

October 12, 2005
OEC-05-059

Applied Physics Laboratory

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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

Dear Ms. Williams:

On behalf of The Johns Hopkins University Applied Physics Laboratory (JHU/APL), this letter is written to provide 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).

JHU/APL is a division of The Johns Hopkins University and is designated as a Department of Defense (DOD) University Affiliated Research Center (UARC). In its role as a UARC, JHU/APL provides expertise to various U.S. Government sponsors in systems engineering, test and evaluation, engineering, and operations analysis, as well as basic theoretical and experimental research. The U.S. Government utilizes JHU/APL's core competencies in military projects, civilian space, and many other specialty areas of science and technology to further national interests, many of which contractually require international collaboration.

JHU/APL views export compliance as an important obligation. However, while the spirit of the proposed rule has merit, implementation of the rule as written will present significant challenges for entities that currently seek to comply with statutory export obligations.

Public comments already received by your office have noted many concerns with which JHU/APL agrees, such as:

- The advisability of obtaining review of the proposed rule from all Federal agencies having jurisdiction for export (and import) regulations that also govern the work performed under DoD contracts prior to the rule's implementation;
- The potential that the proposed rule's inconsistency with terms defined in the ITAR and the EAR could result in a contractor being in full compliance with applicable laws and regulations but inadvertently breaching their DOD contract;
- The requirements for unique badging and segregated work areas containing export-controlled information and technology are more restrictive than either the ITAR or EAR;
- The proposed rule's emphasis on "access" to export-controlled information and technology exceeds the ITAR and EAR requirements and should be reconsidered;
- Flow-down of the proposed contract clause to subcontractors may result negotiation delays or refusals to subcontract by foreign companies, universities and small businesses; and

- The proposed rule is likely to significantly increase the cost of contract administration as well as overall export compliance.

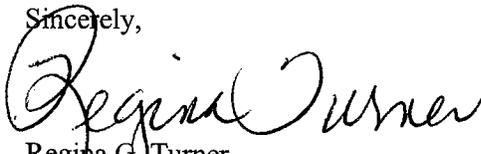
JHU/APL would like to focus its comments on two issues that have not been reflected in other comments:

- Other entities that have submitted comments have raised concerns, which JHU/APL shares, regarding the inconsistency of the proposed rule's language and terminology with existing export regulations under the ITAR and the EAR, and the possibility that entities could be compliant with applicable statutes but not in compliance with the proposed contract clause. In addition to the concerns already expressed by many others, it should also be noted that the proposed rule does not reflect export controls under the jurisdiction of other Government agencies, such as Department of Treasury, Bureau of Alcohol, Tobacco, Firearms, and Explosives, and Department of Homeland Security, which may be required in the performance of DoD contracts.
- JHU/APL, as well as other contractors, currently utilize a Technology Control Plan ("TCP") to control access to unclassified export-controlled information and technology. The proposed rule's facility segregation and unique badging requirements would exceed the restrictions already imposed under the ITAR and the EAR, and already addressed by establishing and implementing a TCP.

In conclusion, JHU/APL agrees with the intent of the proposed rule to protect against unauthorized transfer of export controlled technologies and information. However, facilitating and requiring compliance with current ITAR, EAR, and other government export regulations will meet the intent of the proposed rule.

Thank you for the opportunity to provide comments and suggestions.

Sincerely,



Regina G. Turner
Manager, Laboratory Export Office