International Traffic in Arms Regulations (ITAR): Who must comply, what is controlled and where do we go from here?

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International Traffic in Arms Regulations (ITAR)

• 22 C.F.R. Chapter I, Subchapter M Parts 120-130 - Department of State – International Traffic in Arms Regulations (ITAR)
  • Controls the
    • temporary and permanent export
    • re-export, and
    • temporary imports of defense articles and defense services on the United States Munitions List.
  • Directorate of Defense Trade Controls (DDTC)
    • 4 Offices – Licensing, Compliance, Policy, Administration
    • www.pmddtc.state.gov
The ITAR requires
- manufactures of products that fall under the United States Munitions List (USML) to register as manufacturers – and
- exporters of products that fall under the United States Munitions List (USML) to register as exporters.

Manufacturers must register with the DDTC even if they do no exporting. Annual registration.

Can take 30-60 days to get registered!
Who Must Comply

• Registration Process with the DDTC – ITAR Part 122

  • Submit the DS2032 Form, Transmittal Letter and Confirmation of Payment of Fee
  • Annual Registration
  • $2,250 for new registrants or registrants for who DDTC has not adjudicated or issued a response to any applications during a 12 month period
  • $2,750 per year for registrants for who DDTC has issued a response between one and ten applications
  • $2,750 per years plus an additional fee of $250 times the number of applications over ten
  • The fee for registrants whose total registration fee is greater than 3% of the total value of the applications – the current registration will be reduced to 3% of such total application value or $2,750, whichever is greater.
The ITAR controls hardware, technical data, software and defense services relating to the items listed on the United States Munitions List (USML) located in the ITAR Part 121.

These items are specifically designed, developed, configured, adapted or modified for a military application and can be manufactured, sold and exported to both military and civilian end-users.
What is Controlled

- Category I – Firearms, Close Assault Weapons and Combat Shotguns
- Category II – Guns and Armament
- Category III – Ammunition/Ordnance
- Category IV – Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines
- Category V – Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- Category VI – Vessels of War and Special Naval Equipment
- Category VII – Tanks and Military Vehicles
- Category VIII – Aircraft and Associated Equipment
- Category IX – Military Training Equipment and Training
- Category X – Protective Personnel Equipment and Shelters
- Category XI – Military Electronics
What is Controlled

- Category XII – Fire Control, Range Finder, Optical and Guidance and Control Equipment
- Category XIII – Auxiliary Military Equipment
- Category XIV – Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- Category XV – Spacecraft Systems and Associated Equipment
- Category XVI – Nuclear Weapons, Design and Testing Related Items
- Category XVII – Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- Category XVIII – Directed Energy Weapons
- Category XIX – Reserved
- Category XX – Submersible Vessels, Oceanographic and Associated Equipment
- Category XXI – Miscellaneous Articles
What is Controlled

Category XII – Fire Control, Range Finder, Optical and Guidance and Control Equipment

- (a) Fire control systems; gun and missile tracking and guidance systems; gun range, position, height finders, spotting instruments and laying equipment; aiming devices (electronic, optic, and acoustic); bomb sights, bombing computers, military television sighting and viewing units, and periscopes for the articles of this section.

- (b) Lasers specifically designed, modified or configured for military application including those used in military communication devices, target designators and range finders, target detection systems, and directed energy weapons.

- (c) Infrared focal plane array detectors specifically designed, modified, or configured for military use; image intensification and other night sighting equipment or systems specifically designed, modified or configured for military use; second generation and above military image intensification tubes (defined below) specifically designed, developed, modified, or configured for military use, and infrared, visible and ultraviolet devices specifically designed, developed, modified, or configured for military application. Military second and third generation image intensification tubes and military infrared focal plane arrays identified in this subparagraph are licensed by the Department of Commerce (ECCN 6A002A and 6A003A) [sic] when part of a commercial system (i.e., those systems originally designed for commercial use). This does not include any military system comprised of non-military specification components. Replacement tubes or focal plane arrays identified in this paragraph being exported for commercial systems are subject to the controls of the ITAR.

So in original. Should be “(ECCN 6A002.c, 6A003.b.3, and 6A003.b.4)".
What is Controlled

• (c) Infrared focal plane array . . . . cont’d.
  • NOTE: Special Definition. For purposes of this subparagraph, second and third generation image intensification tubes are defined as having: A peak response within the 0.4 to 1.05 micron wavelength range and incorporating a microchannel plate for electron image amplification having a hole pitch (center-to-center spacing) of less than 25 microns and having either:
    • (a) An S-20, S-25 or multialkali photo cathode; or
    • (b) A GaAs, GaInAs, or other compound semiconductor photo cathode.

• (d) Inertial platforms and sensors for weapons or weapon systems; guidance, control and stabilization systems except for those systems covered in Category VIII; astrocompasses and star trackers and military accelerometers and gyros. For aircraft inertial reference systems and related components refer to Category VIII.

• (e) Components, parts, accessories, attachments and associated equipment specifically designed or modified for the articles in paragraphs (a) through (d) of this category, except for such items as are in normal commercial use.

• (f) Technical data (as defined in § 120.10) and defense services (as defined in § 120.9) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category. (See § 125.4 for exemptions.) Technical data directly related to manufacture and production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated as SME.
What is Controlled

• ITAR §120.3 Policy on Designating and Determining Defense Articles and Services

  • Is specifically designed, developed, configured, adapted, or modified for a military application, AND
  • Does not have predominant civil applications, AND
  • Does not have performance equivalent (defined by form, fit AND function in § 120.4) to those of an article or service used for civil applications; . . . . . OR
What is Controlled

- ITAR §120.3 Policy on Designating and Determining Defense Articles and Services
  - Is specifically designed, developed, configured, adapted, or modified for a military application, and has significant military or intelligence applicability such that control under this subchapter is necessary.

Remember:  The intended use of the article or service after its export (i.e., for a military or civilian purpose) is not relevant in determining whether it is subject to the controls of the ITAR.
What is Controlled

• Engineering plays a critical role in determining if a product will be ITAR or controlled under the regulations for commercial items by the U.S. Department of Commerce, Export Administration Regulations (EAR).

• All starts with the initial design of the product.
• Can start with “Build-to-Print” data from a US Customer and they tell you it’s for a military application. If you modify your design, etc. - - - ITAR Controlled.
• Need a consistent process of determining the jurisdiction of the product and related technical data.
• Record determinations and keep records.
• Spread the News!!! Mark it “ITAR Controlled”
If you are unsure if your product falls within the scope of the USML, submit a Commodity Jurisdiction (CJ) to the State Dept. and request they advise you in writing.

- CJs take 30-60 days for approval.

- No requirement to be registered with DDTC prior to submitting a CJ.

- CJs are submitting electronically and consist of the DS4076 Form, Transmittal Letter providing supplemental information, and any supporting documents, drawings, pictures, etc.
What is Controlled

• ITAR §120.10 Technical Data

• Information **REQUIRED** (key word in definition)

  • For the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles.

  • Includes: documents, blueprints, photos, plans, instructions, etc.

  • Software: system functional design, logic flow, algorithms, application programs, operating systems and support software for design, implementation, test operation, diagnosis and repair.

  • ALL classified information, regardless of subject or content.
What is Controlled

- ITAR §120.10 Technical Data...could consist of:
  - Assembly and integration plans
  - Test plans and procedures
  - Block diagrams
  - Design and interface drawings
  - Process Drawings
  - Quality Assurance Information
  - Interface Control Documents
  - Engineering change requests
  - Specifications and Requirements
  - Bill-of-Materials (BOMs), Manufacturing Parts List
  - Repair, Maintenance and Operation Manuals
Not every document about the hardware or military program is considered ITAR technical data! What is NOT “Technical Data” and does not require an export license or Technical Assistance Agreement (Agreement or TAA)?

- Does not include information concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges and universities or information in the public domain as defined in §120.10.

- It does not include basic marketing information on function or general system descriptions of defense articles.

- Does not include financial information; however, always review to confirm.
What is Controlled

- ITAR §120.9 Defense Services
  - Furnishing of *assistance*, including training, in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles.
What is Controlled

• Exporting Hardware
  • Developing a prototype and temporarily exporting it to your foreign customer in Canada for testing.
  • Displaying hardware at a foreign trade show in South Korea.
  • Requires a DSP-73 Temporary Export License

• Exporting technical data
  • Marketing a new product to potential foreign customers in Japan.
  • Negotiating a technical statement of work with a foreign supplier in Italy.
  • Taking your laptop with you to Costa Rica on vacation.
  • Requires a DSP-5 Permanent Export License

• Providing a defense service
  • Assisting a foreign customer with defining required test procedures while they are visiting your facility in the U.S.
  • A telephone call with a foreign vendor regarding how their design of their foreign manufactured component/hardware does not meet your requirements with instructions on your recommendations on what changes need to be made.
  • Requires a Technical Assistance Agreement
Develop an Export/Import Compliance Program which will consist of the following

- Identification of persons responsible within your company
  - Sr. Officer of the Company
  - Designated persons – Empowered Official (ITAR Required)

- Written Procedures and Processes
  - Export/Import Compliance Manual
  - Flow the procedures down to each group and have them update their own procedures to incorporate export/import requirements

- Management Commitment and Policy Statement
  - Post it on your intranet website

- Jurisdiction Process of all Hardware, Software, Technical Data
Where do we go from here?

Develop an Export/Import Compliance Program which will consist of the following

- Various ITAR Requirements
  - Registration, Licenses/Export Authorizations, Exemptions, Part 129 Brokering, Part 130 Paying Fees or Commissions, Shipping, Reporting Requirements to the State Dept.
  - Licenses/Export Authorizations
    - DSP-5 Permanent Export
    - DSP-61 Temporary Import
    - DSP-73 Temporary Export
    - Technical Assistance Agreements (TAA)
Develop an Export/Import Compliance Program

- Export Administration Regulations (EAR) Requirements
  - Licenses, Exceptions, Anti-boycott, Required Documentation
    - Regulations are very detailed, ensure you have people within your company who understand how to review the EAR.

- Screening parties
  - State Dept., Commerce Dept., Treasury Dept. Lists
  - Free Screening Tool – www.bis.doc.gov
  - Screen new hires, suppliers, vendors, sales reps., consultants, customers, etc. and screen at various times.

- Licensing Procedures and Implementation of Export/Import Approvals
  - Keep the scope current (parties, value, hardware, technical data, etc.)
  - Comply with the provisos and limitations
Where do we go from here?

Develop an Export/Import Compliance Program

- Temporary and Permanent Imports
  - Plan ahead
  - In some circumstances, can use ITAR exemptions for temporary imports
  - Permanent Imports may require an ATF-Form 6 Permit from the Bureau of Alcohol, Tobacco, Firearms and Explosives - Imports Branch

- International Travel
  - Hand Carry of Hardware
  - Laptops, smart phones, taking technical data out of the country for your own use, etc.

- Foreign Nationals, Visitors and Tours
  - Hiring Foreign Nationals, Interns, Consultants
  - Do you allow cleaning crew, vending machines, building maintenance, etc. free roam of your facility?
  - Visitors and providing tours – designate a person responsible to provide all tours. Train that person so he/she is aware of what is ITAR technical data.
Where do we go from here?

Develop an Export/Import Compliance Program

- **Recordkeeping**
  - Must maintain records relating to the manufacturing of defense articles.
  - Regarding exports must maintain records for 5 years from the date of export (exemption), expiration date of the license (or when exhausted).

- **Technical Data/Technology**
  - Marking, Storing and Controlling
  - Engineering and IT

- **Training and Audits**
  - All Hands, Specialized, New Hire
  - Annual Audits

- **Reporting Violations**
  - Promote an environment where people will feel comfortable raising concerns about a violation or if they suspect a violation may occur
Where do we go from here?

Prohibited Exports ITAR §126.1

- It is the policy of the U.S. to deny licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applied to Belarus, Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela. This policy also applies to countries with respect to which the U.S. maintains an arms embargo (e.g., Burma, China, and The Republic of Sudan) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the U.S.

- This also applies to United Nations Security Council Embargoes: Cote d’Ivoir, Democratic Republic of Congo, Eritrea, Iraq, Iran, Lebanon, Liberia, Libya, North Korea, Somalia, and The Republic of Sudan.

- In addition, there are special licensing regulations relating to the following countries: Iraq, Afghanistan, Democratic Republic of the Congo, Haiti, Libya, Vietnam, Somalia, Sri Lanka, Liberia, Fiji, Cote d’Ivoir, Cyprus, Zimbabwe, Lebanon, and Sudan.
Where do we go from here?

- ITAR §127.12 Voluntary Disclosure
  - Initial Notification Process— defined in the regulations to inform DDTC immediately a violation has been discovered. 60 days to complete full investigation.
    - Can ask for an extension. No guarantee it will be granted.
  - Corrective Actions
    - Commitment to establish new procedures, conduct additional audits, and provide or obtain additional training.
  - Submit the Full Disclosure to DDTC.
  - Share the details of the violations during the next training session – Lessons Learned.
Where do we go from here?

- ITAR Violations – Penalties & Fines
  - Civil Sanctions
    - Interim Suspension - Up to 60 Days
    - Administrative Debarment from Business with U.S. Government - usually for 3 years
    - Company Fines - up to $500,000 per Violation
  - Criminal
    - For Willful Violations
    - Statutory Debarment - for 3 years
    - Individual Fines - up to $1,000,000
    - AND/OR . . . 10 years in prison!!
2013 – Export Reform

- Watch for changes relating to the transfer of military items currently on the USML to a new “600” category on the Commerce Control List, EAR.
  - Yes. Military items will soon be controlled under the EAR.

- Proposed changes to USML V, VI, VII, VIII, IX, X, XI, XIII, XIX, and XX have already be published.

- Anticipate a Federal Register Notice on the USML XII to be released as a proposed rule within the next 6 months. There will be a period to allow industry to provide comments back to DDTC.
Everyone is responsible for export/import compliance.

Require each department to incorporate compliance activities in their day to day functions.

- Shipping/Receiving
- Accounting
- Business Development
- Sales
- Contracts
- Customer Service
- Purchasing
- Human Resources
- Engineering and Quality
- Management
- Information Technology
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