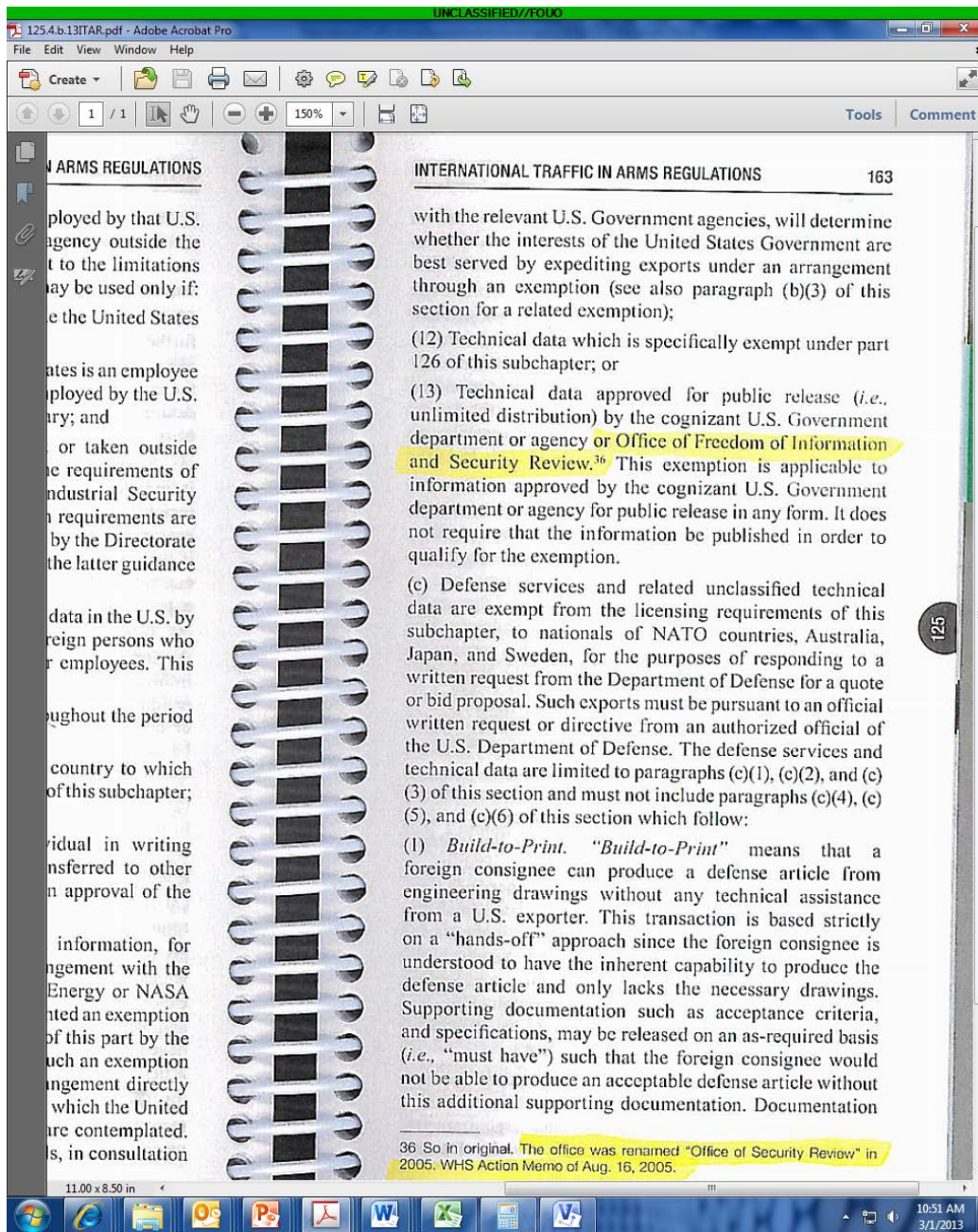


International Traffic in Arms Regulation (ITAR) Compliance And DoD Office of Security Review Authority For Our DoD Customers

The Office of Security Review (OSR) is the sole DoD organization specifically mentioned in the ITAR (see partial copy of July 3, 2012 version of ITAR 125.4(b)(13) below).



OSR uses the authority mentioned above to offer our customers within the Department of Defense (DoD) a process for the review and potential approval for public release of unclassified technical data on defense articles *not* currently under an active DoD contract. DoD customers need just follow the process and procedures contained in DoDD 5230.09 and DoDI 5230.29, and OSR will automatically include an export control review in the normal security and policy review process. Review outcomes include approved/cleared for public release, recommended (non-binding) changes, amendments (mandatory changes), or a full objection to publication (with appeal rights).

At the conclusion of the review, DoD customers will receive a copy of their DD Form 1910 and the first sheet of the submittal both with the OSR clearance stamp unless OSR objects, in which case an explanatory memorandum will also be sent granting appeal rights. If the customer chooses to appeal the review outcome, it is highly recommended additional justifications accompany the appeal request. OSR will evaluate any pertinent information attached to the appeal request including examples of information on official DoD or other official government web sites or examples of previous related official releases in whole or part. Evidence of the information on unofficial web sites is not as compelling, and may be an example of a leak rather than evidence of a previous official government public release.

Does the Secretary of Defense have the legal ability to withhold unclassified technical data on defense articles from public release beyond the ITAR protections?

Yes.

Public Law 98-94 (10 USC § 130) provides the Secretary of Defense with the authority to withhold from the public: unclassified critical technical data with military or space application in the possession of, or under the control of DoD.

What are the potential penalties for an ITAR/export control violation?

In general they are contained in Part 127 of the ITAR. Penalties can include disbarment, a fine, imprisonment, or both for each violation (22 U.S.C. 2778, 2779a, and 2780).

Can you be more specific?

Criminal: “Willful” violation: Up to \$1m per violation for corporations; up to \$1m per violation and up to 10 years in jail for individuals.

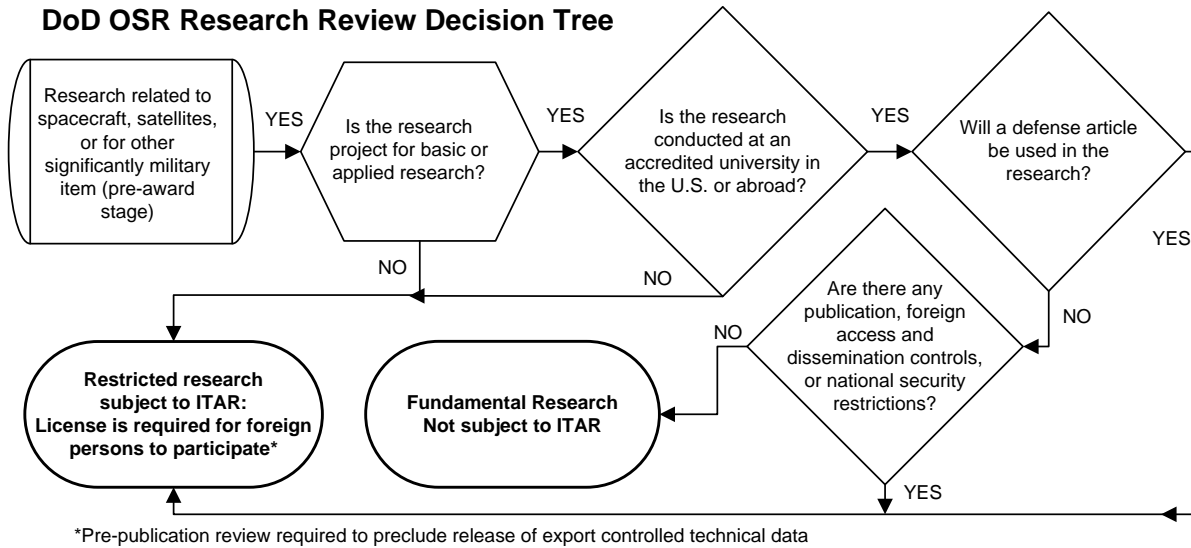
Civil: “Any” Violation: up to \$500k per violation for corporations and/or individuals.

Civil and Criminal: Seizure or forfeiture of goods debarment from licensing (including working with technical data on defense articles) for as long as three years; potential debarment from Government contracting for up to three years.

What about DoD research on defense articles?

On occasion, various DoD organizations study aspects of existing or proposed defense articles in order to improve aspects of their performance. Public release of test data, technical data and real-world performance shortcomings or potential vulnerabilities must be formally reviewed by OSR (or a lower level DoD Research laboratory, if prudent) to preclude a violation of export control public law, in addition to ensuring compliance with the DoD Directive and Instruction mentioned previously.

To assist DoD customers before acquisition contract award, OSR offers the decision tree shown below:



What about active DoD contracts?

Active DoD acquisition contracts must be followed, are typically awarded under the auspices of the Federal Acquisition Regulations (FAR), and Defense Federal Acquisition Regulations (DFAR). DoD customers and contractors wishing to release information on the defense article under an on-going DoD acquisition contract must examine their contract for applicable clauses related to the disclosure of information. Usually a DFAR *Disclosure of Information* clause like 252.204-7000 will be contained (if only by reference in contract boilerplate without title) and apply in this situation. This clause requires the contractor to obtain written permission of the contracting officer prior to releasing information. Additionally, the clause requires contractors to agree to include a similar requirement in each subcontract under their contract. Further it requires subcontractors to submit requests for authorization to release information through the prime contractor to the Contracting Officer.

After the contract is over (or at any stage for a self-funded development effort on a proposed defense article) the contractor may submit requests directly to OSR under ITAR exemption 125.4(b)(13) shown above. Further details on contractor submittal procedures for review of unclassified potentially export controlled technical data on defense articles can be found elsewhere on the OSR website. After review, OSR will send military industrial base customers a formal letter with the review outcome, and at least the first sheet of the submittal with our DoD clearance stamp unless OSR cannot approve the technical data/information for public release. Like DoD customers seeking an export control review, security review outcomes for the Military Industrial Base not under active DoD contract include approved/cleared for public release, recommended (non-binding) changes, amendments (mandatory changes), or a full objection to publication (with appeal rights).

Please do not hesitate to contact OSR with any public release questions.