

Export/Import Control Presentation for the NPMA Duke City Fall Seminar

September 13, 2011

Steve Sultemeier
Empowered Official
Export/Import Control Office

Sandia National Laboratories is a multi-program laboratory managed and operated by Sandia Corporation, a wholly owned subsidiary of Lockheed Martin Corporation, for the U.S. Department of Energy's National Nuclear Security Administration under contract DE-AC04-94AL85000.



Agenda

- Organization & Goal
- Program
- Regulations
- “Deemed” Exports
- Exporting Simplified
- Funds Transfers
- Export Control Clause
- Drop Shipment
- Significant Issue
- Summary & Consequences



Organization

- Restructured organization in 2009 under a Senior Manager reporting directly to the Division 4000 VP with strong Legal support to better accommodate the growing needs of the International Business organizations
- Provide a “One-Stop-Shop” for Protocol, Travel, LOFT (Laptops on Foreign Travel), Medical, and Export/Import Control
- Increased Staffing in Export/Import Control Office (EICO)



Organization

- **Sally Uebelacker, Senior Manager**

Export/Import Control Office (EICO), 4032

- Alan Rittel, Manager
- Tara Anderson
- Connie Chocas
- Kevin Kehe
- Adriane Littlefield
- Steve Sultemeier,
Empowered Official
- Andrea Heacock-Reyes, ASA

International Business, 4031

Lynn Fitzpatrick, Manager

International Travel

- Karen Hopkins
Program Lead

International Protocol

- Patricia Dickens
Program Lead



EICO Goal

Protect Sandia, Lockheed Martin, and DOE/NNSA from Export or Import violations through an integrated export and import control program that assists in the preservation of the economic and national security interests through compliance with U.S. Export and Import Laws and Regulations.



Export/Import Control Program

The EICO provides advice and assistance to the workforce so that Sandia is compliant with export/import laws and regulations. We do this by:

- Interpreting U.S. export and import regulations
- Establishing Sandia export and import policy and program
- Providing training and guidance
- Interacting with regulatory agencies
- Applying for and managing export licenses
- Ensuring lawful U.S. Customs clearance of imported goods
- Conducting investigations related to possible export/import violations



Interpretation of Export/Import Laws and Regulations at Sandia

- The EICO is responsible for the interpretation of export and import regulations
 - DOE, other government agencies, or other national laboratories are not authorized to interpret export/import regulations on behalf of Sandia
- EICO/Legal or Lockheed Martin Corporate International Trade Compliance Office/Legal are the only organizations authorized to interact with export (i.e., DOS & DOC) and import (i.e., CBP & ATF) regulatory agencies
- Government agencies are not subject to the same restrictions as corporations - Sandia Corporation is not a government agency
- Having a tasking statement or a Memorandum of Agreement or Understanding from a U.S. Government agency does not exempt you from complying with U.S. export laws and regulations



What is Export Controlled?

All tangible items are export controlled to some degree. This includes Commercial-off-the-Shelf (COTS) items.

Some intangible items such as technology, information and software going to:

- Foreign governments and agencies
- Foreign persons (corporations and individuals)
- Foreign subsidiaries in the U.S. that are not registered as a U.S. business
- Non-U.S. persons in the U.S.
- U.S. persons representing foreign interests
- U.S. military at a foreign location
- U.S. persons at foreign locations



Why are We Concerned About Controlling Exports?

- Export laws and regulations help protect economic and national security and promote U.S. foreign policy decisions.
- Violating export laws and regulations can severely tarnish Sandia's reputation and affect our ability to obtain funding
- There are significant civil and criminal penalties for violating export laws and regulations

Even unintentional violations of the export regulations can cause real damage to the company and to you (fines, suspensions, disciplinary actions)



Government Regulators

**U.S. Department of State
– Directorate of Defense
Trade Controls (DDTC)
International Traffic in
Arms Regulations (ITAR)
Military Items**

22 CFR 120-130
Regulate and license the export of
defense articles and services
(munitions).

**U.S. Department of
Treasury – Office of
Foreign Assets Control
(OFAC)
Economic & Political
Sanctions Programs**

31 CFR 500
Administers and enforces economic and
trade sanctions against targeted foreign
countries, terrorism sponsoring
organizations, and international narcotics
traffickers.

**U.S. Department of
Commerce – Bureau of
Industry and Security (BIS)
Export Administration
Regulations (EAR)
Dual Use Items**

15 CFR 730-774
Regulate and license the export of dual use
sensitive goods and technologies.

**U.S. Nuclear Regulatory
Commission (NRC)
Nuclear Equipment and
Materials**

10 CFR 110
Regulate and license nuclear material
and equipment.

**U.S. Department of
Energy/National Nuclear
Security Administration
Special Nuclear Material
Production and Access**

10 CFR 810
Regulate and license nuclear power
technology and Special Nuclear Materials.

**U.S. Department of
Homeland Security – U.S.
Customs and Border Protection**
**U.S. Department of Justice –
Alcohol, Tobacco Products and
Firearms (ATF)**

19 CFR 1-299 and 27 CFR 447 (ATF)
Regulates and enforces importation of trade,
drug, immigration, arms, ammunition and
implements of war.



Exporting Regulations

- The regulations see each piece being exported as either “Article”, “Item”, “Information”, or “Service”
- Each item is identified by its primary or predominate use.
 - If its use is predominately Military, Defense Service or Intelligence it most likely falls under the ITAR.
 - The International Traffic in Arms Regulations (ITAR) are under the control of the Department of State
 - If for Commercial use, or primarily Commercial use with some Military applications Commerce terms it “Dual Use” and it most likely falls under the EAR.
 - The Export Administration Regulations (EAR) are under the control of the Department of Commerce



Export Breakdown

All items exported from the US are controlled

- 90% of these items do not need licenses to be exported
- Of the remaining 10%:
 - ~90% fall under the regulations of the Department of Commerce and the Export Administration Regulations (EAR) and require licenses or exceptions to be exported
 - ~10% fall under the regulations of the Department of State and the International Traffic in Arms Regulations (ITAR) and require a license, exemption, or other authorization to be exported
 - There are also a small number of items that fall under the control of the Nuclear Regulatory Commission, the Department of Energy and other U.S. Government agencies.



“Deemed” Exports

- Deemed Export - Release, including oral or visual disclosure, of technology or software subject to export control regulations to a foreign national in the United States. Such release is deemed to be an export to the home country or countries of the foreign national and is controlled to the same level as an actual export would be if it were shipped to the person's home country.
- **FNRs are the most obvious means of deemed exports occurring.**
- Note: Under the EAR, “use” is defined as operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing. Under the ITAR, any “use” of a defense article would be considered a defense service.



“Deemed” Exports (con’d)

You Might Be Exporting and Not Even Know It

- Face-to-face conversations
- Phone conversations
- Faxes and emails
- Access to equipment
- Presentations
- Text messages
- Internal computer networks & External computer networks
- *Be especially careful of email addresses like “@.edu”, “@hotmail” or “@yahoo”*

Shipping or mailing tangible items, software, or technical information is also exporting

SNL Email addresses of Foreign Nationals have “–EXP”



Exporting Simplified

- **Temporary**

- International Handcarry Form (IHF)
 - Use LOFT
 - List everything on IHF including CryptoCard
 - Submit to EICO NLT 5 days prior to last day in office
 - May require a License or other authorization
- EICO may request items be submitted on a Web Shipper if the loss, theft, or seizure of a hand carried item would result in an export control violation

- **Permanent**

- WebShipper, even if handcarried
- Property reviews
- May require a License or other authorization



FUNDS TRANSFERS

A **funds transfer** by Sandia to a foreign entity does not require U.S. export licensing or determination as long as the funds are used by the foreign entity for the purchase of equipment, software, technology, and assistance **indigenous to the country of transfer or the equipment, software, or technology is customarily stocked as COTS (commercial-off-the-shelf) in the country of transfer.**

- The foreign entity shall flow down the requirements of this guidance to all subcontracts.



FUNDS TRANSFERS (con'd)

- If the foreign distributor is out of stock for certain COTS items they customarily stock and have to reorder, the equipment, software, or technology would still be considered to be COTS.
- If Sandia transfers funds and the foreign entity buys **non-U.S. equipment, software, technology** from another country, there also is no U.S. export control issue. However, **Sandia must document the contract file** with written evidence from the manufacturer or supplier that the equipment, software, or technology does NOT contain U.S. content and, therefore, is NOT subject to U.S. export control laws and regulations.



Export Control Clause

617-EXP (01-10)

(a) Any item, technical data, or software furnished by Sandia in connection with this purchase order/contract is supplied for use in the United States only. Contractor agrees to comply with all applicable U.S. export control laws and regulations, specifically including, but not limited to, the requirements of the Arms Export Control Act, 22 USC 2751 - 2794, including the International Traffic in Arms Regulation (ITAR), 22 CFR 120 - 130; the Export Administration Act, 50 USC app. 2401 - 2420, including the Export Administration Regulations (EAR), 15 CFR 730 - 774; and including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Contractor agrees that it will not transfer any export controlled item, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Contractor or Contractor's lower-tier suppliers, without the authority of an export license, agreement, or applicable exemption or exception. Contractor shall immediately notify the SCR if it transfers any export controlled item, data, or services to foreign persons. Diversion contrary to U.S. export laws and regulations is prohibited.

(b) Contractor shall immediately notify the SCR if Contractor is, or becomes, listed in any Denied Parties List or if Contractor's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

(c) If Contractor is engaged in the business of either exporting or manufacturing (whether exporting or not) defense articles or furnishing defense services, Contractor represents that it is registered with the Directorate of Defense Trade Controls, as required by the ITAR, and it maintains an effective export/import compliance program in accordance with the ITAR.

The Contractor shall flow down the requirements of this clause to all subcontracts.



Additional Details to Consider

- **Property Requirements**

- (Government furnished property? Repair? Return?)
- Asset Management & Corp Storage, Org. 10263, and Reapplication & Disposition, Org. 10264

- **Hazardous Material, Packaging, and ES&H Considerations**

- Batteries of all types require review by packaging specialist
- Special requirements exist for:
 - Chemicals, Radioactive Materials, Biological Materials (Human and Plant), Lasers, Radio Frequency Receivers/Transmitters, Firearms and Ammunition
- Shipping & Packaging (Packaging Design Engineer), Org. 10264

- **Software License Agreements**

- Authorizations granted or not granted by the manufacturer - transfer, etc.
- Intellectual Property Management, Licensing and Alliances, Org. 1931



Drop Ship Policy

- A “Drop Shipment” is an item that ships directly from the manufacturer to the end user
- Drop Shipments are currently not allowed but a revision to the policy is being evaluated
 - Significant issue for both Property and EICO
 - Because of the required documentation, items that require an export license will ship from SNL



Significant Issue

Background

- October 1998, Sandia sold a computer.
- Sandia Property Administration not fully aware of export control restrictions on it.
- NNSA and Sandia upper management fully involved with several Congressional briefings
- Lesson learned from sale was to determine appropriate export control restrictions prior to selling anything.



Significant Issue (con'd)

Property Management Process Revisions

- SNL's root cause analysis & responses to two DOE/NNSA internal reviews resulted in significant revisions to high risk property review process.
- DOE-PMR high risk property management definitions clear except that all export controlled property is considered high risk. For example, a pencil is export controlled as EAR99.
- Export controlled property definition created a problem in revising Sandia's high risk property review process.
- Property Management teamed with EICO to resolve the problem.



Significant Issue (con'd)

Commerce Control List (CCL)

- Property & EICO personnel teamed to review use of CCL Export Control Classification Numbers (ECCNs) in high risk property reviews.
- Use of ECCNs appeared more advantageous than using detailed specifications in Nuclear Supplier's Group (NSG) Trigger and/or Dual-Use Lists.
- SNL experience showed vast majority of property in two export control categories:
 - Items export controlled for Anti-Terrorism (AT) reasons only (i.e., ECCNs such as XA99X or XB99X); or
 - EAR99.



Significant Issue (con'd)

High Risk Property Review Process Revised

- Difficult to determine what export controlled items should be considered high risk property because of DOE-PMR definition that all export controlled property is considered high risk.
- Stated purpose of DOE-PMR High Risk Property Management Program is:

“To ensure that the disposition of high risk personal property does not adversely affect the national security or nuclear nonproliferation efforts of the United States.”



Significant Issue (con'd)

High Risk Property Review Process Revised (con'd)

- Two of the reasons for export controls in the CCL are National Security (NS) & Nuclear Nonproliferation (NP).
- Since property export controlled only for Anti-Terrorism (AT) or designated EAR99 are clearly outside those reasons, SNL requested approval from DOE/AL to exclude this type property from high risk.
- Request approved in May 2000.



Significant Issue (con'd)

ECCN Database

- An ECCN Database was developed when Property began using ECCNs in high risk property reviews.
- ECCN Database include:
 - Model Number; Manufacturer;
 - Description; ECCN (and date received);
 - Whether item is releasable or not; and
 - Later, ID research by LANL or SNL



Significant Issue (con'd)

HR Review Process (con'd)

- Focuses primarily on scientific and laboratory test equipment.
- Reviews initially performed jointly by reps from Property and EICO.
- Items first physically reviewed to determine if it is a nuclear weapon component, military item, or an item made for a military purpose.
 - If so, marked as HR in Control Log
 - National Stock Numbers (NSNs) of military items are recorded and the local Defense Reutilization & Management Organization is contacted to determine its demilitarization code for dispositioning.



Significant Issue (con'd)

HR Review Process (con'd)

- ECCN Database checked for item
 - If listed, ECCN will assist in determination if releasable
 - If item not listed, reviewers determine if item warrants research:
 - If item of low value or its manufacturer not well known, item marked for destruction
 - If item's manufacturer well known and/or of high value, an attempt will be made to obtain an ECCN through the manufacturer or, in some cases, with assistance of SNL employees with expertise in using item. If successful, the ECCN is added to the Database and a determination can be made if releasable.
 - If ECCN cannot be determined, item is marked for destruction



Significant Issue (con'd)

Conclusion

- High Risk Property Review Process & Export Control Review Process closely linked at Sandia to serve the same function:

To protect national security and further nonproliferation policies of the U. S. Government.



Significant Issue (con'd)

Conclusion (con'd)

- ECCNs provide an extremely useful tool in performing high risk property reviews when used in conjunction with a well-organized process.
- ECCNs are particularly useful for identifying items included in the Nuclear Suppliers Group Trigger and Dual-Use Lists.
- Do not provide any assistance for munitions list items and those export controlled by DOE, the NRC, and other Government agencies.



Export Control Awareness Training

EC100, Export Control Awareness Training, is required annually for all MOWs who, through their job responsibilities, will travel internationally or will ship, mail, hand-carry, electronically transmit, brief, discuss, provide services, or in any other way transfer any export-controlled commodity, technical data/information, or software/computer code outside or within the United States to foreign persons, or knowingly cause or permit any other person to do so.

Note: This would include those involved in international activities and include those whose duties include arranging travel or logistics, such as shipping, property, or procurement specialists, technical staff, and managers of those functions.

EC100 is **recommended** for MOWs who do not fit the above criteria, but who do travel internationally for personal reasons.



Summary

- Please “Ask Before You Act”. Contact us early in your project. We need an open and honest exchange of information to provide the best possible solution.
- Give us as much detail as possible so we can connect the dots and make full use of any exceptions or exemptions to a license.
- We are not an enforcement organization. Sandia management expects laws, regulations, and policies will be followed.
- Exporting and importing are minefields of regulations and requirements. Working together, we can make sure we do it right.



Consequences

- Goods subject to seizure and forfeiture
- Negative publicity/notoriety for LMC/Sandia and negative repercussions from DOE/NNSA
- LMC/Sandia denied export privileges and fined \$1M for each offense
- An **INDIVIDUAL**, not LMC/Sandia, may be fined up to \$1M and/or imprisoned up to 20 years (criminal)
- An **INDIVIDUAL**, not LMC/Sandia, may be fined the greater of \$250K or twice the value of the transaction (administrative)
- Loss of USG contracts
- Take disciplinary action against individuals violating company policies (i.e., Corporate Procedures)



Questions?



US EXPORT REFORM

National Export Initiative

- In July 2009, Secretary of Commerce Gary Locke instructed the Bureau of Industry and Security (“BIS”) to initiate a review of the entire export control system.
- On August 13, 2009, the Obama Administration created an interagency task force to review the export regulation system.
- In November 2009, Secretary Locke outlined his five strategies for increasing U.S. exports.
- In President Obama’s January 27, 2010, State of the Union he stated that the Administration would launch the “National Export Initiative” that would work to reform the current export control system consistent with national security to allow the U.S. to double its exports over the next five years. On March 11, 2010, the President signed an executive order creating the National Export Initiative.



National Export Initiative (Cont'd)

- Historically, reform efforts have stalled because of national security concerns throughout the Government.
- Secretary of Defense Gates made clear that this was no longer the case and that the Department of Defense would get behind substantial reforms. Secretary Gates stressed the need for a transparent and efficient export control system that places “higher walls” around fewer, more critical items.



National Export Initiative (Cont'd)

To meet these needs, Secretary Gates stated that the Obama Administration's proposal would overhaul the current export control regulations by implementing the following four principles:

1. The establishment of a single export controlled items list which would allow the Government to concentrate on controlling critical items and technologies;
2. The establishment of a single licensing agency with jurisdiction over both munitions and dual-use items and technologies, intended to streamline the review process and ensure that export decisions are consistent;
3. The establishment of a single enforcement agency responsible for managing the numerous export control regulations; and
4. The establishment of a unified information technology ("IT") infrastructure designed to reduce the redundancies, incompatibilities and waste created by the current system.



National Export Initiative (Cont'd)

- What does all this mean for U.S. businesses currently struggling to comply with the current system? It is unlikely export control reform will occur anytime soon or that when it does, that it will bear any meaningful resemblance to the framework set forth by Secretary Gates.
- The good news is that NNSA has a seat at the table and Los Alamos has a technical expert on the Commerce's Emerging Technologies and Research Advisory Committee.
- Anatoli (Toli) Welihozkiy, NA-242, is representing NNSA/DOE in Export Reform. Toli has sought input from the NSE and we plan to continue to vet recommendations and dialogue through Sandia's active participation in an NSE Export Control Working Group.