



OFFICE OF THE VICE PRESIDENT - RESEARCH AND GRADUATE STUDIES

OFFICE OF THE PRESIDENT  
1111 Franklin Street, 11<sup>th</sup> Floor  
Oakland, California 94607-5200

March 10, 2017

CHANCELLORS  
ACADEMIC COUNCIL CHAIR  
LABORATORY DIRECTOR WITHERELL  
ANR VICE PRESIDENT HUMISTON

**RE: Systemwide Review of Proposed Presidential Policy on Export Controls**

Dear Colleagues:

Attached for Systemwide Review is a new Presidential Policy on Export Controls.

This new policy provides the core parameters for compliance with the federal export control regulations. Please refer to the attached Summary of Export Controls Policy for additional context and information for the new policy.

Systemwide Review

Systemwide Review is a public review distributed to the Chancellors, the Director of Lawrence Berkeley National Laboratory, the Chair of the Academic Council, and the Vice President of Agriculture and Natural Resources, requesting that they inform the general University community, affected employees, and union membership about policy proposals. Systemwide Review also includes a mandatory, three-month full Senate review. Employees should be afforded the opportunity to review and comment on the draft policy. Attached is a Model Communication which may be used to inform non-exclusively represented employees about this proposal. The Labor Relations Office at the Office of the President is responsible for informing the bargaining units representing union membership about policy proposals.

We would appreciate receiving your comments by June 8, 2017. Please submit your comments or questions to Lourdes DeMattos, Research Policy Analysis and Coordination, at [ECPolicyComments@ucop.edu](mailto:ECPolicyComments@ucop.edu). Please indicate "Export Controls Policy Comments" in the subject line.

Sincerely,

A handwritten signature in black ink, appearing to read "Arthur Ellis".

Arthur Ellis  
Vice President  
Research and Graduate Studies

Attachments: Summary of Export Controls Policy  
Presidential Policy on Export Controls

cc: President Napolitano  
Provost and Executive Vice President Dorr  
Executive Vice President & Chief Financial Officer Brostrom  
Executive Vice President & Chief Operating Officer Nava  
Executive Vice President Stobo  
Senior Vice President Henderson  
Senior Vice President Peacock  
Senior Vice President Gulbranson  
Interim Senior Vice President Lohse  
Vice President & General Counsel Robinson  
Vice President & Chief Investment Officer Bachher  
Vice President Budil  
Vice President Duckett  
Vice President Holmes-Sullivan  
Vice Provost Carlson  
Vice Provost Gullatt  
Deputy General Counsel Woodall  
Vice Chancellors/Vice Provosts of Academic Personnel/Academic Affairs  
Academic Personnel Directors  
Chief of Staff Grossman  
Deputy Compliance Officer Lane  
Chief Policy Advisor Kao  
Deputy Chief of Staff Jones  
Senior Counsel Auriti  
Executive Director Baxter  
Executive Director Peterson  
Executive Director Streitz  
Director Chester  
Director Henderson  
Director Lockwood  
Export Control Manager Warshawsky  
Manager Donnelly  
Manager Smith  
Academic HR Manager Jordan  
Human Resources Manager Romorino

## SUMMARY OF EXPORT CONTROLS POLICY

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The attached Export Controls policy has been drafted to provide the core parameters for compliance with the federal export control regulations.

### I. Background

The federal government controls the transfer and export of information, items, technology, and software important to U.S. national security, foreign policy, and economic interests. The federal government also controls transactions and distributions of funds within and to certain countries, entities, or individuals based on a variety of interests. The University must comply with these controls in the conduct of all of its activities. Export control violations can result in civil and criminal penalties against the University and individuals, including fines and imprisonment.

The proposed policy will help protect both the University and individuals affiliated with the University from the risk of non-compliance. This policy is consistent with the University's historical approach to export controls. The Office of the President may issue guidance from time to time to help with the implementation of this policy as needed.

### II. Drafters of the Export Controls Policy

The proposed Export Controls policy was created by a workgroup consisting of individuals from UCOP's Research Policy Analysis and Coordination office, the Office of Ethics, Compliance and Audit Services, the Office of General Counsel, and a number of campus representatives knowledgeable in export control regulations. The workgroup has consulted with the Systemwide Export Control Workgroup and representatives from Procurement, Financial Accounting, Risk Services, Human Resources, Academic Personnel, Budget Analysis and Planning, and Student Affairs.

### III. Brief Summary of the Export Controls Policy

The proposed policy seeks to provide a framework for all University locations to develop further local export control compliance programs that satisfy federal legal requirements while allowing each location the flexibility to develop its own specific requirements and practices. Compliance with Export Controls requires the cooperation and is the responsibility of various offices and individuals across the University system. The proposed policy identifies some of those offices and individuals and describes some of their responsibilities to ensure that the University follows export control laws and regulations.

The Office of the President is also considering a *separate* policy on Openness in Research. The principles of openness in research intersect with the federal export control regulations because the regulations do not apply to (i.e., "exclude") fundamental research of the type performed by the University in an open academic environment. However, it is worth noting that the Export

Control policy focuses on export control compliance across the broad range of University activities, whereas any proposed Openness in Research policy would only apply to research activities.

#### IV. Timeline of the Reviews of the Export Controls Policy

You are reviewing the proposed Export Control policy in the course of its 90-day systemwide review. Once the 90-day review period is complete and comments have been addressed, the proposed policy will go before UCOP's Policy Advisory and Policy Steering Committees before the President is asked to sign it.

#### V. Contact for Questions

If you have any questions or comments on this draft Export Controls policy, please contact Lourdes DeMattos, Research Policy Analysis and Coordination, at [ECPolicyComments@ucop.edu](mailto:ECPolicyComments@ucop.edu). Please indicate "Export Control Policy Comments" in the subject line. You may also wish to contact your local export control contact regarding this policy or export controls in general (see list below).

<a href="#">UC Berkeley</a>	<a href="#">Scott Fong</a> , <a href="mailto:shfong@berkeley.edu">shfong@berkeley.edu</a> , <i>Export Control Compliance Officer</i>
<a href="#">UC Davis</a>	<a href="#">Craig Allison</a> , <a href="mailto:ccallison@ucdavis.edu">ccallison@ucdavis.edu</a> , <i>Director, Research Compliance</i>
<a href="#">UC Irvine</a>	<a href="#">Marci Copeland</a> , <a href="mailto:m.copeland@uci.edu">m.copeland@uci.edu</a> , <i>Export Control Officer, Office of Res-Research Admin</i>
<a href="#">UCLA</a>	<a href="#">Ann Pham</a> , <a href="mailto:ann.pham@research.ucla.edu">ann.pham@research.ucla.edu</a> , <i>Export Control Administrator</i>
<a href="#">UC Merced</a>	<a href="#">Deborah Motton</a> , <a href="mailto:dmotton@UCMERCED.EDU">dmotton@UCMERCED.EDU</a> , <i>Assistant Vice Chancellor for Research</i>
<a href="#">UC Riverside</a>	<a href="#">Charles Greer</a> , <a href="mailto:charles.greer@ucr.edu">charles.greer@ucr.edu</a> , <i>Associate Vice Chancellor for Research</i>
<a href="#">UC San Diego</a>	<a href="#">Brittany Whiting</a> , <a href="mailto:brwhiting@ucsd.edu">brwhiting@ucsd.edu</a> , <i>Export Control Officer</i>
<a href="#">UC San Francisco</a>	<a href="#">Joan Doherty</a> , <a href="mailto:Joan.Doherty@ucsf.edu">Joan.Doherty@ucsf.edu</a> , <i>Associate Director, Office of Ethics &amp; Compliance</i>
<a href="#">UC Santa Barbara</a>	<a href="#">Brandt Burgess</a> , <a href="mailto:bburgess@ucsb.edu">bburgess@ucsb.edu</a> , <i>Director of Research Integrity</i>
<a href="#">UC Santa Cruz</a>	<a href="#">Brian Warshawsky</a> , <a href="mailto:brian.warshawsky@ucop.edu">brian.warshawsky@ucop.edu</a> , <i>Acting Campus Export Control Lead</i>
<a href="#">Lawrence Berkeley National Laboratory</a>	<a href="#">Scott Fong</a> , <a href="mailto:shfong@berkeley.edu">shfong@berkeley.edu</a> , <i>Export Control Compliance Officer</i>
<a href="#">Agriculture &amp; Natural Resources</a>	<a href="#">Kathy Nolan</a> , <a href="mailto:knolan@ucanr.edu">knolan@ucanr.edu</a> , <i>Director, Contracts &amp; Grants</i>



# Export Controls

<b>Academic Officer:</b>	Provost & EVP
<b>Academic Office:</b>	AA - Academic Affairs
<b>Staff Officer:</b>	EVP - Chief Financial Officer
<b>Staff Office:</b>	FA - Financial Accounting
<b>Issuance Date:</b>	[Issuance Date]
<b>Effective Date:</b>	[Effective Date]
<b>Scope:</b>	UC Faculty, Academic Appointees, Staff, Students (including student employees), non-employee participants in University programs (e.g., visiting scholars, vendors, and contractors).

	Academic Affairs	Office of the Chief Financial Officer
Contact	Wendy Streitz	Peggy Arrivas
Title	Executive Director, Research Policy Analysis and Coordination	Associate Vice President, Systemwide Controller
Email	wendy.streitz@ucop.edu	Peggy.Arrivas@ucop.edu
Phone	(510) 987-9108	(510) 987-9067

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## I. POLICY SUMMARY

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This policy addresses the University of California’s (“University”) compliance with U.S. export control laws and regulations,<sup>1</sup> while adhering to the University’s mission as an institution of higher education. The University maintains an open academic environment in support of its mission of teaching, research, and public service. At the same time, export control laws and regulations control the conditions under which certain information, technologies, and commodities can be exported<sup>2</sup> overseas to anyone, including U.S. citizens, or to a foreign national within the U.S. The University is committed to complying with all U.S. export control laws in both research and non-research activities.

This Policy applies to all University activities. Export control violations can result in civil and criminal penalties against the University, and/or assessment of fines or imprisonment of an individual.

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## II. DEFINITIONS

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Included are some excerpts of definitions intended to facilitate the reading of this policy, but note that definitions vary slightly from one federal regulation to another. The ITAR and EAR definitions are provided here as the most common.<sup>3</sup> UC locations are advised to review the applicable regulations, and in case of inconsistency, the definitions associated with the cognizant regulations shall take precedence over definitions provided here.

### A. *Acronyms*

CCL	Commerce Control List
DDTC	Directorate of Defense Trade Controls
EAR	Export Administration Regulations
ECCN	Export Control Classification Number
ECO	Export Control Officer
FRE	Fundamental Research Exclusion
FTR	Foreign Trade Regulations

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<sup>1</sup> See Section VI of this Policy for a list of U.S. export control regulations in effect at the time this Policy was issued and their corresponding federal agencies.

<sup>2</sup> An export can include, but is not limited to, hand-carrying or shipping an item, sending information or data about an item electronically, or sharing information about an item through a phone or in-person conversation. See Export definition for more detail.

<sup>3</sup>The International Traffic in Arms Regulations (ITAR) under the U.S. Department of State regulate the export and temporary import of defense articles and services. The Export Administration Regulations (EAR) under the U.S. Department of Commerce regulate the export of items that are designed for commercial purposes, but which could have military applications.

ITAR	International Traffic in Arms Regulations
NRC	Nuclear Regulatory Commission
OFAC	Office of Foreign Assets Control
SECO	Systemwide Export Control Officer
TCP	Technology Control Plan
USML	U.S. Munitions List

### ***B. Deemed Export***

**As defined under the ITAR, [22 C.F.R. § 120.17](#), Deemed Export means:**  
 “Releasing or otherwise transferring [‘technical data’](#) to a foreign person in the United States.”

**As defined under the EAR, [15 C.F.R. § 734.13](#), Deemed Export means:**  
 “Releasing or otherwise transferring [‘technology’](#) or source code (but not object code)<sup>4</sup> to a foreign person in the United States.”

### ***C. Defense Article***

Defense Articles are items on the U.S. Munitions List (see [22 C.F.R. § 121](#)), including technical data about such items. These are generally inherently military in design and purpose, though the term also includes items and technical data that are not inherently military, such as satellites or items that incorporate a defense article.

### ***D. Empowered Official***

**As defined under the ITAR, [22 C.F.R. §120.25](#), an Empowered Official is a U.S. person who:**

- “(1) Is directly employed by the applicant or a subsidiary in a position having authority for policy or management within the applicant organization; and
- (2) Is legally empowered in writing by the applicant to sign license applications or other requests for approval on behalf of the applicant; and
- (3) Understands the provisions and requirements of the various export control statutes and regulations, and the criminal liability, civil liability and administrative penalties for violating the Arms Export Control Act and the International Traffic in Arms Regulations; and
- (4) Has the independent authority to: (i) Enquire into any aspect of a proposed export or temporary import by the applicant, and (ii) Verify the legality of the transaction and the accuracy of the information to be submitted; and (iii) Refuse to sign any license application or other request for approval without prejudice or other adverse recourse.”

### ***E. Export<sup>5</sup>***

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<sup>4</sup> “Software” is defined as “a collection of one or more ‘programs’ or ‘microprograms’ fixed in any tangible medium of expression,” and “Source Code (or source language)” is defined as “a convenient expression of one or more processes that may be turned by a programming system into equipment executable form (‘object code’ (or object language)).” [15 C.F.R. § 772](#)

**As defined under the ITAR, [22 C.F.R. § 120.17](#), Export means:**

- “(1) An actual shipment or transmission out of the United States, including the sending or taking of a defense article out of the United States in any manner;
- (2) Releasing or otherwise transferring technical data to a foreign person in the United States (a ‘deemed export’);
- (3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR by a U.S. person to a foreign person;
- (4) Releasing or otherwise transferring a defense article to an embassy or to any of its agencies or subdivisions, such as a diplomatic mission or consulate, in the United States;
- (5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad; or
- (6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export . . . . However, for certain limited purposes . . . , the controls . . . may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.”

**As defined under the EAR, [15 C.F.R. § 734.13](#), Export means:**

- “(1) An actual shipment or transmission out of the United States, including the sending or taking of an item out of the United States, in any manner;
- (2) Releasing or otherwise transferring “technology” or source code (but not object code) to a foreign person in the United States (a “deemed export”);
- (3) Transferring by a person in the United States of registration, control, or ownership of:
  - (i) A spacecraft subject to the EAR that is not eligible for export under License Exception STA (i.e., spacecraft that provides space-based logistics, assembly or servicing of any spacecraft) to a person in or a national of any other country; or
  - (ii) Any other spacecraft subject to the EAR to a person in or a national of a Country Group D:5 country.”<sup>6</sup>

## ***F. Foreign Person***

**As defined under the ITAR, [22 C.F.R. § 120.16](#), and the EAR, [15 C.F.R. § 772.1](#), a Foreign Person<sup>7</sup> is a person who IS NOT a **U.S. person**. A U.S. person includes a:**

- a. Citizen of the United States;
- b. Lawful permanent resident, i.e., a person lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws;<sup>8</sup>
- c. Person who is a protected individual, e.g., a person admitted as a refugee or granted asylum;<sup>9</sup> or

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<sup>5</sup> Be mindful of the regulations that apply to your specific circumstances. For example, the Department of Energy (DOE) and OFAC regulations do not explicitly define export, but do offer information on the scope of their regulations. [10 C.F.R. § 810.2](#); [OFAC Sanctions Programs and Country Information](#)

<sup>6</sup> The list of countries that are part of Country Group D:5 are provided in the EAR. [15 C.F.R. § 740.1, Supplement No. 1.](#)

<sup>7</sup> [22 C.F.R. § 120.16.](#)

<sup>8</sup> [8 U.S.C. 1101\(a\)\(20\).](#)



- d. Corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States, and any governmental (federal, state, or local) entity in the United States.

### **G. Fundamental Research**

**As defined under the ITAR, [22 C.F.R. § 120.11\(8\)](#), Fundamental Research means:** “basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

- (i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
- (ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.”

**As defined under the EAR, [15 C.F.R. § 734.8\(c\)](#), Fundamental Research means:** “research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.”

### **H. Fundamental Research Exclusion (FRE)<sup>10</sup>**

The Fundamental Research Exclusion (FRE) provides that technology or software that arises during, or results from, fundamental research and is intended to be published is excluded from the export control regulations.<sup>11</sup>

### **I. Restricted Party**

An individual, organization or entity appearing on any one of the U.S. government restricted party lists (e.g., the Department of Treasury Specially Designated Nationals List (SDN) or the Department of Commerce Entity List) as a party prohibited from receiving U.S. exports or financial transactions and/or with whom U.S. persons are restricted from engaging in export or financial transactions.

### **J. Technical Data/Technology**

**As defined under the ITAR, [22 C.F.R. § 120.10](#), Technical Data means:**

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<sup>9</sup> [8 U.S.C. 1324b\(a\)\(3\)](#).

<sup>10</sup> See [22 C.F.R. § 120.11\(a\)\(8\)](#); [15 C.F.R. § 734.8](#); [10 C.F.R. § 810.3](#); see also [National Policy on the Transfer of Scientific, Technical and Engineering Information, Nat'l Security Decisions Directives 189 \(Sept. 21, 1985\)](#).

<sup>11</sup> The FRE does not apply to all University activities. Please see section IV.A for a greater discussion on how the FRE applies.

- “(1) Information, other than software as defined [below]<sup>12</sup>, which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.
- (2) Classified information relating to defense articles and defense services . . .;<sup>13</sup>
- (3) Information covered by an invention secrecy order; or
- (4) Software . . . directly related to defense articles.”

This definition *does not* include the following: (1) information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, (2) information in the public domain,<sup>14</sup> or (3) basic marketing information on function or purpose or general system descriptions of defense articles.

**As defined under the EAR, [15 C.F.R. § 772](#),** Technology means “[i]nformation necessary for the ‘development,’ ‘production,’ ‘use,’ operation, installation, maintenance, repair, overhaul, or refurbishing . . . of an item. Technology “may be in any tangible or intangible form, such as written or oral communications, blueprints, drawings, photographs, plans, diagrams, models, formulae, tables, engineering designs and specifications, computer-aided design files, manuals or documentation, electronic media or information revealed through visual inspection.”

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### III. POLICY TEXT

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#### A. Purpose

This Policy is to assure compliance with U.S. export control laws and regulations. Federal export control laws and regulations restrict the transfer of specific items, information, and/or services for reasons of national security or trade protection. In general, the export control regulations control:

- The export from the United States to a foreign country of certain items, information, or software;
- Verbal, written, electronic, or visual disclosures or transfer of scientific and technical information related to controlled items to foreign persons or entities inside or outside the United States;

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<sup>12</sup> “*Software* includes but is not limited to the system functional design, logic flow, algorithms, application programs, operating systems, and support software for design, implementation, test, operation, diagnosis and repair.” [22 C.F.R. § 120.45\(f\)](#).

<sup>13</sup> Includes classified information relating to defense articles and defense services on the U.S. Munitions List, and classified information related to formerly ITAR-controlled articles subsequently appearing on the Commerce Control List (e.g. those in the ECCN -500 or -600 series).

<sup>14</sup> Public domain means “information which is published and which is generally accessible or available to the public.” [22 C.F.R. § 120.11](#).

- Transactions with, or travel to, certain sanctioned or embargoed countries for the conduct of activities such as teaching or research, or attending conferences; and
- Financial transactions, exports, re-exports,<sup>15</sup> and deemed exports<sup>16</sup> of items and information to Restricted Parties or End Users, or for Restricted End Uses.<sup>17</sup>

## **B. Applicability**

This Policy applies to all University staff, faculty, academic appointees, students (including student employees), and non-employee participants in University programs at its campuses including the UC Health Systems, the Lawrence Berkeley National Laboratory (LBNL), the Office of the President, Agriculture and Natural Resources (ANR), and all University programs and activities. For purposes of this Policy, UC campuses and Health Systems, LBNL, and ANR are referred to as “UC locations,” and the term “local” refers to matters relating to these.

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## **IV. COMPLIANCE / RESPONSIBILITIES**

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### **A. Compliance**

Generally speaking, the export control regulations permit U.S. universities to allow foreign nationals (e.g., students, faculty, academic appointees, and non-employee participants in University programs) to participate in fundamental research projects without securing a license. They also permit U.S. universities to share with foreign nationals in the U.S. or abroad “‘technology’ or ‘software’ that arises during, or results from, fundamental research and is intended to be published,” also without securing a license.<sup>18</sup> This carve-out is known as the Fundamental Research Exclusion, or the FRE.<sup>19</sup> Thus, our principal strategy for compliance with the U.S. export control regulations is based upon maintaining an open, fundamental research environment. Indeed, principal University tenets, including the freedom to publish and disseminate

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<sup>15</sup> Re-exports may require licenses from the U.S. government or carry additional restrictions even if the item is in a foreign country. Under the EAR, a re-export is an actual shipment or transmission from one foreign country to another foreign country. [15 C.F.R. § 734.2\(b\)\(4\)](#). Under the ITAR, a re-export is a transfer of defense articles or defense services to an end-use, end-user, or destination not previously authorized by license, written approval, or exemption. [22 C.F.R. § 120.19](#).

<sup>16</sup> A deemed export is a verbal, written, electronic, or visual disclosure of EAR or ITAR-controlled scientific and technical information to foreign nationals in the United States. Such a release is “deemed” to be an export to the home country or countries of the foreign national. This Policy uses the term “deemed export” when discussing access by foreign nationals to controlled information in the United States, without regard to which agency may have cognizance over the transaction. See [15 C.F.R. § 734.13\(2\)](#); [22 C.F.R. § 120.17\(a\)\(2\)](#).

<sup>17</sup> Restricted End Use and End Users are identified in the EAR. [15 C.F.R. § 744](#).

<sup>18</sup> [15 C.F.R. § 734.8](#).

<sup>19</sup> See [22 C.F.R. § 120.11\(a\)\(8\)](#); [15 C.F.R. § 734.8](#); [10 C.F.R. § 810.3](#); see also [National Policy on the Transfer of Scientific, Technical and Engineering Information, Nat’l Security Decisions Directives 189 \(Sept. 21, 1985\)](#).

research results,<sup>20</sup> nondiscrimination<sup>21</sup> and open access to University classrooms, libraries, laboratories, and specialized research facilities, without regard to citizenship,<sup>22</sup> are consistent with the requirements of the FRE.<sup>23</sup> To maintain the FRE, no University employee can consent (e.g., as a term or condition of an award or in a written or verbal side agreement or arrangement), or otherwise engage in behavior that restricts publication or the participation of foreign nationals.

In addition, the University assures compliance with the U.S. export control regulations by obtaining export licenses and/or implementing control plans when appropriate. Even in the course of fundamental research, transactions, items, or activities may require export licenses, control plans, or other compliance approaches. Transactions, items, or activities that may require export licenses, control plans, or other approaches to ensure compliance with the export control regulations include, but are not limited to:

- Transfer of proprietary information related to controlled items or technology,
- Receipt of ITAR-controlled items,
- Sales and service agreements related to controlled items or technology,
- Physical exports outside the U.S. of hardware, software, or technology,
- Dealings with restricted parties or entities,
- Defense services,<sup>24</sup>
- Restricted end uses, or
- Transactions involving embargoed or sanctioned parties/countries.

## **B. Responsibilities**

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<sup>20</sup> See [Academic Personnel Manual 010](#). See also University of California Office of the President, [Contract and Grant Manual § 1-410](#) [hereinafter *C&G Manual*]

<sup>21</sup> See [C&G Manual § 14-700](#). See also [Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment](#) (Jul. 3, 2013); [Regents Policy 4400: Policy on University of California Diversity Statement](#) (Sept. 16, 2010).

<sup>22</sup> See Memorandum from Robert N. Shelton, Vice Provost for Research, to the Vice Chancellors for Research, [Unacceptable Controls Based on U.S. Citizenship Status \(C&G Memo 00-05\)](#) (Dec. 15, 1999).

<sup>23</sup> See [22 C.F.R. § 120.11\(a\)\(8\)](#); [15 C.F.R. § 734.8](#); [10 C.F.R. § 810.3](#). See also [National Policy on the Transfer of Scientific, Technical and Engineering Information, Nat'l Security Decisions Directives 189 \(Sept. 21, 1985\)](#).

<sup>24</sup> Per the ITAR, Defense Service means: (1) The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; (2) The furnishing to foreign persons of any technical data controlled under ITAR (see §120.10), whether in the United States or abroad; or (3) Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the United States or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice. (See also §124.1.). [22 C.F.R. § 120.9](#).

Compliance with the export control regulations requires the cooperation and shared responsibility of many offices and persons across the University system. These are described below in general terms. Also see Appendix A for a list of potentially affected activities.

### **1. UC Office of the President (UCOP)**

Implementation of Export Control Regulations is handled by a number of persons/units within UCOP. These include:

**The UC President** has “full authority and responsibility over the administration of all affairs and operations of the University.”<sup>25</sup> The President provides leadership commitment to compliance with export control regulations, identifying and delegating authority to a key senior officer(s) who will oversee the export control compliance program, and designating ITAR Empowered Official(s).

**Ethics, Compliance and Audit Services (ECAS)** is responsible for overseeing the University’s compliance with export control regulations. The Senior Vice President of ECAS is an Empowered Official under the ITAR. The Senior Vice President also designates the Systemwide Export Control Officer (SECO) and recommends additional ITAR Empowered Officials to the President.

The SECO is responsible for coordinating systemwide communication and maintaining and disseminating regulatory information to UC locations. In addition, specifically with regard to ITAR, the SECO is an Empowered Official responsible for ITAR compliance and coordination with UC locations.

**Academic Affairs** through its **Research Policy Analysis & Coordination (RPAC) unit** is responsible for providing institutional policy and guidance with regard to export control regulations and other governmental regulations that potentially impact research publication and access. RPAC also advocates on behalf of the University to outside parties on export control issues related to research.

**The Office of the CFO** is responsible for ensuring, with the Chief Compliance Officer and Empowered Official, that UC locations implement export control policies and procedures.

**UC Office of General Counsel (OGC)** provides legal advice including access to outside counsel as needed. OGC may also coordinate with local Campus Counsel.

### **Other Offices at UCOP**

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<sup>25</sup> University of California Board of Regents, [Standing Order 100.4\(a\)](#). This authority excludes only those activities which are the responsibility of the Secretary and Chief of Staff, Chief Investment Officer, General Counsel of The Regents, and Senior Vice President - Chief Compliance and Audit Officer.

Export control regulations may impact units other than those Office of the President units named above, such as Procurement Services, Academic Personnel, Human Resources, Risk Services, and Financial Accounting. These units are responsible for supporting compliance with the export control regulations by cooperating with ECAS, Academic Affairs, and the Office of the CFO, ensuring that their respective policies are consistent with export control regulations and disseminating training and guidance to their campus constituents as needed.

## ***2. UC Campuses, the UC Health Systems, the Lawrence Berkeley National Laboratory (LBNL), and the Division of Agriculture and Natural Resources (ANR)***

Each UC location is responsible for creating a local Export Control Compliance program that is consistent with this policy and all U.S. export control laws and regulations. Each location shall establish practices and procedures for effective implementation, taking into consideration its local environment and infrastructure. Responsibility for compliance with such local Export Control Compliance programs resides with the following:

### **Local Export Control Officer(s)**

Individuals designated by executive leadership at each UC location as Export Control Officers (ECOs) shall be responsible for the monitoring and oversight of the local Export Control Compliance program (including regular assessments). ECOs shall be issued appropriate delegations of authority to effectively implement the local Export Control Compliance program. ECOs will serve as the primary point of contact and subject matter experts at that location.<sup>26</sup>

### **Other Administrative Offices**

Routine activities at the UC locations such as research, shipping, and processing foreign national visas may have export control regulatory implications. Functionally, export control compliance impacts a broad range of offices and departments. These offices include, but are not limited to the following:

- Academic Personnel
- Business Contracts
- Compliance
- Contracts and Grants
- Cooperative Extensions
- Disbursements
- General Counsel
- Health Systems

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<sup>26</sup> UC locations have the discretion of organizing and assigning the duties and responsibilities of the ECOs as they deem appropriate.

- Human Resources
- Information Technology
- International Students and Scholars Offices and International Centers
- Material Management and Asset Management
- Purchasing
- Risk Management
- Shipping
- Technology Transfer
- Travel

The local Export Control Compliance program should include education, training, and procedures for all gatekeepers. All offices and departments impacted by export control issues are expected to support and cooperate with their ECOs and the campus Export Control Compliance program to create procedures and implement these as appropriate.

### **Faculty and Other Academic Appointees, Staff, Students and Non-employee participants in University programs**

The local Export Control Compliance program should raise awareness so that faculty and other academic appointees, staff, students, and non-employee participants in University programs can identify activities that may have export control implications and seek guidance from subject experts. Accordingly, faculty and other academic appointees, staff, students, and non-employee participants in University programs are responsible for adhering to and supporting the University's Export Control Compliance Program in their respective areas by: (1) completing all training as applicable and as required by the location; (2) proactively identifying potential export control issues that may arise in the course of their University activities, in accordance with local training and awareness campaigns, and seeking assistance from their ECOs as appropriate; and (3) implementing any compliance measures or technology control plans as advised by the local Export Control Officer.

Faculty and other academic appointees, staff, students, and non-employee participants in University programs should contact the local Export Control Officer prior to engaging in situations including, but not limited to the following:

- Determining whether and how their activities (i.e., research, shipping, or exchange) involving export-restricted materials, items, information or software may be impacted by export control regulations.
- Making arrangements to bring export-controlled items, information or software onto a UC campus or into a UC research setting (e.g., proprietary and controlled software obtained through outside consulting).

- Traveling to, exporting to, or otherwise conducting University transactions with countries subject to Office of Foreign Assets Control (OFAC) sanctions.

The ECO should also be contacted upon becoming aware of a potential export control regulatory violation at the University.

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## V. PROCEDURES

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This Policy requires leadership commitment for the establishment of local Export Control Compliance programs by all University locations. Such programs must be consistent with the U.S. Export Control regulations, this Policy, other University policies, and any export control implementing guidance issued by the UC Office of the President.

### A. *Export Control Compliance Programs*

Compliance programs should be documented and minimally include the following elements:

- Designation of local **Export Control Officer(s)**;
- Delegation of authority for export control compliance functions;
- Identification of the export control compliance responsibilities pertaining to the various offices at the UC location (See Appendix A for a sample matrix that identifies potential risk areas and responsible offices.);
- Training and education of Export Control Officer(s);
- Communication, training, and education for the campus community (including Faculty and Other Academic Appointees, Staff, Students, and Non-employee participants in University programs) to promote understanding and awareness of the Export Control regulations;
- Implementation of practices and procedures to be carried out by the ECO and/or other offices at the UC location for:
  - Identification, review, and determination of export control plan requirements, licensing, and/or other tactics for the following:
    - materials shipped abroad, including jurisdiction and export classification;
    - restricted individuals and entities;
    - travel by UC personnel to sanctioned countries;
    - the purchase of export-restricted items;
    - research contracts and agreements, especially those that contain provisions such as publication controls or access/dissemination restrictions (e.g., approval requirements for the participation of foreign nationals);
    - access to or use of ITAR-controlled technology or equipment;



- material transfer agreements, license agreements, sales and service agreements, and other agreements;
- Submission of requests for export licenses (including a process to determine the need for export licenses, the use of general licenses, the use of regulatory exceptions and exemptions, and a requirement that all export licenses be coordinated with the ECO);
- Escalation of ITAR license requests to the SECO;
- Establishment of Technology Control Plans (TCPs) when warranted;
- Maintenance of records (see Record Keeping below);
- Oversight of the local Export Control Compliance program, including regular audits/assessments; and
- Review, investigation, escalation, and disposition of reported or suspected violations (see section on Potential Violations: Escalations, Reviews, and Investigations, and section on Disclosures below). This includes the establishment of procedures to allow individuals to report potential non-compliance whether through new or existing means.

## ***B. Record-Keeping***

Each set of U.S. export control regulations (e.g., EAR, OFAC, ITAR, DOE, FTR, and NRC) contains specific recordkeeping requirements that must be satisfied. UC locations must keep copies of all export documentation as required by the controlling regulations, and must designate the office(s) of record to archive export reviews, applications, licenses and other related records, such as shipping paperwork, TCPs, and financial records. Licensing documentation shall be retained according to the regulations and as captured in [UC Records Retention Schedule](#). In the event of conflict between the retention periods in the regulations and the UC Records Retention Schedule, the periods specified by the regulations shall take precedence. If the controlling agencies have no stated requirements, records should be kept no longer than as required by the UC Records Retention Schedule. Consult with the local Export Control Officer to verify or obtain record retention information and instructions.

For ITAR recordkeeping, the Empowered Official will forward ITAR licenses to the Export Control Officer at the location to which the license pertains. When the license has been exhausted, the UC location will be responsible for returning the original to the Department of State, with a copy provided to the SECO.

## ***C. Potential Violations: Escalations, Reviews, Investigations***

The University will respond promptly to all reports of non-compliance, and will take appropriate action to correct and prevent future violations.

Individuals may use existing means of reporting suspected violations, such as whistleblower hotlines, or may report via any other mechanism established for that

purpose in the relevant location's local Export Control plan. A local official who receives a report of a suspected violation must coordinate with the local Export Control Officer, legal counsel, and other leadership as necessary. UC locations should halt transactions, if appropriate, investigate the suspected violation, and evaluate what steps should be taken. Locations must determine whether a reported incident appears to constitute a violation of law and/or policy, and whether it is a result of systemic institutional practices or procedures. Locations must promptly report suspected violations of the U.S. export control regulations to the SECO and OGC. Corrective action plans should include provisions to prevent recurrence of any violations arising from systemic institutional practices or procedures.

Export control violations can result in civil and criminal penalties against the University and the individuals involved, including assessment of fines and/or imprisonment of individuals. Penalties apply to each specific violation, which means that if a violation relates to more than one controlled material or item, or occurs on more than one occasion, each item or incident may trigger a separate penalty.

Failure to comply with this Policy may be grounds for discipline pursuant to the Faculty Code of Conduct and the University Policy on Faculty Conduct and the Administration of Discipline<sup>27</sup> and/or other applicable disciplinary policies. Federal regulations may require reporting of any violations to the cognizant agency responsible for the export control regulation and to federal sponsors.

#### ***D. Disclosures to Federal Agencies***

The export control regulations contain provisions governing voluntary self-disclosure of violations to the relevant government agency. Voluntary and timely self-disclosures may mitigate the seriousness of a penalty. Any such disclosures concerning an ITAR matter must be prepared in conjunction with the local Export Control Officer, the SECO, and OGC. For all other disclosures, the Export Control Officer at each location must coordinate with local leadership (including the compliance officer) and counsel, and provide advance notification to the SECO and OGC.

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## **VI. RELATED INFORMATION**

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### ***A. REGULATIONS***

The list below provides links and/or summary information on the most common export regulations.<sup>28</sup>

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<sup>27</sup>Academic Personnel Policy Section 015, [The Faculty Code of Conduct \(APM - 015\)](#) and Section 016, [University Policy on Faculty Conduct and the Administration of Discipline \(APM-016\)](#).

<sup>28</sup> This list is not comprehensive. Persons are advised to consult with the local Export Control Officer. All links and references are as of June 13, 2016. All regulations are subject to change; Export Control Officers should regularly review the federal agencies' websites for updates.

**Department of State – <https://www.pmddtc.state.gov/>  
International Traffic in Arms Regulations (ITAR), [22 C.F.R. §§ 120-30](#).**

The U.S. Department of State, Directorate of Defense Trade Controls (DDTC), regulates items and information inherently military in design, purpose, or use through the International Traffic in Arms Regulations (ITAR). Referred to as "defense articles," such items are found on the U.S. Munitions List. [22 C.F.R. § 121](#). Certain information related to Defense Articles is referred to as "technical data." Licenses are required for the export of Defense Articles and Defense Services to every country. There may be items that are not inherently military that are included on the USML, such as satellites or items that incorporate a defense article.

**Department of Commerce, Bureau of Industry and Security –  
<http://www.bis.doc.gov/>  
Export Administration Regulations (EAR), [15 CFR §§ 730-74](#).**

The U.S. Department of Commerce, Bureau of Industry and Security (BIS) controls goods and information having both a civilian and military use ("Dual Use") through the Export Administration Regulations (EAR). Dual Use items are placed on the Commerce Control List (CCL), which is also known as the "Dual Use List." [15 C.F.R. § 774](#). BIS also controls some military items formerly on the USML (mostly parts and components) that do not provide a critical military capability or intelligence. BIS uses the term "technology" or "technical data" when referring to certain information about the goods on the Commerce Control List.

**Department of Treasury, Office of Foreign Assets Control (OFAC) –  
<http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>  
OFAC Sanctions Regulations, [31 C.F.R. §§ 501-98](#).  
[OFAC Sanctions Programs and Country Information](#).**

The U.S. Department of the Treasury oversees U.S. economic sanctions and embargoes through its Office of Foreign Assets Control (OFAC). Empowered by the Trading with the Enemy Act of 1917, [50 U.S.C. app. §§ 1-44](#), and the International Emergency Economic Powers Act, [50 U.S.C. §§ 1701-08](#), OFAC enforces import and export trade, anti-terrorism, narcotics, human rights and other national security- and foreign policy-based sanctions prohibiting the provision of anything of value, either tangible or intangible, to sanctioned countries, organizations or individuals. The pertinent regulations provide OFAC with broad authority to block or interdict certain "prohibited transactions" involving restricted destinations or parties.

**Department of Commerce, Census Bureau – <https://www.census.gov/foreign-trade/regulations/>  
Foreign Trade Regulations (FTR), [15 C.F.R. § 30](#).**

The Foreign Trade Regulations (FTR) (promulgated at [Title 13, United States Code \(U.S.C.\), Chapter 9, section 301](#)) mandate Electronic Export Information (EEI) reporting through the Automated Export System (AES) for all shipments valued over \$2500 or those requiring an export license. Some exceptions fall under Section 30.2 of the FTR.

### **Department of Energy**

**Assistance to Foreign Atomic Energy Activities, [10 C.F.R. § 810](#).**

The Department of Energy regulates the export of unclassified nuclear technologies in its Assistance to Foreign Atomic Energy Activities regulations.

**Nuclear Regulatory Commission (NRC) – <http://www.nrc.gov/about-nrc/ip/export-import.html>**

**Export and Import of Nuclear Equipment and Material, [10 C.F.R. § 110](#).**

The NRC regulates the import and export of commodities related to nuclear energy.

### **Other**

Other federal agencies regulating exports and imports include the Fish and Wildlife Service (FWS), Animal and Plant Health Inspection Service (APHIS), Food and Drug Administration (FDA), Environmental Protection Agency (EPA), and Centers for Disease Control and Prevention (CDC).

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## **VII. FREQUENTLY ASKED QUESTIONS**

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Not applicable

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## **VIII. REVISION HISTORY**

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This is an amalgamation of various policies into a single new University policy on Export Controls.

Export Controls

Appendix A: Sample Responsible Offices Chart – sample activities that may involve export issues; may vary by location

	Contracts & Grants (Inc. Fed/State/Priv Sponsors)	Tech Transfer	Business Contracts	Business and Finance	Departmental Administrators	Shipping/ Mail Rooms	International Activities	Legal Counsel	Compliance	Faculty	Material Managers	Human Resources	Cooperative Extensions
<b>Maintaining Openness in Research, Avoiding Deemed Exports and Defense Services</b>	Sponsored Research Agmts; RFPs; NDAs; Design Kits; Records	MTAs, Software Licensing; Patents; Records	Sales & Service Agmts; Outside User Recharge Activities & PO's	Purchase Orders; Subcontracts; Money transfers; Records	Sponsored Research Agmts; RFPs; NDAs; Design Kits; Purchases; Recruiting; Reporting; Records		Recruiting; visas; I-129s; Records	Advise; help resolve issues; disclosures; investigations	Licensing; classification; I-129s; Foreign Nat'l Screening; Tech Control Plan; Investigations; IRB-res abroad; Records	Research; Recruiting; teaching; training; ID issues; help identify/classify controlled items	Safeguarding on-site-controlled equipment; Records	Recruiting, Screening, Hiring	Research; Recruiting; teaching; training; ID issues; help identify/classify controlled items;
<b>Shipping, Physical exports by any means</b>		Export of tangible goods, e.g., research samples, equipment, internat'l collaborations; Records		Export of tangible goods, e.g., research samples, equipment; international collaborations; Records	Export of tangible goods, e.g., research samples, equipment; international collaborations; Records	Export of tangible goods, e.g., research samples, equipment; Records		Advise; help resolve issues; disclosures; investigations	Export Licensing; Determining export classification or Assist in determining complex export classification; Records	Export of tangible goods (e.g. research samples, equipment); international collaborations	Equipment disposition or sale to foreign or restricted parties; on-site safeguard controlled equipment; Records		
<b>Restricted party screening</b>	Sponsored Res Agmts, Subcontracts; RFPs; NDAs; Design Kits; Records	MTAs, Software Licensing; Patents; Records	Sales & Service Agmts; Outside User Recharge Activities & PO's	Purchase Orders; Subcontracts; Payments (transfer of funds); Records	Purchase Orders; Exports; Records	Export of tangible goods, e.g., research samples, equipment; Records	Recruiting, visas, I-129s; Records	Advise; help resolve issues; disclosures; investigations	Export Licensing; I-129s; determining export classification; Records	Identify researchers and access points if not conducting FRE research		Recruiting, Screening, Hiring	
<b>Travel</b>					Know regulations; assist in obtaining OFAC licenses; Records		Know regulations; assist in obtaining OFAC licenses; Records	Advise; help resolve issues; disclosures; investigations	Assist in determining license reqts, and obtaining approp licenses; IRB-research abroad; Records	Know regulations; assist in obtaining OFAC licenses			
<b>Sanctioned countries (services, travel, exports/ imports)</b>	Sponsored Research Agmts & Subagmts; NDAs; Records	MTAs; Software Licensing; Patents; Records	Sales & Service Agmts; Outside User Recharge Activities & PO's	Subagmts and other misc out-going agmts; Records	Sponsored Research Agmts/Subagmts; NDAs; POs; Payments; Exports; Records	Export of tangible goods, e.g., research samples, equipment; Records		Advise; help resolve issues; disclosures; investigations	Assist in interpreting regulations	Know regulations	Equipment disposition /sale to foreign/ restricted parties; Records		