



Department of Defense **INSTRUCTION**

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Incorporating Change 1, May 24, 2017

USD(P)

SUBJECT: Implementation of Trade Security Controls (TSCs) for Transfers of DoD Personal Property to Parties Outside DoD Control

References: See Enclosure 1

1. **PURPOSE.** In accordance with the authority in DoD Directive (DoDD) 5111.1 (Reference (a)), this instruction:

a. Reissues DoD Instruction (DoDI) 2030.08 (Reference (b)) to establish policy and assign responsibilities to implement DoD TSC measures for transfers of DoD personal property to parties outside DoD control.

b. Reinforces DoD demilitarization (DEMIL) provisions in accordance with DoDI 4160.28 (Reference (c)) and DoD Manual (DoDM) 4160.28 (Reference (d)).

c. Reinforces DoD materiel disposition provisions in accordance with DoD 4160.21-M (Reference (e)).

d. Establishes TSC measures necessary to prevent unauthorized transfers of DoD export-controlled personal property to individuals, entities, or countries.

2. **APPLICABILITY.** This instruction applies to:

a. The OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in DoD (referred to collectively in this instruction as the "DoD Components").

b. DoD export-controlled personal property to be transferred outside DoD control regardless of the authority upon which it is transferred, including exchange or sale and all other forms of transfer. (Additional policies and procedures that are specific to international transfers are found in DoDI 2040.02 (Reference (f)).)

c. DoD export-controlled personal property controlled by contractors.

d. DoD export-controlled personal property throughout the life cycle of the property, from initial acquisition and contracting phases (including pre-solicitations) through ultimate disposition.

e. The disposal of DoD export-controlled personal property that was transferred on a government-to-government basis; for example, DoD personal property transferred to foreign governments via Foreign Military Sales and cooperative agreement or exchange channels.

f. DoD export-controlled personal property in possession of other Federal agencies.

3. POLICY. It is DoD policy that:

a. All transfers of DoD export-controlled personal property, within or outside the United States, will be conducted pursuant to:

(1) Section 2778 of Title 22, United States Code (U.S.C.), also known as the “Arms Export Control Act (AECA)” (Reference (g)), as implemented in parts 120 through 130 of Title 22, Code of Federal Regulations (CFR), also known and referred to in this instruction as the “International Traffic in Arms Regulations (ITAR)” (Reference (h)).

(2) Chapter 35 of Title 50, U.S.C. (Reference (i)), as implemented in parts 730 through 774 of Title 15, CFR, also known and referred to in this instruction as the “Export Administration Regulations (EAR)” (Reference (j)).

(3) Sections 2301- 2349bb of Reference (g).

(4) Parts 500 through 598 of Title 31, CFR, also known as the “Office of Foreign Assets Control Regulations” (Reference (k)).

(5) Part 101-42.1102 of Title 41, CFR (Reference (l)).

(6) Any similar applicable regulations issued by any Federal agency.

b. DoD export-controlled personal property will not be transferred to the control or possession of a foreign person or ineligible transferee unless authorized by statute, under regulations issued by the Secretary of State, the Secretary of Commerce, or the Secretary of the Treasury or other authority.

c. DoD programs for the transfer of DoD export-controlled personal property will be administered to ensure that transfers comply with export control regulations (ITAR EAR and

Reference (k)), DoD DEMIL instructions (References (c) through (e)), and DEMIL regulations (part 101-42.1102 of Reference (l)).

d. DoD Components must apply appropriate TSC measures, including those required at Enclosure 3, to prevent unauthorized exports or transfers of DoD export-controlled personal property. These measures must be applied throughout the entire lifecycle of DoD export-controlled personal property, which includes all acquisition phases (including pre-solicitation activities), sustainment, and ultimate disposal.

e. TSC measures will be implemented, as appropriate, in coordination with programs established by the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)); the Defense Security Cooperation Agency (DSCA); the Defense Technology Security Administration (DTSA); the Directorate of Defense Trade Controls (DDTC) at the Department of State (DOS); the U.S. Immigration and Customs Enforcement at the Department of Homeland Security (DHS); the Bureau of Industry and Security at the Department of Commerce (DOC); and the Office of Foreign Assets Control at the U.S. Department of the Treasury (USTD).

f. Transfers of DoD personal property at locations outside of the United States must also comply with applicable foreign laws, regulations, and international agreements.

g. All DoD activities and personnel will report known or suspected violations of U.S. export laws and regulations for investigation in accordance with DoDD 5106.01 (Reference (l)), DoDI 5505.2 (Reference (n)), the ITAR and EAR. Failure to report such violations to the appropriate authorities may result in criminal or civil penalties.

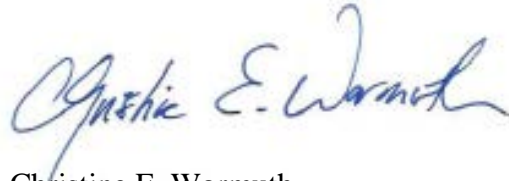
4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3 for required DoD TSC measures. These measures are critical, but may not be the only procedures necessary for DoD Components to comply with this instruction.

6. RELEASABILITY. *Cleared for public release*. This instruction is available on-the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. SUMMARY OF CHANGE 1. The changes to this issuance are administrative and update references for accuracy.

8. EFFECTIVE DATE. This instruction is effective February 19, 2015.



Christine E. Wormuth
Under Secretary of Defense for Policy

Enclosures

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5111.1, "Under Secretary of Defense for Policy (USD(P)),
December 8, 1999
- (b) DoD Instruction 2030.08, "Implementation of Trade Security Controls (TSC) for Transfers of DoD U.S. Munitions List (USML) and Commerce Control List (CCL) Personal Property to Parties Outside DoD Control," May 23, 2006 (hereby cancelled)
- (c) DoD Instruction 4160.28, "DoD Demilitarization (DEMIL) Program," April 7, 2011
- (d) DoD Manual 4160.28, "Defense Demilitarization," June 7, 2011
- (e) DoD Manual 4160.21, "Defense Materiel Disposition" October 22, 2015
- (f) DoD Instruction 2040.02, "International Transfers of Technology, Articles, and Services,"
March 27, 2014
- (g) Title 22, United States Code
- (h) Title 22, Code of Federal Regulations, Subchapter M, parts 120 through 130, also known as the "International Traffic in Arms Regulations"
- (i) Title 50, United States Code, chapter 35 also known as the "International Emergency Economic Powers Act"
- (j) Title 15, Code of Federal Regulations, Subchapter C, parts 730 through 774, also known as the "Export Administration Regulations"
- (k) Title 31, Code of Federal Regulations, parts 500 through 599, also known as the "Office of Foreign Assets Control Regulations"
- (l) Title 41, Code of Federal Regulations
- (m) DoD Directive 5106.01, "Inspector General of the Department of Defense (IG DoD),"
April 20, 2012, as amended
- (n) DoD Instruction 5505.02, "Criminal Investigations of Fraud Offenses," August 29, 2013, as amended
- (o) Defense Security Cooperation Agency 5105.38-M, "Security Assistance Management Manual," April 30, 2012
- (p) DoD Directive 5105.72, "Defense Technology Security Administration (DTSA),"
April 26, 2016
- (q) DoD Instruction 4140.01, "DoD Supply Chain Materiel Management Policy,"
December 14, 2011
- (r) DoD Instruction 5230.24, "Distribution Statements on Technical Documents,"
August 23, 2012, as amended
- (s) DoD Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure," November 6, 1984, as amended
- (t) DoD Instruction 5230.29, "Security and Policy Review of DoD Information for Public Release," August 13, 2014
- (u) DoD Manual 5200.01, Volume 4, "DoD Information Security Program: Controlled Unclassified Information (CUI)," February 24, 2012
- (v) DoD Manual 5200.45, "Instructions for Developing Security Classification Guides,"
April 2, 2013

- (w) DoD 4100.39-M, Volume 10, "Federal Logistics Information System (FLIS) Procedures Manual: Multiple Application References/Instructions/Tables and Grids," October 2010
- (x) DoD DEMIL and Trade Security Controls Program Website, "Procedures and Guidance, Trade Security Controls," <https://demil.osd.mil/tscguid.aspx>.
- (y) Defense Federal Acquisition Regulation Supplement, current edition
- (z) Defense Federal Acquisition Regulation Supplement Procedures, Guidance, and Information, current edition

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR POLICY (USD(P)). The USD(P) establishes policy for the transfer of DoD export-controlled personal property according to applicable U.S. laws, regulations, and policies.

2. DIRECTOR, DSCA. Under the authority, direction, and control of the USD(P) and in addition to the responsibilities in section 7 of this enclosure, the Director, DSCA, develops written procedures, in coordination with DOS, to implement TSC policy for DoD export-controlled personal property transfers administered by DSCA. These procedures will be incorporated in DSCA 5105.38-M (Reference (o)), and address the DEMIL and disposal of property transferred by the DoD to a foreign government pursuant to Foreign Military Sales, Military Assistance, Grant Aid, or other DSCA-administered programs.

3. DIRECTOR, DTSA. Under the authority, direction, and control of the USD(P) and in addition to the responsibilities in section 7 of this enclosure, the Director, DTSA, proposes updates for this instruction to the USD(P), consistent with DoDD 5105.72 (Reference (p)).

4. USD(AT&L). The USD(AT&L) has overall responsibility for management of the DoD TSC Program and issues supplemental guidance as appropriate.

5. ASSISTANT SECRETARY OF DEFENSE FOR LOGISTICS AND MATERIEL READINESS (ASD(L&MR)). Under the authority, direction, and control of the USD(AT&L), the ASD(L&MR):
 - a. Provides management oversight of the DoD TSC Program.

 - b. Issues supplemental guidance, as appropriate, for the DoD implementation of TSC measures and policy for DoD personal property.

6. DIRECTOR, DEFENSE LOGISTICS AGENCY (DLA) In addition to the responsibilities in section 7 of this enclosure, and under the authority, direction, and control of the ASD(L&MR), the Director, DLA:
 - a. Manages the DoD TSC Program to implement DLA TSC responsibilities in accordance with this instruction and DoDI 4140.01 (Reference (q)). In coordination with the ASD(L&MR) and the DoD Component heads, also:
 - (1) Maintains the DoD TSC Program Office.

- (2) Develops supplemental TSC implementation guidance for DoD Components.
 - (3) Maintains a DoD TSC training program.
 - (4) Maintains the DoD TSC website as a resource for DoD Components to implement TSC policy.
 - (5) Conducts TSC assessments for DLA and other DoD Components as requested.
 - (6) Maintains DLA's TSC Enforcement and Investigative Program.
- b. Ensures that all dispositions of DoD export-controlled personal property under DLA's control are executed in accordance with this instruction.
 - c. In coordination with ASD(L&MR), provides guidance, training, and assistance to other DoD Components for the implementation of TSC policy and measures.

7. DoD COMPONENT HEADS. The DoD Component heads:

- a. Ensure their Component's compliance with this instruction.
- b. Carry out TSC measures in Enclosure 3 and the applicable supplemental measures and guidance issued by the USD(AT&L) or ASD(L&MR) for the transfer of DoD export-controlled personal property.
- c. Establish and implement additional measures that are necessary to comply with this instruction.
- d. Support their fellow DoD Components to develop and implement DoD TSC policy, guidance, and procedures, including:
 - (1) Help the Director, DTSA, develop DoD TSC policy.
 - (2) Participate in DoD TSC working groups.
 - (3) Help the Director, DLA, and the ASD(L&MR) develop supplemental TSC measures and guidance.

ENCLOSURE 3

PROCEDURES

1. GENERAL. These key TSC measures must be carried out by all DoD Components to comply with this instruction, so that only authorized individuals gain access to or possession of DoD export-controlled personal property.

2. REQUIRED GENERAL MEASURES FOR DoD COMPONENTS

a. Assign proper DEMIL codes for managed inventory items, at the inception of the acquisition cycle, in accordance with Volume 2 of Reference (d).

b. Limit access to DoD export-controlled personal property.

c. Prevent unauthorized visual or oral disclosure of DoD export-controlled personal property to foreign persons, in the United States or abroad, when such disclosure would constitute an export in accordance with the EAR or the ITAR.

d. Properly mark and protect unclassified technical data with distribution statements, and disseminate in accordance with DoDI 5230.24 (Reference (r)), DoDD 5230.25 (Reference (s)), DoDI 5230.29 (Reference (t)), Volume 4 of DoDM 5200.01 (Reference (u)), and DoDM 5200.45 (Reference (v)).

e. Properly DEMIL or mutilate DoD U. S. Munitions List (USML) and Commerce Control List (CCL) personal property as required by Reference (d), before release from DoD control, unless it is being transferred pursuant to an authorized exception.

f. Property to be transferred as scrap must not contain useable or salvageable end-items, components, accessories, attachments, parts, firmware, software, systems, or associated technology that are DoD USML or CCL personal property.

(1) In rare instances, even though there are no recognizable parts, items, or components, certain types of scrap materials may be listed on the USML or CCL (generally when the material itself is controlled) and may require DOS or DOC authorization for transfers to foreign entities or for transfers within foreign countries.

(2) Similarly, scrap that is listed on the USML or CCL requires a TSC assessment.

(3) Further guidance on the limited instances of export controls for scrap is at References (e), (j), and section 102-36 of Reference (k).

g. In addition to other guidance provided, adhere to the following policies and regulations, and use the resources as applicable, to implement this instruction: Reference (q), part 101-42 of

Reference (l), DoD 4100.39-M (Reference (w)), and the DoD DEMIL and Trade Security Controls Program Website (Reference (x)).

- h. Implement applicable supplementary DoD TSC, DEMIL, or sales policy measures.
- i. Establish and carry out additional component-specific measures as necessary to comply with this instruction.

3. REQUIRED MEASURES FOR DoD COMPONENTS WHEN TRANSFERRING DoD USML OR CCL PERSONAL PROPERTY

- a. Perform TSC assessments before transferring DoD USML or CCL personal property.

(1) DoD USML and CCL personal property must not be transferred directly or indirectly to any person or entity unless it has been determined eligible after a TSC assessment conducted by the DLA. This requirement does not apply to transfers under government-to-government agreements or similar programs when recipients are assessed by other means, for example, in accordance with Reference (f), or when transfers are made to other federal agencies pursuant to Reference (l) or similar authorities.

(2) The assessment must determine the eligibility and suitability of recipients to possess or control the further disposition of DoD USML or CCL personal property and include inquiries to verify the destination and proposed use of transferred DoD USML or CCL personal property.

- b. Execute written agreements, signed by recipients of DoD USML and CCL personal property, to comply with the terms and conditions for the use of the property, including their responsibility to comply with U.S. export control laws and regulations. Examples of agreements are sales contracts, contract awards, Foreign Military Sales agreements, and end use certificates.

- c. Execute written agreements with other federal agencies receiving DoD USML or CCL personal property pursuant to Reference (l), that require the recipient to handle DoD personal property in compliance with this policy.

- d. Check for required export licenses or other authorizations prior to relinquishing custody of DoD USML or CCL personal property. This only applies when recipients have indicated an intention to export DoD personal property.

4. REQUIRED MEASURES FOR DoD COMPONENTS WHEN TRANSFERRING EAR99 ITEMS. Recipients of DoD EAR99 personal property must agree in writing to comply with U.S. export control laws and regulations. DoD Components should refer recipients in writing to the EAR, and provide them the guidance and information in subchapter C, parts 732, 746, and 736. Exports of these items may require licenses when destined to certain prohibited entities or destinations.

5. REQUIRED MEASURES FOR DoD COMPONENTS DURING SOLICITATION, CONTRACT AWARD, AND ADMINISTRATION ACTIVITIES

a. Review technical data during pre-solicitation, solicitation, and contract processes to ensure that it is appropriately marked in accordance with Reference (r), and that export-controlled data is released only to authorized parties in accordance with the EAR, the ITAR, Reference (k), and References (s), (t), and (f).

b. Convey appropriate instructions to DoD contractors and offerors to ensure proper handling and destruction of DoD USML and CCL personal property (which includes equipment, materials, technical data, technology, and software) during pre-solicitation, solicitation, and contract award and administration activities.

c. Appropriately investigate potential offerors and awardees to ensure they are authorized recipients of DoD USML technical data and CCL technology in accordance with the ITAR, the EAR, Reference (k), and Reference (w).

d. Incorporate appropriate terms and conditions into DoD contracts to ensure that DoD contractors handle DoD export-controlled personal property in their custody, consistent with this instruction and in accordance with subparts 245.604-3, 225.7901, and 204.73 of the Defense Federal Acquisition Regulation Supplement (DFARS) (Reference (y)). The contracting officer should review the related DFARS Procedures, Guidance, and Information (Reference (z)), and include in applicable contracts and solicitations, DFARS clauses 252.225-7048 and 252.204-7012.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

AECA	Arms Export Control Act
ASD(L&MR)	Assistant Secretary of Defense for Logistics and Materiel Readiness
CCL	Commerce Control List
CFR	Code of Federal Regulations
DDTC	Directorate of Defense Trade Controls
DEMIL	demilitarization
DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
DHS	Department of Homeland Security
DOC	Department of Commerce
DoDD	DoD Directive
DoDI	DoD Instruction
DoDM	DoD Manual
DOS	Department of State
DSCA	Defense Security Cooperation Agency
DTSA	Defense Technology Security Administration
EAR	Export Administration Regulations
ITAR	International Traffic in Arms Regulations
TSC	trade security controls
U.S.C.	United States Code
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics
USD(P)	Under Secretary of Defense for Policy
USML	United States Munitions List
USTD	United States Department of the Treasury

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this instruction.

CCL. Defined in part 772 of the EAR. The CCL is at supplement No. 1 to part 774 of the EAR.

CCL technology and software. Defined in part 772 of the EAR.

defense article. Defined in subpart 120.6 of the ITAR.

defense service. Defined in subpart 120.9 of the ITAR.

DEMIL. Defined in Reference (d).

DEMIL code. Defined in Reference (d).

disposition. The process of reutilizing, donating, selling, ultimately disposing, or otherwise transferring DoD personal property.

DoD export-controlled personal property. DoD personal property that is controlled for export on the ITAR or the EAR. These items (including articles, items, technical data, technology, and software) are identified on the USML, CCL, or are subject to the EAR, e.g., “EAR99”.

DoD personal property. All DoD property (including technical data, technology, and software) except real property (land, improvements, buildings, etc.) and government records. DoD excess, surplus, and foreign excess personal property are a subset of DoD personal property defined in Reference (e).

DoD TSC. DoD policy and measures to implement TSC.

DoD USML or CCL personal property. DoD personal property that is listed either on the USML (including equipment, materials, technical data (which includes software), and defense services subject to the ITAR), or listed on the CCL (including equipment, materials, technology, and software, and controlled pursuant to the EAR). This does not include EAR99 items.

EAR99. Defined in subpart 774.1 of the EAR.

end use certificate. A statement by a prospective purchaser or transferee indicating the intended destination and disposition of DoD USML and CCL personal property to be purchased or transferred and acknowledging U.S. export license requirements and DoD TSCs.

export. Defined in subpart 120.17 of the ITAR, for ITAR-controlled items, and in subpart 772.1 of the EAR, for EAR-controlled items.

foreign excess personal property. Defined in Reference (e).

foreign person. Defined in subpart 120.16 of the ITAR.

ineligible transferees. Individuals, entities, or countries:

Excluded from federal programs by the General Services Administration as identified in the System for Award Management at <https://www.sam.gov/portal/public/SAM/>.

Subject to denial, debarment, or other sanctions pursuant to export control and related laws, regulations, or orders administered by the DOS, DOC, DHS, or USTD. The DOS, DOC, DHS, and USTD name these entities, individuals, and countries in the Federal Register and at the following websites:

DOS DDTC Debarred Parties Website at http://www.pmddtc.state.gov/compliance/debar_intro.html; DOS DDTC Embargoed Countries Website http://www.pmddtc.state.gov/embargoed_countries/index.html

DOC Denied Persons List Website at <http://www.bis.doc.gov/dpl/thedeniallist.asp> and DOC Unverified List Website at http://www.bis.doc.gov/enforcement/unverifiedlist/unverified_parties.html

USTD Specially Designated Nationals List Website at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx> which includes designated narcotics traffickers and designated terrorists, USTD Sanctions Program Website at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>

Supplementary information on additional lists that should be consulted to identify ineligible transferees can be found at the DoD DEMIL and Trade Security Controls Program Website.

mutilation. Defined in Volume 1 of Reference (d).

scrap. Recyclable, waste, and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit, and function have been destroyed. Items classified as scrap can be processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable USML or CCL items, components, and parts are not scrap. In rare instances, even though there are no recognizable parts, items, or components, certain types of scrap materials may be listed on the USML or CCL (generally specific alloys). Further guidance is at References (e), (j), and section 102-36 of Reference (l).

technology. Defined in Reference (f).

transfer. The sale, lease, loan, grant, exchange, trade, barter, release, or donation from the DoD to another person or entity outside of DoD control. Transfers can include, but are not limited to: military sales, surplus property sales, foreign excess property sales or donations, research collaboration, exchanges, consulting arrangements, co-development and co-production arrangements, exhibits, meetings and symposia, technical missions, employment, dissemination of patent information, release of technical reports and technical data, illicit acquisition of

technology or articles, and access through ownership or substantial interest in a business or other organization.

TSC. The controls on export or other transfers, DEMIL, or mutilation of DoD personal property established by the EAR, ITAR, AECA, section 2301- 2349bb of Reference (g), References (i), (k), part 101-42.1102 of Reference (l), and any similar controls established by the DHS.

TSC assessment. A pre-award assessment made by DoD, usually by DLA, verifying that the destination, end-user, and end-use of controlled DoD personal property conform to U.S. export control requirements.

TSC measures. Measures designed to preclude the improper or unauthorized transfer of DoD export-controlled personal property.

USML technical data. Defined in subpart 120.10 of the ITAR.

U.S. person. Defined in subpart 120.15 of the ITAR.

United States. Defined in subpart 120.13 of the ITAR.