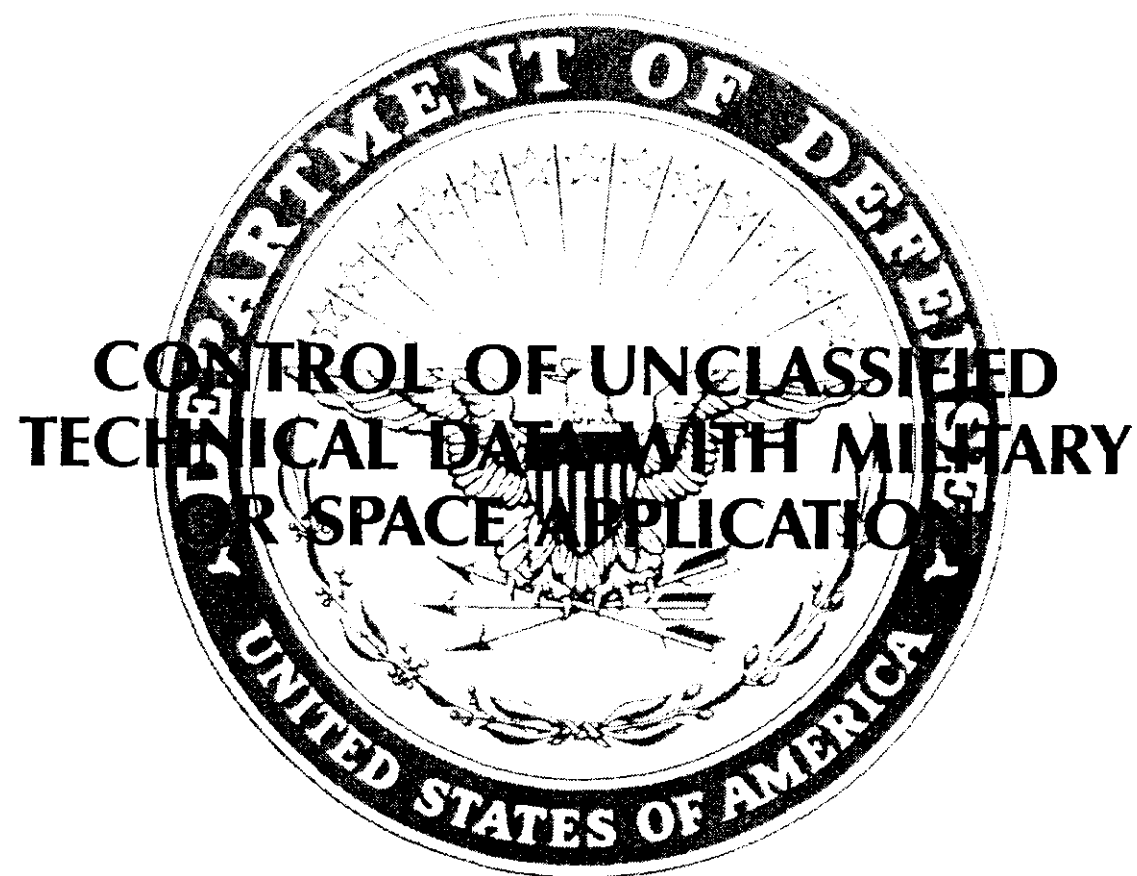

DEPARTMENT OF DEFENSE



- Withholding of Unclassified Technical Data From Public Disclosure
- Distribution Statements on Technical Documents

THE OFFICE OF THE DEPUTY UNDER SECRETARY
OF DEFENSE FOR POLICY

FOREWORD



May, 1985

It is imperative that we stem the flow of our critical technology to potential adversaries. Without question, the Soviet and Eastern Bloc acquisition of U.S. technology with military application severely undermines our national security. By acquiring our critical technology, the Soviets are able to develop countermeasures to our existing and even anticipated defense systems at a much faster rate and lower cost than would otherwise be possible. Recently, the Congress passed a law authorizing the Secretary of Defense to withhold from public disclosure unclassified **export**-controlled technical data. The implementation of this new authority is the subject of this pamphlet.

The Department of Defense has issued two new directives that are concerned with improving our protection of unclassified, yet critical, technical data from uncontrolled public disclosure and foreign access. It is essential that the new program be thoroughly understood by all who produce our military systems or utilize DoD technology. We are resolved to meet the challenge posed by the extensive efforts of our adversaries to obtain military-related equipment and technology. We need your help. I ask your fullest cooperation to make this new program work and achieve its intended objective—to protect America's national security.

A handwritten signature in black ink, reading "L. Britt Snider", is positioned above the printed name.

L. Britt Snider
Principal Director for
Counterintelligence
and Security Policy

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INTRODUCTION

“Stopping the Soviets’ extensive acquisition of military-related Western technology in ways that are both effective and appropriate in our open society is one of the most complex and urgent issues facing the Free World today.”

The above cited statement from a 1982 report by the Central Intelligence Agency on Soviet Acquisition of Western Technology is as valid today as it was then.

Soviet acquisition of U.S. technology significantly shortens their research and development cycle, and reduces the risks associated with the design of new weapons and defensive systems. The Department recognizes a compelling requirement to improve control of unclassified technology with military or space application in order to reduce the loss of this **valuable** national asset. The objective is to safeguard such technology in a reasonable and rational manner without adversely affecting business competition, technological innovation or economic growth. Indeed, procedures have been established to facilitate domestic access because through such access competition will be maximized and procurement costs minimized.

This pamphlet provides background on the problem of technology loss, outlines key provisions of the statutes and directives aimed at reducing the loss, and spells out specific actions to be taken by persons working with military-related technical data. It is intended as a ready reference for all those who originate, disseminate, or use DoD technical data. [It should be used in conjunction with DoD Directive 5230.25, “Withholding of Unclassified Technical Data from Public Disclosure; and DoD Directive 5230.24, “Distribution Statements on Technical Documents.”

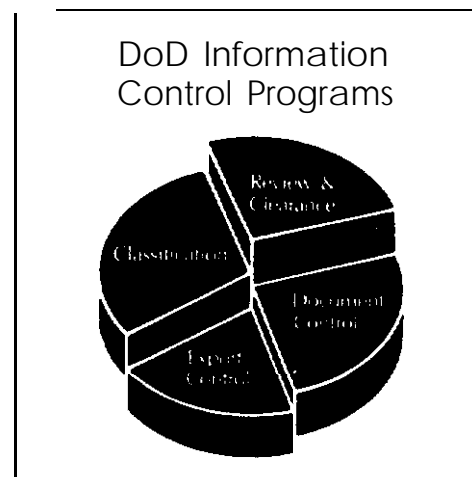
Questions or suggestions concerning this pamphlet are invited and should be addressed to: Director, Counterintelligence and Security Policy, Office of the Deputy Under Secretary of Defense (Policy), the Pentagon, Washington, **D.C.** 20301-2200.



BACKGROUND

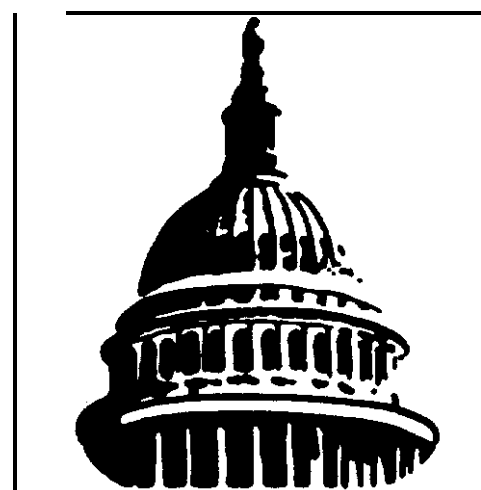
Over the years, the Department of Defense has established programs designed to protect and preserve our technology. Basically, these programs are: Information Security, Pre-Release Review and Clearance, Export Control Licensing, and Scientific and Technical Document Distribution.

These programs reflect a balance between the principles of openness in Government and the Government's legitimate need to regulate the disclosure of certain information in the interest of national security. Collectively, however, they proved inadequate to the challenge posed by extensive efforts of the Soviet Union to obtain our military-related equipment and technology. The difficulty in achieving the objectives of these programs was attributed in part to conflicting legislative policy. For example, the Freedom of Information Act did not provide for withholding unclassified technical data from requesters, including foreign nationals, even though export of the technical data would be otherwise restricted by regulations implementing export control laws. Thus, the problem faced by the Department of Defense was that any release of such data into the public domain resulted in uncontrolled foreign access.



PUBLIC LAW 98-94

The Department of Defense and other Executive Branch agencies presented the problem and the seriousness of its impact on national security to Congress. In September 1983, Congress included in Public Law 98-94, the Defense Authorization Act of 1984, authority for the Secretary of Defense to withhold from public disclosure certain technical data with military or space application. The Department of Defense may now withhold from public disclosure export-controlled **technical** data requested under provisions of the Freedom of Information Act.

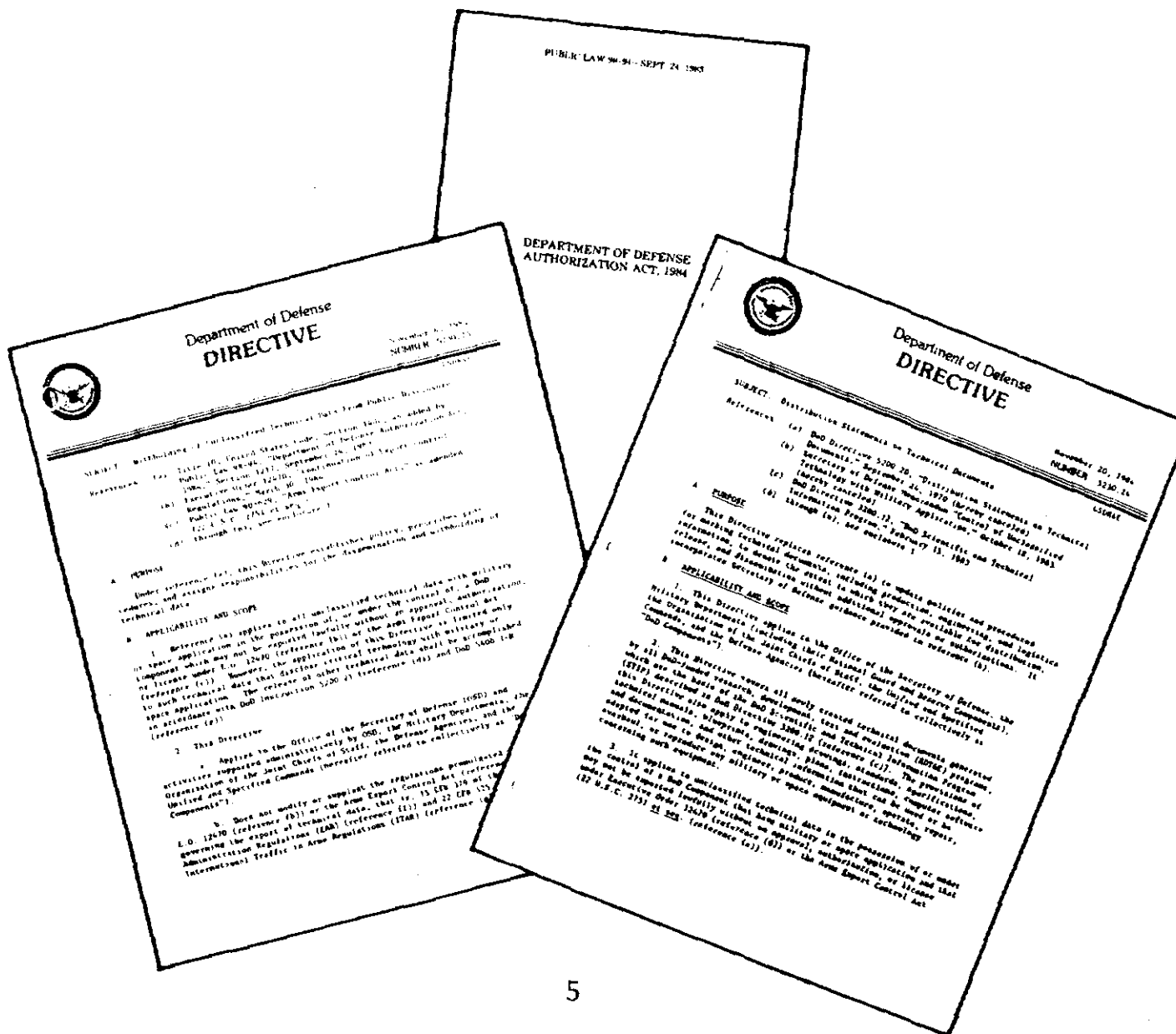


The new legislation and DoD implementing policies do not apply to scientific, educational, or other data not directly and significantly related to design, production, or utilization in industrial processes. Therefore,

there is no impact on the dissemination of information related to fundamental research, or the results thereof, that qualify for a general, unrestricted license under the provisions of the Export Administration Regulations.

DEPARTMENT OF DEFENSE IMPLEMENTATION

The provisions of Section 1217 of Public Law 98-94 are implemented in the Department of Defense by a new directive (DoD Directive 5230.25) that sets forth policies, procedures and responsibilities for the withholding of unclassified technical data from public disclosure. The Department also **has** issued a new companion directive (DoD Directive 5230.24) that establishes a new distribution marking system for technical documents.



DoD Directive 5230.25, “Withholding of Unclassified Technical Data from Public Disclosure”

Criteria for Withholding

The Directive provides that data may be withheld from public disclosure when all of the following criteria are met. The technical data:

- are in the possession of or under the control of the Department of Defense.
- have military or space application.
- may not be exported lawfully without an approval, authorization or license under U.S. export control laws, and
- disclose critical technology,

Information under the control of or in the possession of the Department of Defense means data created or received by elements of the Department and information developed and produced for the Department under contractual arrangements or other agreements.

The new legislation defines technical data with military or space application as any:

- blueprint,
- . drawing,
- plan,
- . instruction,
- computer software and documentation, or
- other technical information,

that can be used, or adapted for use, to:

- . design,
- engineer,
- produce,
- manufacture
- operate,
- repair,
- . overhaul, or
- . reproduce

military or space equipment or related technology. However, the Secretary’s authority to withhold such data does not extend to technical data authorized for export under a general, unrestricted license, or exemption under regulations implementing the export control laws.

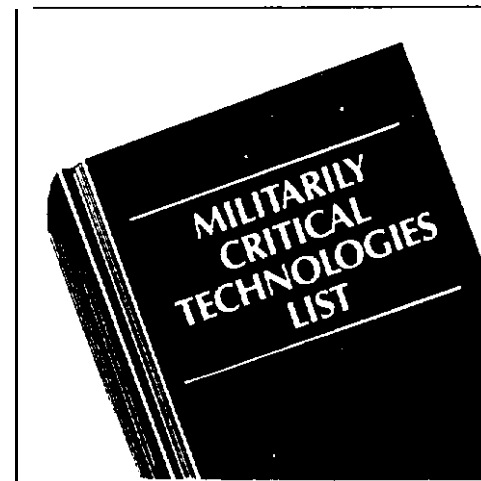
The implementing regulations for the export control laws describe the

technical data that may not be exported lawfully without approval. Generally, technical data related to items on the State Department's Munitions List and the Commerce Department's Commodities Control List, contained in these regulations, require licensing or approval.

"Critical technology" essentially is data that reveals production know-how that would contribute significantly to a country's military potential and possibly prove detrimental to the security of the United States. such data may be comprised in part or in whole of:

- Arrays of design and manufacturing know-how.
- Keystone manufacturing, inspection, and test equipment
- Keystone materials.
- Goods accompanied by sophisticated operation, application or maintenance know-how.

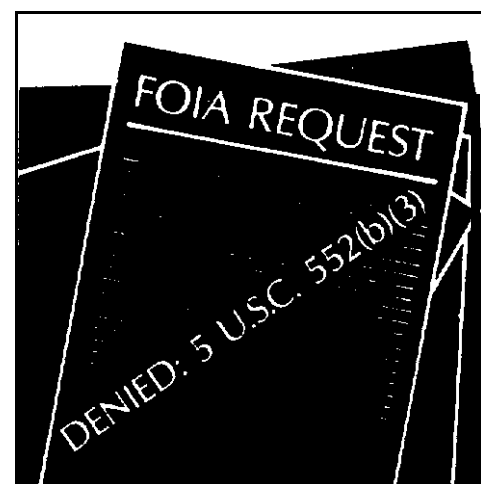
The Militarily Critical Technologies List is an excellent aid in identifying "critical technology." Published in both classified and unclassified form in October 1984, it is a detailed and structured technical statement of development, production, and utilization technologies which the Defense Department has determined to be crucial to our military capability and of significant value to potential adversaries.



The DoD activity that sponsored the work that generated the technical data or received the technical data on behalf of the Department has the responsibility for determining whether the criteria for withholding from public disclosure are met. Such activity is referred to in this pamphlet as the "controlling DoD office."

FOIA Denial Authority

DoD Directive 5230.25 provides immediate authority to deny Freedom of Information Act requests for technical data that meet the above criteria. In such cases, the third exemption of the Freedom of Information Act should be cited, which recognizes other statutes which specifically authorize withholding.

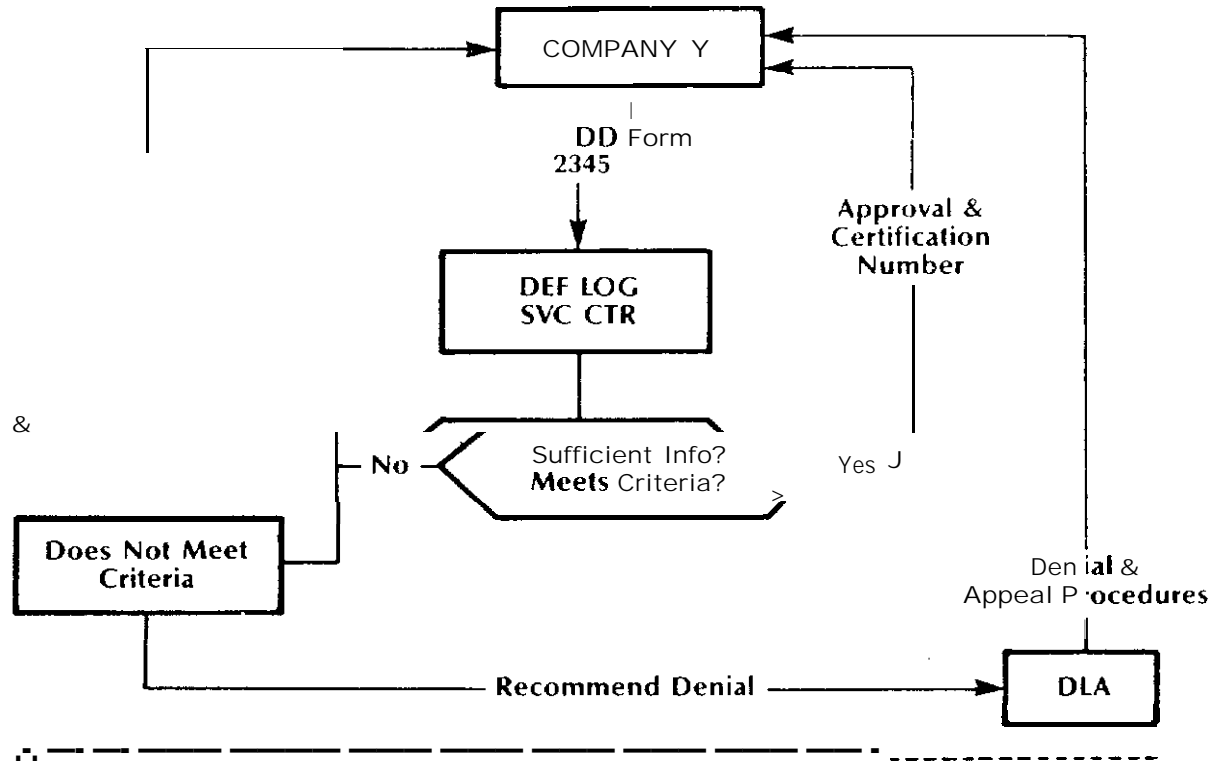


Non-Government Access

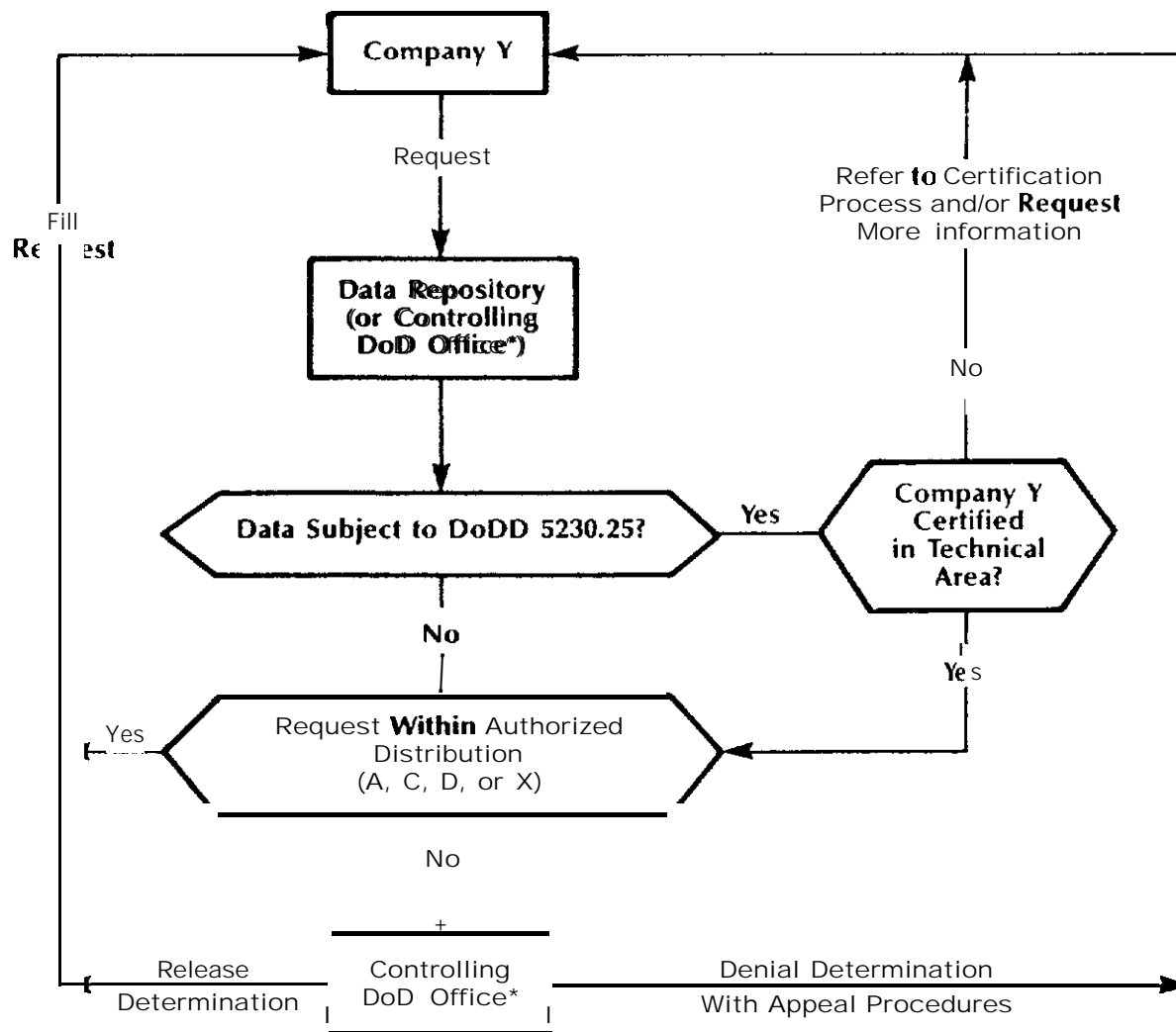
The Department has established a system that accommodates transfer

QUALIFIED CONTRACTOR CERTIFICATION AND DOCUMENT REQUESTS

Request for Certification:



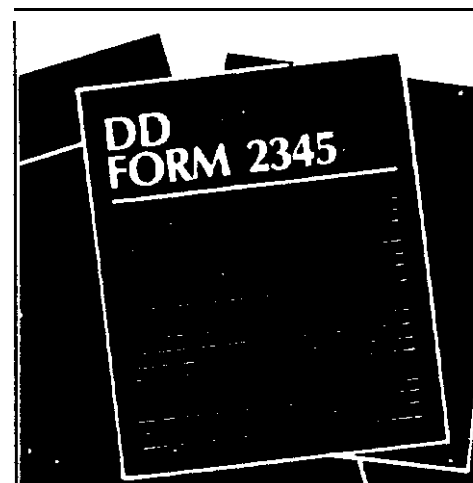
Request for Technical Document:



*If request made direct to Controlling DoD Office, final determination made there.

of export-controlled DoD technical data to persons or enterprises in the U.S. while retaining the protections afforded by national export control laws. This data, however, is provided under a binding agreement and, therefore, is not a public disclosure. The system, established in the new Directive (5230.25) includes a process for certifying those who need access and outlines procedures for obtaining the data required.

Certification is accomplished using DD Form 2345, called an "Export-Controlled DoD Technical Data Agreement." The Form is in effect a self-certification that the applicant will use the data only in ways that will maintain the protections afforded by U.S. export control laws.



Application for Eligibility

To illustrate the process, "Company Y" will identify an individual who will receive export-controlled technical data on the company's behalf. This individual must be a U.S. citizen or person admitted lawfully into the United States for permanent residence, and now living in the United States. Company Y further certifies that it needs the data to bid or perform on a contract with the Department of Defense or other government agency or for other legitimate business purposes.

"Other legitimate business purposes" include:

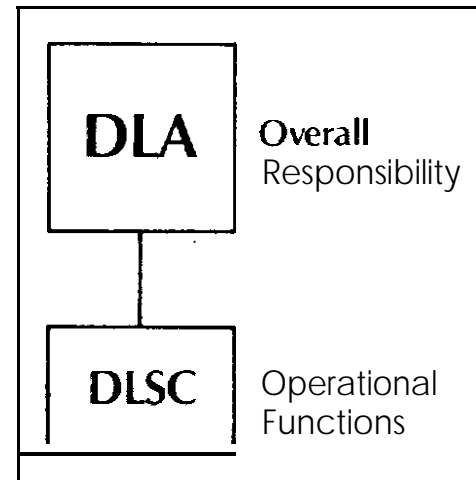
- bidding or preparing to bid on a sale of surplus property;
- selling or producing products for the commercial marketplace, foreign or domestic;
- engaging in scientific research;
- acting as a subcontractor for a concern that may be involved in the preceding activities; or

selling technical data that are subject to the new legislation in support of DoD contractors or in support of the competitive process for DoD contracts.

The description of Company Y's business activity should be sufficiently detailed to allow a determination whether the export-controlled technical data subsequently requested are reasonably related to the company's business. For example, the firm might explain that it designs and constructs high-pressure, high-volume hydraulic pumps for use in aircraft control surfaces rather than simply stating "hydraulic pumps."

Company Y acknowledges its responsibilities under U.S. export control laws, including its obligation, under certain circumstances, to obtain an export license before releasing technical data within the United States. It agrees not to publicly disclose any export-controlled DoD technical data it receives under this agreement and agrees to disseminate the data only to employees, persons acting on its behalf, and those for whom the company has specific authorization.

The Defense Logistics Agency has overall responsibility for administering the certification system, and the Defense Logistics Services Center, located in Battle Creek, Michigan, carries out the operational functions. It collects the certifications and maintains them in a data base. The Center also will disseminate a list of contractors eligible for access to export-controlled DoD technical data.



Company Y submits the DD Form 2345 to the Commander, Defense Logistics Services Center, Attention: **DLSC-FBA**, Federal Center, Battle Creek, Michigan, 49017-3084. The Center will respond to questions concerning completion of the Form and related matters such as identifying contractors which have been certified under the program.



The Center will review the submitted DD Form 2345 within five working days and:

- accept the certification;
- return it because of insufficient information, or
- forward the Form to Headquarters, Defense Logistics agency, with a recommendation to reject the certification because the contractor does not meet the eligibility requirements.

Companies that are certified will be assigned a certification number and will be eligible to receive export-controlled DoD technical data for a renewable five year period.

The certification form is relatively simple to complete. When executed by both parties, it constitutes an agreement between the certifying company and the Defense Department. [f a contractor violates the provisions of the agreement,



the Department may revoke the firm's certification for access to export-controlled data. However, re-certification is possible in instances when the basis for the revocation has been remedied by the contractor. If a contractor exports the data without benefit of license or authorization, it may be in violation of the export control laws and subject to severe criminal penalties.

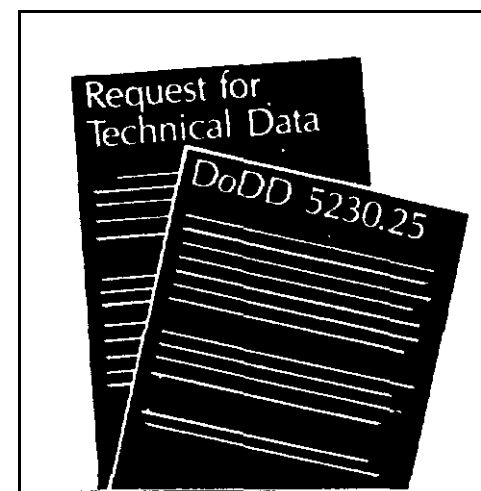
U.S. contractors become qualified on the date DoD accepts their certification, and these contractors will receive a renewal notice 120 days before their certification expires. However, certified contractors should submit a revised DD Form 2345 whenever information previously furnished becomes outdated—if, for example, ownership, purpose of business, or company name changes.

If the Department rejects the certification, it will send the company, by certified mail, a copy of the rejection, stating the reasons for the rejection, explaining appeal rights, and notifying the firm that it should appeal within thirty days.

Requests for Export-controlled Technical Data

A U.S. contractor, once qualified, obtains export-controlled technical data from the Department of Defense by submitting a request, along with a statement of intended use, to the appropriate repository or controlling office. There, it will be reviewed to determine whether the data requested are subject to the provisions of DoD Directive 5230.25. If the data are *not* subject to the Directive, the controlling office will fill the request unless other regulations limit dissemination of the data.

If the technical data *is* subject to the provisions of DoD Directive 5230.25, the controlling office will determine whether the requestor is a qualified U.S. contractor and that the intended use of the technical data falls within the scope of the business purpose for which the company is certified before releasing the data. When export-controlled technical data is released to qualified U.S. contractors, it will include a notice cautioning the recipient that:



- Export of DoD technical data without first obtaining approval or license from the Government may constitute a violation of law;
- Penalties for unlawful export range from imprisonment of up to 2-10 years or fines from \$100,000-\$1,000,000 or combinations of both;
- Unauthorized dissemination of this information is prohibited and may result in disqualification of the recipient to receive further DoD export-controlled technical data; and

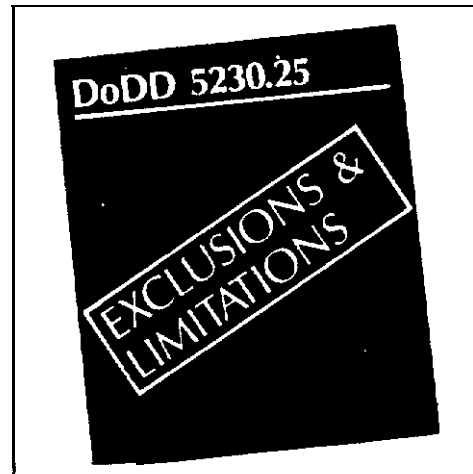
Such disqualification may be considered in determining eligibility for future contracts with DoD.

If the request for data is denied, the Department will furnish a written explanation and procedures to appeal the denial

Exclusions/Limitations

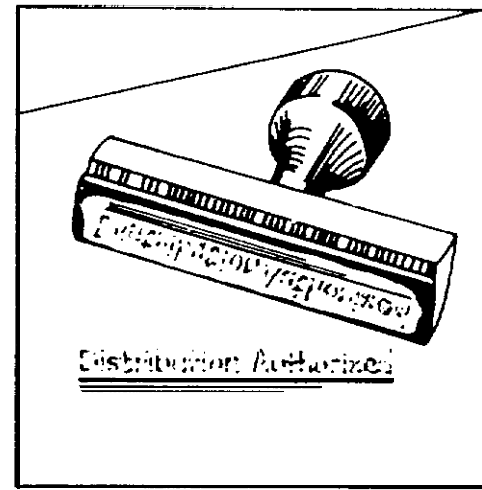
The provisions of the new Directive do not:

- modify the regulations that implement the Export Control Laws;
- alter responsibilities of DoD components to protect proprietary data of a private party in which the Department of Defense has limited rights or restricted rights;
- affect release of technical data by DoD components to foreign governments, international organizations, or their representatives or contractors, pursuant to official agreements or U.S. Government-licensed transactions;
- apply to classified technical data (although after declassification such data will be considered under the Directive on the same basis as originally unclassified data);
- provide authority to deny technical data to Congress or to any Federal, State, or local governmental agency that requires the data for official governmental purposes. (Data so disseminated will include a statement on DoD control in accordance with DoD Directive 5230.25);
- permit withholding from public disclosure unclassified information regarding DoD operations, policies, activities, or programs (but technical data subject to the Directive will be excised from the material disclosed publicly);
- provide a basis for release of information authorized to be withheld under any of the **exemptions** of the Freedom of Information Act.



DoD Directive 5230.24, “Distribution Statements on Technical Documents”

To identify technical data covered by DoD Directive 5230.25 and to facilitate dissemination of technical data within the Defense community, a new distribution marking system has been established. The new distribution markings have two basic purposes: to identify documents that contain information the dissemination of which is controlled by statute or regulation, and to indicate the extent of **secondary** distribution that is permissible without further authorization or approval of the originator.



Export-Control Warning Notice

The new distribution marking system mandates the use of the following warning notice on all documents that contain export-controlled technical data:

“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 Executive Order 12470, Violators of these export laws are subject to severe criminal penalties.”

The controlling office may affix this notice in conjunction with any distribution marking except Statement A, which authorizes public release. This notice indicates that DoD Directive 5230.25 procedures are to be followed for dissemination outside the U.S. Government.

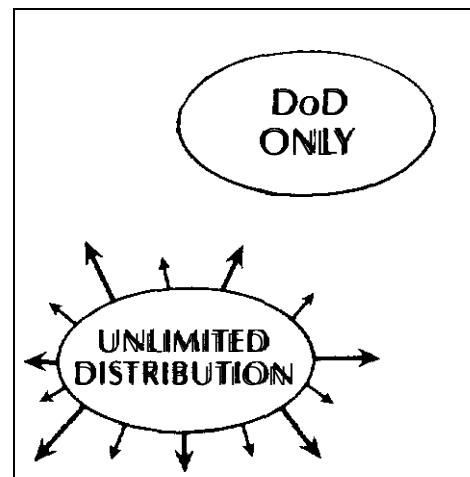
The controlling DoD office also must assign a distribution statement that specifies the extent of dissemination without the need for additional authorization. That statement will be one of seven contained in this second newly approved Directive.

Marking Requirements

Distribution statement markings are now mandatory for all newly generated technical documents, including working papers, memoranda, and preliminary reports, if those documents are not already in the public domain and if they are likely to be disseminated outside the Department of Defense. DoD managers of technical programs must assign distribution statements to all technical documents generated within their programs before primary distribution. However, this requirement does not apply to contractors' technical proposals or similar documents submitted in anticipation of contract awards.

There is no requirement in the new directive for retroactive application of distribution statements or other control markings to technical documents in files or storage that were created prior to the establishment of the new program. However, when such documents are requested or otherwise activated for dissemination, they should be evaluated for content. If it is determined that they: contain DoD export-controlled technical data; have not been placed in the public domain; and are to be disseminated outside the Department of Defense they shall be marked appropriately under the new system.

The seven authorized distribution statements provide options ranging from unlimited distribution to no secondary distribution without specific authority of the controlling DoD office. In selecting and applying the appropriate statement, DoD officials must consider the information contained in the document and the audience for which it is intended. For example, distribution of proprietary information, which is not owned by the Department and is protected by a contractor's "limited rights" statement will be regulated to ensure protection of the contractor's rights. In addition to proprietary information, the Department can apply distribution statements to technical documents that contain or reveal:



- foreign government information,
contractor performance evaluations,
- technical or operational information used solely for official administrative or operational purposes,
critical technology,
- information not appropriate for premature dissemination because it pertains to systems or hardware in the developmental or conceptual stage, or
- export-controlled technical data.

Distribution statements are not in themselves authority to withhold unclassified technical data from public disclosure. Such determinations are the responsibility of the controlling DoD office and will be made in accordance with DoD Directive 5400.7, "The DoD Freedom of Information Act Program."

Distribution Statements

The seven distribution statements with notes on their meaning and use are illustrated below.

DISTRIBUTION STATEMENT A

"Approved for public release; distribution is unlimited."

This statement may only be used on *unclassified* technical documents that have been *cleared for public release by competent authority* under public affairs directives. Documents marked with Distribution Statement A are assumed to be placed in the public domain; therefore, any technical data contained in or revealed by such documents are no longer subject to export controls.

DISTRIBUTION STATEMENT B

"Distribution authorized to U.S. Government agencies only (*fill in reason*) (*date of determination*). Other requests for this document shall be referred to (*insert controlling DoD office*)."

This statement may be used on unclassified or classified technical documents. Examples of information which, if included in technical documents, would be reason for assigning Distribution Statement B include:

- Proprietary information not owned by the U.S. Government and protected by a contractor's "limited rights" statement.
- Foreign Government Information to be protected and limited in distribution in accordance with the desires of the government that furnished the technical information.
- Contractor performance evaluation in management reviews or other advisory documents evaluating programs of contractors.

Other types of information that might be basis for assigning Distribution Statement B are:

- Test and Evaluation Data;
- Administrative or Operational Use Publications;
- Software Documentation;

- Other information requiring protection in accordance with documented authority such as Executive Orders, classification guidelines, or DoD Component regulations.

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)**.”

This statement may be used on unclassified or classified technical documents. Examples of information which, if included in technical documents, would be reason for assigning Distribution Statement C include:

- Technical data that advance current technology or describe new technology in an area of potentially significant military application.
- Technical data that relate to a military deficiency of a potential adversary.

Other types of information that might be the basis for assigning Distribution Statement C include:

- Administrative or operational use reports.
- Information protected by specific authority.

DISTRIBUTION STATEMENT D

“Distribution authorized to the Department of Defense and DoD contractors only **(fill in reason) (date of determination)**. Other requests shall be referred to **(insert controlling DoD office)**.”

This statement may be used on unclassified or classified technical documents. Examples of information which, if included in technical documents, would be reason for assigning Distribution Statement D include:

- Information on systems or hardware in the development or concept stage when premature disclosure must be prevented.
- Software documentation.
- Information protected by specific authority,

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**)."

This statement may be used on unclassified or classified technical documents. Examples of information which, if included in technical documents, would be reason for assigning Distribution Statement E include:

- Export-controlled technical data designated by competent authority in accordance with DoD Directive 5230.25 to be of such military significance that release for purposes other than direct support of DoD-approved activities may jeopardize an important technological or operational military advantage of the United States.
- Foreign government information.
- Information requiring protection against premature dissemination.
- Software documentation
- Critical technology.
- Information protected by specific authority.

DISTRIBUTION STATEMENT F

"Further dissemination only as directed by (insert controlling DoD office) (date of determination) or higher DoD authority."

This statement normally is used only on classified technical documents, but may be used on unclassified technical documents when specific authority exists. It is used only when the DoD originator determines the information is subject to special dissemination limitation.

DISTRIBUTION STATEMENT X

"Distribution authorized to U.S. Government agencies and private individuals or enterprises eligible to obtain export-controlled technical data in accordance with regulations implementing 10 **U.S.C.** 140c **(date of determination)**. Other requests must be referred to **(insert controlling DoD office)**."

This statement is used on unclassified documents when distribution statements 8, C, D, E or F are not applicable but the document does contain export-controlled technical data determined, in accordance with DoD Directive 5230.25, to require restricted dissemination.

SPECIAL APPLICATION
HIGH DENSITY MATERIALS

Air Force Materiel Laboratory
Wright-Patterson Air **Force Base**

20 April 1985

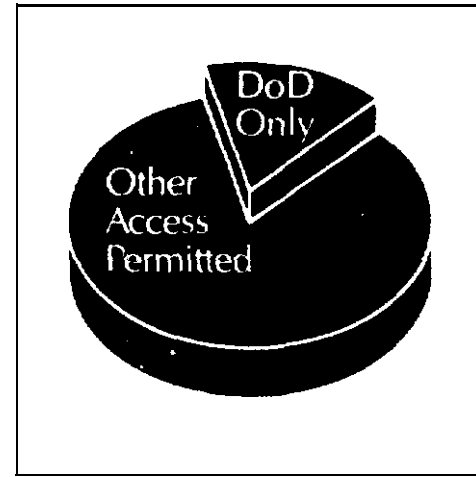
"WARNING This document contains technical data whose export is restricted by the Arms Export Control Act (Title 22, U.S.C. Sec. 2751 et seq.) or Executive Order "12470. Violators of these export laws are subject to severe criminal penalties."

<p>"Distribution authorized to Government agencies and private individuals or enterprises eligible to obtain export-controlled technical data in accordance with regulations implementing 10 U.S.C. 140c. Date of determination: 20 April 1985. Other requests must be referred to Air Force Materiel Laboratory, Wright-Patterson AFB."</p>	<p>"DESTRUCTION NOTICE For classified documents, follow the procedures in DoD 5220.22-M Industrial Security Manual, Section 11-19 or DoD 5200.1-R, Information Security Program Regulation, Chapter IX. For unclassified, limited documents, destroy by any method that will prevent disclosure of contents or reconstruction of the document."</p>
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(Example of marking for a Distribution X Document Containing Export-Controlled Technical Data)

Requests for documents from those outside the community designated by Statements B through F and X will be referred to the controlling DoD office for a release determination.

The Department of Defense is dividing export-controlled data into two categories. Most of the export-controlled data can be distributed to individuals or organizations outside the Government who make appropriate certifications. A second and much smaller category of data, the release of which could jeopardize an important technological or operational military advantage, will be provided qualified U.S. contractors only when the data is for DoD-approved uses. Perhaps the best example of such technology would be Naval Nuclear Propulsion Information. This type of data will normally be marked with Distribution Statement E or F. A listing of such data can be obtained from the Office of the Under Secretary of Defense for Research and Engineering.



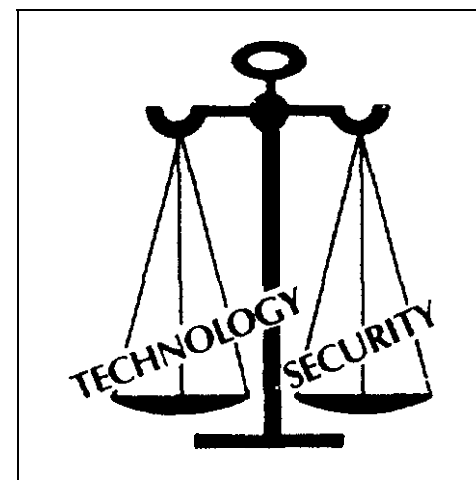
Destruction Notice

Finally, documents containing export-controlled data must also bear the following marking:

"DESTRUCTION NOTICE - For classified documents, follow the procedures in DoD 5220.22-M, Industrial Security Manual, Section 11-19 or DoD 5200.1-R, Information Security Program Regulation, Chapter IX. For unclassified, limited documents, destroy by any method that will prevent disclosure of contents or reconstruction of the document."

OVERALL EFFECT OF THE SYSTEM

The intent of the system is that it stem the flow of military-related technical data to our adversaries without stifling technological growth, blocking the exchange of technical data that is vital to progress and innovation, or reducing the competitiveness of U.S. industry in world markets. Properly applied, the system will keep critical technology from our adversaries but permit it to flow to government agencies and private entities that have legitimate need for it.



As noted on page 10, the Defense Logistics Services Center will respond to questions concerning completion of DD Form 2345 and related matters. The toll

free phone number is:

800-DLA-DLSC