

6. Additional information may be obtained on the internet using the AFIS Uniform Resource Locator: <http://www.dtic.mil/defenselink/afis/>.

B. *Use of materials published by print media directorate.* With the exception of copyrighted matter, all materials published by PMD may be reproduced or adapted for use by DoD newspaper and magazine editors as appropriate. When PMD material is edited or revised, accuracy and conformance to DoD policy and accepted standards of good taste will be maintained. Due to the policy-oriented nature of *DEFENSE* magazine contents, particular care shall be taken to preserve the original context, tone, and meaning of any material adapted, revised, or edited from this publication.

C. *Eligible activities.* The following activities are eligible to receive the above listed PMD products:

1. All authorized DoD newspapers and magazines.
2. Headquarters of the DoD Components and their subordinate commands.
3. Proponent offices of DoD periodicals published by the DoD Components.
4. Armed Forces Radio and Television Service networks and outlets.
5. Isolated commands and detachments at which DoD newspapers are not readily available.

APPENDIX E TO PART 247—DoD COMMAND NEWSPAPER AND MAGAZINE REVIEW SYSTEM

A. *Purpose.* The purpose of the DoD command newspaper and magazine review system is to assist commanders in establishing and maintaining cost-effective internal communications essential to mission accomplishment. The system also enables internal information managers to assess the cost and effective use of resources devoted to command newspapers and to provide requested reports.

B. *Policy.* DoD newspapers and magazines shall be reviewed and reported biennially. The review process is not intended to replace day-to-day quality assurance procedures or established critique programs.

C. *Review criteria.* Each newspaper and magazine shall be evaluated on the basis of mission essentiality, communication effectiveness, cost-effectiveness, and compliance with applicable regulations.

D. *Reporting requirements.*

1. The DoD Components (less the Military Departments) shall forward, by January 31 of each even numbered year, the information indicated at attachment 1 to this appendix for each newspaper published to: Director, American Forces Information Service, ATTN: Print Media Plans and Policy, 601 North Fairfax Street, Alexandria, VA 22314-2007.

2. No later than April 15 of each even-numbered year, the Secretary (or designee) of each Military Department shall forward to the address above a report of the Military Department's review of newspapers and magazines. This report shall include summary data on total number of newspapers and magazines, along with a listing of the information indicated at attachment 1 to this appendix.

3. One information copy of each issue of all DoD newspapers and magazines shall be forwarded on publication date to the address in paragraph H.1. of this appendix.

4. Information copies of CE contracts shall be forwarded to the address in paragraph H.1. of this appendix, upon request.

5. Administrative Instructions shall be issued by the Director, AFIS, for the annual review and reporting of newspapers and magazines.

Attachment 1 to Appendix E to Part 247—Newspaper and Magazine Reporting Data

As required by section H. of this appendix, the following information shall be provided biennially regarding newspapers and magazines:

- A. Name of newspaper or magazine.
- B. Publishing command and mailing address.
- C. Printing arrangement:
 1. Government equipment.
 2. Government contract with commercial printer.
 3. CE contract with commercial publisher (provide name, mailing address, and phone number of commercial publisher).
- D. Frequency and number of issues per year.
- E. Number of copies printed and estimated readership.
- F. Paper size (metro, tabloid, or magazine format).

PART 250—WITHHOLDING OF UNCLASSIFIED TECHNICAL DATA FROM PUBLIC DISCLOSURE

- Sec.
- 250.1 Purpose.
 - 250.2 Applicability and scope.
 - 250.3 Definitions.
 - 250.4 Policy.
 - 250.5 Procedures.
 - 250.6 Responsibilities.
 - 250.7 Pertinent portions of Export Administration Regulations (EAR).
 - 250.8 Pertinent portions of International Traffic in Arms Regulations (ITAR).
 - 250.9 Notice to accompany the dissemination of export-controlled technical data.

AUTHORITY: Sec. 1217, Pub. L. 98-94, (10 U.S.C. 140c).

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SOURCE: 49 FR 48041, Dec. 10, 1984, unless otherwise noted.

§ 250.1 Purpose.

This part establishes policy, prescribes procedures, and assigns responsibilities for the dissemination and withholding of technical data.

§ 250.2 Applicability and scope.

(a) This part applies to:

(1) All unclassified technical data with military or space application in the possession of, or under the control of, a DoD Component which may not be exported lawfully without an approval, authorization, or license under E.O. 12470 or the Arms Export Control Act. However, the application of this part is limited only to such technical data that disclose critical technology with military or space application. The release of other technical data shall be accomplished in accordance with DoD Instruction 5200.21 and DoD 5400.7-R.

(2) The Office of the Secretary of Defense (OSD) and activities support administratively by OSD, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the Unified and Specified Commands (hereafter referred to collectively as "DoD Components").

(b) This part does not:

(1) Modify or supplant the regulations promulgated under E.O. 12470 or the Arms Export Control Act governing the export of technical data, that is, 15 CFR part 379 of the Export Administration Regulations (EAR) and 22 CFR part 125 of the International Traffic in Arms Regulations (ITAR).

(2) Introduce any additional controls on the dissemination of technical data by private enterprises or individuals beyond those specified by export control laws and regulations or in contracts or other mutual agreements, including certifications made pursuant to § 250.3(a). Accordingly, the mere fact that the Department of Defense may possess such data does not in itself provide a basis for control of such data pursuant to this part.

(3) Introduce any controls on the dissemination of scientific, educational, or other data that qualify for General License GTDA under 15 CFR 379.3 of the EAR (see § 250.7) or for general ex-

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emptions under 22 CFR 125.11 of the ITAR (see § 250.8).

(4) Alter the responsibilities of DoD Components to protect proprietary data of a private party in which the Department of Defense has "limited rights" or "restricted rights" (as defined in 32 CFR 9-201(c) and 9-601(j) of the DoD Acquisition Regulation, or which are authorized to be withheld from public disclosure under 5 U.S.C. 552(b)(4).

(5) Pertain to, or affect, the release of technical data by DoD Components to foreign governments, international organizations, or their respective representatives or contractors, pursuant to official agreements or formal arrangements with the U.S. Government, or pursuant to U.S. Government-licensed transactions involving such entities or individuals. In the absence of such U.S. Government-sanctioned relationships, however, this part does apply.

(6) Apply to classified technical data. After declassification, however, dissemination of such data that are within the scope of § 250.2(a)(1) is governed by this part.

§ 250.3 Definitions.

(a) *Qualified U.S. contractor.*¹ A private individual or enterprise (hereinafter described as a "U.S. contractor") that, in accordance with procedures established by the Under Secretary of Defense for Research and Engineering, certifies, as a condition of obtaining export-controlled technical data subject to this Directive from the Department of Defense, that:

(1) The individual who will act as recipient of the export-controlled technical data on behalf of the U.S. contractor is a U.S. citizen or a person admitted lawfully into the United States for permanent residence and is located in the United States.

¹Canadian contractors may be qualified in accordance with this part for technical data that do not require a license for export to Canada under 22 CFR 125.12 of the ITAR and 15 CFR 379.4(d) and 379.5(e) of the EAR submitting an equivalent certification to the U.S. Department of Defense.

(2) Such data are needed to bid or perform on a contract with the Department of Defense, or other U.S. Government agency, or for other legitimate business purposes² in which the U.S. contractor is engaged, or plans to engage. The purpose for which the data are needed shall be described sufficiently in such certification to permit an evaluation of whether subsequent requests for data, pursuant to § 250.5(d)(2) are related properly to such business purpose.

(3) The U.S. contractor acknowledges its responsibilities under U.S. export control laws and regulations (including the obligation, under certain circumstances, to obtain an export license prior to the release of technical data within the United States) and agrees that it will not disseminate any export-controlled technical data subject to this part in a manner that would violate applicable export control laws and regulations.

(4) The U.S. contractor also agrees that, unless dissemination is permitted by § 250.5(h), it will not provide access to export-controlled technical data subject to this part to persons other than its employees or persons acting on its behalf, without the permission of the DoD Component that provided the technical data.

(5) To the best of its knowledge and belief, the U.S. contractor knows of no person employed by it, or acting on its behalf, who will have access to such data, who is debarred, suspended, or otherwise ineligible from performing on U.S. Government contracts; or has violated U.S. export control laws or a certification previously made to the Department of Defense under the provisions of this part.

(6) The U.S. contractor itself is not debarred, suspended, or otherwise determined ineligible by any agency of the U.S. Government to perform on U.S. Government contracts, has not been convicted of export control law violations, and has not been disqualified under the provisions of this part. When the certifications required by paragraphs (a) (5) and (6) of this section, cannot be made truthfully, the

²This does not require a contract with or a grant from the U.S. Government.

U.S. contractor may request the certification be accepted based on its description of extenuating circumstances.

(b) *Controlling DoD Office.* The DoD activity that sponsored the work that generated the technical data or received the technical data on behalf of the Department of Defense and therefore has the responsibility for determining the distribution of a document containing such technical data. In the case of joint sponsorship, the controlling office is determined by advance agreement and may be either a party, a group, or a committee representing the interested activities or DoD Components. (The controlling DoD office is identified on each export-controlled document in accordance with DoD Directive 5230.24.

(c) *Critical Technology.* Technologies that consist of (1) arrays of design and manufacturing know-how (including technical data); (2) keystone manufacturing, inspection, and test equipment; (3) keystone materials; and (4) goods accompanied by sophisticated operation, application, or maintenance know-how that would make a significant contribution to the military potential of any country or combination of countries and that may prove detrimental to the security of the United States (also referred to as militarily critical technology).

(d) *Other legitimate business purposes.* Include:

(1) Providing or seeking to provide equipment or technology to a foreign government with the approval of the U.S. Government (for example, through a licensed direct foreign military sale).

(2) Bidding, or preparing to bid, on a sale of surplus property.

(3) Selling or producing products for the commercial domestic marketplace or for the commercial foreign marketplace, providing that any required export license is obtained.

(4) Engaging in scientific research in a professional capacity.

(5) Acting as a subcontractor to a concern described in paragraphs (d) (1) through (4) of this section; or

(6) Selling technical data subject to this part in support of DoD contractors or in supporting of the competitive process for DoD contracts, provided

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such sales are limited solely to DoD contractors or potential DoD contractors who also are qualified U.S. contractors and provided such technical data are related to the purpose for which the qualified U.S. contractor is certified, or selling technical data to foreign contractors or governments overseas after receiving the required export license or approval by the U.S. Government.

(e) *Potential DoD contractor.* An individual or organization outside the Department of Defense declared eligible for DoD information services by a sponsoring DoD activity on the basis of participation in one of the following programs:

(1) The Department of the Army Qualitative Requirements Information Program.

(2) The Department of the Navy Industry Cooperative Research and Development Program.

(3) The Department of the Air Force Potential Contractor Program.

(4) The DoD Scientific and Technical Program; or

(5) Any similar program in use by other DoD Components.

(f) *Public disclosure.* Making technical data available without restricting its dissemination or use.

(g) *Technical data with military or space application, or technical data.* Any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used or be adapted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.

(h) *United States.* For the purpose of this part, the 50 States, the District of Columbia, and the territories and possessions of the United States.

§ 250.4 Policy.

(a) In accordance with 10 U.S.C. 140c, the Secretary of Defense may withhold from public disclosure, notwithstanding any other provision of law, any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully without an ap-

proval, authorization, or license under E.O. 12470 or the Arms Export Control Act. However, technical data may not be withheld under this section if regulations promulgated under either the Order or Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations. (Pertinent portions of such regulations are set forth in §§ 250.7 and 250.8).

(b) Because public disclosure of technical data subject to this part is tantamount to providing uncontrolled foreign access, withholding such data from public disclosure, unless approved, authorized, or licensed in accordance with export control laws, is necessary and in the national interest. Unclassified technical data that are not governed by this part, unless otherwise restricted, shall continue to be made available to the public as well as to state and local governments.

(c) Notwithstanding the authority provided in paragraph (a), of this section, it is DoD policy to provide technical data governed by this part to individuals and enterprises that are determined to be currently qualified U.S. contractors, when such data relate to a legitimate business purpose for which the contractor is certified. However, when such data are for a purpose other than to permit the requester to bid or perform on a contract with the Department of Defense, or other U.S. Government agency, and the significance of such data for military purposes is such that release for purposes other than direct support of DoD activities may jeopardize an important U.S. technological or operational advantage, those data shall be withheld in such cases.

(d) This part may not be used by DoD Components as authority to deny access to technical data to the Congress, or to any Federal, State, or local governmental agency that requires such data for regulatory or other official governmental purposes. Any such dissemination will include a statement that the technical data are controlled by the Department of Defense in accordance with this part.

(e) The authority provided herein may not be used to withhold from public disclosure unclassified information

regarding DoD operations, policies, activities, or programs, including the costs and evaluations of performance and reliability of military and space equipment. When such information does contain technical data subject to this part, the technical data shall be excised from that which is disclosed publicly.

(f) This part may not be used as a basis for the release of "limited rights" or "restricted rights" data as defined in 32 CFR 9-201(c) and 9-601(j) of the DoD Acquisition Regulation or that are authorized to be withheld from public disclosure under the Freedom of Information Act (FOIA).

(g) This part may not be used to provide protection for technical data that should be classified in accordance with E.O. 12356 and DoD 5200.1-R.

(h) This part provides immediate authority to cite 5 U.S.C. 552(b)(3) as the basis for denials under the FOIA of technical data currently determined to be subject to the provisions of this part.

§ 250.5 Procedures.

All determinations to disseminate or withhold technical data subject to this part shall be consistent both with the policies set forth in § 250.4 of this part, and with the following procedures:

(a) Requests for technical data shall be processed in accordance with DoD Directive 5230.24 and DoD Instruction 5200.21. FOIA requests for technical data subject to this part shall be handled in accordance with the procedures established in DoD 5400.7-R. Such FOIA requests for technical data currently determined to be subject to the withholding authority effected by this part shall be denied under citing the third exemption to mandatory disclosure, and the requester shall be referred to the provisions of this part permitting access by qualified U.S. contractors.

(b) Upon receipt of a request for technical data in the possession of, or under the control of, the Department of Defense, the controlling DoD office shall determine whether such data are governed by this part. The determination shall be based on the following:

(1) The office's finding³ that such data would require an approval, authorization, or license for export under E.O. 12470 or the Arms Export Control Act and that such data may not be exported pursuant to a general, unrestricted license (15 CFR 379.3, EAR) (see § 250.7) or exemption (22 CFR 125.11, ITAR) (see § 250.8).

(2) The office's judgment that the technical data under consideration disclose critical technology with military or space application. For purposes of making this determination, the Militarily Critical Technologies List (MCTL) shall be used as general guidance. The controlling DoD office may request assistance in making such a determination from the Office of the Under Secretary of Defense for Research and Engineering (OUSDR&E) in accordance with procedures established by that office.

(c) The controlling DoD office shall ensure that technical data determined to be governed by this part are marked in accordance with DoD Directive 5230.24.

(d) The controlling DoD office shall authorize release of technical data governed by this part to currently qualified U.S. contractors only, as defined in § 250.3(a) of this part, unless one of the following apply:

(1) The qualification of the U.S. contractor concerned has been temporarily revoked in accordance with § 250.5(e) of this part; or

(2) The requested data are judged to be unrelated to the purpose for which the qualified U.S. contractor is certified. When release of technical data is denied in accordance with this section, the controlling DoD office shall request additional information sufficient to explain the intended use of the requested data and, if appropriate, request a new certification (see § 250.3(a) above) describing the intended use of the requested data; or

(3) The technical data are being requested for a purpose other than to permit the requester to bid or perform on a contract with the Department of Defense or other U.S. Government

³May require consultation with the Department of State or the Department of Commerce, as appropriate.

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agency, in which case the controlling DoD office shall withhold such data if it has been determined by the DoD Component focal point (see § 250.5(e)(5)) that the significance of such data for military purposes is such that release for purpose other than direct support of DoD-approved activities may jeopardize an important technological or operational military advantage of the United States.

(e) Upon receipt of credible and sufficient information that a qualified U.S. contractor has (1) violated U.S. export control law, (2) violated its certification, (3) made a certification in bad faith, or (4) made an omission or misstatement of material fact, the DoD Component shall revoke temporarily the U.S. contractor's qualification. Such revocations having the potential for compromising a U.S. Government investigation may be delayed. Immediately upon such revocation, the DoD Component shall notify the contractor and the OUSDR&E. Such contractor shall be given an opportunity to respond in writing to the information upon which the temporary revocation is based before being disqualified. Any U.S. contractor whose qualification has been revoked temporarily may be reinstated upon presentation of sufficient information showing that the basis for such revocation was in error or has been remedied.

(f) When the basis for a contractor's temporary revocation cannot be removed within 20 working days, the DoD Component shall recommend to the OUSDR&E that the contractor be disqualified.

(g) Charges for copying, certifying, and searching records rendered to requesters shall be levied in accordance with DoD Instruction 7230.7. Normally, only one copy of the same record or document will be provided to each requester. Any release to qualified U.S. contractors of technical data controlled by this part shall be accompanied by a notice to the recipient as set forth in § 250.9.

(h) Qualified U.S. contractors who receive technical data governed by this part may disseminate such data for purposes consistent with their certification without prior permission of the

controlling DoD office or when such dissemination is:

(1) To any foreign recipient for which the data are approved, authorized, or licensed under E.O. 12470 or the Arms Export Control Act.

(2) To another currently qualified U.S. contractor (as defined in § 250.3(a) above, including existing or potential subcontractors, but only within the scope of the certified legitimate business purpose of such recipient.

(3) To the Departments of State and Commerce, for purposes of applying for appropriate approvals, authorizations, or licenses for export under the Arms Export Control Act or E.O. 12470. Any such application shall include a statement that the technical data for which such approval, authorization, or license is sought are controlled by the Department of Defense in accordance with this part.

(4) To Congress or any Federal, State, or local governmental agency for regulatory purposes, or otherwise as may be required by law or court order. Any such dissemination shall include a statement that the technical data are controlled by the Department of Defense in accordance with this part.

(i) A qualified U.S. contractor desiring to disseminate technical data subject to this part in a manner not permitted expressly by the terms of this part shall seek authority to do so from the controlling DoD office.

(j) Any requester denied technical data, or any qualified U.S. contractor denied permission to redisseminate such data, pursuant to this part, shall be provided promptly a written statement of reasons for that action, and advised of the right to make a written appeal of such determination to a specifically identified appellate authority within the DoD Component. Appeals of denials made under DoD 5400.7-R (reference (e)) shall be handled in accordance with procedures established therein. Other appeals shall be processed as directed by the OUSDR&E.

(k) Denials shall cite 10 U.S.C. 140c as implemented by this part, and, in the case of FOIA denials made in reliance on this statutory authority, 5 U.S.C. 552(b)(3). Implementing procedures

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shall provide for resolution of any appeal within 20 working days.

§ 250.6 Responsibilities.

(a) The Under Secretary of Defense for Research and Engineering (USDR&E) shall have overall responsibility for the implementation of this Directive and shall designate an office to:

(1) Administer and monitor compliance with this Directive.

(2) Receive and disseminate notifications of temporary revocation in accordance with § 250.5(e) of this part.

(3) Receive recommendations for disqualification made in accordance with § 250.5(f) of this part, and act as initial disqualification authority.

(4) Provide, when necessary, technical assistance to DoD Components in assessing the significance of the military or space application of technical data that may be withheld from public disclosure under this Directive.

(5) Establish procedures to develop, collect, and disseminate certification statements and ensure their sufficiency, accuracy, and periodic renewal, and to make final determinations of qualification.

(6) Ensure that the requirements of this Directive are incorporated into the DoD Federal Acquisition Regulation Supplement for optional application to contracts involving technical data governed by this Directive.

(7) Develop, in conjunction with the General Counsel, Department of Defense, guidelines for responding to appeals.

(8) Develop procedures to ensure that DoD Components apply consistent criteria in authorizing exceptions under § 250.5(i) of this part.

(9) Establish procedures and appropriate mechanisms for the certification of qualified U.S. contractors, pursuant to § 250.6(a)(5) of this part, within 60 days of the effective date of this Directive. During this 60-day period, requests for technical data governed by this Directive shall be processed in accordance with procedures in effect before the promulgation of this Directive.

(10) Take such other actions that may be required to ensure consistent and appropriate implementation of this

Directive within the Department of Defense.

(b) The Under Secretary of Defense for Policy shall:

(1) Develop and promulgate, as required, policy guidance to DoD Components for implementing this Directive.

(2) Develop procedures with the Departments of State and Commerce to ensure referral of export cases involving technical data governed by this Directive to the Department of Defense.

(c) The Assistant Secretary of Defense (Public Affairs) shall:

(1) Monitor the implementation of provisions of this Directive that pertain to DoD 5400.7-R.

(2) Provide such other assistance as may be necessary to ensure compliance with this Directive.

(d) The General Counsel, Department of Defense, shall:

(1) Assist in carrying out the provisions of this Directive by advising DoD Components with respect to the statutory and regulatory requirements governing the export of technical data.

(2) Advise the USDR&E regarding consistent and appropriate implementation of this Directive.

(e) The Heads of DoD Components shall:

(1) As the delegated authority, have the option to redelegate the authority to withhold technical data in accordance with this Directive.

(2) Disseminate and withhold from public disclosure technical data subject to this Directive in a manner consistent with the policies and procedures set forth herein.

(3) Designate a focal point to

(i) Ensure implementation of this Directive;

(ii) Identify classes of technical data the release of which is governed by § 250.5(d)(3) of this part;

(iii) Act on appeals relating to case-by-case denials of technical data;

(iv) Suspend a contractor's qualification pursuant to § 250.5(e) of this part;

(v) Receive and evaluate requests for reinstatement of a contractor's qualification; and, when appropriate,

(vi) Recommend disqualification to the OUSDR&E.

(4) Promulgate and effect regulations to implement this Directive within 180 days.

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(5) Disseminate technical data governed by this Directive in the manner prescribed herein, to the extent feasible, during the period after which certification procedures have been established under §250.6(a)(9) of this part, but before DoD Components have issued implementing regulations under paragraph (e)(4) of this section. However, if such dissemination is not feasible, the DoD Component may process requests for such data in accordance with procedures in effect before the promulgation of this Directive.

§250.7 Pertinent portions of Export Administration Regulations (EAR).

The following pertinent section of the EAR is provided for the guidance of DoD personnel in determining the releasability technical data under the authority of this part.

EXPORT ADMINISTRATION REGULATIONS 15
CFR 379.3

General License GTDA: Technical Data Available to All Destinations

A General License designated GTDA is hereby established authorizing the export to all destinations of technical data described in §379.3(a), (b), or (c), below:

(a) *Data Generally Available.* Data that have been made generally available to the public in any form, including

(1) Data released orally or visually at open conferences, lectures, trade show, or other media open to the public; and

(2) Publications that may be purchased without restrictions at a nominal cost, or obtained without costs, or are readily available at libraries open to the public.

The term "nominal cost" as used in §379.3(a)(2), is intended to reflect realistically only the cost of preparing and distributing the publication and not the intrinsic value of the technical data. If the cost is as much as to prevent the technical data from being generally available to the public, General License GTDA would not be applicable.

(b) *Scientific or Educational Data.* (1) Dissemination of information not directly and significantly related to design, production, or utilization in industrial processes, including such dissemination by correspondence, attendance at, or participation in, meetings; or

(2) Instruction in academic institutions and academic laboratories, excluding information that involves research under contract related directly and significantly to design, production, or utilization in industrial processes.

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(c) *Patent Applications.* Data contained in a patent application, prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office. (No validated export license from the Office of Export Administration is required for data contained in a patent application, or an amendment, modification, supplement, or division thereof for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office 37 CFR part 5. See §370.10(j).)

§250.8 Pertinent portions of International Traffic in Arms Regulations (ITAR).

The following pertinent section of the ITAR is provided for the guidance of DoD personnel in determining the releasability of technical data under the authority of this part.

INTERNATIONAL TRAFFIC IN ARMS
REGULATIONS 22 CFR 125.11

General Exemptions

(a) Except as provided in §26.01, district directors of customs and postal authorities are authorized to permit the export without a license of unclassified technical data as follows:

(1) If it is in published⁴ form and subject to public dissemination by being:

(i) Sold at newsstands and bookstores;

(ii) Available by subscription or purchase without restrictions to any person or available without cost to any person;

(iii) Granted second class mailing privileges by the U.S. Government; or

(iv) Freely available at public libraries.

(2) If it has been approved for public release by any U.S. Government department or agency having authority to classify information or material under Executive Order [12356], as amended, and other applicable Executive Orders, and does not disclose the details of design, production, or manufacturing of any arms, ammunition, or implements of war on the U.S. Munitions List.

(3) If the export is in furtherance of a manufacturing license or technical assistance agreement approved by the Department of State in accordance with part 124 of this chapter.

⁴The burden for obtaining appropriate U.S. Government approval for the publication of technical data falling within the definition in §125.01, including such data as may be developed under other than U.S. Government contract, is on the person or company seeking publication.

(4) If the export is in furtherance of a contract with an agency of the U.S. Government or a contract between an agency of the U.S. Government and foreign persons, provided the contract calls for the export of relevant unclassified technical data, and such data are being exported only by the prime contractor. Such data shall not disclose the details of development, engineering, design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List. (This exemption does not permit the prime contractor to enter into subsidiary technical assistance or manufacturing license agreements, or any arrangement which calls for the exportation of technical data without compliance with part 124 of this subchapter.)

(5) If it relates to firearms not in excess of caliber .50 and ammunition for such weapons, except technical data containing advanced designs, processes, and manufacturing techniques.

(6) If it consists of technical data, other than design, development, or production information relating to equipment, the export of which has been previously authorized to the same recipient.

(7) If it consists of operations, maintenance and training manuals, and aids relating to equipment, the export of which has been authorized to the same recipient.⁵

(8) If it consists of additional copies of technical data previously approved for export to the same recipient; or if it consists of revised copies of technical data, provided it pertains to the identical Munitions List article, and the revisions are solely editorial and do not add to the content of technology previously approved for export to the same recipient.

(9) If it consists solely of technical data being reexported to the original source of import.

(10) If the export is by the prime contractor in direct support and within the technical and/or product limitations of a "U.S. Government approved project" and the prime contractor so certifies. The Office of Munitions Control, Department of State, will verify, upon request, those projects which are "U.S. Government approved," and accord an exemption to the applicant who applies for such verification and exemption, where appropriate, under this subparagraph.⁶

⁵Not applicable to technical data relating to Category VI(d) and Category XVI.

⁶Classified information may also be transmitted in direct support of and within the technical and/or product limitation of such verified U.S. Government approved projects without prior Department of State approval provided the U.S. party so certifies and complies with the requirements of the Depart-

(11) If the export is solely for the use of American citizen employees of U.S. firms provided the U.S. firm certifies its overseas employee is a U.S. citizen and has a "need to know."⁷

(12) If the export is directly related to classified information, the export of which has been previously authorized to the same recipient, and does not disclose the details of design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List.

(b) *Plant visits.* Except as restricted by the provisions of §126.01 of this subchapter:

(1) No license shall be required for the oral and visual disclosure of unclassified technical data during the course of a plant visit by foreign nationals provided the data [are] disclosed in connection with a classified plant visit or the visit has the approval of a U.S. Government agency having authority for the classification of information or material under Executive Order [12356], as amended, and other applicable Executive Orders, and the requirements of section V, paragraph [41(d)] of the Industrial Security Manual are met.

(2) No license shall be required for the documentary disclosure of unclassified technical data during the course of a plant visit by foreign nationals provided the document does not contain technical data as defined in §125.01 in excess of that released orally or visually during the visit, is within the terms of the approved visit request, and the person in the United States assures that the technical data will not be used, adopted for use, or disclosed to others for the purpose of manufacture or production without the prior approval of the Department of State in accordance with part 124 of this subchapter.

(3) No Department of State approval is required for the disclosure of oral and visual classified information during the course of a plant visit by foreign nationals provided the visit has been approved by the cognizant U.S. Defense agency and the requirements of

ment of Defense Industrial Security Manual relating to the transmission of such classified information (and any other requirements of cognizant U.S. Government departments or agencies).

⁷Classified information may also be exported to such certified American citizen employees without prior Department of State approval provided the U.S. party complies with the requirements of the Department of Defense Industrial Security Manual relating to the transmission of such classified information (and any other requirements of cognizant U.S. Government departments or agencies). Such technical data or information (classified or unclassified) shall not be released by oral, visual, or documentary means to any foreign person.

§ 250.9

section V, paragraph [41(d)] of the Defense Industrial Security Manual are met.

§ 250.9 Notice to accompany the dissemination of export-controlled technical data.

(a) Export of information contained herein, which includes, in some circumstances, release to foreign nationals within the United States, without first obtaining approval or license from the Department of State for items controlled by the International Traffic in Arms Regulations (ITAR), or the Department of Commerce for items controlled by the Export Administration Regulations (EAR), may constitute a violation of law.

(b) Under 22 U.S.C. 2778 the penalty for unlawful export of items or information controlled under the ITAR is up to 2 years imprisonment, or a fine of \$100,000, or both. Under 50 U.S.C., appendix 2410, the penalty for unlawful export of items or information controlled under the EAR is a fine of up to \$1,000,000, or five times the value of the exports, whichever is greater; or for an individual, imprisonment of up to 10 years, or a fine of up to \$250,000, or both.

(c) In accordance with your certification that establishes you as a “qualified U.S. contractor,” unauthorized dissemination of this information is prohibited and may result in disqualification as a qualified U.S. contractor, and may be considered in determining your eligibility for future contracts with the Department of Defense.

(d) The U.S. Government assumes no liability for direct patent infringement, or contributory patent infringement or misuse of technical data.

(e) The U.S. Government does not warrant the adequacy, accuracy, currency, or completeness of the technical data.

(f) The U.S. Government assumes no liability for loss, damage, or injury resulting from manufacture or use for any purpose of any product, article, system, or material involving reliance upon any or all technical data furnished in response to the request for technical data.

(g) If the technical data furnished by the Government will be used for commercial manufacturing or other profit

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potential, a license for such use may be necessary. Any payments made in support of the request for data do not include or involve any license rights.

(h) A copy of this notice shall be provided with any partial or complete reproduction of these data that are provided to qualified U.S. contractors.

PART 251—NATIONAL LANGUAGE SERVICE CORPS (NLSC)

Sec.

- 251.1 Purpose.
- 251.2 Applicability.
- 251.3 Definitions.
- 251.4 Policy.
- 251.5 Responsibilities.
- 251.6 Procedures.

AUTHORITY: 5 U.S.C. 3109, 18 U.S.C. 202, 31 U.S.C. 1535, 50 U.S.C. 1913.

SOURCE: 80 FR 76635, Dec. 10, 2015, unless otherwise noted.

§ 251.1 Purpose.

This part:

(a) Implements the responsibilities of the Secretary of Defense in 50 U.S.C. 1913 by establishing the NLSC program.

(b) Establishes policy, assigns responsibilities, and provides procedures for the management of the NLSC program.

(c) Assigns responsibility to the National Security Education Board (NSEB) to oversee and coordinate the activities of the NLSC (as provided and determined by the Secretary of Defense pursuant to 50 U.S.C. 1903 and 1913 with policy and funding oversight provided by the Under Secretary of Defense for Personnel and Readiness (USD(P&R))) in accordance with DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R))” (available at <http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf>).

§ 251.2 Applicability.

This part applies to Office of the Secretary of Defense, 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 the DoD (referred to collectively in this