

UPDATE – Notice on License Support Documentation

As of August 4, 2008, the subject notice has been updated per the bolded sections identified below.

Text originally posted September 10, 2005:

Section 123.1(c)(4) of the International Traffic in Arms Regulations (ITAR) establishes that the Directorate of Defense Trade Controls (DDTC) may require all pertinent documentary information in order to consider the issuance of a license or other approval. Consistent with our longstanding practice, in addition to requiring a purchase order, letter of intent, or other documentation, DDTC's Office of Defense Trade Controls Licensing (DTCL) may require a signed contract to be submitted with any application for the permanent export of defense articles.

The purpose of this requirement is to confirm the legitimacy of the transaction, including the roles and responsibilities of all the parties. DTCL has received with increasing frequency supporting documentation that calls into question whether the applicants are in a position to fulfill their responsibilities as registered exporters and, in fact, whether anyone at the companies could meet the obligations as empowered officials under Section 120.25. In these instances, the applications have been Returned Without Action advising the applicants of the ITAR requirements.

At this time, DTCL finds it prudent to iterate to exporters of defense articles the fundamental ITAR requirement for supporting documentation.

The purchase documentation must be from the foreign party purchasing the defense articles. The purchase documentation cannot be from its U.S. subsidiary since the latter entity is considered a U.S. person under the ITAR. The purchase order must be addressed and directed to the registered U.S. party selling the defense articles and submitting the export license application. This ensures the applicant is in a contractual position to fulfill all responsibilities of registered parties under the ITAR, including being knowledgeable of all elements of the transaction. The documentation may contain references to other parties and their roles (e.g., suppliers, manufacturers, freight forwarders), but at a minimum must specifically explain the role of the party submitting the license application.

All applications not in compliance with this requirement will be Returned Without Action. In the interim, DTCL will consider applications on a case-by-case basis and determine whether they may be approved pending full implementation of this requirement.

Text added and posted April 28, 2008:

The supporting purchase order, letter of intent, or other documentation must have an issue date within one year from the date of application submission; if more than one year old, a letter of explanation must be provided and will be considered on a case-by-case basis. The only exception to this requirement is an unshipped balance license request where the original purchase order or letter of intent is required as supporting documentation with a letter of explanation identifying the unshipped balance.

Any supporting purchase order, letter of intent, or other documentation identifying the purchase price in a non-U.S. currency must provide the exchange rate and U.S. dollar conversion for each line item. This conversion must be annotated on the relevant document by either the foreign party or the U.S. applicant.

The supporting purchase order, letter of intent, or other documentation must state the ultimate end-user and end-use of the requested defense articles. The end-user and end-use statement must be consistent with what is on the license application. If this information is not available in the supporting purchase documentation, a separate statement from the foreign party is acceptable. This separate statement does not take the place of a DSP-83 when required.

Text added and posted August 4, 2008:

Per DDTC guidance in the guidelines to complete the DSP-5, DSP-73 and DSP-61, DDTC will not accept post office boxes or other general or imprecise addresses without a letter of explanation/justification. This requirement extends to all parties to the transaction, U.S. and foreign. Incomplete, imprecise addresses or use of post office boxes may result in your application being Returned Without Action after September 15, 2008.

If the address of a manufacturer is not known, the applicant may select “Unknown” and state in the letter of explanation why the information is not available. When selecting “Unknown”, the applicant must exercise due diligence to determine the manufacturer’s information, such as requesting the source to provide the manufacturer’s information.

In order to facilitate the review of your license application, please identify related precedent licenses in the “Description of Transaction” section of the license application. There is no need to upload a copy of the precedent license but citing the precedent case number is strongly encouraged.