

University of Virginia

**Export Compliance Management Program
Manual**

Last Revised 01/06/2021

ACRONYMS

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

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FOREWARD

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

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

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

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

General Notes

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

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

CHAPTER 1: OVERVIEW OF U.S. EXPORT REGULATIONS

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

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

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

The most extensive export control regulations are those associated with technology and certain types of associated technical data. U.S. law and presidential delegation of authority have assigned the control of technology exports to three principal agencies: the Directorate of Defense Trade Controls, Department of State; Bureau of Industry and Security, Department of Commerce; and the Office of Foreign Assets Control, Department of the Treasury. Each agency has its own scope of authority and implementing regulations which are briefly discussed below.

¹ 8 USC § 1324b(a)(3)

International Traffic in Arms Regulations (ITAR)²

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

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

- **Defense Articles⁶** - means any item or technical data that is specifically listed on the USML as well as including any forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles. Technical data may be data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items on the USML. It does not include basic marketing information on function or purpose or general system descriptions.
- **Technical Data⁷** - means any information, other than software, which is required for the design, development, assembly, production, manufacture, operation, repair, testing, maintenance, or modification of a defense article. Technical data may include drawings, blueprints, photographs, plans, assembly instructions, operations and maintenance manuals, and email or telephone exchanges where such information is discussed. However, technical data does not include general scientific, mathematical, or engineering principles commonly taught in schools, information present in the public domain, general system descriptions, or basic marketing information on function or purpose. It should be noted that if a U.S. government contractor makes the determination that an effort is controlled under the ITAR, all work and technical data generated for that project is subject to the ITAR, regardless of whether it may have previously existed in the public domain. Technical data also includes classified information relating to defense articles and defense services on the USML and “600-series” items controlled by the Commerce Control List of the Export Administration Regulations (EAR). Information covered by an invention secrecy order and software directly related to defense articles are also considered technical data controlled under the ITAR.

² 22 CFR Parts 120 – 130.

³ 22 USC 2778, Chapter 39

⁴ Executive Order 11958

⁵ ITAR § 121

⁶ ITAR § 120.6

⁷ ITAR § 120.10

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

Items Controlled Under the ITAR

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

- Category I: Firearms, Close Assault Weapons and Combat Shotguns
- Category II: Guns and Armament
- Category III: Ammunition / Ordnance
- Category IV: Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- Category V: Explosives and Energetic Materials, Propellants, Incendiary Agents, and their Constituents
- Category VI: Surface Vessels of War and Special Naval Equipment
- Category VII: Ground Vehicles
- Category VIII: Aircraft and Related Articles
- Category IX: Military Training Equipment and Training
- Category X: Personal Protective Equipment
- Category XI: Military Electronics
- Category XII: Fire Control, Range Finder, Optical and Guidance and Control Equipment
- Category XIII: Materials and Miscellaneous Articles
- Category XIV: Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- Category XV: Spacecraft Systems and Related Articles
- Category XVI: Nuclear Weapons Related Articles
- Category XVII: Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- Category XVIII: Directed Energy Weapons

⁸ ITAR § 120.9

⁹ See ITAR § 121.1

- Category XIX: Gas Turbine Engines and Associated Equipment
- Category XX: Submersible Vessels and Related Articles
- Category XXI: Articles, Technical Data, and Defense Services Not Otherwise Enumerated

An electronic version of the USML (22 CFR §121.1) is available at: <https://www.ecfr.gov/cgi-bin/text-idx?SID=a22a930e304f35fbc32ac84fc9fa6f63&mc=true&node=pt22.1.121&rgn=div5>.

Commodity Jurisdiction

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

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

Exports Under the ITAR

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

- Tangible Exports and Transfers
 - Shipping or taking a defense article or technical data out of the United States (this includes the electronic download of technical data from a server in the U.S. to a laptop located outside of the United States).
 - Transferring title or ownership of a defense article to a foreign person, in or outside the United States.
 - The re-export or re-transfer of defense articles from one foreign person to another, not previously authorized (i.e., transferring an article that has been exported to a foreign country from that country to a third country).

¹⁰ ITAR § 120.4. Instructions and required information for filing a CJ request (Form DS-4076) are available at https://www.pmdtcc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=249f7c0adb6cf7007ede365e7c9619fd. You can check the status of pending CJ requests at <http://elisa.dtsa.mil/>.

¹¹ ITAR § 120.17

- Transferring the registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite covered by the USML, whether the transfer occurs in the United States or abroad.
- Intangible Exports
 - Disclosing technical data to a foreign person, whether in the United States or abroad, through oral, visual, or other means.
 - Performing a defense service for a foreign person, whether in the United States or abroad.

Export Authorizations

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

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

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

Prohibited Destinations

The ITAR specifically prohibits issuance of a license or use of a license exception for the export of defense articles or services to certain proscribed countries (§126.1); this prohibition includes transfers

¹² ITAR § 122.1

to nationals of prohibited countries. Proscribed countries subject to a policy of denial, as of the date of this revision, include Belarus, Burma, China, Cuba, Iran, North Korea, Syria and Venezuela. Additional countries are subject to a policy of denial, but with limited exceptions available; as of the date of this revision, those countries are Afghanistan, Central African Republic, Cyprus, Democratic Republic of Congo, Eritrea, Haiti, Iraq, Lebanon, Libya, Somalia, South Sudan, Sudan, and Zimbabwe. The list of proscribed countries changes from time to time, so the current DDTC list should be checked prior to initiating any export transaction; the list may be accessed on the DDTC Country Policies webpage at https://www.pmdtc.state.gov/ddtc_public?id=ddtc_public_portal_country_landing.

Import of Defense Articles

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

Export Administration Regulations (EAR)¹⁴

The EAR are issued by the U.S. Department of Commerce, Bureau of Industry and Security (BIS) primarily under the legal authority of the Export Control Reform Act of 2018 (ECRA)¹⁵ and the Export Administration Act (EAA) of 1979, as amended¹⁶. Enactment of the ECRA repealed the EAA, other than Sections 11A, 11B, and 11C, which had been in lapse since August 21, 2001, and extended by Presidential Executive Orders issued under authority granted by the International Emergency Economic Powers Act (IEEPA)¹⁷.

The EAR control the export of both items and “technology”. Under the EAR, “technology” is defined as the “specific information necessary for the ‘development’, ‘production’, or ‘use’ of a product. The information takes the form of ‘technical data’ or ‘technical assistance’. Controlled ‘technology’ is defined in the General Technology Note and in the Commerce Control List.” The General Technology Note (GTN)¹⁸ states “(t)he export of ‘technology’ that is ‘required’ for the ‘development’, ‘production’, or ‘use’ of items on the Commerce Control List is controlled according to the provisions in each Category.”

¹³ 27 CFR, Part 447, Subpart C.

¹⁴ Codified at 15 CFR Chapter VII, Subchapter C available at <https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title15/15CVIIsubchapC.tpl>.

¹⁵ Public Law 115-232--Title XVII, Subtitle B of which is the Export Control Reform Act of 2018—has been codified, as amended, at 50 U.S.C. §§ 4801-4852.

¹⁶ Public Law (PL) 96-72.

¹⁷ PL 95-223; 50 USC 1701 *et seq.*

¹⁸ EAR § 774, Supplement No. 2

“Required”, “Development”, “Production”, “Use”, “Technical data”, and “Technical assistance” are all defined terms under the EAR¹⁹ and may **not** have the same meaning as they do in common usage or as used in export control regulations promulgated by other federal agencies.

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

Items Controlled Under the EAR

The term “dual-use”, which refers to items that have both military and civilian applications, has often been used to describe the scope of technologies that are subject to the EAR but that term is not entirely accurate as the EAR also control items with purely civilian applicability and military items that have been formally transferred from the ITAR. Items or technologies are subject to the regulatory authority of the EAR if described in §734.2 through 734.5.

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

Items subject to specific control and licensing policies are identified in an Export Control Classification Number (ECCN) on the Commerce Control List (CCL). Each ECCN is composed of five alpha-numeric

¹⁹ EAR § 772

characters; a number, followed by a letter, followed by three additional numbers. The first number designates which one of the ten CCL categories of technology captures the item:

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

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

- Group A - Equipment, Assemblies and Components. These are essentially saleable commodities; finished or unfinished goods ranging from high-end microprocessors to airplanes, to ball bearings.
- Group B - Test, Inspection and Production Equipment. These items are generally referred to as manufacturing equipment. This includes equipment specifically for manufacturing or testing controlled commodities, as well as certain generic machines, such as computer numerically controlled ("CNC") manufacturing and test equipment.
- Group C - Materials. This includes certain alloys and chemical compounds. It also includes controlled biologics and toxins.
- Group D - Software. This includes software specifically associated with particular controlled commodities or manufacturing equipment, as well as any software containing encryption and the applicable source code.
- Group E - Technology. As defined in the EAR, "technology" includes both technical data, and services. Unlike the International Traffic in Arms Regulations, no distinction is made between technical data and "know how" or assistance. However, the EAR may apply different standards to technology for "use" of a product than for the technology for the "development" or "manufacture" of the product.

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

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

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

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

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

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

Exports Under the EAR

The EAR control both the actual shipment or transmission of controlled items out of the U.S. (export) and any subsequent transfer of controlled items originally exported from the U.S. to a third country (re-export)²⁰. The terms “deemed export” and “deemed re-export” are used respectively to refer to the release of “technology” to a foreign national in the U.S. and the release of technology by a foreign national who has been licensed to receive it to the national of another foreign country. Such transfers

²⁰ EAR § 772

are “deemed” to be exports to the foreign national’s home country regardless of the fact that they occur in the U.S. or abroad, in the case of deemed re-exports.

Export Authorizations

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

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

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

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

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

The most commonly used controls are Anti-Terrorism and National Security, while other controls only apply to limited types of articles. For example, ECCN 4A994 lists “License Requirements: Reason for Control: AT” and indicates that the control applies to the entire entry “AT Column 1” which refers to the Country Chart²¹. Items may be controlled for more than one reason so it is important to identify all applicable reasons for control.

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

(3) Assess License Exceptions²². The EAR contains a number of exceptions. Determining whether a particular exception applies requires review of the specific application details, as well as the notes on applicable license exceptions following the ECCN entry. Possible license exceptions include:

- LVS - Items of limited value (value is set under each ECCN).
- GBS - Items controlled for national security reasons to Group B countries²³.
- TSR - Certain technology and software to certain countries.
- APP - Computer exports to certain countries.
- TMP - Certain temporary exports, re-exports, or imports, including items moving through the U.S. in transit.
- RPL - Certain repair and replacement of parts for items already exported.
- GOV - Exports to certain government entities.
- GFT - Certain gifts and humanitarian donations.
- TSU - Certain mass-market technology and software.
- BAG - Baggage exception.
- AVS - Aircraft and vessels stopping in the U.S. and most exports of spare parts associated with aircraft and vessels.
- APR - Allows re-export from certain countries.
- ENC - Certain encryption devices and software.
- AGR - Agricultural commodities.
- CCD - Authorization of certain consumer communication devices to Cuba.
- STA - Strategic Trade Authorization which allows for exports to or for ultimate end use by the governments of close allies.
- SCP – Support for the Cuban People

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

²¹ Supplement No. 1 to EAR § 738

²² EAR § 740

²³ Supplement No. 1 to EAR 740 contains the Country Group Listings (A:1-6; B; C (reserved); D:1-5; and E:1-2)

Treasury Sanction Programs and Barred Entities²⁴

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

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

OFAC sanctions are issued under the authority of the International Emergency Economic Powers Act of 1977 (IEEPA)²⁵, with the exception of the embargoes on Cuba and North Korea which are issued under the authority of the Trading with the Enemy Act of 1917 (TWEA)²⁶. Comprehensive sanction programs, such as those against Iran and Cuba, generally prohibit the importation and exportation of goods and services, whether direct or indirect, as well as "facilitation" by a U.S. person of transactions between foreign parties and a sanctioned country. For example, sending a check to an individual in Iran could require an OFAC license or be prohibited. More limited sanction programs may only block particular transactions or require licenses under certain circumstances for exports or services; examples of countries subject to a limited sanction program include, but are not limited to, Burundi, Libya, Nicaragua, and Zimbabwe.; OFAC sanction programs are subject to change in response to evolving foreign policy decisions or directives. A full list of OFAC sanction programs and country information is available at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>.

While most sanctions are administered by OFAC, BIS has jurisdiction over certain export prohibitions (via "embargo" regulations), such exports to Syria.²⁷ In other words, a license from BIS would be required to ship most items to Syria and other OFAC sanctioned countries or could be prohibited. Each sanction or embargo program in the FACR is independent and unique. You cannot expect that sanctioned activities identified in the Iranian Assets Control Regulations will be the same as those identified in the Sudanese Sanction Regulations. Similarly, an activity that may be eligible for a general license under one sanction regulation may not be licensable or may require a specific license in another.

Other Export Regulations

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

- Department of Justice, Drug Enforcement Administration, Office of Diversion Control
 - Scope: drugs (of abuse), chemicals and precursors

²⁴ 31 CFR Subtitle B, Chapter V

²⁵ 50 USC §§ 1701-1706

²⁶ 12 USC § 95a

²⁷ 15 CFR § 746

- Regulations: 21 CFR Parts 1311-1313
- Agency Website: <http://www.deaiverison.usdoj.gov/>

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

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

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

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

Items exclusively controlled for export or re-export by the Departments of State, Treasury, and Energy as well as those controlled by the Nuclear Regulatory Commission and the Patent and Trademark Office are excluded from the scope of the EAR²⁸. Control by a single federal agency is typical; however, situations may arise where licenses from two or more agencies may be required to support for the same University activity.

²⁸ EAR § 734.3(b)(1)

CHAPTER 2: OTHER RESTRICTIONS

Anti-boycott Restrictions

The U.S. policy to oppose restrictive trade practices or boycotts is found in the Anti-Boycott Act of 2018 (ECRA Part II)²⁹ and the Ribicoff Amendment to the 1976 Tax Reform Act (TRA)³⁰ and were implemented to prevent U.S. business from participating directly or indirectly in the Arab League's boycott of Israel. The laws prevent U.S. persons from doing business under terms that would restrict that person's ability to do business with other countries under a boycott not recognized by the U.S. The Arab League's boycott has lessened over the years, but still remains in effect in some countries. These restrictions are enforced by BIS and the applicable regulations are at 15 C.F.R. § 760. The TRA does not prohibit specific conduct; rather, it denies tax benefits for certain types of boycott related activities³¹.

Anti-boycott restrictions are most likely to arise in dealings with entities in Arab League countries. As of this writing, Iraq, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen continue to impose boycott restrictions on Israel and companies that do business with Israel; Iraq is not currently listed, but its status with respect to the future remains under review by the Department of Treasury³². Egypt and Jordan have ceased participating in the boycott. There are strict reporting requirements even where the U.S. person refuses to participate in a requested boycott action; forms for reporting requests for restrictive trade practices are available on BIS's Anti-boycott webpage³³.

Jurisdiction

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

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

What is Prohibited?

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

- Agreements to refuse or actual refusals to do business with Israel or with blacklisted companies.
- Agreements to discriminate or actual discrimination against other persons based on race, religion, sex, national origin, or nationality.
- Agreements to furnish or actual furnishing of information about business relationships with Israel or with blacklisted companies.

²⁹ Public Law 115-232--Title XVII, Subtitle B of which is the Export Control Reform Act of 2018—has been codified, as amended, at 50 U.S.C. §§ 4801-4852.

³⁰ The Ribicoff Amendment to the Tax Reform Act (PL 94-455) added Section 999 to the Internal Revenue Code (26 USC § 1 et seq.).

³¹ See 26 CFR § 7.999-1 for the Implementing tax regulations.

³² See list published annually by the Department of Treasury. As of this writing, Federal Register, Vol. 84, No. 25, p. 2337, 6 February 2019, was the most recent publication (<https://www.govinfo.gov/content/pkg/FR-2019-02-06/pdf/2019-01136.pdf>).

³³ See <http://www.bis.doc.gov/index.php/enforcement/oac>.

- Agreements to furnish or actual furnishing of information about the race, religion, sex, or national origin of another person.
- Paying or otherwise implementing letters of credit that include requirements to take boycott-related actions prohibited by the anti-boycott regulations.

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

Exceptions

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

Reporting Requirements

The EAR requires U.S. persons to report requests they have received to comply with, further, or support an unsanctioned foreign boycott on a quarterly basis³⁴. Links to the required report forms as well as the regulations and examples of boycott requests are available on BIS's Anti-boycott Compliance webpage (<http://www.bis.doc.gov/index.php/enforcement/oac>). The Office of Antiboycott Compliance has also set up an advice line for questions about the anti-boycott rules, which can be reached at (202) 482-2381. The U.S. Internal Revenue Service (IRS) also requires U.S. taxpayers to report operations in or relating to boycotting countries and nationals and requests to cooperate with boycott activities³⁵.

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

Restricted Parties

Several U.S. Government agencies maintain one or more lists of individuals or entities that are barred or otherwise restricted from entering into certain types of transactions with U.S. persons. The following lists are specifically

³⁴ EAR § 760.5

³⁵ See IRS Form 5713 and instructions (<https://www.irs.gov/forms-pubs/about-form-5713>).

applicable to export controls and must be screened to ensure that the university does not engage in a transaction with a barred entity.

- **Specially Designated Nationals and Blocked Persons List (“SDN List”).** Maintained by OFAC, this is a list of barred terrorists, narcotics traffickers, and persons and entities associated with embargoed regimes. Generally, all transactions with such persons are barred. The SDN List is available at: <https://sanctionssearch.ofac.treas.gov/>.
- **Persons Named in General Orders**³⁶. As of this writing, General Order No. 1 establishes a 24-month validity period for all reexport authorizations; General Order No. 2 contains the provisions of the U.S. embargo on Syria. The controls for exports and reexports to Syria are set forth in §746.9 of the EAR; General Order No. 3, dated July 22, 2015, provides that all conditions that apply to Country Group E:1, as specified in Supplement N. 1 to part 740 of the EAR, on licenses issued prior to July 22, 2015 and that are in effect on that date, are revised to apply to Country Groups E:1 and E:2 as specified in Suppl. No 1 to part 740 of the EAR ; General Order No. 4 is “reserved”; and General Order No. 5, dated April 16, 2013, provided authorization for items the President Determines No Longer Warrant Control under the USML which will be transferred to the Commerce Control List (CCL) as final rules become published. A link to the General Orders is available at: <https://www.bis.doc.gov/index.php/documents/regulation-docs/413-part-736-general-prohibitions/file> (p.7).
- **AECA Debarred List.** Issued by the Department of State, this list identifies entities and individuals prohibited from participating directly or indirectly in the export of defense articles, including technical data and defense services. The list is available at: https://www.pmdtdc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=7188dac6db3cd30044f9ff621f961914.
- **Denied Persons List.** Identifies those individuals and entities that have had their export privileges revoked or suspended by BIS. Dealing with a party on this list is prohibited only if it would violate the terms of the denial order. The list includes a reference to the Federal Register notice publishing the denial order and is available at: <http://www.bis.doc.gov/dpl/default.shtm>. It is important to note that denial orders may be either “standard” or “non-standard” with “standard” orders issued after 27 August 2002 conforming to the language posted at <http://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern/denied-persons-list/12-policy-guidance/list-parties-of-concern/321-the-denied-persons-list-standard-order>. As the name implies, “non-standard” denial orders contain different terms so reviewing the full denial order is critical when evaluating a proposed transaction involving a party subject to a “non-standard” order. All denial orders are published in the Federal Register, which is accessible at <https://www.federalregister.gov/>.
- **Entity List.** Parties whose presence in a transaction can trigger a license requirement beyond those identified elsewhere in the Export Administration Regulations (EAR). The list provides the specific license requirements and policy that apply to each listed party. The list is available at: <http://www.bis.doc.gov/entities/default.htm>.

³⁶ EAR § 736, Supplement No. 1

- **Unverified List.** These are foreign “persons” for which BIS has been unable to verify the nature of their operations. Dealings with these entities are not prohibited; however, their presence in a transaction is a “red flag” and should be resolved before proceeding with the transaction. The list is available at: http://www.bis.doc.gov/enforcement/unverifiedlist/unverified_parties.html.
- **Nonproliferation Sanctions.** These are sanctions against foreign individuals, private entities, and governments that engage in proliferation activities. The Department of State maintains a list of current sanctions at: <http://www.state.gov/t/isn/c15231.htm>.

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

In addition to screening against export-related restriction lists, the University must also screen parties against the U.S. Government’s exclusion lists when the activity or transaction involves Federal funds. The parties on these lists are entities that have been barred from contracting (procurement, non-procurement, and reciprocal programs) with U.S. Government agencies. All companies and universities contracting with the U.S. Government, either as prime or subcontractors, must comply with these prohibitions. The exclusions lists are searchable in the System for Award Management (SAM).³⁷

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

³⁷ The System for Award Management (SAM) is accessible at <https://www.sam.gov/SAM/pages/public/searchRecords/advancedPIRSearch.jsf>.

CHAPTER 3: POTENTIAL PENALTIES FOR VIOLATIONS

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

Defense Articles & Technical Data

The Arms Export Controls Act (AECA)³⁸ and the ITAR³⁹ provide that willful (i.e. criminal) violations of the defense controls can be fined up to \$1,000,000 per violation, or twenty years of imprisonment, or both. The Secretary of State may also assess civil penalties, which may not exceed \$1,183,736 per violation.⁴⁰ Civil penalties may be imposed either in addition to, or in lieu of, any other liability or penalty.⁴¹ The articles exported or imported in violation, and any vessel, vehicle or aircraft involved are subject to seizure, forfeiture and disposition.⁴² Additionally, the Assistant Secretary for Political-Military Affairs may order debarment of the violator, i.e., prohibit the violator from participating in export of defense items.⁴³

Criminal prosecutions have increased in recent years; DDTC posts major export enforcement actions on their website.⁴⁴ Civil cases are generally settled with a negotiated consent agreement⁴⁵ and many major U.S. companies have been assessed significant civil penalties.⁴⁶ For example, following an extensive export investigation ITT Industries, a leading manufacturer of night vision equipment for the U.S. military, received a three-year debarment of the company's Night Vision Division. As part of their consent agreement ITT also agreed to pay millions of dollars for violations of defense export laws.⁴⁷

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

³⁸ 22 USC § 2778(c)

³⁹ 22 CFR § 127.3

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

⁴¹ https://www.pmdtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=e1999c7fdb78d300d0a370131f96193d

⁴² 22 CFR § 127.6

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

⁴⁴ https://www.pmdtc.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=6ae22ec1db2a9740c53a7d321f9619c4

⁴⁵ https://www.pmdtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=384b968adb3cd30044f9ff621f961941

⁴⁶ A thorough discussion of penalties imposed under the ITAR is available in "Monograph on U.S. Defense Trade Enforcement" by John C. Pisa-Relli (Feb 2007).

⁴⁷ The DDTC has made the 2007 Consent Agreement and Order available at

https://www.pmdtc.state.gov/sys_attachment.do?sysparm_referring_url=tear_off&view=true&sys_id=6eddf689db99db0044f9ff621f961924.

information to DDTC.⁴⁸ Voluntary disclosure may serve as a mitigating factor in the determination of administrative penalties.

EAR Controlled Technology & Anti-boycott

Violations of the EAR are subject to both criminal and administrative penalties. Fines for export violations, including anti-boycott violations, can be as high as 20 years of imprisonment and up to \$1,000,000 per violation in criminal cases, and \$300,000 per violation or twice the value of the transaction, whichever is greater and may include the denial of export privileges.⁴⁹ For many violators a denial order is probably the most serious sanction as it bars a U.S. company from exporting or bars a foreign entity from buying U.S. origin products for a specific period of time, typically several years.⁵⁰

In most instances, BIS reaches negotiated settlements in its administrative cases, as a result of voluntary self-disclosures of violations by companies and individuals. Voluntary disclosures constitute a major mitigating factor in determining penalties, reducing the amount of penalty by up to 50 percent, provided certain conditions are met, such as the implementing of a comprehensive compliance program.⁵¹

OFAC Sanctions

Exporter may be subject to a maximum civil penalty of \$307,922 or twice the amount of the underlying transaction per violation under OFAC regulations.⁵² Violations of sanctions issued under the Trading With the Enemy Act (TWEA), e.g., Cuba and North Korea, are subject to a maximum civil penalty of not more than \$190,743 per violation.⁵³ The U.S. Government may also pursue criminal prosecution if violations are willful and knowing. Penalties for criminal violations under OFAC sanctions may reach \$1,000,000 per violation and imprisonment of up to 20 years.⁵⁴ In addition to OFAC penalties, egregious conduct by the violator may result in BIS suspending export privileges.

Penalty Assessment

DDTC⁵⁵, BIS⁵⁶, and OFAC consider a number of factors, both aggravating and mitigating, when assessing penalties. Mitigating factors include:

- (1) whether the disclosure was made voluntarily;

⁴⁸ 22 CFR § 124.12

⁴⁹ <https://www.bis.doc.gov/index.php/enforcement/oe/penalties>

⁵⁰ <https://www.bis.doc.gov/index.php/enforcement/oe/voluntary-self-disclosure>

⁵¹ BIS Annual reports include information on enforcement actions, access reports from past years at <https://www.bis.doc.gov/index.php/about-bis/newsroom/publications>.

⁵² Most economic sanction regulations penalties are set under IEEPA. See supra note 22.

⁵³ 31 CFR 501.701

⁵⁴ Most economic sanction regulations penalties are set under IEEPA, see supra note 22, and TWEA, see supra note 53.

⁵⁵ ITAR §§ 127.2(a) and 127.12(a)

⁵⁶ EAR § 766, Supplement No. 1

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

Aggravating factors include:

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

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

CHAPTER 4: INTERSECTION OF EXPORT CONTROLS AND UNIVERSITY ACTIVITIES

University Activities Excluded From or Not Subject to Export Control

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

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

“Information and Informational Materials” are generally excluded from the licensing requirements of most, if not all, of the OFAC country sanctions. The exclusion applies to “publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.”⁵⁷

The EAR contain an exclusion similar to OFAC’s provision in § 734.3(b)(2)⁵⁸. However, the EAR go on to exclude additional items as not subject to the EAR because they are published; arise during, or result from, fundamental research; are released by instruction in a catalog listed course or associated teaching laboratory of an academic institution; appear in patents or open (published) patent applications; non-proprietary system descriptions; and certain telemetry data⁵⁹. These subcategories of publicly available technology and software are further described in §§ 734.7 (published), 734.8 (fundamental research results) and 734.10 (patents), as well as Note 2 to Category 9, Product Group E⁶⁰. In general, information is published when it becomes generally accessible to the interested public in any form, including:

- publication in periodicals, books, print, *etc.*, available for general distribution for free or at cost;
- readily available at libraries open to the public or university libraries;
- patents and open patent applications available at any patent office; or
- release at an open conference, meeting, seminar, trade show, or other gathering open to the public.

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

⁵⁷ Similarly, but not identically, defined in each country-specific sanction regulation issued by OFAC; the specific quote provided in the text of this paragraph is taken from the Iranian Transaction Regulations (31 CFR Part 560.315).

⁵⁸ Prerecorded phonograph records reproducing in whole or in part, the content of printed books, pamphlets, and miscellaneous publications, including newspapers and periodicals; printed books, pamphlets, and miscellaneous publications including bound newspapers and periodicals; children's picture and painting books; newspaper and periodicals, unbound, excluding waste; music books; sheet music; calendars and calendar blocks, paper; maps, hydrographical charts, atlases, gazetteers, globe covers, and globes (terrestrial and celestial); exposed and developed microfilm reproducing, in whole or in part, the content of any of the above; exposed and developed motion picture film and soundtrack; and advertising printed matter exclusively related thereto.

⁵⁹ EAR § 734.3(b)(3)

⁶⁰ On or about p. 49, at <https://www.bis.doc.gov/index.php/documents/regulations-docs/2340-cc19-4/file>.

As discussed previously in this manual, the ITAR control the export of defense articles, which by definition includes any “technical data” designated in the USML. Technical data is defined in the ITAR to exclude “information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain”⁶¹. In the ITAR “public domain” means “information which is published and which is generally accessible or available to the public”⁶². The definition provides a list of ways information may be considered generally accessible or available to the public, including:

- Through sales at newsstands and bookstores;
- Through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information;
- Through second class mailing privileges granted by the U.S. Government;
- At libraries open to the public or from which the public can obtain documents;
- Through patents available at any patent office;
- Through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States;
- Through public release (*i.e.*, unlimited distribution) in any form (*e.g.*, not necessarily in published form) after approval by the cognizant U.S. government department or agency;
- Through fundamental research (see discussion below)

Interestingly, the ITAR do not currently recognize publication via electronic means (i.e. internet) other than through public release following agency approval. Similarly, only information released at conferences, meetings, etc. occurring “**in the United States**” may be considered to be in the public domain under this definition.

Also of note, is that it is possible to provide a regulated “defense service” without providing “technical data”.

Fundamental Research (EAR & ITAR)

During the early and mid-1980’s the Federal government and several universities worked together to establish national policy related to the control of information generated in Federally-funded research at colleges, universities and laboratories. This work resulted in the issuance of National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical and Engineering Information on 21 September 1985. In the wake of the September 11th terrorist attacks, NSDD 189 was reaffirmed in a letter from Condoleezza Rice, Assistant to the President (George W. Bush) for National Security Affairs, date 1 November 2001. At the core of NSDD 189 is the following definition of fundamental research:

“... basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.”

⁶¹ITAR § 120.10

⁶² ITAR § 120.11

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

The “fundamental research” definition in the EAR⁶³ is consistent with that in NSDD 189. Publicly available technology and software that arises during, or results from, fundamental research is excluded from the scope of the EAR’s regulatory authority⁶⁴. Under the EAR, the results of fundamental research are excluded from the scope of the EAR regardless of whether or not they are published.

The ITAR includes “fundamental research” within the definition of public domain⁶⁵ (see prior section) and therefore the resulting information will fall outside the scope of regulation, except when provided as part of a defense service. University research will not be considered fundamental under the ITAR if the University or its researchers accept other restrictions on publication of the resulting scientific and technical information; or the research is funded by the U.S. Government and specific access and dissemination controls apply to the results.

Although the definition of fundamental research in the ITAR varies slightly from that expressed in NSDD 189 it has essentially the same meaning. However, given the placement of the definition within “public domain” and its express limitation to “information which is published and which is generally accessible to the public” unpublished fundamental research results may not be considered to be in the public domain unless approved for unlimited public release by the cognizant U.S. government agency⁶⁶. This interpretation is somewhat countered by the inclusion of “where the resulting information is ordinarily published and shared broadly in the scientific community” in the fundamental research section in the definition of “public domain”.⁶⁷

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

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

EAR § 734.3(b) identifies specific items which are not subject to the EAR, including information and software that are “released by instruction in a catalog courses or associated teaching laboratory of an academic institution”⁶⁸. It is important to note that this exclusion does not apply to mentoring and instruction provided outside of the classroom, e.g. to students performing research.

⁶³ EAR § 734.8

⁶⁴ EAR § 734.3(b)(3)(ii)

⁶⁵ ITAR § 120.11

⁶⁶ ITAR § 120.11(a)(7)

⁶⁷ ITAR § 120.11

⁶⁸ EAR § 734.3(b)(3)

The ITAR controls defense articles, which by definition includes technical data designated on the USML⁶⁹. However, “information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities” is specifically excluded from the definition of technical data under the ITAR⁷⁰.

The following is one example of how these definitions apply to university activities. The university offers a catalog listed course in very high-speed integrated circuit design and manufacturing. The course is open to any University student who has completed the necessary prerequisite courses. In this case the material presented in the class will not be subject to export controls despite the fact that very high-speed integrated circuits are on the CCL. The key factors here are that the information is provided in a catalog listed course and the course is open to any qualified individuals regardless of nationality. This is not the case when instruction is related to a defense article subject to the ITAR (see “*Defense Services*” in *Educational/Training Situations* on page 31).

Areas of Continuing Impact on Academic Pursuits and Activities

Physical Export of Items, Including Technical Data, or Technology

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

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

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

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

While exports are commonly associated with the shipment of a tangible item to a location outside the U.S., export controls have a much broader scope. One of the most difficult issues with respect to export controls is the fact that an export is defined to include the transfer of controlled information or services to foreign nationals even when the transfer takes place within the territory of the United States⁷¹. Though taking place inside the U.S., the transfer is

⁶⁹ ITAR § 120.6

⁷⁰ ITAR § 120.10

⁷¹ ITAR § 120.17(a)(3-5) and EAR § 734.2(b)(1)

“deemed” to be an export to the country of the foreign national⁷². Both the ITAR and the EAR provide for deemed exports, although the term “deemed export” is not used in the ITAR. While the ITAR distinguishes between the transfer of technical data and providing a defense service in the definition of “export”⁷³, the EAR generally provides for the release of technology. Such transfer or release may be made through oral, visual, or other means. The following are examples of how an export may occur:

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

**The EAR and ITAR differ in controls related to access. Under the ITAR providing a foreign national the ability to touch, see or use a defense article would be an export if such access provides technical data, while under the EAR it would only be an export if it released technology or software subject to the EAR as described in § 734.15. Note, however, that foreign national licensing guidance provides that any “access” by a foreign person to a defense article would require a license. [In the event an unlicensed foreign person had unrestricted access to a defense article, it would be difficult, if not impossible, to show that the foreign national did not obtain technical data by deconstructing, examining or reverse engineering the defense article.]*

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

As with physical exports, most transfers of technical information at universities do not require a license. One reason for this is that technology controls do not apply to many of the items on the CCL. A second reason is that access to CCL-listed “development” or “production” or “use” technology is rarely required to conduct university activities. Although it may seem that universities would frequently need to transfer “use” technology to foreign nationals, the fact that the definition of “use” involves more information than would normally be available in an operation or owner’s manual⁷⁴ actually makes exports of “use” technology relatively infrequent. Even when a license requirement does exist based on the specific ECCN and Country Chart⁷⁵, a license exception may be available to overcome the license requirement for the proposed deemed export.

⁷² EAR § 734.2(b)(2)(ii)

⁷³ ITAR § 120.17(a)(4) addresses technical data transfers; ITAR § 120.17(a)(5) covers provision of defense services.

⁷⁴ EAR § 772 defines “use” to include all of the following six elements “operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing”. Note that for “600 series” items on the CCL, only one element may be necessary to constitute “use”.

⁷⁵ EAR § 738, Supplement No. 1

The ITAR provides one broad license exemption specifically for universities which may be useful for some projects; this is often referred to as the Bona Fide Employee Exemption (BFEE)⁷⁶. This exemption permits disclosures of unclassified technical data in the U.S. by U.S. institutions of higher learning to foreign persons who are their “bona fide and full time regular employees” when certain criteria are met. This exemption may not be used for employees who are nationals of a country to which exports of defense articles and services are prohibited⁷⁷. The BFEE may be used for nationals of other countries provided the employee resides in the U.S. throughout the period of employment and the university informs the foreign national in writing that the technical data may not be transferred to other foreign nationals without the prior written approval of DDTC. It is important to note that this license exemption is not available for students, trainees, collaborators, consultants, or individuals who are not both full time and regular employees of the university.

“Defense Services” in Educational/Training Situations

As mentioned previously, the ITAR differentiates between the export of technical data to a foreign person in the U.S. and the provision of defense services. While the BFEE may be used to permit the University to share an ITAR-controlled blueprint or technical specification document, it does not allow a U.S. person to provide instruction or consultation related to the information contained in the document. Likewise, the BFEE does not permit a U.S. person to demonstrate or provide instruction in the operation of a defense article. Such activities are considered defense services⁷⁸ and would require specific authorization from DDTC. It is important to note that a defense service can be performed even when the information provided is already in the public domain; this is made clear by the following statement:

“... The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in §120.9(a) of this subchapter (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from licensing requirements of this subchapter pursuant to §125.4 of this subchapter)...”⁷⁹

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

Therefore, although “information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities and information in the public domain” are not “technical data”⁸⁰ and do not require a license for export, providing the same information *in relation to a defense article* is a defense service and would require prior approval by DDTC⁸¹. There is no exclusion or exemption available to cover such exchanges when they occur in the context of a university course or fundamental research activity.

⁷⁶ ITAR § 125.4(b)(10)

⁷⁷ ITAR § 126.1

⁷⁸ ITAR § 120.9

⁷⁹ ITAR § 124.1

⁸⁰ ITAR § 120.10 definition of technical data

⁸¹ ITAR § 124.1(a) Manufacturing license agreements and technical assistance agreements, Approval.

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

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

Institutional Commitment

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

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

The University of Virginia has formalized its commitment to compliance with U.S. export control laws and regulations through the adoption of University Policy FIN-043, Managing Export and Sanction Compliance in Support of University Activities, on November 29, 2011, and as subsequently revised. This policy sets forth both institutional expectations for compliance and identifies the institutional executives and offices responsible for oversight and administration. The current policy may be accessed electronically through the University's publicly available Policy Directory at <https://uvapolicy.virginia.edu/>.

Empowered Officials

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

Export Controls Functions and Responsibilities

Broadly speaking, the role of the Office of Export Controls (OEC) is to serve as a central resource for export control information and assistance and to coordinate the University's overall export compliance management program. The Key University Offices & Roles listed in the following section are those that, together with the OEC, are central to assuring institutional compliance with U.S. export controls.

The export controls policy (FIN-043) identifies the roles and responsibilities of the Director of Research Regulatory Affairs; Office of Export Controls; Faculty members; and All University faculty, staff, trainees and volunteers related to export controls.

The Director of Research Regulatory Affairs is responsible for:

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

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

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

Faculty members are responsible for:

- Consulting with and providing assistance to the Office of Export Controls to ensure that:
 - Controlled technology, regardless of whether it is instructional or research technology, used or produced by them or under their supervision is categorized correctly under export control regulations;
 - Controlled activities are identified, approved, and licensed if necessary; and
 - All exports of controlled technology, both physical and deemed, including those associated with international travel, are conducted in compliance with applicable export control, sanctions, census, and customs requirements;
- Knowing and complying with the terms and conditions of their funding awards and other agreements, including export controls, sanctions, and limitations on dissemination/publication of research data and results;
- Assisting the University in preventing unauthorized exports and/or sanctions violations and applying for government licenses where appropriate;

- When applicable, developing a technology control plan, submitting the plan for approval, and following the requirements of the approved plan;
- Seeking advice from the Office of Export Controls when acquiring proprietary (non-public) information or items via a mechanism other than procurement/purchase; and
- Ensuring that staff, students, trainees, and volunteers under their supervision, and visitors are made aware of any applicable requirements (e.g., University, regulatory, or sponsor imposed) and receive adequate training in how to conduct their activities in compliance with those requirements.

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

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

Key Cooperating Offices & Roles

Office of Sponsored Programs

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

Office of the Vice President for Research

The Office of the Vice President for Research has the final authority to determine whether or not the University of Virginia will accept research restrictions, including those associated with export controls. The University's organizational structure is such that all research activity falls under the oversight of the VPR. The VPR's office assists OEC with outreach and is involved with all inquiries related to suspected non-compliance with University policy or export control regulations.

Human Resources

The Recruitment group within University Human Resources (UHR) manages visa applications, including modifications and renewals, for institutionally sponsored employees. Although most foreign national University employees are in the U.S. on H1B visas there are a small number holding other visa types. UHR files all I-129 (Petition for a Nonimmigrant Worker) applications on behalf of the University, but requires each sponsoring department or supervisor to include an

Advisory Letter from OEC stating the appropriate response to the “Certification Regarding the Release of Controlled Technology or Technical Data to Foreign Persons in the United States” question. In order for OEC to perform the necessary review, the sponsoring department or supervisor must complete the University’s I-129 Export Certification Request Form and submit it to OEC for review. Instructions for completion of the request form are contained in the H-1B Packet provided by UHR at https://hr.virginia.edu/sites/default/files/IMPACT%20COE/Compliance-Immigration/H-1BPacket_March2020_0.doc. Information is also available on the Office of Export Controls website at <http://export.virginia.edu/i-129-export-certification>.

Office of the Assistant Vice President for Financial Operations

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

University purchasing or procurement functions are managed by Procurement & Supplier Diversity Services (PSDS). PSDS assists with the University’s export control program by screening new vendors and requesting export control information from vendors when they are acquiring technology; this is typically for purchases valued at \$10,000 or more. Smaller purchases may be made by research or departmental personnel using a Purchase Order in the UVA Marketplace or a University Travel & Expense Card (T&E Card). Annually all T&E Card users are provided basic information on export controls and reminded of their responsibility to assure that vendors provide notification to the Office of Export Controls before delivering defense articles to the University. Similarly, the University’s Purchasing Terms and Conditions (<https://procurement.virginia.edu/page/terms>) require that vendors provide written notice via email, and receive prior written authorization from the Office of Export Controls, before delivery to the University, for any items it will be providing to the University that are controlled under the International Traffic in Arms Regulations.

Facilities Management

The University’s Surplus Property Program is governed by University policy, PRM-016, *Surplus Property Disposal* and managed by Facilities Management. The current policy may be accessed electronically through the University’s publicly available Policy Directory at <https://uvapolicy.virginia.edu/>. Information on the Surplus Property Procedures may be accessed at <https://www.fm.virginia.edu/programs/reusestore/procedures.html>.

International Studies Office

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

Office of the University Counsel

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

Export Controls Advisory Committee

An Export Controls Advisory Committee (ECAC) may be convened on an *ad hoc* basis to provide input on existing or potential new elements of the Export Control Management Program (ECMP). The OEC may also convene the ECAC to assist in the assessment of the factors that contributed to an incident of non-compliance with University policy and procedures or violation of U.S. export controls and recommend a course of action to prevent similar incidents in the future. The ECAC membership will be comprised of representatives of Key University Offices and others as appropriate to address the specific situation or need for which the ECAC has been convened.

Organizational Structure

A current version of the University's organization structure is available on the Institutional Research & Analytics at <https://ira.virginia.edu/university-organizational-chart>.

CHAPTER 6: UNIVERSITY OF VIRGINIA PROCESSES & PROCEDURES

Export Control Analysis of Research Projects/Programs

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

Initial Review

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

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

If the reviewer identifies any “red flags” they email the Office of Export Controls (export-controls@virginia.edu), including a reference to the ResearchUVA file and/or any documents or correspondence not in ResearchUVA, a request for review and export control guidance prior to final execution of the agreement or acceptance of the award. When red flags are identified in funding agreements, University accounts (PTAOs) should not be set-up and no work should start until the red flags are resolved unless authorized by the Office of Export Controls.

Office of Export Control Review

- Thoroughly review agreement terms for

- References to export controls, including restrictions on participation by foreign nationals
- Publication or dissemination restrictions, e.g., DFARS 252.204-7000, that could make the use of the Fundamental Research exemption problematic
- For DOD agreements and awards
 - DFARS 252.204-7012 clause and presence of controlled technical information
 - Lack of “being developed for both civil and military applications” language
- Government or sponsor furnished equipment that could be ITAR-controlled
- Examine the proposal budget for indications of
 - Foreign travel, performance sites, or subcontractors
 - Purchases of potentially ITAR-controlled equipment
- Examine the project statement of work.
 - Collaborations with parties in foreign countries, or with foreign nationals domestically on non-fundamental research
 - Work being performed in sanctioned countries
 - Plans to ship items to international locations
 - Use of sponsor or Government furnished property
 - Access to proprietary or government restricted technical information, e.g., technology (EAR), technical data (ITAR), sensitive nuclear technology (NR), or controlled technical information (on agreements subject to DFARS 252.204-7012)
 - Use of defense articles
 - Exports of other than fundamental research results
 - Development of items that may be captured in USML catchall entries
- Prior to accepting restrictions on publication or dissemination of research results, OSP staff must have authorization from the principal investigator, department chair, dean’s office, and the Office of the Vice President for Research.
- Prior to accepting the DFARS 252.204-7012 when controlled technical data is present, OSP staff must assure that IT security requirements can be fulfilled by working with the InfoSec, as well as appropriate school, department, or other IT support staff. *Note: When controlled technical information (e.g., controlled unclassified information or covered defense information) will be generated, stored or processed at UVA or will be transiting UVA IT resources in unencrypted form, a Technology Control Plan (TCP) will be required whether or not the information is export controlled.*
- If foreign travel is indicated, notify the principal investigator of their responsibilities as an employee traveling internationally on University business.
 - If work includes travel to sanctioned countries, determine license requirements and work with principal investigator to prepare license application(s).
 - If work requires permanent or temporary export of University items determine licensing requirements, assess applicability of license exceptions/exemptions, and apply for licenses, if needed.
- If any work potentially includes ITAR-controlled defense articles or export-controlled technical information, work with the principal investigator to
 - determine its export control jurisdiction and classification;
 - develop a Technology Control Plan (TCP);
 - train project personnel; and
 - apply for any necessary export authorizations (e.g., licenses or technology assistance agreements).

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

Export Control Analysis of International Academic Agreements

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

Assessment: Identification, Marking and Tracking of Listed Materials

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

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

Assessment of University developed items will follow the structure set forth in the following tools and guidance provided by the Directorate of Defense Trade Controls (DDTC) and Bureau of Industry and Security (BIS):

- DDTC Tools
 - Order of Review: https://www.pmdrtc.state.gov/ddtc_public?id=ddtc_public_portal_dt_order_of_review
 - Specially Designed: https://www.pmdrtc.state.gov/ddtc_public?id=ddtc_public_portal_dt_specially_designed
 - Part 130: https://www.pmdrtc.state.gov/ddtc_public?id=ddtc_public_portal_dt_part_130
- BIS Tools
 - CCL Order of Review: <https://www.bis.doc.gov/index.php/export-control-classification-interactive-tool>
 - Specially Designed: <https://www.bis.doc.gov/index.php/specially-designed-tool>
 - STA: <https://www.bis.doc.gov/index.php/statool>
 - Note: STA is the Strategic Trade Authorization license exception.
 - De minimis and Direct Product Rules: <https://www.bis.doc.gov/index.php/de-minimis-direct-product-rules-decision-tool>

Other resources may also be used to inform the assessment.

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

Outgoing International Shipments

University personnel are responsible for contacting the Office of Export Controls (OEC) for a technology and export control assessment prior to exporting any item out of the U.S. The request may be submitted on the Export Assessment Request form (<http://export.virginia.edu/sites/export.virginia.edu/files/Export-Assessment-20150701-distributed.pdf>). The OEC will assist University exporters with determining if any export regulations apply to their shipment, outlining the proper course of action to assure compliance, and applying for government authorizations if necessary.

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

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

Procurement Activities

Whenever possible the University prefers to rely on manufacturers to provide the export control status of items and software being obtained through a procurement activity. Purchasers within Procurement and Supplier Diversity Services handle all procurements valued at \geq \$10,000 or requiring a contract with the University; smaller value purchases are handled by purchasers in research, academic, or support offices.

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

In cases where the vendor does not know the export control status of an item (e.g. when the vendor is not the manufacturer) or refuses to provide export control information to the University, the Office of Export Controls will perform a self-assessment based on the available information. In cases where doubt exists as to the jurisdiction of the item(s), the University will either decline to purchase or will proceed with the purchase and protect the item as a defense article until it is conclusively shown to be subject to the EAR (e.g. through a formal response to a commodity jurisdiction or advisory opinion request).

Purchases valued at $<$ \$10,000 may be made by using a UVA Travel and Expense Card if otherwise eligible under institutional policy and procedures. All individuals issued a Travel and Expense Card are required to complete initial and annual refresher training; this training informs them of their responsibility to request export control information from vendors prior to placing an order and to notify the Office of Export Controls prior to proceeding with the purchase of any ITAR controlled items (defense articles).

Surplus of University Property

All surplus of University property must comply with Surplus Property Disposal policy (PRM-016), accessible through the University's publicly available Policy Directory at <https://uvapolicy.virginia.edu/>. Associated procedures issued by Facilities Management and are available at <https://www.fm.virginia.edu/programs/reusestore/procedures.html>. The University surplus procedures are compliant with the general principles expressed by BIS in their advisory opinion on public sales in the US⁸²; no ITAR controlled items may be surplussed without the express authorization of the Office of Export Controls. University surplus may not be exported, directly or indirectly (i.e. provided to an individual or entity when there is reason to believe that it will subsequently be exported), without the authorization of the Office of Export Controls.

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

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

- Sponsored Agreements – some funding awards may include access to or the loan of items by the sponsor or other party to the agreement in order for the University to conduct its defined scope of work. Such arrangements are reviewed and negotiated by UVA Office of Sponsored Programs as previously described (see Export Control Analysis of Research Projects/Programs).
- Material Transfer Agreements (MTA) – typically used for the transfer of biological specimens, these agreements are reviewed and negotiated by University contract negotiators in the Office of Sponsored Programs. Although MTAs may not be associated with a Sponsored Agreement, they are reviewed similarly for export control issues but with particular attention focused on identifying select agents and export controlled biologics or toxins.
- License Agreements – Institutional license agreements are subject to the same review process as indicated in the previous section, *Procurement Activities*, although the terms and conditions are negotiated by University contract negotiators. The OEC will advise the University contract negotiator and, when needed, communicate with the vendor regarding export control language and terms in the license agreement.
- Nondisclosure Agreements, Confidentiality Agreements, and Data Use Agreements – used for the exchange of protected personal (e.g., under HIPAA⁸³ or FERPA⁸⁴), proprietary, or U.S. government restricted information; typically information will be provided in the form of oral disclosure or documents (hard copy or electronic) rather than items or materials. Such arrangements are reviewed and negotiated by the Office of Sponsored Programs as described previously (see Export Control Analysis of Research Projects/Programs).
- Donations – Occasionally the University receives donations of equipment or other material, these donations will be subjected to the same review process as described for *Procurement Activities*, above.
- Equipment Loans, other than as part of a Sponsored Award – are subject to the same review process as indicated in the previous section, *Procurement Activities*. In fact equipment loans that are not part of a

⁸² *Public sale of US equipment to a foreign national and the "deemed export" rule*; Bureau of Industry and Security, US Department of Commerce, Advisory Opinion dated 12/6/2004, available at <http://www.bis.doc.gov/index.php/policy-guidance/advisory-opinions>.

⁸³ The Health Insurance Portability and Accountability Act of 1996; P.L. 104-191; enacted August 21, 1996. The HIPAA Administrative Simplification Rules are located at 45 CFR Parts 160, 162 and 164.

⁸⁴ The Family Educational Rights and Privacy Act of 1974 (a.k.a. the Buckley Amendment) codified at 20 USC § 1232 with implementing regulations at 34 CFR Parts 99.

Sponsored Award must be submitted as zero dollar purchase orders to ensure proper negotiation, marking, protection, insurance, and return of loaned equipment.

Restricted Party Screening

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

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

- All non-UVA parties proposed to be part of an export (e.g. receiving party, end-user, consignee, shipper, or freight forwarder);
- All parties prior to their being added to a Technology Control Plan;
- Foreign parties to an international academic agreement;
- Foreign parties to a sponsored award or contract, including subcontractors;
- Parties to a foreign financial transaction;
- Foreign national employees as part of the University's internal review process for all I-129, *Petition for a Nonimmigrant Worker*, applications being submitted to the U.S. Customs and Immigration Service. (See related information).
- Foreign parties (and the organizations they are employed by) visiting UVA in an official capacity should be screened before arriving on Grounds.

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

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

The Office of Export Controls has developed restricted party screening procedures and provides them to all parties authorized to use the online tool.

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

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

Technology Control Plan

A Technology Control Plan is the formalization of the processes and procedures University project personnel will use to ensure that any subject items and information are not disclosed to unauthorized personnel or exported without any necessary export authorizations. The Office of Export Controls has created a template TCP, accessible at <https://export.virginia.edu/technology-control-plan>, to serve as a starting point, with the intention that it be adapted first and foremost to comply with the specific U.S. regulatory requirements and secondly to accommodate the needs and structure of the University project or program.

TCP Development

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

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

Security Measures

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

- Compartmentalization. Project operation may be limited to laboratory areas that are physically shielded from access or observation by unauthorized individuals. Such areas must remain secured at all times when subject items or information are in use.

- Time Blocking. Project operation may be restricted to specific time blocks when access will be limited to authorized personnel. Unauthorized individuals shall not be permitted to observe project operations or have access to the space during this time.
- Marking. Export controlled information must be clearly identified and marked.
- Personnel Identification. Authorized individuals may be required to wear a badge, special card, or similar device indicating their permission to access project areas. Physical movement into and out of designated project area may be logged or otherwise monitored.
- Secure Storage.
 - Tangible items should be stored in controlled access rooms or storage devices that prevent visual disclosure as well as physical access. Access keys or cards may only be issued to authorized personnel.
 - Soft and hardcopy data, laboratory notebooks, reports, and other research materials should be stored in locked storage devices. Keys may only be issued to authorized personnel.
- Electronic Security.
 - Project computers, networks, and electronic files should be secured and monitored through User Ids, password controls, and encryption technology (128-bit or better). Database access should be managed via a Virtual Private Network.
 - Electronic communications (email, text and instant messaging) containing controlled information should be either explicitly prohibited or specifically addressed in the TCP procedures.
 - Verification IT security provisions by ISPRO or approved designees may be required at OEC's discretion.
- Project Communications. Discussions about the project must be limited to the individuals identified and authorized under the TCP and occur only in areas where unauthorized individuals are not present and cannot reasonably overhear. Discussions with non-UVA parties must occur only under signed agreements which fully respect non-U.S. person limitations for such disclosures.

Required Training

Before any individual may be added to a TCP and have access to items or information controlled and protected under a TCP, the individual must complete the initial training requirement, be provided a copy of the TCP, certify his or her agreement to comply with the terms of the TCP, and be authorized by the Office of Export Controls. Training is provided by the OEC.

Although TCP specific training is required for anyone listed on the TCP, general export controls training is available to anyone at the University free of charge from Office of Export Controls (in-person, through Workday Learning, or via the OEC website) or through the Collaborative Institutional Training Initiative (CITI), a contract vendor.

TCP Recertification

All TCP's must be recertified by the Responsible Person on an annual basis. OEC has established a schedule for the review of each TCP, and will contact the Responsible Person to begin the process of recertification. This process insures that TCPs for projects that are no longer active are terminated (*Note: TCP's can only be terminated if there are no export controlled materials in the possession of the any of the project members.*) Recertification also ensures that the project

personnel and covered items and information lists are kept up to date, and that the project is still operating within the parameters set forth in the TCP.

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

TCP Modifications

Any change (e.g., changes in location, procedures, or staffing) to an approved TCP must be requested by the Responsible Person and be approved by the Office of Export Controls before being effected.

Export Authorization (Licensing)

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

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

International Travel Reviews and Travel Related License Exceptions and Exemptions

Travel to destinations outside the U.S. with controlled items, including controlled information (e.g. UVA or third party proprietary or confidential, U.S. government restricted), may also implicate export control regulations. A license may be required depending on which items are taken, which countries are visited, the purpose of the trip, the specific individual or entity the traveler will be visiting or whether services are provided to a foreign person. It is important to note that presenting results at a scientific conference OUTSIDE of the U.S. may be an export (ITAR or EAR) or regulated service (sanction programs) depending on the material to be presented, openness of the conference, location, and sponsor(s) and in some cases may require a license; this is particularly true in the case of conferences and other activities that are held in sanctioned countries or sponsored by restricted parties. The OEC can determine whether, for those UVA faculty, staff, students or others traveling internationally on University business and/or with University-owned property, their

travels will invoke U.S. export controls or sanction programs, and whether they may need a license to proceed and, if so, whether or not a license exception (EAR) or exemption (ITAR) is available to overcome the requirement.

Reviews of International Travel for University Business

- UVA faculty, staff, students or others traveling on University business or with University-owned property should contact the Office of Export Controls well in advance of any planned international travel. This includes personal trips where University-owned property is taken.
 - If traveler is going to a country or region subject to comprehensive sanctions by the US Government (Iran, North Korea, Cuba, Syria, Sudan, and the Crimean region of Ukraine), the traveler should complete the Sanctioned Country Review Request form (<https://export.virginia.edu/sites/export.virginia.edu/files/Sanctioned-Country-Review-Request-distributed.pdf>). Other countries are subject to more limited sanctions; for a complete list of current country-based sanction programs see <https://www.treasury.gov/resource-center/sanctions/programs/pages/programs.aspx>.
 - If the traveler is taking University-owned items, including UVA or third-party proprietary, confidential or U.S. government restricted information, UVA-owned intellectual property or UVA-owned equipment, the Temporary Export Request Form (https://export.virginia.edu/sites/export.virginia.edu/files/Temporary_Export_Request20190516.pdf) should be completed by the traveler and returned to OEC for review.

License Exceptions and Exemptions

A License Exception⁸⁵ may be available for temporary exports of EAR-controlled items, technology, or software if the individual travelling outside the U.S. can certify that he or she:

1. will ship or hand-carry the items, technology, or software for University business only;
2. will return or certify the destruction of the items, technology, or software within 12 months of leaving the U.S.;
3. will keep the items, technology, or software within his or her effective control;
4. will take necessary security precautions to protect against the unauthorized export of the technology; and
5. will not ship or hand-carry the items, technology, or software to a Iran, Syria, Cuba, North Korea, or Sudan⁸⁶ without first consulting with the Office of Export Controls.

A License Exemption⁸⁷ may be available for ITAR controlled technical data transmitted outside the U.S., in certain limited situations. The OEC will assess the availability of exemptions on a case-by-case basis.

Please note that other exceptions or exemptions may be available.

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

⁸⁵ EAR § 740.1

⁸⁶ This list is current as of the date of this writing, but is subject to change. A current list is available at EAR § 742.1.

⁸⁷ ITAR § 125.4

determination. All exceptions or exemptions must be documented and the record maintained for at least five years⁸⁸ from the date of export.

Training & Information

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

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

General Awareness

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

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

Personnel Listed on a TCP

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

⁸⁸ ITAR § 125.6 and EAR § 762

Project or Program Specific

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

Export Control Certification for I-129 Foreign National Employee Petition

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

The University Human Resources (UHR) provides employees and prospective employees with information on Immigration Policies and Procedures (<https://hr.virginia.edu/careers-uva/immigration-services/immigration-policies-and-procedures>) and forms (<https://hr.virginia.edu/careers-uva/immigration-services/immigration-forms>), including the H-1B visa packet (https://hr.virginia.edu/sites/default/files/IMPACT%20COE/Compliance-Immigration/H-1BPacket_March2020_0.doc). UHR requires an advisory letter from OEC indicating the appropriate export certification as part of the H-1B packet submitted by the sponsoring unit. Units may obtain an advisory letter by submitting a completed I-129 Export Certification Request Form (<http://export.virginia.edu/i-129-export-certification>) to the OEC. Normal processing time is 2 business days.

Recordkeeping

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

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

Under the ITAR, when an exemption is claimed for the export of unclassified technical data, the exporter must maintain a record of each such export. The business record should include the following information: a description of the

unclassified technical data, the name of the recipient end-user, the date and time of the export, and the method of transmission⁸⁹. Note that this section of the ITAR does not specify a required retention period.

BIS has identified specific record-keeping requirements in the EAR⁹⁰. Generally, records required to be kept by EAR must be kept for a period of five years from the project's termination date. However, if BIS or any other government agency makes a request for such records following a voluntary self-disclosure, the records must be maintained until the agency concerned provides written authorization otherwise.

Internal Monitoring

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

Violations

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

Any individual who suspects a violation has occurred should immediately notify the Office of Export Controls⁹¹. The University takes all such reports seriously; in response, OEC will consult with the Office of University Counsel (OUC) who will determine if further investigation under privilege is warranted. If the initial review determines that the allegation or concern is not actually related to export control, is not a violation, or lacks merit, OEC will inform the reporter and, if appropriate, internally transfer the report to the proper office for further review and resolution. If the initial review supports the allegation, OUC will direct OEC to conduct a comprehensive internal review and the University may submit an initial notification about the suspected violation to the cognizant government agency⁹². The internal review will include gathering information about the circumstances, personnel, items, and communications involved and performing a detailed regulatory assessment. Once the internal review is complete, OEC staff will prepare a final report detailing

⁸⁹ ITAR § 123.26

⁹⁰ EAR § 762.6

⁹¹ See responsibilities of the responsibilities assigned to University employees, trainees and students in University of Virginia Policy: *Managing Exports of Controlled Technology to Foreign Persons and Destinations in Support of Research and Scholarship* (Policy ID: FIN-043).

⁹² EAR § 764.5 and ITAR § 127.12(c)

their findings for OUC. OEC and will collaborate with OUC and, if appropriate, the Export Controls Advisory Committee to develop specific recommendations to strengthen the University's internal controls to prevent similar violations in the future for consideration by University leadership. If an initial disclosure was made to the cognizant regulatory agency, a final narrative report detailing the following will be submitted:

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

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

Risk Assessment

Identifying and addressing emerging and evolving risks is an important component of a robust compliance program. The Office of Export Controls (OEC) uses professional association listservs, newsletters, agency updates/announcements, federal register notices and news services to stay informed about emerging and evolving risks and will work with relevant University leaders and business units to adapt internal policy, procedure, and guidance as necessary to assure ongoing compliance. While these efforts are critical to maintaining compliance, they do not replace the need for periodic program/institutional risk assessments.

The Director of Research Regulatory Affairs (DRRA) will conduct an annual risk assessment of the University's export (and sanctions) compliance program. A report summarizing the findings of the assessment will be provided to the Vice President for Research. At minimum this report will identify major/significant risks and recommended action plans to mitigate, reduce, or avoid those risks.

Additional programmatic or issue specific risk assessments may be performed by internal (outside OEC) or external parties as directed by the Vice President for Research (VPR) or Office of University Counsel (OUC). In addition, the DRRA may recommend or request an external risk assessment to address emerging risks but any such engagement must be approved by the VPR and/or OUC depending on the specific circumstances (e.g., engagement of outside counsel or need for a results to be privileged).