

# Export Control and Sponsored Research

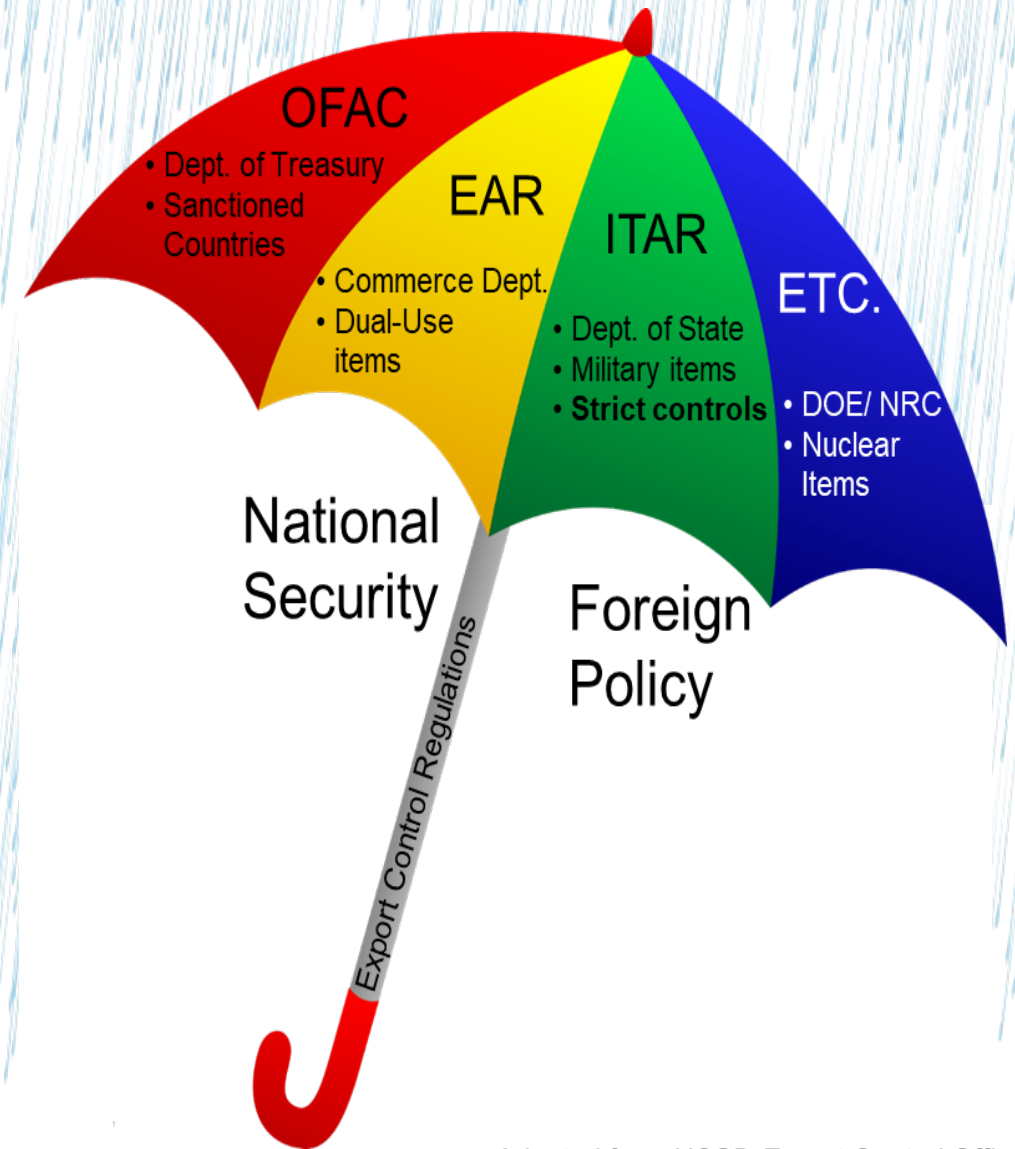
Part II: Agreements, sponsors and exports

# 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.*

# Why This Matters...

Penalties (civil and criminal) and sanctions can be enforced at both the institutional and individual (PI) levels.

## How do institutions get in trouble?

- Ignore export control clauses
- Failure to implement Technology Control Plan
- Failure to obtain a license for a licensable activity
- Failure to Screen International Partners/Entities against the U.S. Government's Restricted Party lists.

# Export Control Roles

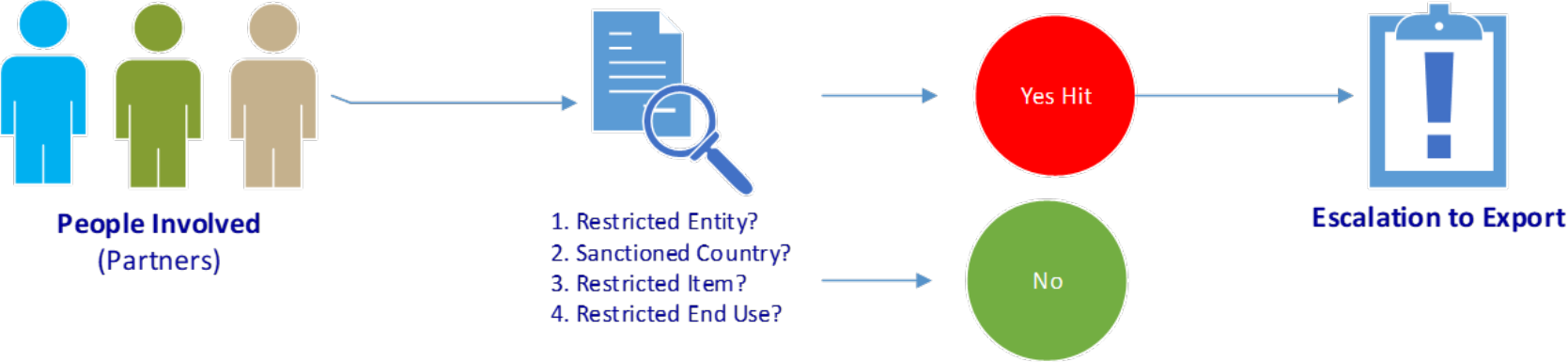
## SPO:

- Notify campus Export Control Office based on award review guidelines

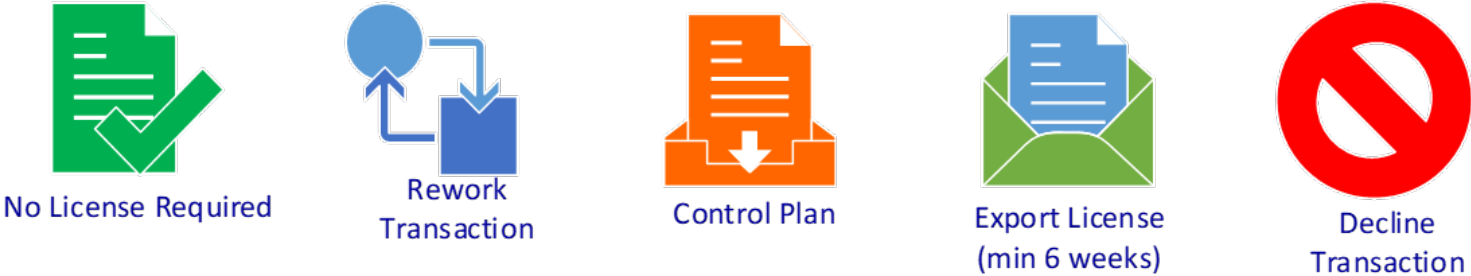
## Export Control Officer:

- Designated by executive leadership at each UC Location per UC Export Control Policy
- 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

# Export Control Review Outcomes



## Possible Outcomes



UC Strategy is to conduct fundamental research. Even in the conduct of fundamental research, some activities require export control review and the above are the potential outcomes of that review.

# Award Review

## Export Control Red Flags



### SENSITIVE TECHNOLOGIES

What is the subject of the work (not an exhaustive list)?

- Military
- Space
- Nuclear
- Bio agent
- Encryption
- UAV
- Weapons technology



### COUNTRIES

Comprehensively Sanctioned Countries?  
Cuba, Iran, North Korea, Syria, Crimea  
Region of Ukraine

Other Restricted Countries? Examples:  
China, Myanmar, Russia, or Venezuela



### SPONSOR

Sponsor (foreign or domestic) works  
in sensitive technology end-uses?

- Military (DOD, DARPA) or defense contractor
- Space agency (NASA, JPL)
- Nuclear agency (NETL, NNSA)



### EXPORT CONTROL LANGUAGE

Publication Restrictions

Foreign National Restrictions

- Possible receipt of controlled items, information or software (DFARS 7000, Export Control terms)
- IT security requirements (DFARS 7012, 7019, 7020, etc.)
- Anti-terrorism, trade compliance, or sanctions language



### EXPORTS

International shipments or  
hand-carries?

Restricted party screening hits and export control proposal routing questions marked “yes” or which should be, are also escalated to Export Control.

# Areas of Concern in Research Agreements



Photo courtesy of Pixabay.com

# Agreement Language

Language categories that frequently have export control 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, references to embargoed or sanctioned countries
- RFP marked “Export Controlled” or “ITAR”

## Restriction on further transfer

## Data Ownership

## Confidential Information

## IT security, CUI or CMMC



# Other Agreement Types

## Have Specific Export Control Considerations

### Non-Disclosure

- Manage proprietary information

*May cover export controlled information or software*

*Or use of either as background information and can remove project from fundamental research exclusion*

### Material Transfer

- Incoming or outgoing transfers

*May cover export controlled items, information or software*

### Sales and Service

- Purchase of a service or item by an outside party

*Activities are not covered by fundamental research exclusion*

# Other Agreement Language Red Flags

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, material transfers) that involve defense contractors

*Boeing, Lockheed Martin, Northrop Grumman, etc.*

Meetings at which foreign nationals are prohibited from attending



# The Big Picture

No matter what type of agreement you are working on -

- non-disclosure agreement (NDA), research agreement, international agreement, material transfer agreement (MTA), software license, sub-award, sales and service, procurement, facility use, equipment loan, international licensing agreements –

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.



# Best Practices

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

Why Ask? You might not otherwise know the items/info are controlled because:

- 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 NDAs & research agreements, include language that indicates no exchange of export controlled items/information** (or no exchange of export controlled items/information other than EAR99)

- When might it be ok to be silent?
- When might it not be?
- What do you need to put in place when receiving EAR99 information?

# Best Practices continued

Assume items/information coming from defense contractors are export controlled

- What steps do you take?

Review more closely items/information going into or out of certain departments

- All of Engineering
  - Mechanical & Aerospace Engineering, Materials science, Computer science
- Computer Science
  - Encryption, cybersecurity, high tech
- Physical Science
  - Astronomy, Earth System Science, Chemistry
- Biological Science

<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

# Federal Agreement Clauses

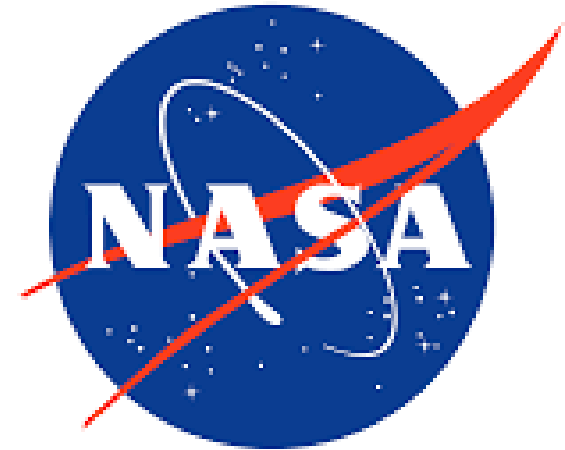
## **FEDERAL ACQUISITION REGULATION**

Issued Fiscal Year 2019 by the:

**GENERAL SERVICES ADMINISTRATION**

**DEPARTMENT OF DEFENSE**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**



# Problematic Export Control Clauses (not exhaustive)

## **Export Control**

DFAR 252.204-7008, DFAR 252.225-7048

## **Foreign National Restrictions**

AFMC 5352.227-9000, ARL 52.004-4400, FAR 52.204-2

## **Publication Restrictions**

ARL 52.005-4401, DFAR 252.204-7000, DFAR 252.227-7025, FAR 52.227-14, FAR 52.227-17

## **Security, Access, and Dissemination Control**

DEAR 952.204-2, DFAR 252.204-7012, DFAR 252.239-710, FAR 52.204-21, FAR 52.239-1, NIST 800-171

# Publication Clause Example

## Maintains fundamental research

UC publications resulting from this Agreement shall be provided to 412 TW in advance, subject to a thirty (30) day comment period. Given that 412 TW will not be disclosing export controlled, confidential or sensitive information under this agreement, the 30-day prepublication review period will be limited to ensuring that any Air Force patent rights are not compromised. UC retains the right to publish the results of its research without restriction.

## Does not maintain fundamental research

UC publications resulting from this Agreement shall be provided to 412 TW in advance, subject to a thirty (30) day **review and approval** period. Given that 412 TW will not be disclosing export controlled, confidential or sensitive information under this agreement, the 30-day prepublication review period will be limited to ensuring that any Air Force patent rights are not compromised. UC retains the right to publish the results of its research ~~without restriction~~.



# Publication Clause

DFAR 252.204-7000 (abridged)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium unless:

- 1) The Contracting Officer has given prior written approval;
- 2) The information is otherwise in the public domain before the date of release; or
- 3) The information results from or arises during the performance of a project that has been **scoped and negotiated** by the contracting activity with the contractor and research performer and **determined in writing by the contracting officer** to be fundamental research in accordance with NSDD189... and the USD memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008....

# Foreign Nationals & Export Controlled Data Clause

AFMC 5352.227-9000 EXPORT CONTROLLED DATA RESTRICTIONS

(d) **Equipment and technical data generated or delivered under this contract are controlled by the International Traffic in Arms Regulation (ITAR), 22 CFR Sections 121 through 128. An export license is required before** assigning any foreign source to perform work under this contract or before **granting access to foreign persons to any equipment and technical data generated or delivered during performance (see 22 CFR Section 125).** The Contractor shall notify the Contracting Officer and obtain written approval of the Contracting Officer prior to assigning or granting access to any work, equipment, or technical data generated or delivered under this contract to foreign persons or their representatives. The notification shall include the name and country of origin of the foreign person or representative, the specific work, equipment, or data to which the person will have access, and whether the foreign person is cleared to have access to technical data (DoD 5220.22-M, National Industrial Security Program Operating Manual (NISPOM)).

# Department of Defense



U.S. DEPARTMENT OF DEFENSE



# Department of Defense Forms and Markings

## DD2345 - Militarily Critical Technical Data Agreement

- Required to handle/access Department of Defense unclassified export controlled technical data
- Contact Export Control Officer – data custodian

## DD254 – Contract Security Classification Specification

- Utilized for contracts that require security clearance
- Contact UCOP facility security officer (FSO)

## Distribution Statements : you want distribution statement A

- DISTRIBUTION STATEMENT A: Approved for public release: distribution unlimited.
- DISTRIBUTION STATEMENT B: Distribution authorized to U.S. Government agencies only (reason for restriction) (date of determination). Other requests for this document shall be referred to (insert controlling DoD office).
- DISTRIBUTION STATEMENT C: Distribution authorized to U.S. Government agencies and their contractors (reason for restriction) (date of determination). Other requests for this document shall be referred to (insert controlling DoD office).
- DISTRIBUTION STATEMENT D: Distribution authorized to the Department of Defense and DoD contractors only (reason for restriction) (date of determination). Other requests shall be referred to (insert controlling DoD office).

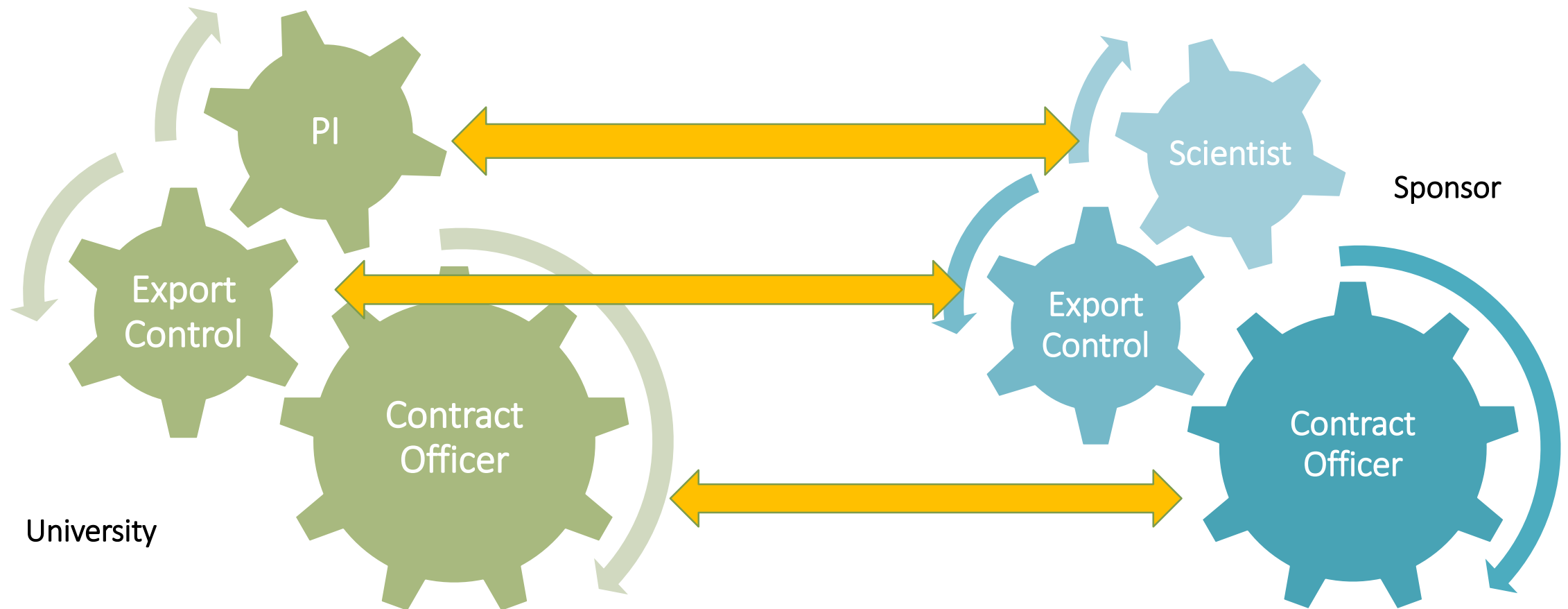
# DoD Research Funding

Research, Development, Test & Evaluation, (RDT&E) is divided into 7 Budget Activities (BA):

- BA 1: Basic Research (6.1)
- BA 2: Applied Research (6.2)
- BA 3: Advanced Technology **Development** (6.3)
- BA 4: Advanced Component **Development** and Prototypes (6.4)
- BA 5: System **Development** and Demonstration (6.5)
- BA 6: RDT&E Management Support (6.6)
- BA 7: Operational Systems **Development** (6.7)

In some cases, “developmental” items funded by DoD may become export controlled under International Traffic in Arms Regulations (ITAR)

# Agreement Negotiation



# What we hear from sponsors....

“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



# Award Review Export Control Red Flags



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# International Shipping/Hand-Carrying

Fabrication of equipment for a foreign sponsor

Donations of items to foreign destinations

Foreign collaboration



# Activity: Studying the Depths



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## Computer Science and Engineering

# Activity: Smart Drones



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# Summary

Contact Export Control for review and assistance based on the guidelines presented here.

- Foreign sponsor and/or collaborators for restricted party screening
- Proposal routing questions marked “yes” or that should be
- Export control red flags:
  - Sensitive technology (military, space, nuclear, bio agent, encryption, UAV or weapons technology)
  - Countries of concern
  - Sensitive sponsor foreign or domestic: military (DOD, DARPA), space agency (NASA, JPL), nuclear agency (NETL, NNSA), defense contractor
  - Export control language: possible receipt of controlled items, info or software and related IT security requirements; publication or foreign national restrictions
  - International shipping or hand carrying



# UC Resources

## Export Control Policy

<https://policy.ucop.edu/doc/2000676/ECP>

## ECAS Export Control Website

<https://www.ucop.edu/ethics-compliance-audit-services/compliance/export-control/index.html>

## Openness in Research Policies

Senate Concurrent Resolution No. 66—Relative to postsecondary education, S. Con. Res. 66, 1996 Leg., Reg. Sess. (Cal. 1996) ([http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb\\_0051-0100/scr\\_66\\_bill\\_960911\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/95-96/bill/sen/sb_0051-0100/scr_66_bill_960911_chaptered.pdf)).

*Academic Freedom*, Academic Personnel Manual, APM-010 (<http://www.ucop.edu/academic-personnel-programs/files/apm/apm-010.pdf>).

*The Faculty Code of Conduct*, Academic Personnel Manual, APM-015 (<http://www.ucop.edu/academic-personnel-programs/files/apm/apm-015.pdf>).

*Affirmative Action and Non-Discrimination in Employment*, Academic Personnel Manual, APM-035 (<http://www.ucop.edu/academic-personnel-programs/files/apm/apm-035.pdf>).

*Restrictions on Rights to Publish or Disseminate Information Resulting from Work under Sponsored Projects*, Memorandum from Charles J., Hitch, Univ. of Cal. President, to the Chancellors of the Univ. of Cal. (Aug. 3, 1970) (<http://policy.ucop.edu/doc/2500501/SponsProjRestrPub>).

*Guidelines for the University's "Principles Regarding Rights to Future Research Results"*, Memorandum from Aimée Dorr, Univ. of Cal. Provost & Executive Vice President to the Chancellors, Executive Vice Chancellors and Provosts, & Vice Chancellors for Research of the Univ. of Cal. (July 20, 2015) (<http://www.ucop.edu/research-policy-analysis-coordination/files/Principles%20Guidelines.pdf>).



# UC Resources Continued

## Openness in Research Policies Continued

*Publication Policy and Guidelines on Rights to Results of Extramural Projects or Programs*, Contract and Grant Manual, Section 1-400 (<http://www.ucop.edu/research-policy-analysis-coordination/resources-tools/contract-and-grant-manual/chapter1/chapter-1-400.html>).

*Citizenship Restrictions*, Contract and Grant Manual, Section 2-513, (<http://www.ucop.edu/research-policy-analysis-coordination/resources-tools/contract-and-grant-manual/chapter2/chapter-2-500.html>)

*Export Controls*, Contract and Grant Manual, Section 2-514, Export Controls (<http://www.ucop.edu/research-policy-analysis-coordination/resources-tools/contract-and-grant-manual/chapter2/chapter-2-500.html>).

*Funds Restricted to U.S. Citizens*, Contract and Grant Manual, Section 14-700 (<http://www.ucop.edu/research-policy-analysis-coordination/resources-tools/contract-and-grant-manual/chapter14/chapter-14-700.html>).

*NASA Restrictions on U.S. Citizenship in University Space Engineering Research Centers*, RPAC Memo RAO-87-39 (<http://researchmemos.ucop.edu/php-app/index.php/site/document?memo=UkFPLTg3LTM5&doc=2921>).

*Acceptance of Funds Restricted to U.S. Citizens*, RPAC Memo RAO-90-03 (<http://researchmemos.ucop.edu/php-app/index.php/site/document?memo=UkFPLTkwLTAz&doc=2809>).

*Unacceptable Controls Based on U.S. Citizenship Status*, RPAC Memo RAO00-05 (<http://researchmemos.ucop.edu/php-app/index.php/site/document?memo=UkFPLTAwLTA1&doc=2189>).

*Provision of Information on Citizenship, Visa Status, Nationality or Country of Origin: Federal and State Law and Regulation*, RPAC Memo RAO-04-02 (<http://researchmemos.ucop.edu/php-app/index.php/site/document?memo=UkFPLTAOLTAY&doc=3497>).

<https://www.ucop.edu/research-policy-analysis-coordination/policies-guidance/citizenship/index.html>

<https://www.ucop.edu/research-policy-analysis-coordination/policies-guidance/export-control/index.html>