

Ms. Amy Williams  
Defense Acquisitions Regulation Council  
OUSD (AT&L) DPAP (DAR)  
IMD 3c132  
3062 Defense Pentagon  
Washington D.C. 20301-3062

Reference: DFARS 2004-D010

Dear Ms. Williams:

I write to respond to the request for comments on the proposed amendment to DFARS (Case 2004-D010) as published in the Federal Register on July 12, 2005. I write as the Washington Representative of the Association of International Education Administrators, chief international education officers from more than 230 U.S. campuses. We write to make known our concern with the proposed regulations, and to associate our concerns with the views of COGR, AAU, and NASULGC as broadly representative of higher education institutions specifically engaged in large scale research efforts.

First we would thank the DOD for the opportunity to comment on these proposed changes in regulations. Discussions have occurred on campus and in various briefings called to respond to these proposed regulations have alerted many members of the higher education community to the need for concern about contract procedures and research conducted on campus that are far more specific when dealing with any DOD sponsored research than with many other federal agencies. International offices are often responsible for the recruitment of international students to various campuses. These proposed regulations have added a new layer of concern to the several additional layers of clearance and control that all US campuses have been subject to in the period of time after the attacks on the U.S. of September 11, 2001. Many of these have been appropriate. All have been expensive. All have resulted in a significant drop off in international applications and enrollments that may have serious implications in the future for US competitiveness. Most of the previous regulation changes have not been the responsibility of the Department of Defense.

With the above as context let me briefly discuss AIEA concerns. We think these proposed regulations are too broad and have the potential for stifling academic research. They do not seem to take into account the fluid nature of scientific and academic exchange in which research in almost all fields is international in character and this is common and vital to on-going research. These proposed regulations do not make any distinction between fundamental and applied research. While recognizing that the distinction between fundamental and applied research is not always rigid, most DOD sponsored research on campus is grant based and thus almost by definition fundamental, and not purchased. This distinction was established in National Security Decision Directive (NSDD) 189 which set out in 1985 the mechanism for classification of technology. The proposed addition to DFARS makes no mention of these procedures, nor of the critical distinction between fundamental and applied research, nor of the exemption of

fundamental research (the kind most likely to be conducted on campus) from export control requirements.

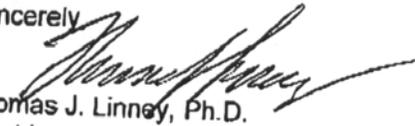
In general AIEA believes the proposed regulations as currently written are too broad for implementation. Perhaps it is possible to reject these proposed regulations, and start with a new draft. Industry representatives at workshops called to discuss the proposed regulations suggested the proposed regulations were overly broad, and that current regulations were adequate. **Any existing DOD contract already has sufficient provisions for enforcement of export controls if necessary.**

It is also worth noting that the Department of Commerce is engaged in a parallel exercise, to revise ITAR Regulations. Comments closed on new proposed regulations in July of 2005. Final regulations have yet to be issued. It would seem to be reasonable to request that the Departments of Defense and Commerce have consistency in ITAR and EAR regulations and export control language and regulations be consistent between and among departments with export control shared responsibilities. Campus responsibility for compliance only becomes more difficult with departmental regulations that vary only slightly in the same area of concern. Coordination with other export control regulations would seem only reasonable in this context.

Finally AIEA has **major concerns with proposed "access control" requirements.** Unique badging for foreign nationals is troubling in a number of ways. First, it may not be necessary at all in the case of fundamental research. Second, the proposed rule uses the word "may" in the context of access control, and research and development in ways that are too broad to apply to most campus research facilities. With some exceptions for very high tech facilities, most often operated off campus, most campus based research facilities are open to all admitted students. If the procedures to admit such individuals to the United States, which have been improved and tightened via multiple clearance layers in recent years, are not yet adequate, there are procedures in place for improving them. Universities and scientific organizations have and will continue to participate in these procedures. If they are acceptable, there would seem to be no need to adopt additional procedures via DOD regulations in this manner. If a person is needed for national security based research, additional clearance procedures can be and often are established. These efforts, most often do not involve campus based research, and that too is an appropriate distinction. U. S. campuses have been a mechanism of outreach for understanding and exchange with nearly every country in the world. AIEA would hope that this policy would continue. DOD fundamental research is an important addition to any campus research portfolio. Applied research and DOD contracts have been and can be undertaken in appropriate ways that comply with DFARS regulations and export controls. The comments of COGR, AAU, and NASULGC all suggest reasonable alternative ways to approach the problems outlined in these proposed regulations. **AIEA would urge DOD to work with those organizations most concerned with university based research to develop more reasonable approaches to resolving the issues raised in this notice of proposed rulemaking.**

AIEA would like to thank DOD for the opportunity to comment on these proposed regulations.

Sincerely

  
Thomas J. Linney, Ph.D.  
Washington Representative  
Association of International  
Education Administrators