



OFFICE OF THE CHANCELLOR

9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0005
TELEPHONE: (858) 534-3135
FAX: (858) 534-6523

October 6, 2005

Defense Acquisition Regulations Council
Attn: Ms. Amy Williams
OUSD (AT&L) DPAP (DAR)
IMD 3C132
3062 Defense Pentagon
Washington, D.C. 20301-3062Subject: DFARS Case 2004-D010—Export-Controlled Information and Technology
(70 CFR 39976, July 12, 2005)

Dear Ms. Williams:

On behalf of the University of California, San Diego, I offer the following comments on the Department of Defense's proposal to amend the Defense Acquisition Regulation Supplement (DFARS), as published in the Federal Register on July 12, 2005. In summary, I believe the proposed rule would have an onerous impact on the University of California, San Diego and would severely undermine the ability of the university to conduct research on behalf of the Department of Defense.

The proposed rule overlooks the safeguards currently provided in the conduct of fundamental research on behalf of the federal government (*National Security Decision Directive (NSDD 189)*). The advance of fundamental research requires an open, collaborative, and spontaneous research environment. NSDD 189, promulgated by the Reagan Administration during the Cold War, established the federal government's policy for controlling information and technology developed through federally-funded research at universities and research institutions. The proposed changes to the DFARS do not explicitly recognize the exemptions of contracts for basic research and development, nor do they require program managers to actively engage the definition of exempt research. As a result, I believe it is most likely that program managers would devolve oversight of whether a project "may" involve export-controlled information to contract managers. In the interests of efficiency and accountability, I suspect most contract managers in turn would err on the side of caution and routinely apply these burdensome obligations to every R&D contract. For universities this would mean that, regardless of whether the

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proposed campus-based project actually involved access to export-controlled information, they would nonetheless be required to maintain a full-fledged access control plan, with its severe work restrictions.

The full-fledged access control plan, in turn, specifically requires unique badging and segregation requirements for international students and researchers. In short, if this aspect of the rule were to be adopted, it would greatly discourage my campus from participating in any defense contracts that potentially involved export-controlled technology.

In June 2004, the President's Council of Advisors on Science and Technology (PCAST) authored a report entitled Sustaining the Nation's Innovation Ecosystem: Maintaining the Strength of Our Science Engineering Capabilities. A key finding of our report is that "the openness of our campuses to students, scholars, and faculty from all over the world is one of our greatest strengths and lies at the heart of the phenomenal success of the American research university." By segregating international researchers and thus undermining the openness of our campus, the proposed rules would erode a key component of the success of higher education institutions in conducting research for the federal government.

I firmly believe that the Department of Defense should withdraw, or at least postpone, any proposed new rules relating to export-controlled information until the Department of Commerce (DOC) completes its work regarding deemed export requirements (ANPR; RIN 0694-AD29). The higher education community has been working diligently with DOC's Bureau of Industry and Security in order to address the agency's concerns relating to export-controlled information. It is clear that a closely coordinated federal rulemaking process among the agencies, including the Department of Defense, is needed in order to protect national security without discouraging universities from participating in research critical to national defense.

Thank you for the opportunity to comment on the proposed rules. I appreciate your attention to my concerns.

Sincerely,



Marye Anne Fox
Chancellor