

Steps to Comply with the International Traffic in Arms Regulations (ITAR)

November 2018

There are two primary regulatory bodies that administer U.S. export control laws for defense or military-related products and services.

1. The Department of State via the Directorate of Defense Trade Controls (DDTC) administers the **International Traffic in Arms Regulations (ITAR)**, which controls items considered defense articles, services, and technical data.
2. The Department of Commerce via the Bureau of Industry and Security (BIS) administers the **Export Administration Regulations (EAR)**, which controls purely civilian items, items with both civil and military, terrorism, or potential WMD-related applications, and items that are exclusively used for military applications but that do not warrant control under the ITAR.

Licensing and other export certification requirements for exporting a military-related product (or service), are dependent upon the item's technical characteristics, the destination, the end-user, and the end-use. You, as the exporter, must determine whether your export requires a license. When making that determination consider:

What are you exporting? Where are you exporting? Who will receive your item? What will your item be used for?

To fully comply with ITAR and the DDTC, complete the following steps:

1. It is required that all companies in the business of manufacturing, exporting, or temporarily importing defense articles, or furnishing defense services, register with the DDTC. You can use the [United States Munitions List \(USML\)](#) to determine whether your products or services fall under ITAR jurisdiction. If your products or services are listed on the USML, then you are required to register with the DDTC. If you export or temporarily import defense products or services listed on the USML, you are required to apply for and then receive a special license.
 - a. If your product or service is not on the USML, then it does not require an ITAR license from the DDTC. However, it may still require a license based on the country, company, or individual that you are doing business with or who ends up with the products.
 - i. The Department of the Treasury via the Office of Foreign Assets Control (OFAC) administers and enforces sanctions against foreign countries, people, and organizations. A license from the Department of Treasury may be required if you are exporting to an OFAC restricted country. For more information visit the [OFAC Resource Center](#) page.
 - ii. Several agencies publish lists that identify persons, businesses, organizations, and other groups to which trade is restricted or prohibited. To determine whether your product or service requires a license based on who will receive your item or who the end-user is, it is recommended that you visit the [BIS How Do I Avoid Dealing with Unauthorized Parties](#) page for more information.

- b. It is often the case that companies can use this registration as a branding tool, informing clients that they are registered in the DDTC system. More information can be found on the [DDTC Registration](#) page.
 - c. If you are unable to determine whether your product or service is on the USML, you may submit a [Commodity Jurisdiction](#) request or consult with the MITC.
2. Once you register your company with the DDTC and have determined that your products fall under ITAR jurisdiction by using the U.S. Munitions List, you must obtain approval from the DDTC to export or to temporarily import a defense article, service, or technical data. The two types of formal approval that a company can apply for are a License, and an Agreement, both are described below.
 - a. The online resource tool used to submit most unclassified license and agreement applications is DTrade. Once you are registered with ITAR and the DDTC, you must setup the electronic DTrade submission system. The DDTC anticipates that most licensing and agreement submissions will be available via DTrade soon. Classified licenses and agreement applications may require other forms of submission. See the [DDTC DTrade](#) page for more information.

License: you must apply for a license if you intend on exporting or importing defense articles, services, or technical data. There are different types of licenses, and corresponding forms, that the DDTC uses to regulate defense trade. Below are all the different types of license applications:

- Unclassified: Permanent Export License (form DSP-5)
- Unclassified: Temporary Export License (form DSP-73)
- Unclassified: Temporary Import License (form DSP-61)
- Classified: Export (Permanent or Temporary) & Temporary Import License (form DSP-85)
- Articles sold under the Foreign Military Sales Program (form DSP-94)
- Non-Transfer and User Certificate (form DSP-83, completed in addition to form DSP-85 when applying for a Classified: Export (Permanent or Temporary) & Temporary Import License)

For more information about these licenses and to access all the forms, visit the [DDTC Forms](#) page.

Agreement: used when a U.S. person provides a defense service to a foreign person, gives authorization to manufacture defense articles abroad, or establishes a distribution point abroad for defense articles of U.S. origin for subsequent distribution to foreign persons. There are two types of agreements, a Manufacturing License Agreement and a Technical Assistance Agreement. Below are a list of activities that are frequently requiring agreements:

- Supporting Direct Commercial Sales to Foreign Parties
- Providing Overseas Maintenance or Training Support
- Technical Studies, Evaluations, Demonstrations or Consultations with Foreign Parties
- Release of Manufacturing Data or Rights
- Efforts to Import Technology from Abroad
- Supporting a Foreign Military Sales Case (Beyond scope of Letter of Offer and Acceptance)
- Supporting U.S. government-Sponsored Foreign Contracts



For more information about agreements, visit the [DDTC Agreement Guidance](#) page.

3. Once you submit your license or agreement application via DTrade (or by another method), you must wait for approval before you engage in defense trade.
 - a. Applications can take a few weeks or several months depending on the type of application, the product or service, the destination or source country, or the end-user. However, it usually takes longer for companies to receive approval for their first application; subsequent or repeat applications may be expedited.
4. If you or your company fails to comply with ITAR and the DDTC, there can be serious consequences. Some possibilities are:
 - Civil penalties per violation up to \$1M and imprisonment for up to 20 years
 - Interim suspension
 - Seizure and forfeiture
 - Debarment from doing defense trade for a minimum of 3 years

It is highly recommended that you consult with an international trade attorney to ensure compliance with ITAR and the DDTC. A trade attorney can help you navigate the specifics of the ITAR and help you develop a company compliance plan for future defense trade transactions.

Defense Industry Maine and the Maine International Trade Center are here to help you on your defense trade endeavors! We can research defense markets, help you navigate the ITAR and DDTC process, and put you in touch with the right people to help your Maine company succeed. Contact us today for more information!