EXPORT CONTROLS - BASICS

**BRIEF OVERVIEW**

- Export Controls are a set of federal laws & regulations
- Export control laws regulate the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. in the interest of national security, economic, and foreign policy concerns
- Export Controls concern shipments/transfers out of the U.S. AND transfers to foreign nationals within the U.S. ("Deemed Export")

**REGULATORY AUTHORITY**

- Export controls involve a number of different regulations. Three major regulatory schemes are:
  - *The International Traffic in Arms Regulations (ITAR)* administered by the U.S. Department of State;
  - *The Export Administration Regulations (EAR)* administered by the U.S. Department of Commerce;
  - *The Office of Foreign Asset Control (OFAC)* administered by the U.S. Department of Treasury

**ITAR**

- Regulates Export and Licensing of *Single-Use Defense Articles* (military and space applications)
- Controlled Items List: U.S. Munitions List (USML)
- Examples: missiles, military armour, certain chemical agents, naval technology, satellite/spacecraft technology, ammunition, explosives

**EAR**

- Regulates Export and Licensing of Dual-Use Commodities (commercial and military applications)
- Controlled Items List: Commerce Control List (CCL)
- Examples: laptops, smart-phones, certain drones, certain navigation systems, infrared cameras, lasers, biological agents
OFAC

- Regulates Licensing of transactions involving sanctions and embargos
- Comprehensive and Selective Sanctions may apply to:
  - Countries
  - Companies
  - Individuals
- Current list of comprehensively embargoed countries/territories:
  - North Korea, Iran, Cuba, Syria, Sudan
  - Crimea Region (Ukraine/Russia)

EXPORT CONTROLS AT A UNIVERSITY - EXEMPTIONS AND EXCLUSIONS

- Fundamental Research Exclusion
  - Basic and applied research in science and engineering, where the resulting information is ordinarily published and shared broadly within the scientific community.
  - No restrictions on publications of scientific and technical information resulting from the project or activity

- Education exclusion
  - ITAR: information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities
  - EAR: information released by instructions in catalog courses and associated teaching laboratories of academic institutions

- IMPORTANT!
  - Fundamental Research Exclusion does NOT apply to:
    - Most physical goods
    - Software
    - Encryption
    - Certain non-publishable research
    - Research conducted outside the U.S.
    - Research with publication restrictions on results
    - Federally funded research with certain access and dissemination control on project results

EXPORT CONTROLS AT THE UNIVERSITY

- Export Controls may apply to the following
  - Shipment of items to location outside of the U.S.
  - Travel to certain sanctioned or embargoed countries for research and teaching
  - Transfer of export controlled technical data to persons located outside of the U.S.
• Sharing of export controlled scientific or technical information with foreign nationals within the U.S. ("Deemed Export")

**WHEN EXPORT CONTROLS ARE TRIGGERED**

• Determine if a license is needed OR if license exceptions apply OR if there is an existing General License (requires detailed analysis; may need to involve faculty; may reach out to peer institutions; can take a few days)

• Apply for licenses
  
  ▪ EAR – Department of Commerce (generally a straight-forward process but can take 1-3 months)
  ▪ ITAR – Brown is *not yet* registered with the Department of State
  ▪ OFAC – Treasury (lengthy process: can take 3-6 months)

➤ **IMPORTANT!**
  
  • Contact ORI early to avoid delays

**NON-COMPLIANCE**

• Non-compliance can result in substantial monetary and criminal penalties against the institution and the individual.

➤ Civil penalties per violation up to $250,000 (EAR) or $500,000 (ITAR)
  
  • Note: the government generally has the authority to charge more than one violation per transaction

➤ Criminal fines for willful violations of up to $1 million and/or 20 years imprisonment
  
  • Academics have been given prison sentences in connection with willful violations

➤ Denial of export privileges under the EAR

➤ Debarment from participating directly or indirectly in the export of ITAR-controlled defense articles, technical data or defense services.

**CONTACT THE OFFICE OF RESEARCH INTEGRITY (ORI)**

➤ Keri Godin, Director  keri_godin@brown.edu

➤ Jules Blyth, Associate Director/Export Control Officer  juliane_blyth@brown.edu

➤ Rebecca Haworth, Research Integrity Manager  rebecca_Haworth@brown.edu
EXPORT CONTROLS – RED FLAGS

CONTACT THE EXPORT CONTROL OFFICER IF:

- Transferring/shipping/carrying of special research equipment, materials or special software to a foreign country.
- Traveling to/research in/shipments to embargoed or sanctioned countries.
- Seeing any reference to the "ITAR", the "USML" or "Export Controls" in a purchasing agreement/quote, or in an award document or other research or collaboration agreement.
- The research agreement or award document contains restrictions on publication rights or requires sponsor approval prior to publication.
- The research agreement or award document contains restrictions on foreign participation in the research.
- Developing technology or software that is:
  - Designed solely or modified for a military use.
  - Primarily for use in a space program.
  - Used primarily in/for a weapon of mass destruction (nuclear, chemical, biological, missiles).
- Receiving unsolicited emails from unknown individuals, including those who identify themselves as academics or students, asking for information on, assistance with, or sharing of know-how/technology/data with potential military applications.