OFFICE OF RESEARCH

UNIVERSITY OF WASHINGTON

October 12, 2005

Defense Acquisition Regulations Council
Attn: Ms. Amy Williams
FAXED TO 703-602-0350
OUSD (AT&L) DPAP (DAR)
IMD 3C132
3062 Pentagon
Washington, DC 20301-3062

Dear Ms. Williams:

On behalf of the University of Washington (UW), and in response to your request for comments, we would like to express deep concern over the proposed amendment to the Defense Federal Acquisition Regulations Supplement (DFARS) (Case 2004-D010) to create a new clause regarding export controlled technologies, and submit the following comments.

The University of Washington receives more federal research and development (R&D) funding then any other US public university, a position that it has held since 1974. For decades we have embraced the fundamental public mission of undertaking basic research in the service of the nation. In FY05 the UW received $40.2M in Department of Defense funding, of which $15.2M was from contracts.

The UW concurs with the detailed comments submitted by the Association of American Universities (AAU), the National Association of State Universities and Land Grant Colleges (NASULGC), and the Council on Governmental Relations (COGR). We emphasize here some of our specific concerns.

1. The DOD proposed rule does not reference the Fundamental Research Exemption (FRE) nor the National Security Decision Directive 189 (NSDD 189).
The FRE and NSDD 189 have been in place as a Presidential directive since 1989 and were restated by Condoleezza Rice in 2001. There is no recognition of the Fundamental Research Exclusion (FRE), or discussion of exemptions of any kind, in the proposed rule change, nor in the proposed new clause. We believe that both the FRE and NSDD need to be explicitly reaffirmed and supported in any new regulations.

Universities adopt these government-wide standards in their dealings with all federal agencies because they provide a clear operational framework consistent with the way successful innovative university is conducted: free and open exchange of ideas. NSDD 189 states that "to the maximum extent possible, the products of fundamental research remain unrestricted." This well proven policy is based on the famous principle enunciated by Ronald Reagan: "True, lasting

G80 Gerberding Hall Box 351202 Seattle, Washington 98195-1202
206.616.0804 FAX 206.685.9210

peace cannot be secured through the strength of arms alone. Among free peoples, the open exchange of ideas ultimately is our greatest security".

Universities have operated successfully under the FRE. Scientific knowledge has proceeded rapidly with the assurance given the rapid dissemination of knowledge and the quality assurance provided by peer review. Sensitive information is protected by classification.

The new clause would be required whenever the Program Director believes that export control may be involved. Our concern is that this clause would be inserted by program directors in all university contracts, and most certainly by industry primes in their university subcontractor agreements. Once these clauses are inserted in agreements it would be extremely difficult to negotiate them away, and many universities would cease to accept these agreements. As has been pointed out by other responses to these changes, this clause is inconsistent with DOD Instruction 5230.27. Section 4.3 which states: *The mechanism for control of information generated by DOD-funded contracted fundamental research in science, technology and engineering performed under contract or grant at colleges, universities and non governmental laboratories in security classification. No other type of control is authorized unless required by law.*

In order to carry out our work, we need to have clarity. The confusion created by the proposed rule changes would discourage the best researchers from seeking DOD contracts, reduce the quality of DOD research, and thereby jeopardize national security.

2. The DOD proposed rule is premature considering the Dept of Commerce Bureau of Industry and Security rule that is also pending.
Since the more then 300 comments to the proposed BIS rules are being reviewed and the final decision is yet to be made, we join the requests from other universities and associations that the BIS proposed rule changes be finalized prior to any further changes of DOD export control rules.

3. Requirement of badging and segregation of foreign nationals.
The University of Washington recruits globally the best students for their graduate program. Foreign nationals compose 10-50% of the graduate enrollment programs in the science and engineering disciplines. The proposed clause imposes new administrative burdens for the badging of foreign nationals and the segregation of work areas. The badging of foreign nationals goes beyond the requirements for classified research. There appears to be the assumption that the current visa process is not doing an adequate review, and an attempt to ameliorate this with another level of oversight. It is not clear why this additional oversight is required, nor why academic institutions are charged with carrying it out. The result, however, is yet more ambiguity and administrative burden without a compelling need. At UW, the result of these requirements would almost certainly be fewer DOD projects being done, because faculty are unwilling to accept projects that create such administrative burden and change the way they carry out their scientific work and direct their graduate students and postdoctoral fellows.

In summary, our recommendations are:

1. Clearly recognize the Fundamental Research Exemption and NSDD 189.

2. Delay further consideration of this proposed rule until the outcome of the BIS proposed changes is resolved.

3. Accept the changes to the DOD proposed clause that COGR has proposed.

We appreciate the opportunity to express our concerns about this proposed change.

Sincerely,

Craig J. Hogan
Vice Provost for Research