



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

Office Of The Under Secretary

AFI61-204_AFGM3
25 AUGUST 2011

MEMORANDUM FOR DISTRIBUTION C
MAJCOMs/FOAs/DRUs

FROM: SAF/AQ

1060 Air Force Pentagon
Washington, DC 20330-1060

SUBJECT: Air Force Guidance Memorandum to Air Force Instruction 61-204 for Marking and Dissemination of Operations and Support Technical Data

This is an Air Force (AF) Guidance Memorandum immediately implementing changes to Air Force Instruction (AFI) 61-204, *Disseminating Scientific and Technical Information*. Compliance with this memorandum is mandatory. To the extent its directions are inconsistent with other Air Force publications, the information herein prevails, in accordance with AFI 33-360, *Publications and Forms Management*.

This memorandum clarifies the marking and dissemination of O&S technical data for each AF activity developing or managing technical information. Because of the intrinsic military purpose of technical orders (TOs), engineering drawings, and other technical data used in the operations and support phase of the AF weapon systems life cycle, the AF has determined, based on Public Law, International Traffic in Arms Regulations, and Department of Defense (DoD) policy that limits on the distribution of this data are justified. It emphasizes the need for proper management and dissemination of O&S technical data protected under the DoD Scientific and Technical Information (STINFO) Program.

Air Force O&S technical data for items on the United States Munitions List (USML) are export controlled and are exempt from release to the general public under the Freedom of Information Act (FOIA), as set out in DoD 5400.7-R_AFSUP1, *DoD Freedom of Information Act (FOIA) Program*, June 24, 2002. See Attachment 2, paragraph 2a. Air Force O&S technical data for items on the Commerce Control List (CCL) are also export controlled and may be exempt from release to the general public. However, distribution of export controlled Air Force O&S technical data within the U.S. Government or to U.S. contractors or U.S. DoD contractors meeting the criteria to access the technical data is permitted in accordance with the document's distribution statement IAW Department of Defense Directive (DoDD) 5230.24, *Distribution Statements on Technical Documents*, March 18, 1987.

For purposes of determining the appropriate distribution markings for Air Force technical orders (TO), and other technical documents, controlling offices shall refer to the USML, the CCL, and the Militarily Critical Technologies List (MCTL). The USML designates some technical data items as Significant Military Equipment (SME). Technical data supporting items designated as SME contain information that justifies higher levels of protection. This technical information shall be restricted solely to U.S. DoD activities or U.S. DoD contractors who hold contracts to specifically support such military equipment or have a legitimate business relationship with the Department of Defense. The Department of Defense has the sole responsibility for determining that a legitimate business relationship exists since the only purpose is to provide access to information created by or under the control of the Department of Defense. Acceptable distribution statements are "D," "E," or "F."

Lower levels of protection may be justified for technical data in the USML that is not designated SME. Acceptable distribution statements are "B," "C," or "X." Higher levels of protection may be applicable based on the specific content of the documents. Technical data not specifically related to items on the USML, CCL, or MCTL will be assigned a distribution statement justified by the content of the document. Instructions for marking and disseminating Air Force operations and support technical documents are provided in attachments 1 and 2.

Notwithstanding any inferred appearance that this Guidance Memo expands the authority for the Air Force to withhold technical data under 10 USC § 130, no Air Force Operations and Support (O&S) technical data may be withheld under 10 USC § 130 that does not meet the requirements set forth under DoDD 5230.25, *Withholding of Unclassified Technical Data From Public Disclosure*, November 6, 1984.

The guidance in this memorandum becomes void after 180 days have elapsed from the date of this memorandum, or upon incorporation of an interim change to, or a rewrite of AFI 61-204, whichever is earlier.

David M. Van Buren
Air Force Service Acquisition Executive

2 Attachments:

1. Instructions for Marking Air Force O&S Technical Documents
2. Instructions for Dissemination Air Force O&S Technical Documents

AFI 61-204_AFGM3
Attachment 1

**Instructions for “Marking” Air Force Operations
and Support Technical Documents**

1. Technical documents containing export controlled information (see AFI 61-204, Attachment 3) cannot validly be assigned a distribution statement of “A”.
2. Articles, services and related technical data for items listed on the United States Munitions List are designated as defense articles and defense services pursuant to sections 38 and 47(7) of the Arms Export Control Act (22 U.S.C. 2778 and 2794(7)).
 - a. Technical data for items designated as Significant Military Equipment (SME) on the United States Munitions List contain information that justifies higher levels of protection. Acceptable distribution statements are “D,” “E,” or “F.”
 - b. Technical data for items on the United States Munitions List not designated as Significant Military Equipment (SME) contain information that justifies lower levels of protection. Acceptable distribution statements are “B,” “C,” or “X.” Higher levels of protection may be applicable based on the specific content of the documents.
3. Technical data not specifically related to items on the United States Munitions List will be assigned a distribution statement justified by the content of the document.
4. To ensure consistency in marking and dissemination, all Air Force technical content managers will employ Air Force approved objective criteria (see 2a and 2b) in making their marking and dissemination determinations. Deviation from the Air Force approved objective criteria is allowed with the written approval of the Program Manager for the applicable weapon system or the AFMC STINFO Officer.

AFI 61-204_AFGM3
Attachment 2

**Instructions for “Dissemination” of Air Force Operations
and Support Technical Documents**

1. Dissemination of Air Force technical documents by anyone other than the controlling DoD office (CDO) for the document will be solely within the limitations of the assigned distribution statement.
 - a. U.S. Government employees, qualified U.S. contractors, and qualified U.S. DoD contractors are entitled to receive documents marked “C” and “X.”
 - b. U.S. DoD employees and qualified U.S. DoD contractors are also entitled to receive documents marked “D” when the request relates specifically to their assigned duties as a DoD employee or relates specifically to an article that is, or could be, directly supported by the requester and the request satisfies an existing contractual need or is needed to bid on an imminent/pending contractual need.
 - c. The definition of a U.S. DoD contractor is defined in Department of Defense Instruction (DoDI) 3200.14, *Principles and Operational Parameters of the DoD Scientific and Technical Information Program*, March 13, 1997, para E2.1.23., and DoDD 5230.24, para E2.1.14., which reads: “U.S. DoD Contractors. Those U.S. contractors currently holding grants or contracts with the Dept of Defense, or those contractors declared eligible for DoD information services by a sponsoring DoD activity on the basis of participation in a DoD Potential Contractor Program.” See DoDI 3200.14, para E2.1.13 for definition of Qualified U.S. Contractor.
2. Distribution of Air Force technical documents outside the limitations of the assigned distribution statement is allowed only with the written permission of the appropriate technical content manager in the CDO.
 - a. When a requester does not meet the criteria to access the information requested (for example, it is not a Distribution A document that allows for public release), Air Force CDOs review the information to determine if denial is appropriate under federal law and other DoD and Air Force regulations. Denial will cite an applicable Exemption under the Freedom of Information Act. Specifically, FOIA Exemptions (b)(1) – concerning classified information; Exemption (b)(2) – concerning internal sensitive unclassified information; Exemption (b)(3) – concerning information that can’t be released based on a specific federal statute, such as 10 U.S.C. Section 130; and Exemption (b)(4), concerning confidential commercial and financial information or trade secrets of a private company or individual, are the most likely of the 9 FOIA exemptions that will support withholding information to others outside the assigned distribution statement markings. Consult with your servicing legal office, as

appropriate, and refer to DoD Regulation 5400.7/AF Supplement, *DoD Freedom of Information Act Program*, for specific guidance on the use of FOIA exemptions.

- b. CDOs must also be able to provide justification as to why an item was a particular distribution in order to adequately protect Air Force interests.

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**



AIR FORCE INSTRUCTION 61-204

30 AUGUST 2002

Scientific/Research and Development

**DISSEMINATING SCIENTIFIC AND
TECHNICAL INFORMATION**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

NOTICE: This publication is available digitally on the AFDPO WWW site at:
<http://www.e-publishing.af.mil>

OPR: SAF/AQRT (Dr. Robert Cohn)
Supersedes AFI 61-204, 27 July 1994

Certified by: SAF/AQR (Mr. James B. Engle)
Pages: 26
Distribution: F

This instruction implements AFD 61-2, *Management of Scientific and Technical Information*, 7 April 1993; Department of Defense (DoD) Directive 5230.24, *Distribution Statements on Technical Documents*, 18 March 1987; and DoD Directive 5230.25, *Withholding of Unclassified Technical Data from Public Disclosure*, 6 November 1984. The Instruction explains how to mark scientific, technical, engineering, production, and logistics data to show the extent to which Air Force personnel or those acting on the Air Force's behalf may disseminate data without additional and prior approval from the controlling DoD office indicated in the distribution statement. It describes the certification process for access to public release data, release of data under the Freedom of Information Act (FOIA), and export-controlled technical data by non-Government U.S. and Canadian nationals. It provides guidance for disposing of scientific and technical documents. It applies to all scientific and technical publications and documents generated either by the Air Force or from Air Force-funded research, development, test, and evaluation (RDT&E) programs, including working papers, memoranda, and preliminary reports, if those documents are not in the public domain. It also applies to engineering drawings, standards, specifications, technical manuals, blueprints, drawings, plans, instructions, computer software and documentation, photographs, technical orders, databases, and any information that can be used or adapted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning that equipment. It applies to any medium that transfers information, including paper, microform, electronic storage, and video recordings. It does not apply to cryptographic and communications security documents, communications and electronic intelligence, and other categories that the Director, National Security Agency, or the Chief, Central Intelligence Agency, designates. It does not apply to classified technical documents containing "restricted data" and "formerly restricted data" as defined in the Atomic Energy Act of 1954, as amended (see joint Department of Energy and DoD directives for distribution, control, and marking requirements). Notwithstanding the "F" distribution above, this instruction is approved for public release (see paragraph 2.17). Maintain and dispose of all records created as a result of prescribed processes in accordance with AFMAN 37-139, *Records Disposition Schedule*.

SUMMARY OF REVISIONS

This instruction updates the procedures for identifying export-controlled technical data and releasing export-controlled technical data to certified recipients and clarifies the use of the Militarily Critical Technologies List. It establishes procedures for the disposal of technical documents. It clarifies the relationship between data marking and handling requirements under the Scientific and Technical Information (STINFO), FOIA, and export-controlled technical information activities, making additional clarifications and corrections to previous version of AFI 61-204, as needed. A "|" indicates revisions from the previous edition.

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1. Responsibilities.

1.1. Air Force components that originate or are responsible for technical documents must determine their documents' distribution availability and mark them appropriately before disseminating them. Components are responsible for the proper handling, securing, disseminating, and disposing of scientific and technical information.

1.2. Air Force personnel who originate or are responsible for technical documents must:

1.2.1. Mark documents with proper distribution statements before disseminating them. In addition to formal distributions (e.g., conferences and symposia), this requirement also applies to documents, briefings, etc., handed out to co-workers when there is any possibility that the recipients might pass the documents on to others. Documents should be marked even when they are in draft form.

1.2.2. Instruct document requesters to obtain documents from established document repositories such as the Defense Technical Information Center (DTIC), the Information Analysis Centers, appropriate DoD technical data repositories, appropriate DoD technical libraries, and Federal records centers through the appropriate records manager.

1.2.3. Release documents only to requestors who fall within the bounds of the distribution statement, have the appropriate need-to-know (for classified documents), and (for export-controlled data) are certified with the Joint Certification Office (JCO) at the Defense Logistics Information Service (DLIS). **NOTE:** For requestors outside the bounds of the distribution statement, get approval from the controlling DoD office (also known as the originating DoD office).

1.2.4. Advise all known repositories holding documents of changes in document markings.

1.2.5. Ensure that documents made available electronically (via computer networks or via the internet, intranet, or extranet) are marked with the appropriate distribution statement and that access is limited accordingly. Additional guidance is contained in AFI 33-129, *Transmission of Information via the Internet*.

1.3. The public affairs office reviews documents that originators recommend for public release in accordance with AFPD 35-1, *Public Affairs Management*.

1.4. The history office reviews documents for appropriate distribution and finds new points of contact when the original point of contact no longer exists or cannot otherwise be found.

1.5. STINFO officers assist committees, panels, and boards to identify the most appropriate distribution of scientific and technical information, regardless of the associated complications. **Example:** Accident Review Boards.

1.6. FOIA Managers process all FOIA requests for scientific and technical information in accordance with DoDR 5400.7/Air Force Supplement.

1.7. Export-Controlled Technical Information coordinators assist in coordinating the appropriate release of export-controlled technical data to certified recipients.

1.7.1. Commanders and directors of Air Force activities appoint local coordinators of export-controlled technical data (usually the local STINFO officer).

1.7.2. Local export-controlled technical information coordinators assist scientists and engineers in identifying export-controlled technical data. These focal points will be skilled in the use of the Munitions List, the Commerce Control List, and other applicable tools.

2. Marking Scientific and Technical Documents.

NOTE: This instruction may not be used as a basis for obstructing the release of scientific and technical information when dissemination is appropriate. It is the intent of the Air Force to disseminate scientific and technical information to the widest audience possible consistent with appropriate limitations.

2.1. Mark all scientific and technical documents, whether produced in hard-copy or in digital format, that may be disseminated.

2.1.1. Apply the single most appropriate distribution statements in **Attachment 2**. Fill in the reason, the date of determination, and the controlling DoD office. Other changes to these distribution statements are prohibited. **NOTE:** Distribution statements apply to secondary distribution only; they do not apply to primary distribution from the controlling DoD office. Distribution control markings must be clearly discernable as documents and/or data are opened. Record media casings must also be clearly marked.

2.1.2. When a classified technical document is declassified, retain the original distribution statement until the controlling office either removes or changes the statement. When a classified document is declassified and has no distribution statement, handle the document as “Distribution F” until the controlling office assigns a distribution statement (reference, **Attachment 2**).

2.1.2.1. Until the controlling office assigns or validates the distribution statement, review the document before dissemination to determine whether the data are export-controlled. If so, mark the document accordingly (reference, paragraph **2.2.**).

2.1.3. Mark and control scientific and technical documents that include contractor-imposed limited-rights legends and computer software that includes contractor-imposed restricted-rights legends according to subpart 27.4 of the Department of Defense Federal Acquisition Regulation Supplement or subpart 34.25 of the Department of Defense Grant and Agreement Regulations.

2.1.4. When creating a technical document containing company proprietary data, in addition to distribution statement (B or E) (reference, **Attachment 2**), mark each page that contains proprietary information with the word “proprietary” and the name of the company (e.g., “Boeing Proprietary”).

2.1.4.1. Whereas contractor technical proposals or documents submitted in anticipation of award of contracts are not intended for further dissemination, no distribution statement is required. Follow the guidelines in this paragraph, however, when working with contractor technical proposals that contain contractor limited rights or proprietary data.

2.1.4.2. Do not make proprietary information available to anyone outside the government (including government contractors) without the written permission of the owner of the proprietary data, even when such access is in direct support of the government under a government contract. This applies to contractor Independent Research and Development documents and/or databases as well.

2.1.5. Distribution statements remain in effect until the controlling DoD office changes or removes them.

2.1.5.1. Air Force components must establish a procedure for reviewing its scientific and technical documents periodically (or when they receive a request for the document) for possible changes or removal of distribution statements.

2.1.5.2. For unclassified documents, the Air Force component must obtain public release determination from the public affairs office according to AFPD 35-1 before assigning distribution statement A.

2.1.6. Air Force components notify DTIC and other concerned document-dissemination activities when:

2.1.6.1. Program management responsibility is transferred or addresses of designated controlling Air Force offices are changed or redesignated.

2.1.6.2. Classification markings, distribution statements, or export control statements are changed or removed.

2.1.7. For technical publications, place the distribution statement on the front cover, title page, and Standard Form (SF) 298, **Report Documentation Page**. If the technical document is not intended for publication and does not have a cover or title page, stamp, print, or write the distribution statement on the front page of the document.

2.1.7.1. When possible, put the portions of the document containing information requiring distribution limitation in an appendix or separate volume to permit broader distribution of the basic document. Prepare the abstract on the SF 298 so that the information in the abstract will not have a limited distribution (i.e., that it can be approved for public release).

2.1.8. Do not apply markings to scientific or technical documents that were created before the implementation of this instruction until someone asks for them. Mark and control them properly before disseminating them. This also applies to all unmarked or superseded distribution statement marked documents in your files.

2.1.8.1. When older documents contain superseded distribution statements, convert the statements as follows:

2.1.8.1.1. Assign distribution statements C, B, E, and F to technical documents bearing the respective distribution statements 2, 3, 4, and 5 of superseded DoD Directive 5200.20, *Distribution Statements (Other than Security) on Technical Documents*, 29 March 1965.

2.1.8.1.2. Do not reevaluate technical documents with distribution statements A and B of canceled DoD Directive 5200.20, *Distribution Statements on Technical Documents*, 24 September 1970 or documents with distribution statements A-F contained in Secretary of Defense Memorandum "Control of Unclassified Technology with Military Applications," 18 October 1983.

NOTE: Do not confuse the distribution statement in this instruction with those described in AFI 33-360V1, *Publications Management Program*, paragraph 3.43. In particular, "Functional (F) Distribution" as used in AFI 33-360V1 does not mean that distribution of the document is restricted.

2.2. Add the following export-control notice if the document contains export-controlled technical data.

<p>WARNING--This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C. 2751 et seq.) or the Export Administration Act of 1979, as amended, Title 50, U.S.C., App. 2401, et seq. Violation of these export-control laws is subject to severe criminal penalties. Dissemination of this document is controlled under DoD Directive 5230.25.</p>	<p>Abbreviated version: (Use abbreviated version only where the complete notice will not fit, such as the eye view line on a microfiche.)</p> <p>WARNING--Export-Controlled</p>
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NOTE: Use the process at [Attachment 3](#) to determine if technical data are subject to export-control.

2.3. Mark documents with the appropriate destruction notice.

2.3.1. Unclassified limited documents (i.e., documents not approved for public release):

<p>DESTRUCTION NOTICE--Destroy by any method that will prevent disclosure of contents or reconstruction of the document.</p>
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2.3.2. Classified documents:

<p>DESTRUCTION NOTICE--Follow the procedures in DoD 5220.22-M, <i>National Industrial Security Program Operating Manual (NISPOM)</i>, section 5-705, or DoD 5200.1-R, <i>Information Security Program</i>, Chapter VI.</p>
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2.4. When scientific or technical data is exempt by law from automatic release under the FOIA and is intended for Government use only, mark the document **For Official Use Only (FOUO)**. **NOTE:** simply marking information FOUO does not make it so. Information marked FOUO must meet at least one of the legislative exemptions from FOIA (reference, Air Force Supplement to DoD 5400.7R, *DOD Freedom Of Information Act Program*).

2.4.1. In the case of scientific and technical documents FOUO is optional and is used to call attention to FOUO content. A distribution statement is mandatory.

NOTE: It does not need to be a scientific or technical report or document to receive a distribution statement. Consider this statement a useful tool to assist in the distribution process regardless of the nature of the document, regardless of whether it is a scientific or technical document or not.

2.5. There are instances when local activities need to indicate that a document is for internal use only. Examples include planning, budget, draft, or notional information—information that is not required to

be, nor intended to be, disseminated. In such cases, the document should be marked with a local distribution statement similar to the following:

Distribution authorized to the Air Force Office of Scientific Research only (planning information). Refer other requests for this document to AFOSR/PII.
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NOTE: Do not use this marking on documents sent to DTIC nor as an excuse not to send required documents to DTIC. This marking is not sufficient to exempt a document from release under FOIA.

3. Dissemination of Scientific and Technical Information.

3.1. Do not disseminate any scientific or technical document, including one in draft or preliminary form, that does not have a clearly marked distribution statement.

3.2. Primary dissemination of scientific or technical information must be in accordance with all regulations and instructions applicable to the scope of primary dissemination or the document's distribution statement, whichever covers the broader audience.

3.3. Secondary dissemination of scientific or technical information may not exceed that authorized by each document's distribution statement without prior consent of the controlling DoD office.

3.3.1. Do not release documents marked with distribution statement F without getting the originator's approval first. Do not disseminate data beyond the bounds of the distribution statement without the approval of the controlling DoD office. Tell the requestor that you are asking for authority to release the data. Assist the controlling office in making the determination to release the data by providing information such as the requestor's status as an Air Force contractor, whether the requestor is registered to receive export-controlled technical information, applicable security clearances, and relevant international exchange agreements.

NOTE: Distribution A has no dissemination restrictions; however, an unmarked document should never be interpreted as being approved for public release; it simply means that the author has forgotten or neglected to mark the document. Do not forget that Public Affairs review is required to mark a document "Approved for public release."

3.4. When presenting scientific or technical information at conferences, symposia, etc., confirm that all those in attendance meet the limitations of the distribution statement. This is particularly important when presenting classified, export-controlled, or proprietary information. (In the latter case, no contractor may be in attendance.)

3.5. The Air Force component's FOIA manager in accordance with governing regulations and instructions will process the release of scientific and technical information requested under the FOIA

3.6. Guidance on release of software is in AFI 33-114, *Software Management*.

NOTE: Only the software developer or office of primary responsibility may release source code; secondary distribution is limited to application software (the object code).

4. Disseminating Export-Controlled Technical Data.

4.1. Send documents containing export-controlled data only to the document custodian listed in Block 3 of DD Form 2345, **Militarily Critical Technical Data Agreement**. **NOTE:** There is no requirement that the company official who certifies the form in Block 6 must sign document requests. (**Comment:** This form is mis-titled. It addresses, as it should, export-controlled technical data not militarily critical technical data. Do not interpret from this incorrect title that there is a connection between export-controlled technical data and the Militarily Critical Technology List—MCTL. The MCTL is not a control list.)

4.2. Include the notice at **Attachment 7** with any release of export-controlled technical data outside of the Department of Defense. Use one copy of the notice regardless of the number of documents included in the release.

4.3. When data packages contain export-controlled data, include instructions with announcements for the data (for example, requests for proposal) that requestors must be certified with the JCO and include information on the certification process.

4.4. Confirm the Certification of Requestors of Export-Controlled Technical Data. In order to receive export-controlled technical data requestors must be certified by the JCO. [Address: Joint Certification Office, Defense Logistics Information Service, Battle Creek, MI 49016-3412]. Under a bilateral agreement with Canada, U.S. and Canadian citizens and permanent residents may receive export-controlled technical data if the requestors are registered with the JCO. Air Force activities may confirm a requestor's status by reviewing the requestor's certified DD Form 2345 or the Certified Contractor Access List (CCAL), which the JCO maintains on a web site at <http://www.dlis.dla.mil/jcp/>. (Certification process is described in **Attachment 4**.)

4.5. A controlling Air Force activity, or a repository responsible for secondary distribution of technical data, may release export-controlled technical data to a currently certified U.S. contractor to bid or perform on a Government contract, unless there is reason to believe that the contractor is debarred, has violated its certification or U.S. export control law, has certified in bad faith, or has made an omission or misstatement of material fact.

4.5.1. Do not release the data if it is not in the best interest of the Government to do so. **NOTE:** When the validity of the contractor's qualifications is in doubt, coordinate with the legal office (JA) or with the JCO.

4.6. When the contractor is not requesting the export-controlled technical data to bid or perform on a Government contract, do not release data that are so significant that release for purposes other than direct support of DoD activities would jeopardize an important U.S. technical or operational military advantage.

4.6.1. Use the sample letter of denial at **Attachment 5** (tailored for local needs) to tell the requestor why his or her request is denied. Coordinate the letter with the FOIA and legal offices and provide the requester FOIA appeal rights as outlined in DoD Regulation 5400.7/AF Supplement. **NOTE:** Cite FOIA Exemption (b)(3) and 10 U.S.C. 130.

4.6.2. When the data are not so significant (i.e., that they would not jeopardize technical or operational military advantages), release the data IAW paragraph **4.4**.

4.7. Upon receipt of a request for export-controlled technical data from someone who is not certified, take one of the following actions:

4.7.1. If the requestor is someone with whom you want to establish or maintain a legitimate business interest, send them a DD Form 2345 and request they complete the form and send it to the JCO. After the JCO certifies the form, follow the procedures in paragraph 4.4. If you are not sure about establishing a business relationship, you may request additional justification as to why they want the data and the nature of their business interests that would be of interest to the Air Force.

4.7.2. If you do not wish to establish a legitimate business interest with the requestor, deny the request. Provide the requester FOIA appeal rights as outlined in DoD Regulation 5400.7/AF Supplement. Use the letter of denial in [Attachment 6](#) (tailored for local needs). Coordinate with your local FOIA and JA offices.

4.8. Air Force components send requests from foreign contractors to its foreign disclosure office (FDO). If the foreign contractor is not bidding or performing on a Government contract, tell the contractor to submit the request through its embassy. The embassy may submit the request to the Deputy Undersecretary of the Air Force for International Affairs (SAF/IA), Country Director. (See AFPD 16-2, *Disclosure of Military Information to Foreign Governments and International Organizations*.)

4.9. Qualified contractors do not need Air Force permission to further disseminate export-controlled technical data for purposes consistent with their certification unless the Air Force has otherwise prohibited this dissemination. The contractor must include a copy of the export-control notice (attachment 7). The contractor may disseminate the data:

4.9.1. To any foreign recipient approved, authorized, or licensed under Executive Order 12470 or the Arms Export Control Act,

4.9.2. To another currently certified U.S. contractor when that contractor is using the information under the guidelines in this AFI,

4.9.3. To the Departments of State and Commerce so that the company can apply for approvals, authorizations, or licenses for export under the Arms Export Control Act or Executive Order 12470, and

4.9.4. To Congress or any Federal, state, or local governmental agency so the company can meet regulatory, legal, or court-order requirements.

4.10. **Presenting export-controlled technical data at conferences.** It is not sufficient to simply confirm that attendees' companies are certified. Attendees themselves must be eligible to receive export-controlled technical information; individuals must be U.S. or Canadian citizens or permanent residents and the registration process must confirm this fact.

5. Dealing with Violations of U.S. Export Control Law.

5.1. Air Force activities must report to their major command (MAJCOM) STINFO officer when a certified U.S. contractor:

5.1.1. Violates U.S. export control law.

5.1.2. Makes certifications in bad faith.

5.1.3. Omits or misstates material facts.

5.2. Report violations involving a foreign contractor or other representative of a foreign nation to the MAJCOM STINFO officer, the FDO (in accordance with AFI 16-201), and to the Air Force Office of Special Investigations.

5.3. After coordinating with the MAJCOM JA, the MAJCOM STINFO officer temporarily revokes the contractor's qualification. **NOTE:** If further legal coordination is required, the MAJCOM JA coordinates with the Air Force Office of the Judge Advocate General and the Office of the General Counsel of the Air Force.

5.3.1. The STINFO officer immediately notifies the contractor and the JCO that the contractor's certification has been revoked and gives the contractor an opportunity to respond in writing to the information on which the temporary revocation is based.

5.3.2. Based on the contractor response, the STINFO officer either: 1) reinstates the contractor when he or she presents sufficient information to show that the basis for the revocation was in error or has been remedied or 2) recommends the JCO disqualify the contractor when he or she does not provide sufficient information within 60 days to remove the temporary revocation.

6. Document Disposal.

6.1. You may place documents approved for public release in recycle or regular trash receptacles as a whole document.

6.2. The preferred method of disposal of unclassified, limited distribution documents is by shredding, although the shredder need not be approved for classified documents. Alternatively:

6.2.1. Place different parts in different recycling or waste bins, or

6.2.2. Tear them into three or more pieces placing them in a single bin, or

6.2.3. Burn them.

6.3. Shred proprietary data.

6.4. Destroy classified documents in accordance with DOD 5200.1-R and AFI 31-401.

6.5. Destruction of Digital Media. Media containing unlimited distribution data may be recycled as is. Media containing unclassified, limited distribution data must be "cleared" before recycling: floppy disks and hard drives must be reformatted and magnetic tapes must be erased. For guidance on destruction of compact disks, refer to MIL-HDBK-9660, *DOD Produced CD-ROM Products*. Media containing classified data must be handled according to DOD 5200.1-R and AFI 31-401.

7. Forms Adopted. DoD Form 2345, **Militarily Critical Technical Data Agreement** and SF 298, **Report Documentation Page**.

8. References and Supporting Information. See [Attachment 1](#) for a glossary of references and supporting information.

MARVIN R. SAMBUR
The Assistant Secretary of the Air Force
for Acquisition

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

DoD 5200.1-R, *Information Security Program Regulation*

DoD 5220.22-M, *National Industrial Security Program Operating Manual*

DoDD 5230.11, *Disclosure of Classified Military Information to Foreign Governments and International Organizations*

DoDD 5230.20, *Visits, Assignments and Exchanges of Foreign Representatives*

DoDD 5230.24, *Distribution Statements on Technical Documents*

DoDD 5230.25, *Withholding of Unclassified Technical Data from Public Disclosure*

DoD 5400.7R Air Force Supplement, *DOD Freedom Of Information Act Program*

AFPD 16-2, *Disclosure of Military Information to Foreign Governments and International Organizations*

AFPD 31-4, *Information Security*

AFI 31-401, *Information Security Program Management*

AFPD 33-1, *Command, Control, Communications, and Computer (C4) Software Management*

AFI 33-114, *Software Management*

AFI 33-129, *Transmission of Information via the Internet*

AFPD 35-1, *Public Affairs Management*

AFMAN 37-139, Records Disposition Schedule.

MIL-HDBK-9660, *DoD Produced CD-ROM Products*

Title 5, United States Code 552, *Freedom of Information Act*

Title 10, United States Code 130, *Authority to Withhold from Public Disclosure Certain Technical Data*

Title 22, United States Code 2571 et seq., *Arms Export Control Act*

NOTE: In general, but particularly in the case of the United States Code, use the latest version. The legal offices of most Air Force activities have the latest versions, which should be used when they differ from the guidance given in this instruction.

Abbreviations and Acronyms

CCAL—Certified Contractor Access List

CCL—Commerce Control List

DDR&E —Director of Defense Research and Engineering

DLIS—Defense Logistics Information Service (formerly the Defense Logistics Services Center)

DTIC—Defense Technical Information Center

EAR—Export Administration Regulations

FDO—Foreign Disclosure Office

FOIA—Freedom of Information Act

FOUO—For Official Use Only

ITAR—International Traffic in Arms Regulations

JCO—Joint Certification Office

MCTL—Militarily Critical Technology List

MAJCOM—Major Command

SF—Standard Form

SJA—Staff Judge Advocate

STINFO—Scientific and Technical Information

Terms

Arms Export Control—The law set out in 22 U.S.C. 2751-2794. This requires obtaining a license from the Department of State for exporting defense articles and services, including technical data related to weapons. It is implemented by the International Traffic in Arms Regulations (ITAR) set out in 22 CFR 121-130.

Certified Contractor—Private individual or enterprise located in the United States or Canada who is certified and registered with the Defense Logistics Services Center for access to export-controlled technical data.

Certified Contractor Access List (CCAL)—Listing of U.S. and Canadian contractors who are registered and certified to receive export-controlled technical information. The Joint Coordination Office (JCO) at the Defense Logistics Services Center (DLSC) maintains the CCAL

<http://www.dlis.dla.mil/jcp/>.

Commerce Control List (CCL)—The list of items in the Export Administration Regulations at 15 CFR 399. Licenses from the Department of Commerce are required to export such items and the technical data relating to them.

Controlling DoD Office—DoD activity that sponsored the work that generated the technical data or the office that receives the data on behalf of a Government agency and has the responsibility for distributing the data to eligible recipients.

Data Custodian—Person designated at a certified contractor facility to receive and disseminate controlled technical data.

Distribution Statement—A statement used in marking a technical document, regardless of publication media or form, to denote the extent of its availability for distribution, release, and disclosure without additional approvals and authorizations from the controlling DoD office.

Export Administration Act—Any of the laws codified at 50 U.S.C. Appendix 2401-2420. These laws were the original basis for the Export Administration Regulations (EAR) (15 CFR 368-399) which require obtaining a license from the Department of Commerce for exporting certain items-and related

technical data.

Export-Controlled Technical Data—Data that cannot be lawfully exported without the approval, authorization, or license under U.S. export control laws. The controlling regulations and documents are the Export Administration Regulations (EAR), the International Traffic in Arms Regulation (ITAR), and the U.S. munitions list.

Export Administration Regulations (EAR)—Controls export of dual-use items (materials with both civilian and military uses) specified on the commodity control list. The EAR is administered by the Bureau of Export Administration, U.S. Department of Commerce, and implements the Export Administration Act of 1979 as amended, and Executive Order 12730.

General License—An unrestricted license or exemption authorized in export-control regulations to export particular technical data, or other items without obtaining a specific license from the Government.

Initial Distribution—Distribution of STINFO by the document originator/controlling DoD office at the time of publication.

International Traffic in Arms Regulation (ITAR)—Controls the export of defense articles specified in the U.S. Munitions List and technical data directly related to them. ITAR is administered by the Office of Defense Trade Controls, U.S. Department of State, and implements the U.S. Arms Export Control Act. It has jurisdiction over:

- A. Information (including classified) relating to defense articles and defense services.
- B. Information covered by an invention secrecy order.
- C. Information directly related to designing, engineering, developing, producing, processing, manufacturing, using, operating, overhauling, repairing, maintaining, modifying, or reconstructing defense articles. It also includes information that advances the state-of-the-art of articles in the U.S. Munitions List, including the technology used to procure or maintain these components. It does not include information concerning general scientific, mathematical, or engineering principles or theory.

Limited Document—Any document that is not approved for public release.

Militarily Critical Technology—Technologies 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 critical technology, they are defined in the Export Administration Act (50 U.S.C. Appendix 2404(d)) as:

- A. Arrays of design and manufacturing know-how (including technical data).
- B. Keystone manufacturing, inspection, and test equipment.
- C. Goods accompanied by sophisticated operation, application, or maintenance know-how
- D. Keystone equipment that would reveal or give insight into the design and manufacture of United States military systems.

Militarily Critical Technology List (MCTL)—Issued by DoD under authority of the Export Administration Act of 1979 as amended and Executive Order 12730. It provides descriptions of technologies that DoD assesses to be critical to the development, production, and use of military

capabilities of significant value to potential adversaries. Corresponding to the Export Administration Act categories, it comprises:

- A. Technology
- B. Test, Inspection, and Production equipment
- C. Materials
- D. Software
- E. Systems, Equipment, Subassemblies, and Components

It also includes technologies significant to the proliferation of nuclear, chemical, and biological weapons and missile delivery systems—weapons of mass destruction. **NOTE:** The MCTL is not a control list, nor is it a substitute for—nor an addition to—the current export-control lists. Rather, MCTL is a detailed and structured technical statement of development, production, and use technologies that the DOD determines to be crucial to given military capabilities, and of significant value to potential adversaries. The MCTL may be found at <http://www.dtic.mil/mctl/> and should always be used in lieu of any printed version. **NOTE:** Much confusion can arise from the title of DoD Form 2345, **Militarily Critical Technical Data Agreement**. In actuality, this form should be titled “Export-Controlled Technical Data Agreement” and all references in it to the MCTL should be ignored. As it stands, the form would lead one to believe, incorrectly, that the MCTL can be substituted for the Munitions List and the Commerce Control List.

Primary Distribution—Distribution of STINFO by the controlling DoD office. Includes initial distribution as well as any distribution during the life of the information made by the controlling or originating DoD office.

Qualified U.S. Contractor—A private individual or enterprise that, in accordance with procedures established by the Director of Defense Research and Engineering (DDR&E), certifies, as a condition of obtaining export-controlled technical data, that:

- A. The individual who will act as recipient of the export-controlled technical data on behalf of the individual or enterprise 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. The export-controlled 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 in which the individual or enterprise is engaged, or plans to engage. **NOTE:** This does not require a contract with or a grant from the U.S. Government.
- C. The individual or enterprise acknowledges its responsibilities under U.S. export control laws and regulations (including the obligation, under certain conditions, 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 in a manner that would violate applicable export control laws and regulations.
- D. The individual or enterprise also agrees that it will not provide access to export controlled technical data subject to this instruction to persons other than its employees or persons acting on its behalf, without the permission of the DoD component that provided the data.
- E. To the best of its knowledge and belief, the individual or enterprise 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.

- F. The individual or enterprise 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. **NOTE:** When the certifications cannot be made truthfully, the individual or enterprise may request the certification be accepted on its description of extenuating circumstances

Scientific and Technical Information—Information relating to research, development, engineering, testing, evaluation, production, operation, use, and maintenance for military products, services, and equipment for military systems. This includes production, engineering, and logistics information.

Secondary Distribution—Distribution by anyone other than the controlling or originating DoD office.

Technical Data—Recorded information, regardless of form or method of recording, of a scientific or technical nature. Information that can be used, or adapted for use, to design, develop, assemble, engineer, produce, manufacture, modify, operate, repair, test, overhaul, maintain, or reproduce equipment and related technology

US Munitions List—This list designates defense articles and defense services that are subject to the ITAR, where:

- A. Defense articles are those items designated in the U.S. Munitions List that must be export controlled, and include models, mock-ups, and any other devices that reveal technical data related directly to those articles.
- B. Defense services means:
1. Furnishing assistance, including training to foreign persons, in the design, engineering development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles, whether in the United States or abroad.
 2. Furnishing any technical data to foreign persons, whether in the United States or abroad.

Attachment 2

DISTRIBUTION STATEMENTS AND THEIR CORRESPONDING REASONS FOR USE

DISTRIBUTION A. Approved for public release; distribution unlimited. (Approval given by local Public Affairs Office)							
DISTRIBUTION B. Distribution authorized to U.S. Government agencies only (reason) (date of determination). Refer other requests for this document to (controlling or originating DoD office).							
DISTRIBUTION C. Distribution authorized to U.S. Government agencies and their contractors (reason) (date of determination). Refer other requests for this document to (controlling or originating DoD office).							
DISTRIBUTION D. Distribution authorized to Department of Defense and U.S. DoD contractors only (reason) (date of determination). Refer other requests for this document to (controlling or originating DoD office).							
DISTRIBUTION E. Distribution authorized to DoD components only (reason) (date of determination). Refer other requests for this document to (controlling or originating DoD office).							
DISTRIBUTION F. Further dissemination only as directed by (controlling or originating DoD office) (date of determination) or DoD higher authority (list the specific authority--unless a classified document).							
DISTRIBUTION X. Distribution authorized to U.S. Government Agencies and private individuals or enterprises eligible to obtain export-controlled technical data in accordance w/ DoDD 5230.25 (date of determination). Controlling DoD office is (insert).							
"REASON"	STATEMENT						
	A	B	C	D	E	F	X
PUBLIC RELEASE (Approval required by Public Affairs Office)	X						
ADMINISTRATIVE OR OPERATIONAL USE. To protect technical or operational data or information from automatic dissemination under the international exchange program or by other means. This protection covers publications required solely for official use or strictly for administrative or operational purposes. This statement may be applied to manuals, pamphlets, technical orders, technical reports, and other publications containing valuable technical or operational data.		X	X	X	X		
CONTRACTOR PERFORMANCE EVALUATION. To protect information in management reviews, records of contractor performance evaluation, or other advisory documents evaluating programs of contractors.		X			X		
CRITICAL TECHNOLOGY. To protect information and technical data that advance current technology or describe new technology in an area of significant or potentially significant military application or that relate to a specific military deficiency of a potential adversary. Information of this type may be classified.		X	X	X	X		
DIRECT MILITARY SUPPORT. To protect export-controlled technical data of such military significance that release for purposes other than direct support to DoD (to bid or perform on a Government contract) may jeopardize an important technological or operational U.S. military advantage. Designation of such data is made by competent authority in accordance with DoD Directive 5230.25.					X		
FOREIGN GOVERNMENT INFORMATION. To protect and limit distribution in accordance with the desires of the foreign government that furnished the technical information. Information of this type normally is classified at the CONFIDENTIAL level or higher in accordance with DoD 5200.1-R		X	X	X	X		
PREMATURE DISSEMINATION. To protect patentable information on systems or processes in the developmental or concept stage from premature disclosure that might jeopardize the inventor's right to obtain a patent.		X			X		
PROPRIETARY INFORMATION. To protect information not owned by the U.S. Government and protected by a contractor's "limited rights" statement, or received with the understanding that it not be transmitted outside DoD or the U.S. Government without the permission of the proprietary rights owner.		X			X		

SOFTWARE DOCUMENTATION. Releasable only in accordance with DoD Instruction 7930.2 and AFI 33-114.	X	X	X	X		
TEST & EVALUATION. To protect results of test and evaluation of commercial products or military hardware when such disclosure may cause unfair advantage or disadvantage to the manufacturer of the product.	X			X		
SPECIFIC AUTHORITY. To protect information not specifically included in the above reasons and discussions but which requires protection in accordance with valid documented authority such as Executive Orders, classification guidelines, or DoD or DoD-Component regulatory documents. When filling in the reason cite "Specific Authority (identification of valid documented authority)."	X	X	X	X		
Statement F is normally used only on classified technical documents(cite DoD 5200.1-R, para 5.208), but may be used on unclassified technical documents when specific authority can be cited.					X	
EXPORT-CONTROLLED TECHNICAL DATA. To protect export-controlled technical data (listed in the Commerce Control List or the Munitions List). Use when statements B, C, D, E, or F do not apply.						X

Attachment 3**DETERMINING WHETHER TECHNICAL DATA ARE SUBJECT TO EXPORT CONTROL**

A3.1. You may withhold from public release technical data that cannot be exported without license or approval under the Arms Export Control Act or the Export Administration Act and are not subject to a general license permitting export under the International Traffic in Arms Regulation and other export-control regulations. To determine if technical data may be withheld from release answer the following questions:

A3.1.1. Data Type.

Are the technical data of the type that can be used--or be adapted for use--to design, engineer, produce, manufacture, operate, repair, or reproduce some article?

Yes: Proceed to paragraph **A3.1.2.** (General License Exemption)

No: Data are not subject to withholding under export-control laws.

Considerations:

A3.1.1.1. The following types of technical data fall into this category: technical reports, engineering drawings, operation and maintenance manuals (sometimes simply technical manuals or technical orders), military specifications and standards related to particular types of equipment, and training manuals related to particular types of equipment.

A3.1.1.2. Most test reports meet this standard. They meet the standards if they show what individual components can be used within a larger weapons system; what weapons can be used for particular purposes; or show how to use, maintain, or train people to use particular weapons. They do not meet this standard if they simply show the operating characteristics of a weapon, and this information would not affect the decision to use the weapon. In the latter case, the information might qualify for security classification, but would not meet export-control standards.

NOTE: "Individual components" fall into two categories:

1. Components that provide valuable insight into the weapon system as a whole in terms of design, use, and the like.
2. Relatively innocuous components such as mounting brackets, access doors, and subassemblies that give no specific insight into the overall weapon system or its unique characteristics.

The latter category requires no export control.

A3.1.2. General License Exemption.

Have the exact same technical data been publicly released, and are they generally available to the public

Yes: Data are not subject to withholding under export-control laws.

No: Proceed to paragraph [A3.1.3](#). (USML)

Considerations:

A3.1.2.1. The data released publicly must be identical for the general license to be applicable. Frequently the information publicly released omits key features, such as the manufacturing tolerances for the dimensions of particular parts. This type of information is the key to the workability of much equipment.

A3.1.2.2. If closely similar data have been publicly released, the portion of the document containing that information is not subject to export-control laws. The other portions should be blanked out, and a copy made by some technique that does not permit the blanked out portions to be determined.

A3.1.2.3. Release to perform a particular task with a constraint on further dissemination is not a public release.

A3.1.2.4. Scientific and educational information not directly and significantly related to design, production, or use in industrial processes, or instruction in academic institutions and academic laboratories, excluding information that involves research under contract related directly and significantly to design, production, or use in industrial processes, is not subject to export control.

A3.1.2.5. Controlled release under DOD Directive 5230.25, as implemented by AFI 61-204, is not a public release.

A3.1.3. United States Munitions List (USML):

Do the technical data directly relate to a weapon listed in categories I through XVI of the USML, ITAR section 22 CFR 121.01?

Yes: Data are subject to withholding under export-control laws.

No: Proceed to paragraph [A3.1.4](#). (CCL).

Considerations:

A3.1.3.1. The ITAR prohibits the export of technical data relating to arms, ammunition, and implements of war without approval of the Department of State. The USML is a listing in the ITAR, which enumerates articles designated as arms, ammunition, and implements of war that are subject to export control.

A3.1.3.2. The term “article” is defined as any of the arms, ammunition, implements of war, and related technical data enumerated in the USML.

A3.1.3.3. Generally, the articles listed are end items or components, and do not describe specific materials (except chemical agents or propellants).

A3.1.3.4. Technical data constitute any unclassified information that can be used--or adapted for use--to design, produce, manufacture, repair, overhaul, process, engineer, develop, operate, maintain, or reconstruct arms, ammunition, and implements of war on the ML, or any technology that advances the state of the art or establishes a new art in an area of significant military applicability in the US.

A3.1.3.5. Check the Munitions List before checking the CCL. Less technical information and knowledge is needed to determine Munitions List applicability.

A3.1.4. Commerce Control List (CCL):

Do the technical data directly pertain to an item listed in the CCL?

Yes: Data are subject to withholding under export-control laws.

No: Data are not subject to withholding under export-control laws.

Considerations:

A3.1.4.1. The CCL is a listing prepared by the Department of Commerce to control the export of goods or technologies that may significantly contribute to the military potential of foreign countries, thereby adversely affecting the national security of the US.

A3.1.4.2. Only technical data relating to commodities on the CCL are prohibited from export without a license.

A3.1.4.3. Technical data constitute any information that can be used--or adapted for use--to design, produce, manufacture, use, or reconstruct articles or materials. The data may take a tangible form, such as a model, prototype, blueprint, or an operating manual, or may take an intangible form such as technical service.

NOTE: If you still cannot make a determination, request guidance from your Judge Advocate General or foreign disclosure office.

NOTE: In applying this guidance, use the latest laws, regulations, and lists. The legal offices of most Air Force activities have the latest versions, and these newer versions should be used when they differ from the guidance given in this instruction.

Attachment 4

CONTRACTOR CERTIFICATION PROCESS FOR ACCESS TO EXPORT-CONTROLLED TECHNICAL DATA

To get certified, U.S. and Canadian contractors submit a completed DD Form 2345, **Militarily Critical Technical Data Agreement**¹, to the U.S. and Canadian Joint Certification Office (JCO) at the Defense Logistics Information Service (DLIS). The JCO reviews the information, signs the form, and returns it to the contractor.

A4.1. Because DoD activities mail export-controlled technical data to the location shown on the form, each corporate subsidiary or division requesting technical data must submit its own form.

A4.2. Contractors designate a data custodian for the facility, either by name or by position. This person receives and disseminates export-controlled technical data internally. **NOTE:** The data custodian at a U.S. contractor facility must be a U.S. citizen or permanent resident. The data custodian at a Canadian contractor facility must be a Canadian or U.S. citizen or a person admitted lawfully for permanent residence into Canada.

A4.3. The contractor must agree to use the data to bid or perform on a contract with a U.S. or Canadian agency or for other legitimate business purposes such as:

A4.3.1. Providing or seeking to provide equipment or technology to a foreign government with the approval of the U.S. Government. **NOTE:** U.S. or Canadian Government must approve sale or transfer before the contractor receives the information.

A4.3.2. Bidding or preparing to bid on surplus Government property.

A4.3.3. Selling or producing products for the U.S. or Canadian commercial domestic marketplace.

A4.3.4. Selling or producing products for the commercial foreign marketplace. **NOTE:** The contractor must have an export license from the appropriate U.S. or Canadian licensing authority.

A4.3.5. Engaging in scientific research in a professional capacity for either the DoD or the Canadian Department of National Defense.

A4.3.6. Acting as a subcontractor for any of the above.

A4.4. Contractors agree not to publicly disclose any export-controlled data, unless the controlling office authorizes it, and to limit access to their employees who meet the following citizenship requirements:

A4.4.1. US citizens or permanent resident if the facility is located in the United States.

A4.4.2. Canadian or U.S. Citizens or persons admitted lawfully for permanent residence in Canada if the facility is located in Canada.

1. There is some confusion regarding the terms "Militarily Critical" and "Export-Controlled." The use of "Militarily Critical Technical Information" on this form is an example of this confusion. The control lists for export control are the Munitions List and the Commerce Control List, regardless of any implied guidance to the contrary in this form. Never use the MCTL for this export control purposes.

A4.5. Certified contractors may:

A4.5.1. Ask for export-controlled technical data.

A4.5.2. Respond to defense-related solicitations and enter into defense-related contracts that include a requirement for controlled technical data.

A4.5.3. Attend restricted gatherings where controlled technical data are presented (for example: symposia, conferences, meetings that publicize advance requirements, pre-bid, pre-solicitation, and pre-award conferences).

A4.5.4. Visit and exchange controlled technical data with other certified U.S. and Canadian contractors or U.S. and Canadian military facilities.

NOTE: When requested, the contractor must send a copy of the JCO-approved DD Form 2345 along with the requests for any of the above. Alternatively, the controlling DoD activity may confirm the company's certification by reviewing the Certified Contractor Access List, which can be found at <http://www.dlis.dla.mil/jcp/>.

A4.6. Form 2345 Review Process. The JCO reviews a DD Form 2345 within 5 working days and based on its interpretation and confirmation of the information that the contractor provides takes one of the following actions:

A4.6.1. Certifies the contractor. The JCO:

A4.6.1.1. Enters a 7-digit certification number in section 7.

A4.6.1.2. Signs the form in sections 8 and 9.

A4.6.1.3. Mails the original to the contractor's data custodian.

A4.6.1.4. Sends the certified contractor a renewal notice 120 days before the certification expires.

A4.6.1.5. Returns the form for more information.

A4.6.2. Does not certify the contractor. The JCO:

A4.6.2.1. Sends a registered letter to the contractor, explaining why the certification was rejected.

A4.6.2.2. Tells the contractor how to appeal the decision.

NOTE: Certified contractors must submit a revised DD Form 2345 when previous information becomes outdated (e.g., changes in company ownership or name, or data custodian). When the JCO approves the revised agreement, it initiates a new 5-year eligibility period.

Attachment 5**SAMPLE DENIAL LETTER TO CERTIFIED U.S. CONTRACTORS
WHO ARE NOT BIDDING OR PERFORMING ON A GOVERNMENT CONTRACT**

A5.1. When releasing the data for other than direct support of the Air Force and the release might jeopardize U.S. technical or operational military advantages:

Dear Mr. Certified:

Your request of (date) for export-controlled technical data is denied pursuant to 5 U.S.C. 552(b)(3) and 10 U.S.C. 130 as implemented by Department of Defense Directive 5230.25 and Air Force Instruction 61-204. We have reviewed your request carefully and have determined that releasing the data for other than direct support of the Air Force might jeopardize U.S. technical or operational military advantages.

If you decide to appeal this decision, write within 60 calendar days from the date of this letter. Include in the appeal your reasons for reconsideration, and attach a copy of this letter. Address your letter as follows:

Secretary of the Air Force

THRU:

(address of installation's FOIA office where your request was denied)

Please call (name, organization, phone) if you have any questions.

Sincerely,

(signature of authorized
FOIA denial authority)

NOTE: Prepare an original letter rather than a form letter or a form. Send by first class mail.

Attachment 6**SAMPLE DENIAL LETTER
TO PEOPLE WHO ARE NOT CERTIFIED U.S. CONTRACTORS**

Dear Mr. Jones:

The information that you requested on (date) is subject to control under Executive Order and export-control laws. We must deny your request under 5 U.S.C. 552(b)(3) and 10 U.S.C. 130 as implemented by Department of Defense Directive 5230.25 and Air Force Instruction 61-204.

If you decide to appeal this decision, write within 60 calendar days from the date of this letter. Include in the appeal your reasons for reconsideration, and attach a copy of this letter. Address your letter as follows:

Secretary of the Air Force

THRU:

(address of installation's FOIA office where your request was denied)

Private individuals or enterprises must be Department of Defense certified U.S. contractors before they can receive export-controlled technical data. I have attached an information sheet describing the process you must follow to become a certified U.S. contractor.

Please call (name, organization, phone number) if you have questions.

Sincerely,

(Signature of authorized
FOIA denial authority)

NOTE: Prepare an original letter rather than a form letter or a form. Send by first class mail.

Attachment 7**NOTICE TO ACCOMPANY THE DISSEMINATION
OF EXPORT-CONTROLLED TECHNICAL DATA**

Export of the attached information (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 Regulation (ITAR), or the Department of Commerce for items controlled by the Export Administration Regulation (EAR), may constitute a violation of law.

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

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.

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

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

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.

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.

Include a copy of this notice with any partial or complete reproduction of these data that are provided to qualified U.S. contractors.