PRECISION COMPLIANCE

FREE GUIDE FROM ITARMANUAL.COM

ITAR Frequently Asked Questions

Plain-English answers about the International Traffic in Arms Regulations for manufacturers, exporters, and the people responsible for keeping their companies compliant.

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BEFORE YOU START

Why this guide exists

If your company makes, sells, or supports anything with a defense application, someone in the building is responsible for ITAR compliance. Often that person is an engineer or operations manager who inherited the job, not a trade lawyer. The regulations are dense, the terminology is precise, and getting it wrong is expensive.

To make matters worse, much of the ITAR guidance circulating online is years out of date. It cites an agency that was renamed decades ago, describes paper filing processes that are now fully electronic, quotes penalty figures that have since been adjusted upward many times, and references regulation section numbers that changed when the State Department reorganized the ITAR's definitions in 2022.

This guide answers the questions we hear most from manufacturers and exporters, in plain English, checked against the current regulations and official Directorate of Defense Trade Controls (DDTC) guidance. Where a specific rule matters, we cite the section of the ITAR (Title 22 of the Code of Federal Regulations) so you can read the source text yourself at ecfr.gov.

It is a starting point, not a substitute for a compliance program. The final page explains how ITARManual.com can help with that part.

1 The basics

1. What are the ITAR, and where do they come from?

The International Traffic in Arms Regulations (ITAR) implement Section 38 of the Arms Export Control Act (22 U.S.C. 2778), which authorizes the President to control the export and temporary import of defense articles and defense services. That authority is delegated to the Secretary of State and administered by the Directorate of Defense Trade Controls (DDTC) in the State Department's Bureau of Political-Military Affairs. The regulations themselves are published at Title 22 of the Code of Federal Regulations, parts 120 through 130. (22 U.S.C. 2778; 22 CFR 120.1)

2. I have older guidance that says "ODTC." Is that the same agency?

Yes, and it is a useful freshness test. The Office of Defense Trade Controls (ODTC) was reorganized into today's Directorate of Defense Trade Controls years ago. Any document that still says ODTC, names a specific licensing officer to mail things to, or tells you to submit paper copies predates the current system: registrations, license applications, commodity jurisdiction requests, and agreements are all filed electronically through DDTC's online portal, the Defense Export Control and Compliance System (DECCS). (pmddtc.state.gov)

3. Does the ITAR apply to my company?

If you engage in the United States in the business of manufacturing, exporting, or temporarily importing defense articles, or furnishing defense services, the ITAR applies to you, and you are required to register with DDTC. A single occasion of manufacturing, exporting, or furnishing is enough to count as "engaging in the business." Two points surprise people: a manufacturer that never exports must still register, and brokers of defense articles have their own registration requirement under part 129. (22 CFR 122.1(a); 22 CFR part 129)

4. What is a "defense article," and what is the U.S. Munitions List?

A defense article is any item or technical data designated on the U.S. Munitions List (USML), which appears at 22 CFR 121.1 and is organized into 21 categories (I through XXI), from firearms and ordnance through aircraft, spacecraft, and directed-energy weapons. The term is broader than finished hardware: it includes technical data recorded in any form, and even forgings, castings, and other unfinished products that have reached the point where they are clearly identifiable as defense articles. It does not include basic marketing information or general system descriptions. (22 CFR 120.31; 22 CFR 121.1)

2 Jurisdiction: USML or CCL?

5. My product is not obviously military. Which agency's rules apply?

Two lists matter. Items on the USML are controlled by the State Department under the ITAR. Dual-use items, and many less-sensitive military items (the "600 series"), are on the Commerce Control List (CCL) and controlled by the Commerce Department's Bureau of Industry and Security under the Export Administration Regulations (EAR). The ITAR prescribes an "order of review" for classifying your own products, built around the defined term "specially designed." Getting this first call right drives everything else: registration, licensing, and which agency you answer to. (22 CFR 120.11; 22 CFR 120.41)

6. What if I am not sure which list my product is on?

You can ask the government to decide by submitting a commodity jurisdiction (CJ) request. The request is a Form DS-4076, submitted electronically through DECCS. State makes the determination in consultation with the Departments of Defense and Commerce, based on the article's form, fit, function, and performance capability, plus the design and use history you provide. If the agencies disagree, State resolves the dispute under established interagency procedures. (22 CFR 120.12; 22 CFR 120.4)

7. How long does a commodity jurisdiction determination take?

Far less time than it used to. Under the current rule, DDTC provides a preliminary response within 10 working days of receiving a complete request. If a final determination has not been issued after 45 days, you may request expedited processing in writing. You can also appeal a determination you disagree with. (22 CFR 120.12(d), (e))

8. My foreign customer will only use the item commercially. Does that help?

Not by itself. The ITAR states that the intended use of an article or service after its export, whether military or civilian, is not, by itself, a factor in determining whether it is subject to the ITAR. Jurisdiction turns on what the article is: its form, fit, function, and performance capability, and its design, development, and use history. An item specially designed for a military application stays ITAR-controlled even if a particular customer plans a purely civilian use. (Note 2 to 22 CFR 120.3; 22 CFR 120.12(b); 22 CFR 120.41)

3 Registration, licensing, and agreements

9. How does DDTC registration actually work?

You submit a Statement of Registration (Form DS-2032) electronically through DECCS and pay the registration fee, then renew annually (the renewal window opens 60 days and closes 30 days before your registration expires). Under the fee schedule effective January 9, 2025, Tier 1 is $3,000 per year for new registrants and renewing registrants with no favorable licensing determinations in the measuring period; Tier 2 is $4,000 for registrants with five or fewer favorable determinations; Tier 3 is $4,000 plus $1,100 for each favorable determination beyond five. Reduced fees exist for certain 501(c)(3) organizations; check DDTC's fee page for current details. (22 CFR 122.2, 122.3; 89 FR 99084; pmddtc.state.gov)

10. Once registered, can I export?

Not yet. Registration confers no export rights or privileges; it is primarily a way for the government to know who is in the business, and it is a precondition for licenses and other approvals. Each export of a defense article, item of technical data, or defense service needs its own authorization: a license, an approved agreement, or a specific regulatory exemption. (22 CFR 122.1(c); 22 CFR 120.14, 120.15)

11. What kinds of licenses and approvals are there?

The workhorses, all filed through DECCS, are:

- **DSP-5** - permanent export of unclassified defense articles and technical data
- **DSP-61** - temporary import of unclassified defense articles
- **DSP-73** - temporary export of unclassified defense articles
- **DSP-85** - export or temporary import of classified articles and data
- **Agreements** (TAAs and MLAs) under part 124 for ongoing programs

Exemptions in the regulations can replace a license in specific, narrow situations, but every exemption has conditions and recordkeeping requirements, and most are unavailable for proscribed destinations. (22 CFR parts 123, 124, 125; 22 CFR 120.57)

12. Are there special exemptions for close allies?

Yes, two big ones. The long-standing Canadian exemption permits license-free export of many unclassified defense articles and defense services to Canadian government entities and Canadian-registered persons, subject to a substantial exclusion list. Newer is the AUKUS exemption, in effect since September 2024: it authorizes license-free transfers of many defense articles and services among authorized users in the United States, the United Kingdom, and Australia, limited to the territory of the three countries and excluding the items listed in Supplement No. 2 to part 126. Both exemptions carry detailed conditions, and using an exemption you do not actually qualify for is itself a violation, so read the exclusion lists before relying on either. (22 CFR 126.5; 22 CFR 126.7; 89 FR 67270)

13. What are TAAs and MLAs?

A Technical Assistance Agreement (TAA) authorizes the performance of defense services or the disclosure of technical data to a foreign party; it is the standard vehicle for engineering support, training, and joint development. A Manufacturing License Agreement (MLA) goes further: it authorizes a foreign person to manufacture defense articles abroad, and covers the export of the manufacturing know-how that entails. Both require DDTC approval before you perform. (22 CFR 120.57(d), (e); 22 CFR part 124)

14. What are SME and MDE, and why do the asterisks on the USML matter?

Significant Military Equipment (SME) means articles warranting special export controls because of their capacity for substantial military utility or capability. On the USML, SME items are the ones preceded by an asterisk, plus all classified articles. For permanent export of SME you must obtain a completed Form DSP-83 Nontransfer and Use Certificate from the foreign end user, committing them not to retransfer or repurpose the article without U.S. approval.

Major Defense Equipment (MDE) is SME with a nonrecurring research and development cost over $50 million or total production cost over $200 million. Large transactions trigger certification to Congress before a license can issue: currently $14 million (MDE) or $50 million (articles and services) for most countries, and $25 million / $100 million for NATO members, Australia, Israel, Japan, New Zealand, and South Korea. Exports of USML Category I firearms require certification at $1 million. (22 CFR 120.36, 120.37; 22 CFR 123.10; 22 CFR 123.15)

15. Which destinations are off-limits?

Section 126.1 of the ITAR lists proscribed destinations. Belarus, Burma, China, Cuba, Iran, North Korea, Syria, and Venezuela are subject to a blanket policy of denial, and a further set of countries including Afghanistan, Iraq, Libya, Russia, and Sudan face country-specific prohibitions. The list changes with world events, so check the current text of 126.1 before quoting, proposing, or shipping. Two traps worth knowing: most exemptions are unavailable for these destinations, and even making a proposal or presentation to sell to one generally requires DDTC approval. If you learn of a proposed or actual sale involving a proscribed destination, you have an affirmative duty to notify DDTC. (22 CFR 126.1(a), (d), (e))

4 The definitions that catch people

16. What counts as an "export"? I do not ship anything overseas.

Shipping is only one kind of export. Under the ITAR, "export" also includes releasing or otherwise transferring technical data to a foreign person *inside the United States* (a "deemed export"), transferring registration, control, or ownership of an aircraft, vessel, or satellite to a foreign person, releasing a defense article to a foreign embassy or its agencies, and performing a defense service for a foreign person anywhere. A release of technical data to a foreign person is deemed an export to every country where that person holds or has held citizenship, or holds permanent residency. A plant tour, an email, or a shared drive can be an export. (22 CFR 120.50; 22 CFR 120.56)

17. Who is a "U.S. person," and who is a "foreign person"?

A U.S. person is a U.S. citizen, a lawful permanent resident (green-card holder), a protected individual under 8 U.S.C. 1324b(a)(3), or an entity incorporated to do business in the United States, including government entities. A foreign person is any natural person who is none of those things, plus any foreign entity, international organization, or foreign government and its agencies. This definition is why ITAR compliance reaches into hiring and IT: an engineer on a work visa is a foreign person, and giving them access to technical data is an export to their home country. (22 CFR 120.62; 22 CFR 120.63)

18. What is "technical data"?

Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles: blueprints, drawings, photographs, plans, instructions, documentation, and software directly related to defense articles, plus classified information and information under an invention secrecy order. It does *not* include general scientific, mathematical, or engineering principles commonly taught in schools, information in the public domain (as defined in 120.34), or basic marketing information about function or purpose. Deciding what falls on each side of that line is one of the core jobs of a compliance program. (22 CFR 120.33; 22 CFR 120.34)

19. What is a "defense service"?

Furnishing assistance, including training, to foreign persons in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles; furnishing controlled technical data to foreign persons; or military training of foreign units and forces. Note the breadth: helping a foreign supplier troubleshoot the production of an ITAR-controlled part is a defense service even if no drawing changes hands. (22 CFR 120.32)

20. How long do we have to keep records?

Five years. Registrants must maintain records of the manufacture, acquisition, and disposition of defense articles, technical data, defense services, and brokering activities, including documentation for every export made under an exemption, for five years from the expiration of the license or approval or from the date of the transaction. Records must be available for inspection by DDTC and by customs and enforcement agencies. (22 CFR 122.5; 22 CFR 123.26)

5 Enforcement

21. What are the penalties for violating the ITAR?

They are severe, and they apply per violation. Civil penalties for violations of the AECA's export controls run up to $1,271,078 per violation, or twice the value of the transaction, whichever is greater (as adjusted for inflation effective January 10, 2025; the figure is revised periodically). Willful criminal violations carry fines of up to $1,000,000 per violation, up to 20 years imprisonment, or both. Keep in mind that a single bad program can generate dozens or hundreds of counted violations. (22 CFR 127.10; 90 FR 1866; 22 U.S.C. 2778(c))

22. Besides fines, what else can happen?

Conviction under the AECA triggers statutory debarment - a prohibition on participating, directly or indirectly, in any ITAR-regulated activity, not just exporting - generally for three years, and reinstatement is never automatic; debarred parties are published in the Federal Register. DDTC can also condition, deny, or revoke licenses, and companies convicted of export offenses may separately face suspension or debarment from U.S. government contracting under the Federal Acquisition Regulation. For a defense supplier, losing export privileges or contract eligibility is often costlier than the fine. (22 CFR 127.7; 22 CFR 127.11; 48 CFR subpart 9.4)

23. We think we already violated the ITAR. What should we do?

Talk to qualified export-control counsel promptly, and look hard at a voluntary disclosure. The ITAR states that a voluntary, timely, and complete disclosure of a violation may be considered a mitigating factor in enforcement. Disclosures are made to DDTC's Office of Defense Trade Controls Compliance. What you should not do is nothing: violations surface through audits, disgruntled employees, customs stops, and prime-contractor flowdowns more often than companies expect. (22 CFR 127.12)

24. What does DDTC expect our compliance program to look like?

DDTC published its ITAR Compliance Program Guidelines in December 2022 (updated September 2023), and they are the clearest statement yet of what the government expects. The guidelines describe eight elements: management commitment; registration, jurisdiction and classification, and authorizations; recordkeeping; detecting, reporting, and disclosing violations; ITAR training; risk assessment; audits and compliance monitoring; and a written ITAR compliance manual. In other words, DDTC expects your compliance program to be documented, resourced, and owned by someone - not a binder that exists only when a customer asks. (DDTC, ITAR Compliance Program Guidelines, pmddtc.state.gov)

NEXT STEP

Knowing the rules is half the job

The other half is proving it. What DDTC, auditors, and prime contractors expect to see is a working compliance program: written policies, documented procedures, trained employees, and clear ownership. Building one from the raw regulations takes hundreds of hours; hiring consultants to build it can cost tens of thousands of dollars.