

October 5, 2005

Defense Acquisition Regulations Council
OUSD (AT&L) DPAP (DAR)
IMD 3C132
3062 Defense Pentagon
Washington, DC 20301-3062

Attn: Ms. Amy Williams

Re: Notice of Proposed Rulemaking, (DFARS Case 2004-D010); Defense Federal Acquisition Regulation Supplement; Export-Controlled Information and Technology

Dear Ms. Williams:

Washington State University (WSU) is appreciative of the opportunity to provide comments and input regarding the proposal to amend the Defense Federal Acquisition Regulation Supplement (DFARS), published in the Federal Register, Vol. 70, No. 132, July 12, 2005 entitled "Defense Federal Acquisition Regulation Supplement; Export-Controlled Information and Technology". We understand that the world has changed since the events of September 11, 2001 and are supportive of, and understand the need for, increased vigilance regarding the potential dual use of materials and technology.

We feel strongly about the impact of the proposed rules and join our colleagues, individually and in concert with the Council on Governmental Relations (COGR), the Association of American Universities (AAU), and others in providing our comments and concerns. In general, the Department of Defense (DoD) appears to adopt most of the recommendations made in the DoD, Office of Inspector General (IG), "Export-Controlled Technology at Contractor, University, and Federally Funded Research and Development Center Facilities" (D-2004-061). Thus many of our comments and concerns stem from the IG report and their adoption in the proposed rules. Our major comments and concerns are discussed below.

1. The proposed changes are out of proportion to the perceived problem.

The status of export controls is already in a state of significant uncertainty. The Department of Commerce (DoC) Bureau of Industry and Security (BIS) is currently reviewing the significant response from universities regarding their Advanced Notice of Proposed Rulemaking (ANPR; RIN 0694-AD29) published in the Federal Register on March 8, 2005. The National Academies of Science (NAS) have been holding meetings regarding both sets of proposed rules. Given all of the discussion currently underway it seems premature for the DoD to change their rules until the DoC changes have been resolved. In addition, the DoD IG report indicates one instance of a university allowing a foreign national access to unclassified export-controlled technology without proper authorization. While this is regrettable, and should be prevented, this may not indicate that a large change in the rules is required.

2. The National Security Decision Directive (NSDD) 189 of September 21, 1985 provides necessary control.

NSDD 189 provides exclusion under EAR and ITAR for "fundamental research". We believe that NSDD 189 should be the mechanism for controlling classified information and technology in the U.S.

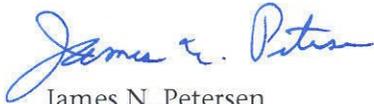
3. Restricting certain foreign nationals access to technology (equipment and/or information) at U.S. research universities is a detriment to the leadership position the U.S. holds in university research and technology development.

I have read and heard many arguments and statistics regarding students choosing to attend universities in other countries. This hurts the U.S. educational system and leadership in fundamental research. There is currently a shortage of qualified students in the sciences and engineering fields and such requirements as deemed export licenses will only exacerbate this trend. Any actions or interpretations that hinder the competitiveness of U.S. universities would be detrimental our future leadership in fundamental research and subsequent technological advances.

In summary, WSU is sympathetic to the need for enhanced national security and our role in such endeavors. We are currently expending considerable time and effort in tracking foreign nationals and enhancing our security of biological and other research materials. However, we do not believe that the recommendations in the DoD IG Report should be adopted wholesale by DoD. We are hopeful that the dialogue that DoD has started with universities will continue and that the comments received on the NPRM will result in changes (if any are necessary) that will be practical and truly in the best interest of the U.S.

Thank you for the opportunity to comment on the proposed regulations.

Sincerely,



James N. Petersen
Vice Provost for Research
Battelle Distinguished Professor of Bioprocessing

JNP/jo