



DoD INSTRUCTION 2040.03

END USE CERTIFICATES (EUCs)

Originating Component: Office of the Under Secretary of Defense for Acquisition and Sustainment

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Approved by: Ellen M. Lord, Under Secretary of Defense for Acquisition and Sustainment

Purpose: In accordance with the authority in DoD Directive 5134.01 and the July 13, 2018 Deputy Secretary of Defense Memorandum, this issuance establishes policies, assigns responsibilities, and provides procedures for signing EUCs required by foreign governments for foreign defense items purchased by the United States.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

1.2. POLICY.

It is DoD policy that:

a. EUCs be executed and required when:

- (1) Such certificates facilitate DoD purchases of foreign products or services.
- (2) It is in the best interest of the United States to purchase such products or services.

b. Consistent with U.S. laws, regulations, and acquisition policy, DoD Components purchase foreign products to obtain products and services that best meet U.S. requirements.

(1) Acquisition of foreign products and services that meet DoD requirements promote interoperability, standardization, and an expanded procurement base.

(2) U.S. worldwide security responsibilities are extensive; recognition of these circumstances requires flexibility in U.S. international commitments concerning the authorized uses or retransfer of products and services acquired from foreign nations. Use for defense purposes (See Glossary):

- (a) Reflects the necessary flexibility in EUCs to be signed with foreign governments.
- (b) Establishes the baseline position for routine EUCs.

SECTION 2: RESPONSIBILITIES

2.1 UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT (USD(A&S)).

The USD(A&S):

- a. Monitors compliance with this issuance.
- b. In coordination with the Under Secretary of Defense for Policy (USD(P)) and the Under Secretary of Defense for Intelligence and Security (USD(I&S)), develops procedures to ensure the timely review of EUCs.
- c. After receiving USD(P)'s concurrence, authorizes the signature of the EUC, in accordance with Section 3, when purchase of a foreign product is in the best interest of the United States.
- d. When requested, and in coordination with the USD(P), assists the DoD Components with negotiating the elimination or alleviation of an EUC's restrictive language.

2.2. USD(P).

The USD(P):

- a. Consults with the USD(A&S) and, as appropriate, coordinates with the Department of State on EUC requests authorized by this issuance.
- b. When requested, and in coordination with the USD(A&S), assists the DoD Components with negotiating the elimination or alleviation of an EUC's restrictive language.

2.3. USD(I&S).

The USD(I&S):

- a. Oversees EUCs under their purview to ensure compliance with current policies and procedures.
- b. In coordination with the USD(A&S), establishes DoD coordination procedures for all EUCs within USD(I&S)'s purview.

2.4. DOD COMPONENT HEADS.

The DoD Component heads:

- a. Approve signature of EUCs as described in Section 3.

(1) This authority may be delegated to a position no lower than a member of the senior executive service or general officer/flag officer of their respective DoD Components.

(2) If the DoD Component senior executive service or general officer/flag officer with the delegated EUC approval authority is unavailable to sign the EUC, they may designate signature of the EUC by a DoD military member who is no lower than O-6 or a DoD civilian employee who is no lower than a GS-15.

b. Establish procedures to ensure compliance with this issuance and with the transfer and use restrictions agreed to in the EUC for the life of the purchased item. This includes:

(1) Providing copies of all signed EUCs to the USD(A&S).

(2) Maintaining records of all EUC coordinations and signatures.

SECTION 3: EUC EXECUTION REVIEW AND APPROVAL

3.1. GENERAL.

EUC approval falls into two tiers: Tier A and Tier B. All EUCs within USD(I&S)'s purview must be coordinated between the USD(I&S) and the USD(A&S) in accordance with Paragraph 2.3.b.

3.2. TIER A.

a. The DoD Component heads will submit EUCs to the USD(A&S) for review, when one or more of the following conditions apply:

(1) Integration of the foreign product into higher level equipment is planned.

(2) Use of the foreign product is restricted beyond use for defense purposes.

(3) No reciprocal defense procurement memorandum of understanding (MOU) or agreement exists. (See the list of reciprocal defense procurement MOU or agreement signatories, also known as "qualifying countries," as defined in Subpart 225.0 of the Defense Federal Acquisition Regulation Supplement.)

(4) No general security agreement or general security of military information agreement exists.

b. If there are issues with the EUC review request, the USD(A&S) will engage with the DoD Component within 21 working days to discuss and seek resolution of issues. As required, the DoD Component may request expedited review for activities that are time-critical. Once the USD(A&S) approves the Tier A EUC request, the DoD Component heads may sign the Tier A EUC. In any event, DoD Component heads must provide a copy of all approved and signed Tier A EUCs to the USD(A&S) 21 working days after signature.

3.3. TIER B.

a. The DoD Component heads may authorize EUCs without the requirement for review by USD(A&S), noted in Paragraph 2.3., when all of the following conditions apply:

(1) No integration of the foreign product into higher level equipment is planned and the use of the foreign product is not restricted beyond use for defense purposes.

(2) A reciprocal defense procurement MOU or agreement exists. (See the list of reciprocal defense procurement MOU or agreement signatories, also known as "qualifying countries," as defined in Subpart 225.0 of the Defense Federal Acquisition Regulation Supplement.)

(3) There is a general security agreement or general security of military information agreement.

b. The DoD Component heads will notify the USD(A&S) of all Tier B EUCs within 21 working days of the properly authorized signature of the EUC.

3.4. REQUESTS FOR REVIEW AND APPROVAL.

Requests for review and approval should specify:

- a. Why it is in the interest of the U.S. Government to procure the item.
- b. The limitations to be imposed by the exporting government and a justification for the U.S. Government to accept those limitations.
- c. That no satisfactory alternative to the foreign product (considering cost, schedule, or operational requirements) is available from domestic or foreign sources without equivalent limitations.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
EUC	end use certificate
MOU	memorandum of understanding
USD(A&S)	Under Secretary of Defense for Acquisition and Sustainment
USD(I&S)	Under Secretary of Defense for Intelligence and Security
USD(P)	Under Secretary of Defense for Policy

G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
EUC	A certification required for exporting foreign products by a foreign government that identifies the end user of the foreign products. The certification may restrict the use or transfer of the foreign product and is signed by an authorized representative of the U.S. Government.
qualifying country	Defined in the Defense Federal Acquisition Regulation Supplement, Subpart 225.0.
use for defense purposes	Includes direct use by or for the U.S. Government in any part of the world and transfer by means of grant aid, international military education and training programs, foreign military sales, and other security assistance and armaments cooperation authorities.

REFERENCES

Defense Federal Acquisition Regulation Supplement, Subpart 225.0, current edition

Deputy Secretary of Defense Memorandum, “Establishment of the Office of the Under Secretary of Defense for Research Engineering and the Office of the Under Secretary of Defense for Acquisition and Sustainment,” July 13, 2018

DoD Directive 5134.01, “Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)),” December 9, 2005, as amended