



Compliance with United States Export Control Laws

Policy Type: Administrative

Responsible Office: Office of Research, Office of Research Administration and Compliance

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Policy Statement and Purpose

For reasons of person security and trade protection, the United States has enacted export control laws to govern the transfer of certain information, items, or technologies to foreign countries and foreign persons. These laws apply to items that have a military application, as well as to commercial items that may have a potential military application or pose a foreign policy or person security concern as defined by the U.S. Government.

It is the policy of the university that all personnel studying at, employed by, or working at the university comply with applicable laws and regulations while studying, teaching, conducting research, providing, or receiving services at, for, or on behalf of the university. Accordingly, university personnel are required to comply with the export control laws and regulations that govern the transfer of export-controlled items to foreign countries and foreign persons.

The purpose of this policy is to outline the fundamental aspects of export control compliance by examining the relationship of export control regulations to specific activities conducted at the university and by explaining how the university supports compliance with these regulations.

Export control laws and regulations apply when an export, re-export, deemed export or in-country transfer occurs. Examples of activities that may implicate export control laws and regulations and therefore require close review, prior to commencement, include, but are not limited to, any of the following:

- engaging in research in controlled areas (e.g., encryption technology, nuclear technology, military technologies, and chemical/biological weapons);
- engaging in research sponsored by any entity that restricts publication or participation by foreign persons;
- receiving and/or using export-controlled information or technologies obtained from other parties;
- shipping or taking equipment, technology, or software beyond U.S. borders;
- traveling or working outside the United States;

- collaborating with foreign persons on research projects, education programs, and other services, whether within the United States or abroad;
- preparing or presenting information at venues abroad or at venues within the United States where foreign persons are present;
- participating in international exchange programs;
- employing foreign persons to work in university offices and laboratories;
- hosting foreign visitors; and
- training foreign persons.

Export control laws and regulations **generally do not apply** to research, teaching, and service activities conducted by university personnel in the United States when the item: 1) is already in the public domain or otherwise publicly available; 2) is educational information; 3) forms a part of fundamental research, or, for ITAR regulated-unclassified technical data only, is disclosed to a bona-fide, full-time employee.

For activities to be exempt and/or excluded from export control laws and regulations, research must be conducted free of any publication restrictions, access, or dissemination controls. VCU is committed to accomplishing teaching, research and service openly and without prohibitions or restrictions on the publication and dissemination of the results of academic and research activities. Any restriction on the publication of the scientific and technical information resulting from research, *other than*: 1) limited pre-publication reviews by research sponsors to prevent inadvertent disclosure of proprietary information provided by the research sponsor or to ensure that publication will not compromise intellectual property rights of the research sponsor; or 2) specific access and dissemination controls when the federal government is sponsoring the research, will subject the activity to export control requirements. University personnel should continue to ensure open publication and dissemination of research.

The Vice President for Research is vested with the authority to designate an Empowered Official to oversee compliance with, and enforcement of, this policy.

Noncompliance with this policy may result in disciplinary action up to and including termination. VCU does not tolerate any form of retaliation against an employee who brings forth a good faith concern, asks a clarifying question, or participates in an investigation.

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Who Should Know This Policy

All university personnel including faculty, staff, postdoctoral fellows, students, and all other persons studying or working at the university (including visiting scholars and scientists) or with whom the university has contracted to teach, conduct research, or provide or receive service activities at, for, or on behalf of the university are responsible for knowing this policy and familiarizing themselves with its contents and provisions.

Definitions

Deemed Export

A deemed export occurs when information or technology subject to export control is released, disclosed, or transmitted to any foreign person in the U.S. Such a release, disclosure, or transmission is considered to be an export to the country of citizenship of the foreign person.

Denied Persons List (DPL)

A list of individuals or companies, maintained by the US Department of Commerce, Bureau of Industry and Security, for which orders denying export privileges in whole or in part have been issued.

Disclosures to Bona-Fide Full Time Employees

ITAR-specific recognized exemption permitting the disclosure of unclassified technical data in the United States by U.S. universities to foreign persons where: 1) the foreign person is the university's bona fide full-time regular employee; 2) the employee's permanent abode throughout the period of employment is in the United States; 3) the employee is not a person of an embargoed country; and 4) the university informs the employee in writing that information disclosed may not be disclosed to other foreign persons without prior written governmental approval.

Dual Use

Items that have both commercial and military or proliferation applications. While this term is used informally to describe items that are subject to the EAR, purely commercial items are also subject to the EAR.

Educational Information

Educational information is information that is normally released by instruction in catalog-listed courses and/or associated teaching laboratories associated with those courses of academic institutions. Educational information is generally not subject to export controls.

Empowered Official

An empowered official is someone directly employed by an organization who is legally empowered in writing to sign export license application or other requests for approval on behalf of the organization. An empowered official has the independent authority to: 1) inquire into any aspect of a proposed export by the organization; 2) verify the legality of the transaction and the accuracy of the

information contained in the application; and 3) refuse to sign any license application or other request for approval without prejudice or other adverse recourse.

Export

An export occurs when an item is transferred physically from the U.S. to a foreign country, e.g., actual shipment of goods or carried during international travel, as well as when information is transmitted to a person or entity in a foreign country, whether in writing, or via email, phone, fax, internet, and verbal conversations.

Export Control Exemption and/or Exclusion

Specific, legally-recognized contexts in which export control regulations are inapplicable to the transmission of information; [e.g., Fundamental Research; Public Domain/Publically available; Educational Information; and Disclosures to Bona-fide Full Time Employees (ITAR exemption only)].

Export Control Laws and Regulations

These include, but are not limited to, ITAR, EAR, and OFAC:

ITAR (International Traffic in Arms Regulations)

Regulations governing the exports and re-exports of items and services for military use, which include defense articles, including technical data, defense technologies, and defense services. These regulations are under the jurisdiction of the U.S. Department of Defense. (22 CFR Parts 120-130).

EAR (Export Administration Regulations)

Regulations governing the export, including deemed export and re-export of dual use commercial items and technologies and other commercial items and technologies without an obvious military use. These regulations are under the jurisdiction of the U.S. Department of Commerce. (15 CFR Parts 730-774).

OFAC (The Office of Foreign Assets Control)

The federal government office responsible for administering and enforcing foreign asset control regulations. This includes economic and trade sanctions based on federal foreign policy and person security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. The regulations administered by OFAC include controls with regard to specific individuals, specific organizations, and certain countries. OFAC is under the U.S. Department of the Treasury. (31 CFR Parts 500-598).

Export License

A written authorization provided by the appropriate governing regulatory authority of the U.S. government detailing the specific terms and conditions under which export or re-export of export-controlled items is allowed.

Export License Exception/Exemption

An authorization that, under very specific conditions, allows for the export or re-export of items that would normally require an export license.

Foreign Person

Any person who is not a U.S. citizen, or who is not a lawful permanent resident of the U.S. (i.e., not a green card holder), or who does not have refugee or asylum status in the U.S. This includes all foreign persons in the U.S. as tourists, students, businesspeople, scholars, researchers, technical experts, salespeople, military personnel, diplomats, etc. Any foreign corporation, business association, partnership, trust, society or any other foreign entity or group as well as international organizations and foreign governments are considered "Foreign Person(s)."

Fundamental Research

Any basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community. Information that results from Fundamental Research is not subject to export control.

In-Country Transfer

The transfer of an item or information to a person or entity that is named on the Entity List maintained by the Bureau of Industry and Security in the U.S. Department of Commerce.

Item(s)

Any material, technology, equipment, technical data, software, source code, or commodity, and any information useful to, or used for, the development, production, or use of any material, technology, equipment, technical data, software, source code, or commodity.

Person Security Concern

An individual or entity included on the Denied Persons, Unverified, Entity, Specially Designated Nationals, Debarred, or Nonproliferation Sanctions Lists issued by the U.S. government.

Public Domain

Information that is published and that is generally accessible or available to the public: 1) through sales at newsstands and bookstores; 2) through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information; 3) through second class mailing privileges granted by the U.S. Government; 4) at libraries open to the public or from which the public can obtain documents; 5) through patents available at any patent office; 6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States; 7) through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant federal government department or agency; and 8) through fundamental research.

Re-Export

A re-export occurs whenever any item or information is sent from one foreign country to another foreign country.

Contacts

The Office of Research Administration and Compliance officially interprets this policy. Other offices are mentioned throughout this policy as available to assist with the topics covered herein (Global Education Office – Immigration Services and the Office of Environmental Health and Safety). The Office of Research

Administration and Compliance is responsible for obtaining approval for any revisions as required by the policy Creating and Maintaining Policies and Procedures through the appropriate governance structures. Please direct policy questions to the appropriate office.

Procedures

The Office of Research will maintain additional detailed information on specific procedures required for activities that may involve export controlled items at www.research.vcu.edu/export_control/index.htm.

General Export Information

An export license from the U.S. Department of Commerce or the U.S. Department of State is required before a foreign person may be given access to an export-controlled item or before an export-controlled item may be transferred to a foreign country. In certain instances, however, an export license exception/exemption is available. In other situations, a proposed disclosure or transfer may be prohibited altogether.

Export controls in sponsored projects:

The Office of Sponsored Programs will assess each new grant or contract received for export control applicability. Investigators, Schools/College and Departments will be involved in clarifying potential export control issues and developing appropriate technology control plans or applying for licenses as needed.

Export controls for international travel:

When planning a trip abroad, VCU travelers should familiarize themselves with export controls and embargoes. Each individual must ensure that any information to be discussed or any items taken with you are either not controlled, or if controlled, proper licenses are in place. Each individual, and VCU, can be held liable for improperly transferring controlled technology; therefore, it is important that you review these federal requirements. In some cases, technology that is otherwise controlled under ITAR or EAR may be excluded from the requirement to have a license or there may be a licensing exception.

Prior to discussing technology or making a presentation while traveling abroad, verify that the technology, information, and/or commodities qualify for an exclusion. It is important to note that the exclusions do not apply when controlled equipment or biological samples are hand-carried or shipped abroad. Biological samples should never be transferred without prior authorization.

Exclusions to the regulations that are particularly relevant to the academic community when traveling abroad are as follows:

- **Published (publicly available) Information and Software** – Information that is published and is generally accessible to the interested public through publication in books or periodicals available in a public library or in bookstores, or information that is presented at

a conference, meeting, seminar, trade show or other open gathering is considered to be in the public domain. An open gathering is one in which members of the general public are eligible to attend and attendees are permitted to take notes. Published information and software also includes information or software made available on web sites accessible to the public for free and without the host's knowledge of, or control of, who visits or downloads software or information. Software is considered published when it is available for general distribution either for free or for a price that does not exceed the cost of reproduction and distribution. However, encryption software with symmetric key length exceeding 64 bits will not be considered published for the purposes of this exclusion. Encryption software must be reviewed on an individual basis to determine if it is controlled.

- **Published Educational Information** – Most of the course material taught in U.S. universities which is published in the course catalogue and open to the public is considered public and falls within the educational information exception.

Computers containing non-commercial, special purpose or certain encryption software may be controlled and should not be taken out of the United States. These items could be subject to seizure or customs duties and may be stolen. If you will need these items while you are abroad, they should be shipped well ahead of time, an export review must be performed and if necessary a license must be obtained prior to shipment.

Required Actions in Advance of International Travel - These requirements apply to all VCU faculty, staff, students and volunteers who travel internationally as part of VCU research, education, service or employment.

1. Request Pre-Approval for International Travel through Chrome River. Be sure to check the "Travel Outside 48 contiguous States" box.
2. Send an e-mail to exportctrl@vcu.edu listing the following: Dates, Destination, Purpose and Account covering the expenses. The Office of Research Administration and Compliance (ORAC) will review the information to determine potential export issues. If additional information is required, the traveler will be asked to complete an International Travel Checklist for evaluation. ORAC will inform the traveler of the results of its evaluation.
3. All international travelers should review the TMP Exceptions section of the website.

Travelers are also strongly encouraged to consult the U.S. Department of State's website http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html, to review current travel warnings. If your destination is on the list, please contact exportctrl@vcu.edu for additional review.

All international travelers who are temporarily exporting university property (commodities, software, or technology) are required to complete a Temporary Export (TMP) Certification; see Forms Section for details. When taken outside of the United States, university property such as commodities, software, and technology (hereinafter called "items") may be subject to **export licensing** under the Export Administration Regulations (EAR) or regulations by other government agencies. Many items such as laptops, tablets, cell phones and PDA's containing commercial software, may be temporarily exported as "tools of the trade" under export license exception TMP. "Tools of the Trade" can be simply defined as

items that are used for university business, conference, trade shows, etc. The TMP exception only applies to university property.

Export controls for international employees and visitors:

VCU is required by federal regulations to monitor assignments to its facilities of foreign persons to ensure that the disclosure of, and access to, export controlled articles and related information are limited to those approved by an export authorization. All international employees and visitors must be processed through the Global Education Office (GEO). From their website (<http://www.global.vcu.edu/students/immigration/>), complete the relevant forms pertaining to your international visitor or employee. The Global Education office will take the appropriate forms and forward the export review form to the Office of Research. An export control review will be performed on all foreign persons regardless of employee or visitor status. If no restrictions are found during the review, the Global Education Office will continue the visa application process. If restrictions are found, the faculty or sponsor of the foreign person will meet with a representative from the Global Education Office and the Office of Research to discuss the issues at hand in attempt of a resolution.

Export controls for shipping:

Shipping tangible items outside of the United States usually requires an export license determination to correctly complete the shipping documentation. Sometimes, the university must obtain an export license from the Commerce Department or State Department for the shipment. Failure to obtain the appropriate license or other government approval, or failure to file correct export documentation or shipping documents can result in severe fines and other penalties. The Office of Environmental Health and Safety and/or the Office of Research Administration and Compliance can help you be certain your export is in compliance with export and sanction laws, and has correctly filed export and shipping documentation.

Export controls for scientific equipment purchases:

All scientific equipment purchases must be processed in accordance with VCU purchasing policies through VCU's Procurement and Payment office.

Vendors will be asked to provide the related ECCN/USML number for each item of equipment purchased. In cases where the ECCN/USML number is other than EAR99, purchase order and specification information will be forwarded to the Office of Research Administration and Compliance for further evaluation.

Technology control plans will be established when required.

Forms

1. [VCU International Employee/Visitor Export Control Review Form](#)
2. [Visiting Nonemployee Scholar Agreement](#)
3. [TMP Exception Form](#)

Related Documents

Related documents are critical to the development of corresponding policies and procedures. Related documents include Federal regulations, state regulations, state policies, and VCU policies, procedures and guidelines.

1. Export Administration Regulations (EAR) - 15 CFR 730-774 - http://www.gpo.gov/bis/ear/ear_data.html
2. International Traffic in Arms Regulations (ITAR) – 22 CFR 120-130 - http://www.pmddtc.state.gov/regulations_laws/itar.html
3. Office of Foreign Assets Control – 31 CFR 500-598 - <http://www.treasury.gov/resource-center/sanctions/Pages/CFR-links.aspx>
4. U.S. Department of State Current Travel Warnings http://travel.state.gov/travel/cis_pa_tw/tw/tw_1764.html

Revision History

This policy supersedes the following archived policies:

None – New Policy

FAQs

1. What is an export?

An export is an actual shipment or transmission of items, services, or technical data subject to either the EAR or the ITAR out of the United States, or release of technology, software, or technical data subject to either EAR or ITAR to a foreign person in the United States.

Technology, software, or technical data is "released" for export through:

- Visual inspection by foreign person of U.S. origin equipment and facilities,
- oral exchanges of information in the United States or abroad,
- transfer or shipment via any means (physical or electronic) to a foreign entity
- providing a service, or the application to situations abroad of personal knowledge or technical experience acquired in the United States

2. How do I know if Export Controls apply to my grant/contract?

OSP will assess the potential for export control applicability to grants and contracts at the time of award. If concerns arise, the PI will be contacted prior to acceptance of the award. If your Sponsor raises the issue of export controls during the conduct of your project, please contact OSP immediately.

3. What do I do if I think export controls apply to my grant/contract?

Do everything you can to make sure that the research performed at VCU falls within the parameters of the following exclusions:

- *Fundamental Research Exclusion: Both ITAR and EAR include language that excludes the results of "fundamental research" from export requirements for export licenses or other government approvals.. The exclusion applies for basic and applied research in science and engineering performed by universities so long as that research is carried out openly and without restrictions on publication, or foreign person access and dissemination restrictions.*
- *Educational Information: authorizes the disclosure, without a license, of educational information released by instruction in catalog courses and associated teaching laboratories of academic institutions and are general scientific, mathematical, or engineering principles commonly taught in universities.*
- *Publicly Available Information Exclusion: applies if the information is in the public domain, i.e., if it is publicly available technology and software that is generally accessible to the public through unlimited and unrestricted distribution. Special rules apply to encryption software even if "open source" or publicly available software is being developed.*

If you are unsure if your activity falls under one of these exclusions, contact the Office of Research Administration and Compliance at exportctrl@vcu.edu and we will help you figure it out.

4. What are some grant/contract clauses associated with export controls that VCU will not accept?

- "The parties acknowledge that the subject of this agreement may be subject to ITAR, EAR and/or other export control regulations as mandated by Federal law. University agrees to indemnify, defend and hold Sponsor harmless from any and all suits, damages or other liabilities resulting from the violation of such regulations."
- DFAR 252.204-7000, Disclosure of Information
“(a) The Contractor shall not release to anyone outside the Contractor’s organization any unclassified information...”
- FAR 52.227-17, Rights in Data – Special Works
“...(d) Release and use restrictions. Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer...”

5. If there are no publication restrictions and no personnel restrictions, can I assume that export controls do not apply to my award?

There is one other issue that should be reviewed. Does your project require VCU to produce and/or deliver any hardware, i.e., equipment, devices or other embodiment of the technology? If so, this may be considered a “defense service” and require an export license. This is one of the considerations Office of Research, Office of Sponsored Programs reviews when reviewing for export controls.

6. What are “defense services”?

Defense services include the furnishing of assistance to foreign persons, whether or not in the United States, with respect to defense articles, and the furnishing of any technical data associated with a defense article.

7. What is involved in obtaining an export license?

A request must be submitted to the Department of Commerce for EAR-controlled items or the Department of State for ITAR-controlled items. Export licenses can take up to 3-6 months for review before a final determination is made. A request for export license would be coordinated through the Office of the Vice President for Research, Research Administration and Compliance.

8. Why should I be concerned about an export?

The university campus is open to students and faculty from many different countries. Access to restricted or export controlled technology, commodities, defense articles and defense services by an unauthorized foreign person could result in severe criminal or civil penalties for the university and the university employee making the export. Prosecution of an export violation may result in fines of up to \$1M and/or a prison sentence of up to 20 years.

9. What is a "Deemed" Export?

Release of technology or source code subject to the EAR to a foreign person in the United States is "deemed" to be an export to the home country of the foreign person under the EAR. Technology is specific information necessary for the development, production, or use of a Commerce Department product controlled for export. "Use" is defined as operation, installation (including on-site installation), maintenance (checking), repair, overhaul and refurbishing.