Spring 2026 DOECAA Conference

DOECAA

DEPARTMENT OF ENERGY
CONTRACTOR ATTORNEYS ASSOCIATION

Contents

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Dear DOECAA community:

The DOECAA Board and I are delighted to welcome you to the Spring 2026 DOECAA conference at Fermi National Accelerator Laboratory and Argonne National Laboratory! Special thanks to the teams at both laboratories led by Beth Fancsali, Nadine Lacombe, Anne Ferguson, and Lynnean Celmer, and their respective teams for their tireless efforts. The panels and tours promise to be timely and exciting!

We are grateful to all the volunteers who have supported DOECAA leading up to this event, especially to our many knowledgeable speakers and panelists for sharing their time and insights with our community. We also extend our deep thanks to the CLE team, including Devon Mobley-Ritter, Matt Williams, and Marolhin Mendez, with invaluable support from colleagues at Morgan Lewis and the ANL and FNAL teams. Thanks to several DOECAA Board Members who came together behind the scenes to ensure that our meetings succeed, including Maxine McReynolds who served as our Board liaison to the conference chairs.

Amongst other priorities, DOECAA is continuing to seek out ways to support early career attorneys within and outside the DOE complex. We will soon be sharing the details of a special event on Thursday, April 23rd evening, hosted by the Legal Mentor Network to facilitate more mentoring opportunities for DOECAA members. Attendance is free and no RSVP is required. We encourage those who are staying the evening after the second day to join us!

DOECAA strives to serve as a vibrant gathering place for learning, networking, and mentoring opportunities, and we welcome your feedback and engagement to support these goals.

Sincerely,

Saurabh Anand, DOECAA President

sanand3@stanford.edu; info@doecaa.org

April 22-23, 2026

Dear Colleagues,

Welcome! On behalf of the Offices of General Counsel at the Fermi National Accelerator Laboratory (Fermilab) and the Argonne National Laboratory (Argonne), it is our pleasure to co-host the Spring 2026 DOECAA Conference. We are pleased to welcome attorneys serving the Department of Energy (DOE) and National Nuclear Security Administration (NNSA) and their respective contractors during these important times.

We have a unique opportunity to engage in critical conversations regarding **"*Energy and Transformation*"** – the theme for this conference. We have a great line up of topics focused on emerging programs and issues. Our panelists bring many perspectives to legal issues in the DOE complex: from national laboratories/contractors, from law firms, from DOE, and from industry. We also look forward to hearing your insights and experiences as we work for innovative and effective solutions to advance our mission in new and exciting areas while ensuring compliance and accountability.

We also are excited to offer you the chance to explore Fermilab and Argonne during the conference. We encourage you to take advantage of the tour options at each laboratory and to attend the networking reception on April 22 at Fermilab.

Thank you for your participation, for the expertise you bring, and for your ongoing dedication to our shared goals. Together, let us embrace the transformative challenges ahead and continue fostering a collaborative legal community across the DOE Complex.

We look forward to a great conference!

Beth Fancsali
General Counsel
Fermi National Accelerator Laboratory

Nadine Lacombe
General Counsel
Argonne National Laboratory

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2026 Spring Conference Attendees

Kevin Amery	Battelle
Shade Amole	Fermilab
Saurabh Anand	SLAC National Accelerator Laboratory
Adam Andersen*	Idaho National Laboratory
Reed Andrus*	Idaho National Laboratory
Russell P. Austin	Battelle
Margaret Babbitt	Sandia National Laboratories
James Barkley*	National Laboratory of the Rockies
Ritu Bhatnagar	SLAC National Accelerator Laboratory
Rebecca Biasiny	Savannah River Nuclear Solutions, LLC
Ivan Boatner	Oak Ridge National Laboratory
Donald Boyle*	Fluor Marine Propulsion, LLC
Robert Bracknell*	Jefferson Lab
Stephen Burdick	Idaho National Laboratory
Mario Burgarello	Sandia National Laboratories
Caryn Carson	Sandia National Laboratories
Jonathan Celniker	Lawrence Livermore National Laboratory
Ellen Chapelle	Gould & Ratner LLP
Kristen Clark*	Pacific Northwest National Laboratory
Tim Cole*	Brookhaven National Laboratory
Sean Coletti*	Idaho Environmental Coalition, LLC
Silas DeRoma	Newport News Nuclear BWXT - Los Alamos
Sachin Desai	Pacific Fusion Corp.
Michael Dobbs	US Department of Energy
James M. Durant III	US Department of Energy
William Elias	Sandia National Laboratories
Paul Lauper Ellison	Fermi Forward Discovery Group, LLC
Matthew Ennis	Fluor Corporation

* Virtual attendee

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2026 Spring Conference Attendees

Beth Fancsali	Fermi National Accelerator Laboratory
Michael Febbo	Husch Blackwell
Stewart Forbes	Hogan Lovells US LLP
Sandra Beth Fowler*	Bechtel National Inc.
Ivy Gibson*	Fermi National Accelerator Laboratory
Camilla Glatt*	Pacific Northwest National Laboratory
Alexandra Hall*	National Laboratory of the Rockies
John Hamner*	Pacific Northwest National Laboratory
Chip Hicks	EnergySolutions, LLC
Caitlin Hoch-Nussbaum	Y-12 National Security Complex
Craig Hunsaker*	Idaho National Laboratory
Kevin Jerbi	Argonne National Laboratory
Shontavia Johnson*	Savannah River National Laboratory
Reggie Jones	Fox Rothschild LLP
John Jung	Argonne National Laboratory
Katherine Kettler	Lawrence Livermore National Laboratory
Ivan T Kirchev	Argonne National Laboratory
Kyle Kneese	Four Rivers Nuclear Partnership (FRNP)
Reed Koenig*	National Laboratory of the Rockies
Amanda Krasulick	Sandia National Laboratories
Jenny Kremin*	National Laboratory of the Rockies
Kallie Kuehl	Pantex
Nadine Lacombe	Argonne National Laboratory
Melanie J. LaFond*	Fluor Marine Propulsion, LLC
Mark Langguth	Argonne National Laboratory
Ann Lee	Lawrence Livermore National Laboratory
Therese Leone	Lawrence Berkeley National Laboratory
Kevin Licciardi	Princeton Plasma Physics Laboratory

* Virtual attendee

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2026 Spring Conference Attendees

Cindy Lovato-Farmer	Pacific Northwest National Laboratory
David Mandl	Oak Ridge National Laboratory
Julia G Mata	Lawrence Berkeley National Laboratory
Derek Maughan*	Pacific Northwest National Laboratory
Keeley McCarty	Fox Rothschild LLP
Conor McMahon	Watt Tieder
Maxine McReynolds	Los Alamos National Laboratory
Luke Meier	Blank Rome LLP
Marolhin Mendez	Brookhaven National Laboratory
Kristen Merrick*	National Laboratory of the Rockies
Foy Meyer	Savannah River Mission Completion, LLC
Brandon Middleton Counsel	U.S. Dept. of Energy, EMCBC Office of the Chief
Josh Miller	Kansas City National Security Campus
Devon Mobley-Ritter*	Lawrence Livermore National Laboratory
Jane Morris	Ames National Laboratory
Donald Murano*	Fluor Marine Propulsion, LLC
Christopher Murray*	SIMCO
John Myer	Husch Blackwell LLP
Rachel Nichols	Argonne National Laboratory
James Ouellette	Bechtel National Inc.
Emi Passini	Michael Best & Friedrich LLP
Michael R. Pillsbury	Maynard Nexsen PC
Justin Poore	Sandia National Laboratories
Brian Potts	Husch Blackwell
Kevin Powers	Los Alamos National Laboratory
Michael Pratt	Sandia National Laboratories
Dorene Price	Brookhaven National Laboratory

* Virtual attendee

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2026 Spring Conference Attendees

Callista Puchmeyer*	Idaho National Laboratory
Deborah Quinn	Savannah River Mission Completion, LLC
Dan Raker	Argonne National Laboratory
Austin Raynor	General Matter
Brandon Regan	Watt, Tieder, Hoffar, Fitzgerald, L.L.P
Gerald Reynolds	Fluor
Pam Reynolds	Huntington Ingalls Industries, Inc.
Dori Richards*	NNSA
Jessica Rifkin	Olason Frank Weeda Terman Matz PC
Elizabeth Rosso*	Pacific Northwest National Laboratory
Alec Rubenstein	Fermi National Accelerator Laboratory
Tiffany Schafer	Argonne National Laboratory
Rhonda Scales*	Jefferson Lab
Olivia Scheuer*	Idaho National Laboratory
Audrey Seeley Counsel	U.S. Dept. of Energy, EMCBC Office of the Chief
Jeffrey Shun	Lawrence Livermore National Laboratory
Anissa Siefken	Pacific Northwest National Laboratory
Susan Slater	Argonne National Laboratory
John Stolpa	National Laboratory of the Rockies
Tim Sullivan	Baker Tilly
James Tak*	Lawrence Livermore National Laboratory
Christina L Tackett	Argonne National Laboratory
Rachna Mehta Talwar*	US Department of Energy Office of Science
Margaret Tharp*	National Laboratory of the Rockies
Andrew Thiros	Los Alamos National Laboratory
Marta Thompson	Akin
Rebecca Tie*	Lawrence Livermore National Laboratory

* Virtual attendee

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2026 Spring Conference Attendees

Michelle Timm*	NNSA
Kaitlyn Trout-Pardee	Fluor/SRNS
Pranava Upadrashta	Argonne National Laboratory
Samantha Updegraff	Sandia National Laboratories
Mike Wagner	Covington & Burling LLP
Julie Walker	Ames National Lab
Thomas Watson	FFPO | FLUOR
J. Andrew Watson, III	Maynard Nexsen PC
Paul J. White*	National Laboratory of the Rockies
Matthew F. Williams*	Lawrence Livermore National Laboratory
Brandon Wilsey	Watt, Tieder, Hoffar & Fitzgerald
Cynthia Wimberly*	NNSA
Daryl Witherspoon	HMIS
Kellen Wittkop*	National Laboratory of the Rockies
Michelle Wong	Lawrence Berkeley National Laboratory
James Xiao	Savannah River Mission Completion, LLC
James Zirkle	GTI Energy
Mary Anne Zivnuska	The Sander Group

* Virtual attendee

Agenda

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Agenda

DOECAA SPRING 2026 CONFERENCE

APRIL 22-23, 2026

"Energy and Transformation"

Hosted By:
Fermi National Accelerator Laboratory
Batavia, Illinois

and
Argonne National Laboratory
Lemont, Illinois

Conference Co-Chairs

Beth Fancsali
General Counsel
Fermi National Accelerator Laboratory
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Nadine Lacombe
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Wednesday, April 22, 2026

Fermi National Accelerator Laboratory

Wilson Hall

7:30 am **Continental Breakfast and Networking**

8:30 am **DOECAA Welcome and Conference Co-Chairs' Opening Remarks & Logistics**

8:45 am **Fermi National Accelerator Laboratory and Leadership in Neutrino Science, Exploring the Quantum Universe and Beyond**

9:00 am **Networking Break**

9:15 am **Off the Beaten Path: Legal Strategies for Driving Success and Innovations in Project Approaches**
This panel addresses special considerations for complex projects involving construction, international partnerships, and more.
Panel: Ellen Chapelle (Partner, Gould & Ratner, LLP), **Alec Rubenstein** (Associate General Counsel, Fermi National Accelerator Laboratory)**, Kevin Jerbi** (Environmental and Safety Counsel, Argonne National Laboratory)

10:15 am **Taking Charge During Change: Highlighting Risks and Opportunities in Domestic and International Transactions**
This panel explores legal and regulatory strategies attorneys can use to navigate an evolving tariff landscape, changes to the Federal Acquisition Regulation, updates to DOE Orders, and anticipated revisions to the Department of Energy Acquisition Regulation.
Moderator: Shade Amole (Associate General Counsel, Fermi National Accelerator Laboratory)
Panel: Tiffany Schafer (Legal Counsel, Argonne National Laboratory)**, Paul Ellison** (Assistant General Counsel, Privacy, Security & Trade / Export/Import Control Compliance Manager, Fermi National Accelerator Laboratory), **Mike Pratt** (Senior Managing Counsel, Sandia National Laboratories), **Jessica Rifkin** (Principal, Olsson Frank Weeda Terman Matz PC)

11:15 am **Lunch**
Second Floor Crossover/Art Gallery
New to Complex Lunch Breakout in Comitium Conference Room - Second Floor Crossover

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12:30 pm **First-of-a-Kind Agreements → First-of-a-Kind Technologies: How Legal Counsel Enable Critical Partnerships in Advanced Nuclear and Fusion**
This panel explores the enabling role legal counsel can play in supporting national laboratory partnerships with industry leaders in crucial fusion and advanced nuclear projects.
Moderator: John Myer (Senior Counsel, Husch Blackwell LLP)
Panel: Stephen Burdick (Senior Counsel, Idaho National Laboratory), **Sachin Desai** (Vice President Global Affairs, formerly General Counsel, Pacific Fusion)**, David Tressler** (Chief Legal Officer, Commonwealth Fusion)**, Austin Raynor** (General Counsel, General Matter, Inc.)

1:30 pm **With Great Power Comes Great Responsibility: Counsel Perspectives on Guiding Clients and Managing False Claims Act (FCA) Risk**
With increasing innovation, funding, and partnerships, there are also a variety of increased risks facing contractors. This panel provides some focus on increased risk related to the False Claims Act.
Panel: Jane Morris (General Counsel, Ames National Laboratory), **Therese Leone** (General Counsel, Lawrence Berkeley National Laboratory), **Reggie Jones** (Partner, Fox Rothschild LLP), **Keeley McCarty** (Partner, Fox Rothschild LLP)

2:30 pm **Networking Break**

2:45 pm **Fermi National Accelerator Laboratory Site Tours**
Tour options include the Superconducting Quantum Materials and Systems Center (SQMS), the Short-Baseline Near Detector (SBND), Bison Ranch, and exploring Wilson Hall
Tour signups will be available onsite on Wednesday morning

5:15 pm **Reception**
Fermi National Accelerator Laboratory - Second Floor Crossover/Art Gallery
separately ticketed, ending at 6:30pm

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Thursday, April 23, 2026

Argonne National Laboratory

Supercomputing and the Theory and Computing Sciences Building (TCSB)

8:00 am **Continental Breakfast and Networking**

8:45 am **Argonne National Laboratory and Leadership in Project Genesis**

9:15 am **DOE Keynote: Perspectives from DOE Counsel**
James Durant, Chief Counsel, DOE Office of Science

9:45 am **Legal Leadership and Strategies Supporting Artificial Intelligence**
This panel covers approaches already implemented and those that might be under consideration for legal professionals across disciplines to help: (i) accelerate advanced nuclear, fusion and grid modernization using AI to provide affordable and reliable energy for the country;(ii) accelerate the building of the "quantum econosystem" that will advance scientific discovery; and (iii) assist in deploying technology and systems to help ensure the safety and reliability of the U.S. nuclear stockpile and accelerate the development of "defense-ready" materials by creating and advancing AI technologies for national security mission.
Panel: Stewart Forbes (Counsel, Hogan Lovells)**, Mark Langguth** (Senior IP Counsel, Argonne National Laboratory), **Rachna Talwar** (Senior Attorney Advisor, Department of Energy)

10:45 am **Networking Break**

11:00 am **Employment Law in Focus: Supporting the Workforce Through Rapid Transformation**
Although palpable excitement and energy surround the bold vision for our future, the national need for innovation and the requisite pace of change gives rise to employment law considerations. Employers are seeing increased respectful workplace and mental health disorders issues, sometimes particularly impacting student programs. Legal counsel is increasingly asked to help clients balance considerations between individual employees and the working environment.
Panel: Katherine Kettler (Interim General Counsel, Lawerence Livermore National Laboratory)**, Rachel Nichols (**Legal Counsel, Argonne National Laboratory), **Emi Passini** (Senior Associate, Michael Best & Friedrich LLP)

12:00 pm **Lunch**

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1:00 pm **With Great Power Comes Great Responsibility Redux: Legal Topics on Research Security and Foreign National Access**
This panel will provide an overview of key statutory and regulatory updates governing research security and access by foreign nationals. It will also include an update on DOE 142.3C, along with a discussion of emerging research security risks and practical strategies for mitigation.
Panel: Stewart Forbes (Hogan Lovells), **Dan Raker** (Chief Human Resources Officer, Argonne National Laboratory), **Marta A. Thompson** (Partner, Aiken Gump Strauss Hauer & Feld LLP)

2:00pm **Legal Ethics in a Dynamic Landscape**
Explore how the ABA's latest guidance on AI is shaping lawyer's ethical obligations under the Model rules, then dive into real-world challenges involving AI in sponsored research and the emerging risks tied to start-ups.
Presented by: Christina Tackett (Deputy General Counsel, Argonne National Laboratory) and **Mike Vernick** (Partner, Jenner Block)

3:00 pm **DOECAA Closing Remarks**

3:05 pm **Networking Break**

3:15 pm **Argonne National Laboratory Site Tours**
Tour options include the Advance Photon Source (APS), Supercomputing and the Theory and Computing Sciences Building (TCSB), and the Nuclear Energy Exhibit Hall
Tour signups will be available onsite on Thursday morning

Speakers

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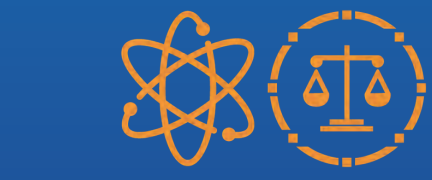
Speakers

Burdick, Stephen	Senior Counsel	Idaho National Laboratory
Chapelle, Ellen	Partner	Gould & Ratner, LLP
Desai, Sachin	Vice President Global Affairs, formerly General Counsel	Pacific Fusion
Durant, James	Chief Counsel	DOE Office of Science
Ellison, Paul	Assistant General Counsel, Privacy, Security & Trade; Export/Import Control Compliance Manager	Fermi National Accelerator Laboratory
Forbes, Stewart	Counsel	Hogan Lovells
Jerbi, Kevin	Environmental and Safety Counsel	Argonne National Laboratory
Jones, Reggie	Partner	Fox Rothschild LLP
Kettler, Katherine	Interim General Counsel	Lawrence Livermore National Laboratory
Langguth, Mark	Senior IP Counsel	Argonne National Laboratory
Leone, Therese	General Counsel	Lawrence Berkeley National Laboratory
McCarty, Keeley	Partner	Fox Rothschild LLP
Morris, Jane	General Counsel	Ames National Laboratory
Myer, John	Senior Counsel	Husch Blackwell
Nichols, Rachel	Legal Counsel	Argonne National Laboratory
Passini, Emi	Senior Associate	Michael Best & Friedrich LLP
Pratt, Mike	Senior Managing Counsel	Sandia National Laboratories
Raker, Dan	Chief Human Resources Officer	Argonne National Laboratory
Raynor, Austin	General Counsel	General Matter, Inc.
Rifkin, Jessica	Principal	Olsson Frank Weeda Terman Matz PC
Rubenstein, Alec	Associate General Counsel	Fermi National Accelerator Laboratory
Schafer, Tiffany	Legal Counsel	Argonne National Laboratory
Tackett, Christina	Deputy General Counsel	Argonne National Laboratory
Talwar, Rachna	Senior Attorney Advisor	Department of Energy
Thompson, Marta	Partner	Aiken Gump Strauss Hauer & Feld LLP
Tressler, David	Chief Legal Officer	Commonwealth Fusion
Vernick, Mike	Partner	Jenner Block

Click the name of each individual to skip to their biography page

Presentation Materials



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OFF THE BEATEN PATH: INNOVATIONS IN PROJECT APPROACHES

STRATEGIC FRAMEWORKS & REGULATORY NAVIGATION

DOECCA: ENERGY AND TRANSFORMATION -- APRIL 22, 2026

The Beaten Path: Standard User Agreements

Rules & Operations

- Work occurs in DOE User Facilities
- Users must comply with DOE rules
  - Safety
  - Site Access
  - DOE Property Management

Property & Resources

- No warranty of DOE facility
- Property Supplied by User
  - Becomes government property if integrated into the facility
  - M&O Contractor liability for gross negligence causing damage to User property
- Patent Rights
- Cost Recovery for use of DOE Resources (Proprietary users)

Liability & Indemnity

- Users are responsible for acts and omissions of their personnel
- Indemnity
  - For products liability
  - General Indemnity – different for proprietary vs. non-proprietary
  - Patent and Copyright Indemnity

DOE's Commitment to Partner with Industry

- Federal Government is pursuing initiatives to accelerate technology deployment
  - Scaling clean energy
  - Artificial Intelligence
  - Grid Infrastructure

Off the Beaten Path Approaches

- DOE projects on non-DOE property

- Private projects on DOE property

- DOE involvement in jointly undertaken public/private projects

Instructive Approaches to DOE/Lab Partnerships

DUNE and LBNF/DUNE-US

· Hosting International Collaboration
. Risk Management issues for Collaboration's work at SURF

Argonne's Theory and Computing Science Building

· DOE leased land to a Trust, Trust constructed facility for leases back

Howard T. Ricketts Regional Biocontainment Laboratories

· DOE leases space for biocontainment lab to UChicago and NIH

Project Solstice

· Oracle to build computing facility at Argonne
· DOE also has Requests for Applications for industry teams to lease DOE Property at INL, Savannah River and Oak Ridge for fully resourced (including power supplies) data centers

Waypoint
01

Safety Standards

10 CFR 851 (OSHA+)

Currently: 10 CFR 851 only applies to projects on DOE property
-- Property leased by DOE vs. Non-leased Property

Proposed Rulemaking: Changes definition of "DOE site" to apply 10 CFR 851 to "any operations authorized by DOE, even if an activity is not located on DOE-owned or -leased areas, when those operations are performed in furtherance of a DOE mission."

Lessons Learned/Open Questions

LBNF/DUNE

- Work at SURF was in both leased and non-leased space
- Different rules applied to work in leased and non-leased space
- Significant issues with application of OSHA vs. MSHA
- Significant issues with application of 851's Industry Guidelines
- Led to requests for variance and implementation plan

Argonne's Theory and Computing Science Building

- Trust employees work under OSHA
- Argonne employees work under 10 CFR 851

Howard T. Ricketts Regional Biocontainment Laboratories

- DOE has no regulatory authority over operations
- Published Federal Register notice to prevent confusion

Project Solstice

- Open Questions

Private Industry Prospective: OSHA+ in Private Facilities

- DOE Authority to impose fines/penalties
  - Process is different from OSHA
  - Process is not well understood by Private Industry outside of DOE complex
- DOE safety standards are viewed as more costly by industry
- Requires significantly greater
  - Documentation of work planning/hazard analysis
  - Management and vetting of subcontractors
- Application of industry guidelines is not well-understood in the private sector
  - E.g., ACGIH guidelines
  - Proposed removal of edition dates

Site Access Issues (Site Security/Access Controls)

LBNF/DUNE:
- Had to work through SURF control of gates
- Implements DOE/Fermilab controls
- Must sign waiver to enter

Theory and Computing Science (TCS) Building:
- Trust's access is "subject to security and access requirements and standards"
- DOE /ANL have access to building
- Publicly accessible conference area

Howard T. Ricketts Regional Biocontainment Laboratories (Ricketts):
- Have to come through main gate
- Subject to DOE Site Access
- Security

Solstice:
- Open Questions

Waypoint 02

Managing DOE Property

Appropriations law's self-insurance rule

- Government does not insure its own property
- Government also cannot require another to insure government property for the benefit of the government

"... although the government could reimburse the lessor for the cost of insuring against its own (the lessor's) risk, it could not require the lessor to carry insurance for the benefit of the government." *Red Book*, 4th *Ed.*, page 3-329.

"In the absence of express statutory authority to the contrary, appropriated funds are not available for the purchase of insurance to cover loss or damage to government property or the liability of government employees." *Red Book*, 4th *Ed.* , page 3-319.

Exceptions that have developed (See Red Book discussions):

- Where the economy sought by self-insurance would be defeated;
- Where sound business practice indicates that a savings can be effected; or
- Where services or benefits not otherwise available can be obtained by purchasing insurance.

03 Private Sector Perspective vs. Public Sector

Private Sector Perspective

- Private Sector typically requires property owner to insure property
- Private sector requires property owner to waive rights of subrogation
- Idea is that the property damage risk is quarantined to the property policy so that the other party's general liability policy limits will not be eroded by already-insured claims
- Property insurance is much more cost-effective than liability insurance
- Private Sector must address risk of liability for government property differently than typical approach

Public Sector/DOE Constraints

- Waiver of subrogation will not be available for DOE Property
- DOE does not favor limitations of liability
- In lease-back transactions, government can require contractor to carry insurance for the government's protection (*see, Red Book*, 3rd Ed., Volume 3, page 13-158 through 13-166)

Lessons from Projects

- LBNF/DUNE:
  - Cost of insuring project-related property would have been very high
  - Property damage risk borne by property owner – whether insured or not
  - Intent to preserve available insurance limits for bodily injury claims
- Theory and Computing Science Building:
  - Trust insures property
  - Includes narrow limitation of liability (limiting Lessor's liability for damage caused by Lessee's property/equipment to gross negligence/willful misconduct).
- Solstice: Open questions

Be Careful of Loss Payee Provisions

- If Government receives insurance proceeds, they might not be available to the project
- As a general proposition, amounts recovered by the government for loss or damage to government property cannot be credited to the appropriation available to repair or replace the property but instead must be deposited in the Treasury as miscellaneous receipts. *Red Book, Vol. 2, page 6-194*

Work-Arounds

- ✓ Builder's Risk Insurance
  - Risk of loss remains with contractor during construction
  - Contractor purchases builder's risk insurance
  - Government funds insurance through contract
- ✓ Hold harmless agreements
  - As a substitute for waiver of subrogation
  - Government is resistant to hold harmless agreements, BUT consider:

    -- Whether more cost effective to insure the liability risk or the property itself
    -- Self-insurance rule does not apply to insuring risk of non-government entity
    -- Structuring the transaction to place risk of loss on entity that can insure critical property
    -- Make sure loss proceeds are held in trust by private entity for the benefit of the project

Managing Risk of Liability for Bodily Injury

Bodily Injury Risk: Industry-Standard Approach

The Contractor Tower

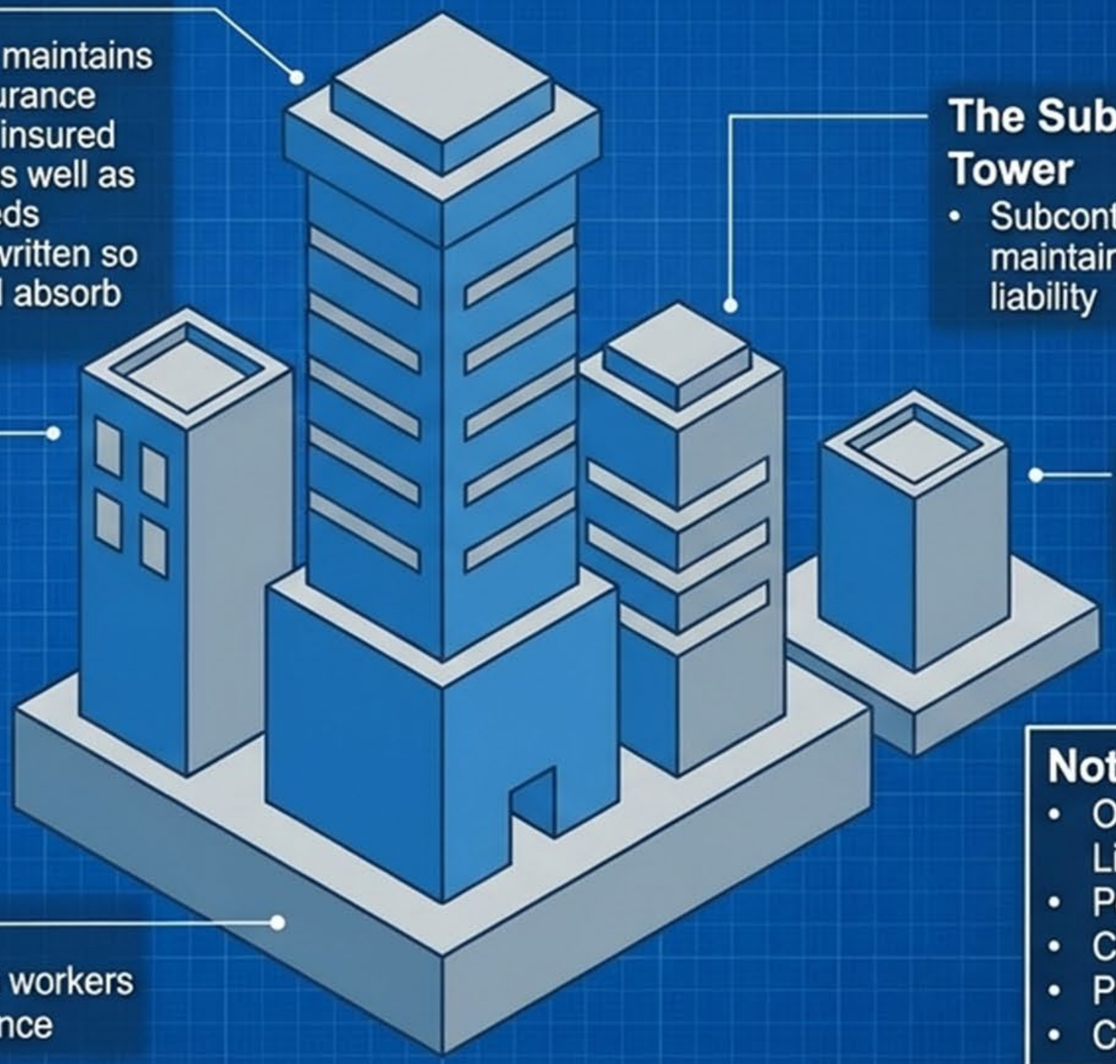
- Party that oversees the work maintains General Liabillty/ Excess Insurance
- Adds others as an additional insured
- Indemnity requires defense as well as indemnity of additional insureds
- Insurance requirements are written so that this GL/Excess tower will absorb most of the liability

The Subcontractors Tower

- Subcontractors typically maintain lower limits of liability

The Owner Tower

- Owner maintains general liability insurance
- Owner is additional insured on Contractor/Subcontractor policies
- Trend is to exclude construction: Owner Interest policy



Other parties Tower

- Each maintain their own general liability insurance

The Base

- Each party maintains workers compensation insurance

Note

- Other risks excluded by General Liability policies covered separately
- Pollution Liabiiity
- Contractors Professional Liability
- Professional Liability
- Cyber – first and third party

Barrier to Entry: Insurance Requirements

- Private Sector
  - Typical to require insurance as a prerequisite to entry
- LBNF Challenge: Working at SURF
  - Property was donated by private entity to State of South Dakota
  - Condition of Property Donation Agreement was that the State entity owning and managing the site implement Risk Transfer Protocols shifting risk to site users
  - Users must sign acknowledgement of risk and waiver of liability to enter

Workers Compensation Insurance Challenge

- If no WC coverage, the general liability risk increases
- Typical industry requires WC with waiver of subrogation to keep risk off of general liability/excess policies
- Sites controlled by Private Industry may have insurance requirements for entry that are not obtainable
- LBNF/DUNE at SURF
  - Foreign entities cannot purchase WC insurance
  - Must establish a U.S. subsidiary to purchase WC insurance
  - Fermilab lessee developed form of access agreement imposing standard obligations on all LBNF/DUNE participants that was approved by the property donor

General Liability Risk

Regulatory and Market Challenges:

- Government cannot insure risks covered by the Federal Tort Claims Act
- Project participants may not maintain or be in a position to maintain sufficient limits covering general liability risks
- General Liability market is hard
- Bodily Injury judgments are increasing
- Limits required should be revisited

DUNE: Wrap-Up Insurance Program

- FFDG has placed wrap-up insurance program
- Program provides coverage to collaborating entities (as additional named insureds) consists of: consists of:
  - General Liability policy
  - Pollution Liability policy
  - Business Travelers Accident insurance
- GAO decision authorized wrap-up insurance for Capital Visitor Center B-290162, Oct. 22, 2002

Public/Private Partnership Challenges

DOE/M&O Employee Work with Industry

- ☐ Cost Recovery
- ☐ OCI analysis
- ☐ IP Ownership/Use
- ☐ Insurable Risks
- ☐ Liability for damages caused by DOE/M&O employees

Ellen Chapelle

Partner

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Services / Industries

Insurance Counseling and Recovery

Construction

Litigation

Real Estate

With more than three decades of experience in representing clients involved in major construction projects, Ellen Chapelle knows how to assess, protect and defend her clients' interests both before *and* after any problems arise.

As a partner in the firm's Construction Practice, as well as the Chair of the firm's Insurance Counseling and Recovery Practice, Ellen's wide range of experience spans both the litigation and corporate sides of representing construction clients. After beginning her career as a complex-commercial litigator, Ellen began applying the knowledge gained through litigation to commercial contracts, including construction contracts, vendor agreements and non-disclosure agreements, with a special emphasis on insurance coverage.

Ellen's work in the construction industry has involved representing corporations, partnerships, owners, general contractors and subcontractors in connection with both public and private projects. Her experience includes handling construction defect claims, change orders, delay claims, claims for cardinal changes in the contract, mechanics lien claims, bond claims and claims involving "pay when paid" clauses.

For the past several years, Ellen served as Associate General Counsel of the Fermi Research Alliance, which manages the Fermi National Accelerator Laboratory for the U.S. Department of Energy. While at Fermilab, Ellen supported multiple large projects that are line items in Congressional budgets, including the Long Baseline Neutrino Facilities/DUNE-US Project, which recently completed construction on nine-story caverns a mile underground at the Sanford Underground Research Facility in South Dakota. Ellen also worked on the risk management and insurance plans to prepare for Fermilab to host international collaborators who will be participating in the installation of scientific equipment at those facilities in South Dakota.

In the corporate arena, Ellen has negotiated and drafted contracts, including construction contracts, vendor agreements and non-disclosure agreements. She also has drafted specifications for insurance, including scope of coverage and additional insured requirements. Ellen has counseled clients concerning risk avoidance in the contracting process, including the importance of identifying gaps between insurance and indemnity provisions.

Ellen also has extensive experience in commercial litigation involving bankruptcy, contract disputes, trade secrets, defamation, professional liability, local governmental taxation and constitutional issues. She has practiced in both state and federal trial and appellate courts, as well as appearing in administrative proceedings. She is also experienced in alternative dispute resolution.

With respect to insurance coverage matters, Ellen has represented clients in disputes with their insurers for coverage under property, general liability and builders risk policies. In addition, she has litigated cases seeking insurance coverage for property damaged by construction defects.

In 2026, Ellen was named a "Notable Woman in Law" by Crain's Chicago Business.

Credentials

Education

- University of Michigan Law School, J.D., *cum laude*
- University of Michigan, B.A., *High Honors and High Distinction in Philosophy*

Bar Admissions

- Illinois
- Michigan

Key Cases or Transactions

- While affiliated with Fermi Research Alliance, assisted in evaluating and managing construction defect claims in relation to the catastrophic failure of the electrical system during construction.
- Negotiated successful resolution of a concrete defect claim against its general contractor which endangered the timely opening of a manufacturing facility.
- Represented a joint venture in connection with an action seeking insurance coverage for damages occurring during construction of a municipal water plant.
- Represented contractor in connection with claims for changes and delay in the renovation of a wastewater treatment plant.
- Represented a municipality in a suit against its former insurance claims administrator and its auditing firm for failing to detect a multimillion-dollar fraud regarding the management of its self-insurance program. Obtained a favorable settlement for the municipality.
- Developed master construction contract forms for various clients, including a national media company, coffee shop chains, and several other retail and restaurant chains.

- Assisted senior living provider with maintaining and updating master contract forms, as well as negotiating project-specific revisions to the forms.
- Developed master construction contract forms for contractor specializing in data centers and for contractor specializing in laboratories and build-outs for educational institutions.
- Represented a manufacturer in a trade secrets action against a competitor who obtained the client's designs through a common supplier. Obtained a favorable judgment at trial.
- Lead trial counsel representing the plaintiff joint venture in a claim for recovery of the contract price, plus the value of certain extra work, relating to a bridge over the Chicago River. Much of the work was done pursuant to oral change orders. The matter was settled before trial, after the City of Chicago agreed to pay the entire amount claimed by the plaintiff joint venture, including the amounts for extra work.
- Represented the contractor who was retained in connection with the renovation of the HVAC/temperature control system and its conversion to digital controls at a federal building. Prepared a claim for the contractor for unfinished work, unabsorbed overhead, change orders and delay against GSA. After extensive discovery concerning those issues, the claim was settled on favorable terms for our client before the U.S. Board of Contract Appeals.
- Represented a large real estate developer in an action against an auditing firm for failing to detect a multimillion-dollar embezzlement by the developer's bookkeeper. Despite the fact that no audit or attestation level services were performed, obtained a seven-figure recovery at trial based upon the American Institute of Certified Public Accountants' Management Advisory Standards (which had seldom been used to impute liability in litigation matters prior to that time).

News

- Ellen Chapelle Named a 2026 Crain's Chicago Notable Woman in Law, March 2, 2026
- Gould & Ratner Works on Chicago's LaSalle Street Corridor Revitalization Initiative, March 31, 2025
- Welcome Back to Ellen Chapelle, Partner in Our Construction and Insurance Counseling Practices, August 14, 2024

Publications

- Climate Change and Construction: Top Five Considerations for Owners Before Building , January 22, 2025
- Riding the Tariff Roller Coaster: Considerations for Construction , April 29, 2025
- Talk It Out: The Importance of Effective and Consistent Communication in Construction Projects , July 15, 2025
- Insuring Construction Risks through Commercial General Liability Policies *, Lexis Practice Advisor*, August 27, 2025
- Construction Pricing Models: Choosing an Appropriate Pricing Arrangement *, Lexis Practice Advisor*, August 28, 2025
- Impact of Rule Requiring Re-evaluation of DBEs Is Uncertain , December 1, 2025
- 2026 Construction Forecast: The Only Thing Certain is Uncertainty , January 13, 2026

Kevin Jerbi is an Environmental Lawyer at Argonne National Laboratory, where he serves as legal advisor on environmental, safety, health, transportation, FOIA, and Prime Contract matters. Before joining Argonne, Kevin spent over a decade with the U.S. Army Corps of Engineers, Chicago District, with a focus on ethics, NEPA compliance, Clean Water Act permitting, procurement, and federal litigation. He also served as a Staff Attorney at the U.S. Court of Appeals for the Seventh Circuit. Kevin earned his J.D. from the University of Illinois College of Law, where he served as Articles Editor of the University of Illinois Law Review.

Alec Rubenstein is Associate General Counsel in the Fermilab Office of the General Counsel. His practice includes construction and complex procurement matters, as well as a variety of other legal and regulatory issues. His current work is primarily focused on supporting Fermilab's Deep Underground Neutrino Experiment. Before joining Fermilab, Alec spent much of his career advising and managing various public and private clients on complex legal matters with a focus on construction, development, financing and procurement, and compliance issues. Alec has his J.D. and B.A. from the University of Illinois Urbana-Champaign.

Taking Charge During Change:

HIGHLIGHTING RISKS AND OPPORTUNITIES IN DOMESTIC AND INTERNATIONAL TRANSACTIONS

ITA-338P

Project-Level Tariff Exemption

PAUL LAUPER ELLISON, ASSISTANT GENERAL COUNSEL & EXPORT/IMPORT CONTROL COMPLIANCE MANAGER
FERMI NATIONAL ACCELERATOR LABORATORY

ITA-338P Summary

- **ITA-338P Form:** Request for Duty-Free Entry of Scientific Instrument or Apparatus
- **Purpose:** Request duty-free entry for foreign-made scientific instruments for research or education – Florence Agreement (1950 UNESCO treaty).
- **Who Applies:** Public or private non-profit institution established for education or scientific research.
- **Process:** Submit to Customs and Border Protection (CBP), which then transmits it to Commerce.

Challenges for Project-Level Approval

- **Eligibility:** 1) Non-profit, 2) eligible and dutiable, 3) proper end-use, 4a) scientific equivalency, and 4b) domestic availability.
- **Scope limits:** Approvals typically apply to specific items. Broad, project-level approvals are uncommon — but not impossible with careful framing.
- **Risk:** CBP decides eligibility (1, 2 & 3) and releases at the port; Commerce performs the "domestic equivalent" comparison (4a & 4b). Both agency approvals are required; Both may take several months. Commerce can narrow/deny, which can trigger retroactive duties.

Recommended Approach – 1

- **Define the "instrument" as a unified system:** Show how modules or are components or accessories of single, larger instrument.
- **Components vs Accessories:** Explain why each item is essential for function (component) or adds capability (accessory). Separately procured accessories = separate review. Physical integration is strongly recommended.

Recommended Approach – 2

- **Group items into modules:** Avoid listing dozens of line items. Instead, describe major modules or assemblies as components and detail how they interface. This simplifies the application and matches "operationally linked" requirements.
- **Cross-reference multiple applications if needed:** Include a coordinating cover letter showing the unified architecture and integration plan.

Required Documentation – 1

- **Applicant status documentation:** M&O contract, nonprofit/Government designation, etc.
- **Program-level sponsorship:** DOE letters, MOUs, international collaboration agreements, etc.
- **Technical specs for modules:** drawings, interface control documents, integration plans showing operational interdependence, etc.
- **Market search & procurement history:** RFPs, SAM.gov postings, bids, statements why no domestic equivalent exists, etc.

Required Documentation – 2

- **Scientific Uniqueness:** Expert content or letters (field scientists/engineers) explaining why the assembled system is one-of-a-kind
- **CBP rulings:** Cite favorable CBP rulings and explain factual differences from unfavorable rulings.
- **POs & shipping:** Purchase orders and shipping plans (show accessories on same PO where applicable).

Operational Tips & Pitfalls

- **PO structure matters:** Put accessories on the same purchase order as components when you want them considered together. Separate POs increase risk of separate applications.
- **In-kind contributions:** Customs is very flexible on what is considered a PO or order.
- **Keep modules narrowly explained yet clearly linked:** Items physically attached or critical to function = stronger than "functionally related" items. Commerce will treat merely related items as ancillary equipment and ask for separate filings.

Checklist

- Ensure the system and its HTS (Harmonized Tariff Schedule) are eligible and dutiable
- Confirm project architecture and list major modules (not every part) as components/accessories to be assembled in the U.S.
- Assemble market search
- Collect expert content
- Ensure procurement teams assemble POs to reflect the component/accessory strategy

Key References in 15 CFR § 301

- § 301.2(f) Instrument
- § 301.2(h) Accessory
- § 301.2(j) Ancillary equipment
- § 301.2(k) Components
- § 301.2(r) Guaranteed specifications
- § 301.2(s) Pertinent
- § 301.4(a) [CBP] Review and determination
- § 301.5(d) Criteria for the determination of the Department of Commerce

IEEPA Tariff Refunds / Strategies to Mitigate Non-IEEPA Tariffs

JESSICA RIFKIN, PRINCIPAL, CUSTOMS & TRADE
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IEEPA Tariff Refunds

- President Trump imposed variety of tariffs under International Emergency Economic Powers Act (IEEPA)
  a) reciprocal tariffs (applied to almost all countries, rates from 10% - 50%);
  b) fentanyl tariffs on China (20%, on top of 10% reciprocal tariff rate), Canada (25% but USMCA qualified goods exempt), Mexico (25% but USMCA qualified goods exempt);
  c) 25% Russian Oil tariff on India (applied on top of 25% reciprocal tariff rate); and
  d) additional 40% tariff on Brazil (applied on top of 10% reciprocal tariff rate)

IEEPA Tariff Refunds

- On February 20, 2026, Supreme Court struck down reciprocal and fentanyl tariffs in *Learning Resources v. Trump*
  - Court ruled that IEEPA does not provide authority to impose tariffs
  - Russian Oil tariff and 40% Brazil tariff were not before the Court, but rationale applies equally to those tariffs
  - President Trump issued EO cancelling all IEEPA-based tariffs on 2/20 and CBP ceased collecting IEEPA-based tariffs effective 2/24
- Supreme Court's decision was silent as to whether relief was prospective only and whether refunds would be given
- Issue of refunds returned to Court of Appeals for the Federal Circuit (CAFC), which issued mandate to Court of International Trade (CIT) to consider refunds issue on March 2

IEEPA Tariff Refunds

- On March 4, in *Atmus Filtration v. U.S.*, Judge Eaton of CIT issued order directing CBP to refund IEEPA tariffs paid by ***all*** importers
  - Order was not limited to plaintiffs in *Atmus Filtration*, or even to plaintiffs at the CIT
- CBP claimed in response that number and volume of entries made it impossible for CBP to immediately comply and to utilize standard methods for providing refunds
- Instead, CBP proposed a new, simplified refund process via a newly constructed ACE functionality called "CAPE" (Consolidated Administration and Processing of Entries"), estimated to be completed by approximately mid-April
- Judge Eaton suspended "immediate effect" of refund order, with weekly check ins and progress reports required from CBP
  - Progress toward CAPE construction deemed "satisfactory" to date

IEEPA Tariff Refunds

- While refunds (plus interest) will almost certainly be given, substantial uncertainty remains as to method, scope, and timing of refunds
- Order directing refunds remains subject to Government appeal – deadline is May 3
  - Government told CIT immediately before *Atmus Filtration* order was issued that importers may only obtain refunds by filing individual suit at CIT
  - Government requested Court to pause order to allow immediate appeal to CAFC, which Court rejected
  - If Government appeals, it is likely to challenge CIT's power to order refunds for all importers (including those who haven't filed suit) (argument that IEEPA relief should be prospective only less likely)
  - That argument may find traction with CAFC, resulting in refund delay while statutory deadlines continue to run

IEEPA Tariff Refunds

- What should you do now to protect right to potentially very significant refunds?
- Determine your role – most likely only importer of record will have direct right to refunds

IEEPA Tariff Refunds (cont.)

- If you are the IOR and until route to refunds has been finally adjudicated, two separate actions must be taken:
  - Prepare to file through CAPE if/when it becomes available
    - Obtain report of all IEEPA tariff entries
    - Ensure relevant documentation is complete
    - Determine liquidation date of all entries
    - Consider mini-audit of entries
  - Until CIT orders become final, file protests of entries once they pass the 90-day voluntary reliquidation period
    - Duties paid at entry are considered "deposits of estimated duties"
    - CBP has 365 days from entry date (date Customs releases goods) to make final determination of duties due and close out ("liquidate") entry
    - CBP generally liquidates entries 314 days after the date of entry but may liquidate them earlier
    - If importer disagrees with liquidation, importers must file administrative protest with CBP within 180 days of date of liquidation
    - Due to administrative difficulties, CBP continues to liquidate entries with IEEPA tariffs included
    - If protest not filed, duties determined to be due at liquidation become final and binding
    - While liquidated entries are included in CIT refund orders, those orders remain subject to appeal
    - Consider mini-audit of entries

IEEPA Tariff Refunds and Current Status of Other (non-IEEPA) Trump Tariffs

- Other considerations for government contractors:
  - Who is the IOR (who may claim)?
  - Cost-reimbursement contract may require crediting Government for refunds received
  - Refunds may trigger price decreases in fixed price contracts
  - Requirement to notify contracting officer
  - Anticipate potential audits

IEEPA Tariff Refunds and Current Status of Other (non-IEEPA) Trump Tariffs (cont.)

- Remember: only IEEPA-based tariffs were struck down by Supreme Court
- Section 232 tariffs are still in effect, and may be expanded
  - Litigation currently pending at CIT contesting CBP's method of calculating value of steel/aluminum inputs
- Section 301 China tariffs are still in effect, and new investigations have been commenced on 16 economies (including China, the EU, Japan, and India) on industrial overcapacity in sectors such as steel, aluminum, semiconductors, and robotics, and on 60 countries on failure to adopt or effectively enforce bans on imports of goods made with forced labor
  - Petition for writ of certiorari currently pending at Supreme Court on current Section 310 Lists 3 and 4A China tariffs
- 10% Section 122 tariffs are currently in effect until July 24, 2026, may be raised to 15%
  - Challenges to legality currently pending at CIT

Tariff Mitigation Strategies for non-IEEPA Tariffs

- Double-check tariff classification – can make significant difference for Section 232 and Section 301 tariffs
  - Internal controls and adequate documentation
  - Obtain binding CBP rulings
- Potentially, rerouting sourcing to more advantageous venue such as Mexico (USMCA duty savings)
  - Legitimate origin-shifting v. mere transshipment
  - USMCA, other FTA origin rules can be complex
  - Practical constraints – lead time, security requirements, etc.
- Duty deferral via Foreign Trade Zones (FTZs) and bonded warehouses
  - But goods must be entered into FTZ in privileged foreign status for Section 122, 301, and 232 tariff purposes
- Duty drawback for exported goods (same/substitution)
  - Duty drawback not allowed for Section 232 tariffs

Tariff Tracker

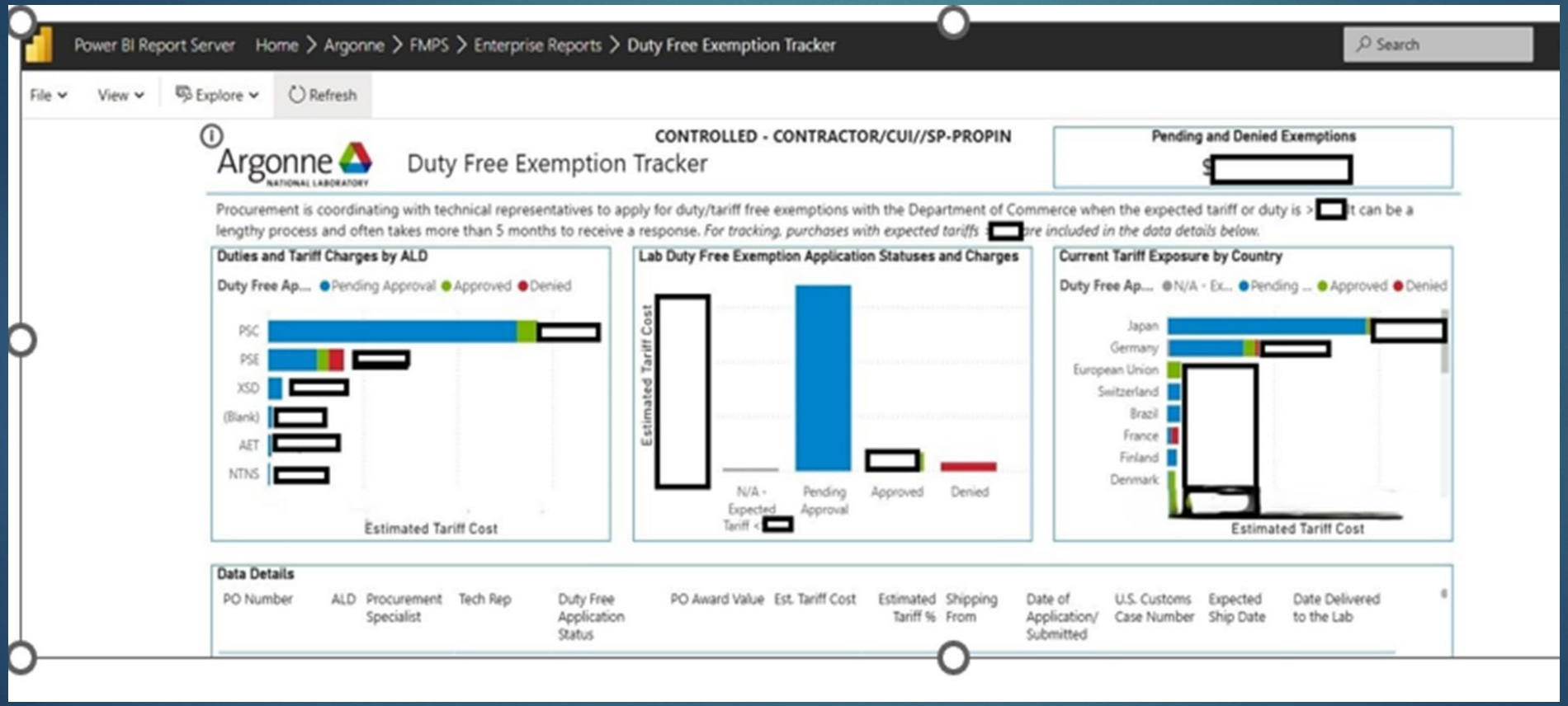
The Argonne Approach

TIFFANY B. SCHAFER, SENIOR ATTORNEY, LAB OPERATIONS
ARGONNE NATIONAL LABORATORY

Tariff Tracker Spreadsheet (Redacted)

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	
Tracker for when a tariff/duty is expected to be >$2,000 per shipment or PO (under $2K will not be included). This is put on Labwide dashboard, so please keep updated timely.																			
PO Numbe	PO Date	Procurement Specialis	Part Description	Supplier	Expected Ship Date	ALI	Divis	Tech R	Shipping From (Count	Award Valu	HTS Code	Estimated Tariff %	Est. Tariff	Date of Application/Submitted	U.S. Customs Case	Duty Free Approval Status	Notified the Tech Rep of Fee	ate Delivered to th	ation Mai
5A-63114	3/5/2025		Diamond Windows		4/1/2025	PSC	XSD		Germany		9001.9	15%		11/25/2025		Pending Approval	The correct HTS code for this shipment should have been 9001.90. It appears that the customs paperwork was mistakenly processed using 7326.90, which is subject to		12/1
6A-60331	10/17/2025		SSA System Spare Parts		12/17/2025	PSC	ASD		Japan		,8504.40.9540, 4009.32.0050, 854	15%	$ -	11/4/2025		Pending Approval	Application submitted		12/1
6A-61175	12/16/2025		Bruker X4 Poseidon system		6/9/2026	PSE	CSE		Germany		9022.19.0000	15%	$ -			Not Submitted	Application pending with Division 1/7, 2/3		
6A-61472	1/16/2026		CleanMill		3/16/2026		ESR		Czech Republic		9012.10.0001	15%				Not Submitted	Pending application docs with division 2/3		
6A-62102	1/27/2026		Xpress 3X Readout system for SDD or HPGe detectors		5/8/2026	PSE	XSD		UK		9030.82.0000	15%	$ -	1/30/2026		Pending Approval	Application submitted, pending approval.		
6A-60512	1/28/2026		OES (EMICON ISD System with electrical isolated optical fiber)		4/8/2026	PSE	MSD		France		9027.30.40.80, 9001.10.00.70, 9027.50.40.60, and	0.15		2/9/2026		Pending Approval	Application submitted, pending approval.		
6A-61415	1/30/2026		In-Line XRF Module		11/2/2026				Japan							Not Submitted			
6A-61490	12/18/2025		APS Storage Ring Vacuum Chambers		9/27/2026	PSC	AES		Germany		85439000	15%	$ -	2/6/2026		Pending Approval			
6A-61735	1/12/2026		Humanoid Robot		6/1/2026		DSL		France		9023.00.1000	10%		2/5/2026		Pending Approval	Application submitted, pending approval.		2/1

Power BI Customer Interface (Redacted)



Project Velocity

MIKE PRATT, SENIOR MANAGING COUNSEL
SANDIA NATIONAL LABORATORIES

What is it?

- DOE-led initiative focused on improving the performance across the entire enterprise. Led by Nick Poradek, DOE Senior Advisor with the support of Jim McConnell, Associate Principal Deputy Administrator for NNSA, and Juston Fontaine, Deputy Director for Operations for Office of Science
- The 6 Objectives are:
  1. Focus on Lab performance and results not just process and procedure
  2. Reform operations to remove barriers that impede research productivity
  3. Reinvest realized cost savings into science
  4. Enhance awareness of National Labs
  5. Drive Stronger cross-lab collaboration
  6. Modernize end-to-end IT systems

What is happening?

- National Lab Chief Operating Officers (COOs) were tasked in mid-January to review more than 80 DOE Directives grouped into categorial areas:
  1. Governance & Self Regulation
  2. Business Agility & Financial Systems
  3. Safety
  4. Security
  5. Operational Efficiency
  6. ND Mission
  7. Nuclear Operations
  8. Legal & External Action
- Small groups reviewing Directives in two-week sprints.

What are sprint teams doing?

- Objective of the effort is to streamline requirements resulting in a wholesale reduction in low-value activities that cost the enterprise time and resources that must be applied to effective mission execution.
- Wholesale change is necessary. Make bold proposals.
- Review and recommend rewriting, consolidation, integration, and/or elimination of directives
- Outcome should be substantially streamlined operational requirements across the DOE complex to enhance operational efficiency.
- Spring teams are intended to be small, move fast, and not consult field/site offices when making recommendations back to DOE.
- Five sprints completed Jan 20 through end of March 2026

What's next for Project Velocity?

- Recommendations from sprint teams delivered to DOE Deputy Secretary
  - Focus on eliminating requirements not required by statute or regulation
- May 2026:
  - DOE to publish rapid revision, consolidation or elimination of DOE Directives
  - Modification to prime contracts to revise/reduce lists of applicable directives
  - Labs, plants and sites will need to figure out what is no longer required and modify local policies and procedures to achieve excellence and improve efficiency

Coming Attractions

- Project Velocity 2.0 for NNSA
  - There are 81 different Business Operating Procedures (BOPs), Policies (NAPs), and Supplemental Directives (SDs)
- Other DOE Regulations (full notice and comment rulemaking)
  - 10 CFR 851, Worker Safety and Health Program
  - 10 CFR 830, Nuclear Safety Management
- DEAR Overhaul
  - Section 5 of EO 14275, Restoring Common Sense to Federal Procurement, issued April 15, 2025 entitled "Aligning Agency Supplements to the FAR" reads:
    - (a) Within 15 days of the date of this order, **each agency exercising procurement authority** pursuant to the FAR shall designate a senior acquisition or procurement official to work with the Administrator and the FAR Council to **ensure agency alignment with FAR reform and to provide recommendations regarding any agency-specific supplemental regulations to the FAR.**

"Revolutionary" FAR 2.0 Overhaul

Top 5 things to know (plus bonus #6!)

TIFFANY B. SCHAFER, SENIOR ATTORNEY, LAB OPERATIONS
ARGONNE NATIONAL LABORATORY

#1 Background & Authority

- Issued under Executive Order 14275 (April 2025)
- Second major FAR revision since its 1984 creation
  - Prior major revision was mid-1990s via acts of Congress, not EO
    - Federal Acquisition Streamlining Act & Reform Act
- FAR 2.0 is one-third length of the FAR
- DOE adopting immediately through class deviations

#2 Key Structural Changes

- Non-statutory provisions removed; retained in buying guides
  - Thousands of pages long
- Largely terminology and plain language updates throughout
  - FAR Part 15: ‘discussions’ replaced with ‘negotiations’
    - Term ‘communications’ removed to reduce confusion

#3 Greater Flexibility in Negotiations

- COs may negotiate with one offeror without additional rounds
  - No longer required to hold rounds with all competitive range offerors
- "Competitive range" redefined for greater CO discretion
  - New definition: proposals 'best suited for further negotiations'
  - Previous definition: 'most highly rated proposals'
- Intended to increase efficiency and speed in source selection

#4 Construction as a Commercial Service

- 'Commercial service' definition now expressly includes construction services
  - Streamlined commercial buying practices for construction
  - FAR Part 12
- Reduced barriers to entry
  - Greater competition

#5 Flowdown Removals

- Several classic flowdowns removed from FAR 52.244-6
  - 52.222-21: Prohibition of Segregated Facilities
  - 52.222-26: Equal Opportunity
  - 52.222-9: Notification of Visa Denial
- Kaspersky Lab & Prohibited Telecom 889, and others consolidated
  - Rolled into new 'Security Requirements' & 'Security Prohibitions' clauses

#6 Bonus!: 2026 Purchasing Threshold Updates

Threshold Type	Previous Value	New 2026 Value
Micro-purchase Threshold	$10,000	$15,000
Simplified Acquisition Threshold (SAT)	$250,000	$350,000
Subcontracting Plan (Non-construction)	$750,000	$900,000
Subcontracting Plan (Construction)	$1.5 million	$2 million
Commercial Simplified Procedures (13.5)	$7.5 million	$9 million
Executive Compensation Reporting (1st tier sub)	$30,000	$40,000

Coming Soon This Summer:
NDAA changes: TCPD & CAS thresholds
Coming June 30, 2026 – major cost & pricing data changes

- Truthful Cost or Pricing Data Act (TCPD, formerly TINA) threshold increased from $2M to $2.5M (inflationary)
- TCPD threshold increasing *again*: $2.5M → $10M (eff. June 30, 2026)
  - Eliminates certified cost data requirement for smaller contracts
- Cost Accounting Standards decoupled from TINA – independent thresholds now apply
  - Modified CAS coverage: $2.5M → $35M
  - Full CAS coverage: $50M → $100M

Key Takeaways

- M&Os don't always follow non-prime clauses to the letter, but COs still use it as the standard for reviewing contractor purchasing systems
- DOE adopting via class deviations during formal rulemaking
- Greater CO flexibility speeds up competitive acquisitions
- Review subcontract flowdowns – key clauses have been removed and are not being enforced
- Higher thresholds reduce administrative burden significantly
- Monitor NDAA changes effective June 30, 2026 for TCPD & CAS

Discussion

Paul Lauper Ellison

Paul Lauper Ellison is Assistant General Counsel, Privacy, Security & Trade and Export/Import Control Compliance Manager in Fermilab's Office of General Counsel. Since 2018, he has directed the laboratory's complex tariff strategy, overseeing tariff exemptions for multi-million-dollar research projects. Mr. Ellison ensures that Fermilab's global scientific collaborations strictly adhere to export control regulations, safeguarding the exchange of technologies while facilitating international discovery.

Before joining Fermilab, he was Senior Counsel for International Trade Compliance at Hughes Network Systems, LLC, a global leader in satellite broadband solutions and managed network services. In that role for over a decade, he navigated regulatory landscapes for millions of systems and customers in over 100 countries.

He's a graduate of George Mason University's Antonin Scalia Law School (JD) and Brigham Young University (BA).

Jessica Rifkin

Jessica Rifkin is a Principal in the Customs & International Trade practice group at the Washington, D.C.–based law firm Olsson Frank Weeda Terman Matz PC. She advises importers and global businesses on a wide range of U.S. customs and trade matters, including tariff classification, valuation, country of origin, antidumping and countervailing duties, and enforcement actions. She regularly represents clients before U.S. Customs and Border Protection and in litigation before the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit, including pending litigation regarding the right to refunds of former IEEPA-based tariffs. Rifkin is particularly recognized for her deep expertise in forced labor compliance, including matters under 19 U.S.C. § 1307 and the Uyghur Forced Labor Prevention Act. Her practice spans multiple industries, with a strong focus on highly regulated sectors.

Mike Pratt

Mike Pratt serves as Senior Managing Counsel for National Technology and Engineering Solutions of Sandia, LLC, a wholly owned subsidiary of Honeywell International, Inc., which manages and operates Sandia National Laboratories for the United States Department of Energy National Nuclear Security Administration. Mike has been at Sandia since 2021, previously serving as Senior Procurement Counsel.

Since 2024, Mike has led the Regulatory and Contract Law Center, which provides advice on corporate matters, security, privacy, environmental, safety and health, contracts, and infrastructure.

Prior to joining Sandia, Mike worked at Los Alamos National Laboratory as a business law attorney and at NASA's Johnson Space Center as a general law and procurement attorney.

Mike began his legal career as an active-duty U.S. Army Judge Advocate and currently serves as a Colonel in the United States Army Reserve.

Mike has a bachelor's degree from Texas Tech University, Juris Doctorate and Master of Public Affairs degrees from the University of Texas at Austin and a Master's Degree in Strategic Studies from the United States Army War College.

Mike is licensed to practice in New Mexico and is a member of the American Bar Association, the Judge Advocates Association, and the Department of Energy Contractor Attorneys Association.

Mike and his wife Carissa have three sons, a 95lb rescue dog named Sam, and are both volunteers with Scouting America.

Tiffany Schafer

Tiffany Schafer is Argonne National Laboratory's Senior Attorney for Laboratory Operations, focusing primarily on contracts and procurement matters, including real estate. She advises Laboratory management on regulatory and compliance issues relating to contracts, organizational conflicts of interest, and DOE directives and regulations, and her other practice areas include insurance coverage matters and litigation defense. Prior to joining Argonne in 2019, Tiffany was a Senior Assistant Attorney General for the Illinois Attorney General's Office, serving as in-house counsel to the Illinois Tollway.

First-of-a-Kind Agreements First-of-a-Kind Technologies

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in Advanced Nuclear and Fusion

Continuing Legal Education Program

DOECAA SPRING CONFERENCE APRIL 22, 2026

Meet the Panel

Name	Role	Affiliation
Stephen Burdick	Panelist	Senior Counsel – Idaho National Laboratory
Sachin Desai	Panelist	Vice President of Global Affairs – Pacific Fusion
Austin Raynor	Panelist	General Counsel – General Matter
David Tressler	Panelist	Chief Legal Officer – Commonwealth Fusion Systems
John Myer	Moderator / Host	Senior Counsel – Husch Blackwell LLP

Detailed biographies available at the end of this presentation.

Program Overview

I	The Evolving Landscape: From Atomic Energy Commission to Modern Partnerships
II	Key Legal Structures: ARDP, Fusion Milestones, OTAs & More
III	Risk Management as the Central Legal Challenge
IV	Regulatory Reform and Its Relationship to Contracting
V	Lessons Learned and Best Practices
VI	Looking Forward: Challenges and Opportunities
VII	Audience Q&A and Open Discussion

Section I: The Evolving Landscape

From Government-Led R&D to Commercial-Scale Partnerships

1950s–1970s

Government Bears the Risk

The Atomic Energy Commission (AEC) and early DOE programs took on virtually all development risk, contracting with national labs and private entities to advance nuclear technology.

1980s–2010s

Increasing Accountability for M&O Contractor Performance

Regulatory compliance burdens, cost management scrutiny, and project delivery accountability all increased significantly, raising the operational bar for M&O contractors. Meanwhile, structural protections available to M&O contractors were not readily accessible to outside companies seeking to work with or near the labs, creating friction for broader private-sector participation and a more challenging environment for smaller companies.

2020s–Present

New Partnership Models Emerge

Public-private partnerships, OTAs, milestone-based contracts, and novel land access agreements reflect an ongoing effort to rebalance risk and incentivize private-sector participation.

Discussion: *How does the history of risk allocation shape the legal challenges counsel face today?*

Section I (cont.): The M&O Model Under Pressure

The M&O Contractor Squeeze

The M&O model was never designed for risk-sharing. It was designed for mission delivery with the government backstopping and the contractor performing. But decades of statutory and regulatory change have quietly shifted that balance. Today, M&O contractors perform work and take on risks the model never accounted for, with a fee structure that has not kept pace and margins that offer no cushion.

There are only two places for the risk to go: onto the private developer, or back onto DOE.

Meanwhile, private innovators, particularly in fusion and advanced nuclear, historically resisted government contracts precisely because the risk/reward ratio was unattractive. The companies able to absorb traditional contract risk tended to be large, established defense contractors, not early-stage innovators.

Discussion: *Is the M&O model built for large-scale advanced nuclear and fusion demonstration projects? Where does the M&O model excel, and where might complementary mechanisms be needed, in the context of large-scale advanced nuclear and fusion demonstration projects?*

Section II: Representative Legal Structures & Programs

Advanced Reactor Demonstration Program (ARDP)

Flagship DOE program supporting advanced nuclear reactor designs. Features significant cost-sharing, large-scale federal funding, and focus on commercial viability. Structure has influenced subsequent fission and fusion initiatives.

Fusion Milestone Program

Modeled on ARDP and commercial space (SpaceX COTS) milestone contracts. Performance-based approach: staged payments tied to technical milestones, risk on private companies, with IP protection and commercial deployment rights provisions.

Project Pele & Microreactors

DOD-led partnership with DOE and private industry to develop deployable microreactors. Exemplifies the need for flexible contracting and rapid prototyping frameworks across government agencies.

Discussion: *What are the legal lessons from each model that should shape future program design?*

ARDP vs. Fusion Milestones — A Comparison

Feature	ARDP	Fusion Milestone Program
Funding Structure	Cost-share (government + industry co-investment)	Milestone-based staged payments
Selection Process	Commercial / business criteria	Office of Science peer review
Number of Awardees	2–3 large awardees selected early; concentrated funding	8 companies initially; field to narrow as milestones are or are not met (but refresh as new companies enter)
Risk Profile	Large, concentrated; awardees become de facto “too big to fail” government contractors	Distributed across broader field; companies bear milestone delivery risk
IP Rights	Different treatment between DOE program offices	IP protections more explicitly addressed in milestone structure

Discussion: *What from these models informs programs such as INFUSE, GAIN, or ARPA-E’s TIAs?*

CRADAs, SPPs, OTAs & Novel Agreements

CRADAs & SPPs

Originally designed for small-scale research collaborations, now stretched to accommodate large demonstration projects — exposing limitations in standard terms.

The CRADA/SPP Fragmentation Problem

Across the DOE complex, there are now approximately 6–7 different variants in use — access CRADAs, umbrella CRADAs, and others. What was intended as a standardized model has become individualized lab-by-lab risk management.

Other Transaction Authorities (OTAs)

Originally mostly a DOD mechanism, now adopted by DOE. Unlike traditional M&O-led arrangements where the lab bears prime contractor risk, OTA's position the private company as the prime, making them better starting point for rational risk distribution with lab support flowing through SPPs and CRADAs in a supporting role.

Land Access & Data Center Agreements

DOE using land assets at INL and other labs to support industry pilots, reactor sites, and data centers. Requires careful balancing of government interests, contractor risk, and industry needs.

Spotlight: Commonwealth Fusion Systems and the Milestone Program

A New Contracting Frontier

Commonwealth Fusion Systems is one of the highest-profile participants in DOE's Fusion Milestone Program, with funding tied to achieving specific technical demonstrations of its SPARC demonstration fusion device (a compact tokamak) designed to achieve net energy gain and the design of its ARC Fusion power plant.

The milestone structure required CFS to bear delivery risk on defined technical benchmarks in exchange for staged government payments, incentivizing rapid execution while preserving the company's commercial IP and deployment rights.

CFS's experience illustrates the core tension in milestone contracting: the model supports private innovation by aligning government funding with demonstrated results but demands that counsel carefully negotiate the boundary between government oversight and the commercial freedom needed to attract private capital. Beyond the Milestone Program, CFS has been innovating on agreements with national labs and other institutions to provide access to SPARC assets.

Discussion: *When a fusion company's private funding significantly exceeds its government award, how should contract terms reflect the shifted balance of risk and investment?*

Spotlight: Use of Fusion Demonstration Systems

A New Contracting Frontier

Fusion companies are building first-of-a-kind neutron and radiation sources that have a variety of useful applications. Many of these companies want to partner with researchers and the government to use these facilities for private and public benefit. The government especially is expected to be a major user of these facilities.

For legal counsel, this represents a unique challenge and opportunity to use a privately funded fusion facility to simultaneously satisfy commercial, US government, and investors; while navigating DOE and NNSA relationship structures.

Discussion: *How does a company pursue government contracting while preserving its ability to deploy the underlying technology commercially?*

Spotlight: General Matter & Uranium Enrichment

A New Contracting Frontier

General Matter is aiming to provide a secure, domestic source for America's uranium enrichment needs. Founders Fund-backed, it has pursued a novel production and contracting approach with the government, modeled in part on the commercial space milestone program structure.

Its recent award, which is a $900 million task order to deliver HALEU (High-Assay Low-Enriched Uranium, the fuel for SMRs and MMRs), illustrates a contracting structure that places delivery risk at the contractor level similar to the SpaceX COTS model.

Historically, uranium enrichment was a government function under USEC. The transition to private commercial contracting raises novel questions about the regulatory structures that must change to accommodate a fully private enrichment company.

Discussion: *What are the legal structuring challenges unique to first-of-a-kind commercial nuclear ventures?*

Section III: Risk Management

The Defining Legal Challenge in Advanced Nuclear and Fusion Partnerships

Risk Allocation

The traditional M&O model placed most risk on government. Recent shifts push risk onto private industry and lab contractors, which can be problematic for M&O entities with non-profit, pass-through structures.

Contract Evolution

Some labs have adapted by pushing for stronger indemnification protections, more explicit warranty disclaimers, and deviations from standard IP clauses in individual negotiations rather than relying on terms that no longer reflect current risk profiles.

Cost-Sharing & Milestones

Programs like ARDP and fusion milestones use cost-sharing and milestone-based payments to align incentives. These require meticulous legal structuring for fairness and viability.

IP & Commercial Rights

Protecting intellectual property and ensuring commercial deployment rights are critical — especially in partnerships involving significant government funding or national security.

Discussion: *How should legal counsel structure arrangements that serve both national defense and commercial interests without compromising either?*

⚖ Section IV: Regulatory Reform & Contracting

The “Hydraulic” Relationship

As regulatory barriers are removed, attention shifts to contractual barriers. Legal counsel must ensure that both sets of barriers are addressed in tandem, not in isolation. Regulatory reform alone is insufficient; industry must also innovate in contracting and risk management.

- Executive orders have targeted deregulation and streamlined project approvals for advanced nuclear and fusion
- New pilot programs and regulatory overhaul at NRC and DOE are actively reshaping the contracting landscape
- Government getting out of the way is not sufficient alone to revitalize the industry; ***industry must also innovate on the contracting side***
- Counsel must serve as the bridge between regulatory reform teams and commercial/contracting teams within organizations

Discussion: *Where do you see the next major barrier — regulatory or contractual — and how should counsel be preparing?*

Section IV (cont.): Executive Orders in Practice

NRC Overhaul

Currently being implemented, with an estimated ~10,000 pages of rulemaking expected to roll out covering deregulation and streamlined project approvals.

Reactor and Fuel Line Pilot Programs

The Reactor Pilot Program establishes a new DOE pathway which leverages DOE's authority to expedite R&D with the goal of at least three advanced reactor concepts reaching criticality by July 4, 2026. The Fuel Line Pilot Program provides a domestic fuel supply chain for testing new reactors. The Nuclear Energy Launch Pad builds on these Pilot Programs.

Contracts as Regulatory Tools

Designating a developer or the M&O contractor as prime contractor is a regulatory strategy, not just a procurement choice. It helps keep the project within DOE's authority and off the NRC's licensing docket. The contract may help resolve a jurisdictional barrier.

Hydraulic Government Action

Government is not just removing barriers but actively using contract authorities to restore momentum in an industry suppressed for years by regulation — a "hydraulic" use of contracts to jumpstart the sector.

Spotlight: The Lawyer's Role in First of a Kind Partnerships

Scope is broader than national labs. The same enabling role applies across all government partnerships, including DOE, DOD, NNSA, and beyond. Counsel must understand the full landscape, not just the lab-specific instruments.

Multi-layered negotiations are the norm. Government-industry partnerships in this space are not bilateral. They involve DOE program offices, M&O contractors, private developers, national security agencies, and sometimes multiple labs, each with distinct risk tolerances, contracting authorities, and institutional interests. This is structurally harder than bilateral regulatory reform and requires counsel who can hold the full picture.

Understanding risk is the prerequisite. Counsel cannot structure an innovative agreement without first understanding what risk each party can absorb, where risk logically belongs, and what tools (CRADAs, SPPs, OTAs, milestone structures, JVs) are available to get it there.

Opening the aperture. The best counsel in this space are not just documenting deals others have designed. They are helping their clients see options that are not obvious, such as structures that have worked in adjacent industries, programs that have not yet been used for a given application, and contract mechanisms that address regulatory barriers directly.

Section V: Lessons Learned & Best Practices

1 Flexibility Over Formulae

One-size-fits-all models rarely work. Each partnership requires a tailored legal approach responsive to specific risks, technologies, and parties.

2 Proactive Risk Management

Anticipate and address risk allocation issues early in the contracting process rather than relying on standard forms or government templates.

3 Cross-Functional Collaboration

Successful partnerships demand close coordination between legal, technical, and business teams — both within organizations and across government-industry boundaries.

4 Transparency & Communication

Clear communication about risk, expectations, and responsibilities builds trust and prevents disputes. Ambiguity is the enemy.

5 Continuous Learning

The legal landscape is evolving rapidly. Counsel must stay current on new programs, regulatory changes, and best practices emerging across the sector.

Discussion: *What is the single most important lesson you would pass on to a lawyer entering this space for the first time?*

Section VI: Looking Forward

Challenges & Opportunities

01	**Evolving Partnership Models**	New models for risk allocation and project delivery will continue to emerge. Legal counsel must be prepared to innovate alongside the technology.
02	**Rethinking the Government Contracting Model**	The limitations of the current government contracting model may necessitate fundamental changes to enable large-scale innovation within the national laboratory system.
03	**Integrating Regulatory & Contractual Reform**	Legal professionals must bridge the gap between regulatory reform and contractual innovation to remove barriers holistically and accelerate commercial deployment.
04	**Building a Broader Legal Community**	As more firms and practitioners enter this space, there is a unique opportunity to share knowledge, develop new standards, and support the sector's growth.
05	**Enabling Industry Revitalization**	Legal counsel play a central role in balancing the imperatives of innovation, safety, national security, and effective risk management.

Discussion: *What does the next generation of government-industry partnership look like in five years — and what legal tools don't yet exist that we need?*

💬 Section VII: Q&A & Open Discussion

Topics audience members may wish to raise:

- How does your organization approach the CRADA/SPP fragmentation problem?
- What IP structuring approaches have worked or failed in your experience?
- How are you advising clients on the interface between the new executive orders and existing contract structures?
- Beyond the Price Anderson Act, what role does insurance play in your risk management?
- Do you structure JVs or parent company backstops to share risk across organizations?

The panel will conclude with open discussion, inviting questions from the audience and encouraging further dialogue among legal professionals in the field.

Thank You

Stephen Burdick

Panelist

Engineer + Attorney

Idaho National Laboratory

Morgan Lewis - Nuclear Regulatory

Biography

Stephen Burdick is Senior Counsel for Battelle Energy Alliance, the M&O contractor for the Idaho National Laboratory. He advises the Laboratory on advanced nuclear projects and related policy topics. Stephen practiced law for almost 15 years in the Morgan Lewis nuclear practice based in Washington D.C. where he represented clients on licensing and regulatory matters before the U.S. Nuclear Regulatory Commission with an emphasis on new reactor projects. Stephen began his nuclear career as a Nuclear Plant Engineer and Operator at the Knolls Atomic Power Laboratory in upstate New York where he helped train Navy sailors in the Naval Nuclear Propulsion Program. Stephen obtained his law degree from the U.C. Berkeley School of Law and a B.S. in Chemical Engineering from Brigham Young University.

Sachin Desai

Panelist

Pacific Fusion

Helion Energy

Hogan Lovells-NRC- Nuclear Regulatory

Biography

Sachin Desai has built a career deploying nuclear projects across the US. He is currently the VP of Global Affairs at Pacific Fusion, where he helps lead US and international regulatory and government engagement. Beginning May 4, 2026, Sachin will be Chief Regulatory and Legal Officer for Zeno Power. He is also Chair of the Board of the Fusion Industry Association. Before joining Pacific Fusion, Sachin was General Counsel at Helion Energy, where he helped lead the fusion industry's engagement with the NRC, Congress, and state governments as they developed seminal positions on how to regulate fusion. Prior, he was an attorney at Hogan Lovells, where he focused on licensing advanced nuclear reactors and fusion energy, and first-of-a-kind nuclear industry transactions. He started his legal career at the US Nuclear Regulatory Commission and obtained his law degree from Harvard Law School, where he also served as Editor in Chief of the Harvard Environmental Law Review. He holds master's and bachelor's degrees in engineering from Cornell University.

Austin Raynor

Panelist

General Matter

Senior White House Counsel

Department of Government Efficiency

Biography

Austin Raynor is the General Counsel of General Matter, a startup focused on reshoring uranium enrichment. He was previously a Senior Counsel in the Office of White House Counsel and, before that, the General Counsel of the Department of Government Efficiency. While in the government, Austin focused on deregulation, nuclear policy, NEPA reform, AI policy, and other issues at the intersection of technology and regulation. Austin also has extensive litigation experience, serving as an Assistant in the Office of the Solicitor General, where he argued eight cases in the United States Supreme Court, and as an associate at Sullivan and Cromwell. He began his career by clerking for Judge Wilkinson on the Fourth Circuit and Justice Thomas on the Supreme Court.

David Tressler

Panelist

Commonwealth Fusion Systems

Waymo / Autonomous Vehicles

Kirkland & Ellis

Biography

David Tressler serves as Chief Legal Officer of Commonwealth Fusion Systems, where he leads the company's legal and compliance functions, acts as legal advisor to the Board of Directors, and provides strategic counsel across the company's corporate development, regulatory, and commercialization initiatives. Before joining Commonwealth Fusion Systems, David served as Chief Legal Officer at 6K Inc. Prior to that, he spent nearly seven years at Waymo as Deputy General Counsel, where he played a central role in the company's rapid growth and successful commercialization, helping to navigate a first-of-its-kind regulatory environment while building a world-class legal team capable of operating at scale. Earlier in his career, David was a partner at Kirkland & Ellis LLP in Chicago. He has also served in the U.S. Army Reserve for more than nineteen years. David holds a J.D. from Harvard Law School, where he was a Hewlett Fellow in Negotiation, and a B.A. in Economics from Xavier University in Cincinnati.

John Myer

Moderator / Host

Husch Blackwell

Fermilab

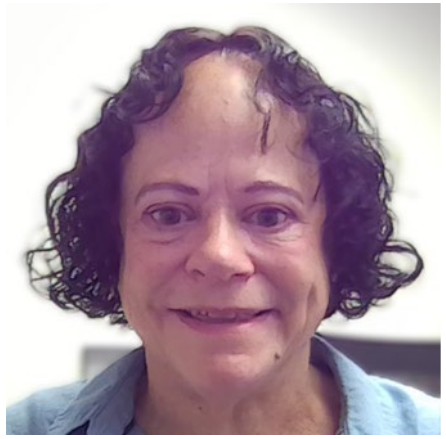
Trane Technologies

Biography

John is Senior Counsel at Husch Blackwell, where he advises companies on the development, financing, and delivery of science and engineering projects spanning commercial fusion, advanced nuclear, AI, and quantum computing. He is also co-founder of the Great Lakes Fusion Energy Alliance and a Fellow at the 5 Lakes Institute. Previously, John served as General Counsel and Corporate Secretary at Fermilab. Before Fermilab, he served as Associate General Counsel and leader of the Government Contracting Center of Excellence at Ingersoll Rand and Trane (now Trane Technologies). John began his legal career as a construction and government contracts litigator at Thompson Hine. Prior to law school, he worked as a manuscript editor at *The Astrophysical Journal*, published by the University of Chicago Press. John holds a J.D. from the University of Michigan Law School and a B.A. from Oberlin College.

With Great Power Comes Great Responsibility: Counsel Perspectives on Guiding Clients and Managing False Claims Act (FCA) Risk

Panelists



Jane Morris	Therese Leone	Reggie Jones	Keeley McCarty
General Counsel Ames National Laboratory	**Chief Laboratory Counsel** Lawrence Berkeley National Laboratory	**Chair** Federal Government Contracts Department, Fox Rothschild LLP	**Partner** Federal Government Contracts Department Fox Rothschild LLP
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False Claims Act – Quick Primer

2025 Civil False Claims Act Statistics

- Record $6.8 billion in settlements and judgments for FY 2025
- $85 billion in recoveries since 1986
- 1297 new relator (qui tam) suits (cases brought by whistleblowers) filed in FY 2025 – almost 25 new cases per week
- More than $330 million paid to whistleblowers in FY 2025

False Claims Act, 31 U.S.C. § 3729 et seq.

- Imposes liability for the following:
  - **False Claim:** Knowingly submitting a false claim to the government or causing another to do so
  - **False Statement:** Knowingly making, using, or causing to be made or used a false record/statement material to a false claim
  - **Reverse False Claim:** Knowingly concealing or decreasing an obligation to pay money to government
  - **Conspiracy** to commit # 1, 2, or 3 above
- Applies when even $1.00 of federal money is used to fund the project. *U.S. v. Custer Battles*, 562 F.3d 295 (4th Cir. 2009).
- "A defendant who induces a victim to enter into a transaction under materially false pretenses may be convicted of federal fraud even if the defendant did not seek to cause the victim economic loss." *Kousisis v. United States*, 605 U.S. 114 (2025)

False Claims Act – Key Elements

- **Falsity** – claim or statement must be false
  - Factual falsity where claim misrepresents the goods or services provided
  - Legal falsity through fraudulent inducement or implied certification theory
- **Knowledge** – defendant must know claim or statement is false:
  - Three paths to knowledge:
    - Has actual knowledge of falsity
    - Acts in deliberate ignorance of truth/falsity
    - Acts in reckless disregard of truth/falsity
  - Subjective standard looks to what defendant believed at the time of conduct, *U.S. ex rel. Schutte v. SuperValu Inc.* (2023)
- **Materiality** – falsehood must be material to the government's decision to pay
  - Rigorous and demanding standard, *Universal Health Services, Inc. v. U.S. ex rel. Escobar* (2016)

False Claims Act – What's the Risk

- **Treble Damages** – 3x the amount of damages sustained by the government (could be full value of contract)
- **Civil Penalties**
  - Current penalty range: $14,308 to $28,619 for each false claim or statement
  - Could assess penalty for every invoice submitted on project
- **Other Potential Risks**
  - Costs of litigation
  - Forfeiture of legitimate claims
  - Suspension/debarment from federal contracting
- **Criminal False Claims** – another potential avenue of enforcement, carries fines, potential restitution, and jail time

FCA Risks and Considerations in DOE Contracting

- Mandatory Disclosure Rule, FAR 52.203-13
- Subcontractor Liability
- Liability for Subcontractor Violations

OIG Mandatory Reporting

- FAR 52.203-13, Contractor Code of Business Ethics and Conduct

  (b)(3)(i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed–

  (A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

  (B) A violation of the civil False Claims Act (31 U.S.C. 3729-3733)

- FCA is the only civil statute on the mandatory disclosure list

Mandatory OIG Reporting and Subcontractors – False Claims Act versus Fraud

- Most subcontractor acts which could constitute an FCA violation could also potentially be criminal fraud, with the Criminal False Claims Act (18 U.S.C. § 287) and False Statements (18 U.S.C. § 1001) being the closest to civil FCA
- BUT **the FCA has a much lower mental state requirement**– Civil FCA expressly does not require specific intent to defraud and includes deliberate indifference and reckless disregard
- In contrast, False Statements statute requires knowing and willful conduct and Criminal False Claims requires “knowing” conduct.

Subcontractor Liability under the FCA

Statutory basis for subcontractor liability:

- FCA expressly includes indirect claims

> 31 U.S.C. § 3729(a)(1)
>
> IN GENERAL.—Subject to paragraph (2), any person who—
>
> A. knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
>
> . . .
>
> is liable to the United States Government for a civil penalty . . . plus 3 times the amount of damages

Subcontractor Liability under the FCA

- Definition of "claim" includes indirect claims:

31 U.S.C. § 3729(b)(2) – "Claim"

A. means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

   i. is presented to an officer, employee, or agent of the United States; or

   ii. is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government—

      I. provides or has provided any portion of the money or property requested or demanded; or

      II. will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded

Potential Sources of Subcontractor Liability

- Foreign funding, affiliations, or talent programs in research
- Timecard fraud
- Failure to meet contract specifications
- False small business certification
- Inadequate cybersecurity controls
- Many more

Prime Contractor FCA Liability for Subcontractor FCA Violations

- Prime's liability is not automatic
- FCA mental state requirement:

31 U.S.C. § 3729(b)(1)
the terms "knowing" and "knowingly"-

A. mean that a person, with respect to information-
   i. has actual knowledge of the information;
   ii. acts in deliberate ignorance of the truth or falsity of the information; or
   iii. acts in reckless disregard of the truth or falsity of the information

Prime's Mental State Requirement, Continued

- Can be liable under the FCA for reckless disregard or deliberate ignorance, **but mere negligence of any kind, including gross negligence is not enough to create FCA liability:**

- U.S. ex rel. Farmer v. City of Houston, 524 F.3d 333 (5th Cir. 2008):

  "These . . . factors would suggest to the jury that even if the reimbursement forms submitted by the third-party contractors in fact contained false statements, it would have been relatively difficult for the defendants to ascertain that fact. Granted, defendants might have been negligent in failing to identify the overcharges, but the jury would conclude that the presence of these additional factors tends to mitigate against finding that defendants acted knowingly."

Caveat – Ames and Lawrence Berkeley National Labs and the FCA

- The FCA applies to “persons” (31 U.S.C. §3729(a)(1)).
- Ames Lab is managed and operated by Iowa State University which is an instrumentality of the State of Iowa
- Lawrence Berkeley Lab is managed and operated by the Regents of the University of California
- States are not “persons” for the purposes of qui tam FCA suits: Vermont Agency of Natural Resources v. U.S. ex rel. Stevens, 529 U.S. 765 (2000)
- State may be “persons” for purposes of FCA suits brought by United States

Strategy to Avoid Liability for Subcontractor Violations

- **Prime must defend against "deliberate indifference" or "reckless disregard" of the truth or falsity of the Subcontractor's claims**
- Strong internal controls
  - Policies/procedures requiring prepayment review of subcontractor invoices by staff knowledgeable of the Subcontractor's work requirements as well as staff familiar with DOE allowability requirements
  - Subcontractor compliance with applicable regulations and statutes also critical to potential FCA liability
- Follow up investigation on invoices or with red flags
- Audits of invoices post payment

Division of Damages and Penalties

- FCA liability can apply to both Prime contractor and Subcontractor
- Damages: Prime and Subcontractor are jointly and severally liable for entire government loss. *United States v. Cooperative Grain and Supply*, Co., 476 F2d 47 (8th Cir. 1973)
- Civil Penalties/ Forfeitures: Each party penalized for each claim that party submitted. *United States v. Bornstein*, 423 U.S. 303 (1976)

Allowability of Prime Contractor Claim for Subcontractor FCA Violations

- Under FAR Part 31, to be allowable, contractor expenses must be:
  - Reasonable, and
  - Allocable

Recent Developments in FCA Enforcement

Revised Interpretation of Federal Anti-Discrimination Laws

- Trump Administration, including EEOC, has taken the position that affirmative action programs, and some diversity, equity, and inclusion efforts are illegal discrimination in violation of Civil Rights Act of 1964
- Examples of illegal DEI, when based on race, sex, or other protected characteristic:
  - Targeted recruiting and hiring efforts
  - Employee training and mentorship
  - Employee Resource Groups that limit membership
- DOJ Civil Rights Fraud Initiative – will pursue FCA charges against institutions that violate federal anti-discrimination laws

IBM Settlement

- DOJ announced $17 million FCA settlement with IBM Corporation April 10
  - $8.2 million in restitution to government
- Alleged liability based on
  - IBM's failure to comply with anti-discrimination laws while performing federal contracts
  - IBM allocating costs for DEI practices to federal contracts and seeking reimbursement
- Alleged conduct dating back to 2019
  - Compensation tied to achieving demographic targets
  - Taking protected characteristics into account in hiring and recruiting, including by altering interview eligibility criteria based on race, color, or sex
  - Developing race and sex demographic goals and making employment decisions accordingly
  - Limiting some training and mentorship opportunities based on race, color, or sex
- Settlement agreement references FAR 52.222-26 - denounced by EO 14173

Executive Order 14173

- “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” signed January 21, 2025
- Revoked long-standing Executive Order 11246, “Equal Employment Opportunity” (1965)
- Federal Affirmative Action Plans, 41 CFR § 60-2, no longer required or permitted
- New contract term requiring certification by contractors and grant recipients that they do not operate illegal DEI programs
  - Could be incorporated into SAM.gov certifications
- New contract term requiring contractors and grant recipients to agree that compliance with Federal anti-discrimination laws is “material” under the FCA

DOE Implementation – DOE-H-2089

COMPLIANCE WITH FEDERAL ANTI-DISCRIMINATION LAWS (APR 2025)

(a) *Definition.* As used in this clause—
Program promoting diversity, equity, and inclusion means a program whose purpose is to promote preferences based on race, color, religion, sex, or national origins, such as in training or hiring.

(b) *Compliance.* The Contractor shall comply with all applicable Federal anti-discrimination laws. These laws apply whether or not the company is a Government contractor. Compliance with applicable Federal anti-discrimination laws is material to eligibility for and payment under this contract for purposes of 31 U.S.C. 3729(b)(4).

(c) *Certification.* By requesting payment under this award, the contractor certifies that, to the best of its knowledge and belief, it does not operate programs promoting diversity, equity, and inclusion that violate any applicable Federal anti-discrimination laws.

(End of Clause)

March 26, 2026 Executive Order

- “Addressing DEI Discrimination by Federal Contractors”
- Requires agencies to include prescribed DEI clause in all federal contracts, subcontracts, and contract-like instruments
- Prohibits racial discrimination in subcontracting and in allocation of contractors’ resources
- Deems violation of clause “material” under the FCA
- Directs DOJ to
  - Consider prosecuting violations of clause under FCA
  - Prioritize investigating qui tam FCA complaints of procurement fraud

“In connection with the performance of work under this contract, [the contractor/appropriate party (contractor)] agrees as follows:

1. The contractor will not engage in any racially discriminatory DEI activities, as defined in section 2 of the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors);

2. The contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the contracting agency pursuant to the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors), for purposes of ascertaining compliance with this clause;

3. In the event of the contractor’s or a subcontractor’s noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor or subcontractor may be declared ineligible for further Government contracts;

4. The contractor will report any subcontractor’s known or reasonably knowable conduct that may violate this clause to the contracting department or agency and take any appropriate remedial actions directed by the contracting department or agency;

5. The contractor will inform the contracting department or agency if a subcontractor sues the contractor and the suit puts at issue, in any way, the validity of this clause; and

6. The contractor recognizes that compliance with the requirements of this clause are material to the Government’s payment decisions for purposes of section 3729(b)(4) of title 31, United States Code (False Claims Act).”

Revolutionary FAR Overhaul

- Goals:
  - Remove many non-statutory requirements
  - Remove 1000+ “shalls” and musts”
  - Enable commercial-like, agile procurements
  - Increase competition
- Two phases of implementation
  - Phase 1: FAR Council issues deviations that must be adopted by each agency to take effect [COMPLETE]
  - Phase 2: Formal notice & comment rulemaking [YET TO BEGIN]
    - 41 U.S.C. § 1707 procedures
    - Will incorporate public feedback on deviations

DOE Implementation

- Adopted RFO deviations for Parts 1, 6, 10, 11, 13, 14, 34, 37, 41, 42, 43, 47, 49, 53
- Parallel “Project Velocity” – Deregulation initiative seeking to rewrite safety, construction, and oversight rules
  - Series of 80+ DOE orders meant to speed up contracting process
  - Construction approval limits raised
  - Fewer approvals required for construction administration
- Increased FCA risk?
  - More discretion placed on contractors due to fewer clear requirements and direct approvals
  - More tenuous working relationship with DOE contracting personnel
  - Variance across projects could increase contract compliance ambiguity

Cybersecurity and Controlled Unclassified Information

- Government-wide focus on protecting government data
- New rules on controlled unclassified information (CUI):
  - Proposed FAR CUI rule
  - DOD's CMMC rollout
  - GSA's "Protecting Controlled Unclassified Information (CUI) in Nonfederal Systems and Organizations Process"
- DOJ Civil Cyber Fraud Initiative – targets contractors who fail to comply with contractual cybersecurity requirements
  - Nine cybersecurity-related FCA settlements in FY 2025 alone ($52 mil)

DOE Implementation

- DOE Order 205.1D, Department of Energy Cybersecurity Program (2024)
- DOE Order 471.7, Controlled Unclassified Information (2022)

Key Takeaways

- Refresh Code of Business Ethics & Conduct, equal employment opportunity policies and practices, and compliance training for federal project personnel
- Monitor subcontractors' compliance with key contractual requirements and meaningfully review invoices
- Closely review new contracts, modifications, and SAM.gov certifications for inclusion of new anti-discrimination clause/certifications
- Communicate in writing with contracting officer regarding ambiguous contract requirements

Jane Kopp Morris has been General Counsel of Ames National Laboratory since 2000. Before that, Jane spent ten years as staff attorney and then Managing attorney at Legal Aid of East Tennessee in Knoxville, Tennessee. Previously, Jane has worked in private practice, the non-profit sector, and for the Federal Government. Jane is a graduate of Cornell Law School (J.D.), University of Texas at Austin (MA), and the University of Notre Dame (BA).

Keeley McCarty is a partner in Fox Rothschild's Federal Government Contracts Department and advises clients on all aspects of federal contracting, including False Claims Act risk and defense. Keeley guides government contractors in responding to civil investigative demands, conducting internal investigations, and litigating federal and state FCA claims from motions practice through trial. Keeley's experience includes defending a large software manufacturer against a $1 billion FCA lawsuit in a four-week bench trial before the US District Court for the District of Columbia.

Reggie Jones is Chair of Fox Rothschild's Federal Government Contracts Department and has a well-established federal compliance and litigation practice with a focus on large, complex claims, internal investigations, and civil and criminal False Claims Act defense. Reggie has represented the U.S. Department of Energy and the National Nuclear Security Administration to provide litigation support for the agency's defense of numerous cases before the Civilian Board of Contract Appeals and the U.S. Court of Federal Claims.

Therese M. Leone serves as Chief Laboratory Counsel for Lawrence Berkeley National Laboratory, where she leads the Laboratory Counsel's team of legal and regulatory professionals. Prior to her current role, she spent nearly a decade advising senior administrators at UC Berkeley (2012–2021) on complex investigations, labor and employment issues, academic policies, student affairs, and Title IX compliance. She also served as Vice President and General Counsel at Mills College (2008–2012), where she oversaw all legal matters and advised the Board of Trustees. As a labor and employment attorney in the UC Office of General Counsel (2002–2008), she provided systemwide counsel on faculty, staff, and student employee matters. Therese holds a J.D. from the University of California, Berkeley, and a B.A. from Northwestern University.

James M. Durant III

As Chief Counsel for the Office of Science-Chicago, Mr. Durant's staff are the legal advisors for all the US National Laboratory Site Offices handling management and operation contracts, acquisitions and grants, environmental law, personnel law, patent applications and licensing actions, etc. He is a principle legal advisor to the DOE Office of Science Field Operations and its Combined Service Center in Oak Ridge Tennessee. His organization is comprised of a General Law Division and a Patent Law Division. Mr. Durant is a Career Senior Executive Service Appointee who began serving DOE in 2013 following a 26-year Air Force career where he retired as a full-bird Colonel.

During his military career, he was appointed as a Judge Advocate, Special Assistant United States Attorney (CA/TX), and an International Commissioner. As a former NATO senior officer, he deployed for OPERATION ENDURING FREEDOM and NORTHERN WATCH serving as the head lawyer for NATO Air South and NATO Headquarters Bosnia. In Bosnia, he was the US National Intelligence Cell's primary lawyer. He is credited with leading armed intrusion teams on six highly dangerous urban assault missions bringing to justice high Serbian officials. In 2003, he was the initial lead lawyer for the Space Shuttle Columbia disaster operation. Colonel Durant served as the first Staff Judge Advocate at the Defense Threat Reduction Agency and Hill Air Force Base. At Vandenberg Air Force Base, he was the first lawyer assigned to the newly established Joint Space Operations Center. He later served as the Deputy Department Head and Professor of Law at the US Air Force Academy. In 2009, the US State Department selected Colonel Durant to serve as the VCI Strategic Initiatives Officer--here he authored the legal authority instrument allowing the United States to negotiate with Russia for the second Strategic Arms Limitations Treaty, START II. In his last military assignment, he was the Legal Director over all US Forces in the UK and Acting US Country Representative to Her Majesty's Royal Government in the UK.

Mr. Durant is well published and has lectured internationally, most recently at the United Nations' Palace De Nations in Geneva Switzerland for a UN publication he co-authored. He is a Fellow of the United Nations endorsed Institute on Responsible Leadership, a Life Fellow of the American Bar Foundation, and a Fellow of the ABA Young Lawyers Division, which he chaired. His is a former Governor on the ABA Board of Governors, and former Chair of the Senior Executives Association, Chicago Federal Executive Board, the ABA Solo Small Firm General Practice Division, and the Tuskegee Airmen National Resolutions Committee. He most recently chaired Easterseals' largest Region. Working for the International Criminal Court, Mr. Durant serves on a Task Force drafting rules for trying cases before the ICC. Among numerous military citations and medals, he earned the Legion of Merit Medal and two Defense Meritorious Service Medals. The Judge Advocates Association and the ABA recognized him as the Outstanding Air Force Judge Advocate of the Year. Mr. Durant is the recipient of the ABA's Lifetime Award, Difference Makers Award, Nelson Award, and most recently, the Spirit of Excellence Award (ABA's 2nd Highest Award). He is also the recipient of the 2025 Senior Executives Lifetime Achievement Award. Mr. Durant earned his BA and JD from Howard University. He is married to Karen Durant, and they have two sons, 1LT James Durant IV, USA, and Jonathan Durant. He is licensed before the US Supreme Court, Supreme Court of Pennsylvania and the US Court of Appeals for Armed Forces Law.

Artificial Intelligence Law Around the World and the United States: Regulatory landscape, enforcement trends, and notable U.S. cases

Rachna Mehta Talwar, Esq.

DOECAA 2026

Agenda

- Global regulatory landscape: models and themes
- European Union AI Act: risk-based regime and cross-border implications
- China AI Governance
- Other Global Developments
- United States: federal landscape and state examples
- Areas of Current Litigation
  - Copyright and Fair Use Legislation
  - Privacy & Biometrics
  - Algorithmic Bias & Discrimination
- Legislative Guardrails
- Mandatory Court Disclosures
- Notable Court Cases & Sanctions
- Ethical & Billing Regulations

Global regulatory landscape: Primary Regulatory Models

Comprehensive cross-sector regimes (e.g., EU)

Sector-specific or use-case focused regimes (e.g., health, finance)

Soft-law governance and risk-management frameworks (e.g., NIST RMF, OECD AI Principles)

European Union: The AI Act – Phased in since its 2024 Adoption

Prohibited Practices: As of February 2025, bans are in effect for AI systems posing "unacceptable risk," such as social scoring, emotion recognition in workplaces, and real-time biometric identification in public spaces.

AI Literacy: Since February 2025, companies must ensure staff involved in AI deployment have adequate AI literacy.

High-Risk Systems: Obligations for systems used in critical areas (e.g., recruitment, credit) are set to apply in August 2026, though a "Digital Omnibus" proposal may delay these until late 2027 to finalize technical standards.

Penalties: Fines can reach €30 million or about 6% of global annual turnover (which ever is higher)

China: data,privacy, and AI governance

- China uses a "vertical" control model targeting specific technologies.
  - Content Labeling: Effective September 2025, all AI-generated content must have visible and encrypted metadata watermarks to ensure trackability.
  - Security: 2026 amendments to the Cybersecurity Law allow for immediate, severe fines for AI-related data leaks or infrastructure failures.

Other Global Developments

- Council of Europe: Opened the Framework Convention on AI (2024), the first legally binding international treaty on AI, focused on protecting human rights.
- Japan: Passed the AI Promotion Act (2025), which uses an "innovation-first" approach with voluntary guidelines rather than strict punitive measures.
- Brazil: Advancing Bill No. 2338/2023, a risk-based framework like the EU AI Act that grants citizens rights to contest AI decisions.

United States AI Law: Current Landscape

- No comprehensive federal AI statute exist
- Federal authorities and core frameworks (non-exhaustive):
  - FTC (Federal Trade Commission): Enforces consumer-protection standards for AI claims under UDAP (unfair or deceptive acts or practices); addresses discriminatory outcomes, transparency of AI-driven disclosures, and advertising claims related to AI tools.
  - NIST (National Institute of Standards and Technology): AI Risk Management Framework (RMF) 1.0 – a voluntary, risk-based framework guiding governance, risk assessment, testing/validation, transparency, and post-deployment monitoring.
  - FDA (Food and Drug Administration): Regulation of AI-enabled medical devices (SaMD/AI devices) with a lifecycle approach—pre-market clearance/approval pathways (e.g., 510(k), de novo) and post-market changes; emphasis on Good ML Practice and ongoing evaluation.
  - Federal Action: In early 2025, President Trump revoked the Biden-era AI Safety Executive Order, replacing it with the "Removing Barriers to American Leadership in AI" order to prioritize innovation over strict safety testing.

State Laws (Effective 2026):

- California: The AI Training Data Transparency Act (AB 2013) and Transparency in Frontier AI Act (SB 53) require developers to disclose training datasets and risk frameworks.
- Colorado: The Colorado AI Act (SB 24-205), effective June 30, 2026, targets "high-risk" AI to prevent algorithmic discrimination.
- Texas: The Responsible AI Governance Act (TRAIGA) takes effect January 1, 2026, focusing on government use and prohibiting AI for behavioral manipulation.

Areas of Current Litigation: Copyright & Fair Use (Training Data Battle)

- The Authors Guild et al. v. OpenAI & Microsoft: A massive consolidated multi-district litigation (MDL) in the Southern District of New York. Authors, including prominent names like John Grisham, allege "wholesale" copyright infringement.
- The New York Times v. Microsoft & OpenAI: This landmark case continues to test whether AI outputs that mimic news articles constitute "market substitution". Legal experts expect a possible settlement in 2026 following the precedent set by other major licensing deals.
- Bartz v. Anthropic: In a historic 2025 development, Anthropic agreed to a $1.5 billion settlement—the largest known copyright payout in U.S. history—to resolve claims over using pirated books for training.
- Music Industry Suits: Major labels (UMG, Warner, Sony) are suing AI music startups Suno and Udio. While Warner Music settled with both in late 2025 to launch joint platforms, other cases remain active.

Privacy & Biometrics: Courts are increasingly applying existing privacy laws, such as the California Invasion of Privacy Act (CIPA), to AI tools.

- AI Chatbots as "Eavesdroppers": Cases like Taylor v. ConverseNow and Jones v. Peloton have allowed claims to proceed where AI customer service bots were found to be "third-party interceptors" of private communications without user consent.
- Biometric Surveillance: A February 2026 lawsuit by Protect Democracy alleges the Department of Homeland Security (DHS) used facial recognition technology unlawfully to track legal observers.

Algorithmic Bias & Discrimination: Lawsuits are targeting the "black box" decisions made by AI in hiring and housing.

- Mobley v. Workday: A major ongoing case where the plaintiff alleges that Workday's AI-driven applicant screening tool systematically discriminates against certain groups of job seekers.
- SafeRent Solutions: A 2025 settlement for $2.275 million in a case alleging that an AI algorithm used for tenant screening was biased against Black renters, signaling a move toward "operational remedies" like mandatory audits.

Legislative Guardrails: States are moving to codify professional standards for AI use to ensure accountability and client confidentiality.

California SB 574 (2026): Passed by the State Senate in early 2026, this bill would require attorneys to independently verify the accuracy of AI-generated content, including citations and factual claims, before submission. It also prohibits arbitrators from delegating decisions to AI without party consent.

Utah Artificial Intelligence Policy Act (2024): Requires prominent disclosure when consumers in "regulated occupations," specifically including lawyers, interact with generative AI.

Colorado AI Act (Effective June 2026): Classifies AI used in legal services as a "high-risk" application, requiring developers and deployers to follow strict impact assessment and anti-discrimination standards.

Mandatory Court Disclosures: Federal and state courts have issued "Standing Orders" that create immediate legal obligations for litigators.

Disclosure Mandates: Many judges, such as those in the Northern District of Illinois, now require a formal disclosure in any filing if AI was used for research or drafting.

Accuracy Certifications: Some jurisdictions, including the Northern District of California, require lead counsel to personally certify the accuracy of any AI-assisted content under threat of sanctions.

Notable Court Cases & Sanctions: Courts are strictly enforcing Rule 11, which requires "reasonable inquiry" into the law.

Wadsworth v. Walmart (2025): A Wyoming court sanctioned attorneys who cited eight fake, AI-generated cases, even though they were "forthcoming and apologetic".

Kohls v. Ellison (2025): A court found an AI expert witness's credibility "shattered" after they submitted a declaration containing AI-hallucinated citations.

Kenosha County Sanctions (2026): A Wisconsin judge sanctioned a District Attorney for failing to disclose AI use in criminal case documents that contained errors.

Ethical & Billing Regulations: Bar associations have formalized how AI affects a lawyer's core duties

- Billing Restrictions: The American Bar Association (ABA) Formal Opinion 512 (2024) and Florida Bar Opinion 24-1 (2024) state that lawyers may only bill for actual time spent and cannot charge for time "saved" by AI.
- Confidentiality: Most state bars, including California and New York, have issued guidelines prohibiting the input of confidential client data into public, non-enterprise AI models.

Hogan Lovells

AI Data Centers and DOE Sites

Stewart Forbe
Counsel, Energy Regulatory

April 23, 2026

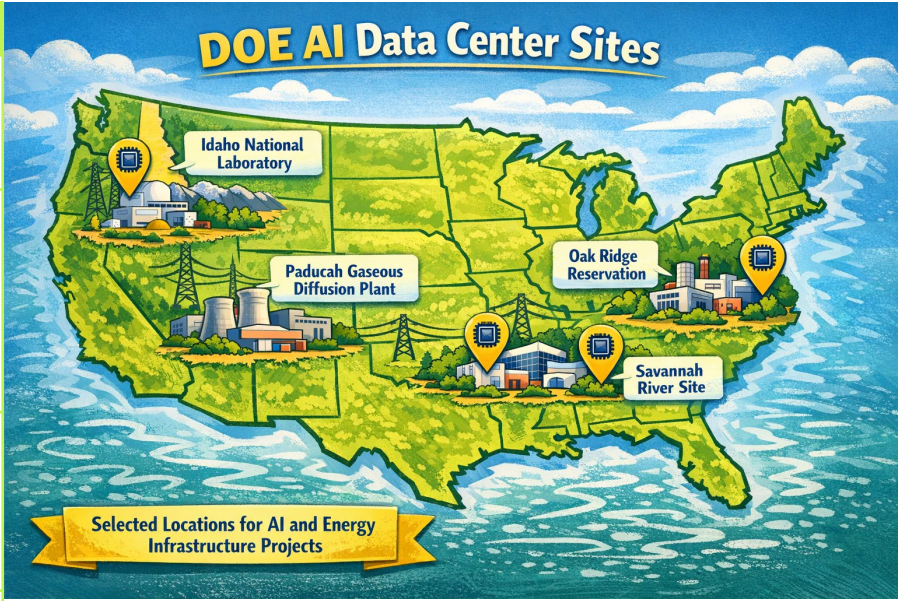
AI and Energy-Federal Priorities

2025
Year of Executive Actions

EO 14165: Declaring an Energy Emergency
EO 14299: Deploying Advanced Nuclear Reactor Technologies for National Security
EO 14300: Reforming the NRC
EO 14301: Reforming Nuclear Reactor Testing at DOE
EO 14302: Reinvigorating the Nuclear Industrial Base
EO 14179: Removing Barriers to American Leadership in Artificial Intelligence
EO 14365: Ensuring a National Policy Framework for Artificial Intelligence
EO 14277: Advancing AI Education for American Youth
EO 14318: Accelerating Federal Permitting of Data Center Infrastructure
EO 14320: Promoting the Export of the American AI Technology Stack
Federal AI Action Plan

2025—DOE AI Actions

April 7, 2025	DOE issues RFI gauging interest of industry to site AI infrastructure and co-located energy generation on 16 identified DOE sites
July 24, 2025	Secretary Write announces that the program has been down selected to four sites: Idaho National Laboratory, Oak Ridge National Laboratory, the Paducah Gaseous Diffusion Plant Site, and the Savannah River Site
September 9, 2025	DOE-Idaho issues a Request for Application; hosts an industry day at NEI with AI Data center and energy developers (primarily nuclear and geothermal)
September 30, 2025	DOE Oak Ridge and NNSA issue their Requests for Proposals
November 4, 2025	DOE-EM issues a Request for Offer to site build and site datacenters at Paducah



Why is DOE doing this?

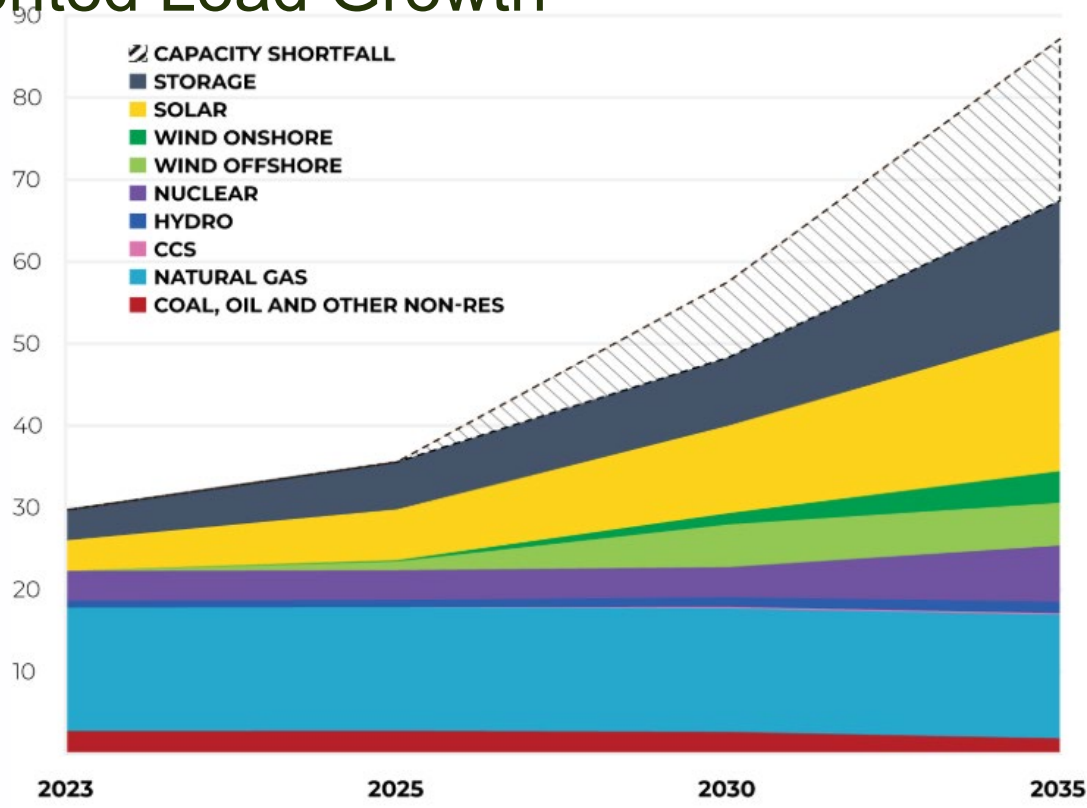
- The Administration is focused on AI development and supporting its expansion
- There is a national security imperative as laid out in the White House's AI Action Plan
- The Administration is pulling out all the stops to make use of federal land for these efforts
- The Genesis Mission

These are the DOE and WH actions.

What’s happening in the market?

Unprecedented Load Growth

- Forecasts across the country show some variant of this
- Drivers for load growth:
  - Data centers
  - Electrification
- Nearly half of the load growth comes from AI/Data center development
- Headwinds and considerations
  - Not all the forecast is real
  - Time to license
  - Turbine shortage
  - Transmission backlog
  - Regulatory uncertainty
  - Increasing Public Opposition



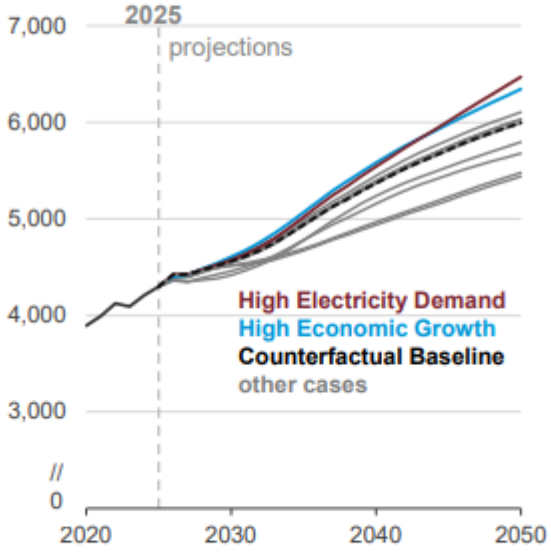
Note: Compliance with VCEA imposes a vulnerable gap beginning 2025 and 2030 and shows and initiaal 9.2GW gap in 20230 that grows to 20GW by 2035.

Source: 2024 Mckinsey Report

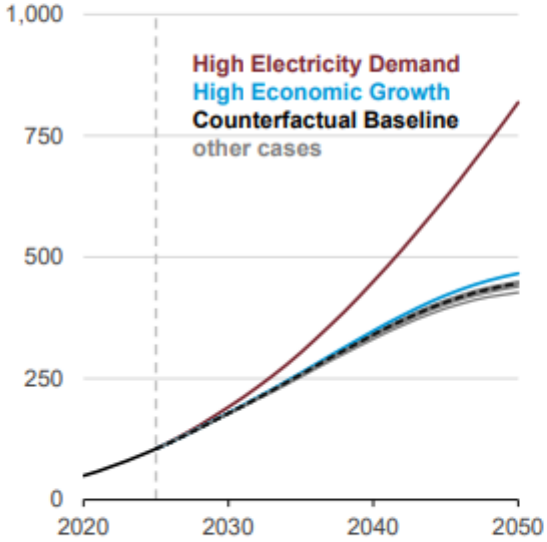
Forecast from the Virginia Dept of Energy

Data center load is emerging as the dominant driver of long-term U.S. electricity growth

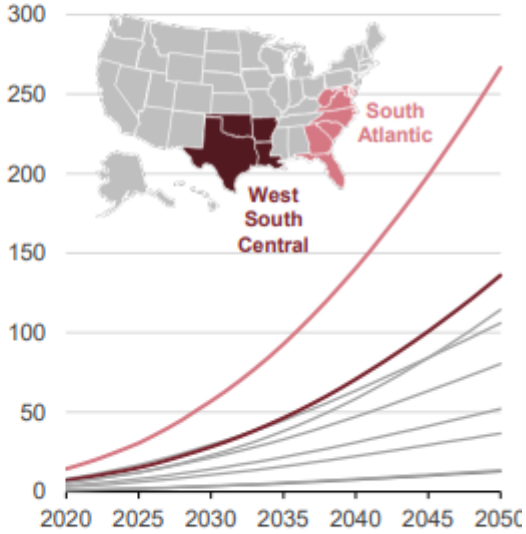
Total electricity consumption, all sectors
billion kilowatthours



Commercial data center server electricity consumption
billion kilowatthours



Commercial data center server electricity use, High Electricity Demand case, by census division
billion kilowatthours



Data source: U.S. Energy Information Administration, *Annual Energy Outlook 2026*, April 2026

Federal Focus on Nuclear and Data Centers

DOE Regulatory Authority

- [T]he Nuclear Regulatory Commission shall…have licensing and related regulatory authority to the following [DOE facilities]…demonstration nuclear reactors…when operated as part…of an electric utility system, or when operated in any other manner [to demonstrate] the suitability for commercial application of such a reactor. 42 U.S.C. 5842
- With some rare and arguable exceptions, no advanced reactors have yet been deployed in America. I find that design, construction, operation, and disposition of such reactors under the auspices of the Department—and not to produce commercial electric power—would be for research purposes, rather than "for the purpose of demonstrating the suitability for commercial application of . . . a reactor" within the meaning of 42 U.S.C. 5842. EO 14301

https://inl.gov/news-release/dome-worlds-first-nuclear-reactor-test-bed-ready-for-privately-developed-advanced-reactors/

Legal Definition-Advanced Nuclear Reactor (42 U.S.C. 16271)

Advanced Reactors should include improvements such as:

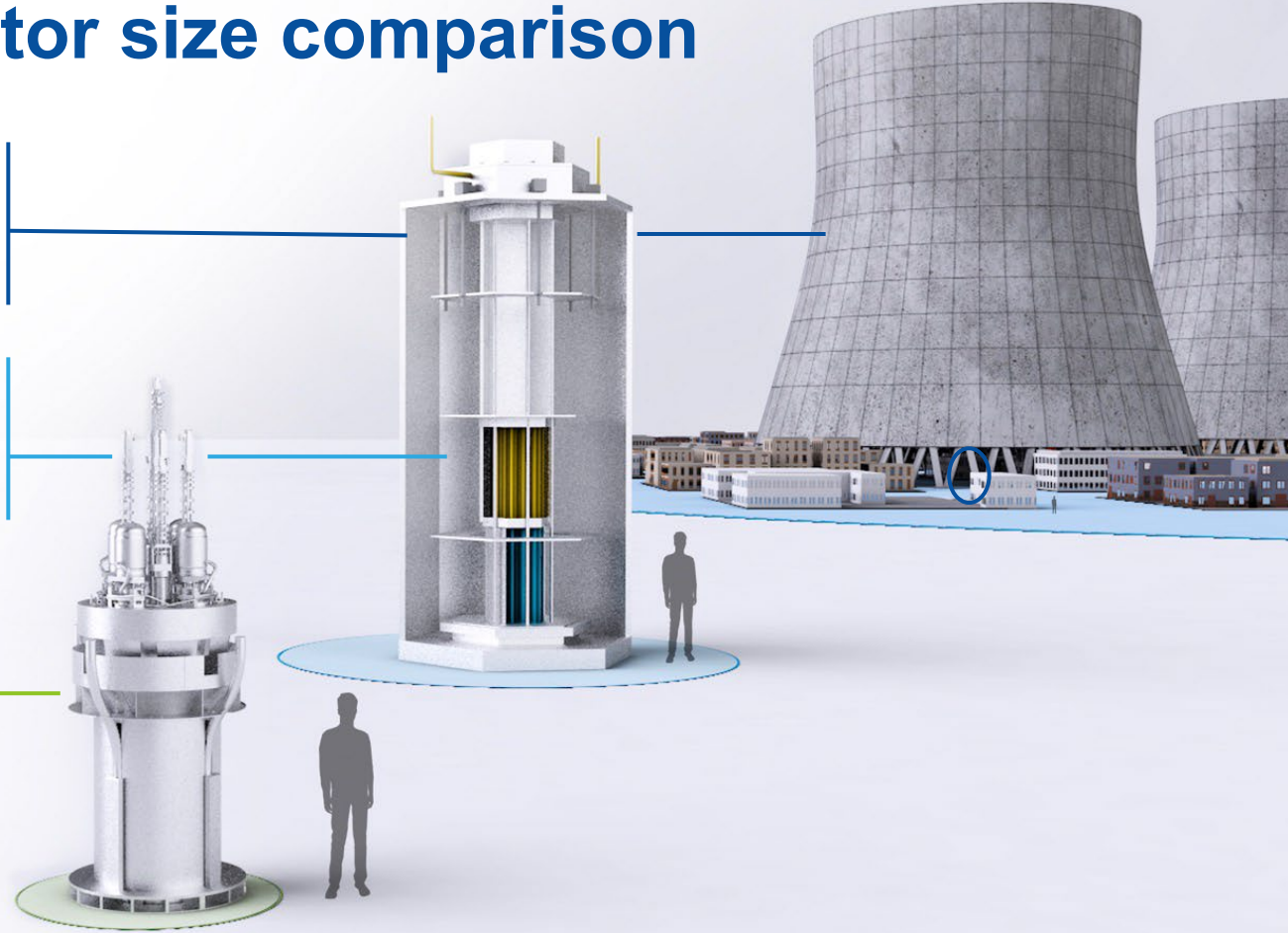
- additional inherent safety features;
- lower waste yields;
- improved fuel and material performance;
- increased tolerance to loss of fuel cooling;
- enhanced reliability or improved resilience;
- increased proliferation resistance;
- increased thermal efficiency;
- reduced consumption of cooling water, etc;
- the ability to integrate into electric applications and nonelectric applications;
- modular sizes to allow for deployment that corresponds with demand; and
- operational flexibility to respond to changes in demand for electricity or process heat.

Advanced reactor size comparison

Large-Scale Reactor
300 MW – 1,000+ MW
1,500 ACRES

Small Modular Reactor
20 MW – 300 MW
50 ACRES

Microreactor
1 MW – 20 MW
LESS THAN AN ACRE



Courtesy of the Idaho National Laboratory

Data Center and Energy Constraints Siting on Federal Land

Question 1-CERCLA Liability

- All four of the identified Data Center hosting sites are on the National Priorities List
- What risks does this pose to developers?
  - CERCLA creates joint and several liability for potentially responsible parties who may have released hazardous substances into the environment 42 U.S.C. 9604
  - This exposes any developer sitting on a DOE site to potential liability for DOE actions that occurred in the past
- DOE has historically addressed this contractually in its lease agreements and deed transfers
  - Oak Ridge's model lease for the data center project contains reciprocal indemnification agreements whereby the lessee's liability is limited to that which they might cause under CERCLA and DOE would retain its obligations

https://www.energy.gov/em/articles/west-valley-clears-one-large-component-after-another-main-plant

Question 2-Water

- Can a developer use DOE's Federal Reserve Water Right in the West?
  - Maybe.
  - U.S. v. New Mexico stands for the proposition that the federal reserve water right may be used for the purposes for which Congress withdrew the land 438 U.S. 696, 702 (1978)
- Would it matter?
  - Maybe not
  - The arid west operates on a prior appropriation/seniority basis
  - Everyone is subject to water calls in times of drought
  - In July 2025, the Idaho Department of Water Resources issued a curtailment order on junior groundwater users with a date after October 11, 1900
  - The INL date is from the 1950s.

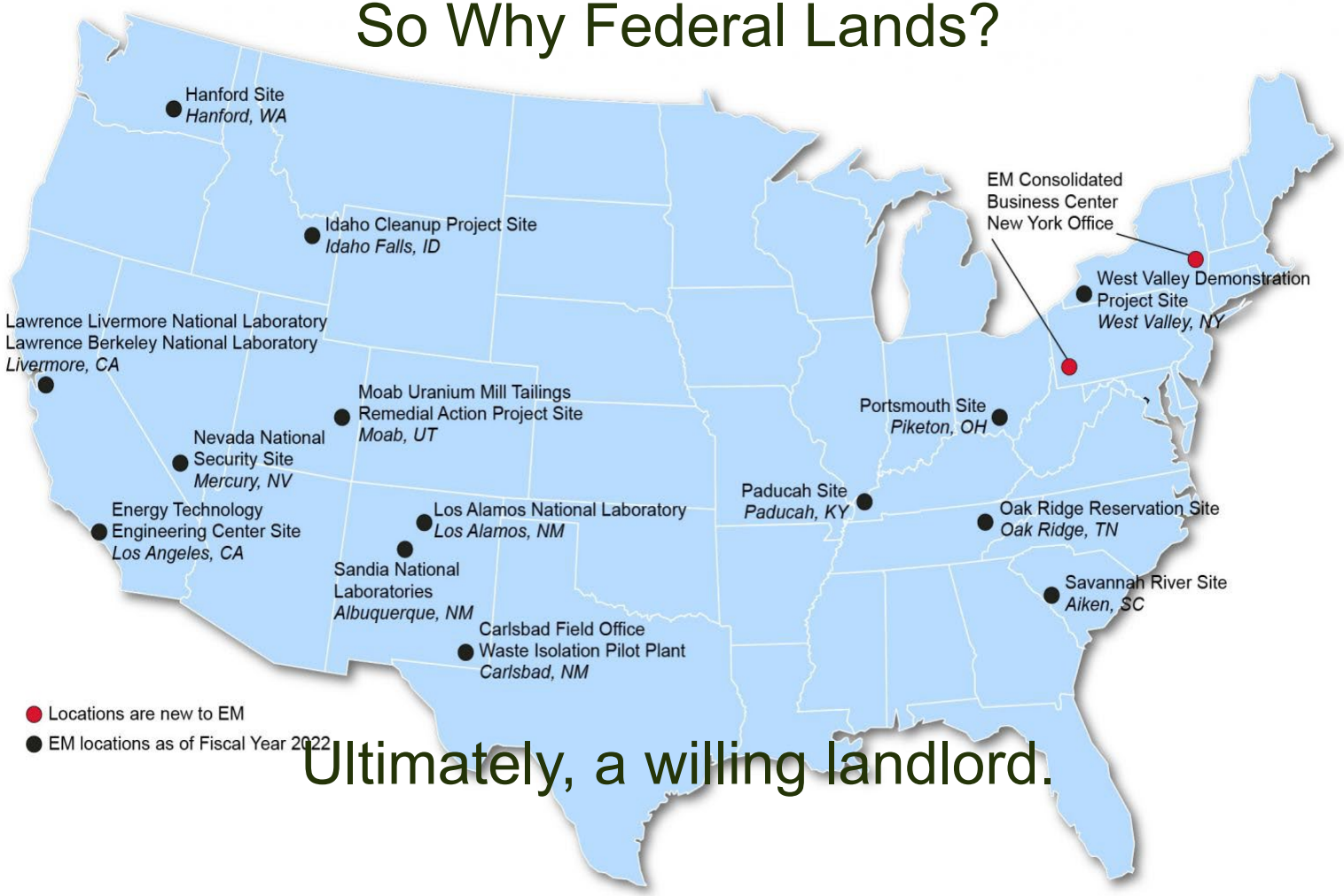
https://www.lanl.gov/media/publications/national-security-science/0723-plutonium-infrastructure

Question 3-Decomissioning and Waste Storage

- Who is liable for the decommissioning of these facilities?
  - For the data center facilities, the liability for removal upon termination of the lease rests with the developer under contract per each of these solicitations
  - This does beg the question about bonding and assuring that the DOE partners do not shirk their responsibilities
- What about fuel waste especially nuclear?
  - Without a permanent repository spent nuclear fuel will remain stored at its production site
  - This may complicate DOE relationships with certain of its host states
  - If these reactors are to transition to NRC licensing as some intend, then the volume of waste will grow

https://www.energy.gov/ne/articles/inside-one-nations-biggest-research-projects-spent-nuclear-fuel

So Why Federal Lands?



Ultimately, a willing landlord.

APRIL 23, 2026

AI AND GENESIS MISSION

MARK LANGGUTH
Sr. Attorney, Intellectual Property

U.S. DEPARTMENT OF ENERGY
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Argonne NATIONAL LABORATORY

GENESIS MISSION

News regarding Genesis Mission

- Genesis Mission Executive Order (Nov 24, 2025)

(https://www.whitehouse.gov/presidential-actions/2025/11/launching-the-genesis-mission/)

- "…**double the productivity** and impact of American science and engineering within a decade."
  (https://www.energy.gov/articles/energy-department-launches-genesis-mission-transform-american-science-and-innovation)

- Genesis Mission Website
  (https://genesis.energy.gov/)

- 26 Genesis Mission Science and Technology Challenges (Feb 12, 2026)
  (https://www.energy.gov/articles/energy-department-announces-26-genesis-mission-science-and-technology-challenges_

WYNTK RE: GENESIS MISSION

Key Themes

- Speed
- Contractor Assurance
- Heightened visibility/expectations

WYNTK RE: GENESIS MISSION

Key Components

— Partnerships

— Platform (AmSc)

— Projects (ModCon)

WYNTK RE: GENESIS MISSION

Partnerships

- CEO-level relationships - led by DOE
- AI Supercomputers (Oct 28, 2025)
  - LANL (Mission/Vision) https://www.lanl.gov/media/news/1028-supercomputers
  - ORNL (Lux/Discovery) https://www.ornl.gov/news/ornl-amd-and-hpe-deliver-does-newest-ai-supercomputers-discovery-and-lux
  - Argonne (Equinox/Solstice) https://www.anl.gov/article/argonne-expands-nations-ai-infrastructure-with-powerful-new-supercomputers
- MOUs (Dec 18, 2025)
  - (https://www.energy.gov/articles/energy-department-announces-collaboration-agreements-24-organizations-advance-genesis)
- PIA/GM Consortium (TechWerx) (Feb 9, 2026)
  - (https://www.energy.gov/articles/energy-department-launches-genesis-mission-consortium-accelerate-ai-driven-scientific)
- OTA/RFA (Mar 17, 2026)
  - (https://www.energy.gov/articles/energy-department-announces-293-million-funding-support-genesis-mission-national-science)

WYNTK RE: GENESIS MISSION

Platform (AmSC)

- American Science Cloud referenced in OBBBA
  - — Multi-Lab effort led by ORNL (https://amsc.energy.gov/)

- AI infrastructure/services “seamless” across Labs
  - — Technology: unified API, interoperability
  - — Users: Federated ID, FNAP
  - — Data Lake: Filling
    - Example: User Facility Data (legal, relationships)

WYNTK RE: GENESIS MISSION

Projects (ModCon)

- Transformative AI Models Consortium (ModCon)
  - AI model collaborations with industry/universities
  - Seed Teams (fixed demonstration schedule)
  - Collaborations across the Lab (led by Argonne)
    - Model AI Agreements responsive to EO section 5(c)(i) and (ii)
      - Project Data Use Agreement (PDUA) term sheet (https://science.osti.gov/-/media/grants/pdf/foas-resources/2026/Sample-OT-and-Project-Agreements-for-DE-FOA-0003612.pdf)
    - Master Scope of Work (pre-approval of work/terms)
    - Inter-Lab alignment/coordination to accelerate collaborations ('Virtual Lab')

“Virtual Lab” Introduction

Genesis Mission Executive Order called for standardized partnership agreements and robust data and intellectual property (IP) protections

The National Lab Tech Transfer Council (NLTT) formed Genesis IP Advisory Committee to tackle this Executive Order challenge.

The IP Committee (through a focused Working Group) created and aligned with all 17 Laboratories a “Virtual Lab Framework” to streamline partnership agreements, protect Laboratories’ and partners’ data and intellectual property, and accelerate technology adoption and U.S. economic impact.

Section 5(i) develop standardized partnership frameworks, including cooperative research and development or other appropriate agreements, and data-use and model-sharing agreements;

Section 5(ii) establish clear policies for ownership, licensing, trade-secret protections, and commercialization of intellectual property developed under the Mission, including innovations arising from AI-directed experiments;

GENESIS R&D PROJECT "VIRTUAL LAB" PARTNERSHIP FRAMEWORK

BENEFITS

Lower barriers with external partners

- Single interface through Lead Lab
- Simple 2-party AI R&D agreements
- Consistent terms

Streamlined multi-lab collaborations

- Rapid team formations
- Aligned scope of work
- 2-page standard project agreement

Reduced DOE review efforts

- Pre-approved Master Scope
- Leverages Lead Lab's reviews
- Foreign partners reviewed by DOE

Consistent intellectual property treatment

- Protect labs' and partners' IP and data
- Enables research and commercial enablement

Maintains DOE and Genesis Objectives:

- Enables trusted U.S. partnerships
- Advances U.S. research and technologies
- Ensures U.S. economic competitiveness

TRADITIONAL MULTI-LAB PARTNERSHIPS (PRE-GENESIS)

TRADITIONAL PROCESS

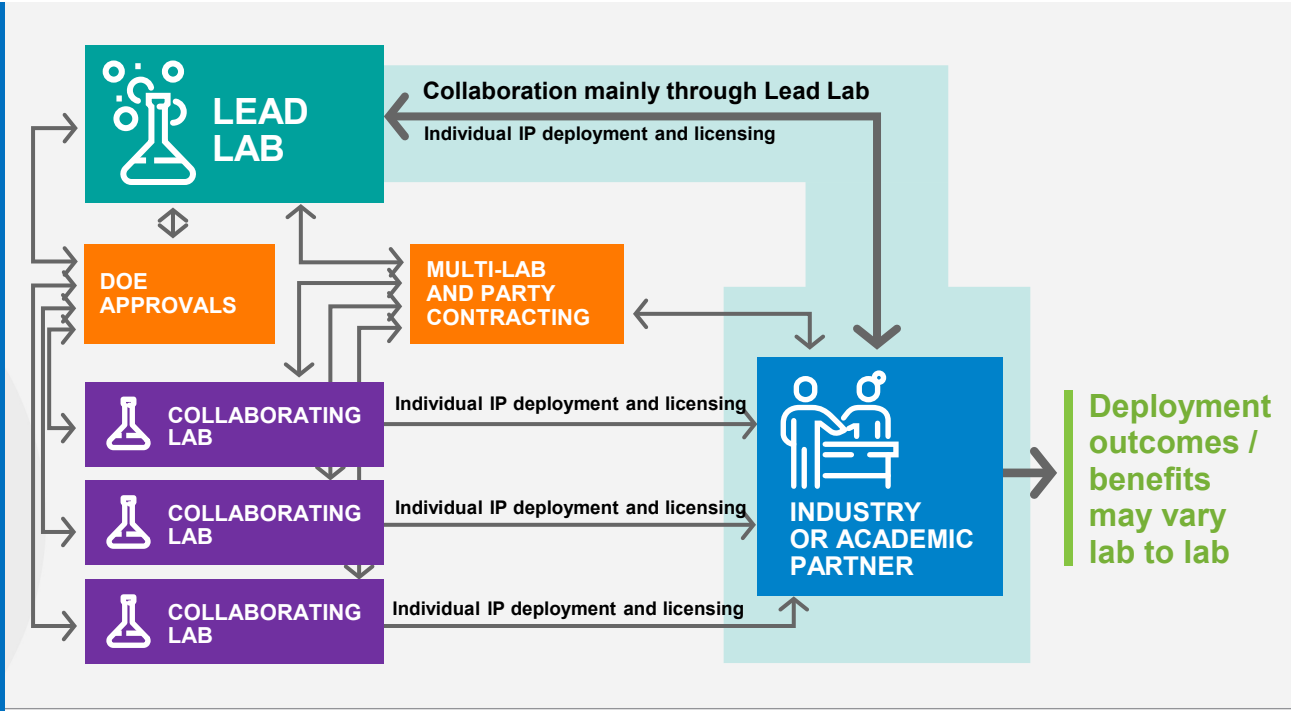
Lead Lab brings partners in

Multi-lab and party agreement negotiations required to fit every lab and partner's legal requirements

Each lab individually obtains DOE approvals for its work

Industry-lab collaboration is controlled and facilitated by lead lab

Each lab separately negotiates deployment terms



GENESIS "VIRTUAL LAB" FRAMEWORK

SIMPLIFIED PROCESS

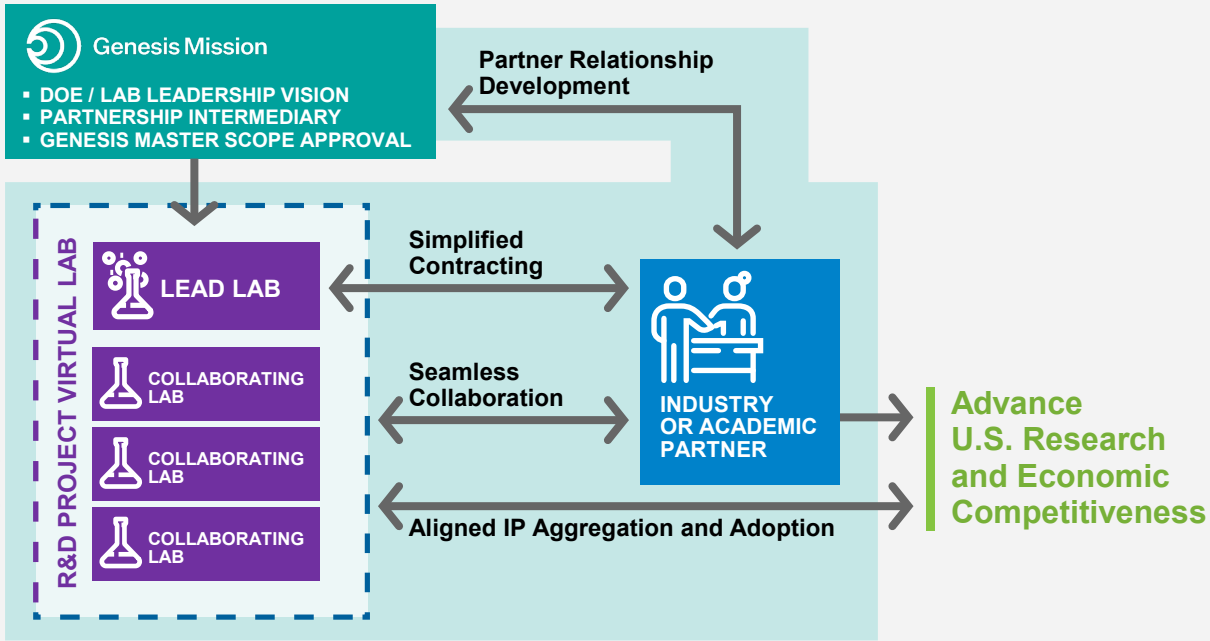
DOE and partnership intermediary connects lab partners with labs

Labs form project "virtual lab" team, designate Lead Lab

Lead Lab contracts with partner

All labs for each project seamlessly collaborate

No DOE approvals for each project (unless foreign partner)



WYNTK RE: GENESIS MISSION

Key Challenges

- Speed
  - — Foreign review under 485.1A
  - — Cultural change to Contractor Assurance
  - — Communication/Coordination
    - Within and across Labs
    - Within and across DOE offices

- Data “contamination”


Argonne
NATIONAL LABORATORY

Bio: Rachna Mehta Talwar

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Rachna Mehta Talwar is a Cum Laude graduate of the University of Illinois and a High Honors graduate of Chicago-Kent College of Law. She began her legal career in private practice as a litigation attorney handling a broad range of matters from family law to corporate disputes. She then served in the public sector with the Minnesota Department of Human Services, leading the launch of Minnesota's health insurance marketplace MNsure and serving as a Contracts Attorney. During her time in Minnesota, she also taught as an adjunct professor in Business Law, Jurisprudence, and Legal Writing at local colleges. After DHS, she joined the U.S. Department of Energy, where she has served for more than ten years—initially as a Procurement Attorney with the Environmental Management Consolidated Business Center in the nuclear sector, and most recently as Site Counsel for SLAC and LBNL, among other duties in the DOE Office of Science.

Stewart Forbes

Counsel, Washington, D.C.

Stewart Forbes brings ten years of energy expertise honed at the U.S. Department of Energy (DOE) to his role in Hogan Lovell's energy regulatory practice group. Stewart is a recognized expert on DOE and its authorities, and a much sought after speaker on advanced nuclear development. He leverages his expertise to support a variety of clients in agreements with DOE and its national laboratories.

During his DOE tenure, Stewart advised multiple agencies, including DOW and NASA on nuclear development projects and was instrumental in structuring both Project PELE and Project Draco. At DOE he designed and implemented a variety of programs as lead counsel. He was instrumental in the Advanced Reactor Demonstration Program, the Civil Nuclear Credits Program, and Mars 2020. He also helped lead DOE's efforts to modernize its Other Transaction Agreement practices.

At Hogan Lovells, Stewart's practice supports energy developers of all types as they navigate DOE and other agencies, federally funded research and development centers, the nuances of siting on federal land, and government indemnification agreements.

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Areas of focus

U.S. Department of Energy

Nuclear Development

Education

Brigham Young University, 2001

University at Buffalo School of Law, 2013

BIO – MARK LANGGUTH

Mark Langguth is a Senior Attorney at Argonne National Laboratory, operated by UChicago Argonne, LLC under a Prime Contract with the U.S. Department of Energy. In that capacity, Mark counsels Argonne management on legal issues related to intellectual property law and technology transfer, including protection of Argonne intellectual property and negotiation of licenses and cooperative development agreements.

Prior to working at Argonne National Laboratory, Mark worked for Motorola, Inc. for 10 years, where he drafted and negotiated strategic transactions and large international commercial agreements.

Mark also worked for Texas Instruments, Inc. as an Industrial Engineer, prior to returning to the University of Iowa to earn his J.D. and a Masters degree in business administration.

Employment Law in Focus: Supporting Our Workforce Through Rapid Transformation

Katherine Kettler, Lawrence Livermore National Laboratory
Rachel Nichols, Argonne National Laboratory
Emi Passini, Michael Best

April 23, 2026

Today’s Agenda

- Workplace Changes and Stress
  - Support For Employee With Mental Health Concerns
    - Accommodations
    - Managing Leave
- “Respectful” Work Environments
- Navigating Changing Requirements
  - Non-Discrimination and Retaliation
  - Gender Ideology

Workplace Changes and Stress

There Is A Lot Going On For Our Employees

- Change to political priorities and administrations (state and federal)
- National and international events
- Change (again) to philosophy around flexible work arrangements (remote, hybrid …. back to office)
- Fluctuating economy impacting job security and resources
- Change to health care funding and access to doctors/hospitals
- Impact of AI on job market and job expectations
- Change to immigration status eligibility
- More …..

Employee Response Can Impact the Workplace

- Attendance and performance concerns
  - Trend of increased wellness checks requested by employers for missing or unresponsive employees
- Taking other jobs without providing any notice they have two jobs or are leaving
- Increased alcohol and drug use confirmed through positive tests
- Colleagues report feeling confused or threatened by an employee's unexpected, unusual behavior
- Team members feel frustrated about having to take on additional work from absent employees
- Productivity losses increase if multiple employees are impacted by a single incident
- Unaddressed concerns may lead to greater safety or compliance concerns
- Ongoing uncertainty may reduce trust in management's ability to address workplace issues effectively

But Employers Want ….

- Employees to work collaboratively
- Employees to be innovative and problem solvers
- Employees to communicate
- Employees to be dependable
- Employees to treat others with respect
- . . .

How can employers bridge this divide?

Accommodations

Invisible Disabilities and Accommodations

- Disability: a physical or mental impairment that substantially limits one or more major life activities.
- Employers must provide reasonable accommodations to qualified individuals with disabilities, except when such accommodation would cause an undue hardship.
- Invisible disabilities may include mental health conditions and also conditions like chronic pain, autoimmune disorders, neurological conditions, and diabetes.
  - Be careful - not all individuals with a mental health condition require accommodations to perform essential functions of their job
- HR and supervisors must be trained to not make judgments based on outdated stereotypes.
- Employers can build awareness and foster a supportive culture.
- Evaluating when an employee can work with an accommodation and when they may not have to work.

Do Not Miss The Request

- Employers must be careful to properly evaluate mental health accommodation requests, as a variety of mental health issues can constitute a disability.
- Failing to do so can lead to liability under both federal and applicable state law. The EEOC maintains a list of recent settlements involving mental health claims:
  - *EEOC v. Ranew's Management Company*, No. 21-CV-00443-MTT (M.D. Ga. 2022)
    - Employer paid $250,000 to settle a lawsuit after firing an employee for taking leave due to severe depression.
  - *EEOC v. Mine Rite Technologies, LLC*, No. 17-CV-00063-SWS (D. Wyo. 2018)
    - Employer settled after employee was harassed by supervisor for PTSD. The employer agreed to pay $75,000, as well as issue a letter of apology and letter of recommendation for the employee.

Select List of Resolved Cases Involving Mental Health Conditions Under the ADA (as of May 2022) | U.S. Equal Employment Opportunity Commission

DOL Sample Accommodations For Mental Health Conditions

- Scheduling modifications - part-time work hours, job sharing, adjustments in the start or end of work hours.
- Breaks according to individual needs rather than a fixed schedule, more frequent breaks and/or greater flexibility in scheduling breaks, and telephone breaks during work hours to call professionals and others needed for support.
- Reduction and/or removal of distractions in the work area.
- Reduction of workplace noise that can be adjusted.
- Increased natural lighting or full spectrum lighting.
- "White noise" or environmental sound machines.
- Software that minimizes computerized distractions such as pop-up screens.

https://www.dol.gov/agencies/odep/program-areas/mental-health/maximizing-productivity-accommodations-for-employees-with-psychiatric-disabilities

Employees Disabled While In Military Service

- Under Uniformed Services Employment and Reemployment Rights Act (USERRA):
- The employer must make reasonable efforts to accommodate an employee's disability incurred in or aggravated by military service so they can perform the duties of their reemployment position.
  - re-employment position is the job the employee would have attained but for military absence (escalator principle)
- If, despite reasonable accommodations, the employee is not qualified for the position due to their disability, the employee must be reemployed in a position of equivalent seniority, status, and pay, to the escalator position. The employee must be qualified to perform the duties of this position or be able to become qualified to perform them with reasonable efforts and training by the employer.
- If the employee cannot become qualified for their reemployment or equivalent position, the employee must be employed in a position that, consistent with the circumstances of their case, most nearly approximates the position in terms of seniority, status, and pay. Such a position may be a higher or lower position, depending on the circumstances.

Section 4313 (a) (3) / 20 CFR 1002.225

What Would You Do?

- A company employs a project manager who has worked there for five years. Historically, the employee received strong performance reviews and was considered reliable by both supervisors and clients.

- Over the past six months, the company has experienced shifting client demands and internal restructuring tied to changes in federal enforcement priorities. During this period, the employee's supervisor has documented several performance concerns, including:
    - Missed project deadlines and delayed client deliverables
    - Inconsistent attendance and last-minute call-outs
    - Limited responsiveness to team communications
    - Feedback from colleagues that the employee appears disengaged during meetings

- The supervisor raised these concerns with the employee during two documented check-ins and placed the employee on a performance improvement plan (PIP) focused on timeliness, availability during core hours, and client communication. Shortly after the PIP was issued, the employee disclosed to HR that they have been diagnosed with an anxiety disorder and depression.

- The employee explains that symptoms worsened as job expectations became less predictable and pressure increased during the organizational changes. The employee provides documentation stating that the condition substantially limits the employee's ability to concentrate, regulate stress, and maintain consistent attendance during prolonged high-pressure periods.

- The employee requests the following accommodations:
    - A modified schedule with a later start time two days per week
    - Temporary remote work flexibility up to three days per week
    - Reassignment of the most high-conflict client calls to another team member, where feasible
    - Permission to bring their emotional support dog to work

When Can You Require A Fitness for Duty?

- Fitness for duty evaluations for current employees subject to heightened legal scrutiny
- Very Limited:
  - The medical examination must be job-related and consistent with business necessity AND
  - The employer must have a reasonable belief, based on **objective evidence**, that an employee's medical condition impairs their ability to perform essential job functions or poses a direct threat to safety.
- Examples:
  - Performance Issues: A sudden, significant decline in performance where a medical reason is suspected, such as erratic behavior, inability to complete tasks, or safety risks.
  - Safety Concerns: Documented, observable behavior indicating a potential "direct threat" to the employee or others (e.g., severe trembling, confusion, erratic, or threatening behavior).
  - Physical Limitations: When an employee's physical restrictions prevent them from doing their job, necessitating a check on whether they can perform essential function
- Outcomes Range:
  - Return with or without restrictions
  - Temporary reassignment or leave
  - Termination as cannot perform work with or without accommodation safely
- To conform with privacy and applicable laws, some labs outsource fitness-for-duty evaluations to third parties

Managing Leave and Returning to Work

Intermittent Leave vs Continuous Leave

- Under the Family and Medical Leave Act (FMLA) (comparable state laws), eligible employees can take leave intermittently or on a reduced schedule
  - This is available for employees caring for their own or their family member's serious health condition, as well as employee's caring for a family military member. 29 CFR § 825.202.
- State FMLA equivalent and paid leave laws may also provide for intermittent or reduced schedule leave
  - Ex: Massachusetts' Paid Family Leave program is funded through employer and employee contributions and permits employees to take intermittent leave.
- Under ADA, leave of absence – intermittent or continuous – may be a reasonable accommodation after exhaust FMLA or if not eligible.

MILITARY LEAVE

Uniformed Services Employment and Reemployment Rights Act (USERRA) - 38 U.S.C. 4301 et seq.

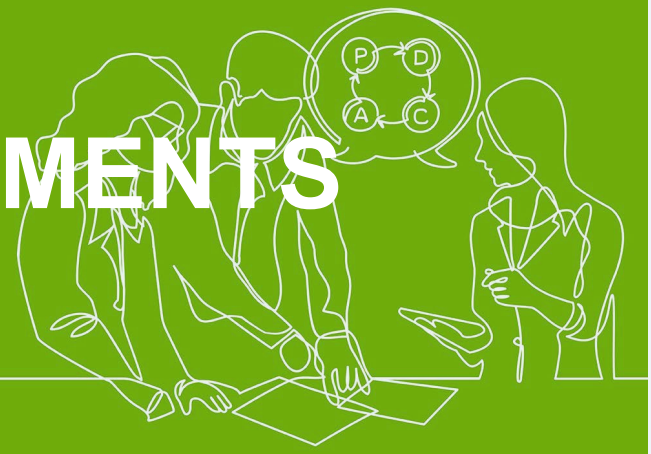
- USERRA provides unpaid leave and reemployment rights for military members engaged in military service
  - Employers may also choose to provide paid leave, or to cover the difference between the employee's normal and military pay.
  - Military service is broadly defined, including active duty, training, and certain disaster response work.
- Many states also have military leave laws that may overlap with or provide additional leave.
  - Ex: the Illinois equivalent of USERRA includes state active duty under the control of the governor.
  - Illinois also requires employees on leave to receive performance evaluations equivalent or higher to the average of those received in the previous 3 years. 330 ILCS 61.

MILITARY LEAVE CONT'D

The Family and Medical Leave Act (FMLA) - 29 U.S.C. § 2601 et seq.

- FMLA also provides leave to family members of military members:
  - Military caregiver leave: To care for an injured service member (26 weeks)
  - Qualified exigency leave: To respond to a qualifying exigency related to a family member's deployment (12 weeks)
- Some states also provide additional leave benefits, including paid leave
  - Ex: Washington's Paid Family & Medical Leave program provides 12 weeks of partially paid leave for qualified exigencies.

MAINTAINING RESPECTFUL ENVIRONMENTS



CLEAR POLICIES, CONSISTENT IMPLEMENTATION AND INVESTIGATE!

Employee Behavior and Internal Response

- We have seen an increase in employees reporting violations of conduct policies, as well as general discussions around respectful workplaces.
- “Respectful” is a vague and undefined term.
- Increased hypersensitivity.

CLEAR POLICIES, CONSISTENT IMPLEMENTATION AND INVESTIGATE!

-Harassment Standard

- Unwelcome conduct based on a protected category that is severe or pervasive.
- Employers can use this standard when evaluating whether behavior violates respectful workplace policies.
- However, this can be difficult because an employee may subjectively find a behavior to be harassing that is not objectively so.

Employers should be careful to conduct responsive and thorough internal investigations to complaints brought by employees.

POLITICAL DISCOURSE AND NLRA PROTECTIONS

- Private employers are not subject to the First Amendment but are subject to the NLRA, which applies whether or not a workplace is unionized.
- Section 7 of the NLRA protects employees who engage in concerted activity:
  - Common examples of concerted activity includes talking with co-workers about wages and benefits or advocating for better working conditions
  - This also can include the use of social media.

POLITICAL DISCOURSE AND NLRA PROTECTIONS CONT.

- The status of political advocacy in the workplace as concerted activity is developing.
  - The Eighth Circuit recently upheld a decision that an employer could require an employee to remove “BLM” from their apron. However, the court focused heavily on the facts of the case: this occurred in the aftermath of the George Floyd shooting, in Minneapolis. The court found that “special circumstances” existed allowing Home Depot to prohibit this. *Home Depot U.S.A. v. NLRB*, No. 24-1406 (8th Cir. Nov. 6, 2025).
  - The treatment of political advocacy also changes depending on the administration in power. In the case above, the NRLB under Biden had held that the employee’s activity was protected.
- Aside from the NLRA, some state and local jurisdictions also protect political affiliation or political activity.
  - Ex: D.C. includes political affiliation as a protected class and New York and California protects off-duty political activities.

Navigating Changing Requirements

Shifting Landscape for Non-Discrimination and Retaliation Laws

- *Students for Fair Admissions v. Harvard/UNC* (2023) - race-based affirmative action programs in college admissions violate the Equal Protection Clause of the 14th Amendment; no more plus factor.
- *Muldrow v. City of St. Louis* (2024) – "some harm" in job transfers
  - *Arnold v. UAL* (7th Cir. 2025) – Holding that employee's placement on a PIP and some changes to her daily responsibilities due to a reorganization were not sufficient to establish "some harm," per *Muldrow*, where employee's pay, benefits, vacation and working hours did not change.
  - *Walsh v. HNTB Corp*. (1st Cir. 2026) – Applying the "some harm" standard and holding the mere issuance of a PIP and negative comments about performance do not constitute an adverse action under the ADEA.
- *Ames v. Ohio Department of Youth Services (2025)* – Title VII does not permit courts to impose a higher burden of proof on "majority-group" plaintiffs in discrimination cases.

Executive Orders - Directed At Employer's DEI and/or Affirmative Action Plans

- January 2025
  - EO 14151 "Ending Radical and Wasteful Government DEI Programs and Preferencing"
  - EO 14173 "Ending Illegal Discrimination and Restoring Merit-Based Opportunity"
  - EO 14281 "Restoring Equality of Opportunity and Meritocracy"
- February 2025 – OPM & DOJ Guidance memos
- March 2025 – EEOC & DOJ joint technical guidance
- May 2025 – DOJ announces Civil Fraud Initiative
- July 29, 2025 – DOJ memo, "proxy discrimination"
- December 2025 – DOJ Civil Investigative Demands ("CIDs")
- March 26, 2026 - EO 14398 "Addressing DEI Discrimination by Federal Contractors"

EEOC Enforcement Priorities

- "Under Title VII, DEI initiatives, policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's or applicant's race, sex, or another protected characteristic."
- "Diversity, Equity and Inclusion (DEI) is a broad term that is not defined in Title VII."
- Notable examples the EEOC gives are of disparate treatment are:
  - Exclusion from training
  - Exclusion from fellowships
  - Exclusion from mentoring or sponsorship programs
- The EEOC also emphasizes that limiting, segregating, and classifying workers is prohibited, including:
  - Limiting membership in workplace groups like ERGs or affinity groups.
  - Separating employees into groups based on protected characteristics when administering DEI or other trainings, even if the groups receive the same programming content or resources.
- Closing disparate impact charges

Demographic Tracking

- President Trump issued EO 14173 "**Ending Illegal Discrimination and Restoring Merit-Based Opportunity**" on January 21, 2025.
  - The EO expressly revokes Executive Order 11246, a Civil Rights era EO with the stated intent to ensure nondiscrimination in federal contracting.
- Labs may still be required to track demographic data if subject to EEO-1 reporting, which applies to federal contractors with 50+ employees.
- Certain states also require tracking and reporting of demographic and other data, including California, Illinois, and Massachusetts.

Gender Identity

- EO 14168 – “Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government"
- On January 26, 2026, the EEOC voted to rescind a 2024 harassment policy that included descriptions of harassment based on gender identity and sexual orientation.
- This does not affect hiring, firing, and promotion decisions, which Chair Lucas has acknowledged remain under *Bostock* (the Supreme Court case that held that Title VII sex discrimination applies to gender identity and sexual orientation).
- Harassment in the workplace will likely continue to be a priority for the EEOC, but not harassment due to transgender status or gender identity.
- Employers must still consider state and local laws which do provide more protections for employees based on their gender identity. (e.g., California). Employers must balance providing those protections while not running afoul of current EEOC and administration priorities.

Key Take Aways

- No magic words are required to request an accommodation. If an employee may need support, ask “how can I help?”
- In addition to information about other benefit programs, implement clear accommodation and leave policies that highlight they apply to physical ***and*** mental health conditions.
- Support our troops and remember leave, re-employment and accommodation requirements are different for active military and vets.
- Look into and address concerns of policy violations, even something that seems minor; it may not need a full “investigation”, but employees want to be heard and see a response
- While we navigate new EOs and agency requirements –two principles have not changed – we do not discriminate and we strive to treat employees fairly.

Questions?

Katherine Kettler

Katherine Kettler is currently the interim General Counsel for LLNL, and she oversees LLNL's employment law & litigation work. Prior to joining LLNL in 2023, she worked at law firms and in-house, including 8 yrs at Intel Corporation. Before law school, Katherine worked as a social worker in New York City. Outside of work, Katherine enjoys spending time with her family and learning wildlife photography (flowers are much more cooperative than mammals!).

RACHEL NICHOLS

Rachel Nichols is an employment attorney at Argonne National Laboratory.
She joined the lab in 2023 from a large hospital system. Prior to law school, she completed a PhD in Immunology.
In addition, she has served 24 years in the Air Force, currently as a Reservist JAG officer and is also an adjunct professor.
Outside of work, she enjoys convincing her two sons to stop playing video games and go outside.

Emi Passini

Emi is a Senior Associate in Michael Best & Friedrich's labor and employment practice group. She represents employers in a wide variety of employment litigation matters and provides day-to-day employment Counseling. Emi also frequently conducts internal workplace investigations and is active in Michael Best's Higher education industry group. Emi graduated from the University of Wisconsin Law School and received her undergraduate degree from the University of South Alabama, where she was also a member of the women's Soccer team.

Research Security

With Great Power Comes Great Responsibility Redux: Legal Topics on Research Security & Foreign National Access

DOECAA

April 23, 2026

Dan Raker, Argonne National Laboratory
Marta Thompson, Akin Gump
Stewart Forbes, Hogan Lovells

Research security –

Safeguarding the research enterprise against the misappropriation of research and development to the detriment of national or economic security, related violations of research integrity, and foreign government interference.

NSTC, *NSPM-33 Implementation Guidance*, at 24.

NSPM-33

DOE is working aggressively to issue a comprehensive directive to the laboratories that leverages their existing risk management posture to meet NSPM-33's research security program requirements. To do so, our managed research environment relies on world-class security and technical leadership, clear and risk-informed policies, and robust controls and procedures.

~J. Tilden, Statement Before the H. Comm. on Science, Space, & Tech., 119th Cong. (Dec. 18, 2025).

Statutory Revisions Affecting The DOE Complex

Congressional action in recent years has directly affected Laboratory access and operations

- Chips & Science Act of 2022
  - Prohibition against malign foreign talent recruitment programs (42 U.S.C. 19231 et seq)
- NDAA for FY 2025 section 3112
  - Prohibits visiting nationals from a country of risk from visiting weapons laboratories or laboratories conducting work for the Naval Nuclear Propulsion Program (50 U.S.C. 2652)
- NDAA for FY 2025 section 6432
  - Review of visiting nationals from countries of risk by DOE's Director of the Office of Intelligence and Counterintelligence (42 U.S.C. 7144b note)

Guarding American Technology from Exploitation (GATE) Act, S. 929

- Proposed on March 11, 2025
- The bill aims to prohibit foreign nationals from the Countries of Concern and the Republic of Cuba from accessing National Laboratory
- Expands upon 3112:
  - Includes Cuba,
  - Applies to all national laboratories, and
  - Encompasses all laboratory information and technology
- In FY2023, approximately 8,000 of 40,000 foreign scientists visiting DOE labs were Chinese or Russian nationals — roughly 1 in 5.
- Passage is currently unlikely despite Administration support
  - In January 2026, Senate Energy Committee Chairman Lee and eight co-signers wrote to Secretary Wright urging an administrative ban on Chinese nationals at DOE labs pending legislation.

Regulatory Changes/Office Changes

- There have been no major regulatory proposals related to research security in 2025 or 2026

- Policy offices such as the Research Technology and Economic Security Office, IN, and DOE's CFIUS office continue to provide due diligence on grants and other transactions

DOE Order 142.3C: New Foreign National Access Program Framework

- Approved March 31, 2026—replaces DOE O 142.3B (Jan. 2021) effective immediately.
- The FNAP establishes requirements for access to DOE national labs by non-US employees, visitors, and others.
- Order 142.3C makes three main changes:
  - Visitor Site Access
    - All foreign nationals visiting lab sites must be processed through DOE.
    - SCL nationals require DOE indices check before arrival—plan for up to a 60-day approval window.
  - New Employees & Affiliates
    - SCL nationals must complete indices checks before their start date—no more after-the-fact processing.
  - Hosting Restrictions
    - Foreign nationals from Countries of Risk may not host any visitor from an SCL country.
      - Countries of Risk: China, Russia, Iran, North Korea and Belarus.

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BIOSECURE Act: New Procurement Restrictions for Federally Funded Research

- Enacted on December 18, 2025 as part of the FY 2026 NDAA.
- Bars federal contractors and grant recipients from using equipment or services from designated biotechnology companies of concern (BCCs) in connection with federal work.
- BCC status is determined through either:
  - 1260H pathway:
    - Listed on DoD's Section 1260H Chinese military companies list + involved in biotech manufacturing, distribution, provision, or procurement (as determined by OMB).
  - Even if not on 1260H list, OMB can designate if:
    - Foreign-adversary control/operation + involved in biotech manufacturing, distribution, provision, or procurement + specified national security risk.
- The Act reaches most FAR-based contracts and also restricts use of federal grant or loan funds for covered biotech equipment or services from a BCC.
- Five-year safe harbor for existing contracts/agreements, including previously negotiated options.

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Other DoD Research Funding Restrictions

- FY2025 NDAA § 238: DoD may not award a grant or contract to an institution of higher education for the specific purpose of conducting fundamental research in collaboration with a covered entity on the Section 1286 list, absent a case-by-case waiver.
- FY2025 NDAA § 226: DoD must conduct annual reviews/periodic examinations of research awards to institutions of higher education to ensure compliance with current DoD research security policy.
- Protecting American Research and Talent Act (H.R. 5253/S. 2755): Would bar federal funds for fundamental research collaborations with any PRC institution conducting defense-related research—not yet enacted but signals direction.

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FCA Enforcement Against Universities

- DOJ is using the False Claims Act to pursue institutions for alleged nondisclosure of foreign affiliations, foreign funding, or talent-plan participation in federally funded research.
- Settlements since 2022 include Ohio State, Stanford, Maryland, Albany, and Delaware.
- Current scrutiny appears centered on NASA and DoD awards, with DOJ reportedly mining public research publications for leads.
- Key risk: nondisclosure can be framed as material to award eligibility, especially under NASA restrictions.

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The Genesis Mission: DOE-Led AI R&D Initiative

- Executive Order 14363 directs DOE to lead a centralized federal initiative to accelerate AI-driven scientific and technological development in areas of national importance.
- DOE is charged with implementing the initiative, setting priorities, and maintaining security for a unified American Science and Security Platform that integrates federal HPC resources, AI models, scientific datasets, and AI-enabled experimental and manufacturing tools.
- Priority areas expressly include advanced manufacturing, biotechnology, critical materials, nuclear fission and fusion, quantum information science, and semiconductors/microelectronics.
- EO signals expanded use of public-private partnerships, user-facility partnerships, and fellowship/ internship/apprenticeship programs, but also likely new requirements around cybersecurity, supply chain security, data governance, and IP/licensing terms.

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Fundamental Research Exemption Under Pressure

- **What is the exemption?**
  - Research "ordinarily published and shared broadly" is exempt from export control deemed export restrictions under 15 C.F.R. § 734.8—meaning labs can share results freely with foreign national researchers without an export license, as long as the work qualifies as fundamental research.
- **How is the exemption lost?**
  - A project loses fundamental research status if the sponsor or institution accepts any restriction on publication or access to results "for national security reasons."
  - The more access controls, disclosure requirements, and personnel restrictions are layered onto a project, the greater the risk that the project no longer qualifies.
- **The practical danger for labs:**
  - Congress and DOE are simultaneously piling on new requirements, which collectively may constitute the kind of "national security restrictions" that strip a project of its fundamental research status.
  - If the exemption is lost, labs may need export licenses to transfer technology that arises from research with foreign nationals, depending on the nature of the technology, nationality of the recipient, recipient's institutional affiliation, and the recipient's intended end-use.

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APRIL 2026

Argonne national laboratory
Research security overview

U.S. DEPARTMENT of ENERGY

Argonne National Laboratory is a U.S. Department of Energy laboratory managed by UChicago Argonne, LLC.

Argonne NATIONAL LABORATORY

“The decision to be open was a bet on the American system, and it paid off because we shared our science. We sparked a global revolution in technology. Because we were transparent, the world's best minds flocked to our universities, and because we led with our values, the United States became the undisputed leader of the space age. That openness remains our greatest strength.

It's the engine that drives our economy, and it's the engine that inspires our children. But we also know that the world of 2025, is not the world of 1958. We're in a fierce competition. Our adversaries are no longer just watching our launch pads. They are actively seeking to extract the intellectual capital that … the American taxpayers have invested in.

My message to you today is that we do not have to choose between being open and being secure. We can and we must do both.”

“I think we can remain competitive in a global like research, without the extensive ties with China. But let me clarify that oftentimes I think we're we may be mixing between many people who are of Chinese nationality, who have been in the States for many years, and those are the folks that have migrated through our universities to our labs that will take time for us to wean off, if you will, right? That will take back to this idea of a STEM related kind of a growth in STEM pipeline for talent, US born talent....We are very reliant on foreign talent right now, sadly.”

“Knowledge knows no boundaries. Brilliant people are to be found everywhere. Our openness to talent from around the world is a critical commitment we uphold.”

11/24/25 Letter from Dr. Dario Gil, Undersecretary for Science and Genesis Mission Director

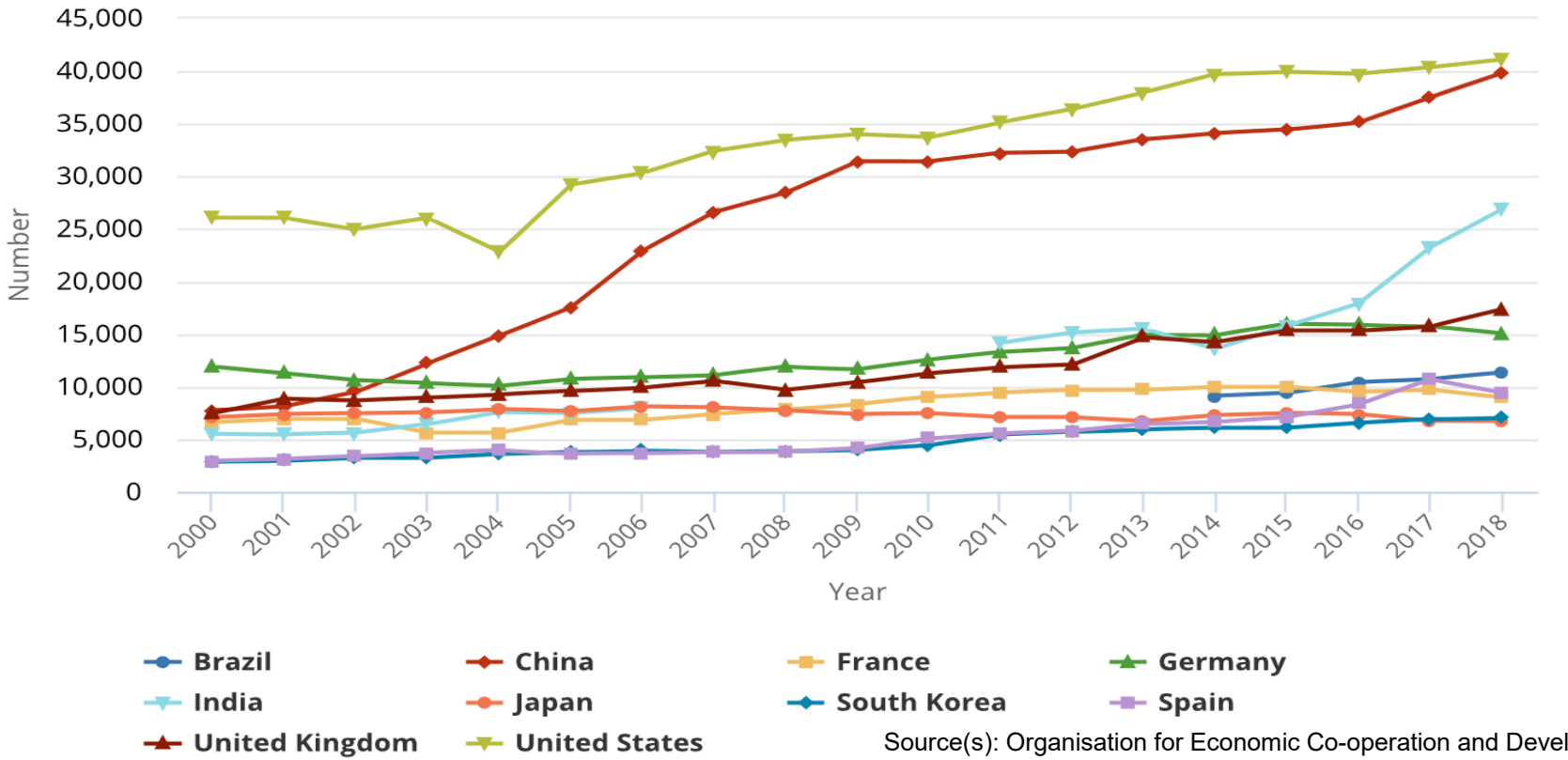
Genesis Mission

“The one thing we don’t have is time. We are going to act with an urgency that will feel deeply uncomfortable. The urgency is driven by the rate and pace of the computing revolution and by the respect with which we must treat our most formidable competitor and adversary, China.”

Number of S&E Doctoral Degrees awarded

Data by Country

S&E doctoral degrees, by selected region, country, or economy: 2000–18

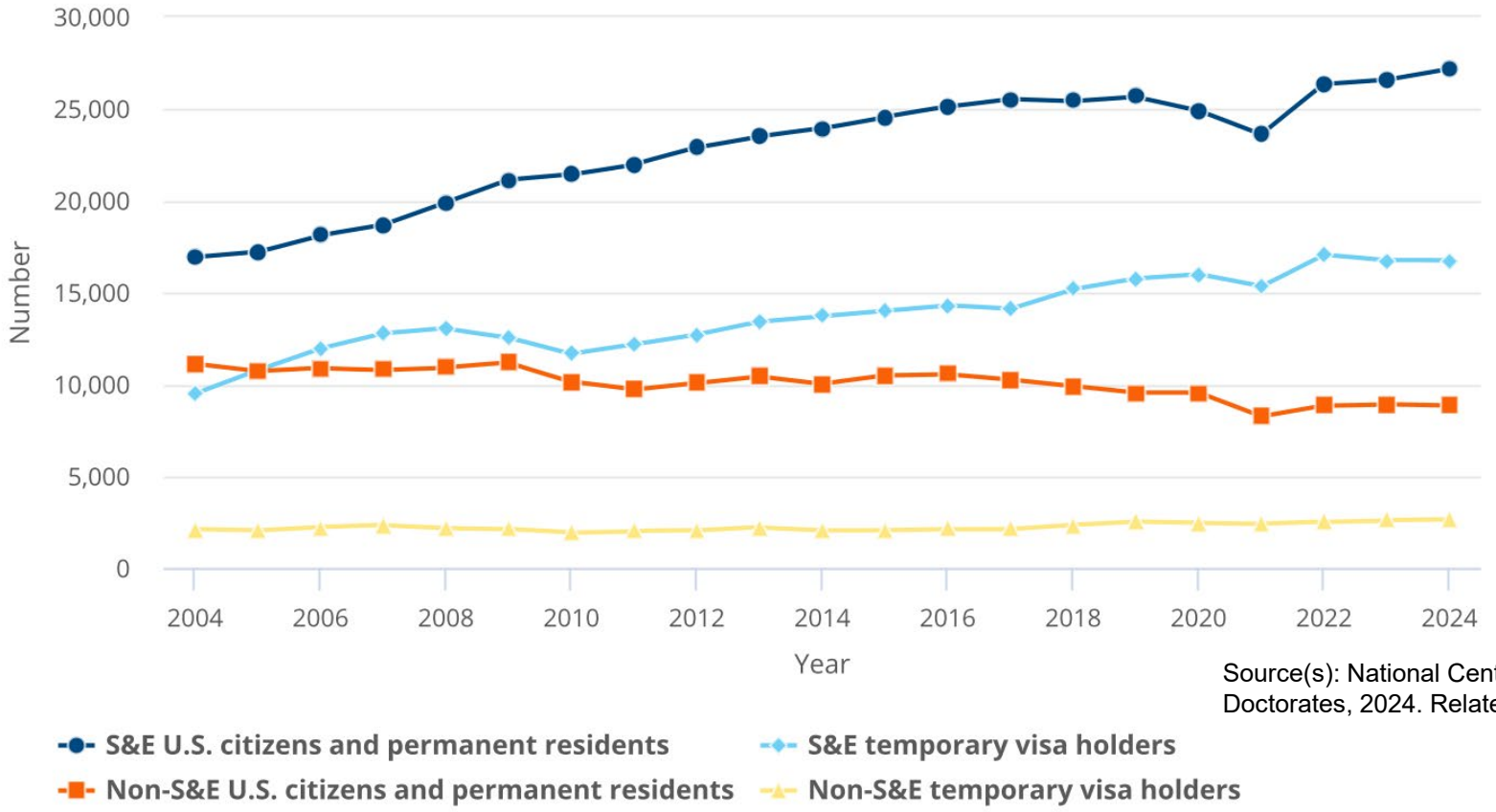


Source(s): Organisation for Economic Co-operation and Development (OECD), OECD.Stat; Eurostat, Education and training database; National Bureau of Statistics of China, China Statistical Yearbook (various years); People's Republic of China, Ministry of Education data (various years); Government of Japan, Ministry of Education, Culture, Sports, Science and Technology, Survey of Education (various years); Government of India, Ministry of Human Resource Development, Department of Higher Education, All India Survey on Higher Education (various years).

U.S. Doctorate recipients Analysis by NSF

Citizenship Trends

Doctorates awarded in S&E and non-S&E fields, by citizenship status: 2004–24

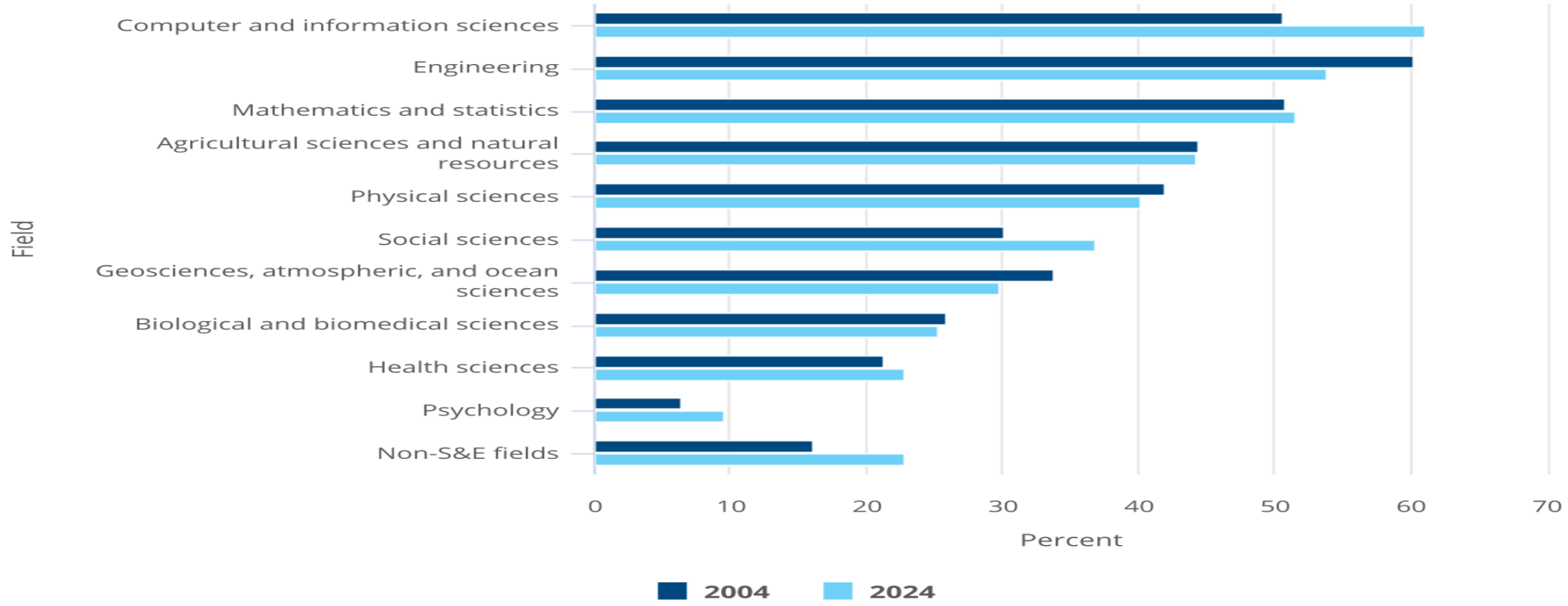


Source(s): National Center for Science and Engineering Statistics, Survey of Earned Doctorates, 2024. Related detailed table 1-6 and table 1-7.

U.S. Doctorate recipients Analysis by NSF

Fields of Temporary Visa Doctorate Recipients

Doctorate recipients on temporary visas, by trend broad field: 2004 and 2024

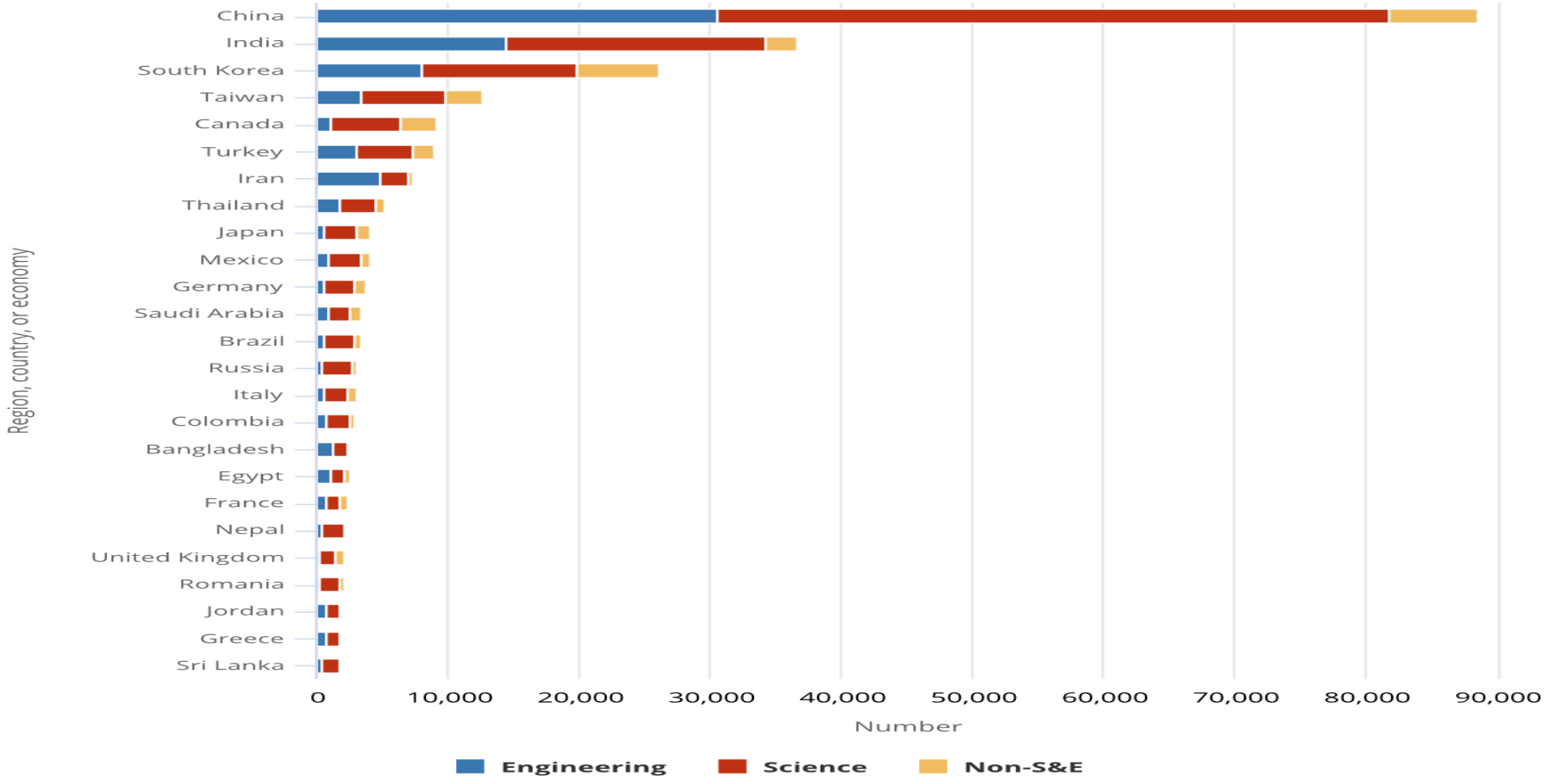


Source(s): National Center for Science and Engineering Statistics, Survey of Earned Doctorates, 2024. Related detailed table 1-6.

Countries of Origin for U.S. Doctorate Recipients

Top Countries and Fields

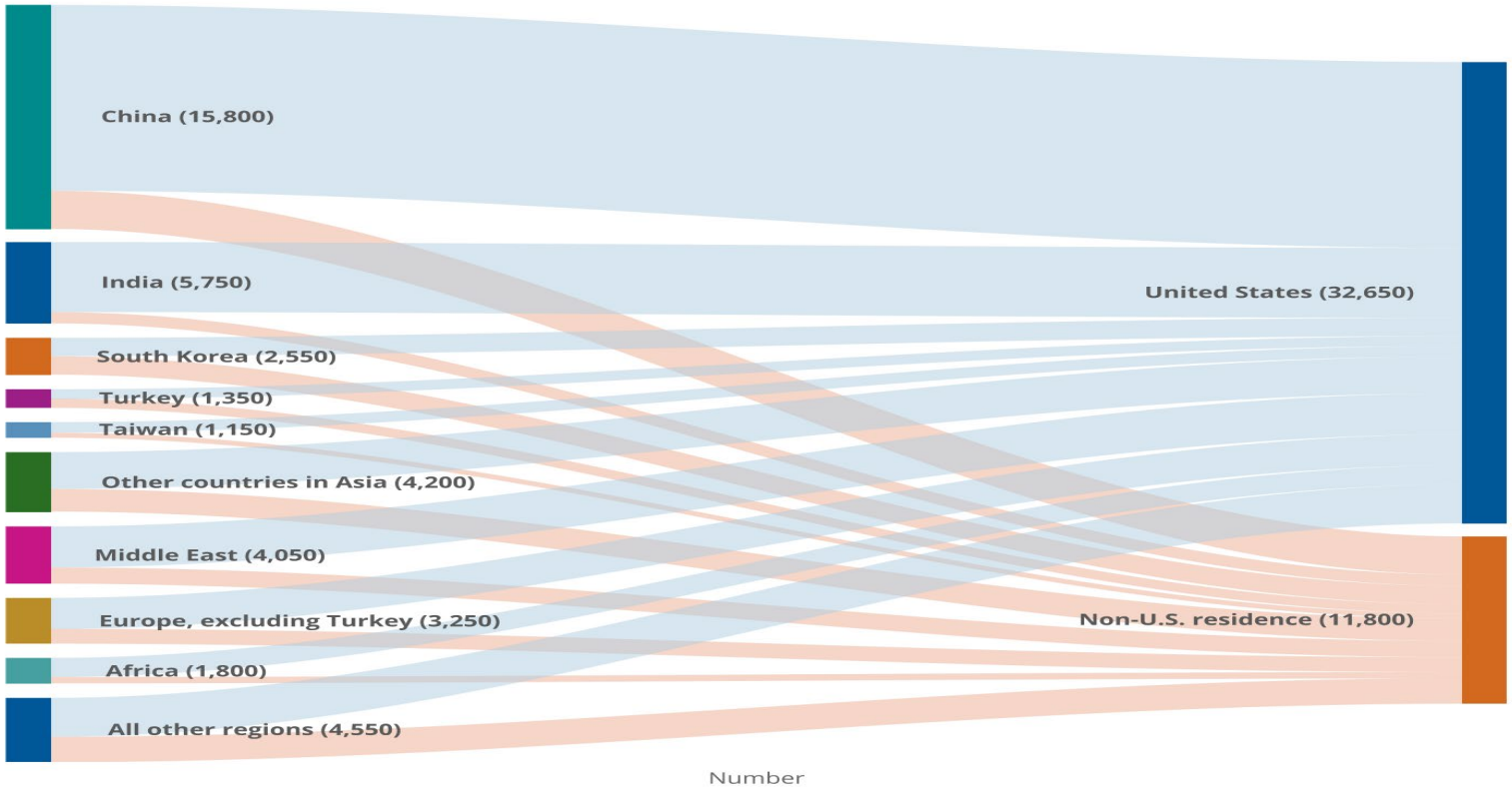
Top 25 regions, countries, or economies of origin of U.S. doctorate recipients on temporary visas, by broad field: 2001–20



Source(s): National Center for Science and Engineering Statistics, special tabulations (2021) of the Survey of Earned Doctorates (SED).

U.S.-Trained Science and Engineering Doctorate Recipients on Temporary Visas Remaining in the U.S.

Residence of 2017–19 U.S. Science and Engineering doctorate recipients on temporary visas, by region, country, or economy of origin: 2023



Source(s): National Center for Science and Engineering Statistics, Survey of Doctorate Recipients, 2023, and Survey of Earned Doctorates, 2017–19.

Research security

House Select Committee on China and HPSCI Investigative Report

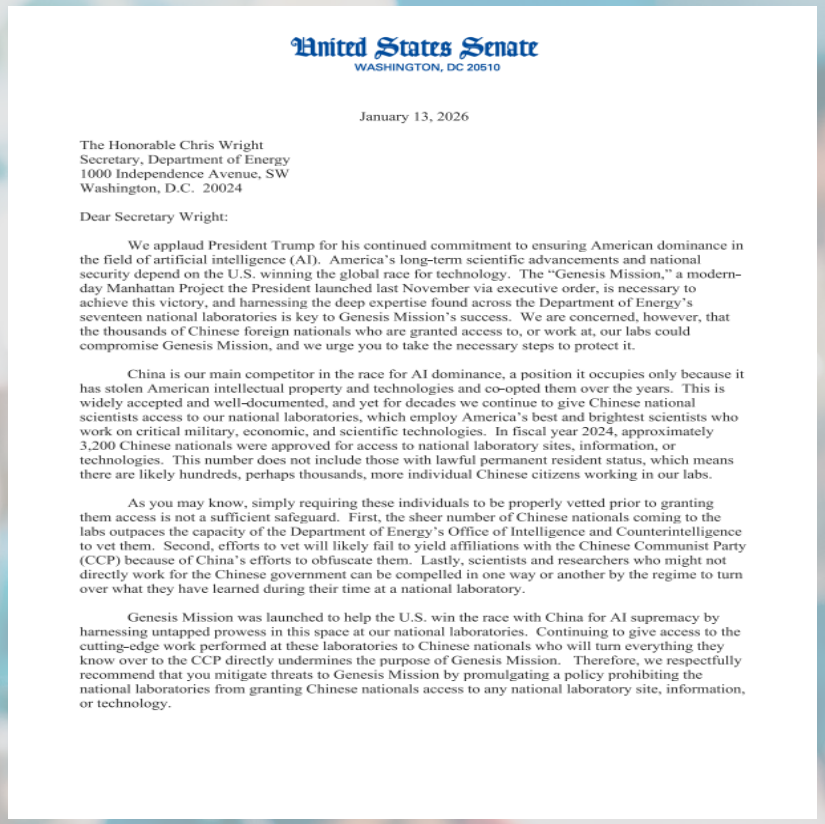
"The investigation identified approximately 4,350 research papers between June 2023 and June 2025 where DOE funding or research support involved research relationships with PRC entities, including over 730 DOE awards and contracts. Of these, approximately 2,200 publications were conducted in partnership with entities within China's Defense research industrial base."

-December 17, 2025

Research security

Letter to S1 signed by 11 Senators – 1/13/26

- “[Simply] requiring [Chinese nationals] to be properly vetted prior to granting them access is not a sufficient safeguard.”
- “We respectfully recommend that you mitigate threats to Genesis Mission by promulgating a policy prohibiting the national laboratories from granting Chinese nationals access to any laboratory site, information, or technology.”



United States Senate
WASHINGTON, DC 20510

January 13, 2026

The Honorable Chris Wright
Secretary, Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20024

Dear Secretary Wright:

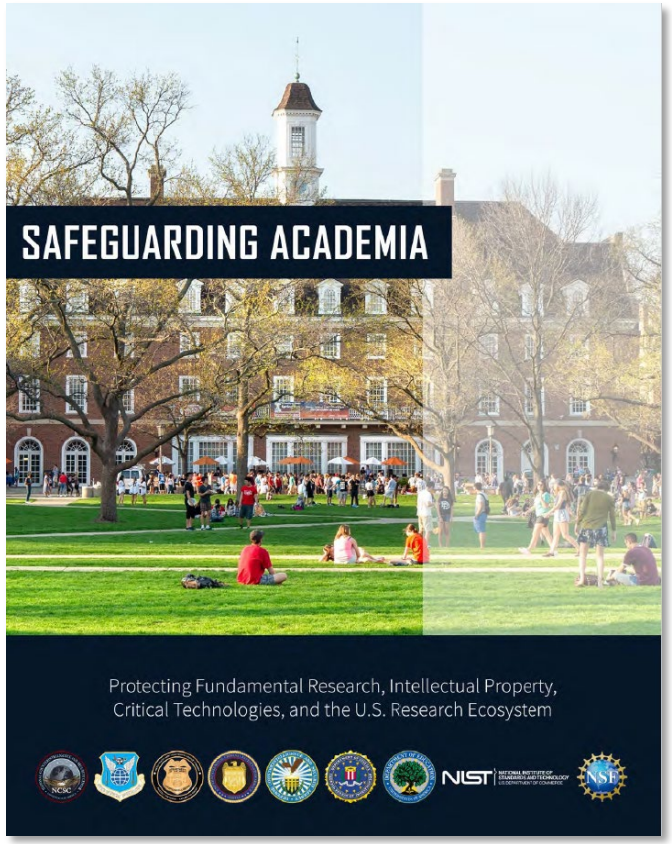
We applaud President Trump for his continued commitment to ensuring American dominance in the field of artificial intelligence (AI). America's long-term scientific advancements and national security depend on the U.S. winning the global race for technology. The "Genesis Mission," a modern-day Manhattan Project the President launched last November via executive order, is necessary to achieve this victory, and harnessing the deep expertise found across the Department of Energy's seventeen national laboratories is key to Genesis Mission's success. We are concerned, however, that the thousands of Chinese foreign nationals who are granted access to, or work at, our labs could compromise Genesis Mission, and we urge you to take the necessary steps to protect it.

China is our main competitor in the race for AI dominance, a position it occupies only because it has stolen American intellectual property and technologies and co-opted them over the years. This is widely accepted and well-documented, and yet for decades we continue to give Chinese national scientists access to our national laboratories, which employ America's best and brightest scientists who work on critical military, economic, and scientific technologies. In fiscal year 2024, approximately 3,200 Chinese nationals were approved for access to national laboratory sites, information, or technologies. This number does not include those with lawful permanent resident status, which means there are likely hundreds, perhaps thousands, more individual Chinese citizens working in our labs.

As you may know, simply requiring these individuals to be properly vetted prior to granting them access is not a sufficient safeguard. First, the sheer number of Chinese nationals coming to the labs outpaces the capacity of the Department of Energy's Office of Intelligence and Counterintelligence to vet them. Second, efforts to vet will likely fail to yield affiliations with the Chinese Communist Party (CCP) because of China's efforts to obfuscate them. Lastly, scientists and researchers who might not directly work for the Chinese government can be compelled in one way or another by the regime to turn over what they have learned during their time at a national laboratory.

Genesis Mission was launched to help the U.S. win the race with China for AI supremacy by harnessing untapped prowess in this space at our national laboratories. Continuing to give access to the cutting-edge work performed at these laboratories to Chinese nationals who will turn everything they know over to the CCP directly undermines the purpose of Genesis Mission. Therefore, we respectfully recommend that you mitigate threats to Genesis Mission by promulgating a policy prohibiting the national laboratories from granting Chinese nationals access to any national laboratory site, information, or technology.

DOE MANAGED RESEARCH ENTERPRISE



The managed research environment at U.S. national labs is governed by a number of DOE policies and orders, including:

- DOE is an element of the Intelligence Community providing a formal connection to the other intelligence agencies. (Executive Order 12333)
- Establish requirements and responsibilities for Counterintelligence (CI) at DOE, NNSA, and the national laboratories. (DOE Order 475.1)
- Establish minimum requirements for foreign nationals to access DOE facilities, sites, information, and technologies. (DOE Order 142.3B)
- Ensure the continued flow of scientific and technical information consistent with DOE's broad scientific mission, while also ensuring protection of U.S. competitive and national security interests and DOE program objectives, including by prohibiting laboratory staff from participating in foreign talent recruitment programs. (DOE Order 486.1A)
- Specify DOE requirements for foreign engagements and establishing requirements for CI review of agreements including MOUs, CRADAs, etc. (DOE Policy 485.1A)

ADVANCING U.S. COMPETITIVENESS
in the Managed Research Environments of Department of Energy National Laboratories

nationallabs.org

While America's open and collaborative research, development, and innovation ecosystem underpins its success, adversary nations that do not share our values have increasingly sought to exploit this openness to misappropriate U.S. taxpayer funded research and undermine U.S. economic and national security. The seventeen Department of Energy (DOE) national laboratories are a critical part of this ecosystem. A network of predominantly government-owned, contractor-operated (GOCO) federally funded research and development centers (FFRDCs) that leverage best practices from the private sector to deliver key national, mission-driven outcomes in everything from fundamental science to advanced energy to nuclear weapons, the national laboratories provide a **managed research environment** that balances risk with benefit and evolves with changing threats and geopolitical dynamics. With people, procedures, tools, and infrastructure, this **managed research environment** provides layers of security and protection enabling classified and unclassified research on sensitive technologies to occur at the same labs as unclassified basic research, for which free exchange of information and robust engagement with the international community is essential.

PEOPLE

The **managed research environment** depends on experts from across the laboratory, including technical subject matter experts, laboratory leadership, DOE and laboratory counterintelligence officials, and other laboratory staff responsible for export controls, physical and network security, information technology, material classification, and Foreign National Access Programs. These domain experts combine deep scientific and technical knowledge with expert understanding of the threat landscape and effective security strategies to identify and mitigate risk. National laboratory directors, in close coordination with senior DOE officials, ultimately decide whether or not to accept the risk and how to manage it.

PROCEDURES

- **Reviewing all foreign nationals requesting access to the laboratory**, both visitors and employees, with enhanced vetting for those associated with a sensitive country. This screening may include, but is not limited to, counterintelligence briefings and debriefings of hosts, cross-checks with other government databases, and individually tailored vetting by locally based counterintelligence professionals. About 10% of the Foreign Nationals who officially request access to the laboratories are denied access, but the rejection rate is at least double that when factoring in those whom the labs advise not to apply in the first place.
- **Developing individual security mitigation plans and continuously evaluating risk.** Ongoing reviews ensure foreign nationals remain isolated from sensitive information both online and on-site and only have access to what is needed for their open, unclassified work. Once granted access, foreign nationals' activities and research is continuously monitored and reevaluated, and access can be denied at any time if the risk-benefit ratio evolves.
- **Applying physical and network access controls** based on the individual security mitigation plan to protect sensitive research. This includes, but is not limited to, limiting physical access to buildings and areas where only unclassified work takes place;

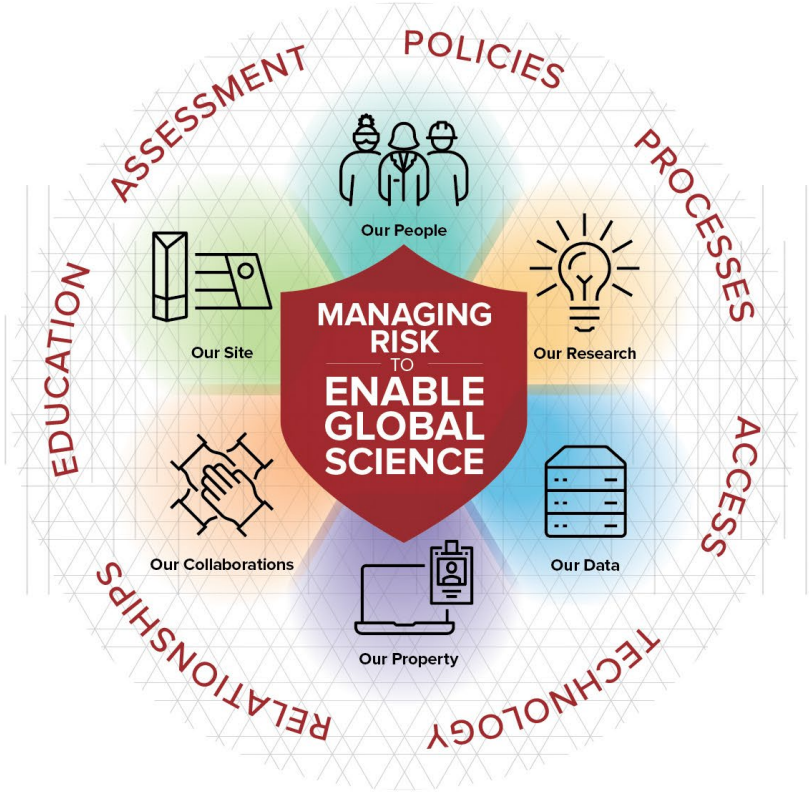
ARGONNE MANAGED RESEARCH ENTERPRISE

Collective Security Management:

- ❑ Foreign National Access Vetting
- ❑ Foreign Agreement Reviews
- ❑ Cybersecurity
- ❑ International Travel
- ❑ Scientific Collaboration
- ❑ Insider Threat Program
- ❑ Awareness/Outreach Programs

SECURITY STRATEGY
OVERVIEW

Argonne NATIONAL LABORATORY



Research security risks

Research Security - Potential mitigations

Governance	**Awareness**	**Data-Informed Risk Management**
Education	**Workforce Engagement**	**Expertise Investment/ Prioritization**
Communication Strategy	**Transparency**	**Stakeholder Management**

RESEARCH **SECURITY**

Integration and partnerships throughout the business lifecycle

Argonne NATIONAL LABORATORY

ARGONNE'S **BUSINESS LIFECYCLE**

Pre-Proposal > Proposal > Project Kickoff > Project Execution > Project Closeout

Mr. Dan Raker

Dan Raker is Argonne's senior director, Human Resource Services, and chief human resources officer, and the laboratory's deputy general counsel. As chief human resources officer, Dan oversees the laboratory's talent strategy, seeking to attract, retain, and develop the people the lab needs to excel, and sustains a welcoming and respectful culture that helps the lab succeed and thrive. Since joining Argonne in 2008, Dan has provided legal support and leadership on a variety of governance, policy and risk issues in support of Argonne's mission. Prior to joining Argonne, Dan worked at a large multinational law firm headquartered in Chicago in the labor and employment practice group and represented Argonne as outside counsel. Dan has a bachelor's degree from Marquette University and a Juris Doctor degree from the University of Illinois College of Law, where he was a member of the Illinois Law Review and was selected for the Order of the Coif. Dan is a certified compliance and ethics professional and a member of the Association of Corporate Counsel and the Society of Corporate Compliance and Ethics.

Marta A. Thompson is a partner in Akin's Washington, DC office and a leading government contracts lawyer. She represents clients in high-stakes government investigations, including False Claims Act matters involving federal grants and contracts, and advises on complex regulatory issues tied to national security, federally funded research, and public procurement. Marta also serves as lead government contracts counsel on sophisticated M&A and investment transactions. She leads Akin's Space group and co-leads the firm's Higher Education practice.

Stewart Forbes

Counsel, Washington, D.C.

Stewart Forbes brings ten years of energy expertise honed at the U.S. Department of Energy (DOE) to his role in Hogan Lovell's energy regulatory practice group. Stewart is a recognized expert on DOE and its authorities, and a much sought after speaker on advanced nuclear development. He leverages his expertise to support a variety of clients in agreements with DOE and its national laboratories. His clients include many advanced nuclear reactor developers, major U.S. engineering, procurement, and construction (EPC) contractors, and appliance manufacturers subject to DOE efficiency regulations.

During his DOE tenure, Stewart advised multiple agencies, including DOW and NASA on nuclear development projects and was instrumental in structuring both Project PELE and Project Draco. At DOE he designed and implemented a variety of programs as lead counsel. He was instrumental in the Advanced Reactor Demonstration Program, the Civil Nuclear Credits Program, and Mars 2020. He also helped lead DOE's efforts to modernize its Other Transaction Agreement practices.

At Hogan Lovells, Stewart's practice supports energy developers of all types as they navigate DOE and other agencies, federally funded research and development centers, the nuances of siting on federal land, and government indemnification agreements. He graduated magna cum laude from the University at Buffalo School of Law, where he specialized in corporate transactions.

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Areas of focus

U.S. Department of Energy

Nuclear Development

Education

Brigham Young University, 2001

University at Buffalo School of Law, 2013

DOECAA CONFERENCE
SPRING 2026

LEGAL ETHICS IN A DYNAMIC LANDSCAPE

CHRISTINA TACKETT
Deputy General Counsel

AGENDA

- ABA Artificial Intelligence (AI) Guidelines
- Mike Vernick, Partner, Jenner & Block
  - — Use of AI in Sponsored Research
  - — Risks Associated with Faculty Start-ups

ABA AI GUIDELINES

Formal Opinion 512 (July 29, 2024) .

Focus: ethical use of Generative AI in legal practice.

Applies ABA Model Rules to AI tools.

Key Duties: competence, communication, confidentiality, candor, supervision, fees.

KEY RISKS OF GENERATIVE AI

- Inaccurate outputs & hallucinations
- Bias & outdated data
- Coidentity risks
- Over-reliance without verification

MODEL RULE 1.1 – COMPETENCE

- Lawyer must understand GAI benefits & risks
- No need to be experts, but must be informed
- Independent verification required
- Lawyer remains responsible for all work

MODEL RULE 1.4 – COMMUNICATION

- Disclose GAI use when material to representation
- Required if client asks or consent is needed
- Explain risks, benefits, and impact on decisions
- Align with client expectations

MODEL RULE 1.6 – CONFIDENTIALITY

- Protect client information when using GAI
- Assess risk before imputing data
- Client informed consent may be required
- Review tool terms, privacy, and data handling

MODEL RULES 3.1, 3.3, 8.4 – CANDOR & MERIT

- No false statements or frivolous claims
- Verify citations and legal authority
- Correct errors before submission
- Avoid misleading Ai-generated arguments

MODEL RULES 5.1 & 5.3 – SUPERVISION

- Establish firm policies on AI use
- Train lawyers and staff on risks and ethics
- Supervise vendors and third-party AI providers
- Ensure compliance with professional rules

MODEL RULE 1.5 – FEES

- Fees must be reasonable and transparent
- Bill actual time spent, not AI efficiency gains
- Distinguish overhead vs. billable expenses
- Do not charge for learning basic AI tools

BEST PRACTICES & TAKEAWAYS

- Always verify AI outputs
- Limit sensitive data input
- Stay updated on AI developments
- Document policies and client agreements
- Use AI as a tool – not a replacement for judgement

DOECAA Conference

Spring 2026

Legal Ethics – Use of Artificial Intelligence in Sponsored Research & Risks Associated With Faculty Start-ups

Mike Vernick

April 2026

JENNER&BLOCK

Agenda

- The intersection of ethics and compliance
- Use of AI in sponsored research
- Faculty start-ups

Connections Between Research Ethics and Compliance

- Research and researchers are operating in a highly stressful environment
  - Political climate
  - Funding challenges
  - Public perception
- Challenging environments can stress both individual and institutional ethics

Connections Between Research Ethics and Compliance

- Approaches to effective compliance
  - Federal Sentencing Guidelines
    - Oversight
    - Monitoring
    - Written policies
    - Training
    - Reporting
    - Auditing
  - Identifying and eliminating or mitigating structural barriers to non-compliance
    - Systems
    - Personnel
    - Operating environment

Artificial Intelligence and Sponsored Research

JENNER&BLOCK

Background– Genesis Mission

- Genesis Mission
  - Acceleration of innovation and discovery through the use of AI
  - Focus on space, science and national security
    - **Scaling the Grid to Power the American Economy**
    - **Harnessing America's Historic Nuclear Data**
    - **Enhancing Particle Accelerators for Discovery**
    - **Designing Materials with Predictable Functionality**
    - **Unleashing Subsurface Strategic Energy Assets**
    - **Achieving AI-Driven Autonomous Laboratories**
    - **Reenvisioning Advanced Manufacturing and Industrial Productivity**
    - **Discovering Quantum Algorithms with AI**
    - **Recentering Microelectronics in America**

Background—Fundamental Principles

- "[W]e urge the scientific community to focus sustained attention on five principles of human accountability and responsibility for scientific efforts that employ AI:
  - Transparent disclosure and attribution
  - Verification of AI-generated content and analyses
  - Documentation of AI-generated data
  - A focus on ethics and equity
  - Continuous monitoring, oversight, and public engagement
- With the advent of generative AI, all of us in the scientific community have a responsibility to be proactive in safeguarding the norms and values of science." Blau et al. PNAS, Vol. 12, No. 22 (May 2024)

Background—Basic Science Issues

- Reproducibility
- Black Box
- Bias
- Transparency
- Overfitting
- Hallucinations

Data Privacy, Data Security & Research Security

- Models may utilize highly confidential data
  - Patient data
  - human subjects
  - Genomic data
  - Personal data
- Entering data into AI tools runs the risk of
  - Improper disclosure and/or dissemination
  - Export controls – may need to include AI in a technology control plan
  - Cybersecurity requirements
  - HIPAA; GDPR compliance
  - Restrictions on access to information

Authorship

- AI Models generally don't meet authorship standards
  - Nature Large Language Models (LLMs), such as ChatGPT, do not currently satisfy our authorship criteria. Notably an attribution of authorship carries with it accountability for the work, which cannot be effectively applied to LLMs. Use of an LLM should be properly documented in the Methods section (and if a Methods section is not available, in a suitable alternative part) of the manuscript. The use of an LLM (or other AI-tool) for "AI assisted copy editing" purposes does not need to be declared. In this context, we define the term "AI assisted copy editing" as AI-assisted improvements to human-generated texts for readability and style, and to ensure that the texts are free of errors in grammar, spelling, punctuation and tone. These AI-assisted improvements may include wording and formatting changes to the texts, but do not include generative editorial work and autonomous content creation. In all cases, there must be human accountability for the final version of the text and agreement from the authors that the edits reflect their original work. (https://www.nature.com/nature-portfolio/editorial-policies/ai#ai-authorship)
- Disclosure warranted, likely in the methods section of journal articles

Research Misconduct

- AI tool use can create research misconduct issues
  - Types of research misconduct include
    - Fabrication
    - Falsification
    - Plagiarism
  - Trend toward specific recognition of the risk of AI tools
    - RESEARCH MISCONDUCT means fabrication, falsification, or plagiarism, **whether committed by an individual directly or through the use or assistance of other persons, entities, or tools, including artificial intelligence (AI)-based tools**, in proposing or performing research funded by NSF, reviewing research proposals submitted to NSF, or in reporting research results funded by NSF

Intellectual Property

- Use of AI tools can create difficult questions about the ownership of resulting intellectual property
- In the case of federally funded activity, there can also be Bayh-Dole Act compliance issues
- Infringement on the intellectual property rights of others
- Publicly available AI tools may create public disclosures and start the patent clock in the US and threaten patentability ex-US
- Utilizing AI may threaten trade secrets, must take reasonable steps to protect such information

Equity, Access and Impact on Science

- Access to sophisticated AI tools can afford researchers a leg up in an increasingly competitive environment
  - Literature reviews
  - Analysis
  - Research
  - Writing
  - Help with “thinking”
- Can also contribute to efforts to obtain funding
  - Movement toward limiting the use of AI to obtain financial support
    - NIH will not consider applications that are either substantially developed by AI, or contain sections substantially developed by AI, to be original ideas of applicants. If the detection of AI is identified post award, NIH may refer the matter to the Office of Research Integrity to determine whether there is research misconduct while simultaneously taking enforcement actions including but not limited to disallowing costs, withholding future awards, wholly or in part suspending the grant, and possible termination.
- But AI tools also require substantial computing power and financial wherewithal
- Some concerns that there is a risk for concentration of research activities and resulting loss of potentially game-changing science
- Similarly, academic literature suggests the possibility that use of AI tools may lead to more publications but in fewer areas and in areas that are more established

AI-Related Practices to Consider

- Develop training modules on appropriate AI use
- Consider implementation of auditing and monitoring protocols
- Many institutions have a specific suite of approved AI tools and procedures to obtain permission to use others
  - Give due consideration to potential biases
  - Think through possible intellectual property issues
  - Vet developers and vendors
- Assess how and if AI can be used in support of extremally funded research initiatives
- Convey expectations around disclosing the use of AI, there may be multiple areas to consider
  - Journals
  - Internal committees
  - Sponsors

AI-Related Practices to Consider

- Implement data controls, e.g., internal controls to prevent confidential material from entering the public domain
- Develop and disseminate guidance on research integrity when AI tools are utilized, e.g., human verification
- May be special concerns for research involving human subjects
  - IRB oversight
  - HIPAA
  - Consent

- Remain engaged and nimble; this is a rapidly changing area!

Key Issues Associated With Faculty Start-ups

JENNER&BLOCK

Overview

- Faculty are becoming ever more entrepreneurial and start-ups are more common
- Although distinct from the academic institution employing the faculty member, start-ups raise a unique series of risks
  - Legal/compliance
  - Reputational
- Start-ups typically have limited resources generally and often specifically to devote to compliance

Financial Conflicts of Interest

- Conflicts arise when a researcher holds equity in a startup may benefit from their university research
  - Calls into question whether the objectivity of that researcher is potentially compromised
- Mitigation
  - Disclosure and management plans
    - Oversight, reporting lines
  - Recusal from contractual, financial and other transactions
  - Sometimes a conflict cannot be mitigated and must instead be avoided

Conflict of Commitment

- Goes to the question of available time; is a researcher with start-up short changing another institution at which they may have a full-time appointment
- C-suite roles raise particular concerns
- Timekeeping on federal grants and contracts is a key compliance area; outside activities may pose risks to accuracy
- Other potential risk areas include:
  - Service on peer review committees
  - Journal editorial boards and/or service as a reviewer
  - Diversion of research funding
  - Selective publications
- Mitigation
  - Institutional policy
  - Disclosure
  - Oversight/monitoring
  - At some point researchers may have to choose their start-up or their academic institution

Improper Pressure Placed on Students and/or Trainees

- Coercion of students and trainees, whether real or perceived, to support start-up activities can be a significant risk area
  - Physically working at the start-up
  - Engaging in activities that benefit the start-up from the academic institution
- Mitigation
  - Training and education
  - Faculty disclosure to lab personnel
  - Avoiding activities that benefit the start-up
  - Climate checks
  - In some cases, a leave may be appropriate

Improper use of Institutional Resources

- Faculty with start-ups may sometimes seek to utilize the resources of their primary employer
  - Space
  - Equipment
  - Personnel
  - Other research resources
- Mitigation
  - Policies
  - Formal agreements
  - Monitoring

Intellectual Property Issues

- Can create dispute around intellectual property ownership
- Bayh-Dole concerns
- Foreign ownership
- Licensing issues
- Domestic manufacturing
- Mitigation
  - Monitoring
  - Diligence
  - Assessment of licensing terms

Research Security

- Research security is an increasingly important compliance area
- Disclosure obligations
  - Current and pending support
- Countries of risk/concern
- Export controls
  - Dual use
  - Defense related
  - High/emerging technology
- Research security programs should actively consider risks associated with faculty start-ups and include specific mitigation measures, including disclosure by faculty and approach to licensing

Institutional Conflicts of Interest

- Academic institutions sometimes hold equity positions in faculty start-ups
- Can create a special set of issues involving:
  - Research collaboration
  - Licensing
  - Financial or other support
  - Trustee/investment
  - Public perception

Special Issues Associated with SBIRs/STTRs

- Administering an SBIR/STTR project can be challenging for a start-up, creates compliance risk that directly or indirectly impact an academic institution
  - Common areas of concern include:
    - Eligibility
    - Day-to-day compliance
    - Compliance with work-share and other similar requirements
- Other risk areas that frequently pose challenges
  - Investigator conflict of interest
  - Negotiating subawards/subcontracts
  - Intellectual property disputes
  - Institutional equity

CHRISTINA TACKETT

Christina Tackett is the Deputy General Counsel and Ethics Officer at Argonne National Laboratory. Before joining Argonne, she served as the Deputy Assistant General Counsel for Legislation and Regulation at the U.S. Department of Energy. Her prior experience also includes roles as the Assistant Chief Counsel for Hazardous Materials Safety Law at the U.S. Department of Transportation and as an Attorney-Advisor at the Federal Maritime Commission. In addition to her civilian career, she is a reservist in the U.S. Army Judge Advocate General's Corps. Christina earned her law degree from Emory University School of Law and undergraduate degree from The George Washington University.

Mike Vernick

- Mike is a partner in Jenner & Block's government contracts and higher education practices. He is a dedicated advisor to universities and research institutions with a practice focusing on the legal frameworks governing federal research funding with particular emphasis on research security, cybersecurity, cost allowability, research misconduct, and conflicts of interest. He is widely recognized for his work defending clients against False Claims Act allegations involving all aspects of federally sponsored research and government contracts.

CLE Information

DOECAA

DEPARTMENT OF ENERGY
CONTRACTOR ATTORNEYS ASSOCIATION

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