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Department of Defense
OFFICE OF PREPUBLICATION AND SECURITY REVIEW

MEMORANDUM FOR SENIOR PENTAGON LEADERSHIP
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Clarifying Guidance for Marking and Handling Controlled Technical Information in accordance with Department of Defense Instruction 5200.48, "Controlled Unclassified Information"

- References:
- (a) Department of Defense Instruction 5200.48, "Controlled Unclassified Information," March 6, 2020
 - (b) Executive Order (E.O.) 13556, "Controlled Unclassified Information," November 4, 2010
 - (c) Part 2002 of Title 32, Code of Federal Regulations
 - (d) Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) Memorandum, "Fundamental Research," May 24, 2010
 - (e) Department of Defense Instruction 5230.24, "Distribution Statements on Technical Documents," August 23, 2012, as amended
 - (f) National Security Decision Directive 189, "National Policy on the Transfer of Scientific, Technical and Engineering Information," September 21, 1985
 - (g) Defense Federal Acquisition Regulation Supplement (DFARS) 252.204-7000, "Disclosure of Information," October 2016
 - (h) DFARS 252.204-7012, "Safeguarding Covered Defense Information and Cyber Incident Reporting"
 - (i) United States Code, Title 50, Chapter 55

The Department of Defense (DoD) issued policy for the designation, safeguarding, and decontrolling of controlled unclassified information (CUI) in accordance with Reference (a). As of March 6, 2020, the effective date of this instruction, DoD Components must implement these new CUI Program requirements.

This memorandum provides clarifying guidance on controlled technical information (CTI), a category of CUI under Reference (a), to ensure such information is categorized and handled in accordance with established law, regulation, and DoD policies. This clarifying guidance will be formally incorporated into the next update/revision of Reference (a). Specifically:

1. Distribution Statements and Clarification of CTI Definition.
 - a. As indicated in Sections 3.7.c. (1) and 4.3.c. of Reference (a), CTI must be marked with distribution statements in accordance with Reference (e).
 - b. CTI is defined in Reference (h). Examples of CTI are provided in Attachment 1, Controlled Technical Information, of this memorandum.

2. Clarification of Policy for Existing Contracts. Program offices and requiring activities are not required to modify existing contracts solely to comply with the requirements of Reference (a), section 5.1.e. In addition, program offices and requiring activities are not required to modify existing contracts solely to address updates to the DoD CUI Registry. If existing contracts are modified, the terms change, the 5.1.e waiver in this clarification memo no longer applies, and Components must comply with the policy as written in Reference (a).

3. Clarification of Research, Development, Test, and Evaluation (RDT&E) efforts

- a. Per Reference (f), “Fundamental Research means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community.” As noted in Reference (d), “DoD will place no other restrictions on the conduct or reporting of unclassified fundamental research, except as otherwise required by applicable federal statutes, regulations, or executive orders.” The determination of whether a research effort is fundamental will be made by the addressees in Reference (d) before the initiation of the program in accordance with Reference (d). (See Attachment 2, Fundamental Research). This authority may not be further delegated.
- b. Information related to RDT&E-funded research efforts, other than fundamental research, do not always qualify as CUI. The decision as to whether these research results qualify as CUI will be made by the personnel responsible for program oversight. For extramural research contracts, this determination will be made as specified in DFARS 252.204–7000 (Reference (g)).

We request you distribute this memorandum broadly throughout your organizations, including to all personnel in program management, contracting, security, and other appropriate offices. Our points of contact for this clarifying guidance are Mr. Michael Russo, OUSD(I&S), (703) 692-7836 or michael.c.russo14.civ@mail.mil; and Ms. Roberta Schoen, DTIC, (703) 448-9756 or roberta.s.schoen.civ@mail.mil.

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Attachments:

1. Controlled Technical Information
2. Fundamental Research

Attachment 1. Controlled Technical Information (CTI)

CTI is defined in (Reference (h)) as “technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. CTI would meet that criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, “Distribution Statements on Technical Documents.” The term does not include information that is lawfully publicly available without restrictions.

Identifying CTI. Safeguarding CTI requires an educated workforce. In accordance with the delegated responsibilities from the DoD Chief Technology Officer and the DoD Senior Agency Official for Security and CUI, examples of technical information which would qualify for control as CTI include:

- Any DoD program technical schematic/architectural drawing used in the manufacturing of a DoD weapon system that shows specifications, tolerances, thresholds, parameters, objectives, measurements, etc.
- Technical information generated or managed by DoD acquisition (including system design, development, production, and procurement) and sustainment (including logistics, maintenance, and materiel readiness) activities.
- CTI includes critical technology, defined at 50 USC § 4565. (a) (6) (Reference (i)). Critical technologies are essential to the design, development, production, operation, application, or maintenance of an article or service that makes or could make a significant contribution to the military potential of any country, including the United States. This includes, but is not limited to, design and manufacturing knowledge, technical data, keystone equipment, and inspection and test equipment or data that relate to a specific military deficiency of a potential adversary.
- Engineering drawings, engineering data and associated lists, standards, specifications, technical manuals, technical reports, technical orders, blueprints, plans, instructions, computer software and documentation, catalog-item identifications, data sets, studies and analyses, and other technical information that can be used or adapted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any military or space equipment or technology concerning such equipment.
- Technical information in tangible form, such as a technical report, model, prototype, blueprint, photograph, plan, instruction, or an operating manual, or that may be intangible, such as a technical service or oral, auditory, or visual descriptions.

Attachment 2. Fundamental Research

Fundamental Research is defined in the National Security Decision Directive 189, “National Policy on the Transfer of Scientific, Technical and Engineering Information,” (Reference (f)) https://www.acq.osd.mil/dpap/dars/pgi/docs/National_Security_Decision_Directive_189.pdf.

The USD(AT&L) Memorandum of May 24, 2010 (Reference (d)) provides clarifying guidance as to Reference (f). [https://www.acq.osd.mil/dpap/dars/pgi/docs/2012-D054%20Tab%20D%20OUSD%20\(ATL\)%20memorandum%20dated%20May%2024%202010.pdf](https://www.acq.osd.mil/dpap/dars/pgi/docs/2012-D054%20Tab%20D%20OUSD%20(ATL)%20memorandum%20dated%20May%2024%202010.pdf).

The USD(AT&L) memorandum states that “research shall not be considered fundamental in those rare and exceptional circumstances where the Applied Research presents a high likelihood of disclosing performance characteristics of military systems or manufacturing technologies that are unique and critical to defense, and where agreement on restrictions have been recorded in the contract or grant. Furthermore, DoD will place no other restrictions on the conduct or reporting of unclassified fundamental research, except as otherwise required by applicable federal statutes, regulations, or executive orders.” Addressees of Reference (d), without further delegation, are responsible to review and concur that controlling decisions are required at the outset of the program.

Reference (g) permits contractors to release information that results from or arises during the performance of a project that involves no covered defense information (as defined in Reference (h)) and has been scoped and negotiated by the contracting activity with the contractor and research performer, and determined in writing by the contracting officer to be fundamental research (which by definition cannot involve any covered defense information).

Projects characterized as fundamental research may include the entire contract effort or a specified portion of the statement of work.

The characterization as fundamental research shall occur when the project is added to the statement of work and prior to award. If a contract is to be modified after contract award, then the changed project should be evaluated, prior to modification of the contract, to determine if the contract as modified would now constitute fundamental research.