

2012 Joint Armaments Division Conference for Small Arms,
Gun and Missile,
and Unconventional and Emerging Armament systems

2012 Update to U.S. Export Controls &

Introduction to Export Controls



Follow up from 2011:

- Review and re-write of all 21 USML categories

Ongoing

- New definition of “Defense Services?”

Still pending

- New policy on 3rd party nationals

New rule

- Electronic payment of annual registration fees

New rule



Review and re-write of all 21 USML categories

Categories 7, 8, 19, and 20 currently being amended.

Changes to Categories 1, 2 or 3? Not likely...



Proposed change to the definition of “Defense Services”

The proposed change removes the requirement in § 124.1(a) to seek DDTC approval if the defense service that is being rendered uses public domain data or data otherwise exempt from ITAR licensing requirements.

The following is not a *defense service*:

- (1) Training in the basic operation (functional level) or basic maintenance;
- (2) Mere employment of a U.S. citizen by a foreign person;
- (3) Testing, repair, or maintenance of an item “subject to the Export Administration Regulations”
- (4) Providing law enforcement, physical security or personal protective training, advice, or services to or for a foreign person
- (5) Providing assistance (including training) in medical, logistical (other than maintenance), or other administrative support services to or for a foreign person.



Proposed change to the definition of “Defense Services”

Proposed rule provides definitions to Organizational-level maintenance, Intermediate-level maintenance, and Depot-level maintenance.

Comments were accepted through June 13, 2011; no final rule issued yet.



New policy on 3rd party nationals

It's complicated.



New policy on 3rd party nationals

“Substantive contacts”

“Business and personal travel”

Allegiances to U.S., versus other nation States



New policy on 3rd party nationals

Under §126.18, “substantive contacts” may include (but are not limited to) the following:

- Regular travel to a foreign location;
- Recent or continuing contact with agents, brokers, and foreign nationals;
- Continued demonstrated allegiance to a foreign country;



New policy on 3rd party nationals

Under §126.18, “substantive contacts” may include (but are not limited to) the following:

- Maintenance of business relationships with persons within a foreign country;
- Maintenance of a residence within a foreign country;
- Receiving salary or other continuing monetary compensation within a foreign country; or
- Actions otherwise indicating a risk of diversion.



New policy on 3rd party nationals

Additional guidance:

- Contacts by the FN/TCN with government or military officials, agents, or proxies;
- Business contacts (focusing on the nature of the business and its legitimacy);
- Family contacts with individuals who pose a risk of diversion;



New policy on 3rd party nationals

Additional guidance:

- Non-family contacts with individuals who acquire and sell defense articles for profit or monetary gain, who work for or with front companies, or who work for criminal or terrorist organizations;
- The totality of continuing connections to a third country, including carrying a passport of that country, casting ballots for elections in that country, currently or previously holding an official position within that country, and prior employment with the government of that country;



New policy on 3rd party nationals

Additional guidance:

- Frequent travel to a foreign country; and
- Maintaining a residence in a foreign country.



New policy on 3rd party nationals

Points to remember:

“Substantive contacts”

“Business and personal travel”



Electronic payment of annual registration fees

Changes to DS2032 registration form

Payment via ACH, SWIFT or FedWire by domestic and foreign parties



Update on new policies and regulations



New regulations and policies:

- Filing, Retention, and Return of Export Licenses and Filing of Export Information
- Defense Trade Cooperation Treaty Between the United States and the United Kingdom
- Debarred freight forwarders
- Exports to Iraq and Afghanistan
- Changes to the Commodity Jurisdiction review process
- Proposed changes to brokering regulations
- Export of Black Rifles to civilians



Filing, Retention, and Return of Export Licenses and Filing of Export Information

Old Rule:

Return paper copies of expired or exhausted DSP 5, DSP 61, DSP 73, and DSP 85 forms to PM/DDTC.



Filing, Retention, and Return of Export Licenses and Filing of Export Information

Proposed Rule:

No requirement to return expired or exhausted licenses to DDTC if:

- License was issued electronically by DDTC
- License was filed with Customs and Border Protection via the Automated Export System (AES).
- Full text can be found at 76 FR 68311



Defense Trade Cooperation Treaty Between the United States and the United Kingdom

- Creation of an exemption for the export of ITAR controlled items
- May only ship to pre-approved government agencies and companies
- May only ship to pre-approved locations
- Not all defense items qualify for the exemption.
- Re-Export of Defense Articles requires approval of the U.S. and/or British government.



Defense Trade Cooperation Treaty Between the United States and the United Kingdom

- Parties must comply with all the provisions of ITAR, including §126.17, in order to use this exemption.
- Additional requirements apply
- Full text can be found online at 77 FR 16592
- Additional guidance from DDTC is online at:

<http://pmddtc.state.gov/treaties/index.html>



Debarred Freight Forwarders

BAX Global Inc

Kuhne and Nagel

Panalpina Welttransport

Panalpina Inc.

Schenker AG:



Exports to Iraq

“On December 15, 2011 an end to military operations in Iraq was officially declared. Effective December 26, 2011 the Department of State will no longer expedite any license application submitted in support of Operation New Dawn (OND).”



Exports to Afghanistan

To be eligible for this expedited handling, the following criteria must be met and the requests must be for:

Defense articles and services to forces or organizations deployed in Afghanistan, or;

Defense articles and services to forces or organizations within 90 days of a scheduled deployment.

must be clearly marked so as not to delay processing. The Transaction ID should begin with the letters “OEF,” as applicable.



Exports to Afghanistan

Requests to re-export USML controlled defense articles under ITAR §123.9 to coalition partners in Afghanistan will be considered for expeditious handling.

To qualify for this consideration, the request must clearly demonstrate that the re-export is for defense articles for:

U.S. and/or coalition forces, or

Supporting contractors currently deployed in Afghanistan or;

Forces scheduled to deploy to Afghanistan within 90 days.



Exports to Afghanistan

Export of Fully Automatic Weapons to Private Entities

Fully automatic weapons may be exported via DSP 73 or DSP 5 to civilian contractors and/or private companies operating in Afghanistan.

DDTC requires justification for the number of weapons being requested, as well as end use assurances.



Changes to the CJ Process

Old Process:

Written correspondence to State and Commerce to determine which agency had proper jurisdiction over the item.

New Process: Electronic submission

Applicants are not required to be registered with DDTC - See 22 CFR 120.4(b)

Electronic Submission to DDTC: Submission submitted via on-line application using the DS-4076 Commodity Jurisdiction (CJ) Request Form



Changes to the CJ Process

Upon submission, two outcomes:

Returned Without Action (RWA):

Usually based upon a request for more information.

Include the DDTC RWA letter as an attachment to the new CJ submission.

Resubmission will be processed as a new CJ request and should be submitted accordingly as a new DS-4076.



Changes to the CJ Process

CJ Case Number:

Successful submission results in receipt of an electronic confirmation .

Applicant will receive a Commodity Jurisdiction case number via email within 48 hours.

Additional information:

http://pmddtc.state.gov/commodity_jurisdiction/index.html



Proposed changes to brokering regulations

The Good, The Bad, and The Indifferent



Proposed changes to brokering regulations

The Good:

Elimination of Dual registration for manufacturer/exporters that engage in brokering activity

Clarification of “brokering activity.”



Proposed changes to brokering regulations

The Good:

Clarification of “brokering activity.”

“brokering does not include activities that do not extend beyond administrative services such as providing or arranging office space and equipment, hospitality, advertising, or clerical, visa, or translation services, or does not include activities beyond the provision of legal advice by an attorney to his client.”



Proposed changes to brokering regulations

The Bad:

Current regulation: “act as an agent for others”

Proposed change: “any person that engages in brokering activities.”

Proposed regulation defines brokering activities as “any action to facilitate the manufacture, export, re-export, import, transfer, or retransfer of a defense article or defense service.”



Proposed changes to brokering regulations

The Indifferent:

Proposed change makes it easier for foreign parties to register as brokers and pay the registration fee to DDTC



Export of “Black Rifles” to civilian end users

Old policy: No exports of collapsible stocks, threaded barrels, or flash hiders to civilian end users.



Export of “Black Rifles” to civilian end users

Current policy: Exports of collapsible stocks, threaded barrels, and flash hiders that are incorporated into a complete firearm are ok for civilian end users.

Prohibition on 5.56x45 and 7.62x51 versus .223 and .308 still in effect



What ever happened to...

1. Viktor Bout, Russian Arms dealer extraordinaire?
2. 2010 SHOT Show arrests for violating the FCPA?





HURRICANE BUTTERFLY

Import / Export Services

FFL Types 1, 7, 11, and 23

DDTC registered exporter and broker



Firearms Law Group

Legal Services to the Military-Industrial Complex

Jason M. Wong, Attorney at Law



Promoting National Security Since 1919

