



6450-01-P

DEPARTMENT OF ENERGY

48 CFR parts 925, 952, and 970

RIN 1991-AB99

Acquisition Regulations: Export Control

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to add export control requirements applicable to the performance of DOE contracts.

DATES: Written comments on this proposed rulemaking must be received on or before close of business [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by “DEAR: Export Control and RIN 1991-AB99,” by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail to: DEARrulemaking@hq.doe.gov. Include DEAR: Export Control and RIN 1991-AB99 in the subject line of the message.
- Mail to: U.S. Department of Energy, Office of Acquisition and Project Management, MA-611, 1000 Independence Avenue, SW., Washington, DC 20585. Comments by e-mail are encouraged.

FOR FURTHER INFORMATION CONTACT: Lawrence Butler, (202) 287-1945 or
lawrence.butler@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

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A. Purpose and Legal Authority

B. Summary of Major Provisions

1. Part 925--FOREIGN ACQUISITION.

2. Part 952--SOLICITATION PROVISIONS AND CONTRACT
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B. Review under Executive Order 12988.

C. Review under the Regulatory Flexibility Act.

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I. Review under Executive Order 13211.

J. Review under the Treasury and General Government Appropriations Act, 2001.

K. Review under Executive Order 13609.

L. Approval by the Office of the Secretary of Energy.

I. Executive Summary

A. Purpose and Legal Authority

The purpose of this rulemaking is to add new DEAR subparts 925.71 and 970.2571 to set forth requirements concerning compliance with export control laws, regulations and directives applicable to the performance of DOE contracts.

Export control laws, regulations and directives that may apply to a contract in effect on the date of the contract award and as amended subsequently include, but are not limited to: the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 et seq.); the Export Administration Act of 1979 (50 U.S.C. app. 2401 et seq.), as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95-223, 91 Stat. 1626, October 28, 1977); Trading with the Enemy Act (50 U.S.C. App. 5(b) as amended by the Foreign Assistance Act of 1961); Assistance to Foreign Atomic Energy Activities (10 Code of Federal Regulations (CFR) part 810); Export Administration Regulations (15 CFR parts 730 through 774); International Traffic in Arms Regulations (22 CFR parts 120 through 130); Export and Import of Nuclear Equipment and Material (10 CFR part 110); regulations administered by the Office of Foreign Assets Control (31 CFR Subtitle B Chapter V); the Espionage Act (37 U.S.C. 791 et seq.); DOE Order 142.3A, Unclassified Foreign Visits and Assignments Program; DOE Order 551.1D, Official Foreign Travel; and DOE Order 580.1A, Department of Energy Personal Property Management Program.

The list of laws and regulations is the same as that in the Export Restriction Notice in 41 CFR 109-1.5303(b)(6), with updated citations for revised versions, as appropriate. The Export Restriction Notice is required by 41 CFR 109 for all transfers, sales or other offerings

of High Risk Personal Property (HRPP), which includes all export-controlled items. The DOE directives in the list are the three DOE orders that refer to export compliance when performing Contractor activities. DOE solicits comment on whether additional export control laws, regulations or directives should be added to this list. Descriptions of these laws, regulations and directives are provided in section II.

B. Summary of Major Provisions

DOE proposes to amend the DEAR as follows, for consistency with a 2010 amendment to the Department of Defense Acquisition Regulations (DFARS) (DFARS Case 2004-D010, 75 FR 18030, Apr. 8, 2010):

1. PART 925--FOREIGN ACQUISITION

Part 925 is amended by adding new section 925.71 to set forth requirements for contractors concerning the export control of items, including but not limited to unclassified information, materials, technology, equipment or software.

More information on what constitutes an “item”, as well as export control requirements generally, can be found at the following Department of Commerce (DOC) website: <http://www.bis.doc.gov/licensing/exportingbasics.htm>. Points of contact for DOC are also provided at this website. Points of contact and additional information for the Department of State can be found at http://www.pmdtc.state.gov/about/key_personnel.html and http://www.pmdtc.state.gov/documents/ddtc_getting_started.pdf. Points of contact and additional information for the Department of Treasury can be found at <http://www.treasury.gov/services/Pages/Foreign-Transaction-Licensing-and-Reporting.aspx>. Points of contact and additional information for the Nuclear Regulatory Commission can be found at <http://www.nrc.gov/about-nrc/ip/export-import.html>. The point of contact for the

Department of Energy is the Office of Nonproliferation and International Security in the National Nuclear Security Administration at <http://nnsa.energy.gov/aboutus/ourprograms/nonproliferation/programoffices/officenonproliferationinternationalsecurity>.

DOE contractors are responsible for complying with export control requirements applicable to their contracts. DOE requirements for contractors will be set forth in a new DEAR Export Clause. It is the contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items. This responsibility exists independent of, and is not established, or limited by, this DEAR rulemaking.

2. PART 952 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Part 952 is amended by adding new clause 952.225-XX to set forth requirements for DOE contractors concerning compliance with applicable export control laws, regulations and directives, including a requirement for DOE contractors to obtain the necessary licenses, approvals and relevant documentation to comply with these applicable laws, regulations and directives.

3. PART 970 - DOE MANAGEMENT AND OPERATING CONTRACTS

Subpart 970.25 is amended by adding new section 970.2571 to set forth requirements for management and operating contractors concerning export control of items, including but not limited to unclassified information, materials, technology, equipment or software.

As noted above, more information on what constitutes an "item", as well as export control requirements generally, can be found at the following DOC website:

<http://www.bis.doc.gov/licensing/exportingbasics.htm>. Points of contact for DOC are also provided at this website. Points of contact and additional information for the Department of

State can be found at http://www.pmddtc.state.gov/about/key_personnel.html and http://www.pmddtc.state.gov/documents/ddtc_getting_started.pdf. Points of contact and additional information for the Department of Treasury can be found at <http://www.treasury.gov/services/Pages/Foreign-Transaction-Licensing-and-Reporting.aspx>. Points of contact and additional information for the Nuclear Regulatory Commission can be found at <http://www.nrc.gov/about-nrc/ip/export-import.html>. The point of contact for the Department of Energy is the Office of Nonproliferation and International Security in the National Nuclear Security Administration at <http://nnsa.energy.gov/aboutus/ourprograms/nonproliferation/programoffices/officenonproliferationinternationalsecurity>. DOE management and operating contractors are responsible for complying with export control requirements applicable to their contracts. DOE requirements for management and operating contractors will be set forth in a new DEAR Export Clause. It is the contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items. This responsibility exists independent of, and is not established, or limited by, this DEAR rulemaking.

Subpart 970.52 is amended by adding new clause 970.5225-1 to set forth requirements for management and operating contractors concerning compliance with export control laws, regulations and directives, including a requirement for DOE management and operating contractors to obtain the necessary licenses, approvals and relevant documentation to comply with applicable laws, regulations and directives.

II. Summaries of Export Control Laws, Regulations and Directives.

Brief summaries of each of these authorities -- which are independent of, and not limited by, any DEAR policy or clause -- are set forth below:

Atomic Energy Act of 1954, as amended (AEA)

The AEA empowers DOE to authorize persons subject to the jurisdiction of the United States to engage directly or indirectly in the production of special nuclear material outside of the United States.

Arms Export Control Act

Provides the authority to control the export of defense articles and services, and charges the President to exercise this authority. Executive Order 11958, as amended, delegated this statutory authority to the Secretary of State.

Export Administration Act (EAA)

Provides legal authority to the President to control, for reasons of national security, foreign policy and/or short supply, the export and reexport of items that are subject to the Export Administration Regulations (EAR) (see below). The EAA has expired but has been continued under the International Emergency Economic Powers Act.

International Emergency Economic Powers Act

Authorizes the President to regulate commerce after declaring a national emergency in response to any unusual and extraordinary threat to the United States which has a foreign source.

Trading With the Enemy Act

Restricts trade with countries hostile to the United States. The law gives the President the power to oversee or restrict any and all trade between the U.S. and its enemies in times of war. The scope of the TWEA was expanded by the Foreign Assistance Act of 1961.

Foreign Assistance Act of 1961

Restricts assistance to any government which engages in a consistent pattern of gross violations of internationally recognized human rights.

10 CFR Part 810, “Assistance to Foreign Atomic Energy Activities”

The DOE has jurisdictional authority over exports of unclassified nuclear technology under section 57 b.(2) of the Atomic Energy Act of 1954, as amended.

10 CFR Part 110, “Export and Import of Nuclear Equipment and Material”

The Nuclear Regulatory Commission (NRC) has jurisdictional authority for exports for peaceful nuclear purposes of nuclear reactors, nuclear enrichment and reprocessing facilities, heavy water production facilities, related proprietary operation and maintenance manuals, and related equipment. The NRC also has jurisdictional authority for exports of special nuclear material, source material, byproduct material, deuterium, and nuclear grade graphite for nuclear end use.

Export Administration Regulations (EAR)

The Department of Commerce (DOC) has jurisdictional authority over a broad range of dual-use commodities (items that have both commercial and potentially military applications), and items that are not controlled by other export regimes. Items that are subject to the EAR include items found on the Commerce Control List (CCL), where they are grouped into ten categories. These include, among other things, certain electronics, computers, sensors and lasers, and microorganisms and toxins. Items on the CCL are classified based upon their physical characteristics and their potential uses. Items not listed on the CCL may nevertheless be subject to the EAR. Such items are designated “EAR99.”

An export license may be required for an item subject to the EAR if the export of the item could impact U.S. national security or foreign policy objectives.

International Traffic in Arms Regulations (ITAR)

The Arms Export Control Act is implemented through the ITAR. The Department of State (State) has jurisdictional authority over munitions items, including military systems, equipment, components, and services, and space-related systems, equipment, components, services and items.

Treasury Department (Treasury): Foreign Asset Control Regulations

The Trading with the Enemy Act is implemented through the Foreign Asset Control Regulations. The Treasury Office of Foreign Asset Control (OFAC) has jurisdictional authority over all financial and tangible items having a destination to embargoed and terrorist sponsoring states.

Department of Energy: Unclassified Foreign Visits and Assignments Program

Defines a program for unclassified foreign national access to DOE sites, information, and technologies by establishing review, approval, documenting and tracking requirements.

Department of Energy: Official Foreign Travel

Establishes DOE and National Nuclear Security Administration (NNSA) requirements and responsibilities governing official foreign travel by Federal and contractor employees.

Department of Energy: Personal Property Management Program

Sets forth (a) requirements that implement and supplement Public Laws, Executive Orders, Office of Management and Budget directives, and any other agency issuances affecting the DOE's personal property management program; (b) requirements that reflect

the accountability perspective of property management; (c) policy that assists DOE property managers, contracting and financial managers, and other DOE officials in understanding their property management roles and responsibilities; and (d) standards, practices, and performance expectations for property management.

This rulemaking, which would add new requirements to DEAR part 925 and subpart 970.25, and create new clauses in part 952 and subpart 970.52, addresses concerns raised in DOE Inspector General (IG) Reports issued in 2004 and 2007. In the 2004 report, the DOE IG determined that the two DOE contractors it reviewed were not properly applying export control procedures. The DOE IG further stated that DOE must ensure that export control guidance, including deemed export guidance, is disseminated and consistently implemented throughout the DOE complex. In the 2007 report, the DOE IG recommended expedited actions to ensure compliance with export control requirements throughout the DOE complex. This rule also addresses a 2011 Government Accountability Office (GAO) report in which the GAO identified weaknesses in government-wide export controls.

III. Procedural Requirements.

A. Review under Executive Orders 12866 and 13563.

Today's regulatory action has been determined to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this proposed rule was reviewed by the Office of Information and Regulatory Affairs within the Office of Management and Budget.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory

review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that today's NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

B. Review under Executive Order 12988.

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these proposed regulations meet the relevant standards of Executive Order 12988.

C. Review under the Regulatory Flexibility Act.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Neither 5 U.S.C. 553 nor 41 U.S.C. 418(b)

requires that today's proposed rule be proposed for public comment. No regulatory flexibility analysis has been prepared.

D. Review under the Paperwork Reduction Act.

This proposed rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

E. Review under the National Environmental Policy Act.

DOE has concluded that promulgation of this proposed rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.). Specifically, this proposed rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this proposed rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review under Executive Order 13132.

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review under the Unfunded Mandates Reform Act of 1995.

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104—4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more. This rulemaking does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review under the Treasury and General Government Appropriations Act, 1999.

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well being. This rule will have no impact on family well-being. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review under Executive Order 13211.

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use”, 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by

the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review under the Treasury and General Government Appropriations Act, 2001.

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review under Executive Order 13609.

Executive Order 13609 of May 1, 2012, "Promoting International Regulatory Cooperation," requires that, to the extent permitted by law and consistent with the principles and requirements of Executive Order 13563 and Executive Order 12866, each Federal agency shall:

(a) If required to submit a Regulatory Plan pursuant to Executive Order 12866, include in that plan a summary of its international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, with an explanation of how these activities advance the purposes of Executive Order 13563 and this order;

- (b) Ensure that significant regulations that the agency identifies as having significant international impacts are designated as such in the Unified Agenda of Federal Regulatory and Deregulatory Actions, on RegInfo.gov, and on Regulations.gov;
- (c) In selecting which regulations to include in its retrospective review plan, as required by Executive Order 13563, consider:
 - (i) Reforms to existing significant regulations that address unnecessary differences in regulatory requirements between the United States and its major trading partners, consistent with section 1 of this order, when stakeholders provide adequate information to the agency establishing that the differences are unnecessary; and
 - (ii) Such reforms in other circumstances as the agency deems appropriate; and
- (d) For significant regulations that the agency identifies as having significant international impacts, consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan.

DOE has reviewed this proposed rule under the provisions of Executive Order 13609 and determined that the rule complies with all requirements set forth in the order.

L. Approval by the Office of the Secretary of Energy.

The Office of the Secretary of Energy has approved issuance of this proposed rule.

List of Subjects in 48 CFR parts 925, 952 and 970

Government procurement

Issued in Washington, DC, on May 24, 2013.

Paul Bosco,
Director
Office of Acquisition and
Project Management
Department of Energy

Oliver M. Voss,
Acting Director
Office of Acquisition
Management
National Nuclear Security Administration

For reasons set out in the preamble, the DOE is proposing to amend Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

PART 925--FOREIGN ACQUISITION

1. The authority citation for part 925 continues to read as follows:

Authority: 42 U.S.C. 7101 et seq., and 50 U.S.C. 2401 et seq.

2. Subpart 925.71 is added to read as follows:

Subpart 925.71 - Export Control

Sec.

925.7100 Scope of subpart.

925.7101 Policy.

925.7102 Contract clause.

Subpart 925.71 - Export Control

925.7100 Scope of subpart.

This subpart implements Department of Energy (DOE) requirements for contractors concerning export control of items including but not limited to unclassified information, materials, technology, equipment or software.

925.7101 Policy.

(a) DOE and its contractors must comply with applicable laws, regulations and directives when exporting items, included but not limited to, unclassified information, materials, technology, equipment, or software. DOE therefore requires its contractors to comply with all applicable export control laws, regulations, and directives, in effect on the date of contract award and as amended subsequently, including but not limited to: the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 et seq.); the Export Administration Act of 1979 (50 U.S.C. app. 2401 et seq.), as continued under the International Emergency Economic Powers Act (Title II of Pub.L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 et seq.); Trading with the Enemy Act; (50 U.S.C. App. 5(b) as amended by the Foreign Assistance Act of 1961); Assistance to Foreign Atomic Energy Activities (Title 10 of the Code of Federal Regulations (CFR) part 810); Export Administration Regulations (15 CFR parts 730 through 774); International Traffic in Arms Regulations (22 CFR parts 120 through 130); Export and Import of Nuclear Equipment and Material (10 CFR part 110); regulations administered by the Office of Foreign Assets Control (31 CFR Subtitle B Chapter V); the Espionage Act (37 U.S.C. 791 et seq.); DOE Order 142.3A, Unclassified Foreign Visits and Assignments Program, October 14, 2010; DOE Order 551.1D, Official Foreign Travel, June 24, 2008; and DOE Order 580.1A, Department of Energy Personal Property Management Program, March 30, 2012; and the Espionage Act (37 U.S.C. 791 et seq.) which among other things, prohibit--

- (1) The making of false statements and concealment of any material information regarding the use or disposition, export or re-export of property; and
- (2) Any use or disposition, export or re-export of property which is not authorized in accordance with the provisions of any transfer, sale or other offering.

(b) Contractors seeking guidance on how to comply with export control requirements should review the list of laws, regulations and directives applicable to the export of unclassified information, materials, technology, equipment or software set forth in paragraph (a) of this section and in clause 952.225-XX. Contractors also may contact the agencies responsible for administration of export laws, regulations or directives applicable to a particular export (e.g., Departments of State, Commerce, Treasury, and Energy, or the Nuclear Regulatory Commission). Questions regarding DOE Directives should be referred to the appropriate DOE program office.

(c) It is the contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items. This responsibility exists independent of, and is not established, or limited by, this subpart.

925.7102 Contract clause.

The contracting officer shall insert the clause at 952.225-XX, Compliance with export control laws, regulations and directives (Export Clause), in any contract that may involve the export of items, including but not limited to unclassified information, materials, technology, equipment, or software.

PART 952 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for part 952 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 et seq.; 50

U.S.C. 2401 et seq.

4. Section 952.225-XX is added to read as follows:

952.225-XX Compliance with export control laws, regulations and directives (Export Clause).

As prescribed in section 925.7102, insert the following clause:

COMPLIANCE WITH EXPORT CONTROL LAWS, REGULATIONS AND DIRECTIVES (XXX 20XX)

(a) The Contractor shall comply with applicable laws, regulations and directives regarding the export of items, including but not limited to unclassified information, materials, technology, equipment or software related to the performance of this contract. The Contractor may be subject to civil or criminal penalties or contractual remedies for non-compliance with applicable laws, regulations and directives as set forth in such laws, regulations and directives, including monetary fines, imprisonment, or contract termination.

(b) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established, or limited by, the information provided by this clause.

(c) The following Export Restriction Notice shall be included in all transfers, sales or other offerings of unclassified information, materials, technology, equipment or software pursuant to a DOE contract:

[Start of Export Restriction Notice]

Export Restriction Notice - The use, disposition, export, and re-export of this property are subject to export control laws, regulations and directives, in effect on the date of contract award and as amended subsequently, that include but are not limited to: the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 et seq.); the Export Administration Act of 1979 (50 U.S.C. app. 2401 et seq.) as continued under the International Emergency Economic Powers Act (Title II of Pub.L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 et seq.); Trading with the Enemy Act (50 U.S.C. App.

5(b) as amended by the Foreign Assistance Act of 1961); Assistance to Foreign Atomic Energy Activities (10 CFR part 810); Export and Import of Nuclear Equipment and Material (10 CFR part 110); International Traffic in Arms Regulations (22 CFR parts 120 through 130); Export Administration Regulations (15 CFR parts 730 through 734); regulations administered by the Office of Foreign Assets Control (31 CFR parts 500 through 598); DOE Order 142.3A, Unclassified Foreign Visits and Assignments Program, October 14, 2010; DOE Order 551.1D, Official Foreign Travel, June 24, 2008; and DOE Order 580.1A, Department of Energy Personal Property Management Program, March 30, 2012; and the Espionage Act (37 U.S.C. 791 et seq.) which among other things, prohibit--

- (1) The making of false statements and concealment of any material information regarding the use or disposition, export or re-export of the property; and
- (2) Any use or disposition, export or re-export of the property which is not authorized in accordance with the provisions of this agreement.

[End of Export Restriction Notice]

(d) Upon a request for guidance by the Contractor, the Contracting Officer should direct the Contractor to the agency responsible for administration of the export laws, regulations or directives applicable to the Contractor's question.

(e) The Contractor shall obtain the necessary licenses, approvals and relevant documentation to comply with applicable export control laws, regulations and directives. The Contractor shall notify the Contracting Officer in a timely manner, in writing, of:

- (1) Any export control requirements it has determined apply to contract performance; and
- (2) That it has taken appropriate steps to comply with such requirements.

(f) The Contractor's responsibility to comply with all applicable export control laws, regulations and directives exists independent of, and is not established or limited by, this clause.

(g) Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations.

(h) The Contractor shall include this clause in subcontracts at any tier that involve the transfer, sale or other offering of items, including but not limited to unclassified information, materials, technology, equipment or software.

(End of clause)

PART 970 - DOE MANAGEMENT AND OPERATING CONTRACTS

5. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 et seq.; 50 U.S.C. 2401 et seq.

6. Subpart 970.25 is revised to read as follows:

Subpart 970.25--Foreign Acquisition

Sec.

970.2570 Buy American Act.

970.2570-1 Contract clause.

970.2571 Export control.

970.2571-1 Scope of subpart.

970.2571-2 Policy.

970.2571-3 Contract clause.

Subpart 970.25--Foreign Acquisition

970.2570 Buy American Act.

970.2570-1 Contract clause.

Contracting officers shall insert the clauses at 48 CFR 52.225-1, Buy American Act—

Supplies, and 48 CFR 52.225-9, Buy American Act--Construction Materials, in management and operating contracts. The clause at 48 CFR 52.225-1 shall be modified in paragraph (d) of the FAR by substituting the word “use” for the word “deliver.”

970.2571 Export control.

970.2571-1 Scope of subpart.

This subpart implements requirements concerning the export by DOE management and operating contractors of unclassified information, materials, technology, equipment or software.

970.2571-2 Policy.

(a) DOE and its contractors must comply with applicable laws, regulations and directives when exporting unclassified information, materials, technology, equipment or software DOE therefore requires its contractors to comply with all applicable export control laws, regulations, and directives, in effect on the date of contract award and as amended subsequently, including but not limited to: the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 et seq.); the Export Administration Act of 1979 (50 U.S.C. app. 2401 et seq.) as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 et seq.); Trading with the Enemy Act; (50 U.S.C. App. 5(b) as amended by the Foreign Assistance Act of 1961); Assistance to Foreign Atomic Energy Activities (Title 10 of the Code of Federal Regulations (CFR) part 810); Export Administration Regulations (15 CFR parts 730 through 774); International Traffic in Arms Regulations (22 CFR parts 120 through 130); Export and Import of Nuclear Equipment and Material (10 CFR part 110); regulations administered by the Office of Foreign Assets Control (31 CFR parts 500 through 598); the

Espionage Act (37 U.S.C. 791 et seq.); DOE Order 142.3A, Unclassified Foreign Visits and Assignments Program, October 14, 2010; DOE Order 551.1D, Official Foreign Travel, June 24, 2008; and DOE Order 580.1A, Department of Energy Personal Property Management Program, March 30, 2012; and the Espionage Act (37 U.S.C. 791 et seq.) which among other things, prohibit--

- (1) The making of false statements and concealment of any material information regarding the use or disposition, export or re-export of property; and
 - (2) Any use or disposition, export or re-export of property which is not authorized in accordance with the provisions of any transfer, sale or other offering.
- (b) Contractors seeking guidance on how to comply with export control requirements should review the list of laws, regulations and directives applicable to the export of unclassified information, materials, technology, equipment or software set forth in paragraph (a) above and in clause 970.5225-1. Contractors also may contact the agencies responsible for administration of export laws, regulations or directives applicable to a particular export (e.g., Departments of State, Commerce, Treasury and Energy, or the Nuclear Regulatory Commission). Questions regarding DOE Directives should be referred to the appropriate DOE program office.
- (c) It is the Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items. This responsibility exists independent of, and is not established, or limited by, this subpart.

970.2571-3 Contract clause.

The contracting officer shall insert the clause at 970.5225-1, Compliance with export control laws, regulations and directives (Export Clause), in any contract that may involve the export

of items including but not limited to unclassified information, materials, technology, equipment or software.

7. Section 970.5225-1 is added to read as follows:

Subpart 970.52--Solicitation Provisions and Contract Clauses for Management and Operating Contracts

970.5225-1 Compliance with export control laws, regulations and directives (Export Clause).

As prescribed in section 970.2571-3, insert the following clause:

COMPLIANCE WITH EXPORT CONTROL LAWS, REGULATIONS AND DIRECTIVES (XXX 20XX)

(a) The Contractor shall comply with applicable laws, regulations and directives regarding the export of items including but not limited to unclassified information, materials, technology, equipment or software related to the performance of this contract. The Contractor may be subject to civil or criminal penalties for non-compliance with applicable laws, regulations and directives, as set forth in such laws, regulations and directives, including contract termination, monetary fines and/or imprisonment.

(b) The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established, or limited by, the information provided by this clause.

(c) The following Export Restriction Notice shall be included in all transfers, sales or other offerings of unclassified information, materials, technology, equipment or software:

[Start of Export Restriction Notice]

Export Restriction Notice - The use, disposition, export, and re-export of this property are subject to export control laws, regulations and directives, in effect on the date of contract

award and as amended subsequently, that include but are not limited to: the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 et seq.); the Export Administration Act of 1979 (50 U.S.C. app. 2401 et seq.), as continued under the International Emergency Economic Powers Act (Title II of Pub.L. 95-223, 91 Stat. 1626, October 28, 1977; 50 U.S.C. 1701 et seq.); Trading with the Enemy Act (50 U.S.C. App. 5(b) as amended by the Foreign Assistance Act of 1961); Assistance to Foreign Atomic Energy Activities (10 CFR part 810); Export and Import of Nuclear Equipment and Material (10 CFR part 110); International Traffic in Arms Regulations (22 CFR parts 120 through 130); Export Administration Regulations (15 CFR parts 730 through 734); regulations administered by the Office of Foreign Assets Control (31 CFR Subtitle B Chapter V); DOE Order 142.3A, Unclassified Foreign Visits and Assignments Program, October 14, 2010; DOE Order 551.1D, Official Foreign Travel, June 24, 2008; and DOE Order 580.1A, Department of Energy Personal Property Management Program, March 30, 2012; and the Espionage Act (37 U.S.C. 791 et seq.) which among other things, prohibit:

- (1) The making of false statements and concealment of any material information regarding the use or disposition, export or re-export of the property; and
- (2) Any use or disposition, export or re-export of the property which is not authorized in accordance with the provisions of this agreement.

[End of Export Restriction Notice]

(d) Upon a request for guidance by the Contractor, the Contracting Officer should direct the Contractor to the agency responsible for the administration of the export laws, regulations or directives applicable to the Contractor's question.

(e) The Contractor shall obtain the necessary licenses, approvals and relevant documentation to comply with applicable export control laws, regulations and directives. The Contractor shall notify the Contracting Officer in a timely manner, in writing, of 1) any export control requirements it has determined apply to contract performance, and 2) that it has taken appropriate steps to comply with such requirements.

(f) The Contractor's responsibility to comply with all applicable export control laws, regulations and directives exists independent of, and is not established or limited by this clause.

(g) Nothing in the terms of this contract adds to, changes, supersedes, or waives any of the requirements of applicable Federal laws, Executive Orders, and regulations.

(h) The Contractor shall include this clause in subcontracts at any tier that involve the transfer, sale or other offering of items including but not limited to unclassified information, materials, technology, equipment, or software.

(End of clause)

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