



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

SECNAVINST 5710.23D
ASN (RD&A)//SSP 21
28 AUG 2018

SECNAV INSTRUCTION 5710.23D

From: Secretary of the Navy

Subj: IMPLEMENTATION OF, AND COMPLIANCE WITH, ARMS CONTROL AGREEMENTS

Ref: (a) DoD Directive 2060.1 of 9 January 2001
(b) DoD Directive 5000.01 of 20 December 2007
(c) SECNAVINST 5000.2E
(d) DoD Directive 5000.2E of 1 September 2011
(e) SECNAVINST S5460.3H (NOTAL)
(f) SECNAV M-5510.36

Encl: (1) Responsibilities
(2) Action

1. Purpose. To fulfill responsibilities set forth in references (a) and (b), this instruction establishes Department of the Navy (DON) policies and procedures to ensure all DON activities are compliant with applicable arms control agreements, as well as applicable arms control procedures and guidance issued by the Under Secretary of Defense (Acquisition and Sustainment (USD (A&S))).

2. Cancellation. SECNAVINST 5710.23C.

3. Applicability. This instruction applies to the Office of the Secretary of the Navy (SECNAV), the Chief of Naval Operations (CNO), the Commandant of the Marine Corps (CMC), and all U.S. Navy, U.S. Marine Corps installations, commands, activities, field offices, and all other organizational entities within the DON.

4. Scope. For purposes of this instruction, the term "activities" as described above includes, but is not limited to the development, procurement, and/or use of all DON "weapons and weapons systems," as defined by reference (c), as well as all DON research and development, tests, acquisitions, exercises, and operations.

5. Background

a. Reference (a) requires that the SECNAV ensure compliance with arms control agreements; provide advice and assistance on implementation, compliance, and interpretation of arms control agreements; establish detailed procedures for implementation of, and compliance with, arms control agreements; designate an implementation and compliance review manager; provide periodic reports of arms control compliance; and seek approval from the USD (A&S) on any arms control issues that reasonably raise compliance concerns.

b. Reference (b) requires that the acquisition and procurement of all weapons and weapons systems is consistent with all applicable domestic law, arms control treaties, international agreements, customary international law, and the law of armed conflict (LOAC). In order to ensure this legal consistency, reference (b) requires that only a specifically authorized attorney conduct such legal reviews of the intended acquisition of weapons or weapons systems. This requirement is further discussed in enclosure (1).

c. Arms control agreements cover, but are not necessarily limited to, strategic arms, nuclear testing, chemical and biological warfare, confidence and security building measures, and additional measures to reduce the outbreak of war. Current and future arms control agreements may affect mission force structure, deployments, operations, and budgets and may place limitations on research, development, and implementation of specified technologies within Navy and Marine Corps programs. If not properly addressed, arms control constraints could lead to inadvertent non-compliance, waste of resources, and/or international incidents.

d. For the purposes of this instruction the term "arms control agreements" includes acceptance of any arms control measures by the United States and one or more other nations. It may include legally or politically binding arrangements and may be characterized as, among other things, a treaty, agreement, protocol, declaration, memorandum of agreement/understanding, or confidence and security building measure. Substantively, the term may encompass any agreement or arrangement governing any aspect of the following: the

numbers, types, location, testing, and performance characteristics of weapons systems (including command and control, logistics support arrangements, and any related intelligence-gathering mechanism); the numerical strength, organization, equipment, deployment, or employment of the armed forces of the parties; and those measures taken for the purpose of reducing instability in the military environment.

6. Policy. All DON activities shall be fully compliant with all applicable domestic law, arms control treaties, international agreements, customary international law, and the LOAC. Current and anticipated arms control compliance requirements, obligations, and constraints shall be considered as an integral part of DON policy planning, acquisition processes, and operations. Within DON, when there is doubt whether an issue raises an arms control compliance concern and whether clearance or resolution is necessary, it shall be sought using the methodology outlined in this instruction.

7. Responsibilities. See enclosure (1).

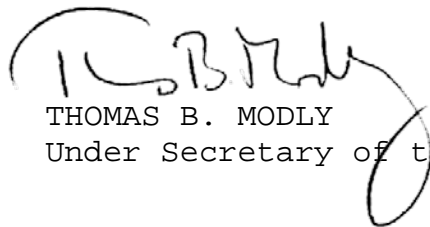
8. Action. See enclosure (2).

9. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page:

<https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx>.

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.



THOMAS B. MODLY
Under Secretary of the Navy

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RESPONSIBILITIES

1. The Assistant Secretary of the Navy (Research, Development and Acquisition) (ASN (RD&A)) shall be responsible for managing the implementation and compliance processes for current and future arms control agreements.

2. The CNO and the CMC shall be responsible for DON policy positions during arms control negotiations, for operational input to Navy and Marine Corps implementation, compliance, and planning activities, and resource sponsorship for current and new arms control implementation requirements.

a. The Deputy Chief of Naval Operations for Operations, Plans and Strategy (DCNO N3/N5) and the Deputy Commandant (Plans, Policies, & Operations) (DC (PP&O)) shall be responsible for formulation of DON arms control negotiation policy positions, in coordination with the Director, Strategic Systems Programs (DIRSSP), during current and future arms control negotiations, and for operational input to DON implementation, compliance, and planning activities, and provide Navy and Marine Corps arms control negotiation and operational impact issues to the Joint Staff.

b. The Director, Undersea Warfare Division (OPNAV N97) shall serve as responsible resource sponsor of the lead office for arms control implementation requirements.

c. The Vice CNO and the Assistant CMC may designate additional/associate funding resource sponsors for arms control implementation requirements, if required.

3. DIRSSP shall be responsible within the DON for planning and coordination of DON arms control implementation policy and activities, conducting program compliance and implementation reviews with appropriate Office of the Secretary of Defense (OSD) and other military service secretariat staffs, and providing input for formulation of DON policy positions during all arms control negotiations.

a. At the direction of ASN (RD&A), DIRSSP will establish and oversee a Naval Arms Control Review Board (NACRB) to review DON's implementation of and compliance with treaties and agreements.

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b. Consistent with reference (c), all DON activities shall be reviewed by DIRSSP via the Naval Treaty Implementation Program (NTIP) Office to ensure compliance with arms control agreements.

4. The General Counsel of the Navy (GC), the Judge Advocate General of the Navy (JAG), and the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) shall be jointly responsible within the DON for the legal interpretation of all applicable domestic law, arms control treaties, international agreements, customary international law, and the LOAC. The GC, JAG, and SJA to CMC, or their designees, shall provide advice and assistance, to ASN (RD&A), the CNO, and the CMC and their subordinate offices, as appropriate, on arms control agreement implementation and compliance review programs, consistent with the responsibilities assigned by reference (c), U.S. Navy Regulations, and this instruction. Reference (d) requires that only authorized attorneys conduct the arms control legal reviews required by references (a) and (b). As such, attorneys within the following DON legal offices are authorized to conduct the arms control legal reviews required by reference (b) and reference (c):

a. Consistent with reference (c) and this instruction, the Office of the JAG (OJAG) Code 10 (National Security Law) shall review all DON weapons and weapons systems during the program decision process to ensure that the intended use of such weapons or systems is consistent with domestic and international law, including the LOAC. Marine Corps requests for legal reviews of weapons and weapon systems shall be sent to OJAG Code 10 via SJA to CMC International and Operational Law Branch.

b. Consistent with reference (c) and this instruction, the DON Office of Counsel, Strategic Systems Programs (DON OC (SSP)) shall provide a legal review of all DON activities reviewed by NTIP. DON OC (SSP) shall ensure all DON activities are consistent with applicable domestic law, arms control treaties, international agreements, and applicable Department of Defense (DoD) arms control policies, and that they do not raise a reasonable arms control compliance concern.

c. Consistent with reference (e) and this instruction, for Special Access Programs (SAPs) under the cognizance of the Director, DON SAP Central Office (DON SAPCO), the OJAG Code 18 (Cyber, Information Operations and Intelligence Law Division)

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and the DON, Assistant General Counsel (Intelligence) (AGC (Intel)) shall conduct a legal review, as appropriate, to ensure such SAPs are consistent with applicable domestic law, arms control treaties, international agreements, and applicable DoD arms control policies, and that they do not raise a reasonable arms control compliance concern.

5. The Deputy Under Secretary of the Navy (DUSN) shall be responsible for security-related matters as they relate to mitigating vulnerabilities for arms control implementation and compliance verification regimes as described in reference (f).

6. Consistent with responsibilities assigned by reference (e), the Director, DON SAPCO shall ensure DON SAPs are prepared to demonstrate compliance with arms control treaty verification activities without compromise of sensitive program information and that reviews required by reference (b) and reference (c) are accomplished.

7. Consistent with reference (c), U.S. Navy Regulations, reference (e), and reference (f) all DON commanders and program managers are responsible for ensuring full compliance with arms control obligations in accordance with this instruction.

ACTION

1. The ASN (RD&A) is the DON implementation and compliance manager for arms control agreements and shall:
 - a. Designate the DIRSSP as the lead office for all DON arms control compliance and implementation functions, to represent DON at DoD Treaty Compliance Review Group (CRG) meetings and Treaty Implementation Working Group meetings, and for any interaction with USD (A&S);
 - b. Establish a NACRB to review DON's implementation of and compliance with arms control treaties and agreements. DIRSSP, or his/her designee (Flag Officer or Senior Executive Service), shall serve as Chairperson of the NACRB;
 - c. Ensure all DON activities are fully compliant with arms control agreements of the U.S. Government. For specific DON planned activities, seek appropriate DoD clearance through the appropriate DoD CRG on a timely basis before taking any action, including but not limited to research, tests, development, acquisition, exercises, and operations that reasonably raise an issue of DON compliance with an arms control agreement;
 - d. Submit, as requested, reports of compliance with arms control agreements to the USD (A&S) and those DON issues that raise compliance concerns to the appropriate DoD CRG.
2. DCNO (N3/N5) and the DC (PP&O) shall:
 - a. Coordinate the development of arms control negotiation policy, as appropriate, with ASN (RD&A); OPNAV (N97); DON SAPCO; and the lead office DIRSSP;
 - b. Provide Navy and Marine Corps negotiation policy positions on arms control to the Joint Staff.
3. OPNAV (N97) shall ensure that adequate funds are programmed to support Navy and Marine Corps compliance with arms control agreements.
4. DUSN shall ensure that DON equities evaluate and mitigate security-related vulnerabilities of arms control implementation and compliance verification regimes.

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5. Naval Criminal Investigative Service (NCIS), in coordination with the lead office DIRSSP, shall provide counter-intelligence and law enforcement support, as required, for arms control implementation and compliance throughout DON.

6. The Director, DON SAPCO shall, for all applicable programs under DON SAPCO cognizance, in coordination with the lead office DIRSSP, and other offices as appropriate:

a. Establish for DON SAPs arms control implementation and compliance plans and procedures;

b. Ensure timely and effective conduct of plans and procedures to include security impacts and risk mitigations during arms control compliance and implementation verification activities;

c. Distribute timely notifications of arms control treaty verification events and confidence-building measures for affected DON SAPs;

d. Conduct program arms control compliance and implementation reviews as required by references (a) through (c);

e. Provide input for formulation of DON policy positions during all arms control negotiations;

f. Include DIRSSP or designated senior representative in Special Programs Review Group deliberations of arms control issues affecting SAPs.

7. DIRSSP (lead office) shall:

a. As the DON lead office for arms control implementation and compliance, establish and execute plans and procedures to ensure that DON complies with the obligations of existing and future arms control agreements;

b. Identify acquisition programs or research efforts most likely to be affected by arms control treaties, coordinate with affected program managers to ensure that plans and designs for these programs are compliant with treaty requirements, and assist Program Managers in meeting arms control certifications required by reference (c);

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c. Identify and conduct review of programs and projects of DON warfare centers, other shore activities, and operating forces that are most likely affected by arms control treaties. Assist these DON activities to ensure treaty compliance;

d. Budget for resources necessary to carry out lead office responsibilities for arms control agreements implementation and compliance;

e. Submit, as required, arms control agreement compliance reports to ASN (RD&A);

f. Provide administrative and secretariat services to the NACRB.

8. A representative from DON OC (SSP), OJAG Code 10, and SJA to CMC shall serve as a member of, and provide legal advice and assistance to the NACRB. In addition, a representative from DON OC (SSP), OJAG Code 10, and/or SJA to CMC, as appropriate, shall accompany and provide legal advice and assistance to all DON components asked to present information to the DoD CRG. OJAG Code 18 and AGC (Intel) shall provide similar support when necessary to Special Programs Review Group deliberations of arms control issues affecting SAPs.

9. The NACRB shall:

a. Establish a DON review process for arms control treaty and agreement implementation and compliance issues;

b. Review all Navy and Marine Corps activities that reasonably raise compliance concerns with arms control agreements. Provide recommendations to ASN (RD&A) as appropriate. Ensure issues that are in doubt are fully vetted within the DON review process;

c. Coordinate arms control compliance certification decisions of ASN (RD&A) for weapons, equipment programs, and activities in appropriate OSD and DON forums;

d. Review emerging DON operational requirements, proposed acquisition programs, and current acquisition programs for arms control compliance and implementation effects prior to Milestone A decisions;

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e. Review arms control related DON implementation and compliance plans, programs, and budgets;

f. Provide periodic reports, at least annually, advising ASN (RD&A) on the status of arms control implementation and compliance activities of DON. Provide other reports as may be required by emergent issues;

g. Membership: DIRSSP (chair); representatives from ASN (RD&A); DCNO (N3/N5); Director, DON SAPCO; CMC (DC (PP&O)/SJA to CMC); JAG; GC; NCIS; DUSN; funding sponsors and other representatives as may be appropriate to the specific treaty or issue the NACRB may address.