

Export Control Directives, Memos, and Example Letter for the DoD or Subsidiary

DoD DIRECTIVE 189 EXCERPTS—SEE HIGHLIGHTED KEY TERMS

THE WHITE HOUSE

WASHINGTON

September 21, 1985

NATIONAL SECURITY DECISION

DIRECTIVE 189

NATIONAL POLICY ON THE TRANSFER OF SCIENTIFIC, TECHNICAL AND
ENGINEERING INFORMATION

I. PURPOSE

This directive establishes national policy for controlling the flow of science, technology and engineering information produced in federally funded fundamental research at colleges, universities, and laboratories. Fundamental research is defined as follows:

"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 distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons."

III. POLICY

It is the policy of this Administration that, to the maximum extent possible, the products of fundamental research remain unrestricted. It is also the policy of this Administration that, where the national security requires control, the mechanism for control of information generated during federally funded fundamental research in science, technology and engineering at colleges, universities and laboratories is classification. Each federal government agency is responsible for: a) determining whether classification is appropriate prior to the award of a research grant, contract, or cooperative agreement and, if so, controlling the research results through standard classification procedures; b) periodically reviewing all research grants, contracts or cooperative agreements for potential classification. No restriction may be placed upon the conduct or reporting of federally funded fundamental research that has not received national security classification, except as provided in applicable U.S. Statutes.

SECRETARY OF DEFENSE—MEMO DATED MAY 20, 2010—SEE KEY TERMS



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MAY 24 2010

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
ATTN: SERVICE ACQUISITION EXECUTIVES
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
ATTN: COMMANDER, U.S. SPECIAL OPERATIONS
COMMAND
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Fundamental Research

References: (a) DoD Directive 5230.24, "Distribution Statements on Technical Documents," March 18, 1987
(b) DoD Instruction 5230.27, "Presentation of DoD-Related Scientific and Technical Papers at Meetings," October 6, 1987

The Department of Defense (DoD) fully supports free scientific exchanges and dissemination of research results to the maximum extent possible. Critical to enabling exchanges and dissemination is an understanding on the part of DoD acquisition personnel and the research community of the statutes, regulations, and policies governing restrictions that apply to the DoD on basic and applied research, recognizing the necessarily open nature of unclassified fundamental research. Understanding will help guide DoD acquisition personnel and contract and grant recipients in making plans and decisions that will affect performance of research under DoD awards and implementing measures that may be needed to comply with appropriate controls.

I have determined that additional clarifying guidance is required to ensure the DoD will not restrict disclosure of the results of fundamental research, as herein defined, unless such research efforts are classified for reasons of national security or as otherwise required by applicable federal statutes, regulations, or executive orders. This memorandum reinforces earlier guidance (Attachment A), addresses residual issues, and deals explicitly with additional facets of fundamental research. My intention is to ensure that the DoD grants, contracts, and negotiations with the research community for fundamental research are consistent across Components and fully compliant with National Security Decision Directive (NSDD) 189 (Attachment B).

NSDD 189 makes clear that the products of fundamental research are to remain unrestricted to the maximum extent possible. When control is necessary for national security reasons, classification is the only appropriate mechanism. The 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 definition of “contracted fundamental research” in a DoD grant or contractual context is established by References (a) and (b) and is defined as follows:

“‘Contracted Fundamental Research’ includes research performed under grants and contracts that are (a) funded by budget Category 6.1 (“Research”), whether performed by universities or industry or (b) funded by budget Category 6.2 (“Exploratory Development”) and performed on-campus at a university. The research shall not be considered fundamental in those rare and exceptional circumstances where the 6.2-funded effort 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.”

EXAMPLE OF LETTER REQUESTING RELIEF

Date

Sponsor Name

Sponsor Title

Entity Name

Street Address

City, State, Zip Code

Via Email

Dear XXXXXXXX,

This letter is being submitted on behalf of [insert Your Organization's Name](#) and [Dr. Your Project Director](#) to formally request a waiver of the [insert cite of language to be removed from document](#), which also restricts the [insert restriction listed in document](#) for the Subaward XXX-XXXXXX-XX-X-XXXX-XXXX.

The proposed work to be performed is fundamental research on the [insert nature of the work to be performed](#). The project does not emphasize any chosen special material for specified applications. Dr. XXXXXXXX's work will focus on [insert emphasis of work to be performed](#). No hardware or software will be developed as a result of the research. Dr. XXXXXXXX does not anticipate the need to work with any covered defense information, data, hardware or software. Nor will any covered defense information, data, hardware or software be received from [insert sponsor name](#) or the government sponsor to complete the scope of work as outlined in the Subaward. Dr. XXXXXXXX does not anticipate generating any covered defense information, data, hardware or software during the project period of the Subaward. As provided by [if applicable, cite where publications are allowable](#), Dr. XXXXXXXX fully intends to publish the progress and results of the work. Further, as an academic institution work is conducted with a vast array of students, including non-US citizens.

After careful review and consideration, the [Export Control Officer](#), Ms. XXXXXXXX and Dr. XXXXXXXX consider this project to be fundamental research, as outlined in the DoD Directive 189, dated September 21, 1985 and explained in the Secretary of Defense Memorandum dated May 24, 2010. The Secretary of Defense Memorandum dated May 24, 2010 further states, "The 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."

In accordance with the Secretary of Defense's memorandum **and because the Subaward is not marked as restricted for proprietary or national security reasons,** SDSU Foundation respectfully requests that the restrictive language in Article [XX](#) be removed.

Please do not hesitate to contact me, should you have questions or require additional information.

Best Regards,

Name

Title

Attachments: National Security Directive 189
DoD Fundamental Research Memorandum 5-24-2010