October 11, 2005

Dear Ms. Williams:

This letter provides 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 Council on Governmental Relations (COGR) is an association of 167 research intensive universities, affiliated hospitals and research institutes in the United States. COGR works with federal agencies to develop a common understanding of the impact that federal policies, regulations and practices may have on the cutting edge research conducted by these institutions. The application of export controls that may impact fundamental research at universities is a matter of great concern to the COGR membership.

Summary of COGR Concerns

The proposed DFARS rule will have substantial impact on universities’ performance of fundamental research for DOD. Universities receive a significant amount of research funding through DOD contracts. For example, for the last fiscal year one COGR member university reports receiving $64M in research funding from DOD, approximately $50M of which was in the form of contracts. While we are not able to provide overall numbers, a significant number of COGR member universities have reported that they receive DOD contract funding for fundamental research, either directly or through subcontracts from defense prime contractors.
The following summarizes our concerns about the proposed rule. We believe DOD should withdraw or at least defer the proposed rule as discussed below. Alternatively, we suggest DOD adopt a much shorter version essentially reminding contractors of the need to comply with export control requirements to the extent applicable to the work under the contract. Should DOD not accept these other options, we have set forth specific suggestions for changes and clarifications to address our concerns in the attached revised version of the DFARS Case.

1. **There is no demonstrated need for a specific DFARS compliance clause.** Contrary to the unfounded assertions in the IG report, universities are cognizant of their responsibilities for compliance with the export control regulations. The need for institutional export control compliance programs has been extensively discussed and brought to the attention of academic researchers and administrators in many academic meetings, conferences, workshops and publications in recent years. Universities have implemented compliance programs with guidance and encouragement from their national associations including COGR. Compliance with export controls regulations is required for everyone. Given the serious concerns with the proposed rule discussed below, the clause as proposed will create confusion and do much more harm than good and is likely to adversely affect U.S. national security. For these reasons COGR urges DOD to withdraw the proposed rule.

2. **The proposed rule is premature given current consideration of the proper interpretation of the export control regulations.** The Department of Commerce Bureau of Industry and Security (BIS) currently is considering the over 300 comments received in response to its Advanced Notice of Proposed Rulemaking (ANPR; RIN 0694-AD29—Fed. Reg. 3/8/05) concerning the correct interpretation of the deemed exports requirements for equipment use technology in fundamental university research and other contexts. The university and business communities currently are engaged in a dialogue with Commerce about these comments and the BIS response. We also understand that the National Science and Technology Council working group on export controls is discussing these issues within the government. The Commerce Department administers the Export Administration Regulations (EAR) and the State Department administers the International Traffic in Arms Regulations (ITAR). Other federal agencies should await guidance on the correct interpretation of regulatory provisions that are the subject of considerable controversy prior to attempting to impose related contract provisions. Otherwise there is potential for conflicts between the regulatory provisions or their interpretation and DOD contract requirements.

3. **In proposing this rule, DOD has failed to acknowledge existing national and DOD policies that are directly relevant.** National Security Decision Directive (NSDD) 189, issued by the Reagan Administration in September 1985, established the federal government’s policy for controlling information and technology developed through federally-funded research at universities and research institutions. This policy states that the appropriate government mechanism for controlling information generated through federally-funded research (to the extent it is deemed to be sensitive for national security reasons) is the “classification” system.
In November 2001, the current Administration reaffirmed that NSDD 189 remains the federal government’s policy. By failing to expressly recognize the fundamental research exclusion from export controls in both the EAR and ITAR (which reflects NSDD 189), the proposed rule essentially contravenes government policy. It potentially may subject all DOD-contracted research at universities to requirements for controlling information and technology regardless of whether export control requirements actually apply, which would be directly inconsistent with NSDD 189. In addition, this clause is inconsistent with DOD Instruction 5230.27. Section 4.3 states: The mechanism for control of information generated by DoD-funded contracted fundamental research in science, technology and engineering performed under contract or grant at colleges, universities, and non-government laboratories is security classification. No other type of control is authorized unless required by law. DOD officials participating in the Workshop on the Department of Defense Notice of Proposed Rulemaking to Amend the DFARS (“NAS Workshop”) held at the National Academies Keck Center on September 16, 2005 specifically agreed that the proposed rule should acknowledge NSDD 189.

4. Implementation of the rule as proposed will result in delays and increased costs in performance of DOD research contracts that will be detrimental both to universities and to DOD. The proposed rule does not explicitly reference applicable exclusions from export controls provided by the EAR and ITAR, such as that for information arising out of or resulting from fundamental research, or the exemptions from licensing requirements. If adopted without including such explicit recognition, the rule may be read to apply export control requirements, as a matter of contract, to information and technology used or generated in the performance of the contract, even when the applicable regulations would not apply controls. Even if this is not the intent, a serious ambiguity would exist under the proposed contract provisions. This inevitably will lead to confusion by contracting officers, protracted contract negotiations related to export controls provisions, delays in research, and an overbroad application of controls contrary to the regulations.

5. DOD implementation of this requirement as proposed will adversely affect U.S. national security as universities will decline to perform critical research for DOD. The effect will be to discourage universities from conducting DOD-contracted fundamental research in order to avoid having to preclude the participation of foreign students and researchers in such research. U.S. science and engineering is critically dependent on the participation of foreign nationals. For example, there were over 260,000 foreign students (undergraduate and graduate) in science and engineering fields enrolled in U.S. universities in 2003 (see http://opendoors.iienetwork.org/?p=49936). In 2003 foreign nationals earned 38% of the science doctorates and 58.9% of the engineering doctorates awarded by U.S. institutions. Temporary U.S. residents constituted 59% of U.S. postdoctoral scholars in science and engineering in 2002. Almost half of the U.S. Nobel laureates in science fields since 1990 were foreign researchers. (For this and other data on foreign participation see the recent report of the National Academy of Sciences Committee on Science, Engineering , and Public Policy (COSEPUP), Policy Implications of International Graduate Students and Postdoctoral Scholars in the United States (May 2005; available at http://www.nap.edu/books/0309096138/html/ ).)
While the proposed rule characterizes the requirements as clarifications of existing responsibilities, the effect is to create new compliance obligations for DOD contractors. DOD contracting officers are likely to default to use of the proposed new clause in most if not all university research contracts, given the statement in the DFARS prescription that contracting officers are to use the clause in solicitations or contracts that may involve the use or generation of export-controlled information or technology. They will have little or no incentive not to include the new compliance clause. As noted above, if this clause is included in a contract, the access control requirements may become a matter of contract compliance, regardless of whether the research is fundamental research otherwise excluded from the requirements under the regulations. This will require universities, in order to undertake DOD contracted fundamental research, to badge all foreign nationals and establish segregated facilities to assure that foreign members of the campus community (unless specifically licensed by the government) do not have access to any information or technology controlled under DOD contracts.

As a result, universities will have to decline to perform contracted fundamental research for DOD or will have to undermine the open, collaborative, and international research environment that underlies the productivity and success of the U.S. academic research endeavor and, ultimately, contributes to our nation’s security. While a few universities have controlled facilities on campus, most do not. They are unlikely to establish them both as a matter of policy and because of the substantial costs associated with such facilities. They also will not agree to discriminatory badging requirements for foreign nationals. Universities will face the difficult choice of substantially altering the normal open campus research environment to comply with the requirements or “walking away” from the conduct of DOD-contracted research. Many can be expected to choose the latter option. This will have substantial adverse effects both on universities and on the ability of DOD to have cutting edge research performed that is critical to U.S. national security.

6. The requirements for an “effective export control compliance program” are overbroad. Any contractual compliance requirements should be limited only to the activities applicable to the DOD contract (if not otherwise covered by an exclusion or licensing exemption), and not to any other activities of the contractor. For example, as stated the proposed rule appears to mandate broad requirements for training employees in export controls and for performance of periodic compliance assessments. While training and assessments undoubtedly are an important aspect of institutional compliance programs, they should not be a matter of contract compliance. Activities beyond those conducted under the DOD contract should not be subjected to prescribed contract requirements in addition to regulatory enforcement. DOD should defer to the appropriate regulatory agencies to establish requirements for institution compliance programs. DOD does not have the authority or responsibility to determine the “effectiveness” of such programs.

7. The proposed rule does not require sufficient specificity in the identification of export-controlled information and technology. DOD should specifically identify by the relevant Export Control Classification Numbers or Munitions List categories the information and technology to be provided under the contract that it believes to be export-controlled. Information and
technology arising during or resulting from fundamental research is not controlled if the contractor has not agreed in advance to restrictions on their publication. Sweeping statements such as stating that everything included in or generated under the project is controlled under the EAR or ITAR, even when substantial portions of the project may involve fundamental research or technologies not listed on the EAR or ITAR control lists, are counterproductive. They do not serve to provide a mutual understanding between DOD and the university contractor of the appropriateness of certain regulatory provisions in specific situations nor help to focus attention on the protection of information and technology as intended by the EAR and ITAR. Applying this clause broadly to projects that otherwise would qualify as fundamental research would nullify the exclusion and require institutions to apply for licenses when no license ultimately will be required. The end result is extra work for the universities and the government with no resulting value added for national security.

8. The proposed rule is overly prescriptive in its requirements for access control plans. It prescribes very specific processes and mechanisms to control export-controlled information and technology. For example, the proposed clause requires that access control plans include 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 Technology Control Plans for the handling of classified material which provides for “other (security) measures… as appropriate” without necessarily imposing blanket requirements for badging and segregated work areas in all cases. 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. DOD officials participating in the NAS Workshop on September 16 supported the removal of the prescriptive requirements in the proposed rule in favor of allowing contractors more flexibility in designing appropriate compliance programs.

9. The requirement to include the proposed rule in all subcontracts for research will have significant adverse impacts on universities. As noted above, many universities receive contract funding from DOD through subcontracts from defense prime contractors. The proposed rule requires that the clause be “flowed down” from prime contractors to all subcontractors, regardless of whether a particular subcontract may involve a university performing fundamental research related to the work performed under the prime. The proposed clause needs to be modified to carve out exceptions to the flow down requirement when the subcontract involves research subject to the fundamental research exclusion from export controls or other exclusions or license exemptions. The inability to carve out exceptions from other mandatory flow down requirements (i.e. DFARS Clause 252.204—7000 Disclosure of Information) has been a continuing problem for universities in the performance of subcontracts under DOD primes, and has resulted in universities “walking away” from such subcontracts in a significant number of instances. (See AAU/COGR Report on Troublesome Research Clauses; available at http://www.aau.edu/research/openness.cfm).
10. The proposed rule fails to recognize the extensive government screening process for foreign nationals prior to their admission to U.S. universities for research purposes. 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. We do not understand the need for further restrictions on the individual’s ability to participate in the conduct of fundamental, unclassified research, as would result from implementation of badging requirements and segregated work areas for foreign nationals and foreign persons as prescribed in the proposed clause.

Recommendations

In the NAS workshop DOD officials indicated that DOD has a number of alternatives with regard to its final decision on the proposed rule. We suggest several options, in the order of preference stated below.

1. As our preferred option, we believe it would be prudent for DOD to withdraw the proposed rule. The IG recommendations, at least as they affect universities, do not appear to be based on sound evidence nor are they well-considered. Given the substantial difficulties with the proposed rule, both DOD and the university community would be better served by its withdrawal.

2. As a second option, we suggest the proposed rule at least be delayed pending the outcome of the Commerce ANPR process and other government policy discussions of the applicability of deemed export controls to use technology in fundamental research. Any resulting regulatory interpretations or changes could result in inconsistencies between DOD contract requirements and the export regulations and/or their official interpretation.

3. Should DOD not accept our first suggestion, and regardless of whether the rule is delayed, we suggest that DOD consider substantially shortening the proposed contract clause (252.204—70XX). It essentially should state only that “In the performance of this contract, contractors must comply with export control requirements to the extent applicable, subject to any relevant exclusions from controls (including for fundamental research and public information) and exemptions from licensing. DOD contractors and subcontractors are responsible for ensuring compliance with existing export control laws and regulations in accordance with the Export Administration Regulations (EAR) and the International Traffic in Arms Regulations (ITAR). DOD is responsible for providing specific information concerning the applicability of controls to particular technologies or information that will be provided to the contractor through furnishing the applicable Export Control Classification Numbers or U.S. Munitions List categories to the contractor, to support compliance.”
Reminding contractors of their responsibility to comply with export control laws and regulations should be a sufficient response to the IG recommendations, and will avoid putting DOD in the position of imposing specific requirements based on regulations that other agencies have the legal authority to interpret and enforce. If DOD is willing to further consider this suggestion, we would be happy to work with you to help develop appropriate language for a DFARS case.

4. Finally, should DOD determine to proceed with a more detailed DFARS change, we have provided specific suggestions for modifications in the proposed DFARS Part 204.73 and the proposed 252.204—70XX clause in the attached revised version of the DFARS Case.

Our suggestions implement the following general recommendations:

1) It is critical that DOD recognize in its prescription to contracting officers that restrictions on the transfer of export-controlled information do not apply if the research is covered by an applicable exclusion or license exemption. In particular, there needs to be an explicit recognition in the proposed contract clause that any compliance requirement is subject to the applicability of any exclusion, especially that for information arising out of or resulting from contracted fundamental research at universities. We suggest specific language to this effect in Part 204.73 under General (204.7302), Policy (204.7303) and the Contract clause prescription (204.7304), as well as in the Definition section in the proposed clause (252.204—70XX(a)). Corresponding changes to the compliance obligations set forth in subparagraphs (c), (d) and (f) of the clause are also suggested to make clear that they do not apply to information or technology that qualify for exclusions or license exemptions, as shown in the attachment.

2) The proposed contract clause, and any compliance obligation that is imposed as a matter of contract by DOD, should apply only to controlled information or technology provided to contractors in connection with doing work under the contract. The contract obligations should not apply more broadly to contractors’ compliance with export controls in non-contract activities or when exclusions from controls or license exemptions apply. We suggest changes in 252.204.70XX as shown.

3) DOD should specifically identify in all solicitations, contracts and other funding mechanisms, the export-controlled information or technology that, absent an applicable exclusion or license exemption, will require a license prior to transfer to any foreign nationals or countries for which the information or technology is controlled. This determination should be made by the responsible regulatory agency in consultation both with the actual requiring entity in DOD (program officer or Contracting Officer’s Technical Representative (COTR)) and the contractor. This contract clause should only be included as a contractual requirement when DOD can provide the contractor with sufficient and appropriate information including Export Control Classification Numbers (ECCNs) and/or Munitions List categories to allow the contractor to properly comply with the export controls regulations. Contracted fundamental research (DOD Instruction 5320.27, dated October 6, 1987) should not be subject to the clause. We have included suggested language in 204.7303 and 7304 and in (b) of 252.204-70XX.
4) As discussed above, DOD does not have the legal authority to require “effective” export compliance programs, nor to determine whether a contractor’s compliance program is “effective.” Those judgments should be made by the relevant regulatory agencies (i.e. Departments of Commerce or State). For this reason we suggest subparagraph (d) of 252.204—70XX be changed to allow contractors the discretion to fashion an appropriate export compliance program that complies with regulatory requirements to the extent that the contractor receives controlled information or technology that is not subject to an exclusion or license exemption. In the event a question should arise about appropriate compliance, the determination should be made by the agency responsible for the applicable export control regulations. The clause should not prescribe badging requirements or segregated work areas. We have included alternative language to accomplish these changes in (d) of 252.204-70XX.

5) The “flow down” language should include the requirement to specifically identify the export controlled information or technology and to recognize any applicable exclusions from controls or license exceptions. We have included suggested language in (f) of 252.204—70XX.

We hope DOD will seriously consider our concerns and recommendations. COGR member universities value highly their relationships with DOD in research activities, and want to do their part to contribute to our national security. However, as stated above, we are concerned that the proposed rule will make it difficult if not impossible for many universities to continue to conduct contracted fundamental research for DOD.

In addition to our comments, we support and endorse the comments submitted by the Association of American Universities (AAU), the American Council on Education (ACE), the Association of American Medical Colleges (AAMC), and the National Association of State Universities and Land Grant Colleges (NASULGC).

We appreciate the opportunity to comment.

Sincerely,

Anthony DeCrappeo
President

Attachment
48 CFR Parts 204, 235, and 252

Defense Federal Acquisition Regulation Supplement; ExportControlled Information and Technology

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.  

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for preventing unauthorized disclosure of export-controlled information and technology under DOD contracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before September 12, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004-D010, using any of the following methods:


E-mail: dfars@osd.mil. Include DFARS Case 2004-D010 in the subject line of the message.

Fax: (703) 602-0350.


All comments received will be posted to http://emissary.acq.osd.mil/dar/dfars.nsf

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0328.
SUPPLEMENTARY INFORMATION:

A. Background

This 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 associated contract clause. The proposed subpart provides general information on export control laws and regulations and requires contracting officers to ensure that contracts identify any export-controlled information and technology. The proposed clause is prescribed for use in solicitations and contracts for research and development or for services or supplies that require the export of export-controlled information or technology in the performance of the contract. The clause requires the contractor to:

• Comply with all applicable laws and regulations regarding export-controlled information and technology; and
• Maintain an export compliance program that complies with regulatory requirements.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because all contractors, including small entities, are already subject to export control laws and regulations. The requirements in this proposed rule are clarifications of existing responsibilities. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004-DO10.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.


Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 204, 235, and 252 as follows:

1. The authority citation for 48 CFR parts 204, 235, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1. PART 204--ADMINISTRATIVE MATTERS 2. Subpart 204.73 is added to read as follows:

Subpart 204.73--Export-Controlled Information and Technology at Contractor, University, and Federally Funded Research and Development Center Facilities

Sec.
204.7301
Definition.
204.7302
204.7301 Definition.

Export-controlled information and technology, as used in this subpart, is defined in the clause at 252.204-70XX.

204.7302 General.

Export control laws and regulations restrict the transfer, by any means, of certain types of information and technology to certain foreign persons in the U.S. or abroad and to anyone (even U.S. citizens) in certain foreign countries, unless an exclusion from controls or a license exemption applies, or a license or other approval is obtained. Any transfer of non-excluded export-controlled information or technology to a foreign national or a foreign person anywhere in the world, including the United States, is considered an export to the home country of the foreign national or foreign person and any such transfer to U.S. citizens or foreign nationals in any foreign country is considered an export to that country. For additional information relating to restrictions on export-controlled information and technology, see PGI 204.7302.

204.7303 Policy.

The contracting officer shall ensure that DoD identifies in its contracts, Broad Agency Announcements, Requests for Proposals, and other forms of solicitations or funding mechanisms, any information and technology that, absent an applicable exclusion from controls or exemption from licensing requirements, may require a license or other government approval under U.S. export controls prior to the information's and technology's transfer (i) to nationals of those foreign countries for which the information and technology are controlled in the U.S. or abroad, or (ii) to anyone in those controlled countries. Each export-controlled technology or information shall be specifically identified. The contracting officer shall provide the Contractor with sufficient and appropriate information including Export Control Classification Numbers (ECCNs) and/or Munitions List categories to allow the Contractor to identify whether any export controlled technology or information will be provided to the Contractor in the work under the contract that is not subject to an exclusion from controls or a license exemption. Contracted fundamental research (DOD Instruction 5320.27, dated October 6, 1987) shall not be subject to the clause at 252.204-70XX.

204.7304 Contract clause.

Use the clause at 252.204-70XX, Requirements Regarding Access to Export-Controlled Information and Technology, only in those solicitations and contracts for research and development, services or supplies that pursuant to 204.7303, require the transfer of export-controlled information or technology in the performance of the contract, as determined by the Department of Commerce Bureau of Industry and Security and/or Department of State Directorate for Defense Trade Controls in consultation with the COTR and the contractor; provided, however, that an exclusion from controls or a license exemption does not apply.
PART 235--RESEARCH AND DEVELOPMENT

CONTRACTING 235.071 [Redesignated]

3. Section 235.071 is redesignated as section 235.072.

4. A new section 235.071 is added to read as follows:

235.071 Export-controlled information and technology at contractor, university, and Federally Funded Research and Development Center facilities.

For requirements relating to restrictions on export-controlled information and technology, see Subpart 204.73.

PART 252--SOLICITATION PROVISIONS AND CONTRACT

CLAUSES 5. Section 252.204-70XX is added to read as follows:

252.204-70XX Requirements Regarding Transfer of Export-Controlled Information and Technology.

As prescribed in 204.7304, use the following clause:

Requirements Regarding Transfer of Export-Controlled Information and Technology)(XXX 2005)

(a) Definition. Export-controlled information and technology, as used in this clause, means information and technology that is subject to, does not qualify for exclusions from, and may only be released to certain foreign nationals or foreign persons in accordance with, the Export Administration Regulations (15 CFR parts 730-774) or the International Traffic in Arms Regulations (22 CFR parts 120-130). Export-controlled information and technology does not include information excluded from control under the applicable regulations, such as, but not limited to, information arising out of or resulting from fundamental research and other information that is publicly available or in the public domain.

(b) Pursuant to 204.7304, the performance of this contract will require the Contractor to receive export-controlled information and technology as defined in 252.204-70XX(a). DoD will identify all such controlled information and technology through providing contractor with sufficient and appropriate information including Export Control Classification Numbers (ECCNs) and/or Munitions List categories.

(c) Contractor shall comply with all applicable laws and regulations regarding export-controlled information and technology which the Contractor receives in performing work under this contract, including, if required under the regulations, registration in accordance with the International Traffic in Arms Regulations.

(d) Contractor shall maintain an export compliance program that complies with regulatory requirements to the extent that the contractor receives information or technology under this contract that is subject to export controls and does not qualify for an exclusion from controls or for an exemption from licensing. In the event of a question,
compliance with regulatory requirements shall be determined by the agency that administers the applicable export control regulations in consultation with the DoD contracting officer and the Contractor.

(e) Nothing in the terms of this contract is intended to change, supersede, or waive any of the requirements of, or any of the exclusions or licensing exemptions from, applicable and related Federal laws, Executive orders, and regulations, including but not limited to

(1) The Export Administration Act of 1979 (50 U.S.C. App. 2401 as extended by Executive Order 13222);
(2) The Arms Export Control Act of 1976 (22 U.S.C. 2751);
(3) The Export Administration Regulations (15 CFR parts 730 - 774);
(4) The International Traffic in Arms Regulations (22 CFR parts 120-130);
(6) DoD Industrial Security Regulation (DoD 5220.22-R),
(7) National Security Decision Directive 189 (NSDD-189);
(8) National Industrial Security Program Operating Manual (NISPOM) (DoD 5220.22-M); and
(9) DoD Instruction 5230.27.

(f) The Contractor shall include the substance of this clause, including this paragraph, only in those subcontracts for research and development, services or supplies that

(1) pursuant to 204.7303, require the transfer of export-controlled information; and
(2) provided, however, an exclusion from controls or a license exemption does not apply.

(End of clause)


6. Sections 252.235-7002, 252.235-7003, 252.235-7010, and 252.2357011 are amended in the introductory text by removing " 235.071'' and adding in its place " 235.072' .

[FR Doc. 05-13305 Filed 7-11-05; 8:45 am] BILLING CODE 5001-08-P

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