

§ 250.6

32 CFR Ch. I (7–1–12 Edition)

contractors of technical data controlled by this part shall be accompanied by a notice to the recipient as set forth in § 250.9.

(h) Qualified U.S. contractors who receive technical data governed by this part may disseminate such data for purposes consistent with their certification without prior permission of the controlling DoD office or when such dissemination is:

(1) To any foreign recipient for which the data are approved, authorized, or licensed under E.O. 12470 or the Arms Export Control Act.

(2) To another currently qualified U.S. contractor (as defined in § 250.3(a) above, including existing or potential subcontractors, but only within the scope of the certified legitimate business purpose of such recipient.

(3) To the Departments of State and Commerce, for purposes of applying for appropriate approvals, authorizations, or licenses for export under the Arms Export Control Act or E.O. 12470. Any such application shall include a statement that the technical data for which such approval, authorization, or license is sought are controlled by the Department of Defense in accordance with this part.

(4) To Congress or any Federal, State, or local governmental agency for regulatory purposes, or otherwise as may be required by law or court order. Any such dissemination shall include a statement that the technical data are controlled by the Department of Defense in accordance with this part.

(i) A qualified U.S. contractor desiring to disseminate technical data subject to this part in a manner not permitted expressly by the terms of this part shall seek authority to do so from the controlling DoD office.

(j) Any requester denied technical data, or any qualified U.S. contractor denied permission to redisseminate such data, pursuant to this part, shall be provided promptly a written statement of reasons for that action, and advised of the right to make a written appeal of such determination to a specifically identified appellate authority within the DoD Component. Appeals of denials made under DoD 5400.7-R (reference (e)) shall be handled in accord-

ance with procedures established therein. Other appeals shall be processed as directed by the OUSDR&E.

(k) Denials shall cite 10 U.S.C. 140c as implemented by this part, and, in the case of FOIA denials made in reliance on this statutory authority, 5 U.S.C. 552(b)(3). Implementing procedures shall provide for resolution of any appeal within 20 working days.

§ 250.6 Responsibilities.

(a) The Under Secretary of Defense for Research and Engineering (USDR&E) shall have overall responsibility for the implementation of this Directive and shall designate an office to:

(1) Administer and monitor compliance with this Directive.

(2) Receive and disseminate notifications of temporary revocation in accordance with § 250.5(e) of this part.

(3) Receive recommendations for disqualification made in accordance with § 250.5(f) of this part, and act as initial disqualification authority.

(4) Provide, when necessary, technical assistance to DoD Components in assessing the significance of the military or space application of technical data that may be withheld from public disclosure under this Directive.

(5) Establish procedures to develop, collect, and disseminate certification statements and ensure their sufficiency, accuracy, and periodic renewal, and to make final determinations of qualification.

(6) Ensure that the requirements of this Directive are incorporated into the DoD Federal Acquisition Regulation Supplement for optional application to contracts involving technical data governed by this Directive.

(7) Develop, in conjunction with the General Counsel, Department of Defense, guidelines for responding to appeals.

(8) Develop procedures to ensure that DoD Components apply consistent criteria in authorizing exceptions under § 250.5(i) of this part.

(9) Establish procedures and appropriate mechanisms for the certification of qualified U.S. contractors, pursuant to § 250.6(a)(5) of this part, within 60

days of the effective date of this Directive. During this 60-day period, requests for technical data governed by this Directive shall be processed in accordance with procedures in effect before the promulgation of this Directive.

(10) Take such other actions that may be required to ensure consistent and appropriate implementation of this Directive within the Department of Defense.

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

(1) Develop and promulgate, as required, policy guidance to DoD Components for implementing this Directive.

(2) Develop procedures with the Departments of State and Commerce to ensure referral of export cases involving technical data governed by this Directive to the Department of Defense.

(c) The Assistant Secretary of Defense (Public Affairs) shall:

(1) Monitor the implementation of provisions of this Directive that pertain to DoD 5400.7-R.

(2) Provide such other assistance as may be necessary to ensure compliance with this Directive.

(d) The General Counsel, Department of Defense, shall:

(1) Assist in carrying out the provisions of this Directive by advising DoD Components with respect to the statutory and regulatory requirements governing the export of technical data.

(2) Advise the USDR&E regarding consistent and appropriate implementation of this Directive.

(e) The Heads of DoD Components shall:

(1) As the delegated authority, have the option to redelegate the authority to withhold technical data in accordance with this Directive.

(2) Disseminate and withhold from public disclosure technical data subject to this Directive in a manner consistent with the policies and procedures set forth herein.

(3) Designate a focal point to

(i) Ensure implementation of this Directive;

(ii) Identify classes of technical data the release of which is governed by § 250.5(d)(3) of this part;

(iii) Act on appeals relating to case-by-case denials of technical data;

(iv) Suspend a contractor's qualification pursuant to § 250.(e) of this part;

(v) Receive and evaluate requests for reinstatement of a contractor's qualification; and, when appropriate,

(vi) Recommend disqualification to the OUSDR&E.

(4) Promulgate and effect regulations to implement this Directive within 180 days.

(5) Disseminate technical data governed by this Directive in the manner prescribed herein, to the extent feasible, during the period after which certification procedures have been established under § 250.6(a)(9) of this part, but before DoD Components have issued implementing regulations under paragraph (e)(4) of this section. However, if such dissemination is not feasible, the DoD Component may process requests for such data in accordance with procedures in effect before the promulgation of this Directive.

§ 250.7 Pertinent portions of Export Administration Regulations (EAR).

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

EXPORT ADMINISTRATION REGULATIONS 15
CFR 379.3

General License GTDA: Technical Data Available to All Destinations

A General License designated GTDA is hereby established authorizing the export to all destinations of technical data described in § 379.3(a), (b), or (c), below:

(a) *Data Generally Available.* Data that have been made generally available to the public in any form, including

(1) Data released orally or visually at open conferences, lectures, trade show, or other media open to the public; and

(2) Publications that may be purchased without restrictions at a nominal cost, or obtained without costs, or are readily available at libraries open to the public.

The term "nominal cost" as used in § 379.3(a)(2), is intended to reflect realistically only the cost of preparing and distributing the publication and not the intrinsic value of the technical data. If the cost is as much as to prevent the technical data from being generally available to the public, General License GTDA would not be applicable.

(b) *Scientific or Educational Data.* (1) Dissemination of information not directly and significantly related to design, production,