



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

Subject: DFARS Case 2004-D010  
"Deemed Exports"

I am writing to you as President of the Materials Research Society (MRS). The Materials Research Society represents 13,000 professional Ph.D. scientists and engineers working towards fundamental breakthroughs in electronics, aerospace, biomedical devices, nanotechnology, energy systems, and advanced computation and communication technologies. The Materials Research Society is deeply concerned that the proposed changes to export control regulations regarding DFARS Case 2004-D010 will harm substantially America's science and technology enterprise.

In the Spring of 2004, the Inspector Generals of several federal agencies (i.e. DOC, DOD, DHS, DOE and the Dept. of State), recommended increased application of "deemed" export regulations to foreign students and scholars involved in university based, fundamental research. The science and technology enterprise in this country depends strongly upon the dedicated efforts of a large number of foreign nationals. In a survey of academia published by NSF in 2000, foreign-national faculty in U.S. higher education represented 35% of the engineering professors, 40% of the professors in computer science, and 27% of the professors in mathematics. If the current trends continue, we will require even larger numbers of foreign born Ph.D.'s to meet the workforce needs of our S&T enterprise over the next decade. These foreign nationals begin their training in America's graduate schools, working on projects funded by a broad array of government agencies. They rub elbows with American students and create a multi-cultural atmosphere of learning and respect. The increased application of "deemed" export regulations will remove a large and talented pool of academics from research programs that directly enhance our national security, including a number of researchers who have track records of national service.

Specific changes recommended by the Department of Commerce and the Department of Defense concerning the “use” of export controlled equipment are of concern. The DOC IG specifically recommended existing regulations should be interpreted to require that licenses be obtained before certain foreign nationals are permitted to “use” specific pieces of specialized scientific equipment required for unclassified, fundamental research. The DOC IG also recommended that a foreign student or scholar’s country of birth, as opposed to most recent citizenship, be used to determine when an export license is required. The proposed DOD modifications to DFARS contract clauses will add to the burden placed on the university community. The recommended changes do not discriminate between universities and other defense contractors, nor do they make any explicit exemption for fundamental research as would be expected from NSDD 189. These recommendations threaten university-based research and are likely to stifle research critical to national and economic security. If implemented, the recommendations would require that universities restrict the participation of international students in research once they arrive in the United States. Some may have to wait for additional export control licenses to be issued before they can conduct and use equipment essential for the conduct of basic research. Moreover, universities will have to control access to their research laboratories to ensure that individuals without proper licenses are not permitted to enter, requiring costly new systems of access control (e.g. security guards and badges for students) at university research laboratories.

MRS believes that, once cleared to enter through the visa mantis process, foreign visitors should be free to use any and all equipment required for the conduct of fundamental, unclassified research. They should be able to do so without additional barriers, background checks and/or licenses. Though extraordinary times require extraordinary measures, the burden of policing foreign nationals is an intelligence issue, not an issue for academia.

MRS recognizes the serious threat posed by international terrorism and we will do our part to help secure this great nation. At the same time, we feel that these new regulations regarding deemed exports do more harm than good, and seriously threaten America’s continued dominance in science and technology. The Materials Research Society is hopeful that the Department of Defense will seriously consider the potential harm to unclassified, fundamental research that can be done by expanding these “deemed” export licensing requirements.



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