



October 2, 2012

MEMORANDUM FOR: Chancellors, Provosts

FROM: *Marcellette G. Williams*
Senior Vice President Marcellette G. Williams, Ph.D.

SUBJECT: University Commitment to Compliance with Export Control Laws and Open and Free Academic Discourse and Dissemination of Research Results

224 It is the policy of the University of Massachusetts to comply fully with the U.S. export control laws and regulations. Likewise, it is the mission and policy of the University of Massachusetts to conduct instruction, research, and services openly and without prohibitions on the publication and dissemination of the results of academic and research activities. As a university, therefore, we satisfy a great many of our obligations under the export control laws by reliance on available exclusions for educational information and information that is publicly available or in the public domain.

Fundamental research means basic or applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community. Physical export of materials out of the U.S. or transfer of controlled information to foreign persons within the U.S. (deemed exports) may not meet the fundamental research exemption (FRE) and may require a license, even for goods that result from a research project.

223 International travel by our faculty and campus leadership is another area that merits export control compliance efforts and care. The University also has well developed vendor and sponsor screens it employs to ensure we do not contract with or engage in prohibited transactions with embargoed or sanctioned countries or persons. This has never been more important than at the current moment with our Government's efforts toward increased sanctions toward countries like Iran.

I appreciate how attentive each of you has been with respect to these matters. I applaud you for your efforts. As an additional resource, in September, we appointed Andrew Karberg as the Export Control Compliance Officer in the President's Office, with a reporting line to me and General Counsel.

Andrew will assist me with our annual exporter registrations and export compliance reviews. He will also support system office export control functions such as reviews of exemptions from the University Policy on Open and Free Dissemination of Research Results.

<http://media.umassp.edu/massedu/policy/Policy%20on%20Research%20Projects.pdf>

He will support screens of embargoed and sanctions countries and persons. He will also serve as a general resource to help support your campus export control officers.

As a reminder, please find attached and review the description of projects that merit your close scrutiny and require review and approval of the University President's Office. Attachment A. Attached is the form required for submissions of requests for exclusion. Attachment B.

Below, for your reference, is a description of the penalties that may result from non-compliance with these important laws and regulations:

EAR (Commerce Department): Criminal violations by the university can incur penalties up to \$1 million for each willful violation. For individuals, these penalties can reach up to \$1 million or 20 years imprisonment, or both, per violation. Civil penalties for both the university and individuals can reach up to \$250,000 per violation, or five times the value of the export, whichever is greater. These violations can also result in a denial of export privileges as well as other potential collateral penalties.

ITAR (Department of State): Criminal penalties can reach up to \$1 million per violation and 10 years imprisonment for individual willful violations. Civil penalties imposed upon departments, agencies, and officials can reach up to \$500,000 per violation. A university found to be in violation of ITAR regulations can be debarred from contracting with the government and could lose its export privilege.

OFAC (Treasury): Penalties will range depending upon the sanction regime in question. Criminal violations by the university can reach up to \$1 million, and criminal penalties for individuals can reach \$1 million or 20 years in prison, or both. Civil penalties can be imposed up to \$250,000 per violation, or two times the transaction in question, or both.

cc: Robert Caret, Ph.D., President
Vice Chancellors/Vice Provosts for Research
Deirdre Heatwole, General Counsel
Liz Rodriguez, Senior Counsel
Andrew Karberg, Export Control Compliance Officer

Attachment A
Attachment B

Attachment A

- 1. Projects in which the Research Results are Prohibited from Open Dissemination.** Projects in which publication of the research results is expressly prohibited (based on an assessment of the language of the proposed contract or communications with the sponsor). An example of a prohibition would be a subcontract from a defense contractor which requires prior approval of draft manuscripts by the contractor and the contractor confirms that no publications are likely to be approved for publication due to the sensitivity of the project. This is distinguished from a sponsor's request for prior review of draft manuscripts or presentations, which is commonplace.
- 2. ITAR Projects.** Projects involving receipt of "defense articles" as defined in the International Traffic in Arms Regulations other than commercial or scientific spacecraft covered under Category XV of the USML (such as equipment, software or devices or related technical data specifically designed, developed, configured, adapted or modified for military applications) as confirmed by the applicable Federal agency (or its contractor). This applies even where a Department of State license could be secured or some other ITAR exemption might apply. Indicia would be a project in which the grants office or the researcher is notified that the defense articles being received or the resulting research results must be maintained in a secured area and/or must be specially marked and handled. Ordinarily, UMass projects sponsored by Federal military agencies do not actually involve receipt or development of defense articles. Most of these projects satisfy the fundamental research exclusion from export controls (including DARPA 6.1 and 6.2 projects).
- 3. Classified Projects.** Projects designated as being "classified." The indicia would be that the contract and/or scope of work are designated or marked "secret" or "classified."

From time to time, the grants office may use a "technology control plan" to ensure compliance with the special terms of a Federal grant, such as a prepublication approval requirement. Use of a technology control plan is an effective means for reducing risk and ensuring compliance, but does not mean that the project necessarily falls under one of these three prohibited categories. Bear in mind that under the Department of Commerce regulations, for some kinds of projects, a project can include access or dissemination controls and still constitute "fundamental research."