



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

SECNAVINST 5510.34A
Navy IPO-01
8 October 2004

SECNAV INSTRUCTION 5510.34A

From: Secretary of the Navy
To: All Ships and Stations

Subj: DISCLOSURE OF CLASSIFIED MILITARY INFORMATION AND
CONTROLLED UNCLASSIFIED INFORMATION TO FOREIGN
GOVERNMENTS, INTERNATIONAL ORGANIZATIONS, AND FOREIGN
REPRESENTATIVES

Ref: (a) Arms Export Control Act (22 U.S.C. 2751 et. seq.)
(b) Export Administration Act (50 U.S.C. 2401-2420)
(c) Executive Order 12958, Classified National Security
Information
(d) National Policy and Procedures for the Disclosure of
Classified Military Information to Foreign Governments
and International Organizations (Short Title: National
Disclosure Policy or NDP-1) of Oct 00
(e) DoD Directive 5230.11 of 16 Jun 92
(f) DoD Directive 5230.25 of 6 Nov 84
(g) DoD 5400.7-R of Sep 98
(h) DoD 5200.1-R of Jan 97
(i) DoD Directive 5230.20 of 12 Aug 98
(j) DoD 5200.2-R of Jan 87
(k) DoD 5220.22-M of 17 Jan 95
(l) SECNAVINST 5510.36 of 17 Mar 99
(m) SECNAVINST 5510.30A of 10 Mar 99
(n) SECNAVINST 4900.46B of 16 Dec 92
(o) International Traffic in Arms Regulations (ITAR) (22
CFR 120-130) of 1 Apr 04
(p) Export Administration Regulation (EAR) (15 CFR 730-
774)
(q) DoD Directive 5530.3 of 11 Jun 87
(r) DoD 5105.38-M of Oct 03
(s) DoD 5000.3-M-2 of Jan 94
(t) DoD Directive 4500.54 of 1 May 91
(u) DoD 4500.54-G of 10 Jan 04 (<http://www.fcg.pentagon.mil>)
(v) White House Directive on Safeguarding Classified
National Security Information of 4 Aug 99 (NOTAL)
(w) DoD Directive 5000.1 of 12 May 03
(x) DoD Instruction 5000.2 of 12 May 03
(y) SECNAVINST 5000.2B of 6 Dec 96

8 October 2004

(z) DoD 5230.18-M of Jul 85

Encl: (1) Definition of Terms

1. Purpose

a. To implement references (a) through (h) with respect to the foreign disclosure by Department of the Navy (DON) personnel of classified military information (CMI) and controlled unclassified information (CUI).

b. To implement reference (i) with respect to the control of foreign national visitors, liaison officers, exchange personnel, cooperative program personnel, and other foreign nationals or their representatives who may have contact with the DON.

c. To provide DON foreign disclosure policy and assign responsibilities.

2. Cancellation. SECNAVINST 5510.34, its classified supplement OPNAVINST S5510.155C, and SECNAVINST 5510.31C are hereby cancelled. Report symbols SECNAVINST 5510-1, 5510-2, 5510-3, 5510-4, 5510-5, 5510-6, and 5510-7, which were originally required by SECNAVINST 5510.34, are also cancelled.

3. Background. Reference (d) issued the National Disclosure Policy (NDP-1) and established foreign disclosure policy, procedures, criteria and limitations. Reference (e) states that the Secretary of the Navy (SECNAV) shall designate a senior official to be the Principal Disclosure Authority (PDA) who shall ensure that foreign disclosures are implemented uniformly and in accordance with the NDP-1.

4. Applicability. The provisions of this instruction apply to all DON organizations and personnel involved in initiatives that may result in the disclosure of CMI or CUI to foreign governments and international organizations, or their representatives or persons sponsored by them (hereinafter referred to as foreign representatives). DON activities shall ensure these provisions are imposed on contractors through the security requirements of each contract. This instruction applies to disclosures at any location and any form; i.e., in oral, visual, or material form (e.g., releases of documentary information or hardware). In the event of a perceived conflict between this instruction and other DON policies or procedures, relevant disclosure issues will be held in abeyance until the Navy International Programs Office (Navy IPO) resolves the policy conflict.

8 October 2004

a. CMI is information originated by or for the Department of Defense (DoD) or its agencies or is under their jurisdiction or control and requires protection in the interest of national security. It is designated TOP SECRET, SECRET, or CONFIDENTIAL. CMI may be in oral, visual, or material form and has been subdivided further into eight NDP Categories.

b. CUI is limited to unclassified information with a military or space application to which access or distribution statements have been applied in accordance with national laws and regulations.

c. The policy set forth in this instruction and its implementing procedures shall apply to export license applications that are reviewed by DON pursuant to references (a) and (b).

d. Access to CMI and CUI by foreign national employees of the DON or DON contractors shall be in accordance with this instruction and references (j) through (o), as applicable.

e. This instruction does not apply to

(1) disclosures to U.S. nationals (except that it does apply when they are acting as foreign representatives),

(2) DON information approved for public release,

(3) unclassified information that does not have a military or space application, and

(4) unclassified information determined to be exempt from mandatory disclosure to the public under the Freedom of Information Act (5 U.S.C. 552), for which other instructions apply.

5. Delegations of Authority. Disclosure authority is hereby delegated within the DON as described below. The heads of DON organizations not listed below may apply to the Director, Navy IPO for disclosure authority on a case-by-case basis when it can be justified that such authority is mission essential.

a. The Assistant Secretary of the Navy for Research, Development, and Acquisition (ASN (RD&A)) is the PDA for the DON. The ASN (RD&A) has the authority to speak for the DON on all foreign disclosure matters subject to compliance with this instruction.

8 October 2004

b. The ASN (RD&A) has delegated authority to Director, Navy IPO to approve or deny the disclosure of DON CMI and CUI to foreign governments, international organizations, and foreign representatives within the limits of this instruction. Under this authority, Director, Navy IPO represents the DON on the National Disclosure Policy Committee (NDPC), ad hoc committees, and working groups and may further delegate disclosure authority as necessary for the DON to carry out its assigned missions.

c. Delegation of Disclosure Authority Letters (DDLs) for other specified DON organizations and offices (e.g., the Chief of Naval Operations, the Commandant of the Marine Corps, commanders of Navy commands, and Technical Project Officers (TPOs)) are issued under separate correspondence.

6. Action

a. ASN (RD&A) shall oversee the foreign disclosure program for the DON and ensure that DON foreign disclosure procedures are in compliance with this instruction.

b. The Director, Navy IPO shall:

(1) Prepare, coordinate and publish the Department of the Navy Foreign Disclosure Manual (hereafter, "Manual"). This Manual shall establish DON procedures for the implementation of this instruction. The Manual shall cover the various circumstances under which DON commands, agencies, offices, and staff elements (hereafter, "DON organizations") may disclose CMI and CUI to foreign representatives. The Manual shall also establish procedures to coordinate all DON foreign disclosure actions with other DoD or Federal agencies or foreign governments that have jurisdiction over or an interest in the information to be disclosed.

(2) Develop a training program for DON officials who are to be Designated Disclosure Authorities (DDAs), Foreign Disclosure Points of Contact (FDPOCs), and other DON personnel who are involved in or manage the disclosure of information concerning international programs.

(3) Delegate foreign disclosure authority to DON organizations or officials when such authority is determined to be mission essential and in the best interest of the U.S. Government.

c. The Chief of Naval Operations, the Commandant of the Marine Corps, Naval Component Commanders, Commanders of the

8 October 2004

Systems Commands, and the Chief of Naval Research shall designate a DDA who shall be responsible for controlling disclosures of CMI and CUI at that organization.

d. Heads of DON organizations shall:

(1) Designate one or more FDPOCs within their headquarters and at subordinate commands and activities to coordinate foreign disclosure reviews and to facilitate a complete, timely, and consolidated response to requests to disclose CMI and CUI to a foreign person. FDPOCs do not hold disclosure authority unless also appointed as a DDA.

(2) Develop internal procedures to assure compliance with this instruction and the implementing procedures within their organizations.

(3) Avoid entering into discussions with foreign persons or their representatives on initiatives that will result in the disclosure of CMI or CUI without first obtaining disclosure authority from a DDA in their chain of command or Navy IPO, as appropriate.

e. The Director, Naval Criminal Investigative Service (NCIS) shall:

(1) Maintain effective liaison with the Director, Navy IPO on security matters related to the visits and assignments of foreign nationals to DON organizations and their contractors.

(2) Ensure that security procedures related to the visits and assignments specified below in paragraph 7.j. are in compliance with the policies set forth herein and with the implementing procedures.

f. The Inspector General of the Navy shall conduct periodic reviews to determine compliance with this policy and the implementing procedures. The results of such reviews, along with recommendations, shall be provided to the Office of the Secretary of the Navy; the ASN (RD&A); the Chief of Naval Operations; the Director, NCIS; the Commandant of the Marine Corps; and the Director, Navy IPO.

7. Policy. CMI and CUI are national assets that must be protected but may be shared with foreign governments and international organizations when it is necessary to support U.S. national defense and foreign policy, and a favorable foreign disclosure decision has been rendered. The unauthorized foreign disclosure of CMI and CUI can lead to the compromise of U.S.

8 October 2004

military capabilities and underlying technologies. Likewise, military operational plans and intelligence operations and sources may be compromised. Penalties for the unauthorized disclosure of CMI and CUI range from administrative sanctions to criminal charges with possible fines or imprisonment. DON policy is described below:

a. Foreign Disclosure Decision Criteria. CMI and CUI under DON control may be disclosed to foreign representatives only when a DON official who has been specifically delegated disclosure authority determines that:

(1) the disclosure is in support of a lawful U.S. Government purpose (e.g., Foreign Military Sales (FMS) program, cooperative program, personnel exchange program),

(2) the disclosure is in compliance with the policies stated herein, and

(3) the disclosure is in compliance with the procedures established in the Manual.

b. Government-to-Government Principle. Decisions on the foreign disclosure of CMI and CUI shall be based on the "government-to-government" principle. The basis of this principle is the U.S. Government's willingness to provide the requested information to the potential recipient's government and the physical transfer will take place under procedures approved by the sending and receiving governments. Foreign disclosure decisions can be made only when there has been a determination that the recipient government is capable of protecting the information, and that it has or will make a commitment to comply with U.S. Government conditions on the use, further transfer, and protection of the information.

c. False Impressions Doctrine. In accordance with reference (d), DON organizations and their personnel will scrupulously avoid any action that creates a false impression that the U.S. is willing to enter into any arrangement with a foreign government that may involve the eventual disclosure of CMI or CUI. Therefore, before a DON organization enters into an initiative with a foreign person that will entail the eventual disclosure of any CMI or CUI, the organization shall obtain disclosure authority sufficient to provide all of the information of the type and at the classification level that is known or anticipated for the life of the program or initiative.

8 October 2004

d. The Technology Transfer and Security Assistance Review Board (TTSARB). The TTSARB, established by reference (n), ensures that cognizant DON officials review all precedent-setting or otherwise significant foreign disclosure issues to establish a coordinated DON decision. The Director, Navy IPO, as the Executive Secretary of the TTSARB, will coordinate such issues within the DON.

e. Disclosure Reviews of Export License Applications. DON organizations that are tasked by Navy IPO to review export license applications will respond within seven (7) business days of receipt. Delays in review of export license applications can jeopardize defense trade initiatives and can have an adverse effect on the U.S. industrial base; however, reviewers need to ensure that DON equities are adequately protected. **Although exports are not by definition "foreign disclosures," these foreign disclosure criteria and security requirements that apply to foreign disclosure decisions shall also apply in formulating DON recommendations to the Defense Technology Security Administration (DTSA) on export license applications.** However, DON organizations shall not act as a transmittal agent on behalf of a private individual or firm, either as a convenience or to satisfy security requirements. Such individuals and firms are required to obtain an export authorization in compliance with references (a), (b), (o), and (p), and with reference (k) if classified information is involved.

f. International Agreements. Reference (q) defines and governs the negotiation of international agreements. Reference (e) requires DoD and its components to determine the foreign disclosure requirements prior to the negotiation of an international agreement. Therefore, DON personnel shall not enter into discussions that imply a commitment to negotiate an agreement until negotiating authority has been obtained and foreign disclosure guidelines have been provided. International agreements, in and of themselves, do not authorize DON officials to release specific CMI or CUI to foreign persons. DON personnel shall not disclose CMI or CUI under an international agreement except under a DDL approved and issued by Navy IPO or other cognizant authority. DDLs provide disclosure authority and guidance to DON Program/Project Managers and Technical Project Officers (TPOs) for implementation of international agreements.

g. Foreign Military Sales (FMS) Programs. Reference (r) requires disclosure authorization from the appropriate DDA prior to sales, loans, leases, and grants of defense articles and services and prescribes transfer arrangements. Before responding to an FMS request, the cognizant DDA shall conduct a

8 October 2004

disclosure review to ensure that the response complies with existing national, DoD, and DON disclosure policies, and the prescribed transfer arrangements have been approved by the responsible security office.

h. Ship Transfers. It is DON policy to transfer decommissioned or excess ships and service craft to foreign governments and international organizations in support of U.S. foreign policy objectives. The cognizant DDA shall conduct a review of the ship's systems and inventory to ensure release is in compliance with the DON, DoD, and national disclosure policies.

i. Foreign Comparative Testing (FCT). The purpose of the FCT Program is to test foreign non-developmental items (NDIs) to determine if they satisfy U.S. Armed Forces requirements or correct mission area shortcomings per reference (s). The FCT Program results in a test report which is generally releasable to the foreign contractor and/or foreign government that provided the item for testing. However, if the final test report includes U.S. CMI or CUI, that information shall be reviewed for release by the cognizant DDA or Navy IPO.

j. Official Visits and Assignments of Foreign Nationals. Hosting official foreign national visitors and assigning foreign nationals to DON organizations as foreign liaison officers, exchange personnel, or cooperative program personnel are necessary to support bilateral or multinational agreements and programs. Official foreign visitor access must be controlled properly to avoid inadvertent or unauthorized disclosure. DON organizations shall comply with the provisions of reference (i). Foreign nationals who visit or who are assigned to DON organizations may be permitted access only to information that is authorized for disclosure to their government. Therefore, only Navy IPO, DDAs, or other officials delegated authority by a DDL may approve access to CMI and CUI by visiting and assigned foreign nationals. Unofficial visits (e.g., courtesy calls, public tours, students) are outside the scope of this instruction and instead shall be governed by the procedures in SECNAVINST 5510.30A, which implements reference (j). See definitions for official and unofficial foreign visits in enclosure (1). NOTE: Foreign nationals not sponsored by their government, visiting under the terms of a DoD/DON contract are not official visits and will be cleared in accordance with reference (k).

k. Overseas Visits by DON Personnel. Reference (t) requires that DoD organizations designate an official to be responsible

8 October 2004

for approving visits by DON employees to overseas locations and to ensure compliance with the foreign disclosure, security, and other requirements set forth in the directive. Reference (u) establishes specific visit requirements for individual countries. DON organizations shall establish procedures to implement references (t) and (u). Designated officials shall ensure that CMI and CUI to be disclosed during visits have been approved in advance by the responsible DDA.

1. Training

(1) Foreign students may receive training on U.S. equipment, weapons, or systems (herein referred to as "equipment") that involve the disclosure of CMI or CUI if the equipment is already in the inventory of the foreign government, or if there is a government-to-government commitment that the equipment will be acquired. Foreign nationals may also conduct training on U.S. equipment at U.S. facilities if the item has been sold or approved for disclosure to the foreign national's government. In either case, the training shall be consistent with the version of the equipment (including technical training pertaining to operations and maintenance) that has been authorized for disclosure to the foreign national's government.

(2) DON activities responsible for the development of training material, particularly computer-based training, shall develop the material keeping in mind that the training may be provided to foreign nationals. In those instances where there is a reasonable expectation of foreign participation in the training, to the greatest extent possible, the training should be designed in a modular fashion or in a fashion that may easily be tailored or sanitized.

m. Documentary Disclosures. To avoid false impressions and to avoid the proliferation of requests for documents (written material, recorded data, computer or electronic media, films, tapes, etc.) that are not releasable to the requestor, DDAs shall

(1) ensure that references to non-releasable documents, information, and sources are removed from presentations, briefings, documents, and material provided or delivered to foreign governments, international organizations, or foreign representatives;

(2) normally deny the release of documents that are reference lists or bibliographies;

8 October 2004

(3) allow, when appropriate under certain circumstances, the casual mention of weapon or system names for weapons or systems not authorized for release when to remove such references would be resource intensive. This type of casual mention is generally unclassified and should reveal no system vulnerabilities, performance parameters, or specific variants released to foreign countries, and does not violate any DON or DoD policy concerning the mentioned weapon or system; and

(4) deny the disclosure request if the document contains non-releasable information and its removal is not feasible and/or impractical (in that the resultant document would not serve the intended purpose).

n. Protection of Foreign Government Information. Reference (c), reference (v), treaties, and international agreements require the protection of Foreign Government Information (FGI). FGI in the possession of DON organizations shall not be disclosed to any person or other entity of a third country, including lawfully admitted permanent resident aliens, without the consent of the originating foreign government. DON organizations shall protect FGI in compliance with references (h) and (l).

o. Limitations on DON Disclosure Authority. Certain types of CMI and CUI are not subject to the exclusive disclosure authority of either DON or DoD. These include, but are not limited to, atomic information (Restricted Data and Formerly Restricted Data), Low Observable (LO) and Counter Low Observable (CLO) information or technology, National Intelligence, Sensitive Compartmented Information (SCI), acoustic intelligence (ACINT), information controlled by the Committee on National Security Systems (Communications Security and Information Security information), threat parametric data, Global Positioning System (GPS) information, information related to offensive counterintelligence operations, narcotics intelligence, Strategic War Plans, foreign government information, and any information originated by a department or agency other than the DON. DON organizations shall comply with the procedures contained in the Manual when obtaining disclosure authorization for these and other types of information. In addition, Annex C of reference (d) sets forth specific disclosure policy guidance related to selected U.S. weapon systems, equipment, and technologies which in some cases require coordination with certain non-DON organizations.

p. Participation by Foreign Contractors in DON Procurements. To the extent consistent with law, regulation, policy, treaties,

8 October 2004

and international agreements, foreign contractors may serve as prime contractors and subcontractors in DON procurements involving CMI and CUI. As generally set out in references (w), (x), and (y), planning for possible foreign involvement in a DON procurement should begin as early as possible and restrictions on foreign participation should be described in the announcement for a procurement. DON Program Managers shall obtain a disclosure authorization from their DDA to ensure that all information necessary for a foreign contractor to perform as a prime contractor is releasable to the parent foreign government. All contractors shall be required via the contract to obtain authorization for the transfer of any CMI or CUI to a foreign subcontractor. Navy IPO shall be notified of all denials of or restrictions on foreign participation that are based on national security and disclosure concerns.

q. Foreign Ownership, Control, or Influence (FOCI). Certain U.S. companies located and incorporated in the United States are under FOCI. Access by such companies to U.S. CMI requires a foreign disclosure determination by a DDA. This determination would be based on whether the CMI would otherwise be authorized for release to the government of the foreign entity that is the source of the FOCI. Reference (k) provides guidance to such firms in order to negate or adequately mitigate their FOCI status and thereby eliminate the need for a foreign disclosure determination.

r. Reporting of Disclosure Decisions. All DON officials who have been delegated disclosure authority shall report decisions disclosing or denying access to CMI to the Security Policy Automation Network (SPAN) in accordance with the procedures in reference (w). The SPAN databases should be used by DON foreign disclosure and export licensing officials to identify applicable policies and precedents that may exist, when researching or considering current disclosure requests.

Gordon England
Secretary of the Navy

Distribution:
SNDL Parts 1 and 2

8 October 2004

DEFINITION OF TERMS

Case-by-Case Basis. The principle that a disclosure authorization is restricted to individual events or occasions to prevent confusion with permanent and repetitive disclosure determinations.

Classified Military Information (CMI). Information originated by or for the DoD or its Agencies or is under their jurisdiction or control and that requires protection in the interests of national security. It is designated TOP SECRET, SECRET, or CONFIDENTIAL. CMI may be conveyed via oral, visual, or material form and has been divided into eight categories which are defined in references (d) and (e).

Communications Security (COMSEC). Measures and controls taken to deny unauthorized persons information derived from telecommunications and ensure the authenticity of such telecommunications. NOTE: Communications security includes crypto security, transmission security, emission security, and physical security of COMSEC material.

Compromise. A known or suspected unauthorized disclosure of classified information.

Contact Officer. A DON official designated in writing to oversee and control all contacts, requests for information, consultations, access, and other activities of foreign nationals who are assigned to, or are visiting, a DON Component or subordinate organization.

Controlled Unclassified Information (CUI). Unclassified information to which access or distribution limitations have been applied in accordance with national laws, policies, and regulations. CUI is a term used to collectively describe unclassified information that has been determined to be exempt from mandatory disclosure to the public under the Freedom of Information Act (5 U.S.C. 552) or that is subject to U.S. export controls. *Within the DoD most of this information is marked "For Official Use Only" or "FOUO"; however, there are exceptions to the FOUO marking. Unclassified Controlled Nuclear Information (UCNI) is marked as such; personnel and medical files are marked with privacy statements; contractor information marked "PROPRIETARY" or "Business-Sensitive" will be handled as FOUO when provided to DoD/DON; and there are special distribution and export control warning notices that are applied*

8 October 2004

by DON Components to DON documents that contain "critical technology" with a military or space application.

Cooperative Program Personnel. Foreign government personnel, assigned to a program office that is hosted by a DOD Component in accordance with the terms of a Cooperative Program International Agreement, who report to and take direction from a DOD-appointed program manager (or program manager equivalent) for the purpose of carrying out the cooperative project or program. Foreign government representatives described in such agreements as liaison officers or observers are not considered Cooperative Program Personnel and are treated as Foreign Liaison Officers.

Critical Technology. See Technology, Critical.

Defense Articles. Any weapons, weapon systems, munitions, aircraft, boats, or other implements of war; any property, installations, commodities, materials, equipment, supplies, or goods used for the purposes of furnishing military assistance or making military sales; any machinery, facility, tool, material, supply, or other item necessary for the manufacture, production, processing, repair, servicing, storage, construction, transportation, operation, or use of any other defense article; and any component or part of any articles listed above. They include any item or technical data designated in the U.S. Munitions List set out in reference (o).

Defense Services. The furnishing of assistance (including training) to foreign persons, whether in the U.S. or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles; the furnishing to foreign persons of any technical data controlled by reference (o), whether in the U.S. or abroad; or military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the U.S. or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice.

Defense Personnel Exchange Program (DPEP). A program under which military and civilian personnel of the Department of Defense and military and civilian personnel of the defense ministries and/or military services of foreign governments, in

8 October 2004

accordance with the terms of an international agreement, occupy positions with and perform functions for a host organization to promote greater understanding, standardization, and interoperability.

Delegation of Disclosure Authority Letter (DDL). A letter issued by the appropriate Designated Disclosure Authority (DDA) (normally Navy IPO) to a designated DON official defining classification levels, categories, scope, foreign countries, and limitations of information that may be authorized by the designated DON official for disclosures to a foreign recipient. Under no circumstances may the contents of DDLs be disclosed or acknowledged to foreign representatives. DDLs are general or subject-specific.

a. General delegations of disclosure authority are issued by Navy IPO to Designated Disclosure Authorities (DDAs) (e.g., the Chief of Naval Operations, the Commandant of the Marine Corps, and the commanders of DON components).

b. Subject-specific DDLs are issued to specified DON components or offices, typically on a project-by-project basis. For example, a DDL is typically issued for DEA/IEA Annexes, MOAs, and MOUs to Technical Project Officers.

Designated Disclosure Authority (DDA). An official at a DON organization (e.g., command, agency, staff element) that has been granted a general delegation of disclosure authority by Navy IPO and is responsible for controlling disclosures of CMI and CUI at that organization. Normally, the designated official is nominated by the head of his or her organization and is approved by Navy IPO following the issuance of the general delegation of disclosure authority to the DON organization.

Disclosure. Conveying controlled information, in any manner. For the purposes of this instruction, "disclosure" is defined as oral, visual, electronic or physical transfer ("release") of controlled information or material. (See Foreign Disclosure.)

Documentary Information. Any information, which is recorded on paper, film, transparency, electronic medium, or any other medium. This includes, but is not limited to printed publications, reports, correspondence, maps, audiotapes, email, spreadsheets, databases and graphical slides, technical drawings, software code, and information embodied in hardware.

Export. Reference (o) defines "export" as:

8 October 2004

- a. Sending or taking a defense article out of the United States in any manner, except by mere travel outside of the United States by a person whose personal knowledge includes technical data; or
- b. Transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite covered by the U.S. Munitions List, whether in the United States or abroad; or
- c. Disclosing (including oral or visual disclosure) or transferring in the United States any defense article to an embassy, any agency or subdivision of a foreign government (e.g. diplomatic missions); or
- d. Disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad; or
- e. Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.
- f. A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this [ITAR] subchapter. However, for certain limited purposes, the controls of this [ITAR] subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.

Export License. The authorization issued by the State Department, Office of Defense Trade Controls, or by the Department of Commerce, Bureau of Industry and Security, which permits the export of ITAR- or EAR-controlled articles, technical data, or services.

Export License Application. A request submitted by U.S. persons and foreign government entities in the U.S. to export ITAR- or EAR-controlled technical data, services, or articles to a foreign person (see "Foreign Person").

Foreign Disclosure. The disclosure of CMI or CUI to an authorized representative of a foreign government or international organization. Also, see Government-to-Government Transfer. [NOTE: The transfer or disclosure of CMI or CUI to a foreign national who is an authorized employee of the U.S.

8 October 2004

Government or a U.S. contractor technically is not a "foreign disclosure," since the disclosure is not made to the person's government. For U.S. contractors, access by such persons will be handled under the provisions of the Arms Export Control Act or Export Administration Act and the National Industrial Security Program Operating Manual. For DON organizations, access by such persons is handled in compliance with references (h) and (j) and is implemented by references (u) and (w).]

Foreign Disclosure Point Of Contact (FDPOC). FDPOCs are DON officials who are appointed by the Chief of Naval Operations, the Commandant of the Marine Corps, Component Commanders, Commanders of Systems Commands, and the Chief of Naval Research for the coordination of foreign disclosure reviews and to facilitate a complete and timely response to foreign requests for CMI or CUI representing the consolidated organization position. FDPOCs do not hold disclosure authority, unless also appointed as a DDA (see definition of DDA).

Foreign Exchange Personnel. Military or civilian officials of a foreign defense establishment (i.e., a DoD equivalent) who are assigned to a DoD Component in accordance with the terms of an exchange agreement and who perform duties, prescribed by a position description, for the DoD Component.

Foreign Government Information (FGI). Information received from one or more foreign governments or international organizations as classified, or expected to be held in confidence. It is classified, safeguarded, and declassified as agreed between the U.S. and the foreign entity.

Foreign Liaison Officer (FLO). A foreign government military member or civilian employee authorized by his or her government and certified by a DoD Component to act as an official representative of that government in its dealings with a DoD Component in connection with programs, projects, or agreements of interest to that government. There are three types of FLOs:

a. Security Assistance. A foreign government representative who is assigned to a DoD/DON Component or contractor facility in accordance with a requirement that is described in a Foreign Military Sales (FMS) Letter of Offer and Acceptance (LOA).

b. Operational. A foreign government representative who is assigned to a DoD/DON Component in accordance with a documented

8 October 2004

requirement to coordinate operational matters, such as combined planning or combined exercises.

c. National Representative. A foreign government representative who is assigned to his or her national embassy or delegation in the U.S. (e.g., an attaché) to conduct liaison activities with the DoD and the DoD Components.

Foreign Military Sales (FMS). That part of security assistance authorized by the Arms Export Control Act and conducted using formal contracts or agreements between the U.S. Government and an authorized foreign purchaser. These contracts, called Letters of Offer and Acceptance are signed by both the U.S. Government and the purchasing Government or international organization and provide for the sale of defense articles and/or defense services (to include training) from DoD stocks or through purchase under DoD-managed contracts.

Foreign National. A person who is not a citizen or national of the United States.

Foreign Person. A natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101 (a)(20), or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society, or any other entity or group that is not incorporated or organized to do business in the U.S., as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

Foreign Representative. A person, regardless of citizenship, who represents a foreign interest in his or her dealings with the U.S. Government, or a person who is officially sponsored by a foreign government or international organization. A U.S. national will be treated as a foreign person when acting as a foreign representative.

Foreign Visit. Any contact by a foreign representative with a DON organization or contractor facility. Such visits are of two types, based on sponsorship:

a. Official Foreign Visit. Contact by foreign representatives under the sponsorship of their government or an international organization with a DoD component or DoD contractor facility.

8 October 2004

Only official visitors may have access to classified or controlled unclassified information.

b. Unofficial Foreign Visit. Contact by foreign nationals with a DoD/DON command or activity for unofficial purposes, such as courtesy calls and general visits to commands or events that are open to the public, or without sponsorship of their government. Such visitors shall have access only to information that has been approved for public disclosure.

NOTE: Foreign nationals not sponsored by their government, visiting under the terms of a DoD/DON contract are not considered foreign visitors and will be cleared in accordance with reference (k).

Government-to-Government Transfer. The principle that classified information and material will be transferred by government officials through official government channels (e.g., military postal service, diplomatic courier) or through other channels expressly agreed upon in writing by the governments involved. In either case, the information or material may be transferred only to a person specifically designated in writing by the foreign government as its designated government representative for that purpose.

International Organization. An entity established by recognized governments under an international agreement which, by charter or otherwise, is able to acquire and transfer property, make contracts and agreements, obligate its members, and pursue legal remedies.

Lawful Permanent Resident. An individual having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. See U.S. National.

Naval Nuclear Propulsion Information (NNPI). Information, classified or unclassified, concerning the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of naval nuclear-powered ships and prototypes, including the associated nuclear support facilities. Information concerning equipment, components, or technology which are applicable to both naval nuclear and conventional propulsion plants is not considered to be NNPI when used in reference to conventional applications only, provided no association with naval nuclear propulsion can be directly identified from the information in

8 October 2004

question. In cases where an association with naval nuclear propulsion can be directly identified from the information in question, designation as NNPI is mandatory.

Nondevelopmental Item

a. Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

b. Any item described in paragraph a. of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

c. Any item of supply being produced that does not meet the requirements of paragraph a. or b. solely because the item is not yet in use.

Oral/Visual Disclosure. To brief orally, to expose to view, or to permit use under U.S. supervision in order to permit the transfer of knowledge or information, but not to physically transfer documents, material, or equipment to a foreign government or its representatives.

Principal Disclosure Authority (PDA). The PDA oversees compliance with DON disclosure policy and is the only DON official other than the Secretary or Under Secretary of the Navy who is authorized to deal directly with the Secretary or Under Secretary of Defense regarding such matters as DON requests for exceptions to the National Disclosure Policy. The PDA for the DON is the Assistant Secretary of the Navy for Research, Development and Acquisition (ASN (RD&A)). ASN (RD&A) has designated Navy IPO to act on his behalf as the PDA for the DON.

Release. The physical transfer of documents, material, or equipment to foreign governments, international organizations, or a recipient of a licensed export. The definition of "disclosure" includes "release."

Restricted Data (RD) and Formerly Restricted Data (FRD)

a. RESTRICTED DATA (RD) includes all data concerning: (a) the design, manufacture or use of atomic weapons, (b) the production of special nuclear material, or (c) the use of special nuclear

8 October 2004

material in the production of energy, but does not include data declassified or removed from the RESTRICTED DATA category under Section 142 of the Atomic Energy Act of 1954 as amended.

b. FORMERLY RESTRICTED DATA (FRD) is information removed from the RESTRICTED DATA category upon joint determination by the Atomic Energy Commission (subsequently Department of Energy) and the DoD that such information relates primarily to the military utilization of atomic weapons and that it can be adequately safeguarded as classified defense information. Such information is, however, treated the same as RESTRICTED DATA for purposes of foreign disclosure.

Security Assurance. Written confirmation requested by and exchanged between governments of the security clearance level and eligibility of their employees or national contractors to assume custody of classified information on behalf of the recipient government. There are two additional types of security assurances.

a. Facility Security Clearance Assurance (FSCA). A certification provided by a government on a contractor facility under its territorial jurisdiction which indicates that the facility is cleared to a specific security level and has suitable security safeguards in place at the specified level to safeguard classified information.

b. Personnel Security Clearance Assurance (PSCA). This pertains to an individual who is to be employed by a government or its contractors and requires a personnel security clearance. It is a statement provided by the security authorities of the individual's country of citizenship concerning the individual's eligibility for a personnel security clearance at a level equivalent to the level specified by the requesting (host) government. (See also reference (j))

Sensitive Compartmented Information (SCI). Information and material that require special controls for restricted handling within compartmented intelligence systems and for which compartmentation is established.

Security Policy Automation Network (SPAN). A wide area computer network sponsored by the Office of the Under Secretary of Defense (Policy Support) (OUSD (PS)) consisting of a DoD-wide Secret classified network and a separately supported unclassified network that supports communications with foreign governments and international organizations and coordination

8 October 2004

among DoD activities on foreign disclosure, export control, and international arms control and cooperation.

Technical Data

- a. Information, other than software, which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions and documentation.
- b. Classified information relating to defense articles and services.
- c. Information covered by an invention secrecy order.
- d. Software directly related to defense articles.
- e. This definition does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities or information in public domain. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

Technology. The application of scientific knowledge to the research, development, design, and manufacture of end products.

Technology, Critical. Also referred to as 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, consisting of

- a. arrays of design and manufacturing know-how (including technical data);
- b. keystone manufacturing, inspection, and test equipment;
- c. keystone materials; and
- d. goods accompanied by sophisticated operation, application, or maintenance know-how.

8 October 2004

U.S. Citizen. For the purposes of this instruction, a person either naturalized as a U.S. citizen in accordance with U.S. Immigration and Naturalization laws and regulations or a person born in one of the following locations: any of the 50 states of the U.S., the District of Columbia, Puerto Rico, Guam, American Samoa, Northern Mariana Islands, U.S. Virgin Islands, Panama Canal Zone (if the father and/or mother was/were, or is/was a citizen of the U.S.), the Federated States of Micronesia, or the Republic of the Marshall Islands.

U.S. National. A citizen of the United States or a person who, though not a citizen of the United States, owes permanent allegiance to the United States, e.g., a lawful permanent resident of the United States. Categories of persons born in and outside the United States or its possessions who may qualify as nationals of the U.S. are listed in 8 U.S.C. 1101(a) and 8 U.S.C. 1401, subsection (a) paragraphs (1) through (7). Legal counsel should be consulted when doubt exists as to whether or not a person can qualify as a national of the United States. NOTE: A U.S. national shall not be treated as a foreign person except when acting as a foreign representative. See Foreign Representative.