

DFARS Procedures, Guidance, and Information

PGI 204—Administrative Matters

(Added July 21, 2008)

PGI 204.73—EXPORT-CONTROLLED ITEMS

PGI 204.7302 General.

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

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

(ii) Initial DoD acquisition workforce questions regarding the applicability of the EAR or the ITAR to specific procurements or items, or interpretation of DoD issuances regarding export controls, may be directed to the DTSA Policy Directorate, by phone at 703-325-3637 or by visiting the DTSA Policy Directorate web site at:
http://www.defenselink.mil/policy/sections/policy_offices/dtsa/index.html.

(2) *Regulations.* The Department of State and the Department of Commerce are the lead agencies responsible for regulations governing the export of commercial and defense articles:

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

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

(B) The United States Munitions List (USML) is part of the ITAR, in 22 CFR Part 121, and is available at the above web sites.

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

U.S. Department of State
Bureau of Political Military Affairs
Directorate of Defense Trade Controls

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Office of Defense Trade Controls Compliance
<http://www.pmddtc.state.gov/contactus.htm>.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the ITAR. If asked, the contracting officer should direct the contractor's attention to paragraph (c) of the clause at DFARS 252.204-7008 and may inform the contractor that the Department of State publishes guidance regarding ITAR compliance at <http://www.pmddtc.state.gov/compliance.htm>.

(ii) *The Export Administration Regulations (EAR)*, issued by the Department of Commerce, control the export of dual-use items, including commodities, software, and technology. Many items subject to the EAR are set forth by Export Control Classification Number on the Commerce Control List.

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

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

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

U.S. Department of Commerce
Bureau of Industry and Security
Office of Exporter Services (OExS)
OExS Hotline: 202-482-4811.

(D) Contracting officers should not answer any questions a contractor may ask regarding how to comply with the EAR. If asked, the contracting officer should direct the contractor's attention to paragraph (c) of the clause at DFARS 252.204-7008 and may inform the contractor that the Department of Commerce publishes guidance regarding EAR compliance at <http://www.bis.doc.gov/>.

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

(i) NSDD 189 establishes a national policy that, to the maximum extent possible, the products of fundamental research shall remain unrestricted. NSDD 189 provides that no restrictions may be placed upon the conduct or reporting of federally funded fundamental

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research that has not received national security classification, except as provided in applicable U.S. statutes. As a result, contracts confined to the performance of unclassified fundamental research generally do not involve any export-controlled items, information, or technology.

(ii) NSDD 189 does not take precedence over statutes. NSDD 189 does not exempt any research, whether basic, fundamental, or applied, from statutes that apply to export controls such as the Arms Export Control Act, the Export Administration Act of 1979, as amended, or the U.S. International Emergency Economic Powers Act, or the regulations that implement those statutes (the ITAR and the EAR). Thus, if export-controlled items, information, or technology is used to conduct research, the export control laws and regulations apply to the controlled items, information, or technology.

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

(4) *DoD Directive 2040.2, International Transfers of Technology, Goods, Services, and Munitions*. This DoD directive provides guidance to manage, control, and limit the transfer or export of technology, goods, services, and munitions consistent with U.S. foreign policy and national security objectives. DoD Directive 2040.2 is available at <http://www.dtic.mil/whs/directives/corres/html/204002.htm>.

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

- DoD Instruction 2015.4, Defense Research, Development, Test and Evaluation (RDT&E) Information Exchange Program (IEP).
- DoD Directive 5000.1, The Defense Acquisition System.
- DoD Instruction 5000.2, Operation of the Defense Acquisition System.
- DoD Directive 5105.72, Defense Technology Security Administration (DTSA).
- DoD Publication 5200.1-M, Acquisition Systems Protection Program.
- DoD Directive 5200.39, Security, Intelligence, and Counterintelligence Support to Acquisition Program Protection.
- DoD Publication 5220.22-M, National Industrial Security Program Operating Manual (NISPOM).

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- DoD Directive 5230.25, Withholding of Unclassified Technical Data From Public Disclosure.
- DoD Instruction 5230.27, Presentation of DoD-Related Scientific and Technical Papers at Meetings.
- Defense Acquisition Guidebook, available at <http://akss.dau.mil/dag/DoD5000.asp?view=document&doc=1>.
- Under Secretary of Defense (Intelligence) Memorandum, Subject: Policy and Procedures for Sanitization of Department of Defense (DoD) Classified or Controlled Unclassified Information Prior to Public Release, available [here](#).

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(b)(i) For certain procurements of supplies or services, the requiring activity will know that export-controlled items, including information or technology, will not be involved. In such cases, the requiring activity does not have to provide a notification to the contracting officer. A few examples of where this situation would exist include procurements of mowing services, painting services, and office supplies.

(ii) There may be instances where the requiring activity is not initially aware that the contractor will generate or need access to export-controlled items, including information or technology, during the performance of a contemplated contract, yet the requiring activity recognizes that the nature of the work is such that the situation could change during contract performance. For these procurements, the requiring activity must notify the contracting officer in writing that it is unable to determine that export-controlled items, including information or technology, will not be involved.