



UNIVERSITY OF HAWAII

OFFICE OF THE VICE PRESIDENT FOR RESEARCH
UNIVERSITY OF HAWAII

MEMORANDUM

April 5, 2004

TO: Principal Investigators
FROM: James R. Gaines *James R. Gaines*
Interim Vice President for Research
SUBJECT: **Export Controls**

Please be alert to additional legal and regulatory requirements if your project has been identified as, or is suspected to be, “export controlled”. **Export controlled** means your research equipment, data, technology, results, or software will fall under the U.S. International Traffic in Arms Regulation (ITAR), Export Administration Regulations (EAR), and/or the Military Critical Technology List regulations. Technology or data of a sensitive national security nature or with military applications may be export controlled (please note that even if a project is unclassified, it may still be subject to export laws). Once export controlled data or technology is accepted from the sponsor, you have the **legal duty** to prevent its unlawful “export” outside the United States or to foreign nationals residing here. If you have any doubts if your project is export controlled, you may wish to consult with your sponsor to discuss whether any export-controlled technology is being transferred to you or being developed by you. The export control laws make it very clear that personal liability will attach to anyone who fails to adequately protect controlled technology, or exports controlled technology to foreign countries or foreign persons without appropriate licenses and/or required government approvals.

What does Export Control mean to research at UH? This means you cannot **transfer, disclose, make available, or discuss** export controlled materials or data to or with anyone who is a foreign national. This is especially of concern since we have so many students and researchers from other nations studying and conducting research here at the University and in our labs. A license from the U.S. State and/or Commerce Department(s) is required for each “export” or disclosure of controlled materials to another country or to a foreign national.

What does personal liability mean? This means that the University of Hawaii cannot shield you or your employees from the criminal and civil penalties outlined in the export regulations. Anyone who causes the unlawful transfer of controlled technology without the required approvals and licenses can be put in jail or fined. The laws do not care who your employer is, nor can your employer protect you from criminal prosecution if you break export laws. An intent to violate export laws is not required to be found guilty; you can be guilty by negligent, accidental, reckless, or inadvertent disclosure or transfer of controlled material. As the Principal Investigator, you are responsible for directing and controlling the acquisition, disposition and dissemination of any export-controlled equipment or technology. This means there is a good chance you will be found personally liable if export violations occur during the performance of your project.

The current fines/penalties for non-compliance are:

International Traffic in Arms Regulation (ITAR)

- Fine of up to \$1 Million per Violation
- Imprisonment – 10 years per Violation

Export Administration Regulations (EAR)

- Fine of \$10,000+
- Imprisonment for up to 10 years

Please be advised that primary compliance responsibility rests with the Principal Investigator, not the University. The University will not directly handle the export-controlled technology – only the Principal Investigator or his staff can take the appropriate safeguards required by law.

Please review the following websites to determine whether the regulations apply to your equipment, data, technology, or software, and what steps you will have to take if they do apply:

NCURA article by Julie Norris about ITAR/EAR: <http://www.ncura.edu/data/newsroom/newsletters/pdf/newsdec.pdf>

NASA Export Control Program (click on Export Control Briefing link): <http://www.hq.nasa.gov/office/codei/nasaecp/>

U.S. Department of State Guidelines for Compliance: http://www.pmdtc.org/docs/Compliance_Programs.pdf

Definition of "Deemed Exports": <http://www.bxa.doc.gov/DeemedExports/DeemedExportsFAQs.html>

Export Administration Regulations (EAR): <http://w3.access.gpo.gov/bis/>.

International Traffic in Arms Regulation (ITAR): <http://pmdtc.org/reference.htm>

Military Critical Technology List (MCTL): www.dtic.mil/mctl.

Commerce Control List: <http://w3.access.gpo.gov/bis/ear/pdf/indexccl.pdf>

Thank you for your cooperation and understanding. Please contact me if you have any questions or concerns.

cc: Vice Presidents
Chancellors
Director of Office of Research Services
Director of Risk Management
Deans and Directors
Designated Point of Contact