



DEFENSE LOGISTICS AGENCY

THE NATION'S COMBAT LOGISTICS SUPPORT AGENCY



**Introduction to Proper
Handling of DoD Export-
Controlled Technical
Data**

August 25, 2020



WARFIGHTER FIRST



Overview



- This training is meant to provide prospective DLA suppliers with an introductory understanding of the potential export controls and proper handling requirements for DoD export-controlled technical data, to include penalties for violating these requirements under U.S. Federal export control regulations.
- At the completion of this training you will be informed on:
 - DoD Distribution Statements and their restrictions
 - What U.S. Federal Regulations govern the export controls of DoD export-controlled technical data
 - What constitutes DoD export-controlled technical data
 - Penalties for violating U.S. Federal export-control regulations
 - Notification of and acknowledgement by certification that you the prospective supplier understand your responsibilities to comply with U.S. Federal export control regulations



Training Topics



- Training topics include:
 - Understanding DoD Distribution Statements
 - Arms Export Control Act (AECA)
 - Export Control Reform (ECR)
 - Defining DoD export-controlled technical data
 - Transfer Requirements for DoD Export-Controlled Technical Data
 - Penalties for violating export-control laws and regulations
 - Understanding and Notification of Export Control Compliance
 - Certification Statement of Export Control Compliance



Distribution Statements



- Purpose of DoD Distribution Statement on Technical Documents
 - Establishes a standard framework and markings for managing, sharing, safeguarding, and disseminating technical documents in accordance with policy and law.
 - Enables document originators (controlling DoD Office) to signify to what extent technical documents must be controlled.
- Applicability
 - Newly created, revised, or previously unmarked classified and unclassified technical documents generated or managed by all DoD-funded research, development, test, and evaluation (RDT&E) programs, which are the basis of the DoD Scientific and Technical Information Program
 - Newly created engineering drawings, engineering data and associated lists, standards, specifications, technical manuals, technical reports, technical orders, blueprints, plans, instructions, computer software and documentation, catalog-item identifications, data sets, studies and analyses, and 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.
- * **NOTE:** The data may be in tangible form, such as a model, prototype, blueprint, photograph, plan, instruction, or an operating manual, or may be intangible, such as a technical service or oral, auditory, or visual descriptions.



Summary of Distribution Statements

- All newly created, revised, or previously unmarked classified and unclassified DoD technical documents shall be assigned Distribution Statement A, B, C, D, E, or F
 - DISTRIBUTION STATEMENT A. Approved for public release. Distribution is unlimited.
 - DISTRIBUTION STATEMENT B. Distribution authorized to U.S. Government agencies only. Other requests for this document shall be referred to (insert controlling DoD office)
 - DISTRIBUTION STATEMENT C. Distribution authorized to U.S. Government agencies and their contractors (fill in reason) (date of determination). Other requests for this document shall be referred to (insert controlling DoD office).
 - DISTRIBUTION STATEMENT D. Distribution authorized to the Department of Defense and U.S. DoD contractors only (fill in reason) (date of determination). Other requests shall be referred to (insert controlling DoD office).
 - DISTRIBUTION STATEMENT E. Distribution authorized to DoD Components only (fill in reason) (date of determination). Other requests shall be referred to (insert controlling DoD office)
 - DISTRIBUTION STATEMENT F. Further dissemination only as directed by (inserting controlling DoD office) (date of determination) or higher DoD authority.” Distribution Statement F may be applied under rare and exceptional circumstances when specific authority exists or when need-to-know must be verified.



Summary of Distribution Statements Cont'd



- EXPORT CONTROL WARNING. All printed and electronic, including digital, technical documents that are determined to contain export-controlled technical data shall be marked with an export control warning. When it is technically infeasible to use the entire statement, an abbreviated marking may be used, and a copy of the full statement added to the “Notice To Accompany Release of Export-Controlled Data”

Sample of Export Control Warning

WARNING - This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C., Sec 2751, et seq.) or the Export Administration Act of 1979 (Title 50, U.S.C., App. 2401 et seq.), as amended. Violations of these export laws are subject to severe criminal penalties. Disseminate in accordance with provisions of DoD Directive 5230.25.

- * Note: While publications are being updated, export control warning statements may still reference the Export Administration Act of 1979 (Title 50 USC, App. 2401 et seq.) versus the new enactment of Export Control Reform (Title 50 USC, 4801-4851).
- * For additional information related to Distribution Statements please refer to DoD Instruction 5230.24 <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/523024p.pdf?ver=2018-11-08-120712-090>



Arms Export Control Act



- Arms Export Control Act (AECA, *22 USC §2778*)
 - Provides the authority to control the export of defense articles and services, and charges the President to exercise this authority. Executive Order 13637 delegates this statutory authority to the Secretary of State.
- International Traffic in Arms Regulations (ITAR, *22 CFR §120-130*)
 - Implements the authorities of the AECA. These regulations are regularly updated and revised to reflect change in the international political and security climate, as well as technological development.
- United States Munitions List (USML, *22 CFR §121*)
 - **Articles, services, and related technical data** that are designated as defense articles or defense services pursuant to sections 38 and 47(7) of the AECA constitute the USML.
- Directorate of Defense Trade Controls (DDTC)
 - The Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs, in accordance with *22 U.S.C. §2778-2780* of the AECA and the ITAR (*22 CFR §120-130*), is charged with controlling the export and temporary import of defense articles and defense services covered by the USML.

DISCLAIMER: This training is for introductory awareness only and does not take precedence over the regulatory requirements, instructions or directions proscribed by the Department of State or Department of Commerce. Where information is unclear, conflicts or further clarification is required, individuals taking this training should consult the Directorate of Defense Trade Controls at: https://www.pmdtc.state.gov/?id=ddtc_public_portal_contact_us for ITAR related inquiries or the Bureau of Industry and Security at: <https://www.bis.doc.gov/index.php/about-bis/contact-bis> for inquiries related to the Export Administration Regulations.



Export Control Reform



- Export Control Reform (ECR, *50 USC §4801 - 4851*)
 - Provide authority to regulate exports, to improve the efficiency of export regulation, and to minimize interference with the ability to engage in commerce.
- Export Administration Regulation (EAR, *15 CFR §730-774*)
 - Regulations set forth in parts 730-774, inclusive, of Title 15 of the Code of Federal Regulations, designed primarily to implement Export Control Reform
 - The EAR are issued by the United States Department of Commerce, Bureau of Industry and Security (BIS) under laws relating to the control of certain exports, reexports, and activities.
- Commerce Control List (CCL, *15 CFR§774*)
 - A list of items under the export control jurisdiction of the Bureau of Industry and Security, U.S. Department of Commerce. Note that certain additional items described in part 732 of the EAR are also subject to the EAR. The CCL is found in Supplement No. 1 to part 774 of the EAR.

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Defining DoD Export-Controlled Technical Data



- DoD Export-Controlled Technical Data. recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation) that is subject to U.S. Federal export control regulations under the jurisdiction of the Department of State (DoS) as [Technical Data, 22 CFR§120.10] and Department of Commerce (DoC) as [Technology, 15 CFR§772.1]. The term does not include computer software or data incidental to contract administration, such as financial and/or management information.
- All Transfers of DoD export-controlled technical data must be conducted in accordance with U.S. Federal export-control regulations.

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Transfer Requirements and Controls for DoD Export-Controlled Technical Data



- Transfers of DoD export-controlled technical data by purchasers, bidders, or transferees are subject to the requirements of the appropriate licensing department or agency. In many cases, an export license or other authorization may be required prior to transfer.
- With respect to DoD export-controlled technical data covered under the USML, registration of the purchaser's, bidder's, transferee's business with the DoS may also be required. It is the responsibility of the purchaser, bidder, transferee to determine what the applicable requirements may be and to obtain all necessary authorization or approvals.

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Transfer Requirements and Controls for DoD Export-Controlled Technical Data



- Controls Tangible / Intangible Transfers. The United States and other key supplier countries control the transfer of "technology" not in the public domain that is necessary for the development, production, or use of controlled commodities in the same ways that controls are maintained on transfers of the commodities themselves. Furthermore, the United States makes no legal distinction between "tangible" and "intangible" transfers of controlled technology, the form that the technology takes and the means of transfer is not relevant.
 - These U.S. Federal export-controls also cover all forms of transfer, including e-mails, faxes, and face-to-face conversations. Under U.S. law, providing controlled technology to a foreign person, whether within the U.S. or not, is deemed to be equivalent to physically exporting that technology to the country of the person's nationality.

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Penalties for Violating the AECA



- AECA (22 USC §2778(c) Criminal violations; punishment)
 - Any person who willfully violates any provision of this section, section 2779 of this title, a treaty referred to in subsection (j)(1)(C)(i), or any rule or regulation issued under this section or section 2779 of this title, including any rule or regulation issued to implement or enforce a treaty referred to in subsection (j)(1)(C)(i) or an implementing arrangement pursuant to such treaty, or who willfully, in a registration or license application or required report, makes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined for each violation not more than \$1,000,000 or imprisoned not more than 20 years, or both.

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Penalties for Violating the ECR



- ECR (50 USC §4819 (b) Criminal Penalty)

- A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids and abets in the commission of, an unlawful act described in subsection (a)-

- (1) shall be fined not more than \$1,000,000; and

- (2) in the case of the individual, shall be imprisoned for not more than 20 years, or both.

- ECR (50 USC §4819 (c) Civil Penalty)

- (1) Authority

The Secretary may impose the following civil penalties on a person for each violation by that person of this subchapter or any regulation, order, or license issued under this subchapter, for each violation:

- (A) A fine of not more than \$300,000 or an amount that is twice the value of the transaction that is the basis of the violation with respect to which the penalty is imposed, whichever is greater.

- (B) Revocation of a license issued under this subchapter to the person.

- (C) A prohibition on the person's ability to export, reexport, or in-country transfer any items controlled under this subchapter.

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UNDERSTANDING AND NOTIFICATIONS



1. The use, disposition, export and re-export of this property is subject to all applicable U.S. Laws and Regulations, including but not limited to the Arms Export Control Act (22 USC 2751 et seq.); Export Control Reform (50 USC 4801-4851); Executive Order 13222, as amended; International Traffic in Arms Regulations (22 CFR 120 et seq.); Export Administration Regulations (15 CFR 730 et seq.); Foreign Assets Control Regulations (31 CFR 500 et seq.) and the Espionage Act (18 USC 793 et seq.); which, among other things, prohibit:
 - a) A. The making of false statements and concealment of any material information regarding the use or disposition, export or re-export of the property and
 - b) Any use, disposition, export or re-export of the property not permitted by applicable statute and regulation.
2. The submission of false or misleading information and/or concealment of any material facts regarding the use, disposition or export of this property may constitute a violation of provisions of 18 USC 793/1001, 22 USC 2778/2779, 50 USC 4819. Sanctions for violations will be in conformity with U.S laws and regulations (including Federal Acquisition Regulations and DoDI 2030.08) and may include the denial of U.S. export privileges and of any participation in future U.S. Government contracts.
3. Transfers of USML and CCLI property by purchasers/bidders/transferees are subject to the requirements of the appropriate licensing department or agency. In many cases, an export license or other authorization may be required. With respect to USML, registration of the purchaser's/bidder's/transferee's business with the Department of the State may also be required. It is the responsibility of the purchaser/bidder/transferee to determine what the applicable requirements may be and to obtain all necessary authorization or approvals.
4. When USML/CCLI property is transferred, the information in this form regarding the above laws and regulations must be passed to the subsequent purchaser/receiver. Records of Resale in buyer's possession should be available for Trade Security Controls Office review, if requested.
5. The DD2345 number, Invitation For Bid and Sale/Exchange Contract number can be referenced when submitting an application for an export license or other authorization to the Department of State for USML or Department of Commerce for CCLI.
6. The Government expects the Purchaser/Recipient to cooperate with all authorized Government representatives to verify the existence and condition of USML/CCLI.



Certification Statement of Export Control Compliance (To be signed by Data Custodian)



1. I do certify that all information given in this Statement Regarding Disposition and Use of Property is true and correct to the best of my knowledge and belief and have not knowingly omitted any information which is inconsistent with this statement. I understand this statement will be referred to and be a part of the Military Critical Technical Data Agreement or contract of sale/exchange with the U.S. Government. I agree to submit a written request for amendment of this statement to the Approving Official prior to effecting any change of fact or intention from that stated herein or in any prior amendment, whether occurring before or after the release of the commodities, and not to effect such changes without first receiving written approval of the Approving Official.
2. I acknowledge having been advised that the USML/CCLI property I purchased or have been granted access to is controlled by the U.S. Government and in many cases cannot be transferred (exported, sold or given) to a foreign country, a non-U.S. Citizen/National or a non-Permanent US Resident without a valid State/Commerce Department export authorization. Should I transfer this property to a foreign country, a non-U.S. Citizen/National or a non-Permanent US Resident, I will obtain any required authorization before making such transfers. I will not transfer this property to countries, regimes and nationals targeted under the sanctions program administered by the U.S. Treasury Department's Office of Foreign Assets Control.
3. Neither the applicant, corporate officers, directors or partners is:
 - A. The subject of an indictment for or has been convicted of violating any of the U.S. Criminal statutes enumerated in 22 CFR 120.27 since the effective date of the Arms Export Control Act, Public Law 94-329, 90 Stat. 729 (June 30, 1976) ; or
 - B. Ineligible to contract with, or to receive, a license or other approval from any agency of the U.S. Government.
4. The person signing this Certification Statement of Export Control Compliance is (*check all that apply*):
 - a citizen of the United States of America or
 - a citizen of Canada or
 - lawfully admitted to the United States for Permanent Residence and maintains such residence under the Immigration and Nationality Act, as amended (8 USC 1101 (a), 20); or
 - is an official of a foreign government entity in the United States and/or Canada.

CAGE Number: _____

COMPANY NAME: _____

NAME (Type or Print)

SIGNATURE of the DATA CUSTODIAN

DATE SIGNED

