



Export Compliance Refresher Course for USA Organizations

Course Duration: 29 min 02 sec

Presentation Objective

Export compliance refresher course for U.S. persons who previously completed export compliance training



U.S. Regulatory Documents

ITAR: International Traffic in Arms Regulations

Specially Designed Defense &
Aerospace Exports

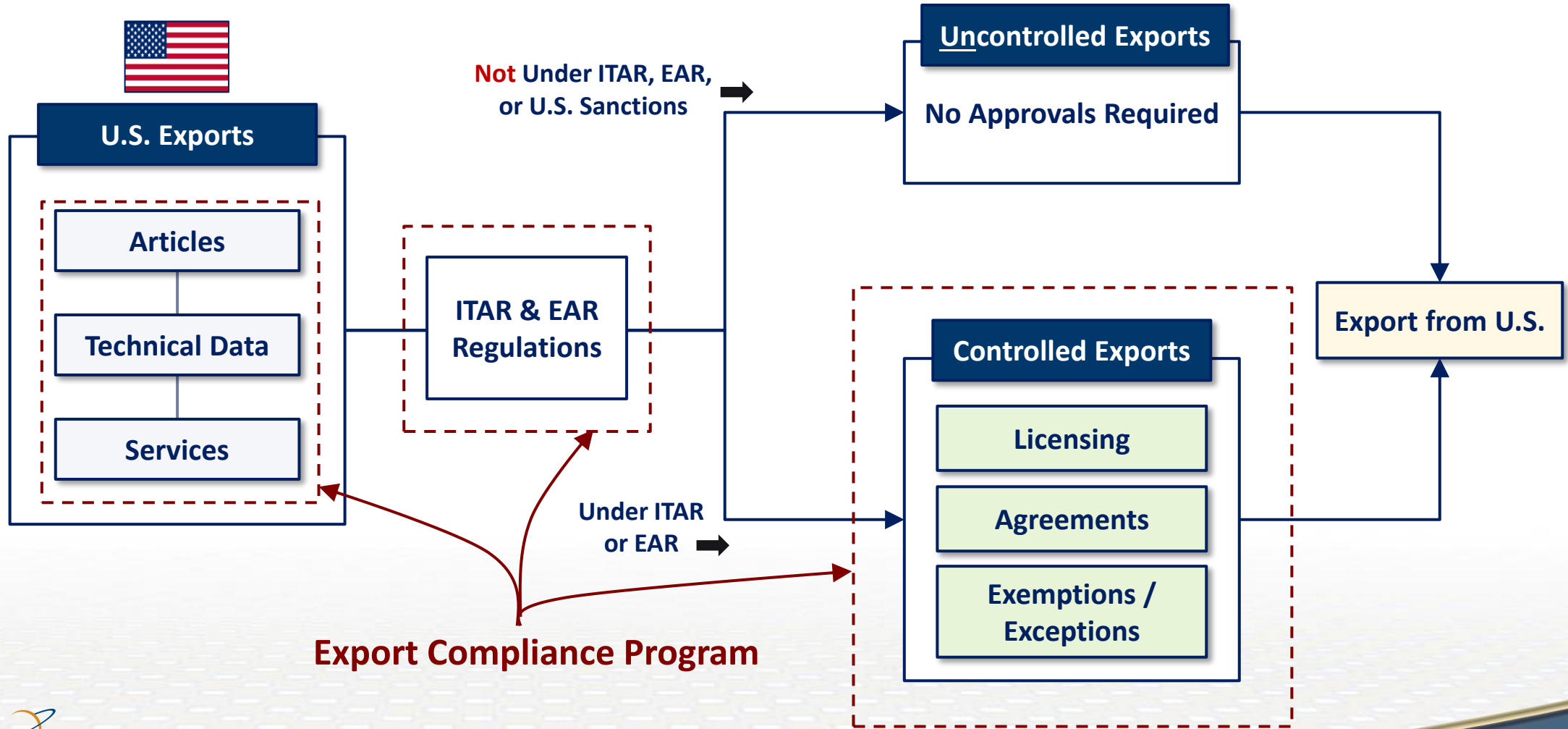


Dual Use &
Commercial Exports



EAR: Export Administration Regulations

Controlled vs Uncontrolled Exports



Export Compliance Core Requirement

Export controlled articles, technical data and services can only be exported to a foreign party when approved.



Export Approval



License, Agreement,
Exemption, or Exception



REGULATORY AGENCIES

Export Approvals

U.S. Department of State



Defense & Aerospace Related

USML Based Export Approvals

- Technical Assistance Agreement (TAA) ← Data and Services
- DSP-5: License for Permanent Export ← Hardware and Data
- Exemptions
- DSP-73: License for Temporary Export
- DSP-61: License for Temporary Import

U.S. Export Regulatory Paths

Commerce & Dual Use Related

CCL Based Export Approvals

- SNAP-R License
- Exceptions

U.S. Department of Commerce



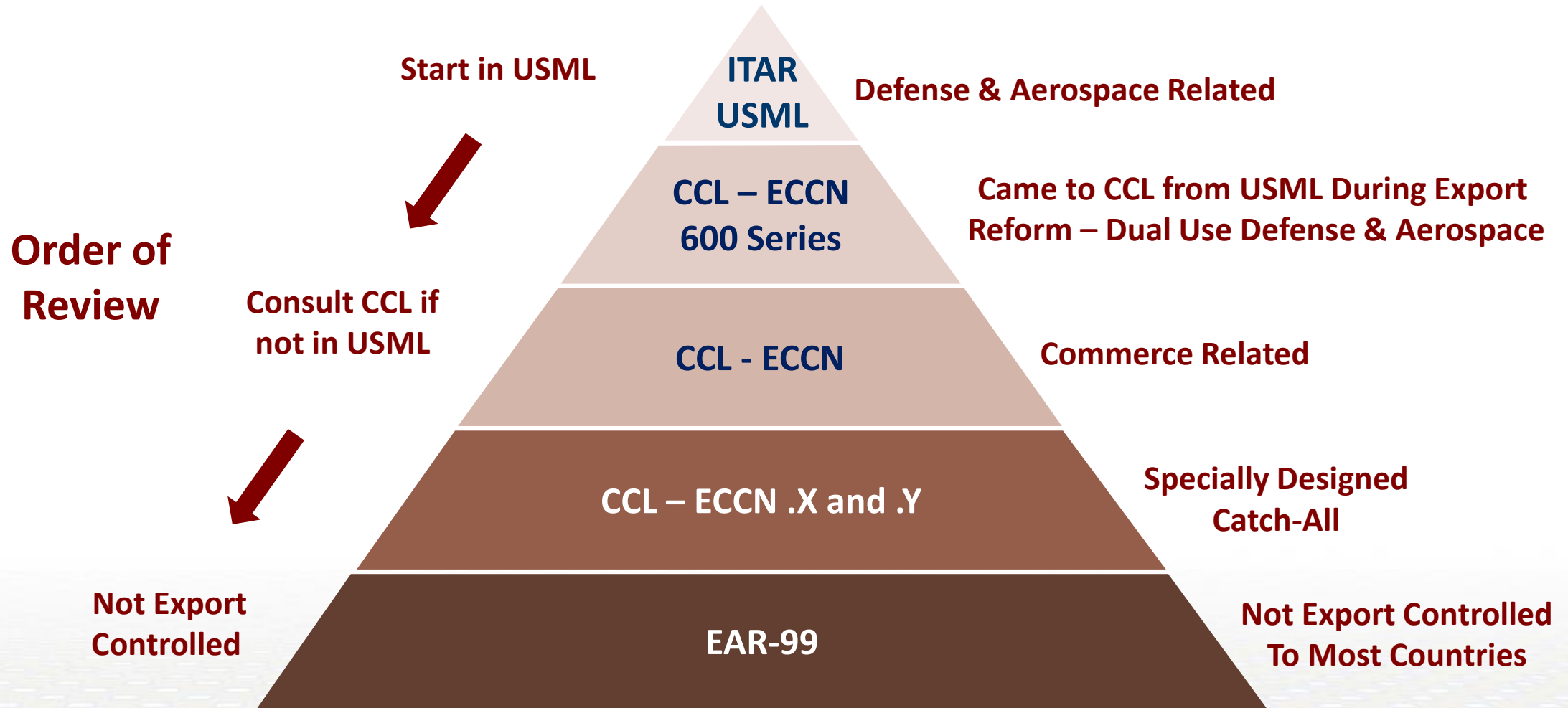
Important Note

Items that enter the U.S. will immediately fall under U.S. export regulations regardless of exportability from where it came.

Export Compliance



Export Classification Pyramid



Foreign Person Defined



Note: Foreign Person Employee of a U.S. Company will require a license to access controlled articles, data, or services

Note: U.S. green card holders, that are permanent U.S residents, are considered U.S. persons.

Note: Not specified in the regulations but a general practice by export authorities. Often specified as a requirement associated with an export approval.

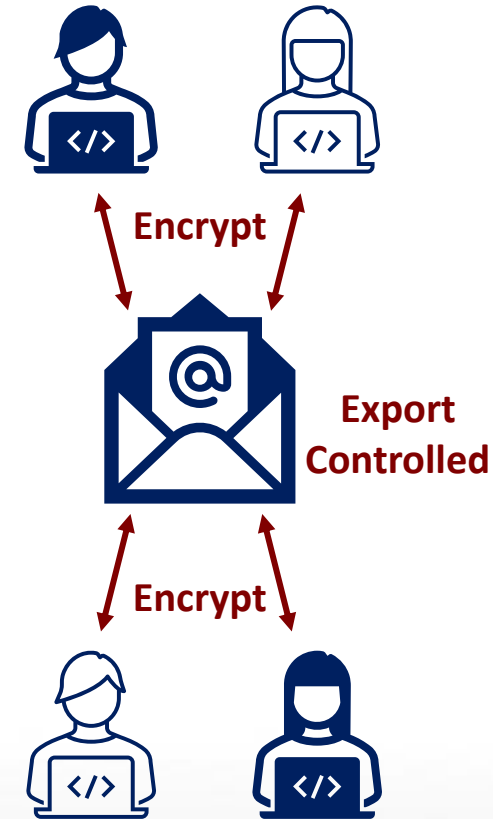
Be Aware – Many Paths to Export

Social Media



Email Communication

- Be careful, emails are the most common path for export violations when they include export controlled technical data.
- No export controlled data can be transferred in an email, outside of a controlled environment, unless encrypted – no exceptions.
- This includes the transfer of export controlled technical data to other U.S. organizations.
- Export controlled data can be transferred, by email, to foreign persons who have approval to receive it, IF, the attached file or email is encrypted.
- There are many utilities and services that encrypt emails and data files to the minimum requirement of 128 bit encryption.



Protecting Export Controlled Technical Data

- No more important responsibility than safeguarding technical data.
- Remember that data comes in many forms – pictures, documents, etc.
- Secure all digitally stored technical data by encryption or controlled access.
- Ensure hardcopy data is not left unattended.
- Properly dispose of data when no longer needed – shred.
- U.S. companies receiving controlled data must be export compliant.
- Report potential violations to your export compliance staff.
- All export controlled technical data must be labeled as export controlled.

What is Public Domain?

- Sales at newsstands and bookstores
- Subscriptions which are available without restriction to any individual
- Through second class mailing privileges granted by the U.S. Government
- At libraries open to the public
- Patents available at any patent office except as defined in ITAR 125.2(b).
- Unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States
- Public release (*i.e.*, unlimited distribution) in any form after approval by the cognizant U.S. Government department or agency

**General information on the internet is not in the public domain.
The data must be evaluated before releasing to a foreign person.**

Technical Data Notes

Technical Data is **NOT** export controlled if it is:

- General scientific mathematical, or engineering principles taught by universities.
- Basic marketing information on function and purpose or general system descriptions.

Special Notes:

- Be aware that a commercial article that is modified for defense or aerospace purposes may now be controlled under the ITAR.
- An export occurs if a foreign person determines controlled technical data by viewing an export controlled hardware. ← **Important**
- Anything entering the U.S. automatically falls under U.S. export regulations. ← **Important**

Approval Provisos and Conditions (1 of 2)

- **Some are Administrative examples:**
 - “This license expires on ...”
 - “Final USG configuration authorization must be the subject of separate export license application...”
- **Some are technical examples...**
 - “No US Government spaced based defense system operations or applications can be offered or discussed”
 - “No US Government threat data can be provided, offered, or discussed”
 - “Simulation data MUST be from the public domain or provided by the end user.”

Approval Provisos and Conditions (2 of 2)

- **Common Example Provisos:**

- Technical data for the hardware/systems **MUST NOT** include design methodology or manufacturing know-how....
- The applicant may perform independent assessments of the hardware, its systems, and sub-systems, operations, performance, and capabilities. However, assessments **MUST BE** limited to descriptions, summaries, and test results and **MUST NOT** provide technical or engineering changes that enhance, improve, or resolve foreign licensee designed or manufactured hardware non-conformances, non-compliances, or problem/anomalies.
- This agreement does **NOT** authorize the applicant to perform failure analysis with the foreign licensees.
- Collaborative design or analysis is limited to interface levels. Anomaly reports, including associated analyses products, **MUST BE** limited to problem identification, root cause, analysis rationale, results of analysis, and corrective actions.

Meetings with Foreign Persons

- Meetings with foreign persons, to include conference calls, have the same export requirements as any other controlled export of technical data from the U.S.
- Do not disclose export controlled articles, technical data, or services, during the meeting with a foreign person, unless approved to do so.
- Verify that everyone in the meeting is allowed to receive controlled technical data.
- For conference calls, ensure the communication is encrypted if export controlled technical data will be discussed.
- Know the data limitations of approved agreements or licensing.
- Keep a record of the meeting dates, participants, and topics for your compliance records.
- **During the meeting, be careful with leading questions: Use “How are you meeting the requirement?” instead of “Have you considered....?”**



Important Stuff

Record Keeping for Exports

- Create a system to manage compliance records.
- Keep any document, decisions made, copies of what was exported, or anything else that will explain the why, what, who, when, etc. related to a controlled export.
- Keep a record of all export controlled transactions
 - Copy of delivery: software, documents, training, etc.
 - Shipping documents
 - Briefings, reviews, status meetings, ...
 - Meeting minutes
 - Approved export license, agreements, exemptions, or exceptions.
 - Information on chain-of-custody, end user, and end use.
- Export records need to be kept for five years after the approval expiration date.
- The burden of proof is on you to show that exports were done in accordance with export regulations.

Technology Control Plan (TCP)

- Compliance processes and procedures
- TCP governs interaction with foreign party's
- Provides guidance to company personnel
- ITAR and EAR regulations take precedent over TCP
- Management must be familiar with implementation of TCP.

Your responsibility is to understand and abide by the contents of your organizations TCP.

- Management Commitment
- Compliance Personnel
- Awareness Training
- Export Control Labeling
- Distribution Control
- Secure Storage
- Technical Data Access
- Foreign Person Meetings
- Foreign Travel
- Service Providers & Subcontractors
- Voluntary Disclosures

Compliance Section Summary



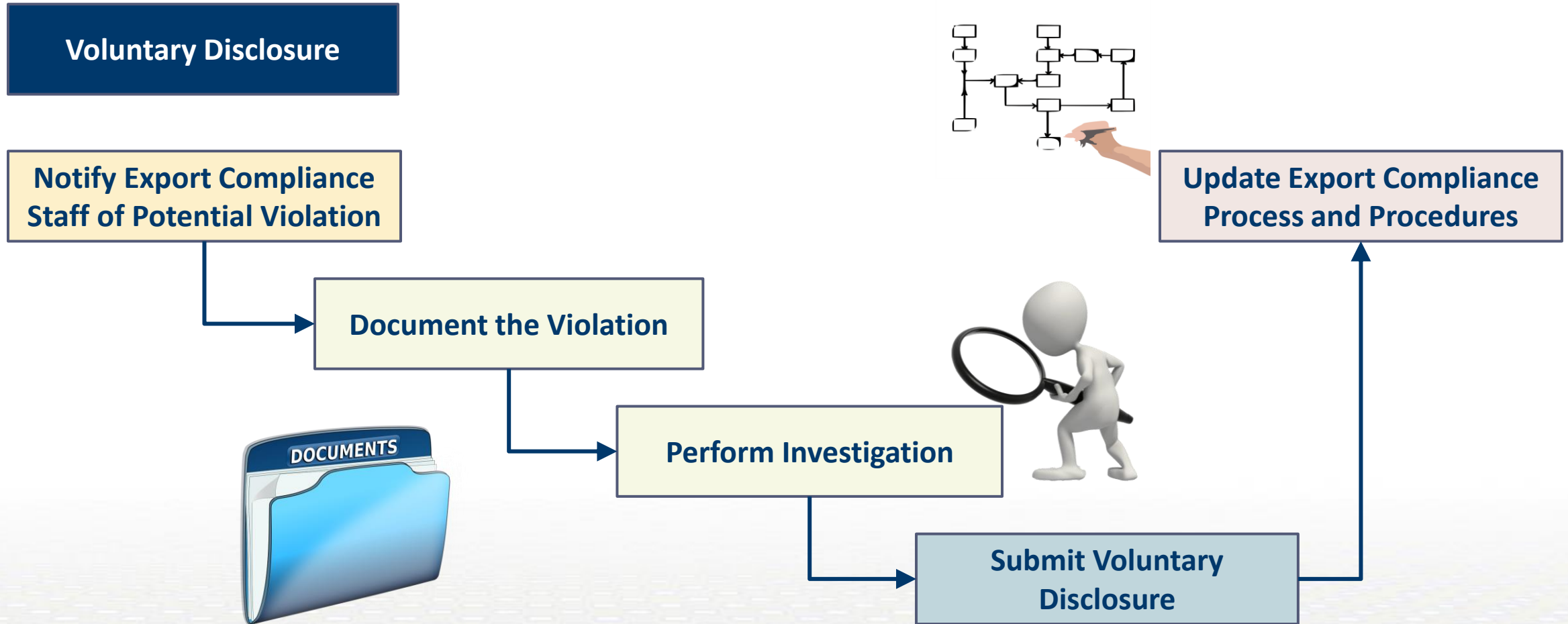
- Export compliance is everyone's responsibility.
- Understand and follow your organizations Technology Control Plan (TCP)
- Pay close attention to any provisos and conditions with an approval since they qualify the approved export authorization.
- Protect controlled technical data and not all information on the internet is considered public domain in relation to export compliance.
- Exports occur in many ways so be mindful of what you are conveying and to whom.
- Ask questions when you have them – the penalties for making an export mistake can be significant for your organization.

VIOLATIONS & VOLUNTARY DISCLOSURE

Types of Export Violations



Voluntary Disclosure



Potential Violation Penalties



Vast Majority – No Penalties

Individual Export Compliance Liability



- An individual is immune from liability for activities associated with their responsibilities as an employee.
- There is no immunity for actions taken by an employee which are outside the scope of employee's responsibilities or those taken with negative intent, in bad faith, or in a reckless manner.

EXPORT COMPLIANCE WRAP-UP

Export Compliance Wrap-Up

- Export compliance is a requirement for your job.
- Understand and follow your Technology Control Plan (TCP).
- Notify administration staff of any potential export violation.
- Exports can occur in many ways so remain aware of who and how you are communicating export controlled content.
- Ask questions when you don't understand an export compliance process or procedure.
- Ensure you understand the limits and provisos when working under export approvals.
- Make export compliance part of your everyday work activity.



Thank You!



www.lms.excelerate-inc.com

training@lms.excelerate-inc.com