FAU
OFFICE OF THE PRESIDENT
Florida Atlantic University

MEMORANDUM

TO: All FAU Faculty and Staff

FROM: Frank T. Brogan, President

DATE: September 3, 2008

RE: **Information and Guidelines on U.S. Export Control Laws**

For more than twenty years, the federal government has regulated the export of certain technologies for protection of national security and trade. **Export control laws** are federal laws passed by Congress, signed by the President, and implemented by several federal agencies. In the post-September 11, 2001 world, our federal government also regards export controls as tools to guard against terrorism. Consequently, enforcement of the laws and regulations has become more vigorous for commercial as well as for academic institutions in the United States.

Universities and colleges are not exempt from these laws and regulations, and compliance is mandatory. **Individuals who violate export control laws and regulations are subject to civil and criminal sanctions (including fines and/or prison sentences for individuals) and universities or research institutions are subject to administrative sanctions (monetary fines and loss of research funding and export privileges).** Legislation signed into law in 2007 provides for criminal penalties for individuals up to $1 million and 20 years' imprisonment. All university faculty, administrators and staff must understand their obligations under the law and adhere to them.

It is the policy of Florida Atlantic University to pursue its mission in teaching, research and service in a manner that is consistent with the applicable export control laws and regulations while making every reasonable effort to maximize situations whereby the University may claim the benefit of exemptions, discussed below, to these regulations. The purpose of this memorandum and the Definitions/FAQ document posted online at http://www.fau.edu/research/export/faq.php is to help FAU faculty, administrators and staff begin to understand the basic requirements of export control laws and to help them determine whether their research and other activities may be subject to these restrictions.

In brief, **export control laws and regulations restrict the export of certain items and information** (in particular, that with military or dual military/commercial applications) **or export to certain destinations** (i.e., countries listed as restricted). It is important to note that export controls may apply to any field of science and engineering. In particular, research that involves individuals from abroad or travel to foreign countries is exposed to these restrictions.

However, not all university research is constrained by export controls because of the existence of several important exclusions or exemptions:

- Information that is readily available and accessible to the public is not subject to export control laws. The terms “publicly available” and “public domain” are used by the agencies involved. Information in this category includes electronic media, publications, periodicals, books, as well as information released at open conferences, trade shows, seminars, workshops and patents and open (published) patent applications;

- For academic or research institutions, there is a qualified exclusion for *fundamental research, defined as basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community*, as distinguished from proprietary research and from industrial development, design, production and product utilization, the results of which are ordinarily restricted for proprietary or national security reasons. Note that proposals or contracts in which there are limitations placed on open publication will generally require careful review for export control issues; and

- Educational information is another category of publicly available information that is exempt from export control laws. This includes the disclosure of general engineering, scientific and mathematical information that is commonly taught in institutions of higher education.

While these exclusions offer academic research certain latitude regarding export controls, it is nonetheless critical that all FAU researchers understand their responsibilities and legal exposure to these laws and regulations. This memo and the on-line documents linked here provide an introduction to the topic.

More detailed information can be obtained from a number of web sites:

- http://www.gpo.gov/bis/ear/ear_data.html
- http://www.bis.doc.gov/licensing/exportingbasics.htm
- http://www.pmddtc.state.gov/
- http://www.treasury.gov/offices/enforcement/ofac
- http://www.cogr.edu/docs/export%20controls.pdf (case studies)

cc: Provost John Pritchett
Michael Moriarty
David Kian
Jack Ludin