

Export Controls at UH

LEONARD R. GOUVEIA JR.

MANAGER, OFFICE OF EXPORT CONTROLS

Briefing Discussion

Review U.S. Export Control Laws

Define the Meaning of “Export Controls”

Identify the Purposes of U.S. Export Control Laws

Explain their Applications at UH and Medical Field

Identify Resources at UH which provide guidance to ensure compliance with U.S. Export Control Laws

Help you understand your role in assisting with export compliance

Export Control Laws and Regulations: OEC Responsibilities

Regulation	International Traffic in Arms (ITAR)	Export Administration (EAR)	OFAC Sanctions Programs Regulations
Law (Act)	Arms Export Control Act (1976)	International Emergency Economic Powers Act (1977)	International Emergency Economic Powers Act
Department	State	Commerce	Treasury
Regulates	<p>*Defense Articles (Military and Space)</p> <p>*Controlled items-based (United States Munitions List)</p>	<p>*Dual-use items (pretty much everything)</p> <p>*Controlled items-based (Commerce Control List)</p>	<p>*Countries, Companies, or individuals the US has sanctions against:</p> <ul style="list-style-type: none"> - Cuba - Iran - North Korea - Syria - Companies/individuals
Considerations	<p>Primarily based on what</p> <p>Secondarily based on whom</p>	<p>Primarily based on what</p> <p>Secondarily based on whom</p>	<p>Primarily based on whom</p> <p>Secondarily based on what</p>

OFAC Sanctions Programs

Comprehensively Sanctioned Territories	*Cuba *North Korea *Crimea *Syria *Iran
Significant Sanctions	*Russia
Limited Sanctions	West Balkans, Belarus, Burundi, Central African Republic, Congo, Iraq, Lebanon, Libya, Somalia, Sudan, Venezuela, Yemen, Zimbabwe
Restricted Persons	Specially Designated Nationals (“SDNs”), Terrorists, WMD proliferators, human rights violators, transnational criminal organizations, narcotics traffickers, Magnitsky, rough diamond, foreign sanctions evaders, etc., etc.

Activities with OFAC Considerations

Travel to sanctioned country

- Cuba
- Iran
- North Korea
- Sudan
- Syria

Providing certain services to governments and entities in sanctioned countries

Employing foreign nationals from sanctioned countries

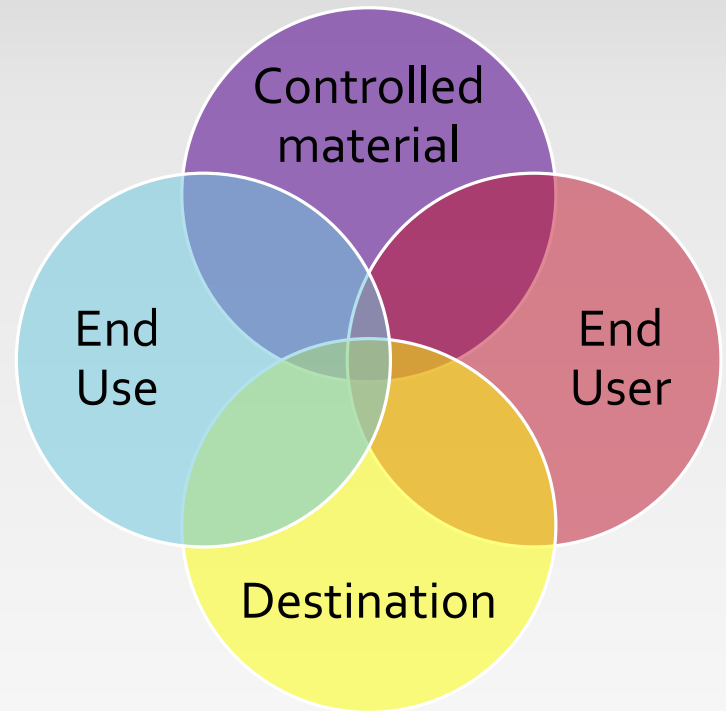
- Need to consider and evaluate what they will or may have access to.
- Access to export-controlled technology may require a license

Fines and Forfeitures (OFAC Violations)

Company	Industry	Fine	Year
BNP Paribas S.A. (French)	Financial Services	\$8,960,000,000	2014
HSBC Bank (U.K.)	Financial Services	\$1,256,000,000	2012
ZTE Corporation (Chinese)	Telecommunications	\$1,200,000,000	2017
Standard Chartered Bank (U.K.)	Financial Services	\$667,000,000	2012
ING Bank N.V. (Dutch)	Financial Services	\$619,000,000	2012
Credit Suisse AG (Swiss)	Financial Services	\$536,000,000	2009
Royal Bank of Scotland (U.K.)	Financial Services	\$500,000,000	2010
BAE Systems PLC (U.K.)	Defence	\$400,000,000	2010
Barclays Bank (U.K.)	Financial Services	\$298,000,000	2010
Bank of Tokyo – Mitsubishi UFJ	Financial Services	\$259,000,000	2013

“Export Controls”

Refers to the measures that are outlined in specific U.S. federal laws, regulations, and programs which address the conditions that strategically important information, technologies or commodities can (or cannot) be exported.



Export Definition

Physical Export:

- Sending, transferring, or taking a tangible item outside the U.S.

Deemed Export:

- Disclosing or releasing (oral/visual) technology, technical data, or source code to a non-U.S. person in the U.S.
- *Does not apply to green card holders, permanent U.S. residents, or protected persons*

Reasons for Export Controls

- **Protection of U.S. Trade to Foreign Countries**

Best Interests of U.S. Economy

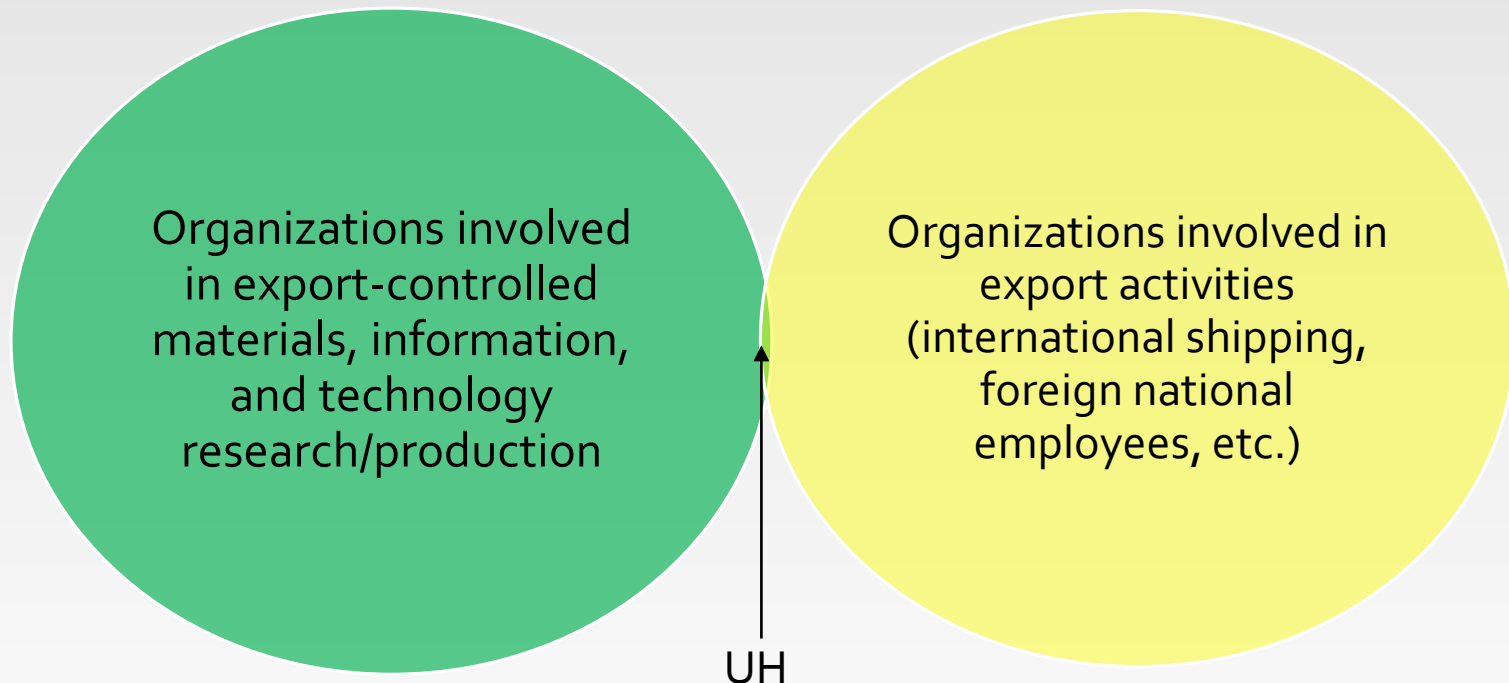
- **Foreign Policy**

Advance U.S. Foreign Policy Goals; align with policies of U.S. allies (complying with multilateral agreements)

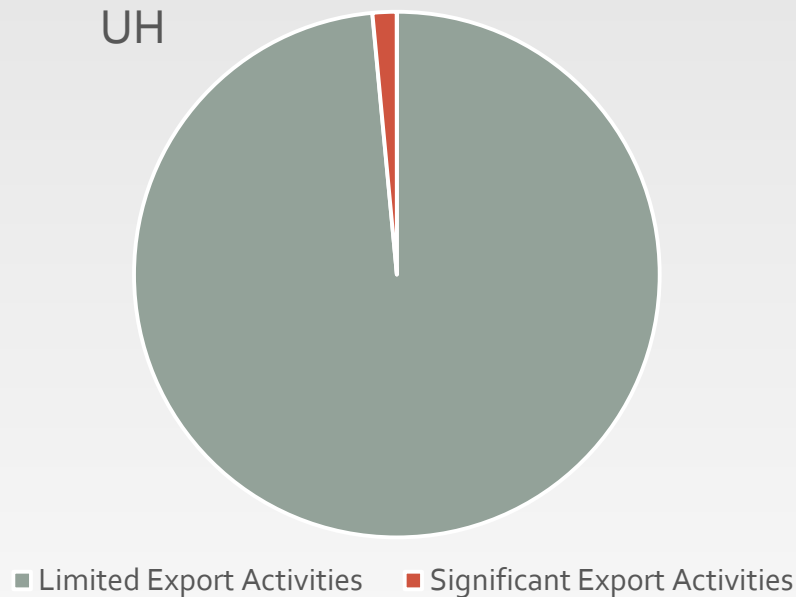
- **National Security**

Prevent the Proliferation of Weapons of Mass Destruction

University Challenges (Export-Controlled Research AND Export Activities)



Export Control Activities and Considerations at UH



- School of Ocean and Earth Science and Technology (e.g. Hawaii Space Flight Laboratory)
- Department of Physics and Astronomy
- Institute for Astronomy
- Applied Research Lab
- College of Engineering

What's Subject to the Regulations?

Easier to define what's not subject to the regulations:

- Publicly available *information* and informational materials (books, articles, etc., including fundamental research)
- Outside the U.S. and did not originate in the U.S. (or does not exceed the de minimis limits)

<https://www.ecfr.gov/graphics/pdfs/er06fe04.001.pdf>

Subject to regulations \neq prohibited activity:

- "Controlled" item, but not exporting
- Exporting, but not "controlled" item
- "Controlled" item, exporting, but exemption/obtain approval
- Still need to conduct analysis

Export Regulations Overview

REGULATION	INTERNATIONAL TRAFFIC IN ARMS REGULATIONS	EXPORT ADMINISTRATION REGULATIONS
CONTROLLED ITEMS	United States Munitions List (USML)	Commerce Control List (CCL)
EXAMPLE	Category XI	6A003.b.6
EXPORT CONTROLS	Require either license or use of license exception	Depends on reason for control/destination
PROHIBITIONS	Some (country specific)	Ordinarily no

Cannot know what restrictions apply until you know the regulation; you don't know the regulation until you know the item's classification

Penalties

Failure to comply with export control laws and regulations may lead to significant civil and/or criminal penalties including, but 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 U.S. government contracts**.

Liability for any export violation is **personal** and/or institutional.

International Traffic in Arms Regulations

- The ITAR implements the authority established by the President to control the export and import of **defense** articles and **defense** services.
- Violations represent illegal activities
- Items that are subject to the ITAR are specifically enumerated on the USML

Relationship between ITAR and UH:

- UH conducts research involving defense articles and defense services, and
- UH performs export activities (including those that involve defense articles and defense services)

United States Munitions List (USML)

- I. Firearms, Close Assault Weapons and Combat Shotguns
- II. Guns and Armament
- III. Ammunition/Ordnance
- IV. Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- V. Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- VI. Surface Vessels of War and Special Naval Equipment
- VII. Ground Vehicles
- VIII. Aircraft and Related Articles
- IX. Military Training Equipment and Training
- X. Personnel Protective Equipment
- XI. Military Electronics

United States Munitions List (USML)

- XII. Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIII. Materials and Miscellaneous Articles
- XIV. Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- XV. Spacecraft and Related Articles
- XVI. Nuclear Weapons Related Articles
- XVII. Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- XVIII. Directed Energy Weapons
- XIX. Gas Turbine Engines and Associated Equipment
- XX. Submersible Vessels and Related Articles
- XXI. Articles, Technical Data, and Defense Services Not Otherwise Enumerated

Export Administration Regulations (EAR)

Items subject to export regulations (i.e. not not subject) but not identified on the USML are, by default, subject to the EAR.

§734.3 Items subject to the EAR.

(a) Except for items excluded in paragraph (b) of this section, the following items are subject to the EAR:

(1) All items in the United States, including in a U.S. Foreign Trade Zone or moving intransit through the United States from one foreign country to another;

(2) All U.S. origin items wherever located;

(3) Foreign-made commodities that incorporate controlled U.S.-origin commodities, foreign-made commodities that are 'bundled' with controlled U.S.-origin software, foreign-made software that is commingled with controlled U.S.-origin software, and foreign-made technology that is commingled with controlled U.S.-origin technology:

(i) In any quantity, as described in §734.4(a) of this part; or

(ii) In quantities exceeding the *de minimis* levels, as described in §734.4(c) or §734.4(d) of this part;

(4) Certain foreign-made direct products of U.S. origin technology or software, as described in §736.2(b)(3) of the EAR. The term "direct product" means the immediate product (including processes and services) produced directly by the use of technology or software; and

Commerce Control List

- Items subject to the EAR are identified on the Commerce Control List, which is made up of 10 categories and 5 product groups.
- Items that are not elsewhere specified in this CCL Category or in any other category in the CCL are designated by the number **EAR99**.
- Unlike ITAR, not every export activity has restrictions

0 Nuclear Materials, Facilities, and Miscellaneous
1 Materials, Chemicals, "Microorganisms," and Toxins
2 Materials Processing
3 Electronics
4 Computers
5 Telecommunications and Information Security
6 Lasers and Sensors
7 Navigation and Avionics
8 Marine
9 Propulsion Systems, Space Vehicles, and Related

A Equipment, Assemblies, and Components
B Test, Inspection, and Production Equipment
C Materials
D Software
E Technology

Medical Related Scenarios – Biological Agents and Genetic Elements

Human, Animal, and Plant Pathogens and Toxins (1C351/4)

- Australia Group
- Select Agents

Genetic elements or GMOs associated with controlled pathogens and toxins (1C353):

Controlled when contain:

- Nucleic acid sequences associated with the pathogenicity of controlled microorganism (1C351)
- Nucleic acid sequences coding for any controlled toxin or toxin sub-unit

Elements include and not limited to:

- Chromosomes, Genomes, Plasmids, Transposons, Vectors

Medical Related Scenarios – Vaccines and Processing Equipment

Vaccines and Medical Toxins (1C991)

- Vaccines or toxins associated with controlled pathogens and toxins identified in 1C351

Biological processing equipment (2B352)

- Complete P3 or P4 facilities
- Fermenters (Single use or disposable systems)
- Centrifugal Separators
- Cross-flow Filtration Equipment & Components
- Freeze-drying equipment
- Protective suits and class III safety cabinet
- Aerosol Challenge Chambers

Considerations and Licensing with Export Activities

CONSIDERATIONS:

What is the classification?

What is the destination country(ies)?

Who are the recipients?

What is the end use?

POSSIBLE OUTCOMES:

1. Not subject to regulations
2. No License Required (NLR)
3. License Exception (ordinarily requires a license, but an exception applies, so don't need license)
4. License Required
5. Prohibited

Fundamental Research (in the Export Control World)

- Commonly declared but not always understood
- Doesn't apply to research with restrictions
- Only applies to information that arises during or results from fundamental research
- DOES NOT apply to information used to conduct fundamental research
- DOES NOT apply to tangible items created during fundamental research

Federal Export Control Laws Applicability

Export control laws are not limited to sponsored research projects only, defense-related projects, etc.

Developed during basic and applied research

- Fundamental Research

Developed during projects or research with restrictions

Purchases

Examples of Export Control Issues in the University Setting (Continued)

Shipping equipment to a foreign country

Collaborating with foreign colleagues in foreign countries

Collaborating with foreign colleagues in the U.S.

Exposing foreign nationals to export-controlled information

Exposing foreign nationals to research projects and/or labs involving export-controlled Information

Traveling to certain countries

Examples of Export Control Issues in the University Setting (Continued)

Training of foreign nationals on export-controlled research protocols or equipment

Working with a foreign country subject to US embargo

Wiring funds to a foreign country (prohibited to embargoed countries)

Purchasing and/or using software that is export-controlled

Purchasing export-controlled equipment

Traveling with laptops or other equipment

Examples of Export Control Issues in the University Setting (Continued)

Research involving export-controlled information

Research contracts which require sponsor approval rights over publication, or operate to restrict information

Research contracts in which sponsor limits participation of foreign nationals

Performing classified research

Receiving and sending export-controlled information by mail, electronically, verbally, etc.

Examples of Export Control Issues in the University Setting (Continued)

Storing export-controlled information on computers

Storing export-controlled Items in offices or labs

Signing Confidentiality Agreements or Non-Disclosure Agreements

Sending materials via Material Transfer Agreements

Shipping research equipment overseas

Using research equipment on ships

Creating, receiving, or working, with encryption software

UH Export Compliance Policy

UH Executive Policy EP 12.218 - Compliance with Export Control Laws and Regulations

Provides guidance to faculty and other researchers in the application of the export control regulations.

Applies to all UH sponsored or unsponsored research, training, and educational activities including extramural contracts and grants accepted by UH and service-ordered to RCUH

<http://hawaii.edu/policy/ep12.218>

UH Export Compliance Policy (Continued)

Summary of Policy:

- System-Wide
- Identifies Export-Control Laws
- License may be required to disclose Export-Controlled Information (inside and/or outside of the U.S.)
- PI or Supervisor has primary responsibility for determining if any Export-Controlled Information is being used in their employment or research activities

UH Export Compliance Policy (Continued)

Summary of Policy (Continued):

- OEC will assist in making a determination as to whether or not there is an export control issue **upon request** (it is therefore important for PIs, faculty, and other UH/RCUH employees to contact me whenever they feel there may be an export issue)
- In the event that a license is ultimately required, the PI or Supervisor must provide all required information to UH Export Control Officer

UH Export Compliance Website

<http://www.hawaii.edu/research/export-controls/>

Key Features:

- Decision Tree
- Detailed Guidelines
- Forms Required for Compliance
- Export Control Definitions
- Links to the Federal Websites
- Violations
- International travel info

Training for individuals and departments available upon request.

Office of Export Controls

uhoec@hawaii.edu

Lauren Murai

Export Control Assistant

lmurai@hawaii.edu

(808) 956-9036

Ben Feldman

Export Control Officer

bfeldman@hawaii.edu

(808) 956-2495

Leonard R. Gouveia Jr.

Manager

lgouveia@hawaii.edu

(808) 956-4740

<http://www.hawaii.edu/research/export-controls/>