



Department of Defense **INSTRUCTION**

NUMBER 2040.02

March 27, 2014

Incorporating Change 1, July 31, 2017

USD(P)

SUBJECT: International Transfers of Technology, Articles, and Services

References: See Enclosure 1

1. **PURPOSE.** In accordance with the authority in DoD Directive 5111.11 (Reference (a)) and the Deputy Secretary of Defense Memorandum (Reference (b)), this instruction:

a. Reissues DoD Instruction (DoDI) 2040.02 (Reference (c)).

b. Establishes DoD policy, assigns responsibilities, and prescribes procedures for the international transfer of dual-use and defense-related technology, articles, and services.

c. Directs the use of a DoD automated export license system.

2. **APPLICABILITY.** This instruction:

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

b. Applies to all transfer mechanisms and will be implemented through such processes as export licensing; security cooperation (including foreign military sales (FMS)); transfers of DoD personal property to parties outside of DoD control; and any DoD research, development, and acquisition (RDA) activities, including international agreements.

c. Does not affect policies, procedures, and responsibilities contained in National Disclosure Policy No. 1 (Reference (d)) and DoD Directive 5230.11 (Reference (e)) concerning disclosures of classified military information.

3. POLICY. It is DoD policy that:

a. Dual-use and defense-related technology will be treated as a valuable national security resource, to be protected and transferred only in accordance with export control laws and regulations, and national security and foreign policy objectives.

(1) In applying export control and technology security policies, emphasis will be given to preserving the U.S. military's technological superiority, establishing and maintaining interoperability with allies and coalition partners, and managing direct and indirect impacts on the defense industrial base in accordance with DoDI 2010.06 (Reference (f)).

(2) Consistent with this instruction, and in recognition of the importance of international trade and scientific and technological cooperation, DoD must apply export control and other technology security policies and procedures in a way that takes into account support of the defense industrial base while maintaining U.S. nonproliferation imperatives.

b. In determining DoD interests in technology and the means by which those interests are protected, DoD will consider such factors as the impact on the U.S. defense industrial base to support defense technologies, scientific and technological acceleration of change, as well as significant means in which scientific research and technological development are implemented in production.

c. DoD will use available resources to achieve DoD and U.S. Government goals and objectives in transfers of technology, articles, and services, while recognizing that constant and rapid changes in technology pose difficult challenges in assessments, formulation of policy options, and implementation of policies.

d. This instruction does not alter or supersede requirements to adhere to:

(1) Chapter 39 of Title 22, United States Code, also known as "The Arms and Export Control Act" (Reference (g)).

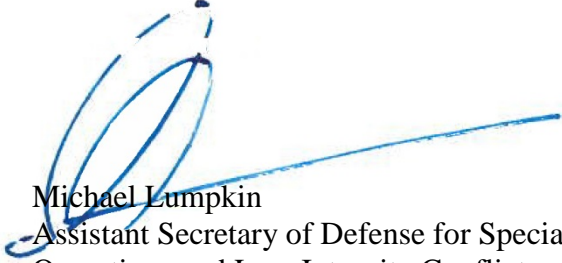
(2) Parts 120 through 130 of Title 22, Code of Federal Regulations, also known and referred to in this instruction as the "International Traffic in Arms Regulations (ITAR)" (Reference (h)).

(3) Parts 730 through 774 of Title 15, Code of Federal Regulations, also known and referred to in this instruction as the "Export Administration Regulations (EAR)" (Reference (i)).

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosures 3 and 4.

6. RELEASABILITY. **Cleared for public release**. This instruction is available on the Directives Division Website at <http://www.esd.whs.mil/DD>.
7. SUMMARY OF CHANGE 1. The changes to this issuance are administrative and update organizational titles and references for accuracy.
8. EFFECTIVE DATE. This instruction is effective March 27, 2014.



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Enclosures

1. References
2. Responsibilities
3. Procedures
4. Release of Controlled Technology or Technical Data to Foreign Persons

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5111.1, "Under Secretary of Defense for Policy (USD(P)),
December 8, 1999
- (b) Deputy Secretary of Defense Memorandum, "Delegations of Authority," November 30,
2006
- (c) DoD Instruction 2040.02, "International Transfers of Technology, Articles, and Services,"
July 10, 2008 (hereby cancelled)
- (d) National Disclosure Policy No. 1, "National Policy and Procedures for the Disclosure of
Classified Military Information to Foreign Governments and International Organizations,"
October 1, 1988¹
- (e) DoD Directive 5230.11, "Disclosure of Classified Military Information to Foreign
Governments and International Organizations," June 16, 1992
- (f) DoD Instruction 2010.06, "Materiel Interoperability and Standardization with Allies and
Coalition Partners," July 29, 2009, as amended
- (g) Title 22, United States Code
- (h) Title 22, Code of Federal Regulations
- (i) Title 15, Code of Federal Regulations
- (k) DoD Directive 5530.3, "International Agreements," June 11, 1987, as amended
- (l) Deputy Secretary of Defense Memorandum, "Implementation of Section 905 of the
National Defense Authorization Act (NDAA) for FY-2010 and Related Actions,"
March 9, 2010
- (m) Defense Security Cooperation Agency Manual 5105.38-M, "Security Assistance
Management Manual," current edition
- (n) DoD Directive 5134.01, "Under Secretary of Defense for Acquisition, Technology, and
Logistics (USD(AT&L)),
December 9, 2005, as amended
- (o) DoD Instruction 5000.02, "Operation of the Defense Acquisition System,"
January 7, 2015, as amended
- (p) DoD Instruction 5200.39, "Critical Program Information (CPI) Identification and
Protection Within Research, Development, Test, and Evaluation (RDT&E)," May 28,
2015, as amended
- (q) DoD Instruction 5230.24, "Distribution Statements on Technical Documents," August 23,
2012, as amended
- (r) DoD Instruction 2000.25, "DoD Procedures for Reviewing and Monitoring Transactions
Filed with the Committee on Foreign Investment in the United States (CFIUS)," August 5,
2010, as amended
- (s) National Security Directive No. 42, "National Policy for the Security of National Security
Telecommunications and Information Systems," July 5, 1990²
- (t) Committee on National Security Systems Policy No. 8, "Policy Governing the Release and
Transfer of U.S. Government Cryptologic National Security Systems Technical Security

¹ Provided to designated disclosure authorities on a need-to-know basis from the Office of the Director of International Security Programs, Office of the Under Secretary of Defense for Policy.

² Classified document; responsibility of National Security Council

Material, Information, and Techniques to Foreign Governments and International Organizations,” August 2012³

- (u) DoD Directive 5105.60, “National Geospatial-Intelligence Agency,” July 29, 2009
- (v) Director, Defense Security Cooperation Agency Memorandum, “Advance Coordination for Defense Articles and Services Requiring Data from the National Geospatial-Intelligence Agency (DSCA Policy 06-43) [SAMM E-Change 64],” October 5, 2006
- (w) DoD Directive 5106.01, “Inspector General of the Department of Defense (IG DoD),” April 20, 2012, as amended
- (x) DoD Instruction O-5240.24, “Counterintelligence (CI) Activities Supporting Research, Development, and Acquisition (RDA),” June 8, 2011, as amended
- (y) Section 1324b(a)(3) of Title 8, United States Code
- (z) DoD Directive 5230.25, “Withholding of Unclassified Technical Data From Public Disclosure,” November 6, 1984, as amended
- (aa) DoD Manual 5200.01, Volume 1, “DoD Information Security Program: Overview, Classification, and Declassification,” February 24, 2012, as amended
- (ab) DoD Directive 5230.20, “Visits and Assignments of Foreign Nationals,” June 22, 2005
- (ac) Defense Federal Acquisition Regulation Supplement, current edition⁴

³ For Official Use Only; responsibility of Committee on National Security Systems Secretariat, National Security Agency

⁴ Copies may be obtained from http://www.acq.osd.mil/dpap/dars/change_notices.html

ENCLOSURE 2
RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR POLICY (USD(P)). The USD(P):

a. Provides policy oversight for all DoD activities and efforts related to international technology transfer in accordance with Reference (a) and DoD Directive 5530.3 (Reference (k)).

b. Develops, coordinates, and provides policy direction and overall management for DoD technology security programs and policy on international technology transfer, including:

(1) Dual-use and munitions export licensing and other export controls.

(2) International cooperation in technology security matters.

(3) Support for enforcement and intelligence activities.

c. Considers and establishes, as appropriate, additional policies and procedures to protect technology from use and exploitation by adversaries, potential adversaries, or countries of concern.

d. Provides and maintains automated processes and technologically advanced systems for export license review, including electronic data transfer to and from other U.S. Government departments and agencies, as requirements and funding permit.

2. USD(P) CHIEF OF STAFF. Under the authority, direction, and control of the USD(P), the USD(P) Chief of Staff:

a. Monitors compliance with this instruction through the Director, Defense Technology Security Administration (DTSA).

b. Is the DoD representative to the Advisory Committee on Export Policy.

3. DIRECTOR, DTSA. Under the authority, direction, and control of the USD(P) and in addition to the responsibilities in section 11 of this enclosure, the Director, DTSA:

a. Prepares technology transfer control and enforcement policy guidance and coordinates overall implementation of DoD technology security policy.

b. Represents DoD in interagency, national, and international forums concerning policy for technology transfer, export control, and enforcement matters.

c. Serves, or designates a representative to serve, as the primary DoD point of contact for technology security policy matters with DoD Components, other federal agencies, interagency groups, industry, foreign governments, multilateral regimes, and intergovernmental organizations,

d. Acts, except as otherwise delegated, as the DoD receiving point for dual-use and munitions export license applications requiring DoD review.

e. Conducts national security policy reviews on export license applications and foreign requests for technology, articles, or services.

f. Prepares the coordinated DoD national security recommendation for those dual-use and munitions export license applications reviewed by DoD.

g. Issues to the Departments of State and Commerce the coordinated DoD national security recommendations on munitions and dual-use export licenses.

h. Issues to the Department of State the coordinated DoD recommendations on commodity jurisdiction applications.

i. Issues to the Department of State the coordinated DoD recommendations on voluntary or directed export disclosures.

j. As appropriate, participates in the development, review, and negotiation of international agreements to address technology transfer and security concerns in accordance with this instruction.

k. Assesses, with the support of the Director, Defense Intelligence Agency (DIA), the Director, Defense Security Cooperation Agency (DSCA), the National Disclosure Policy Committee, and other applicable U.S. Government departments and agencies, recipient nations' dependability and reliability in:

(1) Maintaining control over controlled technology, articles, and services that originate in the United States.

(2) Securing prior U.S. Government approval for further transfers.

l. Supports U.S. intelligence, counterintelligence (CI), and enforcement authorities, as appropriate, in their efforts to halt or control the illicit flow of dual-use and defense-related technology, articles, and services to adversaries, potential adversaries, and countries of concern.

m. Provides to the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) technology reviews and Office of the USD(P) positions on cases of the Committee on Foreign Investment in the United States (CFIUS).

n. Collaborates with DSCA in developing consistent and harmonized approaches for the

provision of technology, articles, and services to foreign governments, whether accomplished through FMS or direct commercial sales.

o. Provides technical and policy analyses and recommendations on requests for exceptions to Reference (d) and Reference (k).

p. Develops DoD policy on DoD use of ITAR exemptions in accordance with the processes detailed in the ITAR.

q. Assists in the designation of articles and services in accordance with the ITAR.

r. Maintains a comprehensive export license database for licenses and other export authorizations, commodity jurisdiction determinations, and export disclosure cases involving controlled defense and dual-use technology, articles, items, and services.

s. Manages and provides guidance to the Technology Security and Foreign Disclosure Office (TSFDO). The TSFDO serves as the executive secretariat for the Arms Transfer and Technology Release Senior Steering Group (ATTR SSG), and reviews, processes, and tracks priority technology security and foreign disclosure (TSFD) requests that impact TSFD release requests in accordance with Deputy Secretary of Defense Memorandum (Reference (l)).

t. Serves as the DoD office of primary responsibility for all issues related to the Arms Trade Treaty.

4. DIRECTOR, DSCA. Under the authority, direction, and control of the USD(P) and in addition to the responsibilities in section 11 of this enclosure, the Director, DSCA:

a. Advises the Director, DTSA, of proposed transfers of significant technologies and weapons systems, as requested or in accordance with existing policies. Collaborates with the Director, DTSA, on whether significant items should be sold exclusively through FMS, or whether specific sales must be made exclusively through FMS. Documents the process for DoD identification of FMS-only items in DSCA Manual 5105.38-M (Reference (m)).

b. Provides the Director, DTSA, when requested, with recommendations on export license applications that may have implications for FMS.

c. Supports the Director, DTSA, when requested, with an assessment of recipient nations' dependability and reliability in maintaining control over U.S.-controlled technology, articles, and services, and in securing U.S. Government approval for further transfer.

5. USD(AT&L). The USD(AT&L):

a. Manages overall DoD acquisition efforts related to technology, articles, and services, including armaments cooperation programs in accordance with Reference (k) and DoD Directive

5134.01 (Reference (n)).

b. Oversees implementation of DoD technology transfer policy for all RDA matters in accordance with this instruction and DoDI 5000.02 (Reference (o)). Ensures program protection plans include provisions for the protection of critical technology information and critical program information when transferred in an international cooperative venture in accordance with Reference (o) and DoDI 5200.39 (Reference (p)).

c. Advises the USD(P) and, when requested by the USD(P), the Under Secretary of State for Arms Control and International Security and the Under Secretary of Commerce for Business, Industry, and Security, on technological aspects of technology transfer, security cooperation, export controls, and technology security in accordance with Reference (d) and DoDI 5230.24 (Reference (q)).

d. As ATTR SSG co-chair with the USD(P), provides strategic guidance to the TSFDO.

e. Is the DoD point of contact with DoD Components, other federal departments and agencies, industry, academia, and appropriate international forums for defense RDA matters.

f. Manages the overall DoD process for USD(AT&L)-related international agreements in accordance with References (k) and (n).

g. Supports the U.S. intelligence, CI, and enforcement communities in their efforts to halt or control the illicit flow of controlled dual-use and defense-related technology, technical data, articles, and services to adversaries, potential adversaries, and countries of concern.

h. Manages and coordinates DoD positions on CFIUS cases while considering their impact on the defense industrial base.

6. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE (USD(I)). The USD(I):

a. Advises and assists the USD(P) and USD(AT&L) with issues, as appropriate, concerning transfers of technology, articles, or services, and programs dealing with such transfers, including those that may significantly affect defense intelligence, CI, and security programs.

b. Develops, coordinates, and oversees the implementation of DoD policy, programs, and guidance for security related to transfers of technology, articles, and services, as well as the security of defense research and technology that may be transferred.

7. DIRECTOR, DIA. Under the authority, direction, and control of the USD(I) and in addition to the responsibilities in section 11 of this enclosure, the Director, DIA:

a. Formulates DoD-coordinated intelligence assessments concerning types and numbers of illegal transfers of dual-use and defense-related technology, articles, services, and associated

transfer mechanisms.

- b. Designates a point of contact to represent DIA on dual-use and defense-related technology, articles, and services transfer matters.
- c. Analyzes and assesses intelligence risks to U.S. national security on transfer cases of dual-use and defense-related technology, articles, and services, including those related to foreign investment in or acquisition of U.S. and U.S.-based companies.
- d. Assesses foreign availability of dual-use and defense-related technology, articles, and services proposed for transfer.
- e. Conducts end-user checks on the declared ultimate consignee on dual-use and defense-related technology, articles, and services transfer cases.
- f. Provides intelligence expertise in U.S. Government and international forums on dual-use and defense-related technology, articles, and services transfer matters.
- g. Provides intelligence concerning the total effect of transfers of dual-use and defense-related technology, articles, and services on U.S. national security.
- h. Assists in identifying and assessing critical technologies.
- i. Coordinates an assessment of risk of diversion of critical technologies in CFIUS cases, in accordance with DoDI 2000.25 (Reference (r)).

8. DIRECTOR, NATIONAL SECURITY AGENCY/CHIEF, CENTRAL SECURITY SERVICE (DIRNSA/CHCSS). Under the authority, direction, and control of the USD(I) and in addition to the responsibilities in section 11 of this enclosure, the DIRNSA/CHCSS:

- a. In his or her capacity as the National Manager for National Security Telecommunications and Information Systems in accordance with National Security Directive No. 42 (Reference (s)), coordinates all releases of information systems security/information assurance (INFOSEC/IA) products or information in accordance with Committee on National Security Systems Policy No. 8 (Reference (t)).
- b. Provides expertise to interagency, national, and international forums on dual-use and defense-related technology, articles, and services transfer matters.

9. DIRECTOR, NATIONAL GEOSPATIAL INTELLIGENCE AGENCY (NGA). Under the authority, direction, and control of the USD(I) and in addition to the responsibilities in section 11 of this enclosure, the Director, NGA:

a. In his or her capacity as the functional manager for the National Systems for Geospatial Intelligence (NSG) and in accordance with DoD Directive 5105.60 (Reference (u)), executes foreign disclosure and release for data requirements to support the transfer of defense articles and services requiring geospatial intelligence (GEOINT).

b. Provides expertise to interagency, national, and international forums on GEOINT and GEOINT-related technology, articles, and services transfer matters.

c. Designates a point of contact to represent NGA on dual-use and defense-related technology, articles, and services transfer matters.

d. Provides advice on the sharing of GEOINT in support of the defense-related technology, articles, and services transfer matters in accordance with Director, DSCA Memorandum (Reference (v)).

e. Provides expertise to interagency, national, and international forums on dual-use and defense-related technology, articles, and services transfer matters with emphasis on NSG equities.

10. IG DoD. In addition to the responsibilities in section 11 of this enclosure, the IG DoD:

a. In accordance with DoD Directive 5106.01 (Reference (w)) and Reference (i), provides oversight of Component Inspector General audits, evaluations, and inspections for compliance with this instruction and related DoD issuances.

b. Develops a uniform system of periodic inspections, using the existing Military Department and agency inspection process, for research, development, test, and evaluation site compliance with DoD issuances concerning technology protection.

11. DoD COMPONENT HEADS. The DoD Component heads:

a. Designate a point of contact in their respective Components for dual-use and defense-related technology, articles, and services transfer matters.

b. Provide Director, DTSA, when requested, coordinated positions on:

(1) Munitions and dual-use export license applications that may have implications for the Component.

(2) Commodity jurisdiction determinations and voluntary or directed disclosures.

c. Assist in identifying and assessing critical technology and in supporting DoD participation in export control list reviews.

d. Ensure programs consider early risk-based features to address protection of critical technologies. Ensure program protection plans include provisions for the protection of critical technology and critical program information when transferred in an international cooperative venture in accordance with References (o) and (p).

e. Assign personnel and resources to process CFIUS cases.

f. Consistent with this instruction and Reference (k), coordinate the development and negotiation of international agreements pertaining to transfers of dual-use and defense-related technology, articles, and services.

g. Provide recommendations to DTSA and DSCA on significant items that should be sold exclusively through FMS.

h. For DoD Components authorized to engage in RDA, coordinate the conduct of security and CI activities supporting international transfers and exports of defense-related technology with the supporting Defense CI Component in accordance with DoDI O-5240.24 (Reference (x)) and Reference (p).

i. Report to the appropriate DoD criminal investigative organization suspected instances of fraud, abuse, bribery, or other violations of law related to:

(1) Reference (g) and implementing regulations;

(2) Other laws governing exports or illicit diversion of U.S. export-controlled technology, articles, or services; or

(3) Other violations of law or regulations pertaining to DoD programs and operations for investigation in accordance with Reference (i).

12. CHAIRMAN OF THE JOINT CHIEFS OF STAFF (CJCS). In addition to the responsibilities in section 11 of this enclosure, the CJCS:

a. Conducts and provides regional, operational, and military mission impact assessments on the transfer of dual-use and defense-related technology, articles, and services, as requested.

b. Provides operational expertise and military judgments in interagency, national, and international forums on dual-use and defense-related technology, articles, and services transfer matters.

c. Provides recommendations on CFIUS cases to the USD(AT&L).

d. Provides to the Director, DTSA, when requested, coordinated positions on munitions and dual-use export license applications that may impact CCMD interests, e.g., regional stability, building partner capacity, and advanced technologies supporting special operations.

13. COMBATANT COMMANDERS. In addition to the responsibilities of section 11 of this enclosure and through the CJCS, the Combatant Commanders:

a. Conduct and provide regional, operational, and military mission impact assessments on the transfer of dual-use and defense-related technology, articles, and services as requested.

b. Provide operational expertise and military judgments in interagency, national, and international forums on dual-use and defense-related technology, articles, and services transfer matters.

c. Provide to the Director, DTSA when requested, coordinated positions on munitions and dual-use export license applications that may impact CCMD interests, e.g., regional stability, building partnership capacity, and advanced technologies supporting special operations.

ENCLOSURE 3

PROCEDURES

1. INTERNATIONAL TRANSFERS OF TECHNOLOGY, ARTICLES, AND SERVICES.

The DoD Components, within their respective authorities, must:

a. Consistent with U.S. foreign policy and national security objectives, manage or participate in management of transfers of technology, articles (including components), and services. These objectives address, but are not limited to, maintaining the military's technological advantage, interoperability with allies and partners, and building partner capacity.

b. Consider the effects of transfers and denials of transfers of technology, articles, and services on maintaining the United States' relative technological advantage, enhancing the interoperability of allied and coalition forces, and the impact on the U.S. defense industrial base to support defense technologies.

c. Control or participate in controlling, as appropriate, export of technology, articles, and services that contribute to the military potential of any country or countries, groups, or individuals that could prove detrimental to U.S. national security or critical interests.

d. In response to the needs of U.S. foreign policy and national security, facilitate and expedite the sharing of dual-use and defense-related technology with allies, coalition partners, and other friendly nations able and willing to protect such technology.

e. Facilitate and foster cooperation with allies, coalition partners, and friendly nations in fundamental research, technological development, and defense exploitation of commercial technologies.

f. Give special attention to rapidly emerging, critical technologies and protect against the possibility that cutting-edge military technology might become available to adversaries, potential adversaries, or countries of concern before adequate safeguards can be implemented.

g. Seek to strengthen other countries' technology security procedures for protecting sensitive, dual-use, defense, and defense-related technology by assisting them to develop the institutional capabilities to do so.

h. Process export license requests through U.S. Export Systems, DoD's single automated export licensing system, and other technologically advanced means to assist decision makers and analysts in reviewing, distributing, and coordinating on export license cases and relevant materials. Export data should be exchanged among U.S. Government agencies through protected electronic means.

i. In accordance with Reference (1) participate in the ATTR SSG when appropriate. Assist the ATTR SSG in the development and implementation of ATTR SSG initiatives and

development of TSFD recommendations that are provided to the Secretary and Deputy Secretary of Defense for decision.

2. INTERNATIONAL CONTROLS ON TRANSFERS OF TECHNOLOGY, ARTICLES, AND SERVICES

a. DoD Components must seek to strengthen and increase the efficiency of international controls on transfers of sensitive technology, articles, and services through multilateral and bilateral modes of cooperation. Multilateral cooperation may be accomplished through international organizations, multilateral regimes, groups, committees, or *ad hoc* arrangements, including, but not limited to:

(1) The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies for control of transfers of conventional arms and dual-use articles and technologies.

(2) The Missile Technology Control Regime, for control of missile-related technologies and components, and certain unmanned air vehicles.

(3) The Nuclear Suppliers Group, for control of nuclear-related technology and materials.

(4) The Australia Group, for control of chemical weapons; chemical weapons precursors; biological agents; and chemical equipment, technology, components, and materials that can be used in the manufacture of chemical, toxin, or biological weapons.

(5) The United Nations, whose bodies may impose and administer sanctions or controls, and its affiliated organizations and agencies, such as the International Atomic Energy Agency.

(6) The Multinational Industrial Security Working Group, for the standardization of security procedures and export controls among various partner nations.

b. The DoD Components concerned with strategic trade and dual-use or munitions policy must seek to rationalize and strengthen international controls on sensitive technology, articles, and services by:

(1) Encouraging effective enforcement of international controls.

(2) Developing thresholds for items on international control lists beyond which technology and articles cannot be transferred to countries of concern.

(3) Promoting other measures that strengthen international organizations and regimes in furtherance of U.S. national security, allied and coalition security, and technology security objectives.

3. RELEASE OF INFOSEC/IA PRODUCTS. In accordance with Reference (s), any release of INFOSEC/IA products or information must be specifically authorized by the Committee on National Security Systems in accordance with the conditions of and based on the requirements stated in Reference (t) and not on the following justifications:

- a. To complete a package for FMS; or
- b. An initiative to promote international competition for a system's procurement.

ENCLOSURE 4

RELEASE OF CONTROLLED TECHNOLOGY OR TECHNICAL DATA
TO FOREIGN PERSONS

1. The ITAR and the EAR establish policies and procedures.
 - a. Any release or disclosure of controlled technology or technical data to any foreign person, whether it occurs in the United States or abroad, is deemed to be an export, requiring either an export license or an authorization for disclosure.
 - b. Controlled technology or technical data is considered to be released or disclosed when information is transferred to foreign persons by means of:
 - (1) A visual inspection.
 - (2) An oral exchange.
 - (3) An application of the technology or data.
 - (4) The use of any other medium of communication, including but not limited to, electronic, magnetic, or laser technology.
2. These procedures do not apply to lawfully admitted, permanent residents or persons protected by section 1324b(a)(3) of Title 8, United States Code (Reference (y)). For the purposes of the ITAR and the EAR, they are considered applicable to U.S. persons.
3. These procedures apply to all situations involving the release or disclosure of controlled technology or technical data, including but not limited to:
 - a. Foreign persons visiting or holding positions at U.S. Government or private research institutions or laboratories.
 - b. Foreign persons visiting or working at U.S. military installations.
 - c. Foreign persons visiting or working at U.S. manufacturing plants.
 - d. Foreign persons visiting or working with U.S. DoD contractors.
 - e. Foreign persons who are students in U.S. universities that receive DoD contracts or grants.
 - f. Shipments of controlled items from U.S. facilities to facilities abroad, whether U.S. or foreign-owned.

g. Shipments of controlled items to foreign persons or foreign-owned facilities, whether in the United States or abroad.

4. To ensure compliance with References (g), (h), and (i), DoD Components will:

a. In coordination with DoD intelligence, CI, security, and foreign disclosure personnel:

(1) Identify and mark unclassified and classified export-controlled information and technology, as appropriate, to restrict access and use by unauthorized foreign nationals in accordance with References (d), (e), (p), (q), (s), and (t), and DoD Directive 5230.25 (Reference (z)).

(2) Identify threats by foreign countries that are targeting specific unclassified or classified export-controlled information and technologies in accordance with References (q) and (w).

(3) Identify vulnerabilities and countermeasures to protect such unclassified or classified export-controlled information and technology in accordance with References (p), (q), and (w), and Volume 1 of DoD Manual 5200.01 (Reference (aa)).

b. Consistent with the requirements in References (d), (e), (q), (r), (u), (i), (h), and (aa), and DoD Directive 5230.20 (Reference (ab)), ensure that appropriate internal controls inside DoD facilities are established and maintained to prevent unauthorized access by foreign nationals to unclassified and classified export-controlled information and technologies.

c. Implement internal controls typically used by DoD Components to protect unclassified or classified export controlled information and technology, including:

(1) Unique badging requirements for foreign nationals.

(2) Separate work areas for export-controlled information and technology.

(3) Periodic foreign disclosure and export control training.

(4) Periodic self-assessments of the effectiveness of such measures.

d. Ensure that all appropriate solicitations and contracts include a clause stating that the contractor must comply with all applicable export control laws and regulations in accordance with the Defense Federal Acquisition Regulation Supplement (Reference (ac)).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ATTR SSG	Arms Transfer and Technology Release Senior Steering Group
CCMD	Combatant Command
CFIUS	Committee on Foreign Investment in the United States
CI	counterintelligence
CJCS	Chairman of the Joint Chief of Staff
DIA	Defense Intelligence Agency
DIRNSA/CHCSS	Director, National Security Agency/Chief, Central Security Service
DoDI	DoD Instruction
DSCA	Defense Security Cooperation Agency
DTSA	Defense Technology Security Administration
EAR	Export Administration Regulations
FMS	foreign military sales
GEOINT	geospatial intelligence
IG DoD	Inspector General of the Department of Defense
INFOSEC/IA	information systems security/information assurance
ITAR	International Traffic in Arms Regulations
NGA	National Geospatial Intelligence Agency
NSG	National Systems for Geospatial Intelligence
RDA	research, development, and acquisition
TSFD	technology security and foreign disclosure
TSFDO	Technology Security and Foreign Disclosure Office
USD(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics
USD(I)	Under Secretary of Defense for Intelligence
USD(P)	Under Secretary of Defense for Policy

PART II. DEFINITIONS

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

articles. All commodities and products considered as “munitions” and governed by the ITAR or EAR, as well as all “dual-use” commodities and products governed under the EAR, e.g., materials, supplies, manufactured products, inspection and test equipment. Components, parts, accessories, and attachments are also included in this definition. The term, however, excludes controlled technology and technical data, “know-how,” and information in intangible form, such as that electronically transmitted.

controlled technology. Information, including software, necessary for the development, production, or use of a controlled article. Specific technology controls are identified in each export control classification of the EAR and govern export control requirements.

critical program information. Elements or components of an RDA program that, if compromised, could cause significant degradation in mission effectiveness, shorten the expected combat-effective life of the system, reduce technological advantage, significantly alter program direction, or enable an adversary to defeat, counter, copy, or reverse engineer the technology or capability. This includes information about applications, capabilities, processes, and end-items, elements or components critical to a military system or network mission effectiveness, and technology that would reduce the U.S. technological advantage if it came under foreign control.

critical technology. Technology or technologies essential to the design, development, production, operation, application, or maintenance of an article or service that makes or could make a significant contribution to the military potential of any country, including the United States. This includes, but is not limited to, design and manufacturing know-how, technical data, software, keystone equipment, and inspection and test equipment.

defense-related technology. Defense articles controlled under the ITAR, and defense-related items controlled under the 600 series of the EAR.

DoD personal property. DoD possessions, including technical data and controlled technology, but not including real property (buildings or land). DoD excess, surplus, and foreign excess personal property are a subset of DoD personal property and are possessions not needed by any DoD activity, whether located inside or outside the United States.

dual-use. Technology and articles that can be used for either commercial or civilian purposes or for military, defense, or defense-related purposes.

foreign person. Includes foreign individuals, corporations, government agencies, or other foreign entities.

interoperability. The ability to operate in synergy in the execution of assigned tasks.

know-how. The learned ability for design, development, product, ion, application, operation, or use of technology and articles, as well as provision of services. The term encompasses processes, procedures, specifications, design data and criteria, and testing methods. For manufacturing, the term covers information that provides detailed processes and techniques needed to translate a detailed design into a finished article.

munitions. Includes arms, ammunition, and other implements of war. Any machinery, property, installation, commodity, tool, material, supply, or other item necessary for the manufacture, production, processing, repair, servicing, storage, construction, transportation, operation, or use of any article listed above. Includes technical data related to State Department munitions list items.

services. Any test, inspection, overhaul, repair, training, publication, technical or other assistance, or defense information used to furnish military assistance, including military education and training activities.

technical data. Information of any kind that can be used, or adapted for use, in the design, production, manufacture, assembly, repair, overhaul, processing, engineering, development, operation, maintenance, adapting, testing, or reconstruction of goods or munitions; or any technology that advances the state of the art, or establishes a new standard, in an area of significant military applicability in the United States. The data may be in tangible form, such as a model, prototype, blueprint, photograph, plan, instruction or an operating manual, or may be intangible, such as a technical service or oral, auditory, or visual descriptions. Technical data does not include information concerning general scientific, mathematics, or engineering principles commonly taught in schools, colleges, and universities or information in the public domain. Technical data also does not include basic marketing information on function, purpose, or general system description.

technology. The application of scientific and industrial information and know-how to design, produce, manufacture, use, adapt, reconstruct, or reverse-engineer goods. This includes information and data in all forms, including electronic form. The term does not include the goods themselves, nor does it include scientific information in the public domain.

transfer mechanisms. The means by which technology, articles, and services are or can be conveyed, including, but not limited to, sales, research collaboration, exchanges, consulting arrangements, co-development and co-production arrangements, exhibits, meetings and symposiums, technical missions, training, as well as personnel and information exchanges, employment, distribution 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.