of arranging with carriers for items to move from origin to destination (their trade association calls them "Architects of Transport"). Often, a single company will act as both freight forwarder and customs broker. If you use an international package/freight delivery network, the freight forwarding and customs brokerage roles are bundled into the service:

- FedEx Express International
- FedEx Freight International
- DHL
- UPS Global Trade

Shipments that need special attention (export licenses, temporary exports, special requirements for import into receiving country, etc.) may be best handled through a freight forwarder/customs broker,

Shipping Documentation

A delivery service or forwarder/broker can help with documentation, but they rely on the person ordering the delivery for information about the shipment (and that person is responsible, not them). It will be necessary to provide the shipment address, item descriptions (including export classification, tariff code, and value), the purpose of the shipment, export control authorization, and declaration control statement. Instruction to the forwarder or carrier are documented in the Shipper's Letter of Instructions. Information for customs officials in both the ending and receiving parties is documented in a Commercial Invoice (for Sales Transactions) or Proforma Invoice (when not a sale). [See the Shipping Documentation page for more information.](#)

Financial

Small-package shipments under \$2,500 can be insured with the carrier.

- Determine whether insurance will be needed, and whether to buy it from the carrier
- The shipment will be subject to duty and possibly tax (e.g., VAT) on entering the destination country. Some tariff codes have a 0% rate, and many countries allow duty-free importation for temporary imports.
- Research and estimate duty and VAT if it's a concern
 - For temporary exports, get a carnet, plan on posting a temporary import bond, or plan to drawback the import duty when the item is returned.

*Available online at https://research.vcu.edu/media/office-of-research-and-innovation/exportcontrol/export_checklist.docx

Appendix 5 – Technology Control Plan Template

**VIRGINIA COMMONWEALTH UNIVERSITY
EXPORT COMPLIANCE PROGRAM
TECHNOLOGY CONTROL PLAN (TCP) CERTIFICATION**

PART I

Individual Requesting and Responsible for TCP: First-name Last-name		
Telephone Number	(NNN) NNN-NNNN	
E-mail Address	Address	
Request Date	Date of the TCP	
Description of Controls:	(EAR and ECCN# / ITAR and category)	
Primary Area(s) of Risk: (example: foreign national “use” of controlled equipment on campus.)	Please describe all areas of Risk	
Location(s) Covered by TCP (add additional rows if needed)	Building(s):	
	Room(s):	
	Server or other virtual storage:	
Project Personnel	List Name(s) below:	List citizenship(s) / Permanent Res. Status:
Personnel who will have access to export controlled subject matter (add additional rows if needed)	First-name Last-name	Citizenship
Is sponsored research involved?	Yes or No	
If yes, identify sponsor:	Name of sponsor	
OSP Number and projected end date of project	FP0000NNNN	
Is a non-disclosure agreement involved?	No	
If yes, identify the parties:	N/A	
Contact Information:	N/A	
Attachments:	N/A	1. Export Briefing and Certification Form(s) for each person subject to this TCP 2. TCP
Approved:	<p>_____</p> <p>Tina Cunningham, J.D., CRA Empowered Official</p> <p style="text-align: center;">OR:</p> <p>_____</p> <p>Dr. P. Srirama Rao, Vice President for Research and Innovation Empowered Official for Export Controls</p>	<p>_____</p> <p>Date</p>

PART II

BRIEFING AND CERTIFICATION ON THE HANDLING OF EXPORT-CONTROLLED INFORMATION

SUMMARY:

This project involves the use of Export-Controlled Information. As a result, the project implicates either the International Traffic in Arms Regulations (ITAR) under the jurisdiction of the Department of State, or the Export Administration Regulations (EAR) under the jurisdiction of the Department of Commerce.

ITAR and EAR:

It is unlawful under the ITAR to Export controlled technology or information to a Foreign Person without proper authorization. In general, Export Controlled Information means activities, items, and information related to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, modification, demilitarization, destruction, processing, or use of items with a capacity for military application utility. Export Controlled Information does not include basic marketing information on function or purpose; general system descriptions; or information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities or information in the public domain.

It does not matter if the actual intended end use of Export Controlled Information is military or civil in nature. Researchers may be held personally liable for violations of the ITAR and EAR. As a result, you should exercise care in using and sharing Export Controlled Information with others. Technical information, data, materials, software, or hardware, *i.e.*, technology generated from this project, must be secured from use and observation by unlicensed non-U.S. citizens. Both civil and criminal penalties may be imposed for unlawful export and disclosure of Export Controlled Information up to and including incarceration.

DEFINITIONS:

- U.S. Person: Persons who are permitted to access export-controlled items without restrictions. This includes:
 - U.S. Citizens, Aliens who are “lawful permanent residents” (Green Card Holders), Other Protected individuals (designated an asylee or refugee or a temporary resident under amnesty provisions), any entity incorporated to do business in the U.S.
- Foreign Person/Foreign National: everyone not a U.S. person. Any foreign interest and any U.S. person effectively owned or controlled by a foreign interest. This includes:
 - Foreign businesses not incorporated in the U.S. and persons representing other Foreign Persons, H-1B Work Visa, F1 Study Visa, J1 Training Visa, E1 Investors Visa, TN Work Visa, L1 Intra-Company Transfer Visa, K and V Fiancée Visas.
- Export:
 - *Sending*: transferring or taking a tangible item outside of the U.S. (also applies to foreign made imports).
 - *Disclosing*: (oral/visual): technical data, technology, or source code to a Foreign Person, in the U.S. or abroad.
 - *Providing*: technical assistance, training, or defense services to a Foreign Person, whether in the U.S. or abroad.
- Export Controlled Technology/Information:
 - Items, or certain parts of those items designed specifically for use in that item, that appear on the U.S. Munitions List or the Commerce Control List.
 - For ITAR
 - *Defense Article*: any item or technical data designated on the U.S. Munitions List

- *Technical Data*: information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance OR modification of defense articles.
- *Defense Services*: the furnishing of assistance (including training) to Foreign Persons, 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.
- For EAR: specific information (or source code) necessary for the development, production, or use of a product listed on the commerce control list
 - *Use*: operation, installation (including on-site installation), maintenance (checking), repair, overhaul, AND refurbishing of controlled items.

SECURITY MEASURES will be appropriate to the classification involved. Examples of security measures are (but not limited to):

- *Project Personnel* – Authorized personnel must be clearly identified.
- *Laboratory “work-in-progress”* - Project data and/or materials must be physically shielded from observation by unauthorized individuals by operating in secured laboratory spaces, or during secure time blocks when observation by unauthorized persons is prevented.
- *Marking of Export Controlled Information* – Export Controlled Information must be clearly identified and marked as export controlled.
- *Work Products* - Both soft and hardcopy data, lab notebooks, reports, and research materials are stored in locked cabinets; preferably located in rooms with key-controlled access.
- *Equipment or internal components* – Such tangible items and associated operating manuals and schematic diagrams containing identified “export controlled” technology is to be physically secured from unauthorized access.
- *Electronic communications and databases* – Appropriate measures will be taken to secure controlled electronic information. Such measures may include: User ID, password control, SSL or other approved encryption technology. Database access may be managed via a Virtual Private Network (VPN). Only authorized users can access the site and all transmissions of data over the internet will be encrypted using 128-bit Secure Sockets Layer (SSL) or other advanced, federally approved encryption technology.
- *Conversations* – Discussions about the project or work products are limited to the identified contributing investigators and are held only in areas where unauthorized personnel are not present. Discussions with third party sub-contractors are only to be conducted under signed agreements that fully respect the non-U.S. citizen limitations for such disclosures.

PART III

TECHNOLOGY CONTROL PLAN (TCP)

1) COMMITMENT

Virginia Commonwealth University (VCU) is committed to export controls compliance. The Office of the Vice President for Research and Innovation is responsible for implementation of technology control plans as applicable. The Empowered Official for export controls is Tina Cunningham, Associate Vice President for Research Administration. Nicole Porter, Export Compliance Officer, is the main contact for export control issues. The individual responsible for and committed to ensuring compliance with this TCP is [INSERT Name of Responsible Party].

As part of its commitment to export controls compliance, VCU has established several policies that must be reviewed and followed by the individual responsible for ensuring compliance with this TCP. The Research Data Ownership, Retention, Access, and Security Policy provides guidelines for the storage and protection of controlled research data. The Export Compliance and Research Security policy provides an overview of export control laws and must be reviewed and followed by any researcher responsible for compliance with export control laws under this TCP. All personnel with access to the controlled technology or research have read and understand these policies.

2) BACKGROUND AND DESCRIPTION OF THE USE OF CONTROLLED ITEMS AND INFORMATION

[INSERT]

3) PHYSICAL SECURITY

[INSERT description of how equipment, technology, data and other controlled information will be shielded from unauthorized persons including descriptions of relevant security systems such as badging, escorts, visitor logs and other types of building access restrictions.]

4) INFORMATION SECURITY

Virginia Commonwealth University rules require all researchers to ensure that sensitive digital research data is appropriately protected. In accordance with those rules, Virginia Commonwealth University provides guidance on procedures for Protecting Sensitive Digital Research Data found in the Research Data Ownership, Retention, Access, and Security Policy that contains a link to Technology Services' "Data Security Guidelines," that will be followed for protection of controlled information under this TCP. Controlled data are categorized under the Data Classification Standard as Category I data. All project data and other related digital materials will be strongly password-protected and encrypted using commercially available encryption technology. Guidance on utilizing encryption as a means of protecting sensitive digital data can be accessed at the VCU Information Security Standard. The computer(s) on which this data will be stored shall not be connected to any networks. When this computer has reached its usable life, the hard drive will be forensically erased or destroyed using university hard drive destruction services.

[INSERT an outline of additional measures that will be taken to ensure information access controls that will be utilized to ensure the requirements are met including use of passwords and encryption protection. The data discard policy and relevant information technology policies and procedures should be included, as well as other plans for controlling access to controlled information. These procedures should address system backup and who will have access, transmission procedures, how computers on which sensitive digital data will be stored will be sanitized upon completion of the project, and other procedures necessary to provide the necessary security. Use of laptops for storage of this data must be justified and will only be approved with additional security procedures.]

5) BREACH IN SECURITY PROTOCOL

Should there be a breach in the security protocols outlined in this Technology Control Plan, the PI or other associated personnel, must contact the Export Compliance Program immediately. The Export Compliance Program will conduct a of review of the breach and determine whether a report must be filed with the Federal Agency that controls the export.

6) PERSONNEL SCREENING

All personnel with access to the controlled technology and their nationality are listed in the TCP Certification Form. [Insert any information on the type of background check and any additional required reviews that will be employed beyond the University’s standard background check procedures for all employees.]

7) INTERNATIONAL TRAVEL

These requirements apply to all VCU faculty, staff, students and volunteers who travel internationally as part of VCU research, education, service or employment. Request Pre-Approval for International Travel through the ECO electronic system. The Export Compliance Program will review the information to determine potential export issues.

8) TRAINING AND AWARENESS

All personnel with access to controlled information on this project have read and understand the “Briefing and Certification on the Handling of Export Controlled Information.” All personnel must also have taken the CITI Export Controls course within 2 years of implementation of the TCP and must submit the certificate of completion to the Export compliance office with this signed TCP to move forward with their export-controlled project. Additional export control training for this project may be conducted by OSP. Additionally, all personnel with access to digital data/information stored on their university computer have read and agree to follow the VCU procedures for Protecting Sensitive Digital Research Data.

9) COMPLIANCE ASSESSMENT

As a critical component to the University’s ongoing compliance monitoring, self-evaluation is an internal assessment process whereby procedures are reviewed and any findings reported to the Export Compliance Program at exportctrl@vcu.edu, or to the Empowered Official for export controls at tlunningham2@vcu.edu. The Office of the Vice President for Research and Innovation may also conduct periodic evaluations and/or training to monitor compliance with the TCP procedures. Any changes to the approved procedures or personnel having access to controlled information covered under this TCP will be cleared in advance by the Empowered Official for export controls.

10) PROJECT TERMINATION

Security measures, as deemed appropriate, will remain in effect after the project has ended in order to protect the export-controlled information unless earlier terminated when the information has been destroyed or determined to be no longer export controlled.

Department(s): Department name Sponsor: Sponsor name

Research Project Title: Title

OSP No. FP0000NNNN

Certification: I hereby certify that I have read and understand this Briefing, and that I understand and agree to follow the procedures outlined in the TCP. I understand that I could be held personally liable if I unlawfully disclose, regardless of form or format, Export-Controlled Information to unauthorized persons.

Signature: Date:

VCU International Agreements Pre-Screening Form

Instructions: Please answer the following questions to the best of your ability. Submit this form to the Export Compliance Program at exportctrl@vcu.edu

VCU Employee Name:	Department:
Phone:	E-Mail:

Travel Questions
Foreign Institution Name and Address:
Foreign Institution Country of Origin/Organization:
Please describe the nature of the agreement (<i>ex: MOU, Research Collaboration, Student Exchange</i>):
If applicable, please describe the type of research or services that will be provided under the agreement (<i>ex: plan to develop academic courses for foreign institution, plan to collaborate on software development</i>):

I attest that, to the best of my ability, I have truthfully answered all of the above questions.

Traveler Signature

Date

*Available online at <https://research.vcu.edu/media/office-of-research-and-innovation/exportcontrol/pre-screening.docx>

Virginia Commonwealth University Visiting Nonemployee Scholar Agreement

This agreement should be filled out by the PI, host, or someone with knowledge of the visitor’s activities on campus.

Name of Visiting Scholar (herein “Scholar:”):

Name of Visiting Scholar’s Home Organization: _____

Period of Time at VCU: _____ through

Name of VCU Faculty Sponsor:

VCU School/Department:

Laboratory/Research Space Utilized:

If any of the information in this agreement changes, including updated lab access or use of different research equipment, or extension of period of time at VCU, I agree to update this agreement to reflect any changes.

In consideration of being permitted to be part of an educational experience at Virginia Commonwealth University (VCU), I hereby agree to the following:

- Education experience and scholarly activities are limited to: (example:
- To follow the administrative and research policies, standards and practices of VCU when present on the VCU campus or using VCU facilities or resources.
- To not publish any material related to my Research that identifies or uses the name of Virginia Commonwealth University, or its members, clients, students, faculty or staff, directly or indirectly, unless I have received written permission from VCU. However, VCU hereby grants me the right to publish research reports, research publications required by the written research protocol/project (a copy of which has been attached).
- To comply with all applicable federal, state and local laws including but not limited to the use, possession, manufacture or distribution of alcohol and controlled substances, compliance with drug-free workplace, non-discrimination, sexual harassment and export regulations.

Further, I acknowledge and agree that during the term of this Agreement I may have access to VCU information that is commercially valuable and not generally known in its industry of principal use (herein “Proprietary Information”) In the event VCU, faculty, staff, students or employees disclose Proprietary Information to me , I agree that I will use reasonable care to hold in confidence and not disclose, transfer, use, copy, or allow access to any such Proprietary Information unless specifically authorized in writing to do so by the Vice President for Research or his/her duly authorized representative.

In the event the research activities involve the use of VCU facilities or resources or involve faculty, staff or students of VCU the resulting development of any intellectual property shall be governed by VCU's Intellectual Property Policy. I acknowledge and agree that ownership of intellectual property developed as a result of assigned institutional effort(s) of VCU's faculty, staff and students or the use of VCU's institutional resources shall reside with VCU, unless such work is covered by a written sponsored research agreement between ___ (*insert visitor name or visitor's employer in blank*) and VCU in such case the terms of that agreement will govern. The undersigned agrees that such inventions shall be promptly disclosed to VCU. The undersigned further agrees that in the event he/she conceives an invention or develops copyrightable material jointly with VCU faculty, staff or students, he/she will promptly disclose the invention or copyrightable material to VCU. I hereby assign to VCU all right, title and interest in and to such intellectual property and agree that I will thereafter execute and deliver any transfers, assignments, documents or other instruments necessary or appropriate to vest title and ownership of such intellectual property in VCU including documents that may be necessary for securing intellectual property protection to such intellectual property. Each Party shall retain for itself all right title and interest in any pre-existing background intellectual property owned by that Party.

Further, I understand and agree, unless otherwise agreed to in writing, that I will not receive any monetary compensation from VCU for any services I provide to VCU or staff as a part of my research.

I understand and agree that I shall not be deemed to be employed by or an agent or a servant of VCU; that VCU assumes no responsibilities as to me as may be imposed upon an employer under any law, regulation or ordinance; that I am not entitled to any benefits available to employees; and, therefore, I agree not to in any way to hold myself out as an employee of VCU.

I understand and agree that I may be immediately withdrawn from the Research based upon my failure to comply with the rules and policies of VCU.

I understand and agree to show proof of health insurance, and professional liability insurance in amounts satisfactory to VCU, and covering my activities at VCU, and to provide evidence of such insurance upon request of VCU. I further agree to provide evidence of coverage under my employer's worker's compensation insurance plan and occupational health plan (if applicable).

I agree to use reasonable care with any University property and technology to which I am granted access to during my time at VCU. I am exercising my own free choice to participate voluntarily in the Research, and promising to take due care during such participation, hereby release and discharge, indemnify and hold harmless VCU and its affiliated foundations, board of visitors, officers, agents, employees, and any other persons or entities acting on its behalf, and the successors and assigns for any and all of the aforementioned persons and entities, against any and all claims, demands, and causes of action whatsoever, whether presently known or unknown, either in law or in equity, relating to injury, disability, death or other harm, to person or property or both, arising from my participation in the Research and/or presence at VCU.

I acknowledge that I have been informed of the nature of the activities and that I am aware of the hazards and risks which may be associated with my participation in the Research activities, including the risks of bodily injury, death or damage to property which may occur from known or unknown causes. I understand, accept, and assume all such hazards and risks, and waive all claims against VCU, and other persons as set forth above. I understand that I am solely responsible for any costs arising out of any illness, infection, bodily injury or property damage sustained through my participation in normal or unusual acts associated with the Research.

I will complete the training required by the Institutional Animal Care & Use Committee for all personnel who conduct research or training activities with vertebrate animals and/or training required by the

Institutional Review Board for all personnel who conduct research activities with human subjects. Such training shall be satisfactorily completed prior to my participation in such research activities. In addition, I will continue to participate in my Employer's occupational health program during the period covered by this Agreement. I have attended training in appropriate occupational health topics related to the risk factors associated with performance of research or training activities involving vertebrate animals.

By signing this agreement, I am confirming that I am authorized to be in and remain in the United States and participate in the activities outlined in this agreement, and I agree to maintain that authorization through the duration of this agreement.

I agree to not remove any University property or technology from campus without the written permission of my VCU Faculty Sponsor. Furthermore, I agree that under no circumstances will I remove University property, technology, or data to a foreign country without written permission from VCU's Office of Research and Innovation.

I am aware of U.S. sanctions and export control regulations and agree to comply. I realize that the violation of export control regulations or U.S. sanctions can result in civil and criminal penalties against me personally.

This agreement applies for the duration of my stay at the University. I understand that if I violate any of the terms of this agreement I am subject to immediate removal from campus and termination of enrollment in any courses or participation in any research.

I have read, or have had read to me, the above statements, and understand them as they apply to me. I hereby certify that I am eighteen (18) years of age or older, or my parent or guardian has signed below; that I am legally competent to execute this Visiting Scholar Agreement; and that I, or my parent and/or guardian, have read carefully and understand the above Agreement; and that I have freely and voluntarily signed this Agreement.

This ____ day of ____ 20

Signature: _____

Name (Please print): _____

Parent/Guardian Signature (if applicable): _____

Parent/Guardian Name (please print): _____

*Available online at https://research.vcu.edu/media/office-of-research-and-innovation/exportcontrol/nonemployee_scholar_agreement.doc

Appendix 8 – Export Control Red Flags

Export Control Red Flags

If the terms and conditions of an RFP, solicitation, or award from a sponsor contain any of the following restrictions or limitations, there is a strong likelihood that the US Export Control laws will apply.

- Does the award specifically state that ITAR, EAR or OFAC laws will apply?
- Does the award specifically state that the technology involved is export controlled?
- Has the sponsor specifically stated that the fundamental research exclusion otherwise available to universities does not apply?
- Does the technology or data involved have military, security, or intelligence applications? Does it appear on ITAR’s U.S. Munitions list?
- Does the technology, data or material involved have a dual civilian and military application? Does it appear on the Commerce Department’s Control List? Does it have an ECCN?
- Does the research involve the use of encryption technology or encrypted software?
- Does the research involve classified, secured, or top-secret materials?
- Will the PI be asked to maintain the confidentiality of sponsor information? Was a NDA or Teaming Agreement executed between the parties?
- Does the award contain any publication restriction or limitation? This can include the right of the sponsor to review and approval all proposed publications beforehand.
- Does the award contain DFARS 252.204-7000, Disclosure of Information?
- Is the award funded by other than 6.1 or 6.2 Congressional appropriations?
- Does the award prohibit the involvement of foreign nationals? Are project participants limited to U.S. citizens or legal resident aliens only?
- Does the award involve the shipment or export of technology, data, or materials outside the U.S.?
- Will collaborations with foreign consultants be required?
- Will the work involve a country that has been embargoed or sanctioned by either the State or Treasury Departments?

If you’ve answered yes to any of these questions, contact the Export Compliance Program at exportctrl@vcu.edu.

*Available online at https://research.vcu.edu/media/office-of-research-and-innovation/exportcontrol/red_flags.pdf

Appendix 9 – Export Control Self-Assessment Guide for Principal Investigators

Self-Assessment Guide

Periodically throughout the course of the research, the PI and key personnel on the project should review the procedures, terms, and direction of the research to verify that they remain in compliance with the Export Control Laws. The PI should consider the following questions:

- | Yes | No | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Has the sponsor issued a modification to the terms and conditions of the award that affect publication of the research results? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has the sponsor issued a modification to the terms and conditions of the award that affect the involvement of foreign nationals to the project? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has the research project evolved to now include technology or devices for use in military, security, or intelligence activities? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has the research project evolved to now include technology or data with a substantial or dual-use military application? |
| <input type="checkbox"/> | <input type="checkbox"/> | Are there currently foreign nationals working on the research project? |
| <input type="checkbox"/> | <input type="checkbox"/> | Have any new members joined the research team since the initial TCP was prepared who have not provided proof of US citizenship or legal resident alien status? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is any member of the research team collaborating with a foreign colleague in a foreign country? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has any member of the research team travelled to a foreign country since the research activities began? |
| <input type="checkbox"/> | <input type="checkbox"/> | Are laptops, cell phones, or global positioning systems being used by any member of the research team specifically for this project? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has encrypted technology been newly introduced to the project since the development of the TCP? |
| <input type="checkbox"/> | <input type="checkbox"/> | Has any research related technology or data been emailed or shipped outside of the United States? |
| <input type="checkbox"/> | <input type="checkbox"/> | Is the research being conducted in a space which is accessible by anyone other than a member of the research team? |

- Has the research team deviated from the procedures outlined in the original TCP prepared for this project?
- Does the current TCP inadequately protect the research team members and the University from a violation of the federal export control regulations?

If the answer to any of the above questions is "yes," either the TCP needs to be revised or a license is required from the appropriate federal agency. In either event, please secure all research materials, cease research activity, and contact the University's Empowered Official for further guidance.

*Available online at https://research.vcu.edu/media/office-of-research-and-innovation/exportcontrol/self_assessment.pdf

OVPRI Compliance Notice

No. 21-002.1

Last Approval Date: June 07, 2021

NOTICE: International Shipping of Biological Materials

Purpose

Effective June 07, 2021, VCU will require all employees (including faculty) and students to adhere to the process established in this compliance notice when shipping biological materials or compounds internationally.

As stated in the *Export Compliance and Research Security* policy, VCU is committed to compliance with all United States export control laws and regulations, and acknowledges that failure to comply with these laws and regulations may result in the imposition of criminal and civil penalties, including jail time and monetary penalties.

Background

The United States Department of Commerce, Bureau of Industry and Security (BIS) is responsible for regulating the export of commercial and dual-use items and technology from the United States to other countries. As part of that responsibility, the BIS administers and maintains the Export Administration Regulations (EAR) (codified at 15 CFR Parts 730-780), a set of rules that defines, amongst other things, what items may be shipped freely to other countries and what items require an export license prior to shipping. The EAR contains the Commerce Control List (CCL), a directory of export-controlled items and technologies.

The CCL identifies a number of pathogens, toxins, and biological compounds that may require an export license prior to shipping, depending on the destination and intended recipient. Specifically:

- CCL entry 1C351 contains a listing of export-controlled human and animal pathogens and toxins;
- CCL entry 1C353 contains a listing of export-controlled genetic elements and genetically modified organisms; and
- CCL entry 1C354 contains a listing of export-controlled plant pathogens.

Additionally, the United States Department of the Treasury, Office of Foreign Assets Control (OFAC) is responsible for maintaining and enforcing the United States' economic and trade sanctions. OFAC sanctions vary significantly from country to country, and in some cases require an export license prior to sending any physical items, including biological materials, to sanctioned countries.

Process

Shipping to restricted destinations. Due to OFAC sanctions and some country-specific requirements in the EAR, shipments of biological materials to certain international destinations may require an export license or the provision of other information prior to shipping. For this reason, all VCU employees (including faculty) and students are required to consult with the Export Compliance Program by emailing

exportctrl@vcu.edu **prior** to shipping **any** pathogens, toxins, genetic elements, genetically modified organisms, or other biological materials to end-users in the following countries:

- China
- Cuba
- Iran
- North Korea
- Russia
- Syria
- Venezuela

After initiating a consultation with the Export Compliance Program as described above, employees (including faculty) and students may proceed with their shipments **only after** receiving express written permission from the export control officer, the assistant director of the Export Compliance Program, the senior associate vice president for research compliance, or the institutional biosafety officer.

Failure to comply with this required process may result in disciplinary action up to and including termination.

Shipping biological materials controlled under CCL entries 1C351, 1C353, or 1C354. CCL entries 1C351, 1C353, and 1C354 subject a number of pathogens, toxins, genetic elements, and genetically modified organisms to export controls. Biological materials listed under these entries may require an export license prior to shipping, depending on the destination and intended recipient. For this reason, all VCU employees (including faculty) and students are required to implement a material transfer agreement by emailing mtadua@vcu.edu **prior** to shipping **any** item listed under CCL entries 1C351, 1C353, or 1C354 to a destination outside of the United States. For CCL entries 1C351, 1C353, and 1C354, see the Commerce Control List, Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms,” and “Toxins” under the Related Documents section below.

Employees (including faculty) and students may proceed with their shipments **only after** a fully executed material transfer agreement is in place.

Failure to comply with this required process may result in disciplinary action up to and including termination.

Shipping biological materials controlled under CCL entries 1C351, 1C353, or 1C354. CCL entries 1C351, 1C353, and 1C354 subject a number of pathogens, toxins, genetic elements, and genetically modified organisms to export controls. Biological materials listed under these entries may require an export license prior to shipping, depending on the destination and intended recipient. For this reason, all VCU employees (including faculty) and students are required to implement a material transfer agreement by emailing mtadua@vcu.edu **prior** to shipping **any** item listed under CCL entries 1C351, 1C353, or 1C354 to a destination outside of the United States. For CCL entries 1C351, 1C353, and 1C354, see the Commerce Control List, Category 1 – Special Materials and Related Equipment, Chemicals, “Microorganisms,” and “Toxins” under the Related Documents section below.

Employees (including faculty) and students may proceed with their shipments **only after** a fully executed material transfer agreement is in place.

Failure to comply with this required process may result in disciplinary action up to and including termination.

Shipping biological materials, toxins, and shipments requiring dry ice. **Prior** to shipping any biological materials, toxins, or shipments requiring dry ice to **any** destination, international or domestic, all VCU employees (including faculty) and students are required to attend and complete dangerous goods shipping training. For more information or to sign up for an upcoming session, see the Dangerous Goods Shipping Training Sign-Up Page under the Related Documents section below.

Frequently Asked Questions

1. Do CCL entries 1C351, 1C353, and 1C354 control any biologicals that are commonly used in VCU's laboratories?

Yes. While many of the pathogens and toxins controlled under CCL entries 1C351, 1C353, and 1C354 are relatively uncommon, some are used frequently in VCU's laboratories. Specifically, vesicular stomatitis virus, its plasmids (such as VSV-G), and genetic elements derived from vesicular stomatitis virus (such as lentivirus made using VSV-G) are subject to United States export controls and are thus subject to the required process established by this compliance notice.

2. Is COVID-19 controlled under CCL entries 1C351, 1C353, or 1C354?

No. Although CCL entry 1C351 controls "severe acute respiratory syndrome-related coronavirus (SARS-related coronavirus)," the BIS has issued guidance that COVID-19 (SARS-CoV-2) is specifically **not** controlled under CCL entry 1C351, and is instead classified as EAR99, a category subject to very few export controls. However, SARS and MERS continue to be subject to export control under CCL entry 1C351. See the BIS COVID-19 Guidance Document under the Related Documents section below.

3. Are there any best practices to consider when working with VCU's material transfer agreement team?

Yes. VCU's material transfer agreement team is friendly and helpful, but they are not experts in biological or genetic materials. Best practices include providing the material transfer agreement team with highly detailed descriptions of the items to be transferred, and allowing sufficient time for the review, negotiation, and execution of the material transfer agreements prior to when the biological materials need to be shipped.

Related Documents

1. [VCU Policy: Export Compliance and Research Security](#)
2. [VCU Policy: Safety and Risk Management](#)
3. [Commerce Control List, Category 1 – Special Materials and Related Equipment, Chemicals, "Microorganisms," and "Toxins"](#)
(CCL entries 1C351, 1C353, and 1C354 can be found at pages 65-72)
4. [OFAC Sanctions Programs and Country Information](#)
5. [To Request a Material Transfer Agreement](#)
6. [BIS COVID-19 Guidance Document](#)
7. [Dangerous Goods Shipping Training Sign-Up Page](#)
8. [Immigration Services for International Students, Research Scholars, Instructional Faculty, Postdocs, or Specialists](#)

Contact

Please direct any questions regarding this compliance notice to the Export Compliance Program in the Office of the Vice President for Research and Innovation at exportctrl@vcu.edu.

Issued By:

VCU Office of the Vice President for Research and Innovation
Tina Cunningham, J.D., CRA
Associate Vice President for Research Administration

VCU Safety and Risk Management
Michael Elliott, MS
Institutional Biosafety Officer

Review/Revision History

06/07/2021: Creation as 21-002.1

*Available online at <https://research.vcu.edu/media/office-of-research-and-innovation/secure/complianceprogram/21-002.pdf>