

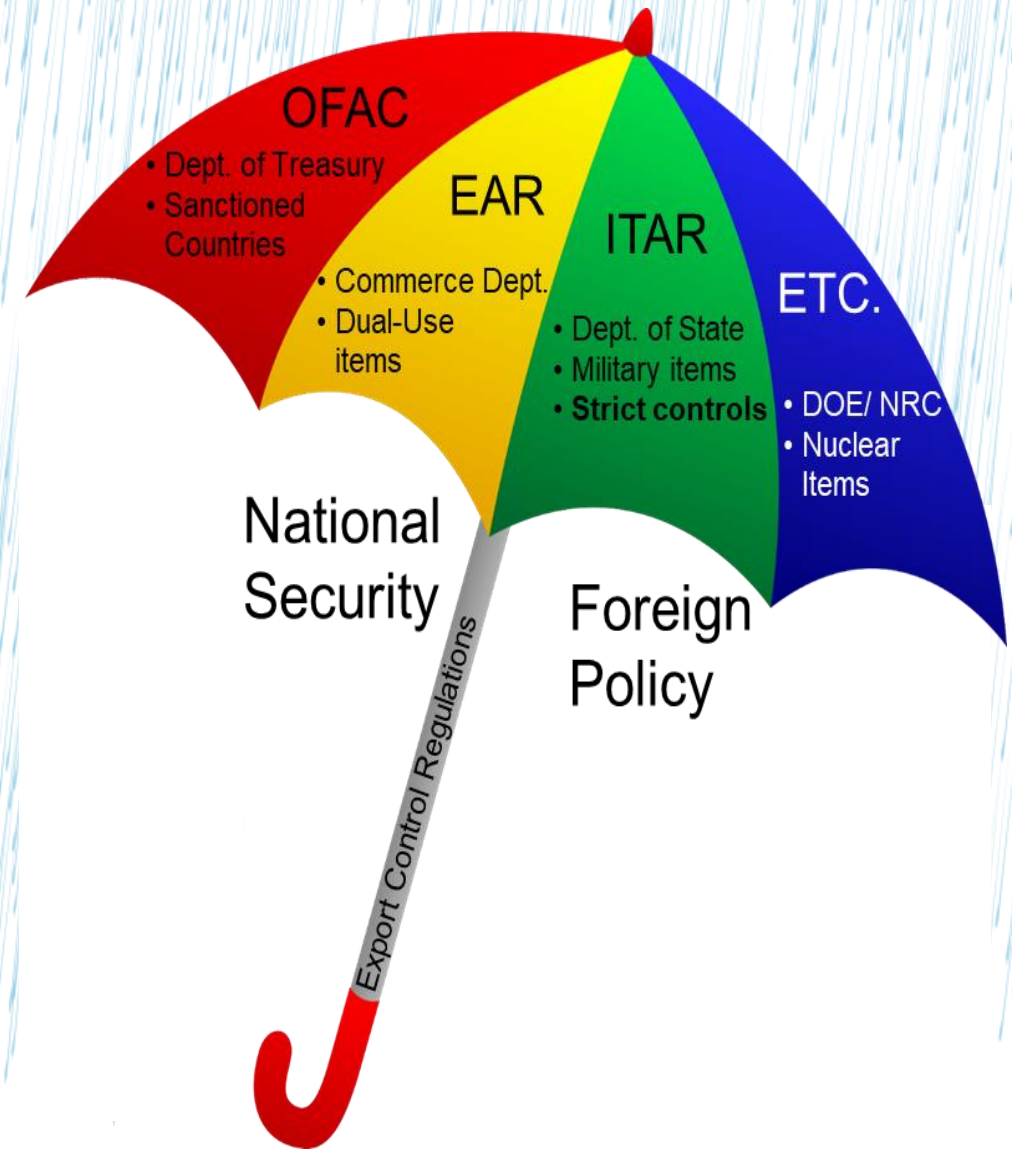
Export Controls and Agreements

Export Controls

Federal laws and regulations that control:

- The export of sensitive equipment, software, and technology
- Trade and financial transactions

Promote **national security** interests and **foreign policy** objectives.



Adapted from UCSD Export Control Office.

Partners in Export Control



Export Control Roles

IPO:

- Notify export control based on agreement review guidelines we will discuss here

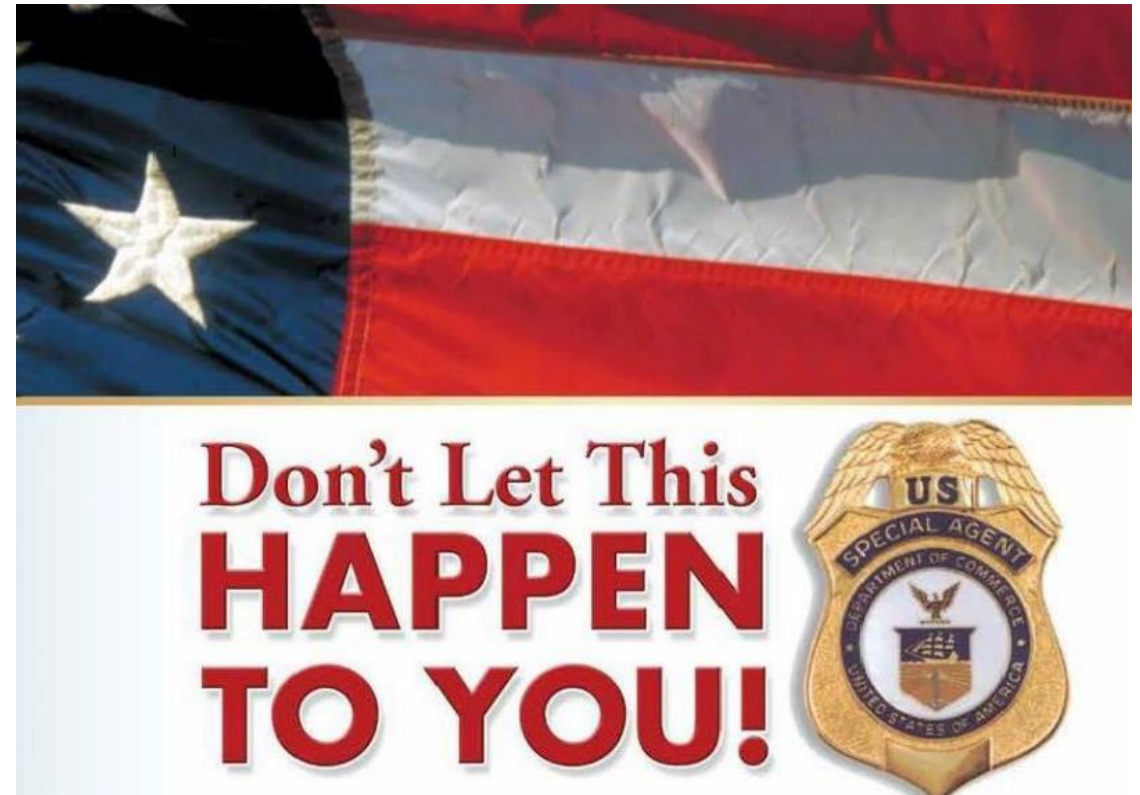
Export Control Officer:

- Designated by executive leadership at each UC Location
- Responsible for the monitoring and oversight of the local Export Control Compliance program
- Primary point of contact and subject matter experts at that location
- Responsible for reviewing the applicability of export control regulations and filing export licenses

Why Comply?

Violations may result in potential criminal or civil liability

- Penalties of up to \$1M per violation AND up to twenty 20 years in prison
- Enforcement actions are often made public and result in reputation damage
- Loss of research funding
- Loss of export privileges; debarment; seizures



What is an Export?

A transfer of items or services outside the U.S.

- Items - commodities, data, information and software source code
- Services - anything of value, services related to defense articles or for a foreign military
- Outside the U.S. - to foreign nations, companies not incorporated in the U.S. and foreign persons

Transfers inside the U.S.

- Deemed Export - transfer of information to foreign nationals in the U.S.
 - ✓ Lab tours that expose export controlled technology
 - ✓ Participation in research or meetings discussing export controlled technology

Fundamental Research Exclusion

- Basic or applied research at an accredited institution of higher learning (in the U.S).
- No publication restrictions
- If federally funded, no access or dissemination restrictions on results



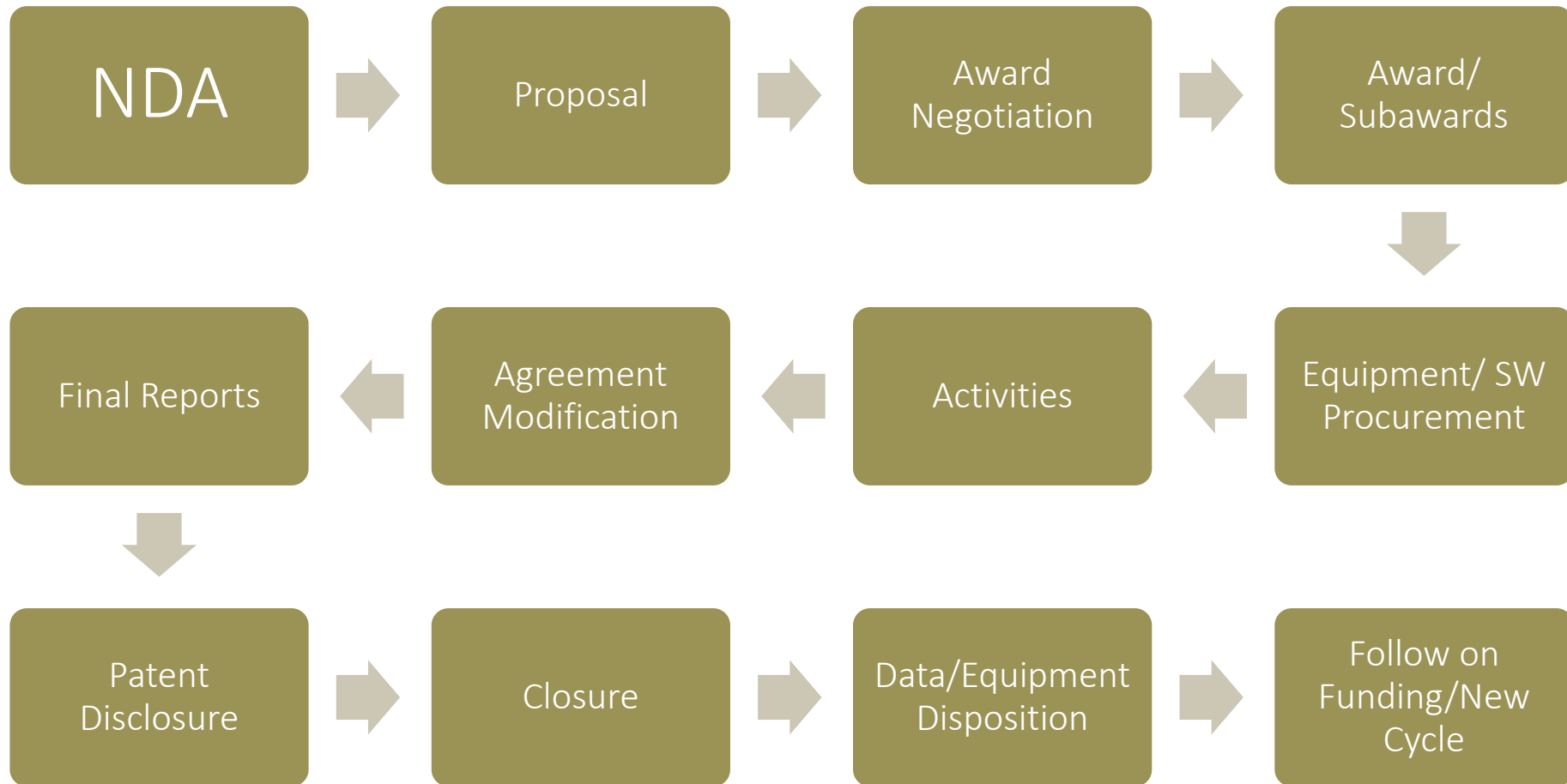
University Strategy

Protect the fundamental research exclusion by negotiating the elimination of all contractual clauses that restrict university control of publications or limit access to or participation in research.

Identify transactions that require further export control review.

Implement technology control plans and file for licenses when needed.

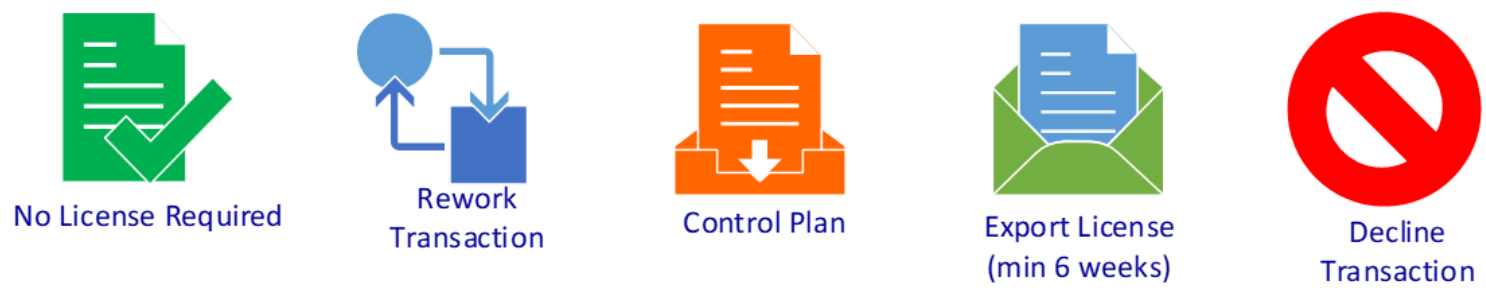
Agreements Lifecycle- Export Considerations



Export Control Review Outcomes



Possible Outcomes

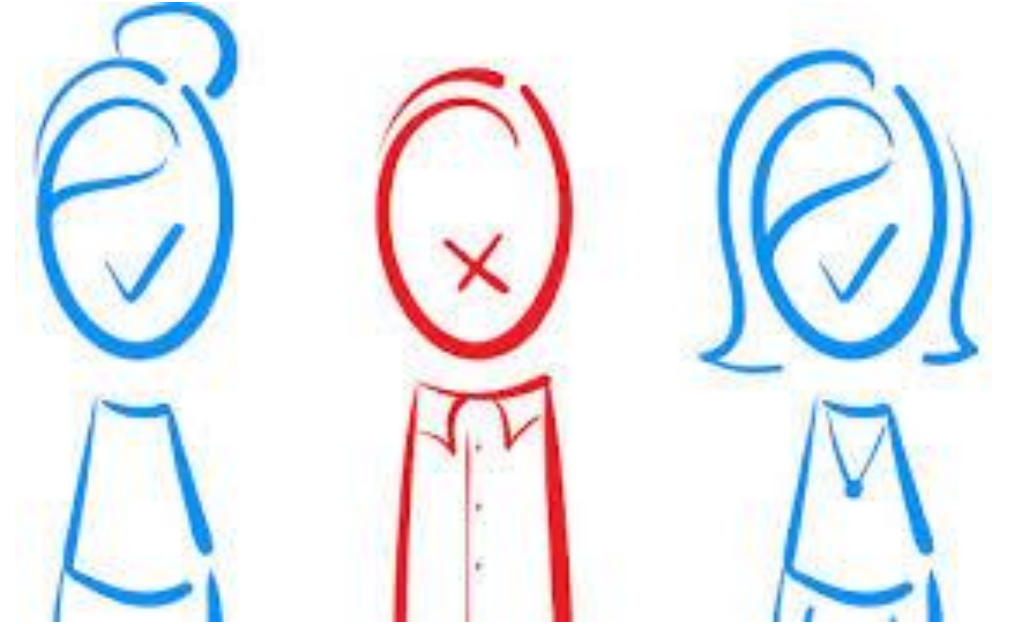


Agreement Review

Escalate to export control for review and assistance

- Sanctioned countries: Cuba, Iran, Sudan, Syria, North Korea and Crimea region of Ukraine
- Restricted party screening results
- Export control red flags:
 - Sensitive technology (military, space, nuclear, bio agent, encryption, UAV or weapons technology)
 - Sensitive third party (military, space agency, nuclear agency, defense contractor)
 - Export control language issues (potential receipt of controlled items, information or software, publication or foreign national restriction issues)
 - International shipping or hand carrying
 - Country of concern

Restricted Destinations and Parties



OFAC Sanctions

Administered by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC), and impact our university activities.

The most restrictive sanctions programs (Cuba, Iran, North Korea, Syria and the Crimea region of Ukraine) prohibit:

- A broad range of services and transactions that benefit or provide value.
- Export of products, software, and transfer of technology.
- Providing educational services and technical services, even where no monetary compensation occurs.



Restricted Party Lists

The US Government issues various lists of individuals & entities both in the U.S. & abroad that have committed export violations or other serious offenses.

- Terms & conditions require no debarred, disqualified or ineligible persons

- Part of funding awards, procurement and service agreements

Financial dealings or export transactions with Restricted or Prohibited parties is prohibited.

- Terrorists

- Weapons Proliferators

- Export Violators

- Drug Traffickers

Restricted Party Screening: Software

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U.S. and Canada: [1-877-328-7866](tel:1-877-328-7866)
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A Reason to Screen

The University of Massachusetts at Lowell (UML) failed to screen an international entity, Pakistan's Space and Upper Atmosphere Research Commission (SUPARCO), prior to a collaboration analyzing electron density in Karachi and Islamabad.

UML was unaware that the U.S. government had placed SUPARCO on the Department of Commerce's Entity List, which establishes additional export requirements. UML exported atmospheric testing equipment, not typically controlled by export regulations, to SUPARCO.

A license is required on nearly all shipments to an entity listed under the Department of Commerce's list. The U.S. government assessed UML a \$100,000 civil penalty which would be waived after two years if there were no other violations.

Agreement Review

Escalate to export control for review and assistance

- Sanctioned countries: Cuba, Iran, Sudan, Syria, North Korea and Crimea region of Ukraine
- Foreign sponsor and/or collaborators for restricted party screening
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Receiving Items (Incoming) from Collaborators, Sponsors or 3rd Parties

Material
Software
Data



What type of items (not exhaustive) are Export Controlled?

- Biological agents
- Fiber optic cables or filaments
- Gas monitoring devices
- Gravimeters
- High-frequency radios
- Infrared cameras/detectors
- Lasers
- Military/naval equipment
- Navigation or avionics items
- Nuclear/radioactive items
- Night vision equipment
- Optical lenses
- Oscilloscopes
- Photonics instruments
- Radar equipment
- Semiconductors
- Ruggedized electronics
- Sensors or scanners
- Space-related items
- Spectrometers
- Unmanned aerial vehicles

*see also DOE Science and Technology Matrix

Consequences for Researchers Are Real

Dr. Thomas Campbell Butler

Infectious disease professor at Texas Tech University

Convicted on 3 counts of improper shipping of plague samples to collaborators in Tanzania

Served 2 year sentence in Federal prison

Dr. John Reece Roth

Professor of engineering at University of Tennessee

Shared ITAR controlled technical data from contract on a trip to China

Served 4 year sentence in Federal prison

ITAR Munitions List “Military Items”



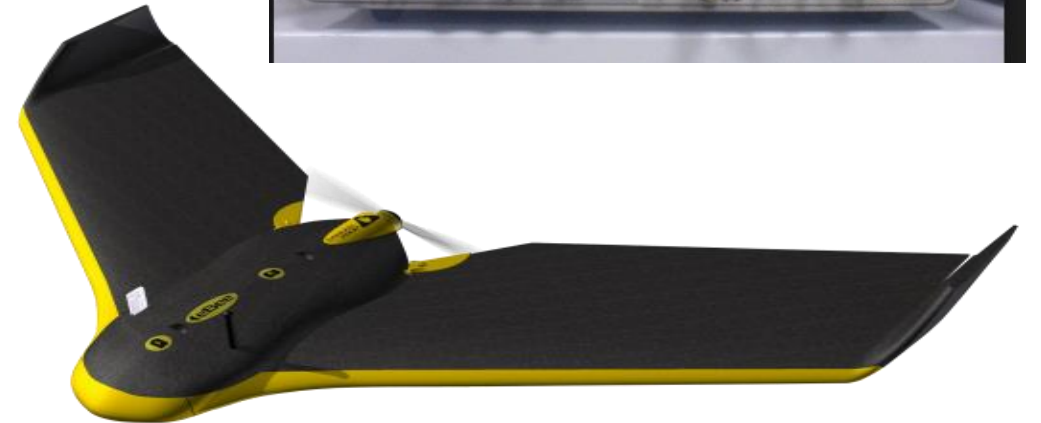
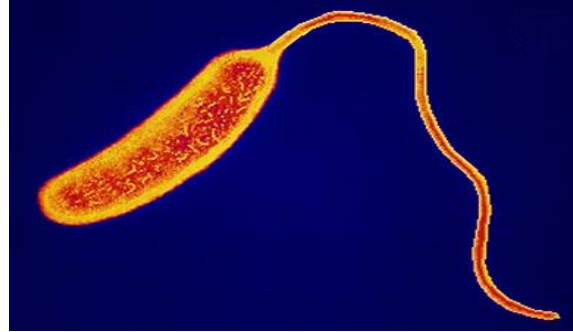
ITAR: Defense Service

The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles;

The furnishing to foreign persons of any controlled technical data, whether in the U.S. or abroad; or

Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the U.S. or abroad by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

EAR Commerce Control List (CCL) “Dual Use”



Department of Energy

10 CFR Part 810 Regulations

- Software
- Research or other activities involving nuclear reactor design, component design

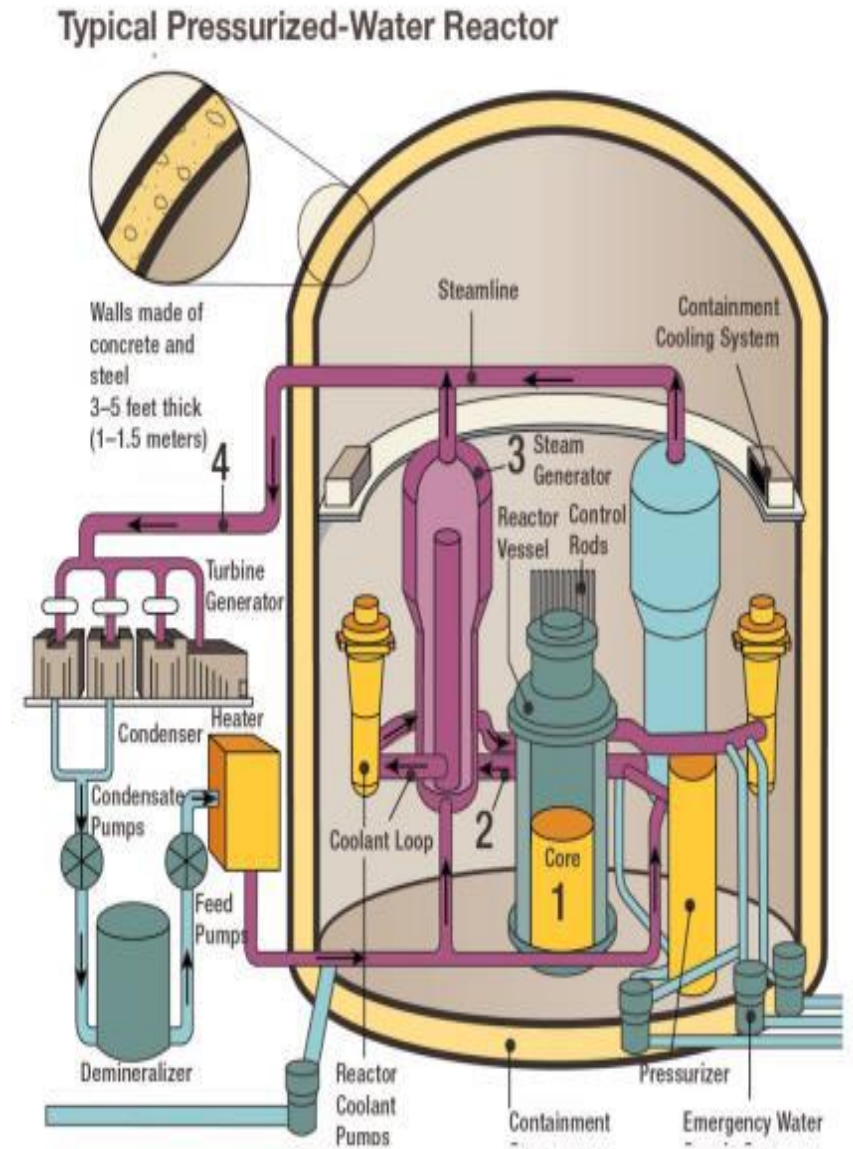


Radiation Safety Information Computational Center
Delivering the Best Computational Tools for Nuclear Research

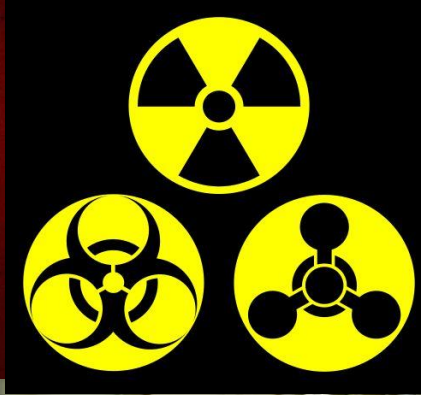
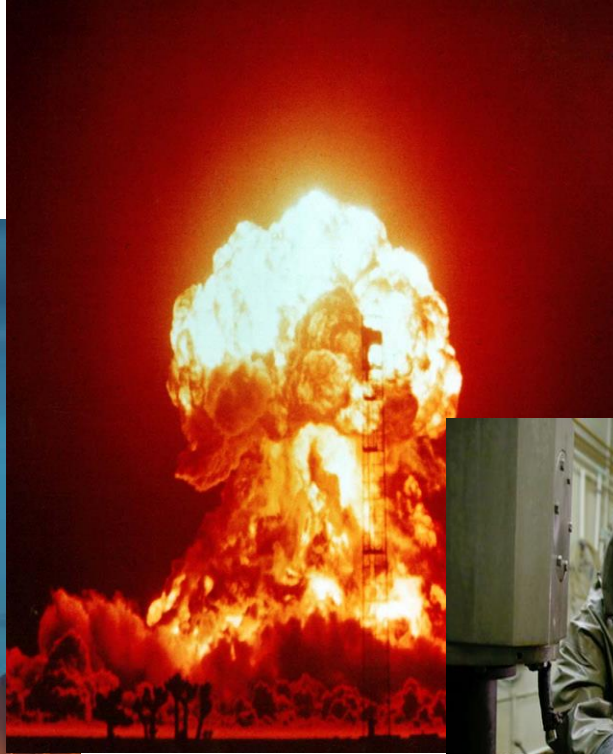
Nuclear Regulatory Commission

10 CFR Part 110

Imports and exports of major and minor nuclear reactor equipment



Restricted End Uses



Nuclear both civil & weapons, chemical & biological weapons, rockets & UAVs

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Agreement Language:

Frequent Categories Having EC Issues

Publication

- *Requirements for prepublication review and approval*
- *Right to withhold permission for publication*

Foreign National Participation

- *Restrictions on prepublication dissemination of information to non-U.S. citizens or other categories of persons*
- *Restrictions on participation of non-U.S. citizens or other categories of persons in the research*

Export Control or Global Trade Sections

- *Anti-terrorism, trade compliance, Specially Designated Nationals, defense services, technical data, any references to embargoed or sanctioned countries*
- *RFP marked “Export Controlled” or “ITAR”*

Restriction on further transfer

Data Ownership

Confidential Information

Agreement Types and Export Control Considerations

Non-Disclosure

- Manage proprietary information
 - May cover export controlled information or software*
 - Or use of either as background information*

Material Transfer

- Incoming or outgoing transfers
 - May cover export controlled items, information or software – ask for export classification of the item*

Sales and Service

- Purchase of a service or item by an outside party
 - Activities are not covered by fundamental research exclusion*

Other Considerations

Correspondence with sponsors, vendors or customers with markings:

“export controlled”

do not distribute

no export

no foreign national access

Any activities (research, sales and service, materials) that involve defense contractors

Boeing, Lockheed Martin, Northrop Grumman, etc.



Export Controls and Agreements

No matter what type of agreement you are working on - each step of the way, seek to understand the situation.

- The activity covered by the agreement and export control clause are not independent of each other. Must review the language *and* the activity.



Standard Practices

Ask for export classification (for incoming materials and information. See MTA Guidelines)

- When transferring controlled items/information inside the United States, the party has no regulatory obligation to notify recipient that items/information are export controlled.
- You can buy export restricted items commercially

On NDA's include language that indicates no exchange of export controlled items/information other than EAR99

- What is are the risks of this language:

The Recipient must comply with all applicable United States and foreign export laws and regulations.

Best Practices

Assume items/information coming from defense contractors are export controlled

- What steps do you take?

Review more closely items/information going into certain departments

- All of Engineering
 - Mechanical & Aerospace Engineering
 - Materials science
 - Computer science
- Computer Science
 - Encryption, cybersecurity, high tech

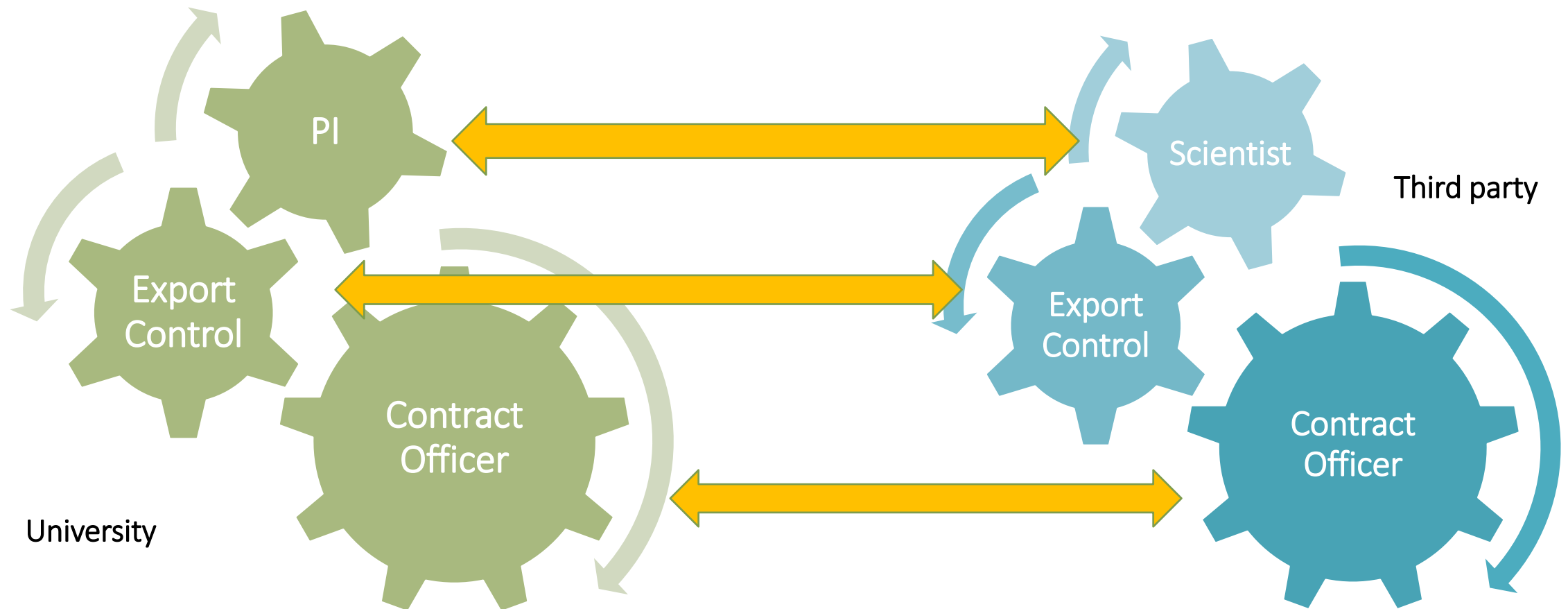
<http://www.bga-aeroweb.com/Top-100-Defense-Contractors-2013.html>

#	Prime Contractor
1	Lockheed Martin Corp.
2	The Boeing Company
3	Raytheon Company
4	General Dynamics Corp.
5	Northrop Grumman Corp.
6	United Technologies Corp.
7	Huntington Ingalls Industries Inc.
8	L-3 Communications Holdings Inc.
9	BAE Systems plc
10	SAIC Inc.
11	Humana Inc.
12	Veritas Capital Fund II L.P.
13	Health Net Inc.
14	Textron Inc.
15	Bechtel Group Inc.
16	General Electric Company
17	Exelis Inc.
18	Fluor Corp.
19	Booz Allen Hamilton Holding Corp.
20	Bell-Boeing Joint Project Office
21	General Atomic Technologies Corp.
22	Supreme Group Holding
23	Computer Sciences Corp.
24	Triwest Healthcare Alliance Corp.
25	Oshkosh Corp.
26	Hewlett-Packard Company

Best Practices continued

- Get to know the portfolio of your researchers – which ones are doing research in red flag areas?

Agreement Negotiation



What we hear from sponsors....continued

“We don’t know how the discussion might evolve and what we might be providing you so we can’t agree not to provide you export controlled information.”

“We don’t know the export control classification of what we are providing you.”

Engage the scientists to better understand what will be shared. Once you and the sponsor agree on what will be discussed and shared, ask the sponsor to provide the export classification for that information. Include a description of what will be shared and the export classification in the agreement. Indicate in the agreement that nothing other than what is described will be shared. If needed set-up an internal technology control plan for the information.

Ask to set-up a conference call: legal/export control, contract officers and PIs. Discuss the same as above. Once the contract officer and legal team understand what will be transferred they can consider language options. Remember – the situation and the language **are not** independent.

Do not simply indicate the University is doing fundamental research. If the sponsor is transferring controlled information, they want to know you will safeguard it. In order for you to safeguard it, you need to know what it is.

What we hear from sponsors....

“I can’t change that clause without approval from legal. That will probably take a long time.”

Request changes and ask them to run it by legal. In many cases it will not take as long as they indicate.

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International Shipping/Hand-Carrying

Fabrication of equipment for a foreign sponsor

Donations of items to foreign destinations

Foreign collaboration

Country of Concern

Military End Use/User Controls under the EAR:

China (inclusive of Hong Kong), Russia and Venezuela

Proscribed countries under ITAR (policy of denial for licensing):

Belarus, Burma, China, Cuba, Iran, North Korea, Syria, Venezuela

Comprehensively embargoed country under OFAC and BIS:

Cuba, Iran, North Korea, Sudan, Syria, *Crimea Region of Ukraine*

*see also DOE Science and Technology Matrix



Summary

Contact export control for review and assistance based on the guidelines presented here.

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- Export control red flags:
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