MEMORANDUM

To: Deans, Chairs, and Directors
From: Harris Pastides, Vice President for Research and Health Sciences
Subject: Export Control Regulations
Date: January 21, 2005

Federal laws restricting exports of goods and technology can impact research, training, and other activities conducted by University faculty. Export control laws apply not only to the actual export of goods and technology outside the United States, but also to the disclosure of certain technical data or information to foreign persons while in the United States (referred to as a "deemed export").

Universities are required to comply with these regulations. Individuals who violate export regulations are subject to civil and criminal sanctions (including fines and/or prison sentences for individuals) as well as administrative sanctions (loss of research funding or export privileges). It is vitally important that University faculty and administrators understand their obligations under these regulations and adhere to them.

There are two main bodies of export control law. One is implemented by the U.S. Department of Commerce through its Export Administration Regulations (EAR) and is concerned primarily with commercial goods that also may have military or strategic applications (known as "dual use" items). The second is implemented by the U.S. Department of State through its International Traffic in Arms Regulations (ITAR) and is concerned primarily with military articles and services. These regulations apply to:

- The physical transfer of controlled items and related technical information, including software, to persons and entities outside the U.S.
- The disclosure of technical data or information on controlled items to foreign persons while in the U.S. These so-called "deemed exports" may include formal presentations, informal conversations, or observations during site tours.
- The training and offering of services involving controlled equipment to foreign persons.

The purpose of these regulations is to restrict exports of goods and technology that could have an adverse impact on the United States economy, contribute to the military potential of international adversaries, or otherwise interfere with United States foreign policy objectives. Because export control regulations restrict the sharing of goods and technology, they may conflict with the University's tradition of academic freedom and openness in research and present challenges that are more likely to occur due to heightened concerns about homeland and national security.
While export controls apply to virtually all fields of science and engineering research, sponsored or not, there are several significant exclusions or exemptions that apply to U.S. institutions of higher learning:

- **The so-called fundamental research exclusion** exempts from coverage basic and applied research in science and engineering performed by U.S. institutions of higher learning *provided* the research is carried out openly and without restrictions on publication or access to or dissemination of the research results. This fundamental research exemption applies primarily to "deemed exports" (transfers of information to foreign persons inside the U.S.). It enables the conduct of fundamental research (collaborations, seminars, conferences, and informal scientific exchanges) to proceed largely unfettered by the restrictions that might govern other exchanges of scientific information.

- **The education exclusion** exempts from export controls the sharing of general scientific, mathematical or engineering information commonly taught in colleges and universities as well as exempting information in the public domain. This exclusion does not apply to training foreign persons how to use controlled pieces of scientific equipment *unless the instruction is part of a class.*

- **The employment exclusion** allows U.S. universities to disclose technical data to foreign nationals in the U.S. *provided* those persons are the full-time, bona fide employees of the universities, have a permanent home in the U.S. during their employment, are not nationals of certain countries the State Department has designated as terrorist countries, and universities inform the persons, in writing, that they may not disclose technical data to other foreign nationals without the prior authorization of the State Department.

Another agency that is involved in export controls is the Treasury Department’s Office of Foreign Assets Control (OFAC). That office administers and enforces economic and trade sanctions against foreign countries, individuals and organizations identified as terrorists or international narcotics traffickers, or involved in or supportive of activities related to the proliferation of weapons of mass destruction. Individuals may not provide technologies or services to countries on OFAC’s list of embargoed entities or specially designated persons without first obtaining licenses from OFAC and the State or Commerce Department. Currently embargoed countries include Cuba, Iran, Iraq, Libya, Liberia, Sudan, and North Korea, as well entities in the Balkans, Burma, and Zimbabwe.

The Office of Research Compliance currently is developing resource materials to assist the USC research community in determining when and how to apply these complex regulations. In the meantime, please share this information with your faculty and researchers. If you have questions related to current or proposed research projects and export controls, you may contact Tommy Coggins, Director of Research Compliance at 7-4456.