MEMORANDUM

TO: Deans, Department Chairs, Center Directors
FROM: Michael Hastings, Director, Research and Sponsored Programs
SUBJECT: Export Control Regulations
DATE: September 11, 2008

Colleges and Universities have been required to comply with export control regulations (ECR) since the 1940’s and, as a result, have faced challenges in balancing ECR compliance with academic traditions regarding the public dissemination of knowledge, challenges made greater by the events of 9/11/2001.

Enacted to protect U.S. national security and economic interests, as well as foreign policy goals, ECRs prohibit the unlicensed transfer to foreign nationals of U.S. goods, services and technologies that have proprietary, military or economic applications, or that are subject to trade restrictions.1 They apply not only to ‘actual’ exports (e.g., physical transfers to destinations outside the U.S.), but also to ‘deemed’ exports in cases where goods, services or technologies are transferred to foreign nationals within the U.S.

The trio of ECRs includes: (1) the International Traffic in Arms Regulations (ITAR) administered by the U.S. Department of State and applicable to inherently military technologies; (2) the Export Administration Regulations (EAR) enforced by the U.S. Department of Commerce and pertaining to “dual use” (civilian or military) technologies; and (3) Foreign Assets Controls (FAC) imposed by the U.S. Department of the Treasury and prohibiting particular types of transactions with countries subject to trade sanctions.2

Exclusions and exceptions to ECR licensing requirements exist for: (1) information and research results already published and available in the public domain (Domain Exclusion);

1 Anne Bowden and Erica Kropp, University of Maryland College Park September 2004 presentation: http://www.umresearch.umd.edu/ORAA/export_control_guidance/ExportControl_090104.pdf
2 Florida State University: http://www.research.fsu.edu/researchcompliance/exportcontrols.html

Links revised 8/3/11
(2) "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 ordinarily are restricted for proprietary or national security reasons" (Fundamental Research Exclusion (FRE); (3) general science, math, and engineering information commonly taught at universities and conveyed in courses listed in course catalogues (Educational Exclusion); (4) unclassified technical data shared with full time regular university employees who maintain permanent residency for the term of their employment who have been informed in writing not to transfer information to other foreign nationals (Full Time Employee Exclusion); and (5) information transported by a laptop qualified as a “tool of trade” that remains at all times in the possession of the researcher, for travel to a foreign country not under U.S. sanctions (Temporary Export Exclusion).

According to the National Council of University Research Administrators (NCURA) and the Council on Governmental Relations (COGR), the majority of information transferred at colleges and universities falls into one or more of the above exempted categories, however, they caution against making assumptions and strongly recommend that all researchers, regardless of funding source, and administrators become familiar with the tenets of ECRs so as not to inadvertently find themselves in violation of the laws which can carry individual and institutional criminal penalties ranging from significant fines to imprisonment.

The Office of Research and Sponsored Programs (ORSP) has compiled a list of resources intended to inform UMaine researchers and administrators about ECRs, and is list is available online at: [http://www.orsp.umesp.maine.edu/ORSPDocs/Info/ECRResources.pdf](http://www.orsp.umesp.maine.edu/ORSPDocs/Info/ECRResources.pdf). Questions regarding specific ECR compliance issues should be directed to ORSP for review and resolution.

5 [http://www.cogr.edu/Pubs_ExportControls.cfm](http://www.cogr.edu/Pubs_ExportControls.cfm)