# Division of Research

| SUBJECT: | Effective Date: | Policy Number: | |
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| Export Control | 3/15/2019 | 10.10 | |
| | Supersedes: | Page | Of |
| | 3/22/2018 | 1 | 5 |
| | Responsible Authority: Vice President for Research<br>Division of Research Export Control Officer | | |

I. Background

Export control laws and regulations exist to protect national security and U.S. foreign policy interests. These laws and regulations place restrictions on the export and release of certain items, Technology, Technical Data, and services outside of the U.S. and to Foreign Persons, whether located in the U.S. ("Deemed Export") or abroad ("Export"). Although many of the activities Florida Atlantic University ("FAU") undertakes are excluded from export control, the University recognizes the importance of complying with all federal laws and regulations. This policy is designed to assist the University community in its efforts to operate in accordance with U.S. export control laws and regulations.

II. Purpose

The purpose of this policy is to facilitate compliance with U.S. export control laws and regulations by establishing roles and responsibilities, and to educate FAU's community on such laws and regulations.

III. Scope

All FAU faculty, staff, students, postdoctoral fellows, postdoctoral scholars, visiting scholars, visiting scientists, and anyone who is paid by, or engaged by, FAU ("FAU Personnel") to conduct research, teach, or provide services at, or on behalf of, FAU is

required to comply with U.S. export control laws and regulations. In addition, FAU Personnel are required to adhere to all FAU policies and procedures to maintain federal, state, and institutional compliance.

## IV. Statement

Florida Atlantic University is committed to complying with all U.S. laws and regulations in its operation. As such, all FAU Personnel are required to comply with U.S. export control laws and regulations. FAU Personnel are responsible for the lawful transfer, control, maintenance, storage, access, and dissemination of certain items, Technology, Technical Data, and services outside of the U.S. or to Foreign Persons, whether located in the U.S. or abroad.

The laws that regulate the export and release of certain items, Technology, Technical Data, and services are enforced primarily by three agencies: The U.S. Department of State, the U.S. Department of Commerce, and the U.S. Department of Treasury.

The U.S. Department of State, through the Directorate of Defense Trade Controls ("DDTC"), regulates "Defense Articles" and "Defense Services" in the International Traffic in Arms Regulations ("ITAR"). Items and information subject to ITAR are found under the DDTC's U.S. Munitions List ("USML"). The U.S. Department of Commerce, through the Bureau of Industry and Security ("BIS") and the BIS's Export Administration Regulations ("EAR"), regulates "dual-use" items, which are items that have both commercial and potential military applications. Items and information subject to EAR are found under the Commerce Control List ("CCL"). The U.S. Department of Treasury maintains the Office of Foreign Assets Control ("OFAC") which enforces economic sanctions and embargoes in transactions and exchanges with designated countries, entities, and individuals.

In certain circumstances, the export or release of certain items, Technology, Technical Data, or services out of the U.S. or to Foreign Persons, whether in the U.S. or abroad, is either prohibited by law, requires an export license granted by the appropriate agency, or other governmental approval. Instances that may require an export license or governmental approval include, but are not limited to, sponsored research at FAU involving controlled items, including dual-use items, research conducted outside of the U.S., international travel, international shipping, hosting foreign scholars, and Deemed-Export visa certifications.

Obtaining an export license is not guaranteed. Depending on the sensitivity of the item, Technology, Technical Data, parties, and/or countries involved, the U.S. government may take between three (3) to six (6) months to review and approve or deny an application for an export license. Before an export license is obtained, or determining that an export control exclusion is applicable, no access to, or conduct of, export controlled activities are permitted by FAU Personnel.

FAU Personnel have an obligation to report any violation or suspected violation of export control laws, regulations, and policies. Such reports can be made to FAU's Division of Research Export Control Officer or the Vice President for Research. All reports of violations or suspected violations of export control laws, regulations, or policies will be reviewed. If an investigation is warranted, FAU's Division of Research will lead the

investigation, with involvement/advisement from the Office of General Counsel as needed. Violations of U.S. export control laws and regulations are severe and can be imposed against both the individual as well as the university. The civil and criminal penalties for violating export control laws and regulations include significant monetary fines, debarment from participating in federal contracting, and imprisonment for individuals. In addition to any government imposed sanctions, any FAU Personnel found to be acting in violation of U.S. export control laws, regulations, or FAU's export control policies and procedures will be subject to disciplinary action by the University.

## V. Export Control Exclusions

### Fundamental Research Exclusion

Basic and applied research in science and engineering performed at accredited institutions of higher education in the U.S., the results of which are ordinarily published and shared broadly within the scientific community, are excluded from export control laws and regulations. The Fundamental Research Exclusion is only applicable to the export or release of research data and information, not the export of tangible items.

Research no longer qualifies under the Fundamental Research Exclusion when there are publication restrictions beyond limited pre-publication review to prevent inadvertent disclosures of proprietary trade secret information. In addition, the Fundamental Research Exclusion is no longer applicable when Foreign Persons are prohibited from participating in the research.

### Publicly Available/Public Domain Exclusion

Information which is published and generally accessible or available to the public: (1) through sales at newsstands and bookstores; (2) through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information; (3) through second class mailing privileges granted by the U.S. Government; (4) at libraries open to the public or from which the public can obtain documents; (5) through patents available at any patent office; (6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States; (7) through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant U.S. government department or agency; or, (8) through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community is not subject to export control laws and regulations under the Publicly Available/Public Domain Exclusion.

### Educational Information Exclusion

General scientific, engineering, or mathematical principles commonly taught in colleges or universities or any educational information released by instruction in catalog-courses or their associated teaching laboratories at accredited institutions of higher education in

the U.S. are not subject to export control laws and regulations under the Educational Information Exclusion.

## VI. Definitions

Deemed Export: A release of Technology, Technical Data, or software source code to a Foreign Person in the U.S. The export is thereby "deemed" to take place to the Foreign Person's home country or last country of citizenship.

Defense Article: Any item or Technical Data designated in ITAR's U.S. Munitions List. Defense Article includes Technical Data recorded or stored in any physical form, models, mockups or other items that reveal Technical Data directly relating to the item.

Defense Service: The furnishing of assistance (including training) anywhere (inside the United States or abroad) to Foreign Persons in connection with the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles, and the furnishing of any controlled "Technical Data" to Foreign Persons anywhere.

Empowered Official: A U.S. person who is directly employed by FAU in a position of having authority for FAU's export control policy and management. The Empowered Official has the authority granted by FAU to sign license applications and other requests for approval of export control related matters at FAU. The Empowered Official has the independent authority to review any aspect of a proposed export to verify the legality of the transaction and may refuse to sign any license application or other request for approval without prejudice or other adverse recourse. The Empowered Official has the authority to suspend or terminate a research or other export activity if the Empowered Official determines the activity is not in compliance, or will lead to noncompliance with existing export control laws, regulations, or policy.

Foreign Person(s): A natural person who is not a citizen or Permanent Resident Alien of the United States. A Foreign Person also means any foreign corporation, business association, partnership, or other entity or group that is not incorporated or organized to do business in the United States.

Release: An item is "released" when either; a) it is made available to Foreign Persons for visual inspection; b) it is exchanged orally; or, c) it is made available by practice or application under the guidance of persons with knowledge of the Technology or Technical Data.

Technical Data (as defined under ITAR): Information, which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of Defense Articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation. The definition does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

Technology (as defined under EAR): Information necessary for the development, production, use, operation, installation, maintenance, repair, overhaul, or refurbishing of an export controlled item.

## VII. Accountability

It is the responsibility of FAU Personnel to comply with all U.S. laws and regulations as well as FAU's policies and procedures. The Division of Research Export Control Officer has been designated as the Division of Research's Empowered Official for all export control related matters. The Empowered Official will assist FAU Personnel in assessing export control requirements on a case-by-case basis.

## VIII. References

U.S. Department of State – Directorate of Defense Trade Controls:
https://www.pmddtc.state.gov/

U.S. Department of Commerce – Bureau of Industry and Security:
https://www.bis.doc.gov/

U.S. Department of Treasury - Office of Foreign Assets Control:
https://www.treasury.gov/offices/enforcement/ofac/

International Traffic in Arms Regulations (ITAR) – 22 CFR §§120-130

ITAR's U.S. Munitions List – 22 CFR §121.1

Export Administration Regulations (EAR) – 15 CFR §§730-774

EAR's Commerce Control List – 15 CFR § 774, Supplement No. 1

FAU Division of Research Export Controls Program:
http://www.fau.edu/research/export-control/

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POLICY APPROVAL

*Initiating Authority*

Signature: Date:

Name: Daniel C. Flynn, Ph.D., Vice President for Research

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Executed signature pages are available in the Initiating Authority Office(s)