

Army Regulation 70-31

Research, Development, and Acquisition

Standards for Technical Reporting

**Headquarters
Department of the Army
Washington, DC
10 March 1986**

Unclassified

SUMMARY of CHANGE

AR 70-31

Standards for Technical Reporting

This revision implements DODD 5230.25 (Withholding of Unclassified Technical Data from Public Disclosure) (included as app B) and rescinds the need for RCS-OSD-1366. AR 70-11 (Dissemination of Scientific and Technical Information) (cited in para 6e) has been referenced for guidance on standards for distribution statements (cited in paras 6c and 9f) and procedures to submit technical reports to Defense Technical Information Center. The proponent for the regulation has been changed from U.S. Army Materiel Command to the Office of the Deputy Chief of Staff for Research, Development, and Acquisition.

Effective 10 April 1986

Research, Development, and Acquisition

Standards for Technical Reporting

By Order of the Secretary of the Army:

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General, United States Army
Chief of Staff

Official:

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Brigadier General, United States Army
The Adjutant General

History. This UPDATE printing publishes a revision which is effective 10 April 1986. Because the structure of the entire revised text has been reorganized, no attempt has been made to highlight changes from the earlier regulation dated 9 September 1966.

Summary. This regulation on the requirements for preparation, review, and distribution of technical reports has been revised. It

implements DOD Directive 5230.25, which is included as appendix B.

Applicability. This regulation applies to all elements of the Active Army, their contractors, and grantees. It also applies to the U.S. Army Reserve and the Army National Guard.

Proponent and exception authority. Not applicable.

Impact on New Manning System. This regulation does not contain information that affects the New Manning System.

Army management control process. This regulation is not subject to the requirements of AR 11-2. It does not contain internal control provisions.

Supplementation. Supplementation of this regulation and establishment of forms other than DA forms are prohibited without prior approval from HQDA (DAMA-ARR), WASH DC 20310-0632.

Interim changes. Interim changes to this regulation are not official unless authenticated by The Adjutant General. Users will

destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent agency of this regulation is the Office of the Deputy Chief of Staff for Research, Development, and Acquisition. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (DAMA-ARR), WASH DC 20310-0632.

Distribution. Distribution of this issue has been made in accordance with DA Form 12-9A requirements for 70-series publications. The number of copies distributed to a given subscriber is the number of copies requested in Block 112 of the subscriber's DA Form 12-9A. AR 70-31 distribution is D for Active Army, ARNG, and USAR.

Contents (Listed by paragraph and page number)

- Purpose • 1, *page 1*
- References • 2, *page 1*
- Explanation of abbreviations and terms • 3, *page 1*
- Scope • 4, *page 1*
- Objectives • 5, *page 1*
- Policy • 6, *page 1*
- Responsibilities • 7, *page 1*
- Procedures • 8, *page 2*
- Additional instructions on technical reports • 9, *page 2*

Appendixes

- A. References, *page 4*
- B. Department of Defense Directive 5230.25, *page 4*

Glossary

*This regulation supersedes AR 70-31, 9 September 1966, and rescinds RCS OSD-1366.

RESERVED

1. Purpose

This regulation sets policies, responsibilities, procedures, and standards for originating, preparing, reviewing, marking, and disseminating technical documentation. In technical fields, information is one of the main products of research, development, test, and evaluation (RDTE).

2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

4. Scope

This regulation covers formal documentation of the objectives, approach, and results of Army-sponsored RDTE despite security classification. Formal documentation is the permanent final record of notable technical achievement; it forms the basis for a tangible end product. Specifically excluded are the following:

- a. Preliminary informal results of studies that require dissemination for immediate action.
- b. Report prepared to convey fiscal, administrative, or other non-technical information.
- c. Progress or letter reports prepared by contractors or grantees primarily to indicate, for administrative purposes, the status of research and development (R&D) effort.
- d. Technical reports prepared primarily to satisfy requests from organizations outside the Department of Defense (DOD) and that essentially duplicate the primary official Government document.

5. Objectives

The objectives of this regulation are as follows:

- a. Attain and maintain quality and effectiveness of the results of Army RDTE by establishing, implementing, and maintaining standards for technical reporting.
- b. Provide a medium for completing the efforts of RDTE to—
 - (1) Enable review of technology, reference to technology, and transfer of technology.
 - (2) Maximize the flow of technical information and minimize the duplication of effort.

6. Policy

a. All completed scientific and technical RDTE sponsored by Department of the Army (DA) will be promptly documented. The principal document representing the culmination of a completed notable scientific and technical effort will be in the form of the technical report. (See MIL-STD-847B for additional guidance.)

b. Proceedings of Army-sponsored technical meetings, conferences, symposia, and monographs written under DA sponsorship will be considered technical reports for the purposes of this regulation. These reports are not subject to MIL-STD-847B but must be submitted to the Defense Technical Information Center (DTIC) within 10 work days from the date of publication.

c. Distribution statements will be placed in all technical reports per AR 70-11.

d. DA encourages and endorses publishing in recognized professional journals. (See AR 70-14, which provides guidance in the use of appropriated funds for this purpose.) Publication in the journal literature will satisfy the Army reporting requirements set forth in this regulation if—

- (1) The sponsoring office does not impose additional requirements.
- (2) The R&D reported was totally sponsored by Program 6.1 or 6.2 funds.
- (3) One copy of each paper planned for publication is submitted to the project officer or program manager designated by the controlling office (see glossary) simultaneously with its submission for publication.

(4) After publication, copies of published papers are submitted to—

- (a) The project officer or program manager designated by the controlling office, or
- (b) Other addresses in quantities as may be directed by the contracting officer.

(5) A DD Form 1473 (Report Documentation Page) containing an abstract of the publication is forwarded to the DTIC within 10 work days of the release of the original publication.

(6) The following caveat appears on all journal literature releases of the manuscript: "Opinions, interpretations, conclusions, and recommendations are those of the author and are not necessarily endorsed by the U.S. Army."

(7) Before publication in the journal, technical reports generated from R&D sponsored by other than Program 6.1 or 6.2 funds are reviewed and approved by the controlling DA office according to DA information release policies and procedures. (See AR 360-5 for policies and procedures on review, clearance, and release of public information.) Further, certain unclassified technical information may be withheld from public disclosure when such disclosure may jeopardize an important U.S. technological or operational advantage. The provisions of this restriction are mandated by DOD Directive 5230.25 (app B) and controlled under the provisions of AR 70-11.

(8) All manuscripts funded or supported by DA that are to be submitted by Army employees, military personnel, contractors, or grantees for publication in scientific journals must carry an acknowledgment such as: "The research described herein was sponsored by (name of sponsoring organization), Department of the Army, Grant or Contract No. ()." Reference is made to any corresponding military document.

e. The technical report for any Army-sponsored R&D that does not meet these criteria must be formatted as described in MIL-STD-847B. It must be submitted to the DTIC within 6 months of the completion of any work that can be reported as a technical achievement. (See AR 70-11 for guidance on submission of technical reports to DTIC.) This technical report may encompass one or more work units. In the interest of referring to related material, the work unit or units associated with this report should be notated in the Form 1473 attached to the technical report rather than in the report manuscript.

7. Responsibilities

a. *Deputy Chief of Staff for Research, Development, and Acquisition (DCSRDA)*. The DCSRDA is responsible for DA policy for technical documentation.

b. *Commanding General, U.S. Army Materiel Command (CG, AMC)*. The CG, AMC will develop procedures and guidance on standards for technical documentation, subject to final approval of the DCSRDA.

c. *Heads of Army Staff agencies, major Army commands, and developing agencies*. These officials will—

- (1) Ensure compliance with the provisions of this regulation.
- (2) Issue supplemental guidance to controlling offices as required.

d. *Heads of controlling offices*. Controlling office heads will release for publication and primary distribution technical reports under their purview. The will ensure that—

- (1) The background, objectives, methodology, and results of technical efforts having valid scientific merit are documented as soon as practicable; that these documents adequately represent the subject at the time of publication; and that internal and/or external reviews are instituted for each report. (These responsibilities apply despite the presence or absence of approval signatures in the report.)
- (2) A file of technical reports for which they are responsible is set up and maintained; and archival copy is retained.
- (3) Reports are properly classified and later declassified. Release authority is verified for sensitive documents.
- (4) Distribution lists are maintained and updated (at least yearly). Technical reports are distributed promptly to all qualified agencies and addresses having a supportable interest in the information.
- (5) Technical reports meet the format requirements of

MIL-STD-847B. Special emphasis is placed on keywords, abstracts, indexing information, and other instructions that will maintain the required control and provide for retrieval and distribution. MIL-STD-847B requires DD Form 1473 for all technical reports prepared by or for DA.

(6) Contracting officers take necessary actions to have technical reporting requirements incorporated in the contract by means of DD Form 1423 (Contract Data Requirements List). Application for special waivers from the provisions of this regulation may be submitted to HQDA(DAMA-ARR), WASH DC 20310-0632. (Waiver provisions of MIL-STD-847B do not apply to DA.)

8. Procedures

a. Technical aspects of the progress of any given R&D effort may be documented before project completion in publication such as the technical note, technical data summary, technical review, technical survey, technical management report, special report, or a similar title. These documents are subordinate to the final technical report and, therefore, are not entered into the DTIC repository. However, significant technical information reported in these documents will be synopsised, abstracted, summarized, or reviewed, as appropriate, in the final technical report.

b. The performing organization will originate distribution lists for appropriate subject categories and update these lists at least yearly.

c. Uniform procedures and controls to distribute technical reports will be set up to maintain compatibility with other recognized Government technical documentation system.

d. Technical reports will be distributed within security and legal constraints to—

(1) Fulfill the DA policy of making the maximum amount of information available to the public.

(2) Promote internal U.S. technology transfer.

e. Initial or primary distribution will be made to the sponsoring office and to the Defense Technical Information Center, Cameron Station, ALEX VA 22314-6145. Technical information reports classified higher than Secret and those dealing with electronic communication, telemetry, intelligence, and communications security will be sent directly to the sponsoring office and to the National Security Agency Reference Center for Scientific and Technical Information. Further primary distribution may include Government agencies; their contractors; grantees; industrial, independent, and professional groups; and persons with a supportable interest in and valid security clearance for the subject matter.

f. The DTIC—

(1) Accomplishes secondary distribution. (See AR 70-11.)

(2) Announces and distributes all classified and unclassified reports (Confidential and Secret, not associated with special access requirements).

(3) Forwards all unclassified unlimited reports to the National Technical Information Service (NTIS) for general public distribution. (Further distribution guidance is in para 9j.)

9. Additional instructions on technical reports

a. *Security requirements.* Basic DA procedures for safeguarding defense information, including information exempt from release under the Freedom of Information Act, apply to the preparation, classification, dissemination, and projection of technical reports. (See AR 340-17 and AR 380-5 for guidance.)

b. *Disposition instructions.* All technical reports, training manuals, and new equipment products must contain dissemination and destruction instructions. (See AR 70-11 and AR 340-18.) A report requiring special handling may have to contain special disposition instructions.

(1) *Unclassified unlimited reports.* These reports will contain the statement: "Destroy this report when no longer needed. Do not return it to the originator."

(2) *Classified reports.* When classified technical report is no longer needed, organizations will destroy the report according to AR 380-5. Army contractors will destroy the report per DOD

5220.22-M, paragraph 19. All others will return the report to the Army sponsoring agency.

c. *Key words.* Selection of keywords from the Defense Documentation Center (DDC) Retrieval and Indexing Terminology (DRIT), May 1979 (AD A068-500), is important. However, to accommodate new vocabulary, the authors are permitted to enter other keywords appropriate to the technical subject matter. Use of terms from this publication will make automatic data storage and retrieval easy. (It is especially important that the first five words in the titles of technical publications include keywords because the "title search" file of the DTIC data bank triggers on only the first five words.)

d. *Copyright material.* A copyright is an exclusive property right granted by the Government to authors or proprietors for protection of their literary and other intellectual product. Copyrighted material may be incorporated into publications prepared by or for DA only with the written consent of the copyright owner or upon approval of the Secretary of the Army, The Judge Advocate General (TJAG), or the TJAG designee. (See AR 310-1 for guidance.)

e. *Rights in technical data.* Claims by a contractor to limited rights in technical data (on items, components, or processes developed at private expense) in a technical report will be governed by the terms of the contract; i.e., Rights in Data and Computer Software Clauses of DFARS 55.227.-7013 through 55.227-7032. The contracting officer should make sure that the contractor's claim of limited rights data is proper. (See DFARS 27.4033.) Any report including limited rights data should be marked with the proper distribution statements. (See para 6c.)

f. *Patents.*

(1) In-house unclassified reports that contain patentable subject matter will be referred immediately to patent personnel. Patent personnel will evaluate these reports to determine whether prompt filing of a patent application is warranted. These unclassified reports will not be distributed outside the U.S. Government. They will be marked with a distribution statement per paragraph 6c, except that Distribution Statement A in AR 70-11, appendix A, will not be used. When a patent application covering the subject matter in the report has been filed in the Patent and Trademark Office, then distribution statement A in AR 70-11, appendix A, may be used if appropriate. Recipients of the report will be informed of any changes to the distribution statement.

(2) Contractor invention disclosures should be handled according to the Contract Clauses prescribed by FAR 27.303. If a technical report is received from a contractor, the contracting officer should examine it and compare it with the contractor's invention reports.

g. *Trade names and manufacturers.* Technical reports will not contain material that implies that the Government endorses or favors a product or service manufactured or provided by a specific supplier. The use of a trade name or product name may be necessary for better understanding; for example, the technical report involves the evaluation of a commercially available product. If so, the product should contain a disclaimer saying that the citation of trade or manufacturers' names does not constitute an endorsement by DA.

h. *General statement that disclaim responsibility for the contents of the report.* Those statements will not be placed in a technical report.

i. *Caveats.* Caveats that may be required to qualify the contents of a technical report will identify—

- (1) The nature of the caveat.
- (2) The specific portions qualified.
- (3) The degree of qualification.
- (4) The reasons.

j. *Distribution of technical reports.*

(1) *Policy.* The Army sponsoring agency will determine the primary distribution list and any limitations on later distribution of technical reports prepared by or for that agency. The sponsoring agency will make primary distribution or may require contractors to distribute technical reports. In special cases that involve related technical effort by other groups, the sponsoring agency may distribute additional copies of its applicable reports. The agency must first determine that it is clearly in the Government's interest to so expedite the related technical effort.

(2) *Procedures.* When technical reports are sent to DTIC, the sponsoring agency will execute DDC Form 50 (DTIC Accession Notice) and forward it with 2 copies of classified reports or reports with other limitations and 12 copies of unclassified reports without distribution limitations. (DDC Form 50 is available from Defense Technical Information Center ATTN: DTIC-DOR, Cameron Station, Alexandria, VA 22304-6145.) Subsequently, the DTIC will make available the unclassified and unlimited distribution technical reports to the National Technical Information Service of the Department of Commerce for sale to the general public. DTIC will distribute the limited distribution reports subject to the limitations imposed by the sponsoring agency. When limitations on release to the general public are no longer required, the sponsoring agency will inform DTIC and other recipients on the primary distribution list.

k. Reports from foreign sources. Any Army agency that arranges agreements to receive technical reports from governmental components of the United Kingdom, Canada, or Australia will assure that a copy is sent to DTIC with clear statements on limitations of distribution, if any, imposed by the originating country.

Appendix A References

Section I Required Publications

AR 70-11

Dissemination of Scientific and Technical Information. (Cited in paras 6e, 8f and 9b.)

AR 70-14

Payments of Costs for Reprints of Articles in Professional Journals. (Cited in para 6d.)

AR 310-1

Publications, Blank Forms, and Printing Management. (Cited in para 9d.)

AR 340-17

Release of Information and Records from Army Files. (Cited in para 9a.)

AR 340-18

Army Functional Files System. (Cited in para 9b.)

AR 360-5

Public Information. (Cited in para 6d(7).)

AR 380-5

Department of the Army Information Security Program. (Cited in paras 9a and b(2).)

DFARS 27.4033

Technical Data, Other Data, Computer Software and Copyrights. (Cited in para 9e.)

DFARS 55.227

Rights in Technical Data Clauses. (Cited in para 9e.)

DOD 5220.22-M

Industrial Security Manual for Safeguarding Classified Information. (Cited in para 9b(2).)

DRIT, May 1979 (AD A068-500)

Defense Documentation Center (DDC). Retrieval and Indexing Terminology. (Available from Defense Technical Information Center ATTN: DTIC-DOR, Cameron Station, Alexandria, VA 22304-6145.) (Cited in para 9c.)

FAR 27.303

Patent Rights Under Government Contracts. (Cited in para 9f(2).)

MIL-STD-847B

Format Requirements for Scientific and Technical Reports Prepared by or for the Department of Defense. (Cited in paras 6a, b, and e, and 7d(5) and (6).)

Section II Referenced Forms

DD Form 1423

Contract Data Requirements List.

DD Form 1473

Report Documentation Page.

DDC Form 50

DTIC Accession Notice. (Available from Defense Technical Information Center, ATTN: DTIC-DOR, Cameron Station, Alexandria, VA 22304-6145.)

Appendix B Department of Defense Directive 5230.25

Department of Defense Directive

November 6, 1984
NUMBER 5230.25
USDR&E

SUBJECT:

Withholding of Unclassified Technical Data From Public Disclosure References:

- (a) Title 10, United States Code, Section 140c, as added by Public Law 98-94, "Department of Defense Authorization Act, 1984," Section 1217, September 24, 1983
- (b) Executive Order 12470, "Continuation of Export Control Regulations," March 30, 1984
- (c) Public Law 90-629, "Arms Export Control Act," as amended (22 U.S.C. 2751 *et seq.*)
- (d) through (n), see enclosure 1

A. Purpose

Under reference (a), this Directive establishes policy, prescribes procedures, and assigns responsibilities for the dissemination and withholding of technical data.

B. Applicability and Scope

1. Reference (a) applies to all unclassified technical data with military or space application in the possession of, or under the control of, a DoD Component which may not be exported lawfully without an approval, authorization, or license under E.O. 12470 (reference (b)) or the Arms Export Control Act (reference (c)). However, the application of this Directive is limited only to such technical data that disclose critical technology with military or space application. The release of other technical data shall be accomplished in accordance with DoD Instruction 5200.21 (reference (d)) and DoD 5400.7-R (reference (e)) and DoD 5400.7-R (reference (e)).

2. This Directive:

a. Applies to the Office of the Secretary of Defense (OSD) and activities supported administratively by OSD, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the Unified and Specified Commands (hereafter referred to collectively as "DoD Components").

b. Does not modify or supplant the regulations promulgated under E.O. 12470 (reference (b)) or the Army Export Control Act (reference (c)) governing the export of technical data, that is, 15 CFR 379 of the Export Administration Regulations (EAR) (reference (f)) and 22 CFR 125 of the International Traffic in Arms Regulations (ITAR) (reference (g)).

c. Does not introduce any additional controls on the dissemination of technical data by private enterprises or individuals beyond those specified by export control laws and regulations or in contracts or other mutual agreements, including certifications made pursuant to subsection C.2., below. Accordingly, the mere fact that the Department of Defense may possess such data does not in itself provide a basis for control of such data pursuant to this Directive.

d. Does not introduce any controls on the dissemination of scientific, educational, or other data that qualify for General License GTDA under subsection 379.3 of the EAR (reference (f)) (see enclosure 3) or for general exemptions under subsection 125.11 of the ITAR (reference (g)) (see enclosure 4).

e. Does not alter the responsibilities of DoD Components to protect proprietary data of a private party in which the Department of Defense has "limited rights" or "restricted rights" (as defined in subsections 9–201(c) and 9–601(j) of the DoD Federal Acquisition Regulation Supplement, reference (h)) or which are authorized to be withheld from public disclosure under 5 U.S.C. 552(b)(4) (reference (i)).

f. Does not pertain to, or affect, the release of technical data by DoD Components to foreign governments, international organizations, or their respective representatives or contractors, pursuant to official agreements or formal arrangements with the U.S. Government, or pursuant to U.S. Government–licensed transactions involving such entities or individuals. In the absence of such U.S. Government–sanctioned relationships, however, this Directive does apply.

g. Does not apply to classified technical data. After declassification, however, dissemination of such data that are within the scope of subsection B.1., above, is governed by this Directive.

C. Definitions

1. Except for the definition in subsection C.2., terms used in this Directive are defined in enclosure 2.

2. *Qualified U.S. contractor.*¹ A private individual or enterprise (hereinafter described as a "U.S. contractor") that, in accordance with procedures established by the Under Secretary of Defense for Research and Engineering, certifies, as a condition of obtaining export–controlled technical data subject to this Directive from the Department of Defense, that:

a. The individual who will act as recipient of the export–controlled technical data on behalf of the U.S. contractor is a U.S. citizen or a person admitted lawfully into the United States for permanent residence and is located in the United States.

b. Such data are needed to bid or perform on a contract with the Department of Defense, or other U.S. Government agency, or for other legitimate business purposes² in which the U.S. contractor is engaged, or plans to engage. The purpose for which the data are needed shall be described sufficiently in such certification to permit an evaluation of whether subsequent requests for data, pursuant to subsection E.4.b., above, are related properly to such business purpose.

c. The U.S. contractor acknowledges its responsibilities under U.S. export control laws and regulations (including the obligation, under certain circumstances, to obtain an export license prior to the release of technical data within the United States) and agrees that it will not disseminate any export–controlled technical data subject to this Directive in a manner that would violate applicable export control laws and regulations.

d. The U.S. contractor also agrees that, unless dissemination is permitted by subsection E.8., below, it will not provide access to export–controlled technical data subject to this Directive to persons other than its employees or persons acting on its behalf, without the permission of the DoD Component that provided the technical data.

e. To the best of its knowledge and belief, the U.S. contractor knows of no person employed by it, or acting on its behalf, who will have access to such data, who is debarred, suspended, or otherwise ineligible from performing on U.S. Government contracts; or has violated U.S. export control laws or a certification previously made to the Department of Defense under the provisions of this Directive.

f. The U.S. contractor itself is not debarred, suspended, or otherwise determined ineligible by any agency of the U.S. Government to

perform on U.S. Government contracts, has not been convicted of export control law violations, and has not been disqualified under the provisions of this Directive.

When the certifications required by subsections C.2.e. and f., above, cannot be made truthfully, the U.S. contractor may request the certification be accepted based on its description of extenuating circumstances.

D. Policy

1. In accordance with 10 U.S.C. 140c (reference (a)), the Secretary of Defense may withhold from public disclosure, notwithstanding any other provision of law, any technical data with military or space application in the possession of, or under the control of, the Department of Defense, if such data may not be exported lawfully without an approval, authorization, or license under E.O. 12470 (reference (b)) or the Arms Export Control Act (reference (c)). However, technical data may not be withheld under this section if regulations promulgated under either the Order or Act authorize the export of such data pursuant to a general, unrestricted license or exemption in such regulations. (Pertinent portions of such regulations are set forth at enclosures 3 and 4.)

2. Because public disclosure of technical data subject to this Directive is tantamount to providing uncontrolled foreign access, withholding such data from public disclosure, unless approved, authorized, or licensed in accordance with export control laws, is necessary and in the national interest. Unclassified technical data that are not governed by this Directive, unless otherwise restricted, shall continue to be made available to the public as well as to state and local governments.

3. Notwithstanding the authority provided in subsection D.1., above, it is DoD policy to provide technical data governed by this Directive to individuals and enterprises that are determined to be currently qualified U.S. contractors, when such data relate to a legitimate business purpose for which the contractor is certified. However, when such data are for a purpose other than to permit the requestor to bid or perform on a contract with the Department of Defense, or other U.S. Government agency, and the significance of such data for military purposes is such that release for purposes other than direct support of DoD activities may jeopardize an important U.S. technological or operational advantage, those data shall be withheld in such cases.

4. This Directive may not be used by DoD Components as authority to deny access to technical data to the Congress, or to any Federal, State, or local governmental agency that requires such data for regulatory or other official governmental purposes. Any such dissemination will include a statement that the technical data are controlled by the Department of Defense in accordance with this Directive.

5. The authority provided herein may not be used to withhold from public disclosure unclassified information regarding DoD operations, policies, activities, or programs, including the costs and evaluations of performance and reliability of military and space equipment. When such information does contain technical data subject to this Directive, the technical data shall be exercised from that which is disclosed publicly.

6. This Directive may not be used as a basis for the release of "limited rights" or "restricted rights" data as defined in subsections 9–201(c) and 9–601(j) of the DoD Federal Acquisition Regulation Supplement (reference (h)) or that are authorized to be withheld from public disclosure under the Freedom of Information Act (FOIA) (reference (i)).

7. This Directive may not be used to provide protection for technical data that should be classified in accordance with E.O. 12356 and DoD 5200.1–R (references (j) and (k)).

8. This Directive provides immediate authority to cite 5 U.S.C. 552(b)(3) (reference (i)) as the basis for denials under the FOIA

¹ Canadian contractors may be qualified in accordance with this Directive for technical data that do not require a license for export to Canada under section 125.12 of the ITAR (reference (g)) and section 379.4(d) and 379.5(e) of the EAR (reference (f)) by submitting an equivalent certification to the U.S. Department of Defense.

² This does not require a contract with or a grant from the U.S. Government.

(reference (i)) of technical data currently determined to be subject to the provisions of this Directive.

E. Procedures

All determinations to disseminate or withhold technical data subject to this Directive shall be consistent both with the policies set forth in section D., above, and with the following procedures:

1. Requests for technical data shall be processed in accordance with DoD Directive 5230.24 and DoD Instruction 5200.21 (references (1) and (d)). FOIA (reference (i)) requests for technical data subject to this Directive shall be handled in accordance with the procedures established in DoD 5400.7-R (reference (e)). Such FOIA requests for technical data currently determined to be subject to the withholding authority effected by this Directive shall be denied under reference (i), citing the third exemption to mandatory disclosure, and the requester shall be referred to the provisions of this Directive permitting access by qualified U.S. contractors.

2. Upon receipt of a request for technical data in the possession of, or under the control of, the Department of Defense, the controlling DoD office shall determine whether such data are governed by this Directive. The determination shall be based on the following:

a. The office's finding³ that such data would require an approval, authorization, or license for export under E.O. 12470 (reference (b)) or the Arms Export Control Act (reference (c)), and that such data may not be exported pursuant to a general, unrestricted license (section 379.3, EAR (reference (f)) (see enclosure 3) or exemption (section 125.11, ITAR (reference (g)) (see enclosure 4).

b. The office's judgment that the technical data under consideration disclose critical technology with military or space application. For purposes of making this determination, the Militarily Critical Technologies List (MCTL) (reference (m)) shall be used as general guidance. The controlling DoD office may request assistance in making such a determination from the Office of the Under Secretary of Defense for Research and Engineering (OUSDR&E) in accordance with procedures established by that office.

3. The controlling DoD office shall ensure that technical data determined to be governed by this Directive are marked in accordance with DoD Directive 5230.24 (reference (1)).

4. The controlling DoD office shall authorize release of technical data governed by this Directive to currently qualified U.S. contractors only, as defined in subsection C.2., above, unless one of the apply:

a. The qualification of the U.S. contractor concerned has been temporarily revoked in accordance with subsection E.5., below; or

b. The requested data are judged to be unrelated to the purpose for which the qualified U.S. contractor is certified. When release of technical data is denied in accordance with this subsection, the controlling DoD office shall request additional information sufficient to explain the intended use of the requested data and, if appropriate, request a new certification (see subsection C.2., above) describing the intended use of the requested data; or

c. The technical data are being requested for a purpose other than to permit the requester to bid or perform on a contract with the Department of Defense or other U.S. Government agency, in which case the controlling DoD office shall withhold such data if it has been determined by the DoD Component focal point (see paragraph F.5.c., below) that the significance of such data for military purposes is such 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.

5. Upon receipt of credible and sufficient information that a qualified U.S. contractor has (a) violated U.S. export control law, (b) violated its certification, (c) made a certification in bad faith, or (d) made an omission or misstatement of material fact, the DoD Component shall revoke temporarily the U.S. contractor's qualification. Such revocations having the potential for compromising a U.S. Government investigation may be delayed. Immediately upon such revocation, the DoD Component shall notify the contractor and the

OUSDR&E. Such contractor shall be given an opportunity to respond in writing to the information upon which the temporary revocation is based before being disqualified. Any U.S. contractor whose qualification has been revoked temporarily may be reinstated upon presentation of sufficient information showing that the basis for such revocation was in error or has been remedied.

6. When the basis for a contractor's temporary revocation cannot be removed within 20 working days, the DoD Component shall recommend to the OUSDR&E that the contractor be disqualified.

7. Charges for copying, certifying, and searching records rendered to requesters shall be levied in accordance with DoD Instruction 7230.7 (reference (n)). Normally, only one copy of the same record or document will be provided to each requester. Any release to qualified U.S. contractors of technical data controlled by this Directive shall be accompanied by a notice to the recipient as set forth in enclosure 5.

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

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

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

c. 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 (reference (c)) or E.O. 12470 (reference (b)). Any such approval, authorization, or license is sought are controlled by the Department of Defense in accordance with this Directive.

d. 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 Directive.

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

10. Any requester denied technical data, or any qualified U.S. contractor denied permission to redisseminate such data, pursuant to this Directive, 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 accordance with procedures established therein. Other appeals shall be processed as directed by the OUSDR&E.

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

F. Responsibilities

1. *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:

a. Administer and monitor compliance with this Directive.

b. Receive and disseminate notifications of temporary revocation in accordance with subsection E.5., above.

c. Receive recommendations for disqualification made in accordance with subsection E.6., above, and act as initial disqualification authority.

³ May require consultation with the Department of State or the Department of Commerce, as appropriate.

d. 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.

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

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

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

h. Develop procedures to ensure that DoD Components apply consistent criteria in authorizing exceptions under subsection E.9., above.

i. Establish procedures and appropriate mechanisms for the certification of qualified U.S. contractors, pursuant to subsection F.1.e., above, 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.

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

2. The *Under Secretary of Defense for Policy* shall:

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

b. 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.

3. The *Assistant Secretary of Defense (Public Affairs)* shall:

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

b. Provide such other assistance as may be necessary to ensure compliance with this Directive.

4. The *General Counsel, Department of Defense*, shall:

a. 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.

b. Advise the USDR&E regarding consistent and appropriate implementation of this Directive.

5. The *Heads of DoD Components* shall:

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

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

c. Designate a focal point to (1) ensure implementation of this Directive; (2) identify classes of technical data the release of which is governed by paragraph E.4.c, above; (3) act on appeals relating to case-by-case denials of technical data; (4) suspend a contractor's qualification pursuant to subsection E.5., above; (5) receive and evaluate requests for reinstatement of a contractor's qualification; and, when appropriate, (6) recommend disqualification to the OUSDR&E.

d. Promulgate and effect regulations to implement this Directive within 180 days.

e. 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 paragraph F.1.i., above, but before DoD Components have issued implementing regulations under paragraph F.5.d., above. 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.

G. Effective Date and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the Under Secretary of Defense for (Research and Engineering) within 180 days.

Signed by Caspar W. Weinberger
Secretary of Defense

Enclosures—5

1. References
2. Definitions
3. Pertinent Portions of Export Administration Regulations (EAR)
4. Pertinent Portions of International Traffic in Arms Regulations (ITAR)
5. Notice to Accompany the Dissemination of Export-controlled Technical Data

(d) DoD Instruction 5200.21, "Dissemination of DoD Technical Information," September 27, 1979

(e) DoD 5400.7-R, "DoD Freedom of Information Act Program," December 1980, authorized by DoD Directive 5400.7, March 24, 1980

(f) Export Administration Regulations

(g) International Traffic in Arms Regulations

(h) DoD Federal Acquisition Regulation Supplement, authorized by DoD Directive 5000.35, "Defense Acquisition Regulatory System," March 8, 1978

(i) Public Law 89-487, "Freedom of Information Act," as amended (5 U.S.C. 552(b)(3) and (4))

(j) Executive Order 12356, "National Security Information," April 2, 1982

(k) DoD 5200.1-R, "Information Security Program Regulation," August 1982, authorized by DoD Directive 5200.1, June 7, 1982

(l) DoD Directive 5230.24, "Distribution Statements on Technical Documents," November, 1984.

(m) Military Critical Technologies List, October 1984

(n) DoD Instruction 7230.2, "User Charges," June 12, 1979

Nov 6, 84
5230.25 (Encl 3)

DEFINITIONS, continued

1. *Controlling DoD Office.* The DoD activity that sponsored the work that generated the technical data or received the technical data on behalf of the Department of Defense and therefore has the responsibility for determining the distribution of a document containing such technical data. In the case of joint sponsorship, the controlling office is determined by advance agreement and may be either a party, a group, or a committee representing the interested activities or DoD Components. (The controlling DoD office is identified on each export-controlled document in accordance with DoD Directive 5230.24, reference (1).)

2. *Critical Technology.* Technologies that consist 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 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 (also referred to as military critical technology).

3. *Other Legitimate Business Purposes.* Include:

a. Providing or seeking to provide equipment or technology to a foreign government with the approval of the U.S. Government (for example, through a licensed direct foreign military sale).

- b. Bidding, or preparing to bid, on a sale of surplus property.
- c. Selling or producing products for the commercial domestic marketplace or for the commercial foreign marketplace, providing that any required export license is obtained.
- d. Engaging in scientific research in a professional capacity.
- e. Acting as a subcontractor to a concern described in (a) through (d) above; or
- f. Selling technical data subject to this Directive in support of DoD contractors or in support of the competitive process for DoD contracts, provided such sales are limited solely to DoD contractors or potential DoD contractors who also are qualified U.S. contractors and provided such technical data are related to the purpose for which the qualified U.S. contractor is certified, or selling technical data to foreign contractors or governments overseas after receiving the required export license or approval by the U.S. Government.

4. *Potential DoD Contractor.* An individual or organization outside the Department of Defense declared eligible for DoD information services by a sponsoring DoD activity on the basis of participation in one of the following programs:

- a. The Department of the Army Qualitative Requirements Information Program.
- b. The Department of the Navy Industry Cooperative Research and Development Program.
- c. The Department of the Air Force Potential Contractor Program.
- d. The DoD Scientific and Technical Information Program; or
- e. Any similar program in use by other DoD Components.

5. *Public Disclosure.* Making technical data available without restricting its dissemination or use.

6. *Technical Data with Military or Space Application, or Technical Data.* Any blueprints, drawings, plans, instructions, computer software and documentation, or other technical information that can be used or be adapted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.

7. *United States.* For the purpose of this Directive, the 50 States, the District of Columbia, and the territories and possessions of the United States.

Nov 6, 84
5230.25 (Encl 3)

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 of technical data under the authority of this Directive.

*Export Administration Regulations Section
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 shows, 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), above, 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 such 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, or utilization in industrial processes, including such dissemination by correspondence, attendance at, or participation in, meetings; or

(2) “Instruction in academic institutions and academic laboratories, excluding information that involves research under contract related directly and significantly to design, production, or utilization in industrial processes.

- (c) “Patent Applications

“Data contained in a patent application, prepared wholly from foreign-origin technical data where such application is being sent to the foreign inventor to be executed and returned to the United States for subsequent filing in the U.S. Patent and Trademark Office. (No validated export license from the Office of Export Administration is required for data contained in a patent application, or an amendment, modification, supplement, or division thereof for filing in a foreign country in accordance with the regulations of the Patent and Trademark Office 37 CFR part 5. See § 370.10(j).”

Nov 6, 84
5230.25 (Encl 4)

Pertinent Portions of International Traffic in Arms Regulations (ITAR)

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

*International Traffic in Arms Regulations
Section 125.11*

“General Exemptions

(a) “Except as provided in § 126.01, district directors of customs and postal authorities are authorized to permit the export without a license of unclassified technical data as follows:

(1) “If it is in published⁴ form and subject to public dissemination by being:

- (i) “Sold at newsstands and bookstores;
- (ii) “Available by subscription or purchase without restrictions to any person or available without cost to any person;
- (iii) “Granted second class mailing privileges by the U.S. Government; or,
- (iv) “Freely available at public libraries.

(2) “If it has been approved for public release by any U.S. Government department or agency having authority to classify information or material under Executive Order [12356], as amended, and other applicable Executive Orders, and does not disclose the details of design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List.

(3) “If the export is in furtherance of a manufacturing licence or technical assistant agreement approved by the Department of State in accordance with Part 124 of this subchapter.

(4) “If the export is in furtherance of a contract with an agency of the U.S. Government or a contract between an agency of the U.S. Government and foreign persons, provided the contract calls for the export of relevant unclassified technical data, and such data are being exported only by the prime contractor. Such data shall not disclose the details of development, engineering, design, production, or manufacture of any arms, ammunition, or implements of war on

⁴ “The burden for obtaining appropriate U.S. Government approval for the publication of technical data falling within the definition in § 125.01, including such data as may be developed under other than U.S. Government contract, is on the person or company seeking publication.

the U.S. Munitions List. (This exemption does not permit the prime contractor to enter into subsidiary technical assistance or manufacturing license agreements, or any arrangement which calls for the exportation of technical data without compliance with Part 124 of this subchapter.)

(5) "If it relates to firearms not in excess of caliber .50 and ammunition for such weapons, except technical data containing advanced designs, processes, and manufacturing techniques.

(6) "If it consists of technical data, other than design, development, or production information relating to equipment, the export of which has been previously authorized to the same recipient.

(7) "If it consists of operations, maintenance and training manuals, and aids relating to equipment, the export of which has been authorized to the same recipient."⁵

(8) "If it consists of additional copies of technical data previously approved for export to the same recipient; or if it consists of revised copies of technical data, provided it pertains to the identical Munitions List article, and the revisions are solely editorial and do not add to the content of technology previously approved for export to the same recipient.

(9) "If it consists solely of technical data being reexported to the original source of import.

(10) "If the export is by the prime contractor in direct support and within the technical and/or product limitations of a 'U.S. Government approved project' and the prime contractor so certifies. The Office of Munitions Control, Department of State, will verify, upon request, those projects which are "U.S. Government approved"; and accord an exemption to the applicant who applies for such verification and exemption, where appropriate, under this subparagraph."⁶

(11) "If the export is solely for the use of American citizen employees of U.S. firms provided the U.S. firm certifies its overseas employee is a U.S. citizen and has a "need to know"⁷

(12) "If the export is directly related to classified information, the export of which has been previously authorized to the same recipient, and does not disclose the details of design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List.

(b) "Plant visits. Except as restricted by the provisions of § 126.01 of this subchapter:

(1) "No license shall be required for the oral and visual disclosure of unclassified technical data during the course of a plant visit by foreign nationals provided the data [are] disclosed in connection with a classified plant visit or the visit has the approval of a U.S. Government agency having authority for the classification of information or material under Executive Order [12356], as amended, and other applicable Executive Orders, and the requirements of section V, paragraph [41(d)] of the Industrial Security Manual are met.

(2) "No license shall be required for the documentary disclosure of unclassified technical data during the course of a plant visit by foreign nationals provided the document does not contain technical data as defined in § 125.01 in excess of that released orally or visually during the visit, is within the terms of the approved visit request, and the person in the United States assures that the technical data will not be used, adapted for use, or disclosed to others for the purpose of manufacture or production without the prior approval

of the Department of State in accordance with Part 124 of this subchapter.

(3) "No Department of State approval is required for the disclosure of oral and visual classified information during the course of a plant visit by foreign nationals provided the visit has been approved by the cognizant U.S. Defense agency and the requirements of section V, paragraph [41(d)] of the Defense Industrial Security Manual are met"

Nov 6, 84
5230.25 (Encl 5)

**Notice to Accompany
the Dissemination of Export-Controlled
Technical Data**

1. Export of information contained herein, which includes, in some circumstances, release to foreign nationals within the United States, without first obtaining approval or license from the Department of State for items controlled by the International Traffic in Arms Regulations (ITAR), or the Department of Commerce for items controlled by the Export Administration Regulations (EAR), may constitute a violation of law.

2. Under 22 U.S.C. 2778 the penalty for unlawful export of items or information controlled under the ITAR is up to 2 years imprisonment, or a fine of \$100,000, or both. Under 50 U.S.C., Appendix 2410, the penalty for unlawful export of items or information controlled under the EAR is a fine of up to \$1,000,000, or five times the value of the exports, whichever is greater; or for an individual, imprisonment of up to 10 years or a fine of up to \$250,000, or both.

3. In accordance with your certification that establishes you as a "qualified U.S. contractor," unauthorized dissemination of this information is prohibited and may result in disqualification as a qualified U.S. contractor, and may be considered in determining your eligibility for future contracts with the Department of Defense.

4. The U.S. Government assumes no liability for direct patent infringement, or contributory patent infringement or misuse of technical data.

5. The U.S. Government does not warrant the adequacy, accuracy, currency, or completeness of the technical data.

6. The U.S. Government assumes no liability for loss, damage, or injury resulting from manufacture or use for any purpose of any product, article, system, or material involving reliance upon any or all technical data furnished in response to the request for technical data.

7. If the technical data furnished by the Government will be used for commercial manufacturing or other profit potential, a license for such use may be necessary. Any payments made in support of the request for data do not include or involve any license rights.

8. A copy of this notice shall be provided with any partial or complete reproduction of these data that are provided to qualified U.S. contractors.

⁵ "Not applicable to technical data relating to Category VI(d) and Category XVI.

⁶ "Classified information may also be transmitted in direct support of and within the technical and/or product limitation of such verified U.S. Government approved projects without prior Department of State approval provided the U.S. party so certifies and complies with the requirements of the Department of Defense Industrial Security Manual relating to the transmission of such classified information (and any other requirements of cognizant U.S. Government departments or agencies).

⁷ "Classified information may also be exported to such certified American citizen employees without prior Department of State approval provided the U.S. party complies with the requirements of the Department of Defense Industrial Security Manual relating to the transmission of such classified information (and any other requirements of cognizant U.S. Government departments or agencies). Such technical data or information (classified or unclassified) shall not be released by oral, visual, or documentary means to any foreign person.

Glossary

Section I Abbreviations

AFARS

Army Federal Acquisition Regulation Supplement

AMC

U.S. Army Materiel Command

DA

Department of the Army

DCSRDA

Deputy Chief of Staff for Research, Development, and Acquisition

DDC

Defense Documentation Center

DFARS

Defense Federal Acquisition Regulations Supplement

DOD

Department of Defense

DRIT

DDC Retrieval and Indexing Terminology

DTIC

Defense Technical Information Center

FAR

Federal Acquisition Regulation

NSAREF

National Security Agency Reference Center for Scientific and Technical Information

NTIS

National Technical Information Service

RDTE

research, development, test, and evaluation

R&D

research and development

TJAG

The Judge Advocate General

Section II Terms

Note: The terms below apply to this regulation; other related terms are in MIL-STD-847B and AR 70-11, appendix A.

Contractor

A person or organization outside the Government with an agreement to provide supplies or services under procedures set up by Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS), and/or the Army FAR Supplement (AFARS). The term includes both prime and subcontractors.

Controlling office (sponsoring or funding activity)

The U.S. Army activity under whose immediate program a document is generated whether the work was done in-house or by contract. In the case of joint sponsorship, the controlling office is determined by advance agreement; it may be either activity, agency, or Service.

Defense Technical Information Center (DTIC) (formerly Defense Documentation Center (DDC))

The central DOD repository of classified and unclassified scientific and technical reports resulting from DOD sponsorship, other than those maintained by the National Security Agency Reference Center. The DTIC is administered by the Defense Logistics Agency (DLA). The DTIC is devoted to acquisition, announcement, storage, retrieval, and secondary distribution of classified and unclassified DOD technical reports.

Grantee

A research organization outside the U.S. Government to which grant funds have been awarded by a DA activity.

National Technical Information Service (NTIS)

The central U.S. Government repository of unclassified unlimited scientific and technical reports, administered by the Department of Commerce and devoted to the acquisition, announcement, storage, retrieval, and secondary distribution of unclassified Government-sponsored technical reports.

Monitoring agency

An activity to which the administrative responsibility for a project, contract, or grant has been delegated (by the controlling office).

National Security Agency Reference Center for Scientific and Technical Information (NSAREF)

The central repository of scientific and technical reports in certain categories that the DTIC is restricted from handling. These categories include documents classified higher than Secret and/or those dealing with electronic communication, telemetry, intelligence, and communications security.

Performing organization

The activity, organization, contractor, or grantee that actually performs the work.

Technical report

Formal documentation of a reportable technical achievement that describes a problem or an objective, an approach to the solution, or resolution, the results, and the conclusions.

The technical report is one of the main tangible end products of Army-sponsored R&D and is made available through the DTIC.

Section III Special Abbreviations and Terms

There are no special terms.

Unclassified

PIN 004448-000