

§ 205.5

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(i) For acquisition of items classified for security purposes by a foreign government.

(ii) For the acquisition of items covered by the nonproliferation agreements to which the United States is a party, such as missile technology, or

(iii) That permit the item to be “used for defense purposes” as defined in §205.3(b), by the United States.

(2) Category II. EUCs that are not Category I or III are Category II. Secretaries of the Military Departments and Directors of Defense Agencies may authorize Category II EUCs only after a determination is made through the coordination procedures set forth in §205.6(a)(1) that, notwithstanding the use or transfer limitations, the purchase is in the U.S. national interest. The least restrictive provisions possible should be negotiated.

(3) Category III. Secretaries of Military Departments and Directors of Defense Agencies may not authorize the signature of EUCs which limit the right:

(i) For use by or for the U.S. Government in any part of the world, or

(ii) To provide the item to allies engaged together with the United States in armed conflict with a common enemy. Waivers to this prohibition may be granted by the Under Secretary of Defense (Acquisition) (USD(A)). Procedures for requesting such waivers are at §205.6(a)(1).

§ 205.5 Responsibilities.

(a) The Under Secretary of Defense (Acquisition) shall:

(1) Monitor compliance with this part.

(2) Develop procedures to ensure timely review of Category II and III items with the Under Secretary of Defense for Policy (USD(P)).

(3) Upon obtaining the concurrence of the USD(P), waive the restrictions in §205.4(c)(3) when purchase of the item is in the national interest.

(4) When requested, and in coordination with the USD(P), assist the Military Departments and Defense Agencies in negotiating the elimination or amelioration of an EUC’s restrictive language.

(b) The Under Secretary of Defense for Policy shall:

(1) Consult with the USD(A) on waivers authorized by this part and, if appropriate, coordinate with the Department of State.

(2) When requested, and in coordination with the USD(A), assist the Military Departments and Defense Agencies in negotiating the elimination or amelioration of the EUC’s restrictive language.

(3) Develop procedures for coordination and review of EUC’s internally and with the Department of State.

(4) Establish, with the concurrence of the USD(A), specific acceptable end use restrictions in addition to those set forth in Category I, which shall be added immediately to Category I and a corresponding administrative change made to §205.4(c)(1).

(c) The Secretaries of the Military Departments and the Directors of the Defense Agencies shall:

(1) Authorize the execution of Category I and II EUCs in accordance with the procedures outlined in §205.6. This responsibility may not be delegated by the Directors of Defense Agencies; it may be delegated by Secretaries of the Military Departments to civilian officers of their respective departments appointed by the President with the advice and consent of the Senate. Once EUC execution is authorized, the Director of a Defense Agency, or Military Department civilian official who has been delegated authorization authority may delegate the authority to sign individual EUCs.

(2) Establish procedures to ensure compliance with this part. These procedures should ensure compliance, for the life of the purchased item, with the transfer or use restrictions agreed to in signing an EUC. They should also ensure 21-calendar day notification to USD(A) before authorizing the execution of a Category II EUC.

§ 205.6 Procedures.

(a) Procedures for the three categories of EUCs established in §205.4(c) are:

(1) Category I. Secretaries of the Military Departments and Directors of Defense Agencies may authorize Category I EUCs.