

AAU Association of American Universities
COGR Council on Governmental Relations

June 9, 2011

Director Charles B. Shotwell
Office of Defense Trade Controls Policy
U.S. State Department
PM/DDTC, SA-1, 12th Floor
Washington, DC 20522-0112

Dear Director Shotwell:

We are responding on behalf of the Council on Governmental Relations (COGR) and the Association of American Universities (AAU) to the April 13, 2011, Federal Register notice requesting comments on proposed policy changes to the definition of “defense services.”

COGR is an association of 182 U.S. research-intensive universities, affiliated hospitals, and research institutes that is specifically concerned with the impact of government regulations, policies, and practices on the performance of research conducted at its member institutions. AAU represents 60 leading U.S. public and private research universities and is devoted to maintaining a strong national system of academic research and graduate education. We support the proposal to remove the furnishing of public domain data from the definition of defense services. This will provide welcome relief for our member institutions from the requirement to obtain a license for a number of services to foreign persons that have, until now, been included under the definition of Defense Services. The new definition removes the restriction currently in ITAR §124.1(a) that requires a license for a U.S. person to work with a foreign person in the design, development, engineering, manufacture, production, assembly, testing, intermediate or depot level repair or maintenance, modification, demilitarization, destruction, or processing of a defense article, even if the information conveyed is all in the public domain. The proposed change would allow U.S. researchers to collaborate with foreign national students, colleagues, or sponsors on projects relating to defense articles so long as they are relying on published information or information that is being developed through fundamental research, without the need for a Technology Control Plan (TCP) and State Department license. This change will reduce the costs and administrative burden of administering a TCP and license for both the university community and the government, and will significantly increase both the scope and volume of research projects that can be undertaken.

Another positive change is the provision in the proposed 120.9(b)(5) that “Providing assistance (including training) in medical, logistical (other than maintenance), or other administrative support services to or for a foreign person” is *not* a defense service. This provision, for example, will allow medical faculty and students at our institutions to collaborate with foreign militaries and physicians, in the U.S. and abroad, to address specific issues relating to battlefield treatment processes and procedures with allied military medical teams without requiring a license for a defense service. Similarly, the provision would appear to allow faculty to consult on supply-chain, best practices, and other non-maintenance logistical assistance to foreign defense contractors. The list of other services in 120.9(b) also is helpful. Additionally, the change

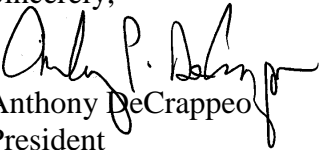
to “training or providing advice to foreign units and forces...in the employment of defense articles” in lieu of “military training of foreign units and forces” in 120.9(3) adds welcome clarity to the definition.

However, the addition of the new provision in 120.9(a)(2) on furnishing assistance on integration of controlled items into an end item or component controlled as a defense article raises some concerns. As proposed, the definition does not appear to exempt use of public domain information in providing such assistance. This is not consistent with either the proposed 120.9(a)(1) or (b)(3) and the scope of the provision as proposed is unclear. Also, while definitions of organizational, intermediate, and depot-level maintenance are included in the proposed 120.38, there is no definition of “basic operation” in (b)(1). This raises a question about the difference between “Training or providing advice . . . in the employment of defense articles,” which is clearly defined as a defense service in 120.9(a)(3), and “Training in the basic operation... of a defense article,” which is specifically exempt from the definition of defense services in 120.9(b)(1). Some clarification between “employment” and “operation” would be helpful. We respectfully urge the State Department/DDTC to clarify these issues.

Previously, COGR and AAU have expressed strong support for the Administration’s Export Control Reform Initiative, and we also support the changes in the proposed rule, with the clarifications noted above.

Thank you for the opportunity to comment and provide input on this very important matter.

Sincerely,



Anthony DeCrappeo
President
Council on Governmental Relations



Hunter R. Rawlings III
President
Association of American Universities