

Export Controls for Administrators



Course Overview

This training course will introduce you to U.S. Export Control regulations and how they apply in a university setting. Specifically, you will learn about:

- ❖ the three main export control regulatory schemes
- ❖ the types of activities at a university that may implicate export controls
- ❖ exceptions and exclusions to export control regulations
- ❖ potential “Red Flags” when it comes to export controls
- ❖ Brown University’s export control compliance program
- ❖ who to contact with questions or for additional training

What Are Export Controls?

The term “Export Controls” refers collectively to a set of *federal laws & regulations* that 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.**

What are International Sanction Programs?

International sanction programs apply broadly to transactions with sanctioned countries and specially designated individuals. Prohibited activities vis-à-vis sanctioned countries and specially designated individuals often include the export and re-export of goods, technology, and services. In some instances, travel may also be prohibited.



We're at a university. Why do we care?

Federal laws restricting exports of goods and technology have been in existence since the 1940s, but attention has increased due to heightened concerns about homeland security, proliferation of weapons of mass destruction, terrorism, and leaks of technology to U.S. economic competitors.

- Export Control and International Sanctions regulations are federal law and apply to **all** persons in the U.S., wherever you are
- Federal agencies are increasingly focused on universities' compliance with export regulations.
- Universities are known to be targets for individuals/groups looking to obtain or access controlled technology or technical data.

Export Controls at the University

There are many activities at the university that are **not** subject to export controls because:

- a. they fall under an exemption or exclusion (explained in more detail later on in this course); OR
- b. they involve information unrelated to defense articles or dual-use items.

IMPORTANT: Brown personnel working in areas such as literature, history, linguistics, music, or political science still need to be familiar with Export Controls for the following reasons:

- They may use controlled tools in teaching and research (e.g., specialized software, drones)
- International sanctions programs apply broadly and may affect travel/research activities proposed in sanctioned countries



Examples of University Activities that may implicate export controls

- **Shipping or taking (i.e., hand-carrying) controlled items** to locations outside the U.S.;
- **Travel to certain sanctioned or embargoed countries** for research, teaching, presentations;
- **Research in export-restricted science and engineering areas**, such as military or defense articles and services, high performance computing, select agents and toxins, encryption technology, space technology & satellites;
- **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. (called a “Deemed Export”);
- Providing **Financial Support/International Financial Transactions** that involve payment of funds to persons, entities, or organizations that are **blocked or sanctioned**.

Export Control Regulations

Export controls and international sanctions involve a number of different regulations. The three major regulatory schemes are the **ITAR**, the **EAR**, and **OFAC**. It is important to remember these acronyms.

International Traffic in Arms Regulations (ITAR)
Overseen by the Department of State

Governs military, weapons and space-related technologies and activities/development of items with a primary military application and/or designed for a military end-use

Export Administration Regulations (EAR)
Overseen by the Department of Commerce

Governs “dual-use” items (those with both military and commercial applications or strictly commercial applications)

Office of Foreign Assets Control (OFAC)
Overseen by the Department of the Treasury

Governs transactions with countries subject to embargo, boycott, or trade sanctions

ITAR

The International Traffic in Arms Regulations (ITAR) regulate export, re-export, transfer and licensing of *Single-Use Defense Articles* (military and/or space applications)



➤ Items controlled are on the U.S. Munitions List (USML)

- The USML is divided into 21 categories of defense articles, ranging from firearms to nuclear weapons
- Examples include missiles, military armor, certain chemical agents, naval technology, satellite/spacecraft technology, ammunition, and explosives
- For more information, see [22 C.F.R. Chapter I, Subchapter M Parts 120-130](#)

EAR

The Export Administration Regulations (EAR) regulate exports, re-exports, transfers, and licensing of *Dual-Use Commodities* (commercial and military applications)



➤ **Items controlled are on the Commerce Control List (CCL)**

- Items listed on the CCL have **Export Control Classification Numbers (ECCNs)**. ECCNs are five character alpha-numeric designations that categorize items based on the nature of the product and its respective technical parameters (e.g., 9A012, 3A001)
- Examples include laptops, smart phones, certain drones, certain navigation systems, certain infrared cameras, lasers, and biological agents
- For more information, see [15 C.F.R §§ 730-774](#)

OFAC

The Office of Foreign Assets Control (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)
- For more information, see [OFAC sanctions programs](#)



IMPORTANT

Most people do not commonly associate universities with military/defense technology or services and, therefore, tend to ignore the ITAR. However, increasingly universities engage in activities that may encroach upon “ITAR territory”.

- Universities and their faculty are increasingly engaging/participating in research funded by military sponsors (e.g., Department of Defense, Office of Naval Research, Air Force Office of Scientific Research)
- Universities and their faculty are increasingly collaborating with military research organizations and agencies, National Laboratories, and the defense industry
- Many research areas, such as biology, chemistry, physics, engineering, applied math, have an increased military focus
- More and more academic researchers are using advanced or military technology in their own research, some which may be controlled under the ITAR.

Faculty and staff must pay special attention to the ITAR, especially if conducting research funded by military sponsors.

EXPORT CONTROLS - OVERVIEW

Regulation	ITAR	EAR	OFAC
Overseen by:	Department of State	Department of Commerce	Department of the Treasury
Controls what:	Single-use military/defense items (“defense article”)	Civil or dual-use items	Sanctions programs (countries, entities, and individuals)
Enumerated on:	United States Munitions List (USML)	Commerce Control List (CCL)	OFAC sanctions list; Specially Designated Nationals (SDN) list

Items, equipment, materials, software and technology not identified on the US Munitions List (ITAR) or the Commerce Control List (EAR) are still subject to the EAR but are categorized as “EAR99”.

When am I exporting?

- The term “export” is relatively broadly defined in the regulations;
- It includes the release of information or technology to a foreign national here in the U.S.;
- Many everyday activities at a university may, in fact, involve “exporting.”



Export Examples:

- Shipment of research materials to colleagues abroad.
- Hand-carrying a controlled research drone and GPS system to a research site abroad.
- Traveling to a conference abroad with your laptop on which you have downloaded export controlled software or controlled technical data.
- Sharing controlled technical data via email with a German colleague in Munich.
- Conducting research in an embargoed or sanctioned country.

What is a “Deemed Export”?



- In addition to the physical transfer of items out of the country, the U.S. Government also actively regulates the **release or transmission of controlled technology or information** to a [foreign person](#) within the U.S (e.g., a foreign national graduate student at Brown). This is referred to as a “**Deemed Export.**”
- Deemed Exports are regulated by the same export control regulations as the actual transfer of items out of the U.S.
- Deemed Exports are considered an export to an individual’s home country.

“Deemed Export” Examples:

- Discussing controlled technical data with an Indian foreign national at Brown;
- Allowing a foreign graduate student access to ITAR controlled technology without a license.

Note: For Deemed Exports, the ITAR regulations consider **all** citizenships and permanent residencies held by a foreign person. For example, the transfer of technical data to a Chinese national who also holds a U.K. passport and a Canadian residency permit, is considered a deemed export to China, the U.K., and Canada. However, once a person is a U.S. permanent resident or a naturalized U.S. citizen, the ITAR does **not** consider prior citizenships or residencies.

The Cost of Noncompliance

Failure to comply with Export Controls can result in severe criminal and monetary fines to **both** the individual and the University.

- ! Fines of up to \$1,094,010 per violation
- ! Prison sentences of up to 20 years per violation

Non-compliance can also lead to:

- Protracted and intensive investigations;
- Termination of export privileges;
- Loss of federal funding; and
- Significant harm to the integrity and reputation of the individual and Brown University



Exemptions and Exclusions

- As a U.S. institute of higher education, Brown can take advantage of a number of exemptions and exclusions from export control regulations, such as the **Fundamental Research Exclusion (FRE)**, the **Education Exclusion**, and the **Public Information Exclusion**.
- As a result, many activities we engage in on Brown's campus are excluded from export controls. It is important to understand that the regulations specify conditions under which these exemptions and exclusions apply. If the conditions set forth under the regulations are not met, the exclusions and exemptions do not apply and the activity becomes subject to export controls.

Fundamental Research Exclusion (FRE)

What is the FRE?

In 1985, the US government, recognizing that the strength of academic research relies on creating an environment that promotes creativity and the free exchange of ideas, released the [National Security Decision Directive 189 \(NSDD189\)](#), which included an exclusion for “Fundamental Research.”



Definition

“*Fundamental Research*” is defined as “basic and applied research in science, engineering, and mathematics, where the resulting information is *ordinarily published* and *shared broadly* within the scientific community.”

Both the EAR ([15 CFR 734.8](#)) and the ITAR ([22 CFR 120.11](#)) contain provisions that shield fundamental research from the respective regulations. OFAC regulations also attempt to “carve-out” certain educational activities/exchanges, but such carve-outs are limited and there is no equivalent to the “fundamental research” exclusion under the EAR & the ITAR.

Fundamental Research Exclusion

- Under the FRE, **information and/or “software” that arise during, or result from, “fundamental research” are not subject to export controls.**
- **Tangible items resulting from the research** (prototypes, etc.) **are controlled** and may require an export license.

The FRE can be jeopardized if

- The University or its researchers accept restrictions on publication of scientific and technical information resulting from the project or activity,
- A research agreement includes access and dissemination controls, protecting information resulting from the research, or
- The researchers agree (even verbally) to any “side-deals” outside of the negotiated terms and conditions of an award or agreement, including:
 - Signing a Non-Disclosure Agreement (NDA) with parties participating in research
 - Accepting proprietary data from a third party

Fundamental Research Exclusion

IMPORTANT: The FRE does **not** apply to controlled items or information used in the research, such as purchased items, software from national labs, or data provided by a sponsor.

Example:

Dr. Jones, Associate Professor in Engineering, has received an NSF award to conduct fundamental research. The research agreement contains no access restrictions, and he is free to publish and share his research results broadly. Thus, the project qualifies for the FRE and the research and its results are not subject to export controls. However, Dr. Jones wants to use a thermal imaging infrared camera in his research. The camera he has purchased is listed on the Commerce Control List (CCL) and is controlled under the EAR (ECCN 6A003.b.4.b.)

Even though the camera will be used to conduct fundamental research, the camera itself will be subject to export controls. Specifically, it means that the camera may not be taken abroad without prior approval from the Export Control Officer and, if necessary, an export license from the Department of Commerce.

Educational Information Exclusion

The **Educational Information Exclusion** covers information that is **commonly taught in universities via instruction in catalog courses** and/or through the associated teaching laboratories.



- Information that qualifies as “educational information” is **not** subject to Export Controls and no export license is required to share such information with foreign nationals in the U.S. or abroad.

Public Information Exclusion

The Public Information Exclusion covers any information that is already “[publicly available](#)” or in the “[public domain](#).” Examples include:

- Books, newspapers, pamphlets
 - Publicly available technology and software
 - Information presented at conferences, meetings or seminars open to the public
 - Information included in published U.S. patents
 - Websites freely accessible to the public
- **Publicly available information** is not subject to Export Controls and no export license is required to share such information with foreign nationals in the U.S. or abroad.

How do I know whether I am covered by an exemption or whether export controls apply?

- As mentioned, tangible items, materials or software are almost always subject to export controls.
- In addition, research activities that allow for access restrictions based on nationality or publication restrictions fall outside the FRE and are thus subject to export controls.
- Likewise, research activities that incorporate proprietary information from a sponsor or a third party may be subject to export controls.
- Moreover, research activities that focus specifically and primarily on military applications are subject to export controls.
- Lastly, traveling to an embargoed country will implicate export controls and sanctions programs.

Export Controls at Brown

➤ Brown University and ITAR-controlled technology

- Brown's export control compliance program is designed to limit Brown's exposure to ITAR-controlled products, technology, and technical data by **presumptively prohibiting faculty, students, and staff from purchasing any item on the United States Munitions List (USML) and subject to the ITAR.**
- Faculty, students, and staff are **prohibited from purchasing any ITAR-controlled products or technology with the University's Purchasing Card**, regardless of its value.
- Faculty, students, staff must contact Brown's Export Control compliance team if they see any **reference to the "ITAR" or the "USML" in any sales agreements, quotes, or other purchasing documents.**

Faculty, students or staff who wish to have ITAR controlled technology on campus must:

- **receive explicit and documented approval from the Vice President for Research; and**
- **work with the Export Control Officer to implement a Technology Control Plan (TCP) prior to the arrival of the controlled item.**

Export Controls at Brown

➤ Traveling to embargoed or sanctioned countries?

- Travel to embargoed or sanctioned countries almost always implicates export controls.
- **Faculty, students, or staff who intend to travel to embargoed or sanctioned countries** under the auspices, or as representatives, of Brown University (i.e. to conduct research, present research results, participate in conferences, etc.) **must contact the Export Control Officer as soon as possible.**
- The Export Control Officer will assist in determining if a special license is required. In many instances, a license from the Office of Foreign Assets Control (OFAC) can take several months.

Embargoed/sanctioned countries and regions (as of 12/2016):

- North Korea
- Cuba
- Iran
- Sudan
- Syria
- Crimea Region of Ukraine

Red Flags!



- ✦ Transfer/shipments of special research equipment, materials or special software to a foreign country.
- ✦ Travel to/research in/shipments to embargoed or sanctioned countries.
- ✦ 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).
- ✦ 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.

If you come across a Red Flag, you must contact Brown’s Export Control compliance team.

When Export Controls are Triggered

- Brown's Export Control compliance team will review license requirements and facilitate the license application process

Who issues a license?

- Department of Commerce issues export licenses for items controlled under the EAR
 - apply online via SNAP-R; applications usually take 1-3 months
- Department of State issues export licenses for items controlled under the ITAR
 - Brown cannot apply for a license at this time because the University is not yet registered with the Department of State
- Department of the Treasury/OFAC issues licenses related to sanctioned and embargoed countries
 - online application; applications can take several months

What is an export license?

- An Export License is a *written* authorization provided by the federal government granting permission for the release or transfer of export controlled information or item under a defined set of conditions.
- If an export license is required, the export (i.e. shipping or taking abroad, sharing with a foreign national) **cannot** take place without an issued license.
- A license is not transferrable and cannot be used for anything else beyond what was requested. For example, if a license is issued to take a drone to Syria, the issued license can not be used to take the same drone to Egypt.

Questions?

Export Control Compliance is administered by the **Office of Research Integrity (ORI)**. If you have any questions, please contact the Export Control compliance team.

Jules Blyth, Associate Director, ORI/Export Control Officer

juliane_blyth@brown.edu

Rebecca Haworth, Research Integrity Manager

rebecca_haworth@brown.edu

Keri Godin, Director, ORI

keri_godin@brown.edu



Check out [ORI's website](#) for more information