

Minutes*

Senate Research Committee
Monday, April 23, 2012
2:15 - 4:00
238A Morrill Hall

Present: Linda Bearinger (chair), Margaret Catambay, Anna Clark, Paul Cleary, Jerry Cohen, Marc Dunham, Maria Gini, Greg Haugstad, Seung-Ho Joo, Frances Lawrenz, Jennifer Linde, LaDora Thompson, Thomas Vaughan, Kyla Wahlstrom, Lynn Zentner

Absent: Alvaro Alonso, Melissa Anderson, Arlene Carney, Robin Dittman, Demoz Gebre, Tucker LeBien, Randy Moore, Timothy Mulcahy, Kola Okuyemi, Federico Ponce de Leon, Alexander Thorkelson, Karen Williams

Guests: Mark Bohnhorst (Office of the General Counsel); Sue Paulson (Director, Sponsored Financial Reporting); Sherrie Kutzler (Office of the Controller); Sarah Waldemar (Office of the Vice President for Research); Associate Vice President Pamela Webb

Other: none

[In these minutes: policy revisions on (1) cost transfers, (2) use of controlled substances in research, and (3) export controls; (4) graduate student international travel]

1. Policy Revisions: Cost Transfers

Professor Bearinger convened the meeting at 2:15 and turned to Ms. Waldemar to present three proposed policy revisions. She noted that Ms. Waldemar is from the Research Integrity Oversight Program.

Ms. Waldemar turned first to a change in the Cost Transfer policy; she provided a matrix outlining when transfers needed to be completed within 60 days and when they could be completed outside the allowable period (non-salary cost transfers and salary cost transfers). She outlined the changes that were being proposed, intended to update the cost-transfer policy with changes in EFS and to increase the ease of making the transfers.

1. Allowable period for transfers changed to 60 from date charge appears
2. Certified Approver review and approval required on salary cost transfers occurring more than 60 days after date payroll is charged (it was not required because PeopleSoft and Forms Nirvana did not permit it); Historical Salary Adjustments (HSAs) are cost transfers
3. Department head signature no longer required on late transfers of either type (they believe it more important that the PI know of an approve late transfers)
4. Verification of PI approval for transfers outside allowable period required as part of transfer documentation, signature not required (which can be accomplished through an email or a documented conversation, for example—they do not want to increase the burden but do want to increase awareness

* These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate; none of the comments, conclusions, or actions reported in these minutes represents the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.

and make sure PIs approve of the changes to what is being charged to their awards), and
5. Salary cost transfers that require recertification will follow current requirements, allowability will be determined by ECRT office (this has not changed, and these will be subject to closer scrutiny—and if not approved, they must be charged to non-sponsored funds).

Getting these changes in place is even more important with the transition to two certification cycles, Ms. Waldemar concluded, and she emphasized the point that Ms. Webb had made at an earlier meeting: The cost transfers cannot be used to balance the books.

They will provide significant education to get people acculturated to the changes and to get people on projects quickly, Ms. Waldemar said. The changes will also cut HSAs and make effort certification easier.

Professor Cohen commended the change to having PIs approve cost transfers. The reality is that people in labs have overlapping projects; the goal is to close out a grant with no money left, so cost transfers are needed. EFS still makes it difficult to get accurate numbers so it remains difficult to close a grant. Many cost transfers are made to deal with inefficiencies in EFS, and in many cases the time actually spent by employees is not so finely divided. He said he was bothered by the 60-day rules because reporting can be much slower than that. What can also cause grief on campus is using an Internal Service Organization that tries to charge grants that were closed out several years ago. These are good changes, he said, but the cause of basic problems is still not being addressed. Scientists have legitimate reasons to make changes and the other issues need to be addressed.

Ms. Waldemar said that 60 days is longer than what was allowed previously. They thought the change would give grant administrators time to meet with PIs and provide reports to them. The EFS reports are better and do provide more information. Professor Cohen agreed that the system is better but said it is not good enough to eliminate the need for cost transfers at the end of a project. He urged them to keep going with the changes; the University does not want to send money back nor does it want to overspend.

The Committee voted unanimously in favor of the changes.

2. Policy Revisions: Using Controlled Substances in Research

Ms. Waldemar next outlined a policy change proposed in light of the effort to recalibrate risk. In the Office of the Vice President for Research, they are looking at research policies, one of which governs use of controlled substances. She outlined the rationale for the change, which is to revise the policy to "remove the requirement that researchers obtain Minnesota Board of Pharmacy (MNBP) registrations for themselves, the unit registrants and local registrants."

1. MNBP does not require that University researchers have registrations to use controlled substances provided they have a DEA registration, it is a condition we created ourselves when the policy was first written. They have frankly said they would be pleased to get out of the business of registering our researchers and the inspections involved in the process.
2. The DEA does not require that our researchers be registered with the MNBP.

3. The controlled substances program will continue to do compliance monitoring through inspections.
4. The process of obtaining annual registrations is time consuming and costly to researchers. If they have more than one location they must pay \$55/per registration/location. Researchers who want to work in a BSL 3 lab as well as their own labs, per UMN policy, will be required to get an additional MNBP registration for that lab location.
5. A focus group was held which included controlled substances registrants from several different locations on both the Minneapolis and St. Paul campuses. All were in favor of revising the policy to eliminate MNBP registration. They did not feel that the added registration in any way reduced risk but all felt the process of MNBP registration was extremely burdensome.
6. Requirements surrounding the purchase of controlled substances by researchers will remain the same (DEA registration, photo ID, etc.) as will the requirements for record keeping, inventory and disposal. We have consulted with the Boynton and Vet Med pharmacies about this.

This has been a complicated process with no benefit, Ms. Waldemar concluded. Other important policy provisions (DEA registration, inventory requirements) remain in place. She reported that she had consulted widely on the change, including with the MNBP, researchers, audits, and compliance, and they all concurred this is a good idea. The revised policy will mean following federal rules and making compliance as easy as possible. (The original reason for the requirement was that there had been diversion of drugs that in one case caused a death, but the University has seen no incidents since then. If someone really wants to divert drugs for illicit use, they will find a way to do it whether or not the University has a policy, Ms. Waldemar surmised.)

So the responsibility lies with the unit, Professor Thompson concluded. That has always been the case, Professor Cleary responded. Professor Cleary said he favored the change; he has been a registrant for a long time and said that with seven faculty members in his department who use controlled substances in research, they have to get approval for all of them. He agreed with Ms. Waldemar that someone who wants to divert drugs will do it. One must still abide by DEA rules and the controls have gotten much better over the years; he commended the change.

The Committee voted unanimously to approve the proposal.

3. New Policy: Export Controls

Ms. Waldemar said that the policy titled Export Controls is a new one. The University has had an export-control program for years but no policy that formalizes it. As the University becomes more diverse and the world gets smaller, the Office of the Vice President for Research believes the University needed the policy, and the Office of the General Counsel also believes it important. The policy and reason for it are as follows (between the * * *):

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POLICY STATEMENT

It is the policy of the University of Minnesota (i) to comply with all Export Controls (EC) and U. S.

Department of Treasury Office of Foreign Assets Control (OFAC) Regulations applicable to University activities, and (ii) to develop and maintain an EC Compliance program to enable University employees and students to understand and comply with these laws and regulations. No University faculty, staff or student may engage in any activity, or commit the University to engage in any activity, (i) that is prohibited by Export Controls or OFAC Regulations, or (ii) that requires a license or other agency approval under Export Controls or OFAC Regulations, unless such license or approval has been obtained.

REASON FOR POLICY

The regulatory framework created by Export Controls and OFAC Regulations has evolved over many years in different contexts to address a wide variety of national security and economic policy goals. The laws and regulations are extraordinarily complex, applying to University activities in ways that may not always be obvious.

The reach and complexity of Export Controls and OFAC Regulations have been steadily increasing in response to threats such as global terrorism, the proliferation of dangerous weapons, and other complex geopolitical developments. The global scope of University activity has also been steadily growing. The University welcomes students and scholarly visitors, and employs researchers, scientists, and other staff, from countries throughout the world. The University engages in an enormous range of basic and applied research, often involving participation by foreign persons. Faculty, staff and students are engaged in activities and collaborations across the globe in furtherance of the University's mission and strategic plan. The University purchases items from, and ships or delivers items to, many different countries.

These activities can intersect with Export Controls and OFAC Regulations in many different ways. The primary focus of the EAR (Export Administration Regulations) is to control the export and re-export of commercial items—including commodities, software, and technology—that have both military and non-military uses. The Bureau of Industry and Security in the United States Department of Commerce oversees these regulations.

The ITAR (International Traffic in Arms Regulations), which are administered by the Directorate of Defense Trade Controls in the United States Department of State, are designed to control the export and re-export of defense articles, defense services, and technical data.

The Office of Foreign Assets Control administers the OFAC Regulations, which have been developed over the years to promote specific foreign policy and economic goals of the United States, primarily by blocking or restricting certain kinds of transactions (i) with designated individuals and entities, and/or (ii) with respect to dealings with individuals, entities, and governments in a number of different countries.

Prohibited or restricted exports may occur under each of these regulatory regimes through the release of technology or software to foreign persons, even if the release takes place within the United States, as well as by shipping or delivering items, technology, or software to other countries. For example, it is possible for technology to be exported under these regulations by allowing a foreign person to participate in research in a University lab. While the university does not accept restrictions on publication of results of research--with the consequence that most university research is considered 'fundamental research' whose results are not subject to export controls--the possible applicability of these laws must be considered in various situations, including when a sponsor attempts to require approval of publication of results, and when research requires use of a sponsor's proprietary information that may be subject to export controls.

Various parts of the OFAC Regulations may be violated simply by purchasing from, shipping to, providing services to, licensing to, or selling to certain entities or individuals (i) who are located in certain countries, or (ii) who are engaged in a variety of activities deemed to be contrary to defined national interests. In addition, hiring, hosting, or collaborating with individuals from certain countries can involve risks of non-compliance with OFAC regulations in some circumstances. Violations can occur in connection with transactions taking place entirely within the United States.

Penalties for violations can be quite severe, potentially including large fines and imprisonment. This policy recognizes the need to enable University faculty, staff and students to understand and comply with these laws and regulations. In addition, creating and implementing an EC Compliance Program meeting federal guidelines can also mitigate the severity of any fines or penalties that might be imposed.

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Her office conducted a review that ended in 2011 about potential export-control issues, Ms. Waldemar reported, because this is an institution that does fundamental research (as defined in the export control regulations), and they did not find significant problems; however, with many students from around the world, it would be possible to get in trouble. So there is a need to provide faculty and staff with the information required on what is acceptable and what is not. The policy brings together clarifications about the regulations. Recent policy change requires faculty members who travel internationally on University business to register with the Global Programs Strategy Alliance (GPS); as part of this policy these travelers would be referred to the Export Controls website to obtain additional information from fact sheets. The Controller's office will be engaged regarding review of shipping and receiving to ensure we are neither sending nor receiving items from boycotted countries. In FY13 Associate Vice President Webb will hire a new grant administrator who will spend 50% time on export controls and the rest of his or her time on international programs. This staff member will work with Sponsored Projects Administration, the Office of the General Counsel, and the Office of the Vice President for Research so that there is a point of contact for questions about export controls, and to help ensure that export control policies and practices are coordinated. Although plans for education are not yet formalized, it is anticipated that this will occur as needed in a number of different ways and at different levels.

Associate Vice President Webb told the Committee that the policy really simply writes down and documents what the University is doing. And the policy owner is Ms. Webb, Ms. Waldemar added.

Mr. Bohnhorst said that having someone with the title and responsibility for the policy will be helpful. He has been the de facto source of information; having a responsible administrator will be more reliable than him filling in holes. He added that faculty members do need to know the rules about OFAC.

Professor Vaughan said the policy applies to technology. What about knowledge? Someone could absorb knowledge and then go home and build the technology. Mr. Bohnhorst agreed there is a distinction between general knowledge that is not subject to export controls and non-public technical information that is. If general knowledge would allow someone to build technology, there's nothing that anyone can do about that.

Professor Cleary said this seems pretty onerous for military and non-military research. He said he did not see how the provisions about knowledge could be enforced—students can copy lab books and take the information home. Information is controlled if it is confidential and non-public, Mr. Bohnhorst said, and most information related to fundamental research is considered public.

Have issues arisen at Minnesota, Professor Cleary asked? The University has had one OFAC violation, Mr. Bohnhorst said. A sample of lab materials was sent to a researcher who had been a visiting scientist the year before. If one hosts someone for many years and wants a life-long collaboration, and the person goes back to one of the countries identified by the federal government as subject to export controls, what are the rules? One can share information but, as in the example above, not materials. If one has a student from one of those countries in a lab, one must understand the rules.

Professor Gini asked if someone works here from one of the countries, but nothing worked on is export controlled, when the person returns home, can she send the person nothing? No email? Mr. Bohnhorst said that information is not export controlled. So published papers and so on are fine, Professor Gini concluded. "Yes," Mr. Bohnhorst confirmed.

Dr. Wahlstrom said the definition appears to mean the policy does not apply to such fields as economics or psychology but to science and engineering. Mr. Bohnhorst said that export controls are mostly related to science and engineering that is militarily useful. But not psychological warfare, Dr. Wahlstrom asked? "No," Mr. Bohnhorst replied.

Professor Cleary said he reads the policy as applying to valuable materials, and Material Transfer Agreements already apply, so this policy applies to certain countries. Export controls do apply to certain countries, Mr. Bohnhorst said, and depending on the sensitivity of the material, it varies. One must know if an item is controlled, and the reason, and then go to the list of countries controlled for certain reasons.

They are not adding new rules, Ms. Waldemar said, just putting the rules into policy. Professor Cleary said he understood that, and like the Material Transfer Agreement, it makes sense, but it impedes scientific exchange because it involves effort and cost. Every time someone wants to send materials to a collaborator, they do not want to get a license. Professor Cohen pointed out that the policy is directed at responding to federal regulations. Mr. Bohnhorst agreed and noted that the list of biological materials it covers is small.

Associate Vice President Webb noted that there is a faculty member in Tennessee who is in prison as a result of violations of export-control law. They want to provide expertise to faculty to answer their questions. They want to add to the expertise provided by Mr. Bohnhorst and take responsibility for knowing specialized rules.

Professor Vaughan said that when he takes equipment abroad, in order to be sure that he has it, he receives many questions on duties, technology, etc., and he needs to explain that it is not military, proprietary, and so on. It would help to have clarity. Will this help? Mr. Bohnhorst said there will be someone he can talk to and who could perhaps provide a letter explaining what he is doing.

Professor Cleary said he was not sure the policy is precise enough and said he had the feeling it also involves commercial issues, which gets into the job of the Material Transfer Agreements. Mr. Bohnhorst said there are many reasons why something might be export controlled, and the regulations

state that some consideration is given to economic factors. This is not the predominant factor, however, and the proposed policy does not go beyond what has already been controlled by regulations, which does not extend to general commercial purposes.

How will the policy be implemented, Professor Vaughan asked? They will hire a new person, half of whose time will be devoted to export controls, Ms. Webb said, and the other half will be expertise on international programs. The person will be a resource for the entire University, including the coordinate campuses, and will work with Mr. Bohnhorst. If

Ms. Waldemar said if someone has a concern about a Material Transfer Agreement, he or she can make a phone call. The Office for Technology Commercialization will also help and will know the rules. The intent is not to put more burdens on the faculty. The goal is to help and to streamline the process. And to keep people out of jail, Professor Cohen added.

Professor Bearinger said that effective communication about the policy will be important to get the word out. There need to be multiple forms of access to the policy. That will be one part of the new person's job, Mr. Bohnhorst said.

The Committee voted 12-1 to endorse the policy.

Professor Bearinger thanked Ms. Waldemar and Mr. Bohnhorst for joining the Committee.

4. Graduate Student International Travel

In an email message to Professor Bearinger, Professor Gini had raised questions about the University's policy on graduate student international travel (between the * * *):

* * *

The University policy (Procedure:

http://policy.umn.edu/Policies/Education/Student/EDABROAD_PROC02.html)

requires that departments assure all students (undergraduate, graduate, post doc, etc.) traveling for University purposes (educational, credit/non-credit, research, with or without University funding etc.):

- (1) Sign the required release & waiver and receive required insurance (CISI) at:
<http://global.umn.edu/travel/insurance/outgoing.html>
- (2) Receive permission, from ITRAAC, to travel to a travel warning country (if relevant). See:
<http://global.umn.edu/travel/approval/index.html>
- (3) Have a 24-7 contact in the department in case of an emergency and communication/emergency plan on file in the department.

According to <http://global.umn.edu/travel/insurance/outgoing.html> all students who attend international conferences or workshops are participating in an experiential program and as such must complete an insurance application and then opt out of it because they are already covered by the appropriate insurance (if they are research assistants or teaching assistants).

My Department was not aware of this policy and neither was the Associate Dean for Research of the College of Science and Engineering.

1. Who is aware of this policy and follows it?
2. How is the policy followed concerning point 3 (having a 24-7 contact in the department)?
3. [Is] a discussion of the policy something that could be on the agenda for next year?

* * *

Professor Gini observed that the form required in (1) is six pages long and every student who travels to an international conference is supposed to fill it out. They have students who travel to such conferences all the time and did not know about this policy. Now what are they supposed to do?

Professor Bearinger said she looked at the policy and said she could not tell when it went into effect or what committees were consulted on it. Dr. Wahlstrom said the policy went into effect about a year ago. Professor Gini said she was surprised that no one knew about it. There is a similar problem with the requirement that all faculty members register when they travel internationally so that the University knows where they are. Professor Linde reported that the School of Public Health has created an infrastructure to ensure that the policy is followed. Dr. Wahlstrom said that the College of Education and Human Development does considerable work in developing countries so faculty and staff were educated about the policy last year.

Professor Gini said there is a difference between undergraduate study abroad and graduate students traveling. The form reads like it is for undergraduate educational opportunities and it should not, she maintained, apply when graduate students are attending conferences. Moreover, the policy requires that people must apply for insurance—and then file a form saying they do not need it. She said the policy will be on the agenda of the Council of Research Associate Deans. Finally, Professor Gini said, her department does not have staff on duty 24/7; how can they follow that rule? Who is to be told?

On the last point, Professor Cohen suggested the PI's cell phone number.

Professor Cohen commented that this policy is part of a larger question at the University, which is regulations that stifle international collaboration because of all of the signatures that are required for international travel. Filling out a six-page form is a burden. In many cases, it would require only 3 sentences for attendance at an international meeting.

It was agreed the Committee would take up the policy in the fall and would invite Dean McQuaid to a meeting.

Professor Bearinger adjourned the meeting at 3:35.

-- Gary Engstrand