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October 12, 2005

VIA OVERNIGHT DELIVERY

Defense Acquisition Regulations Council  
Attn: Ms. Amy Williams  
Crystal Square 4, Suite 200A  
241 18th Street  
Arlington, VA 22202-3402

Dear Ms. Williams:

This letter is The Ohio State University's response to the Advance Notice of Proposed Rulemaking (NPRM) published in the Federal Register on July 12, 2005 (DFARS Case 2004-D010) asking for comments on the Department of Defense's proposal to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to include new requirements for the potential use or generation of export-controlled information or technology. The University appreciates this opportunity to provide its views and to inform the Department of Defense (DoD) of the impact that implementation of the proposed rule would have on our teaching, service and research missions.

Specifically, the proposed rule will seriously impede the University's ability to perform novel scientific investigation on behalf of DoD and, as a result, may adversely impact DoD's research efforts and our national security. Implementation of the proposed DoD rules will result in the insertion of excessively burdensome language in university contracts and subcontracts. As it is currently written, the clause will result in significant confusion among DoD contracting officers and university grants administrators and will likely create situations where DoD contracting officers assume that export controlled information or technology is involved in all projects – resulting in the overly broad application of controls to university-based research.

Inclusion of the proposed export control clause in university contracts and subcontracts will also cause many academic research institutions, including the University, to reject DoD contracts that include it, because the clause would seriously restrict the comprehensive educational experience that the University currently offers to international students, as well as limit collaborative research conducted with our international fellows and scholars.

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Of the proposed provisions and contract clauses, the University is most concerned that no reference is explicitly made to the fundamental research exemption from export controls, nor current Administration policy under the National Security Decision Directive 189, which requires that the results of fundamental research remain unrestricted.

In addition, given the current uncertainty surrounding changes that the Department of Commerce Bureau of Industry and Security (BIS) may make to the Export Administration Regulations (EAR) related to "deemed exports," the University considers the DoD proposed rule to be premature. The impact of the proposed rule may vary significantly depending upon how the Commerce Department decides to respond to the recommendations of its own Inspector General concerning the definition of "use technology" and its application to equipment required for the conduct of fundamental research. The University requests that the DoD delay further action on the proposed rule until BIS issues its final rule.

If DoD nonetheless decides to proceed with the proposed rulemaking, the University recommends that the Agency adopt the revisions submitted by the Council on Governmental Relations (COGR), which have also been endorsed by the American Association of Universities. Specifically, the University supports the COGR substitute language that clarifies the fact that restrictions on the transfer of export-controlled information do not apply if the university research is otherwise covered by an applicable exclusion or license exception, such as the fundamental research exception. The University also supports the language suggested by COGR, which requires contractor "flow down" language in university subcontracts to specifically identify export controlled information or technology. If controlled information is not required for performance of a subcontract, such clauses should not be passed on to university subcontractors.

Thank you again for the opportunity to provide our views and suggestions. The Ohio State University remains fully committed to working with the Department of Defense on our research collaborations, while protecting the country against potential threats.

Sincerely yours,



Robert T. McGrath  
Senior Vice President

cc: Karen A. Holbrook, President