

Export Controls II – Auditing Export Controls

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Have you considered auditing export control at your campus? Do you have an idea of what you should be aware of before engaging in an export control audit? Others have and this is a great opportunity to get some insight into this topic. In this panel discussion, you will learn about the different audit approaches used and key issues identified from recent export control audits conducted at other campuses. After a brief overview from each of the panelists, you will have an opportunity to ask questions and engage in open discussion. Brian Warshawsky, Systemwide Export Control Officer will also be on the panel and available to answer any more technical questions and address key risks associated with export controls.

EXPORT CONTROLS ADVISORY SERVICE– LAWRENCE BERKELEY NATIONAL LABORATORY

The Scope of our Export Control audit at Lawrence Berkeley National Lab covered four main types of activities:

1. Transfers of controlled information, including technical data, to persons and entities outside the US;
2. Shipment of controlled physical items, such as scientific equipment, that requires export licenses from the US to a foreign country;
3. Verbal, written, electronic, or visual disclosures of controlled scientific and technical information related to export controlled items to foreign nationals (“deemed exports”), even when it occurs within the US; and
4. Travel to certain sanctioned or embargoed countries for purposes of teaching or performing research.



Our advisory service included interviewing 32 managers and staff from: Laboratory Counsel, Technology Transfer and Intellectual Property Management (Technology Transfer), Operations, Information Technology (IT), Scientific Divisions, Office of Homeland Security, Office of the Chief Financial Officer (OCFO), Environmental Health and Safety (EH&S), Human Resources (HR), User Facilities, UC Systemwide - Export Control Officer, and the Department of Energy (DOE) Berkeley Site Office-Counterintelligence. We also interviewed the Lab’s Export Control Advisor (contractor) who provides export control consulting services and on-site training. We reviewed the Lab’s and UC’s policies and procedures as well as federal guidelines and regulations.

EXPORT CONTROL ADVISORY-LAWRENCE BERKELEY NATIONAL LAB (Cont.)

We noted or were informed that the export control program at the Lab includes:

- Designated Export Control Officer (part time) assisted by a Sr. Legal Analyst (part time) and an Export Control Advisor (part time-contractor);
- Dedicated Foreign Visits and Assignments staff (full time);
- Legal Counsel screens all T-45 (Iran, Cuba, Syria, Sudan) candidates for export control concerns;
- Online training – “Hosting Foreign Nationals” (for managers and supervisors);
- General export control training available to Lab employees (2011);
- Patent attorneys responsible for reviewing research publications and presentations who have taken external export control training presented by the Department of Commerce-BIS;
- Legal counsel (Export Control Advisor) reviews outbound international shipments against Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR) to determine any classification or licensing requirements;
- Technology Transfer and Legal Counsel (Export Control Officer, Export Control Advisor) review contracts, agreements, Memos of Understanding, etc and ensure any unacceptable language in terms of export control is removed;
- Legal Counsel (Export Control Advisor) reviews User Facility Agreements;
- Policies and procedures;
- Information available on Lab intranet sites (EH&S, Technology Transfer, HR, Facilities-Shipping, and OCFO-Property);
- Automated systems, such as Visual Compliance and the Reports Database to help ensure export control compliance.

Some Export Control Best Practices:

1. Export Control Officer process should be documented and communicated e.g. process for self disclosure and escalation for a situation where an export control violation has occurred or is thought to have occurred. Self disclosure is a Federal requirement.
2. Perform periodic Export Control risk assessments. An analysis of work flow processes will help identify gaps in the current export control program.
3. Perform periodic self assessments to assure compliance validation and identification of areas requiring improvement (Survey is useful for this).

UCSB AUDIT AND ADVISORY SERVICES

Export Controls

Our Audit

1. Audit was requested by the Office of Research; report was issued in September 2011.
2. Purpose was to assess the internal controls and practices established to ensure compliance with:
 - Export Administration Regulations
 - International Traffic in Arms Regulations
 - Office of Foreign Assets Control Sanctions Programs
3. Scope of the included:
 - Compliance with Use of the Fundamental Research Exemption
 - Compliance with the UC Export Compliance Plan
 - International Travel
 - International Shipments
 - Material Transfer Agreements

Overall Results

1. The audit found that improvements in campus controls and practices are needed to ensure compliance with export control regulations.
2. The more significant areas included campus export controls educational efforts and outreach.

Detailed Observations & Corrective Actions

1. Compliance with Fundamental Research Exemption Requirements

We reviewed a sample of non-disclosure agreements (NDAs), research award agreements, and incoming MTAs to ensure that no publication or foreign national restrictions mentioned in the UC Export Compliance Plan were included in these documents. The NDAs, research awards, and MTAs did not contain any publication or personnel restrictions that violate UC's Export Compliance Plan.

2. Improving UCSB's Export Control Compliance Efforts

The audit found that campus departments may not be familiar enough with export control regulations to properly partner with OR in ensuring compliance. We found that most departments and researchers who were sampled for testing were unaware of export controls regulations, who to contact for assistance, and when materials need to be reviewed by the Director of Research Compliance to ensure compliance with export control regulations.

UCSB AUDIT AND ADVISORY SERVICES

Export Controls

We noted that sufficient campus training is especially important because UCSB does not have a centralized shipping center, and OR relies on departments to contact them when materials are about to be shipped internationally.

Management Corrective Actions

General Improvements for Export Control Outreach to Researchers and Staff

- In-Person Outreach
- Website Resources
- Reminders to Faculty

3. International Travel

To determine the volume of UCSB travel to OFAC embargoed countries, we ran a query of travel payments covering an 18-month period. Of approximately 18,300 travel reimbursement line items, we identified six payments for trips to OFAC embargoed countries and followed up to determine the circumstances of the travel, whether a license was required, and whether a license was obtained.

Although there were no legal violations identified by this review, it appears that UCSB's internal controls over travel to OFAC embargoed countries should be tightened to ensure compliance with export control regulations. In all six cases, it appears that the Director of Research Compliance was not consulted regarding the need for a license.

Travel is currently booked through a variety of methods, making it difficult to develop and implement effective controls over foreign travel. The audit noted that centralized travel booking through Connexus may be an opportunity to improve controls.

Management Corrective Actions

International Travel to OFAC Embargoed Nations

OR agreed to provide clear guidance to UCSB researchers regarding the licensing needs for travel to certain nations in the course of their work; the agreed approach was to improve awareness and outreach.

4. International Shipments

A sample of 20 international shipments was selected for detailed testing. We reviewed whether:

- International shipments required a license under EAR and ITAR.
- A MTA was completed for the shipment, if required by campus practices.
- If applicable, the shipment was sent within 30 days prior to the researcher conducting research in that foreign nation, as required by EAR.

We found that 19 of the international shipments did not require a license under EAR and ITAR; we were unable to verify if the remaining shipment required a license because the Principal Investigator failed to respond to our inquiries.

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2010-103: EXPORT CONTROLS
AUDIT PROGRAM
08/19/09

Prepared By: _____
Approved By: _____

A. Administration

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B. Management Policy

Objective: To convey a clear commitment of compliance with the export control regulations from senior management to all employees involved with U.S. export controls.

Audit Step	W/P Ref.	Sign-Off
1. Prepare engagement letter. Obtain applicable manager approval prior to sending to client.		
2. Obtain an understanding of audit area to be reviewed. Document understanding using a assessment of risk questionnaire and through discussions with Export Control Administrator.		
3. Obtain an understanding of computer environment for audit area. Document understanding using Computer General Controls form.		
4. Prepare draft audit program		
5. Obtain approval of audit program from applicable audit manager.		
6. Schedule audit entrance conference with client. Include Internal Audit Services Director and applicable audit manager.		
7. Document all audit observations and proposed recommendations.		
8. Review audit observations and recommendations with Internal Audit Services Director and applicable audit manager.		
9. Discuss results of the audit with appropriate operating personnel.		
10. Prepare Draft Audit Report and review with Internal Audit Services Director and applicable audit manager. Provide a copy of the draft report to client management a reasonable time before the exit meeting.		
11. Schedule audit exit meeting. Include Internal Audit Services Director and applicable audit manager.		
12. Complete Audit Issuance Tracker Followup form.		
13. Complete Auditor In Charge Attestation.		
14. Obtain Manager Attestation.		
15. Obtain Director Attestation.		
16. Finalize Audit Report and issue report.		
17. Complete QA checklist.		
18. Document location of any hardcopy supporting documentation.		
19. Update Findings to reflect wording in Final Audit Report.		

Audit Step	W/P Ref.	Sign-Off
1. Has a written policy statement, which conveys a clear commitment to comply with the export control regulations, been prepared and distributed to all employees who work in export-related functions. a. Is the policy statement communicated to employees on a regular basis and is it: • prepared on University letterhead • dated • signed (including the name and title of the signer)		
2. Does the policy statement of commitment to export controls include the following types of policies: a. Under no circumstances will sales be made contrary to U.S. export regulations. b. Any question concerning the legitimacy of a transaction or potential violations should be referred to Export Control Administrator. c. A description of penalties (corporate, criminal, and administrative) applied in instances of compliance failure.		
3. How is the policy communicated? • new employee orientation • in-house publications • training and/or procedures manual		
4. Are the recipients of the "policy statement on export controls" employees who deal with: • Contracts • Finance and accounting • Legal counsel • Order entry • Shipping • Embargoed countries (interactions, travel, etc)		

C. Responsible Parties

Objective: To ensure that all compliance-related functions, duties and responsibilities in the university are clearly identified and assigned, that the positions and incumbents are known, and that the list is routinely updated.

Audit Step	W/P Ref.	Sign-Off
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Audit Step	W/P Ref.	Sign-Off
1. Determine whether all the compliance-related functions, duties and responsibilities are identified. Determine if a list and/or organizational chart identifying the employee(s) responsible for each export and export control related function exist. a. Is the list and/or organizational chart current? b. Are the assigned export control responsibilities separated from the sales function to prevent a conflict of objectives.		
2. In order to determine ongoing compliance in cases of absence, determine if backup personnel are formally assigned for all key export control related functions.		
3. Is the list or chart of personnel with export and export control-related functions distributed throughout the organization?		
4. Determine that a designated export control coordinator (or similar title) is empowered by senior management to ensure an effective campuswide compliance program is in place.		
5. Does the export control coordinator have an understanding of how products and data are classified among and within the various jurisdictions? (DOC, DOS, DOE, NRC, etc.)?		
6. Does the export control coordinator maintain up-to-date references? (i.e. Export Administration Regulations, International Traffic in Arms Regulations, DOE Part 810 Regulations, etc.)?		

D. Recordkeeping

Objective: To ensure documents are maintained in an accurate and consistent manner and are available for inspection as required

Audit Step	W/P Ref.	Sign-Off
1. Is there a centralized recordkeeping system which records required are quickly identifiable?		
2. Are departments involved in export activities well informed of proper procedures for the maintenance of documents?		

Audit Step	W/P Ref.	Sign-Off
3. Are personnel aware of what records need to be maintained and the appropriate retention period? Select a sample of documents that are identified in section 787.13 (c) of the EAR and ensure the following: a. Documents are maintained in the file. b. Documents are maintained for the required period of retention.		
4. Are Shipper's Export Declarations (SEDs) completed and are copies maintained on file?		
5. Verify that appropriate records are retained a. for boycott-related requests, at least three years from the date of export. b. two to five years from date of export or known reexport of commodities, technical data and software controlled by Dept. of Commerce (DOC). c. six years for exports controlled by International Traffic and Arms Regulations (ITAR).		
6. Are there any DOC applications submitted electronically? a. Is a submission log maintained? b. Does the capability exist to generate hardcopies of electronically submitted DOC applications?		

E. Training

Objective: To ensure training and education are provided, on a regular basis, to all employees involved in export-related activities.

Audit Step	W/P Ref.	Sign-Off
1. Has an identified individual been designated as responsible for the conduct of training on export control issues?		
2. Does the training program include a format, an agenda for training sessions, and an adequate schedule for training?		
3. Determine if orientation training of new employees involved in export-related activities includes the following topics: • the organizational structure of export-related departments and functions, • the role of the export administrator, • U.S. export regulatory requirements, and • Export company procedures.		
4. Is there periodic training to reinforce knowledge and to communicate changes in the EAR, company procedures and application of the regulations to new commodities, technical		

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Audit Step	W/P Ref.	Sign-Off
data, software or services destined for export?		
5. Has training been scheduled and provided for all employees in export-related departments (i.e. sales, contracts, customer service, credit, order entry, shipping, etc.)?		
6. Does the training include the following topics? <ul style="list-style-type: none"> • General Licenses • Proliferation Screening • Denied Parties and Diversion Risk Screening • Technical Data • Authorized Reexports • Cases when Individual Validated Licenses are required • Recordkeeping Requirements • Export Document Preparation • Shipper's Export Declarations • Air Waybills • Commercial Invoices • Boycott-related request 		

F. Test of details

Objective: To test a sample of transactions to determine compliance.

Audit Step	W/P Ref.	Sign-Off
1. Verify appropriate documentation is kept for UCI travelers to embargoed countries.		
2. Verify documentation of sample chosen from UCI Export Control Review Cases report.		
3. Verify documentation of sample chosen from UCI Export Control Review of Files report.		