PGI 225.7901-2 General.

(1) *DoD Focal Point on Export Controls.*

(i) Within DoD, the focal point on export controls is the Defense Technology Security Administration (DTSA). Official authorities and responsibilities of DTSA are established in DoD Directive 5105.72.

(ii) Initial DoD acquisition workforce questions regarding the applicability of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR) to specific procurements or items, or interpretation of DoD issuances regarding export controls, may be directed to the DTSA Policy Directorate, by phone at 571-372-2438/2377 or by visiting the DTSA web site at: http://www.dtsa.mil/SitePages/contact-us/default.aspx.

(2) *Regulations*. The Department of State and the Department of Commerce are the lead agencies responsible for regulations governing the export of defense articles, commercial products or commercial services, and dual use items.

(i) *The International Traffic in Arms Regulations (ITAR)*, issued by the Department of State, control the export of defense-related articles and services, including technical data, ensuring compliance with the Arms Export Control Act (22 U.S.C. 2751 *et seq*.). The United States Munitions List (USML) identifies defense articles, services, and related technical data that are inherently military in character and could, if exported, jeopardize national security or foreign policy interests of the United States.

(A) The ITAR is published in Title 22 of the Code of Federal Regulations (CFR), Parts 120 through 130 (22 CFR 120-130). The official version of the ITAR is maintained at http://www.gpoaccess.gov/cfr/index.html. The Department of State also maintains an on-line version at http://www.pmddtc.state.gov/regulations_laws/itar_official.html.

(B) The USML is part of the ITAR, in 22 CFR Part 121, and is available at the web sites in paragraph (2) (i) (A) of this section.

(C) The Department of State is responsible for compliance with the ITAR. Depending on the nature of questions you may have, you may contact the following Department of State office to obtain additional information:

U.S. Department of State

Bureau of Political Military Affairs

Directorate of Defense Trade Controls

Office of Defense Trade Controls Compliance

http://www.pmddtc.state.gov/about/contact_information.html.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the ITAR. If asked, the contracting officer should direct the contractor’s attention to paragraph (c) of the clause at DFARS 252.225-7048 and may inform the contractor that the Department of State publishes guidance regarding ITAR compliance at http://www.pmddtc.state.gov/compliance/index.html.

(E) Contracting officers should not answer any questions a contractor may ask regarding the State Department requirement, mentioned in the clause at 252.225-7048, for contractors to register with the Department of State in accordance with the ITAR. If asked, the contracting officer should direct the contractor's attention to paragraph (b) of the clause, which directs the contractor to consult with the Department of State regarding any questions relating to compliance with the ITAR. (The registration requirements are in Subpart 122.1 of the ITAR. Subpart 122.1 requires any person who engages in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services to register with the Directorate of Defense Trade Controls.)

(ii) *The Export Administration Regulations (EAR)*, issued by the Department of Commerce, control the export of dual-use items, (items that have both commercial and military or proliferation applications) and purely commercial products or commercial services. These items include commodities, software, and technology. Many items subject to the EAR are set forth by Export Control Classification Number on the Commerce Control List.

(A) The EAR is published in Title 15 of the Code of Federal Regulations, Parts 730 through 774 (15 CFR Parts 730-774), available at http://www.gpoaccess.gov/cfr/index.html and http://www.access.gpo.gov/bis/ear/ear_data.html.

(B) The Commerce Control List is part of the EAR, in Supplement No. 1 to 15 CFR Part 774, and is available at http://www.gpoaccess.gov/cfr/index.html and http://www.access.gpo.gov/bis/ear/ear_data.html.

(C) The Department of Commerce is responsible for compliance with the EAR. Depending on the nature of questions you may have, you may contact the following Department of Commerce office to obtain additional information:

U.S. Department of Commerce

Bureau of Industry and Security

Office of Exporter Services (OExS)

OExS Hotline: 202-482-4811.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the EAR. If asked, the contracting officer should direct the contractor's attention to paragraph (b) of the clause at DFARS 252.225-7048 and may inform the contractor that the Department of Commerce publishes guidance regarding EAR compliance at http://www.bis.doc.gov/.

(3) *National Security Decision Directive (NSDD) 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information*.

(i) NSDD 189 establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled items, as defined in paragraph (a) of the clause at DFARS 252.225-7048.

(ii) NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research, whether basic, fundamental, or applied, from statutes that apply to export controls such as the Arms Export Control Act, the Export Administration Act of 1979, as amended, or the U.S. International

Emergency Economic Powers Act, or the regulations that implement those statutes (the ITAR and the EAR). Thus, if export-controlled items are used to conduct research or are generated as part of the research efforts, the export control laws and regulations apply to the controlled items.

(iii) NSDD 189 is available at http://www.fas.org/irp/offdocs/nsdd/nsdd-189.htm.

(4) *DoD Instruction 2040.02, International Transfers of Technology, Articles, and Services*. This DoD instruction provides guidance to manage and control transfers of technology, articles, and services consistent with U.S. foreign policy and national security objectives. DoD Instruction 2040.02 is available at http://www.dtic.mil/whs/directives/.

(5) *Other DoD Issuances.* Other DoD issuances that address export control matters include those listed below. Except as otherwise noted, these issuances are available at http://www.dtic.mil/whs/directives/.

• DoD Instruction 2015.4, Defense Research, Development, Test and Evaluation (RDT&E) Information Exchange Program (IEP).

• DoD Directive 5000.1, The Defense Acquisition System.

• DoD Instruction 5000.2, Operation of the Defense Acquisition System.

• DoD Directive 5105.72, Defense Technology Security Administration (DTSA).

• DoD Publication 5200.1-M, Acquisition Systems Protection Program.

• DoD Instruction 5200.39, Critical Program Information (CPI) Protection Within the Department of Defense.

• DoD Publication 5220.22-M, National Industrial Security Program Operating Manual (NISPOM).

• DoD Directive 5230.25, Withholding of Unclassified Technical Data From Public Disclosure.

• DoD Instruction 5230.27, Presentation of DoD-Related Scientific and Technical Papers at Meetings.

• Defense Acquisition Guidebook, available at http://akss.dau.mil/dag/DoD5000.asp?view=document&doc=1.

• Under Secretary of Defense (Intelligence) Memorandum, Subject: Policy and Procedures for Sanitization of Department of Defense (DoD) Classified or Controlled Unclassified Information Prior to Public Release, is available here

Link to online training on export controls:

CLM 036 Technology Transfer and Export Control Fundamentals, http://icatalog.dau.mil/onlinecatalog/courses.aspx?crs_id=306

Parent topic: PGI 225.7901 Export-controlled items.