



UNIVERSITY  
of HAWAII<sup>®</sup>  
SYSTEM

October 10, 2014

MEMORANDUM

TO: Department Chairs, College of Natural Sciences  
 Department Chairs, Daniel K. Inouye College of Pharmacy  
 Department Chairs, College of Tropical Agriculture and Human Resources  
 Department Chairs, John A. Burns School of Medicine  
 Interim Director, Pacific Biosciences Research Center  
 Program Directors, UH Cancer Center

CC: Dr. William Ditto, Dean, College of Natural Sciences  
 Dr. John Pezzuto, Dean, Daniel K. Inouye College of Pharmacy  
 Dr. Maria Gallo, Dean and Director, College of Tropical Agriculture and Human Resources  
 Dr. Jerris Hedges, Dean, John A. Burns School of Medicine  
 Dr. Michele Carbone, Director, UH Cancer Center  
 Dr. John Galland, Assistant Vice Chancellor for Research Compliance  
 Dr. Vassilis Syrmos, VP for Research and Innovation

FROM: Leonard R. Gouveia, Jr.  
 Director, Office of Export Controls (OEC) 

SUBJECT: United States (US) Regulations Concerning the Export of Select Agents and Toxins

The purpose of this memorandum is to inform Chairs and Directors who supervise faculty conducting research with select agents and toxins that US export control regulations may be applicable to their work, and to provide some resources to assist with regulatory compliance.

Background

The University of Hawai'i System (UH), which includes the Research Corporation of the University of Hawai'i (RCUH), is subject to US export control laws and regulations that protect national security and trade which includes, but is not limited to: (1) International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), implemented by the US Department of State; (2) Export Administration Regulations (EAR) (15 CFR Parts 770-774), implemented by the US Department of Commerce; and (3) Office of Foreign Asset Control (OFAC), which is part of the US Department of the Treasury, and is primarily responsible for administering and enforcing economic and trade sanctions against certain nations, entities, and individuals.

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Contained within EAR is the Commerce Control List (CCL), which is broken out into categories 0 through 9 and covers a wide spectrum of items that are controlled and may need a government license to physically export from the US. Category 1 of the CCL is a list of "Materials, Chemicals, Microorganisms and Toxins". An export license may be needed to disclose (either inside or outside of the US) certain technologies (i.e. know-how) as identified in Category 1 to a Foreign National (someone who is not a US citizen or permanent resident). Disclosure to a Foreign National **inside** of the US is known as a "deemed export". These export controls are in place for chemical and biological weapons concerns and to prevent the diversion of such items to destinations and end-users of concern.

In order to comply with EAR regulations concerning select agents and toxins, please encourage faculty working with select agents and toxins to take the following steps:

- 1) **Identify any materials they're using that are on the CCL.** The entire CCL is found at: <http://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl>. Category 1 of the CCL for "Materials, Chemicals, Microorganisms and Toxins" is at: [http://www.bis.doc.gov/index.php/forms-documents/doc\\_download/989-ccl1](http://www.bis.doc.gov/index.php/forms-documents/doc_download/989-ccl1).
- 2) **Seek advice from OEC when a physical export of any of these materials, outside of the US, is contemplated.** Prior to exporting items to another country, contact OEC for advice, in order to determine if a federal export license is required, and to possibly identify any exemptions that may be available under EAR.
- 3) **Identify when a "deemed export" may take place, and seek advice from OEC in advance.** If a Foreign National will need to have access to select agents and toxins inside of the US, determine if the Foreign National will be given technology for the "development" or "production" or "use" of the select agents or toxins. Certain technology regarding development, production, or use will trigger a deemed export. For further details, refer to EAR guidance regarding deemed exports at: <http://www.bis.doc.gov/index.php/policy-guidance/product-guidance/chemical-and-biological-controls?id=111>.

If a deemed export scenario with a Foreign National is identified, contact OEC for advice, to determine if a federal export license is required, and to possibly identify any exemptions that may be available under EAR.

**Failure to comply with export control laws and regulations may lead to significant civil and/or criminal penalties which include, but are not limited to, monetary penalties up to \$1,000,000.00 per violation; prison term up to 20 years; denial of export privileges; and debarment from US government contracts. Liability may be personal as well as institutional.**

OEC's contact information is at: <http://www.hawaii.edu/offices/export/exportcontacts.php>.

If you have any questions regarding this memorandum, please contact Ms. Lauren Murai, Export Controls Assistant at 808-956-9036 or via [lmurai@hawaii.edu](mailto:lmurai@hawaii.edu).