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October 3, 2005

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

Dear Ms. Williams:

This letter provides the University of Cincinnati's comments on the proposal to amend the Defense Federal Acquisition Regulation Supplement (DFARS) published in the Federal Register on July 12, 2005 (DFARS Case 2004—D010). The proposed rule contains a new DFARS Subpart 204.73, "Export-Controlled Information and Technology at Contractor, University, and Federally Funded Research and Development Center Facilities," and an associated contract clause (DFARS Part 252.204—70XX). It closely reflects the recommendations in the March 25, 2004 report of the Department of Defense (DoD) Inspector General (IG), *Export-Controlled Technology at Contractor, University, and Federally Funded Research and Development Center Facilities* (D-2004-061).

The University of Cincinnati is engaged in federally funded scientific research and changes to the DRARS may impact how we conduct of research.

The University of Cincinnati recognizes the Department's interest in adequate processes to identify unclassified export-controlled technology and to prevent unauthorized disclosure to foreign nationals. The Inspector General's report, noted above, while not focused on any known problem or national security breach, suggests steps the Department should take to tighten its contracting rules. While the University of Cincinnati believes that current negotiations between university contracting officials and Department contracting officers has yielded the optimum contract provisions for reasonable compliance with national security interests in light of the research and educational missions of our institution, **the University of Cincinnati believes a reasonable compromise on the proposal can be achieved.**

However, there are aspects of the proposed rule that overreach, to the detriment of the productive university contract relationship. We have seen no evidence that existing visa and classification processes fail to adequately address concerns about the potential for transfer of any sensitive technologies at universities, nor does the DoD IG Report provide any such evidence. Extensive background checks are conducted on foreign students and scholars entering the U.S. to study and conduct research. The visa screening process has been under ongoing review and improvement to make it more effective and efficient. Once cleared to enter through this process, foreign students and researchers should be permitted to fully participate in the academic research community.

### Limit Overextension of the Rule

The proposed rule prescribes very specific processes and mechanisms to control export-controlled information and technology. For example, the proposed clause requires access control plans including badging requirements and segregated work areas for foreign nationals for access to export-controlled information and technology. This requirement goes beyond the requirements under the National Industrial Security Program Operating Manual for the handling of classified material which provides for unique badging, segregated work areas and other measures as appropriate, rather than imposing a blanket requirement. It is not appropriate for controls for unclassified information and technology to be less flexible than for classified information. Control of unclassified export-controlled information should be eligible for at least the same flexibility in application as classified information.

### Fundamental Research Exemption

Department officials have recently acknowledged (Workshop on the Department of Defense Notice of Proposed Rulemaking to Amend the Defense Federal Acquisition Supplement, September 16, 2005, National Academies of Science, Washington, D.C.) that the proposed amendment does not affect nor supersede the fundamental research exemption established in NSDD-189. The University of Cincinnati concurs with this acknowledgement and urges the Department to add wording to the proposed rule to that effect.

### Badging

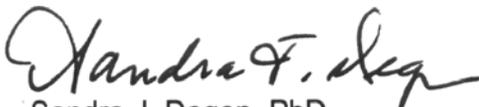
In addition, Department officials have acknowledged that the badging component of the proposal should be eliminated from the final rule in favor of allowing the contractor to maintain an effective export compliance program. The University of Cincinnati concurs with this acknowledgement and urges the Department to remove the prescriptive language on badging.

### Segregated facilities

The University of Cincinnati urges the Department to further modify the proposed rule to focus on the effective management of an export compliance program, without requiring segregated facilities. While a few universities have separate, controlled facilities on campus, most do not. Institutions are unlikely to establish them because of the substantial costs associated with such facilities. Universities will face the difficult choice of substantially altering the normal open campus research environment to comply with the requirements.

We hope the Department will seriously consider our concerns and recommendations. We appreciate the opportunity to comment.

Sincerely,



Sandra J. Degen, PhD  
Acting Vice President for Research