

DEPARTMENT OF THE NAVY  
Office of the Chief of Naval Operations  
Washington, DC 20350-2000

OPNAVINST 5510.161  
Op-009P3  
Ser 09/5U301221  
29 July 1985

**OPNAV INSTRUCTION 5510.161**

**From:** Chief of Naval Operations  
**To:** All Ships and Stations

**Subj:** WITHHOLDING OF UNCLASSIFIED TECHNICAL DATA FROM PUBLIC DISCLOSURE

**Ref:** (a) DOD Directive 5230.25 of 6 Nov 84 (NOTAL)  
(b) Executive Order 12470 (NOTAL)  
(c) Public Law 90-629, "Arms Export Control Act" as amended (22 U.S.C. Section 275 et seq.) (NOTAL)  
(d) SECNAVINST 5720.42C  
(e) OPNAVINST 5510.1G  
(f) Militarily Critical Technologies List of Oct 84 (NOTAL)  
(g) SECNAVINST 5720.44

**Encl:** (1) Extract from the Export Administration Regulation (EAR)  
(2) Extract from the International Traffic In Arms Regulation (ITAR)  
(3) Definitions  
(4) Sample Denial Letter for FOIA Requests  
(5) Information Sheet on Qualified U.S. Contractors  
(6) DD Form 2345  
(7) Sample Denial Letter to Qualified U.S. Contractors - (Requests Unrelated to Certification)  
(8) Notice to Accompany the Dissemination of Export Controlled Technical Data  
(9) Sample Denial Letter to Qualified U.S. Contractors - (Requests Unrelated to DOD Support)  
(10) Sample Denial Letter to persons not Qualified U.S. Contractors

**1. Purpose.** To implement reference (a) within the Department of the Navy (DON), to assign responsibilities, prescribe procedures and issue policy concerning the control of unclassified technical data by the DON.

**2. Applicability and Scope.** This instruction:

a. Applies to all unclassified technical data that disclose critical technology with military or space application in

the possession of or under the control of the DON which may not be exported lawfully without an approval, authorization or license under references (b) or (c).

b. Does not 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 paragraph 4c. Accordingly, the mere fact that the DON may possess such data does not in itself provide a basis for control of these data pursuant to this instruction.

c. Does not introduce any controls on the dissemination of scientific, educational or other data that qualify for General License GTDA under export control law. Enclosures (1) and (2) are pertinent extracts from these laws; General License GTDA is defined in enclosure (1).

d. Does not alter the DON's responsibility to protect proprietary data of a private party in which the DON or the Department of Defense has "limited rights" or "restricted rights" (see enclosure (3), Definitions) or which are authorized to be withheld from public disclosure under the Freedom of Information Act, reference (d).

e. Does not pertain to or affect the release of technical data by the DON 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 these entities or individuals.

f. Does not apply to classified technical data. After declassification, however, dissemination of such data that are within the scope of paragraph 2a is governed by this instruction. Reference (e) prescribes policy and procedures for the protection of classified information, including classified technical data.

**3. Definitions.** Terms used in this instruction are defined in enclosure (3).

**4. Policy**

a. The DON may, pursuant to reference (a), withhold from public disclosure, notwithstanding any other provisions of law, any technical data that disclose critical



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technology with military or space application in the possession of or under the control of the DON, if such data may not be exported lawfully without an approval, authorization or license under reference (c). Regulations issued under Executive Order or export control law (see enclosures (1) and (2)) may, in certain cases, authorize the export of technical data pursuant to a general unrestricted license or exemption. In these cases, the technical data covered by license or exemption may not be withheld.

b. Because public disclosure of technical data subject to this instruction is equivalent to providing uncontrolled foreign access, withholding these data from public disclosure, unless approved, authorized or licensed in accordance with export control law, is necessary and in the national interest. Unclassified technical data that are not governed by this instruction, 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 4a, it is DON policy to provide technical data governed by this instruction to individuals and enterprises that are determined to be qualified U.S. contractors (see enclosure (3), Definitions), when the data are requested for a legitimate business purpose for which the contractor is certified by the Defense Logistics Services Center (DLSC), Battle Creek, Michigan. These certifications are valid for a period of 5 years. When the data are requested for a purpose other than to permit the requester to bid or perform on a contract with the DON, or other U.S. Government agency, and its release for purposes other than direct support of DON or other DOD activities may jeopardize an important U.S. technological or operational advantage, the data shall be withheld. Normally, this restriction will apply only in the case of Naval Nuclear Propulsion Information (NNPI) (as defined in reference (e)), polymer hydrophones/arrays related to submarine technology/design and to structural acoustic applications to submarine design. Commands desiring to have other classes of information included in this restriction against release may request approval from CNO (Op-009P). Requests must include a detailed justification and to be considered favorably, the technical data covered should provide a significant military capability and its development for commercial purposes would jeopardize the military advantage it provides. In the case of requests for large numbers of documents or extensive compilations of data which would tax a command's ability to reply in a timely fashion, the command concerned shall develop with the requester a mutually satisfactory delivery schedule. If

agreement cannot be reached, the matter shall be referred to CNO (Op-009P).

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

e. The authority provided here may not be used to withhold from public disclosure unclassified information regarding DON operations, policies, activities or programs, including the costs and evaluations of performance and reliability of military and space equipment. When information of this kind contains technical data subject to this instruction, the technical data shall be excised prior to any public disclosure.

f. This instruction may not be used as a basis for the release of "limited rights" or "restricted rights" data as defined in enclosure (3), or that authorized to be withheld from public disclosure under the Freedom of Information Act (FOIA), implemented in the DON by reference (d).

g. This instruction may not be used to provide protection for technical data that should be classified in accordance with reference (e).

h. This instruction provides authority to cite "5 U.S.C. Section 552(b)(3)" (FOIA) as the basis for denials under the FOIA (see reference (d)) of technical data determined to be subject to the provisions of this instruction. See enclosure (4) for a sample denial letter for requests made under the FOIA.

## **5. Procedures**

a. Requests for technical data shall be processed in accordance with chapter 12 of reference (e). FOIA requests for technical data subject to this instruction shall be handled in accordance with reference (d). FOIA requests for technical data determined to be subject to the withholding authority effected by this instruction shall be denied under 5 U.S.C. Section 552(b)(3), and the requester shall be referred to the provisions of this instruction permitting access by qualified U.S. contractors. Enclosure (4) is a sample denial letter for requests for unclassified technical data under the FOIA. Enclosure (5) is a sample information sheet pertaining to qualified U.S. contractors which shall be furnished each requester with letters of denial.

b. Upon receipt of a request for technical data in the possession of or under the control of the DON, the controlling Navy or Marine Corps command (see enclosure (3), Definitions) shall determine whether the data are governed by this instruction. This determination shall be based on the following:

(1) The command's findings that the data would require an approval, authorization or license for export under references (b) or (c), and that the data may not be exported pursuant to a general, unrestricted license (see enclosure (1)) or exemption (see enclosure (2)). Commands may, in cases where such determinations cannot readily be made locally, request guidance on specific cases from CNO (Op-009P). It is not intended, however, that all requests be referred routinely to CNO for decision.

(2) The command's judgment that the technical data under consideration disclose critical technology with military or space application. For purposes of making these determinations, the Militarily Critical Technologies List (MCTL), reference (f), shall be used as general guidance. The controlling DON command may request assistance in making these determinations from the Office of the Under Secretary of Defense for Research and Engineering (OUSDR&E) via CNO (Op-009P).

c. Requests from foreign governments, organizations or individuals for technical data shall be referred to CNO (Op-62).

d. The controlling command shall ensure that technical data determined to be governed by this instruction are marked in accordance with chapter 12 of reference (e). All technical documents determined to be subject to the withholding provisions of this instruction will be marked with an export warning notice as follows: "WARNING. This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C. Section 2751 et seq.) or Executive Order 12470. Violations of these export laws are subject to severe criminal penalties."

e. A controlling command shall release technical data governed by this instruction only to a qualified U.S. contractor, as evidenced by the contractor's submission of a completed DD 2345, enclosure (6), with each request for unclassified technical data subject to this instruction. The certification process has been established to assist the controlling Navy or Marine Corps command (see enclosure (3), Definitions) in determining as efficiently as possible whether the requester should receive the technical

data requested. A certified requester is not automatically qualified to receive all DON export controlled information. The controlling command must ensure that the "qualified contractor" is qualified to receive the particular type of information requested. Command release authority may be exercised unless one of the following apply:

(1) The qualification of the U.S. contractor concerned has been revoked temporarily in accordance with paragraph 5i; 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 paragraph, the controlling command shall inform the U.S. contractor of the reasons for the denial, i.e., the requested data are deemed to be unrelated to the U.S. contractor's certification. The letter of denial, enclosure (7), is a sample of such a letter and shall advise the U.S. contractor that application can be made to the DLSC for a new certification and request additional information which would describe 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 DON or other U.S. Government agency. In these cases, the controlling command shall withhold the data if it has been determined by the originating command (see enclosure (3), Definitions) that the significance of the data for military purposes precludes its release for purposes other than direct support of DON approved activities, because release could jeopardize an important technical or operational military advantage of the United States (normally applicable only to NNPI, polymer hydrophones/arrays and structural acoustic applications to submarine design); or

(4) There is reason to question the validity of the U.S. contractor's qualification, in which case the Chief of Naval Operations (Op-009P) is to be notified immediately. Reasons for casting doubt upon the validity of a U.S. contractor's qualification could be, but are not limited to, a certification date of more than 5 years from date of issue; an apparent alteration of the submitted DD 2345; the use of type faces, numbers, titles or other detail which appear different from those previously observed on other DD 2345; or the use of foreign addresses or firms as proposed recipients of controlled data.

f. Any release to qualified U.S. contractors of technical data controlled by this instruction shall be accompanied by

a notice to the recipient as set forth in enclosure (8). Documents being mailed to a qualified U.S. contractor shall be sent to the address shown for the data recipient in block 3 of the DD 2345 regardless of any request for mailing to a different address. Commands shall deny requests from qualified U.S. contractors that specify the data be sent to an address outside the United States.

g. Commands will deny all non-FOIA requests for unclassified technical data covered by this instruction which are not accompanied by a completed DD Form 2345. Commands may confirm, when necessary, a requester's qualification as a U.S. contractor by:

(1) Contacting the DLSC at Autovon 369-9288/89 or FTS 372-9288/89 or commercial (616) 962-6511, extension 9288, to ensure that the requester is listed by the DLSC as a qualified U.S. contractor; and

(2) Reviewing the listing published by CNO (Op-009P) of revocations and suspensions of U.S. contractors' qualifications to ensure that requesters have not been debarred from receiving such data.

h. If a request is denied because of use of an invalid DD 2345, the matter shall be reported immediately to CNO (Op-009P). Reports will contain, as a minimum, the date of the request, the name and affiliation of the requester, a copy of the DD 2345 and an explanation as to why the form was deemed to be invalid.

i. Commands becoming aware 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 an application for certification in bad faith or (4) made an omission or misstatement of material fact will report this information to CNO (Op-009P). CNO (Op-009P) will, in coordination with the General Counsel of the Navy and the Judge Advocate General of the Navy, revoke temporarily the U.S. contractor's qualification. Revocations having the potential for compromising a U.S. Government investigation may be delayed. Immediately upon a contractor's revocation, CNO (Op-009P) shall notify the contractor, the OUSDR&E and all DON commands on distribution for receipt of contractor qualification revocations or suspensions. The contractor concerned 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 by CNO (Op-009P) upon presentation of sufficient informa-

tion showing that the basis for the revocation was in error or has been remedied.

j. When the basis for a contractor's temporary revocation cannot be removed within 20 working days, CNO (Op-009P) shall recommend to the OUSDR&E that the contractor be disqualified.

k. Charges for copying, certifying and searching records provided to requesters shall be levied in accordance with charges authorized by the NAVCOMPT Manual, paragraph 035887. Normally, only one copy of the same record or document will be provided to each requester.

l. Technical documents marked with distribution limitation statements (see Exhibit 12B of reference (e)) which require originator approval prior to release may not be released without such approval. In these cases, a requester may be advised that his request requires originator approval and that the approval has been requested. In these cases controlling commands will request the approval of the originating command prior to release of the requested information. Originating commands shall approve release of their controlled information if assured by the controlling command that the requester is a qualified U.S. contractor, unless the request should be denied for the reasons permitted in paragraph 5e. Unclassified technical data pertaining to naval nuclear propulsion matters requires CNO (Op-00N) approval prior to its release by any controlling command. Unclassified technical data pertaining to submarine matters or operations requires CNO (Op-02) approval prior to its release by any controlling command. Requests for technical data requiring release approval by other DOD or Government agencies shall be referred to those agencies.

m. Unless advised to the contrary, qualified U.S. contractors who receive technical data governed by this instruction may disseminate the data for purposes consistent with their certifications without the prior permission of the controlling Navy command. Qualified U.S. contractors may also disseminate such data without prior permission to:

(1) Any foreign recipient for which the data are approved, authorized or licensed under references (b) or (c);

(2) Another qualified U.S. contractor, as defined in enclosure (3), including existing or potential subcontractors, but only within the scope of the certified legitimate business purpose of the recipient;

(3) The Departments of State and Commerce, for purposes of applying for appropriate approvals, authorizations or licenses for export under references (b) or (c). Any such application shall include a statement that the technical data for which approval, authorization or license is sought are controlled by the Department of the Navy in accordance with this instruction;

(4) Congress or to any Federal, State or local governmental agency for regulatory purposes, or otherwise as may be required by law or court order. Disseminations shall include a statement that the technical data are controlled by the DON in accordance with this instruction.

n. A qualified U.S. contractor desiring to disseminate technical data subject to this instruction in a manner not permitted expressly by the terms of this instruction shall seek authority to do so from the controlling DON command. A command receiving such request from a qualified U.S. contractor shall refer the request to the command or office which originated the information. If the originator cannot be ascertained, the request shall be referred to CNO (Op-009P). Unauthorized redissemination of technical data subject to this instruction by a qualified U.S. contractor can take place by the publishing of articles in open literature, in advertising or in promotional materials, in conducting educational and training courses, and by similar means where persons or entities not authorized by this instruction to have access to the technical data can obtain access.

o. Any requester denied technical data or any qualified U.S. contractor denied permission to re-disseminate technical data pursuant to this instruction shall be provided a written statement of reasons for that action within 15 days of such denial and advised of the right to make a written appeal to CNO (Op-009P). Appeals of denials made under FOIA shall be handled in accordance with procedures established by reference (d). Other appeals shall be processed as directed by CNO (Op-009P). Enclosure (9) is a sample letter of denial to qualified U.S. contractors. Enclosure (10) is a sample denial letter used for denials to requesters who are not qualified U.S. contractors.

p. Denials for other than FOIA requests shall cite "10 U.S.C. Section 140c as implemented by DOD Directive 5230.25 of 6 Nov 1984" (NOTAL). FOIA denials shall cite "5 U.S.C. Section 552(b)(3)," reference (d). Denial letters shall be modelled after the formats set out in enclosures (4), (7), (9) and (10).

q. Requests for technical data from foreign individuals or entities shall be forwarded to CNO (Op-62).

r. When disclosure of export-controlled technical data is necessary to a procurement, the command concerned must ensure that all who receive the data are qualified U.S. contractors. Information for Bids and Requests for Proposals may include notification that only contractors certified under DOD procedures, reference (a), may receive export-controlled technical data from the DON. Such notification, if used, shall include information about the qualified U.S. contractor program, enclosure (5).

## 6. Responsibilities

### a. Under the Chief of Naval Operations:

(1) The Director, Security Policy Division (Op-009P) is responsible for the implementation of this instruction and shall:

(a) Administer and monitor compliance with this instruction.

(b) Receive and disseminate notifications of temporary revocation in accordance with paragraph 5i.

(c) Receive recommendations from DON commands for contractor disqualification and notify the OUSDR&E pursuant to paragraph 5i.

(d) In coordination with the OASNRE&S and the Director, Research Development, Test and Evaluation (Op-098), issue guidance which identifies the technical data subject to this instruction.

(2) The Director, Technology Transfer Policy and Control Division (Op-62) is responsible for the release of technical data covered by this instruction to foreign persons or entities, except for that data covered in subparagraph 5m(1).

b. Commanding officers are responsible for ensuring that technical data subject to this instruction in their possession or under their control are handled in accordance with this instruction.

c. Persons in the naval establishment who have or have had access to technical data covered by this instruction are responsible for the safeguarding and control of

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the data in accordance with this instruction. Naval personnel, military and civilian, may not publicly disclose such data without formal command approval. See reference (g).

d. The Judge Advocate General and the General Counsel, as appropriate, are responsible for ensuring the procedural sufficiency and substantive lawfulness of U.S. contractor certification revocations. The General Counsel is responsible for providing legal review of FOIA request denials when requested.

7. **Report.** The report required by paragraph 5 is assigned report control symbol OPNAV 5510-23 and is approved for 3 years only from the date of this directive.

8. **Form.** DD 2345 (Rev Dec 85), S/N 0102-LF-002-3450, may be obtained through normal Navy supply channels in accordance with NAVSUP P-2002.

**RONALD J. HAYS**  
Vice Chief of Naval Operations

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EXTRACT FROM THE EXPORT ADMINISTRATION REGULATION (EAR)

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

Export Administration Regulations Section 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 shows, 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), above, 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 such 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.

"(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.")

Enclosure (1)

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EXTRACT FROM THE INTERNATIONAL TRAFFIC IN ARMS  
REGULATION (ITAR)

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

International Traffic in Arms Regulations Part 125  
"General Exemption"

"(a) Except as provided in 126.1<sup>\*</sup> 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 published<sup>4</sup> 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 manufacture 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<sup>\*\*\*</sup> of this subchapter.

"(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.<sup>5</sup>

"(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.<sup>6</sup>

"(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.'<sup>7</sup>

"(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 126.1\* 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. (See Section III, paragraph 3-103d, of the DOD Industrial Security Regulation (DOD 5220.22-R) of 22 May 1984 which is equivalent to the citation from the Defense Industrial Security Manual).

"(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 125.1 in excess of that released

Enclosure (2)

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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, adapted 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 section V, paragraph (41(d)) of the Defense Industrial Security Manual are met. "(See Section III, paragraph 3-101d. of the DOD Industrial Security Regulation (DOD 5220.22-R) of 22 May 1984 which is equivalent to the citation from the Industrial Security Manual.)

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<sup>4</sup> "The burden for obtaining appropriate U.S. Government approval for the publication of technical data falling within the definition in 125.1 , including such data as may be developed under other than U.S. Government contract, is on the person or company seeking publication.

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<sup>5</sup> "Not applicable to technical data relating to Category VI(d) and Category XVI.

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<sup>6</sup> "Classified 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 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).

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<sup>7</sup> "Classified 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.

Enclosure (2)

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\* 126.1 Prohibited shipments to or from certain countries.

"(a) General. It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services destined for or originating in certain countries or areas. This policy also applies to exports to and imports from these countries or areas. This policy applies to Albania, Bulgaria, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, Kampuchea, Latvia, Lithuania, North Korea, Outer Mongolia, Poland, Rumania, the Soviet Union and Vietnam. This policy also applies to countries or areas with respect to which the United States maintains an arms embargo or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. The exemptions provided in the regulations in this subchapter, except 123.17 of this subchapter, do not apply with respect to exports to or originating in any of such proscribed countries or areas.

"(b) Shipments. A defense article licensed for export under this subchapter may not be shipped on a vessel, aircraft or other means of conveyance which is owned or operated by, or leased to or from, any of the proscribed countries or areas."

\*\* 125.1 Exports subject to this Part.

"(a) The export controls of this Part apply to the export of technical data and the export of classified defense articles. Information which is in the "public domain" (see 120.18) is not subject to the controls of this subchapter.

"(b) A license for the export of technical data and the exemptions in 125.4 may be used for foreign production purposes or for technical assistance unless the approval of the Department of State has been obtained. Such approval is generally provided only pursuant to the procedures specified in Part 124 of this subchapter.

"(c) Technical data authorized for export may not be diverted or transferred from the country of ultimate end-use (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Department of State.

"(d) The export controls of this Part apply to the exports referred to in paragraph (a) of this section regardless of whether the person who intends to export the technical data produces or manufactures defense articles if the technical data is determined by the Office of Munitions Control to be subject to the controls of this subchapter.

"(e) The provisions of this subchapter do not apply to technical data related to articles in Category VI(e) and Category XVI. The export of such data is controlled by the Department of Energy and the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, and the Nuclear Non-Proliferation Act of 1978."

Enclosure (2)

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Act (22 U.S.C. 5778(e)) for confidential treatment of information provided to the Department of State must be made by letter to the Office of Munitions Control.

**§ 123.23 Renewal and disposition of licenses.**

(a) A license is valid for a period of two years. The license expires if the defense articles described in the license are not shipped within the two-year period. Defense articles to be shipped hereafter require a new application and license. The new application should refer to the expired license. It should not include references to any defense articles other than those of the unshipped balance of the expired license.

(b) Unused, expired, expended, suspended, or revoked licenses must be returned immediately to the Department of State.

**§ 123.24 Port of exit or entry.**

An application for a license must state the proposed port of exit from the United States. If applicable, the port of entry must also be stated. After a license is issued, the person to whom the license was issued must notify the Office of Munitions Control in writing of any proposed change of the port prior to export. A copy of such written notification must be sent to the district director of customs at the new port.

**§ 123.25 Filing of export and interest licenses and shipper's export declarations with district directors of customs.**

(a) The recipient of an export license must deposit the license with the district director of customs at the port of exit designated on the license before shipping the defense article in question. (For exports by mail, see § 123.26.) After a license has been so deposited, the export may be made through the designated port. If necessary, the export may be made through another port if the exporter complies with the procedures established by the U.S. Customs Service and § 123.24. Before shipping any defense article, the exporter must also file a shipper's export declaration (Department of Commerce Form 7525-V) with the district director of customs at the port of exit.

(b) Before any export occurs, the district director of customs at the port of exit must authenticate the shipper's export declaration, and endorse the license to show the shipments actually made. The district director of customs will return a copy of each authenticated shipper's export declaration to the Office of Munitions Control. Every license will also be returned upon the completion of the authorized export or

upon the expiration date stated on the license, whichever occurs first.

(c) An exporter must also file a shipper's export declaration with district directors of customs or postmasters in those cases in which no export license is required because of an exemption in this subchapter. The exporter must certify that the export is exempt from the licensing requirements of this subchapter. This is done by writing "22 CFR (identify section) applicable" on the shipper's export declaration, and by identifying the section under which an exemption is claimed. A copy of each such declaration must be mailed immediately by the exporter to the Office of Munitions Control. This paragraph does not create an obligation to file a shipper's export declaration if (1) the export is exempt from the licensing requirements of this subchapter pursuant to § 123.4 and (2) it is not otherwise required by law or by regulations other than those contained in this subchapter.

(d) District directors of customs are authorized to permit the shipment of defense articles identified on any license when the total value of the export does not exceed the aggregate monetary value (not quantity) stated on the license by more than ten percent.

**§ 123.26 Shipments by mail.**

An export license for defense articles being sent abroad by mail must be filed with the postmaster at the post office where the equipment is mailed. A shipper's export declaration (U.S. Department of Commerce Form 7525-V) must be filed with and be authenticated by the postmaster before the article is actually sent. The postmaster will endorse each license to show the shipments made. Every license must be returned by the postmaster to the Office of Munitions Control upon completion of the mailings or the date that the license expires, whichever occurs first.

**§ 123.27 Temporary exports.**

(a) If defense articles are to be sent abroad for brief periods and returned to the United States in the same condition, a license for the temporary export of defense articles must be obtained from the Department of State (Form DSP-73).

(b) Defense articles authorized for temporary export under this section may be shipped only from a port in the United States where a district director of customs is available. The license for temporary export must be presented to the district director of customs who, upon verification, will endorse the exit column on the reverse side of the license. The endorsed license for temporary export is to be retained by

the licensee. In the case of a military aircraft or vessel, the endorsed license must be carried on board such vessel or aircraft as evidence that it has been duly authorized by the Department of State to leave the United States temporarily.

(c) Upon the return to the United States of defense articles covered by a license for temporary export, the license will be endorsed in the entry column by the district director of customs. This procedure shall be followed for all exits and entries made during the period for which the license is valid. The licensee must send the used license to the Office of Munitions Control immediately upon expiration or after the final return in the case of multiple exports under the same license, whichever occurs first.

**\* \* \***  
**PART 124—MANUFACTURING LICENSE AGREEMENTS, TECHNICAL ASSISTANCE AGREEMENTS, AND OTHER DEFENSE SERVICES**

**Sec.**  
**124.1** Manufacturing license agreements and technical assistance agreements.

**124.2** Exemptions for training and military service.

**124.3** Exports of technical data in furtherance of an agreement.

**124.4** Deposit of signed agreements with the Office of Munitions Control.

**124.5** Proposed agreements which are not concluded.

**124.6** Termination of manufacturing license agreements and technical assistance agreements.

**Procedures**

**124.7** Required information and clauses in proposed agreements.

**124.8** Information required in all agreements.

**124.9** Clauses required both in manufacturing license agreements and technical assistance agreements.

**124.10** Additional clauses required only in manufacturing license agreements.

**124.11** Non-transfer and use occurrence.

**124.12** Required information in letters of transmittal.

**Offshore Procurement and Warehousing Agreements**

**124.13** Procurement by United States persons in foreign countries (offshore procurement).

**124.14** Exports to warehouses or distribution points outside the United States.

**Authority:** Section 58, Arms Export Control Act, 60 Stat. 744 (22 U.S.C. 5778); E.O. 11654, 42 FR 6311; 22 U.S.C. 285a.

**§ 124.7** Manufacturing license agreements and technical assistance agreements.

(a) **General.** The approval of the Office of Munitions Control must be obtained before the defense services

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described in § 120.8(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement with the foreign person concerned to the Office of Munitions Control. Such agreements are generally characterized as either "Manufacturing license agreements" or "technical assistance agreements" as defined in § 120.14 and § 120.20, and may not enter into force without the prior written approval of the Office of Munitions Control. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with § 124.3 and § 125.4(b)(2). The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in § 120.8(a) (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter pursuant to § 125.4). This requirement also applies to the training of foreign military forces, both regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. (In exceptional cases, the Office of Munitions Control, upon written request, will consider approving the provision of defense services described in § 120.8(a) by granting a license under Part 125. Also, see § 128.8 for the requirements for prior approval of proposals relating to significant military equipment.)

(b) *Amendments Proposed* amendments, including extensions, to agreements subject to the requirements of this part must also be submitted for approval. The amendments may also not enter into force until approved by the Office of Munitions Control. Amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in such agreements because of the requirements of this part, do not have to be submitted for approval. One copy of all such minor amendments must be submitted to the Office of Munitions Control within thirty days after they are concluded.

**§ 124.2 Exemptions for training and military services.**

(a) Technical assistance agreements are not required for the provision of training only in the basic operation and maintenance of defense articles lawfully

exported or authorized for export to the same recipient.

(b) Services performed as a member of the regular military forces of a foreign nation by U.S. persons who have been drafted into such forces are not deemed to be defense services for purposes of § 120.8.

**§ 124.3 Exports of technical data in furtherance of an agreement.**

(a) *Unclassified technical data.* District directors of customs or postal authorities may permit the export without a license of unclassified technical data if the export is in furtherance of a manufacturing license or technical assistance agreement which has been approved in writing by the Office of Munitions Control. The export is not authorized without a license if it exceeds the scope or limitations of the relevant agreement. The U.S. party to the agreement must certify that the export does not exceed the scope of the agreement and any limitations imposed pursuant to this Part. The approval of the Office of Munitions Control must be obtained for the export of any unclassified technical data which may exceed the terms of the agreement.

(b) *Classified technical data.* The export of classified information in furtherance of an approved manufacturing license or technical assistance agreement which provides for the transmittal of classified information does not require further approval from the Office of Munitions Control when:

- (1) The United States party certifies to the Department of Defense transmittal authority that the classified information does not exceed the technical or product limitations in the agreement; and
- (2) The United States party complies with the requirements of the Department of Defense Industrial Security Manual concerning the transmission of classified information, and any other requirements of cognizant U.S. departments or agencies.

**§ 124.4 Deposit of signed agreements with the Office of Munitions Control.**

The United States party to a manufacturing license or a technical assistance agreement must file one copy of the concluded agreement with the Office of Munitions Control not later than 30 days after it enters into force.

**§ 124.5 Proposed agreements which are not concluded.**

The United States party to any proposed manufacturing license agreement or technical assistance agreement must inform the Office of Munitions Control if a decision is made not to conclude the agreement. The

information must be provided within 90 days of the date of the decision. These requirements apply only if the approval of the Office of Munitions Control was obtained for the agreement to be concluded (with or without any provisos).

**§ 124.6 Termination of manufacturing license agreements and technical assistance agreements.**

The United States party to a manufacturing license or a technical assistance agreement must inform the Office of Munitions Control in writing of the impending termination of the agreement not less than 90 days prior to the expiration date of such agreement.

**Procedures**

**§ 124.7 Required information and clauses in proposed agreements.**

In order to be approved, all proposed manufacturing license agreements and technical assistance agreements must contain certain information and clauses. The information required is specified in § 124.8. The information required should be provided in terms which are as precise as possible. The clauses which must be included in both manufacturing license agreements and technical assistance agreements are stated in § 124.9. The additional clauses which must be stated in manufacturing license agreements only are specified in § 124.10. If the United States party believes that a clause or some required information is not relevant or necessary to a particular agreement, the Office of Munitions Control may authorize the omission of the information or clause. The transmittal letter accompanying the agreement (see § 124.12) must state the reasons for any proposed variation in the required information or statements.

**§ 124.8 Information required in all agreements.**

The following information must be included in all manufacturing license agreements and technical assistance agreements:

(a) The agreement must describe the equipment and technology involved. They should be described by military nomenclature, contract number, Federal stock number, nameplate data, or other specific information.

(b) The agreement must describe the assistance and information to be furnished and the manufacturing rights to be granted, if any.

(c) The duration of the proposed agreement must be specified, and

(d) The agreement must specifically identify the countries or areas in which manufacturing, production, processing,

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sale or other form of transfer is to be licensed.

**§ 124.9 Clauses required both in manufacturing license agreements and technical assistance agreements.**

The following statements must be included both in manufacturing license agreements and in technical assistance agreements:

(a) "This agreement shall not enter into force, and shall not be amended or extended, without the prior written approval of the Department of State of the U.S. Government."

(b) "This agreement is subject to all United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations."

(c) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(d) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of the U.S. Government's approval of this agreement."

(e) "The technical data or defense service exported from the United States in furtherance of this agreement and any defense article which may be produced or manufactured from such technical data or defense service may not be transferred to a person in a third country or to a national of a third country except as specifically authorized in this agreement unless the prior written approval of the Department of State has been obtained."

(f) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

**§ 124.10 Additional clauses required only in manufacturing license agreements.**

(a) *Cluses for all manufacturing license agreements.* The following clauses must be included only in manufacturing license agreements:

(1) "No export, sale, transfer, or other disposition of the licensed article is authorized to any country outside the territory wherein manufacture or sale is herein licensed without the prior written approval of the U.S. Government. Sales or other transfers of the licensed article shall be limited to governments of countries wherein manufacture or sale is

hereby licensed and to private entities seeking to procure the licensed article pursuant to a contract with any such government unless the prior written approval of the U.S. Government is obtained."

(2) "It is agreed that sales by licensee or its sublicensees under contracts made through the U.S. Government will not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for data which the U.S. Government has a right to use and disclose to others, which are in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon their use and disclosure to others."

(3) "If the U.S. Government is obligated or becomes obligated to pay to the licensor royalties, fees, or other charges for the use of technical data or patents which are involved in the manufacture, use, or sale of any licensed article, any royalties, fees or other charges in connection with purchases of such licensed article from licensee or its sublicensees with funds derived through the U.S. Government may not exceed the total amount the U.S. Government would have been obligated to pay the licensor directly."

(4) "If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sublicensees with funds derived through the U.S. Government, contributions, and subject to the provisions of paragraphs (a) (1) and (2) of this section, no other royalties, fees or other charges may be assessed against U.S. Government funded purchases of such article. However, charges may be made for reasonable reproduction, handling, mailing, or similar administrative costs incident to the furnishing of such data."

(5) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient, shall be provided by (applicant or licensee) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. (See § 128.10(b).)

(6) "(Licensee) agree to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the licensed articles are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transhipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State."

(b) *Special clause for agreements relating to significant military equipment.* With respect to an agreement for the production of significant military equipment, the following additional provisions must be included in the agreement:

(1) "A completed nontransfer and use certificate (DSP-63) must be submitted by the recipient to the Department of State of the United States before any transfer under this agreement may take place."

(2) "The prior written approval of the U.S. Government must be obtained before entering into a commitment for the transfer of the licensed article by sale or otherwise to any person or government outside of the approved sales territory."

**§ 124.11 Nontransfer and use certificate.**

A nontransfer and use certificate (Form DSP-63) (see § 123.10) signed by the foreign party to a manufacturing license agreement or technical assistance agreement is required as a condition to the approval of any such agreement which relates to significant military equipment, classified articles or classified technical data. The Office of Munitions Control may at its option require that this certificate or a comparable undertaking be provided before approving any agreement that does not relate to significant military equipment. The Office of Munitions Control may also require as a condition to the approval of the agreement that an appropriate authority to the foreign party's government also execute the certificate, or that the foreign government concerned provide undertakings comparable to those contained in the Form DSP-63 (e.g., in a diplomatic note). Agreements involving classified articles or classified technical data must be accompanied by a nontransfer and use certificate signed by an authorized representative of the foreign government concerned. This

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requirement may be waived by the Office of Munitions Control if the foreign party is a foreign government with which the United States has a General Security of Information Agreement or other foreign government security assurance.

**§ 124.12 Required information in letters of transmittal.**

(a) An application for the approval of a manufacturing license or technical assistance agreement with a foreign person must be accompanied by an explanatory letter. The original letter and seven copies of the letter and eight copies of the proposed agreement shall be submitted to the Office of Munitions Control. The explanatory letter shall contain:

- (1) A statement giving the applicant's Munitions Control registration number.
- (2) A statement identifying the licensee and the scope of the agreement.
- (3) A statement identifying the U.S. Government contract under which the equipment or technical data was generated, improved, or developed and supplied to the U.S. Government, and whether the equipment or technical data was derived from any bid or other proposal to the U.S. Government.
- (4) A statement giving the military security classification of the equipment or technical data.
- (5) A statement identifying any patent application which discloses any of the subject matter of the equipment or technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.
- (6) A statement of the actual or estimated value of the agreement. If the value exceeds \$250,000, an additional statement must be made regarding the payment of political contributions, fees or commissions, pursuant to Part 130 of this subchapter.
  - (b) The following statements must be made in the letter of transmittal:
    - (1) "If the agreement is approved by the Department of State, such approval will not be construed by (the applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."
    - (2) "The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."
    - (3) "The (applicant) will furnish the Department of State with one copy of the signed agreement (or amendment)

within 30 days from the date that the agreement is concluded and will inform the Department of its termination not less than 30 days prior to expiration and provide information on the continuation of any foreign rights or the flow of technical data to the foreign party. If a decision is made not to conclude the proposed agreement, the applicant will so inform the Department within 60 days."

**Offshore Procurement and Warehousing Agreements**

**§ 124.13 Procurement by United States persons in foreign countries (offshore procurement).**

Notwithstanding the other provisions in Part 124, the Office of Munitions Control may authorize by means of a license (DSP-5) the export of unclassified technical data to foreign persons for offshore procurement of defense articles, provided that:

- (a) The contract or purchase order for offshore procurement limits delivery of the defense articles to be produced only to the person in the United States or to an agency of the U.S. Government; and
- (b) The technical data of U.S. origin to be used in the foreign manufacture does not disclose the details of the design, development, production or manufacture of defense articles; and
- (c) The contract or purchase order between the person in the United States and the foreign person:
  - (1) Limits the use of the technical data to the manufacture of the defense articles required by the contract or purchase order only; and
  - (2) Prohibits the disclosure of the data to any other person except duly qualified subcontractors within the same country; and
  - (3) Prohibits the acquisition of any rights in the data by any foreign person; and
  - (4) Provides that any subcontracts between foreign persons in the approved country for manufacture of equipment for delivery pursuant to the contract or purchase order contain all the limitations of this paragraph (c); and
  - (5) Requires the foreign person, including subcontractors, to destroy or return to the person in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of their terms; and
  - (6) Requires delivery of the defense articles manufactured abroad only to the person in the United States or to an agency of the U.S. Government; and
  - (d) The person in the United States provides the Office of Munitions Control with a copy of each contract, purchase order or subcontract for offshore procurement at the time it is accepted.

Each such contract, purchase order or subcontract must clearly identify the article to be produced and must identify the license number or exemption under which the technical data was exported; and

(e) Licenses issued pursuant to this section must be renewed upon their expiration if offshore procurement is to extend beyond the period of validity of the license.

If the technical data involved in an offshore procurement arrangement is otherwise exempt from the licensing requirements pursuant to 125.4 or 125.5, the DSP-5 referred to in the first sentence of this section is not required. However, the exporter must comply with the other requirements of this section.

**§ 124.14 Exports to warehouses or distribution points outside the United States**

(a) General Agreements (e.g., contracts) between U.S. persons and foreign persons for the warehousing and distribution of defense articles must be approved by the Office of Munitions Control before they enter into force. Such agreements will be limited to unclassified defense articles and must contain conditions for special distribution, end-use and reporting. Licenses for exports pursuant to such agreements must be obtained prior to exports of the defense articles (see § 123.7).

(b) Required Information. Proposed warehousing and distribution agreements (and amendments thereto) shall be submitted to the Office of Munitions Control for approval. The following information must be included in all such agreements:

- (1) A precise description of the defense articles involved. This shall include when applicable the military nomenclature, the Federal stock number, nameplate data, and any control numbers under which the defense articles were developed or procured by the U.S. Government.
- (2) A detailed statement of the terms and conditions under which the defense articles will be exported and distributed.
- (3) The duration of the proposed agreement.
- (4) Specific identification of the country or countries that comprise the distribution territory. Distribution must be specifically limited to the governments of such countries or to private entities seeking to procure defense articles pursuant to a contract with a government within the distribution territory. Consequently, any deviation from this condition must be

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fully explained and justified. A nontransfer and use certificate (DSP-43) will be required to the same extent required in licensing agreements under § 124.10(b).

(c) **Required Statements.** The following statements must be included in all warehousing and distribution agreements:

(1) "This agreement shall not enter into force, and may not be amended or extended, without the prior written approval of the Department of State of U.S. Government."

(2) "This agreement is subject to all United States laws and regulations related to exports and to all administrative acts of the United States Government pursuant to such laws and regulations."

(3) "The parties to this agreement agree that the obligations contained in this agreement shall not affect the performance of any obligations created by prior contracts or subcontracts which the parties may have individually or collectively with the U.S. Government."

(4) "No liability will be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign by reason of the U.S. Government's approval of this agreement."

(5) "No export, sale, transfer, or other disposition of the defense articles covered by this agreement is authorized to any country outside the distribution territory without the prior written approval of the Office of Munitions Control of the U.S. Department of State."

(6) "The parties to this agreement agree that an annual report of sales or other transfers pursuant to this agreement of the licensed articles, by quantity, type, U.S. dollar value, and purchaser or recipient shall be provided by (applicant or licensee) to the Department of State." This clause must specify which party is obligated to provide the annual report. Such reports may be submitted either directly by the licensee or indirectly through the licensor, and may cover calendar or fiscal years. Reports shall be deemed proprietary information by the Department of State and will not be disclosed to unauthorized persons. (See § 125.10(b)).

(7) "(Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred:

These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transhipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items without the prior written approval of the U.S. Department of State."

(d) **Transmittal Letters.** Requests for approval of warehousing and distribution agreements with foreign persons must be made by letter. The original letter and seven copies of the letter and seven copies of the proposed agreement shall be submitted to the Office of Munitions Control. The letter shall contain:

(1) A statement giving the applicant's Munitions Control registration number.

(2) A statement identifying the foreign party to the agreement.

(3) A statement identifying the defense articles to be distributed under the agreement.

(4) A statement identifying any U.S. Government contract under which the equipment may have been generated, improved, developed or supplied to the U.S. Government, and whether the equipment was derived from any bid or other proposal to the U.S. Government.

(5) A statement that no classified defense articles or classified technical data are involved.

(6) A statement identifying any patent application which discloses any of the subject matter of the equipment or related technical data covered by an invention secrecy order issued by the U.S. Patent and Trademark Office.

(e) **Required Clauses.** The following statements must be made in the letter of transmittal:

(1) "If the agreement is approved by the Department of State, such approval will not be construed by (applicant) as passing on the legality of the agreement from the standpoint of antitrust laws or other applicable statutes, nor will (the applicant) construe the Department's approval as constituting either approval or disapproval of any of the business terms or conditions between the parties to the agreement."

(2) "The (applicant) will not permit the proposed agreement to enter into force until it has been approved by the Department of State."

(3) "The (applicant) will furnish the Department of State with one copy of the signed agreement (or amendments thereto) within 30 days from the date that the agreement is concluded, and will inform the Department of its termination not less than 30 days prior to expiration. If a decision is made not

to conclude the proposed agreement, the (applicant) will so inform the Department within 60 days."

#### PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

Sec.  
125.1 Exports subject to this Part.  
125.2 Exports of unclassified technical data  
125.3 Exports of classified technical data and classified defense articles.

##### Exemptions

125.4 Exemptions of general applicability  
125.5 Exemptions for plant visits  
125.6 Certification requirements

##### Procedures

125.7 Exports of unclassified technical data  
125.8 Exports of classified technical data and classified defense articles  
125.9 Filing of licenses for exports of unclassified technical data  
125.10 Filing of licenses for exports of classified technical data and classified defense articles.

Authority: Section 26, Arms Export Control Act, 80 Stat. 744 (22 U.S.C. 2772); E.O. 11858, 42 FR 4311; 22 U.S.C. 2654.

##### § 125.1 Exports subject to this Part.

(a) The export controls of this Part apply to the export of technical data and the export of classified defense articles. Information which is in the "public domain" (see § 120.18) is not subject to the controls of this subchapter.

(b) A license for the export of technical data and the exemptions in § 125.4 may not be used for foreign production purposes or for technical assistance unless the approval of the Department of State has been obtained. Such approval is generally provided only pursuant to the procedures specified in Part 124 of this subchapter.

(c) Technical data authorized for export may not be diverted or transferred from the country of ultimate end-use (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Department of State.

(d) The export controls of this Part apply to the exports referred to in paragraph (a) of this section regardless of whether the person who intends to export the technical data produces or manufactures defense articles if the technical data is determined by the Office of Munitions Control to be subject to the controls of this subchapter.

(e) The provisions of this subchapter do not apply to technical data related to articles in Category VI(e) and Category XVI. The export of such data is controlled by the Department of Energy



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DEFINITIONS

Controlling Navy Command. The Navy command which has possession of technical data subject to this instruction and from which a qualified U. S. contractor requests such data.

Critical Technology. Technologies that consist of (a) arrays of design and manufacturing know-how (including technical data); (b) keystone manufacturing, inspection and test equipment; (c) keystone materials\*\* ; and (d) 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).

Limited Rights. Limited Rights means rights to use, duplicate or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be (1) released or disclosed in whole or in part outside the Government, (2) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for reproduction of the computer software or (3) used by a party other than the Government, except for:

a. Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

b. Release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of subparagraph a above.

Originating Navy Command. The Navy command that sponsored or originated the work that generated the technical data or received the technical data on behalf of the DON and therefore has the responsibility for determining the distribution of a document containing such technical data. In the case of joint sponsorship, the originating command is determined by advance agreement.

\* Keystone equipment (including manufacturing, inspection or test equipment) is the equipment specifically necessary for the effective application of a significant array of technical information and know-how.

\*\* Keystone materials are materials specifically necessary for the effective application of a significant array of technical information and know-how.

Enclosure (3)

Other Legitimate Business Purposes. Include:

- a. Providing or seeking to provide equipment or technology to a foreign government with the approval of the U. S. Government, i.e., through a licensed direct foreign military sale.
- b. Bidding, or preparing to bid, on a sale of surplus property.
- c. Selling or producing products for the commercial domestic marketplace or for the commercial foreign marketplace, providing that any required export license is obtained.
- d. Engaging in scientific research in a professional capacity.
- e. Acting as a subcontractor to a concern described in subparagraphs a through d above; or
- f. Selling technical data subject to this instruction in support of DOD contractors or in support of the competitive process for DOD contractors, provided 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.

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:

- a. The Department of the Army Qualitative Requirements Information Program.
- b. The Department of the Navy Industry Cooperative Research and Development Program.
- c. The Department of the Air Force Potential Contractor Program.
- d. The DOD Scientific and Technical Information Program; or
- e. Any similar program in use by other DOD components.

Public Disclosure. Making technical data available without restricting its dissemination or use. This is equivalent to foreign disclosure as no means to restrict access or further dissemination is provided.

Qualified U. S. Contractor. A private individual or enterprise that has been certified by the Defense Logistics Services Center (DLSC) to receive technical data subject to this instruction in accordance with the provisions of DOD Directive 5230.25 of 6 November

Enclosure (3)

29 JUL 1985

1984 (NOTAL). The certification of a U. S. contractor is evidenced by the presentation by the U. S. contractor of a DD 2345 on which Block 7a has been checked and a certification number entered, and on which Block 8 has been completed by a DLSC official.

Restricted Rights Restricted Rights apply only to computer software, and include, as a minimum, the right to:

- a. Use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;
- b. Use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;
- c. Copy computer programs for safekeeping (archives) or backup purposes; and
- d. Modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

And in addition, any other specific rights not inconsistent therewith listed or described in a contract or described in a license or agreement made a part of a contract.

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.

United States. For the purpose of this instruction, the United States is the 50 States, the District of Columbia, and the territories and possessions of the United States.

Unlimited Rights. Unlimited Rights means rights to use, duplicate or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

Enclosure (3)

Sample Denial Letter for FOIA Requests

Dear Mr. Jones:

Thank you for your recent letter seeking \_\_\_\_\_.

Your request has been considered carefully under the provisions of the Freedom of Information Act, as amended (5 U.S.C. 552), and the implementing Navy directive, Secretary of the Navy Instruction 5720.42C, Subj: Department of the Navy Freedom of Information Act Program.

Your request must be denied because the data you requested are unclassified technical data related to critical technologies with military and space applications which may not be exported lawfully without an approval, authorization or license under Executive Order 12470 or the Arms Export Control Act. Such data are protected from public disclosure pursuant to 10 U.S.C. Section 140c and, thus, are exempt from mandatory disclosure under the FOIA pursuant to the third exemption (5 U.S.C. 552(b)(3)). The third exemption of the FOIA permits withholding from public disclosure information which is protected by statute.

Under the FOIA and the Navy's implementing regulation (32 C.F.R. Section 701.8) you may appeal this determination in writing to the designee of the Secretary of the Navy within 45 days of the date of this letter. Your appeal should be sent, with a copy of this letter, to the General Counsel, Navy Department, Washington, D. C. 20360-5110. It is recommended that you note "FREEDOM OF INFORMATION ACT APPEAL" on your envelope.

The official(s) responsible for the denial of your request (is) (are):

(Name(s), title(s), activity(ies))

The data you requested may be, under some circumstances, provided to individuals or companies certified as Qualified U. S. Contractors by the Department of Defense. Attached for your information is a description of this program.

If you have any questions concerning this response, please contact \_\_\_\_\_, telephone \_\_\_\_\_, who will be pleased to help you.

Sincerely,

Enclosure (4)

29 JUL 1985

## Information Sheet on Qualified U. S. Contractors.

By Department of Defense (DOD) Directive 5230.25 of 6 Nov 1984, a program was established to allow a private individual or enterprise, called a Qualified U. S. Contractor, to obtain export - controlled technical data under certain conditions. The following definition of "Qualified U. S. Contractor" is extracted from that directive:

Qualified U. S. Contractor<sup>1</sup> 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:

a. 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.

b. 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 purposes<sup>2</sup> 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 are related properly to such business purpose.

c. 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 Directive in a manner that would violate applicable export control laws and regulations.

d. The U. S. contractor also agrees that, unless dissemination is permitted by this Directive, it will not provide access to export-controlled technical data subject to this Directive to persons other than its employees or persons acting on its behalf, without the permission of the DOD component that provided the technical data.

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<sup>1</sup> Canadian contractors may be qualified in accordance with this Directive for technical data that do not require a license for export to Canada under section 125.12 of the ITAR and sections 379.4(d) and 379.5(e) of the EAR by submitting an equivalent certification to the U. S. Department of Defense.

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

29 JUL 1985

e. 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 Directive.

f. 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 Directive.

Private individuals or enterprises are certified as Qualified U. S. Contractors by the Defense Logistics Services Center (DLSC) in Battle Creek, Michigan. Persons or companies desiring certification as Qualified U. S. Contractors should submit to DLSC a DD Form 2345 (sample copy attached). Copies of these Forms may be obtained from the Navy Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120-5099. Questions about this program or DD Form 2345 may be referred to DLSC.

Enclosure (5)

29 JUL 1985

EXPORT - CONTROLLED DOD TECHNICAL DATA AGREEMENT (READ PRIVACY ACT STATEMENT AND INSTRUCTIONS ON REVERSE BEFORE COMPLETION)				FORM APPROVED OMB No 0704-0207 Exp Date Dec 31, 1985	
1. TYPE OF SUBMISSION (X one)		INITIAL SUBMISSION	RESUBMISSION	REVISION	5-YEAR RENEWAL
2. INDIVIDUAL OR ENTERPRISE DATA (Referred to as a "qualified U.S. contractor" upon acceptance of certification by the DoD)					
a. NAME			b. ADDRESS (Street, City, State and Zip Code)		
c. NAME OF SUBSIDIARY/DIVISION					
d. FSCM/FSCNM/CAGE CODE			e. PHONE NO		
3. DATA RECIPIENT					
a. NAME			b. ADDRESS (Street, City, State and Zip Code)		
c. PHONE NO					
d. TITLE					
4. DESCRIPTION OF RELEVANT BUSINESS ACTIVITY					
5. AS A CONDITION OF RECEIVING EXPORT-CONTROLLED DOD TECHNICAL DATA, THE INDIVIDUAL OR ENTERPRISE CERTIFIES THAT:					
a. The individual named in Block 3, who will act as recipient of the export-controlled DoD 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			d. No access to export-controlled DoD technical data will be provided to persons other than its employees, or persons acting on its behalf, unless permitted by DoDD 5230.25 or the DoD Component that provided the technical data		
b. Data requested under this certification are needed to bid or perform on a contract with the DoD, or other U.S. Government agency, or for other legitimate business purposes in which the U.S. contractor is engaged, or plans to engage.			e. To the best of its knowledge and belief, no person employed by it, or acting on its behalf, who will have access to export-controlled DoD technical data, 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 DoD under the provisions of DoDD 5230.25		
c. It acknowledges all 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 no export-controlled DoD technical data will be disseminated in a manner that would violate applicable export control laws and regulations.			f. It 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 DoDD 5230.25		
6. CONTRACTOR CERTIFICATION					
I certify that the information and certifications made by me are true, complete, and accurate to the best of my knowledge and belief and are made in good faith. I understand that a knowing and willful false statement on this form can be punished by fine or imprisonment or both. (See U.S. Code, Title 18, Section 1001.)					
a. TYPED NAME (Last, First, Middle Initial)		b. TITLE		c. SIGNATURE	
				d. DATE SIGNED	
7. CERTIFICATION ACTION BY THE DEPARTMENT OF DEFENSE (X one)					
a. CERTIFICATION ACCEPTED: This certification number, along with a statement of intended data use, must be included with each request for export-controlled DoD technical data				NUMBER:	
b. RETURNED - Insufficient information:					
c. REJECTED - Does not meet eligibility requirements of DoDD 5230.25.					
8. DoD OFFICIAL					
a. TYPED NAME (Last, First, Middle Initial)			b. SIGNATURE		
c. TITLE			d. DATE SIGNED		

DD Form 2345, DEC 84

Enclosure (6)

29 JUL 1985

**INSTRUCTIONS FOR COMPLETION OF DD FORM 2345**

**PRIVACY ACT STATEMENT**

- AUTHORITY:** 10 USC, Section 140c, as added by PL 98-94, Section 1217, September 24, 1983, and implemented by DoDD 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure," November 6, 1984 (32 CFR Part 250).
- PRINCIPAL PURPOSE:** To identify individuals and enterprises eligible to receive export-controlled DoD technical data.
- ROUTINE USE:** To support decisions regarding dissemination or withholding of export-controlled DoD technical data. Information provided on this form describing your business may be published from time to time for the benefit of other "qualified U. S. contractors."
- DISCLOSURE:** Voluntary; however, failure to provide the information may result in a denial of access to export-controlled DoD technical data.

Mail the original, completed copy of this form and any attachments to:

Commander, Defense Logistics Services Center  
 ATTN: DLSC-FBA  
 Federal Center  
 Battle Creek, Michigan 49017-3084

**SPECIFIC INSTRUCTIONS**

1. Mark only one box. Mark "RESUBMISSION" only if your previous submission was returned or rejected by the DoD. Mark "REVISION" (of a previously accepted submission) to show revised information, such as addresses or business description. Mark "5-YEAR RENEWAL" in response to a renewal notice from DoD. When either the "REVISION" or "5-YEAR RENEWAL" box is marked, enter your current Certification Number in Block 7a.

and construct high-pressure, high-volume hydraulic pumps for use in connection with aircraft control surfaces; do not state simply "hydraulic pumps." Provide concise statements within the space provided.

5. If certifications 5e and 5f cannot be made, provide (on a separate sheet) a description of any extenuating circumstances that may give DoD sufficient reason to accept your certification.

2. a. For an individual, show full name (Last, First, Middle Initial). For an enterprise, show full name of corporate parent; or institution.

5. If Block 2 identifies an individual, that individual must sign. If Block 2 identifies an institution or a corporate entity, a person who can legally obligate the enterprise to a contract must sign.

b. Enter the mailing address of the individual or enterprise making certification. If a P. O. Box is used for mailing purposes, include street address as well.

c. Each corporate subsidiary or division that is to receive export-controlled DoD technical data must be certified separately. If not applicable, so state.

7. Explanation of DoD Certification Action.

d. Enter the Federal Supply Code for Manufacturers (FSCM) or Non-Manufacturers (FSCNM) or Commercial and Government Entity (CAGE) code assigned to the individual or enterprise making the certification. If none, so state. If a subsidiary or division is certified, enter that organization's code.

a. ACCEPTED. DoD has assigned the individual or enterprise identified in Block 2 a Certification Number which will identify the individual or enterprise as a "qualified U.S. contractor" as defined in DoDD 5230.25. The acceptance is valid for a period of five years from the acceptance date unless sooner revoked in accordance with DoDD 5230.25. If at any time a qualified U. S. contractor is unable to adhere to the conditions under which a certification was accepted by DoD, the contractor's certification is considered to be void, and the contractor will either submit a revised certification or surrender all export-controlled DoD technical data obtained under this agreement to the controlling DoD offices specified on the documents.

e. Show telephone number of the certifying official identified in Block 6. Include the area code.

b. RETURNED. Your submission did not contain all information required to process your certification. Please review any comments provided with the returned submission and resubmit in accordance with the applicable instructions.

3. Show the name, address, phone number (including area code) and title of the individual who will receive export-controlled DoD technical data and be responsible for its further dissemination.

c. REJECTED. Reasons for rejection include, for example, debarment, a business activity that does not fall within the scope of DoDD 5230.25, or failure to make all of the required certifications.

4. Describe the business activity of the entity identified in Block 2 in sufficient detail for DoD Components to determine whether the export-controlled DoD technical data which you may request from time to time are reasonably related to your stated business activity. For example, state that you design

ABBREVIATIONS: "DoD" is Department of Defense and "DoDD" is Department of Defense Directive

DD Form 2345 Reverse, DEC 84



29 JUL 1985

Sample Denial Letter to Qualified U. S. Contractors  
(Requests Unrelated to Certification)

Dear Mr. Green:

Thank you for your recent letter for controlled unclassified technical data as a Qualified U. S. Contractor. Unfortunately, your request must be denied pursuant to 10 U. S.C. 140c as implemented by DOD Directive 5230.25.

Your request has been considered carefully and from the information available to us, we believe that the technical data you requested are unrelated to the purpose for which you have been certified as a Qualified U. S. Contractor. Please provide us with additional information sufficient to explain the intended use of the requested data.

You may request a new certification commensurate with the intended use of the requested data from the Defense Logistics Services Center, Attn: DLSC-F, Federal Center, Battle Creek, Michigan, 49016-3412, or you may appeal this denial to the Director, Security Policy Division (Op-009P), Office of the Chief of Naval Operations, Washington, D. C. 20350-2000.

If you elect to appeal, the appeal must be received by the Director, Security Policy Division (Op-009P) within 45 days from the date of this letter. It is recommended that the letter of appeal and the envelope bear the notation, "Unclassified Technical Data Request Appeal." A copy of this letter should be included with your appeal.

If you have any questions concerning this response, please contact \_\_\_\_\_, telephone \_\_\_\_\_, who will be pleased to help you.

Sincerely,

Copy to:  
CNO (Op-009P)

Enclosure (7)

29 JUL 1985

**NOTICE TO ACCOMPANY THE DISSEMINATION OF EXPORT-CONTROLLED  
TECHNICAL DATA**

1. 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.
2. Under 22 U.S.C 2778, the penalty for unlawful export of items or information controlled under the ITAR is up to two years imprisonment, 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, a fine of up to \$250,000, or both.
3. 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 your disqualification as a qualified U. S. contractor, and may be considered in determining your eligibility for future contracts with the Department of Defense. A qualified U. S. contractor desiring to disseminate technical data received from a Navy command in a manner not expressly permitted, shall seek authority to do so from the originator of the technical data. If the originator cannot be determined, the qualified U. S. contractor shall request this authority from the Chief of Naval Operations (Op-009P), Washington, D. C. 20350-2000. Unauthorized dissemination of technical data by a qualified U. S. contractor can take place by the publishing of articles in open literature, publishing advertising or promotional materials, utilizing the technical data in conducting educational and training courses, and by similar means whereby persons or entities not authorized by the Department of the Navy to have access to the technical data can obtain such access.
4. The U. S. Government assumes no liability for direct patent infringement or contributory patent infringement or misuse of technical data.
5. The U. S. Government does not warrant the adequacy, accuracy, currency or completeness of the technical data.
6. 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.
7. If the technical data furnished by the Government will be used for commercial manufacturing or other profit 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.
8. 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.

Enclosure (8)

29 JUL 1985

**Sample Denial Letter to Qualified U. S. Contractors  
(Requests Unrelated to DOD Support)**

**Dear Mr. Smith:**

Thank you for your recent letter for controlled unclassified technical data as a Qualified U. S. Contractor. Unfortunately, your request must be denied pursuant to 10 U. S.C. 140c as implemented by DOD Directive 5230.25.

Your request has been considered carefully and from the information available to us, we have determined that the significance of the requested data for military purposes is such that its release for purposes other than direct support of Department of the Navy-approved activities may jeopardize an important technical or operational military advantage of the United States.

You may appeal this denial of your request to

**Director, Security Policy Division (Op-009P)  
Office of the Chief of Naval Operations  
Washington, D. C. 20350-2000**

The appeal must be received in that office within 45 days from the date of this letter. It is recommended that the letter of appeal and the envelope bear the notation, "Unclassified Technical Data Request Appeal." A copy of this letter should accompany your appeal.

If you have any questions concerning this response, please contact \_\_\_\_\_, telephone \_\_\_\_\_, who will be pleased to help you.

Sincerely,

Copy to:  
CNO (Op-009P)

Enclosure (9)

OPNAVINST 5510.161  
29 JUL 1985

**Sample Denial Letter to Persons not Qualified U. S. Contractors**

**Dear Mr. Brown:**

Thank you for your recent letter seeking \_\_\_\_\_. Unfortunately, your request must be denied because the requested information is controlled pursuant to 10 U. S. C. 140c as implemented by DOD Directive 5230.25.

Private individuals or enterprises can, in certain cases and if certified as Qualified U. S. Contractors by the Department of Defense, receive controlled unclassified technical data when such data relate to a legitimate business purpose for which the certification is granted. Attached for your information is a sheet which describes the Qualified U. S. Contractor certification process (see enclosure (5) for Information Sheet).

You may appeal this denial of your request to

Director, Security Policy Division (Op-009P)  
Office of the Chief of Naval Operations  
Washington, D. C. 20350-2000

The appeal must be received in that office within 45 days from the date of this letter. It is recommended that the letter of appeal and the envelope bear the notation, "Unclassified Technical Data Request Appeal". A copy of this letter should accompany your appeal.

If you have any questions concerning this response, please contact \_\_\_\_\_, telephone \_\_\_\_\_, who will be pleased to help you.

Sincerely,

Copy to:  
CNO (Op-009P)

Enclosure (10)