Export Controls and Compliance

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What are Export Control Laws (ECLs)?

• Federal laws that govern how items, technology, and data may be exported from the United States or shared with foreign persons within the United States
  – Protect national security
    • Curtailing exports of militarily significant items and technologies to U.S. adversaries
    • Preventing terrorism
  – Prevent the proliferation of weapons of mass destruction
  – Further U.S. foreign policy and Trade agreements
  – Preserve U.S. economic competitiveness
Violations of ECLs

- Violations of the ECLs can result in both institutional and individual penalties including large fines, imprisonment, and debarment from future export activities. These penalties generally result from negligence and willful violation of the law rather than from honest error. Penalties associated with violation of the ECLs are mitigated by self-reporting the violation.

- If you think the regulations have been violated at Penn, contact:
  - Associate Director, Export Compliance: Jessica Buchanan (215-573-8817)
  - Office of General Counsel: Robert Firestone (215-746-5266)
  - Compliance hotline: 215-P-COMPLY or www.upenn.edu/215comply
What is an Export?

- Shipment of goods out of the United States
  - U.S. origin materials to another country
  - U.S. origin materials from one foreign country to another, or from a foreign country back to the U.S. (re-export)
- Electronic transmission out of the United States
  - Any media (phone, fax, email, chat programs, cloud)
- Release of technology to a foreign national in the United States (deemed export)
  - Lab tour, presentations and discussions at meetings, etc.
# ECL Regulations & Federal Agencies with Oversight

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<th>Regulations</th>
<th>Federal Agency with Oversight</th>
<th>Area of Oversight</th>
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| ITAR  
*International Traffic in Arms Regulations* | Department of State, Directorate of Defense Trade Controls (DDTC)                                | Technologies with **inherently military** properties                                |
| EAR  
*Export Administration Regulations* | Department of Commerce, Bureau of Industry and Security (BIS)                                   | Technologies with **“dual uses”** but primarily commercial, most commercial items, and certain military items not controlled under the ITAR |
| OFAC  
*Office of Foreign Assets Control* | Department of the Treasury, OFAC                                                                | Prohibits transactions of value with **certain countries** and individuals          |
Department of State (DDTC)

- Determines regulatory authority for new technologies through Commodity Jurisdiction process
- Administers the ITAR (primarily military and listed on the United States Munitions List [USML])
  - Defense articles
  - Defense services
  - Related technical data
Department of Commerce (BIS)

• The EAR covers
  – Technologies and technical information with both commercial and military applications (chemicals, biologics, telecommunications, software, computers, etc.)
  – Military items not enumerated on the USML
  – Solely civil use items depending on the end use/end user

• Each item has an export control classification number (ECCN)
  – Items are listed on the Commerce Control List (CCL)
Department of the Treasury (OFAC)

- OFAC administers and enforces economic and trade sanctions against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.
- Specially Designated Nationals (SDNs) — persons, businesses, and nations designated by OFAC for sanctions.
- Sanctions are country specific and include financial transactions.
  - Most heavily sanctioned countries: Cuba, Iran, North Korea, Sudan, Syria.
- Non-financial transactions can also require a license.
Prohibited Party

- U.S. government agencies maintain lists of individuals and entities both in the U.S. and abroad that have committed export violations or other offenses.
- Financial dealings or export transactions with restricted entities and parties are prohibited without a license from the applicable government agency.
- Restricted Party Screening is recommended depending on the transaction involved.
What’s controlled?

• **Technologies**
  – USML and defense services
  – CCL and deemed exports

• **Transactions**
  – International shipping
  – International payments

• **International Travel**
  – Depends on the location and equipment involved

• **Activities**
  – Lab tours
  – Hiring of foreign nationals
  – Conferences
What’s NOT controlled?

• Information in the public domain
• Information arising from Fundamental Research Exclusion
  – Applies to information only; not physical things!
• Basic marketing descriptions
• Artistic or non-technical publications
• Information available to the public through:
  – Sales in bookstores
  – Public libraries
  – Published patents
  – Distribution at a conference
  – Educational materials related to catalog courses in associated labs and universities
What can you do to help?

• **International shipping**: use of material transfer agreements, eShip

• **Purchases**: Be alert for invoice notifications on export/re-export, as well as export control language and certifications

• **International Travel**: refer travelers to Penn Global; ORS should be contacted if Penn equipment is involved or the travel involves Iran, Syria, Cuba, North Korea, Sudan

• **Payments**: screen recipients of international payments against banned parties lists

• **International students and scholars**: screen prospective students and scholars before beginning the visa process
Export Liaison Program

• Individuals appointed from academic and business units across campus to assist in:
  – Identifying training needs
  – Identifying potential export control issues
  – Serve as local points of contact for export control-related questions
  – Perform restricted party screening when necessary