

Getting Started with Defense Trade

The Directorate of Defense Trade Controls (DDTC) and the Defense Trade Function

Contents:

- I. Does Defense Export Controls Apply to Me? A Quick Action Checklist**
- II. Rationale for Regulating Defense Exports**
- III. DDTC – The Offices that Administer the Defense Export Regulations**
- IV. Authority for Control of Arms Exports**
- V. U.S. Government Regulatory Measures**
- VI. End-Use/End-User Monitoring**
- VII. Other Compliance Mechanisms**
- VIII. D-Trade – Conducting Your Defense Trade Business Electronically**
- IX. To Learn More**

Does Defense Export Controls Apply to Me? A Quick Action Checklist

- Find out if what you want to export (hardware, technical data, and/or defense services) is covered in the U.S. Munitions List (USML), found in [Part 121 of the ITAR](#).
- Not sure if your desired export is covered by the USML? File a [Commodity Jurisdiction request](#).
- If what you want to export is on the USML, you must be [registered](#) with DDTC.
- After you are registered, you may apply for an export license. [D-Trade](#) is the preferred way of licensing.
- Have basic questions you need answered? Call the [DDTC Response Team](#).

Rationale for Regulating Defense Exports

The U.S. Government views the sale, export, and re-transfer of defense articles and defense services as an integral part of safeguarding U.S. national security and furthering U.S. foreign policy objectives. Authorizations to transfer defense articles and provide defense services, if applied judiciously, can help meet the legitimate needs of friendly countries, deter aggression, foster regional stability,

and promote the peaceful resolution of disputes. The U.S., however, is cognizant of the potentially adverse consequences of indiscriminate arms transfers and, therefore, strictly regulates exports and re-exports of defense items and technologies to protect its national interests and those interests in peace and security of the broader international community.

DDTC – The Offices that Administer the Defense Export Regulations

The Directorate of Defense Trade Controls (DDTC), Bureau of Political-Military Affairs, in accordance with 22 U.S.C. 2778-2780 of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130), is charged with controlling the export and temporary import of defense articles and defense services covered by the United States Munitions List (USML). To learn more about DDTC, please visit its Web site (www.pmddtc.state.gov).

Authority for Control of Arms Exports

The AECA provides the authority to control the export of defense articles and defense services. The AECA charges the President to exercise this authority, which has been delegated to the Secretary of State. The [AECA](#) is available through the DDTC Web site.

The ITAR implements the AECA. These regulations are frequently updated and revised to reflect change in the international political and security climate, as well as technological development. The [ITAR](#) may be accessed on the DDTC Web site.

In accordance with [Executive Order 11958](#), the State Department, with the concurrence of the Department of Defense, determines what commodities are covered by the USML. Guidance on the [commodity jurisdiction \(CJ\) function](#) is available on the DDTC Web site.

In addition to seeking technical support and national security assessments from the Department of Defense, the State Department relies on extensive interagency cooperation and coordination to perform the arms export control function. It:

- Works closely with U.S. Customs and Border Protection (review of defense industry registration, performance of defense export end-use checks, investigations, civil penalties);

- Works with the Intelligence Community to review alleged diversions and unauthorized transfers; and
- Cooperates with the Justice Department and U.S. Attorneys (pre-trial consultations, trial documentary preparation, expert testimony).

U.S. Government Regulatory Measures

For the U.S., licensing and compliance are two sides of the same coin, and there is constant interaction between the two functions.

I. Registration

- In accordance with the AECA, registration with the State Department (via DDTC) of all U.S. persons that manufacture or export defense articles, furnish defense services, or U.S. and foreign persons engaged in arms brokering, is required. The information submitted by registrants is reviewed by the Treasury Department to ensure there are no outstanding law enforcement concerns.
- Registration does not confer any export privileges, but is a prerequisite to export licensing approval.
- The registration process:
 - Informs the U.S. Government about the U.S. defense industry (legal status, export eligibility, foreign ownership/affiliations, legally responsible personnel, areas of activity);
 - Serves as a channel to provide industry with information about export regulations and Government concerns; and
 - Helps validate the bona fides of U.S. firms engaged in defense trade, especially during the review of export license applications.
- Registrants, in accordance with the AECA, are charged a fee. Congress has created a mechanism that allows the State Department to retain the money collected to help support defense export control functions.

To learn more about registration, and to access the registration form, please visit the “[Registration](#)” page on the DDTC Web site.

II. Licensing

- Department of State approval of a license application is required prior to the export of defense articles or defense services.
- About 30 percent of the applications processed by the State Department are referred to other offices and agencies (e.g., the Department of Defense) for comment and recommendations. This is what is referred to as “staffing” the case.
- During the review process, a computerized review of all parties to the proposed transactions is made against a “watch list” of known or suspected export violators. A “match” results in a full compliance review by the State Department before final action is taken on the application.
- In addition to sorting through detailed technical specifications, the license application review process clarifies the ultimate end-use and end-user of the defense export, as well as facts related to intermediate handling.
- From the enforcement point of view, the review process provides an avenue to prevent or eliminate diversions, and to assist the U.S. Government in investigations and prosecutions should an export violation be suspected or reported.
- In submitting license applications, companies must certify eligibility to export and an understanding of the laws governing such exports. Moreover, in carrying out the physical act of exporting, they must meet certain conditions in terms of documentation (electronic reporting of export information using the [Automated Export System, “AES”](#)) and handling (particularly of classified material).
- Exporters must make clear on shipping documents that the defense export cannot be resold or retransferred without prior U.S. Government authorization – a licensing requirement that also involves compliance issues.

To learn more about licensing, and to view the various licensing forms, please visit the [D-Trade Info Center](#) and the “[Licensing](#)” page on DDTC’s Web site.

End-Use/End-User Monitoring

End-Use checks are key to the State Department’s effort to prevent illegal defense exports and technology transfers.

End-use checks (known under the program name “Blue Lantern”) enlist the help of U.S. diplomatic posts, the cooperation of U.S. Customs and Border Protection, and, most importantly, foreign governments in the conduct of pre-license checks and post-shipment verifications of defense exports.

[End-Use monitoring reports](#) are available on DDTC’s Web site.

Other Compliance Mechanisms

The U.S. Government spends considerable effort trying to prevent violations, via participation in industry conferences, Internet postings, and publication of regulations.

When a problem arises, the Department of State has broad authority to take action (i.e., suspend, deny, or revoke license approvals). Working with law enforcement agencies, it can prosecute criminally (possible prison sentences and fines) and independently can take civil action (e.g., fines and denial of export privileges).

Remedial assistance/attention is also offered. The State Department works with companies to develop effective export compliance programs. DDTC makes available a [guideline describing the basic elements of a compliance program](#) via its Web site.

D-Trade – Conducting Your Defense Trade Business Electronically

Effective January 15, 2004, DDTC, through the use of the D-Trade electronic licensing system, is prepared to receive and adjudicate fully electronic defense export authorization requests properly submitted by any U.S. person who is a defense trade registrant and wishes to permanently export unclassified defense articles via the Form DSP-5, temporarily import unclassified defense articles via the Form DSP-61, or temporarily export unclassified defense articles via the Form DSP-73. Based on envisioned expansion of electronic processing capabilities,

DDTC anticipates, with few exceptions, most export licensing submissions via D-Trade in the near future.

For more information on D-Trade, consult the [D-Trade Information Center](#), accessed through the DDTC home page. There you will find links to more background information on electronic licensing.

To Learn More

The DDTC Web site has more information that may be useful to you. The [homepage](#) has a comprehensive listing of links to information that can assist you in your defense exporting endeavors; in addition, consult “New Items and Announcements” for the latest updates.

If you have any questions about any aspect of the defense export process, please contact the [DDTC Response Team](#).