



Export Compliance & Partnering with U.S. Companies

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This presentation is intended to inform the attendees about export control issues facing U.S. companies working with National Labs. This presentation does not contain legal guidance. Meeting participants should not act upon the information in this presentation without consulting legal counsel.

Types of Exports in Projects

U.S. persons such as individuals, corporations and others organized under U.S. law are obligated to comply with all U.S. export controls. U.S. export controls also include provisions to regulate deemed exports and deemed re-exports.

- ✓ **Deemed Export:** release of “technology” or source code to a non –U.S. national in the U.S. or abroad.
- ✓ **Deemed Re-export:** a release or disclosure of U.S.-origin “technology” outside the U.S., to a third-country non-U.S. national overseas.

Key considerations for U.S. Companies:

- Non-U.S. national employees and interns
- Exchange of data among non-U.S. national personnel
- Obtaining export control classification information for technology and technical data provided to the U.S. company
- Providing network access to U.S. company systems that contain technical data and software
- Vetting tours of and visits to U.S. company facilities to ensure compliance with deemed export controls
- U.S. company data may be subject to deemed export controls and may or may not be subject to export license requirements

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Addressing Key Export Considerations

Key Tools

■ Contracts

- Acknowledge that information exchanged may be subject to export controls
- Require counterparty to provide export control information
- Require advance approval/notification for site visits and tours
- Require counterparty to provide information/documentation necessary for export license applications
- Require counterparty to comply with terms and conditions of export license, if issued
- Additional provisions may be used for secondments, network access, procurement activities

■ Software/Internet/Intranets

- Companies may use software application and/or web applications to control access to information/documents that are subject to export controls

■ Compliance Processes

- Personnel and processes for
 - ▶ Training personnel
 - ▶ Processing export control information provided by partners
 - ▶ Access controls for technical data subject that is subject to export controls

Tips for Working with U.S. Companies

- **Talk about export compliance early, often**
 - Don't wait till contract execution!
 - Anticipate the need for on-going exchange of export control information
- **Consider health of Lab's export compliance processes**
 - Export classification for technical data provided by Lab
 - Processing of export controlled information provided by U.S. Company Partner
- **Be prepared to provide export control information**
 - Is Lab data publically available, Fundamental Research, classified with a specific Export Control Classification Number?
- **Be prepared to provide information/documentation to U.S. Company partner necessary for vetting of Lab personnel**
 - Site visits, tours, secondments, access to U.S. Company systems
- **Be prepared to receive export controlled information from U.S. Company partner**
- **Know where to go for help**
 - Do you have dedicated export compliance personnel and/or legal counsel?