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ITAR 101

The Basics



The Presenters

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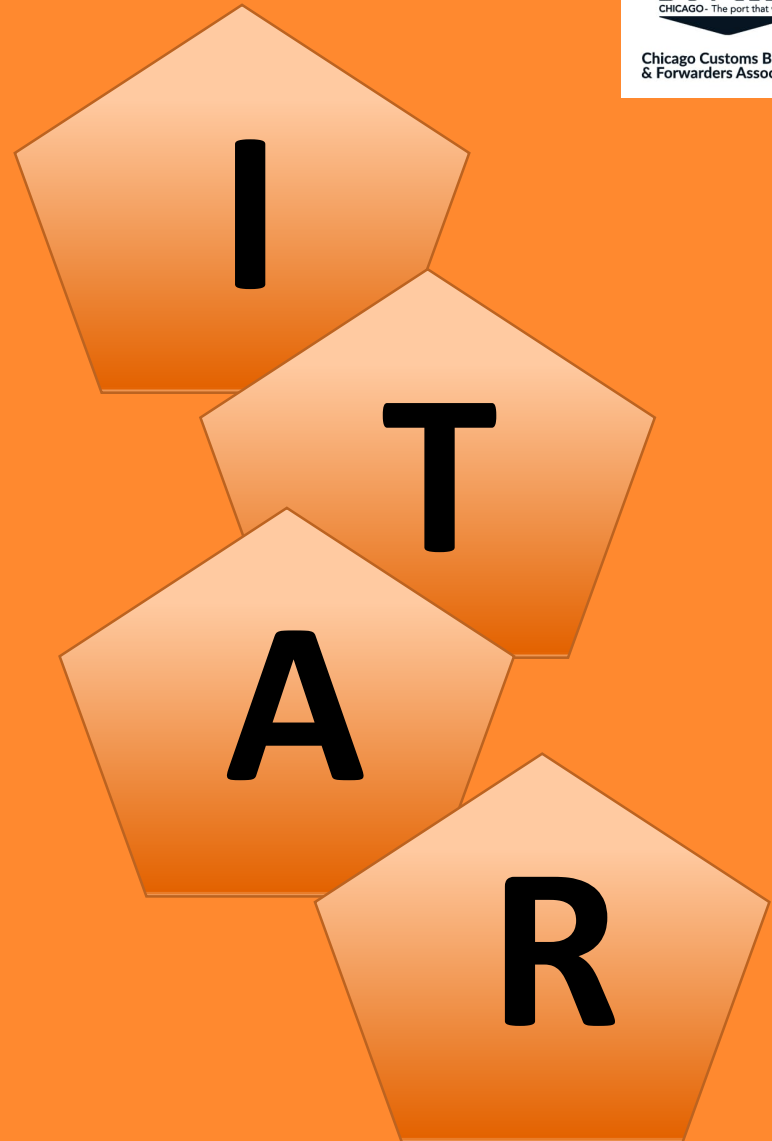


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Today's Topics

- ❖ Introduction to the International Traffic in Arms Regulations (ITAR)
- ❖ Department of Commerce vs Department of State
- ❖ Types of Licenses
- ❖ ITAR License Exemptions
- ❖ Filing of the Electronic Export Information (EEI)
- ❖ The ATA Carnet and ITAR
- ❖ Recordkeeping
- ❖ Training
- ❖ Internal Audits



The International Traffic in Arms Regulations (ITAR)



Arms Export Control Act (AECA) 22 U.S.C. 2778

Authorizes the President to designate items that shall be considered defense articles and services. This authority has been delegated to the Secretary of State by Executive Order 13637.

International Traffic in Arms Regulations (ITAR) 22 CFR 120-130

Implements the AECA and is the regulation that controls the export and temporary import of defense articles and services covered by the United States Munition List.

Introduction to the **ITAR**

Definitions

USML / USMIL

DDTC Registration

Empowered Officials





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DEFINITIONS:

22 CFR 120.4– 120.51

§ 120.4 Commodity Jurisdiction

§ 120.6 Defense Article

§ 120.7 Significant Military Equipment

§ 120.15 U.S. Person

§ 120.16 Foreign Person

§ 120.17 Export

§ 120.18 Temporary Import

§ 120.19 Reexport

§ 120.25 Empowered Official

§ 120.41 Specially Designed

§ 120.51 Retransfer





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U.S. Munitions List (USML) and U.S. Munitions Import List (USMIL)

U.S. Munitions List (USML):

Items designated by the Secretary of State for purposes of export and temporary import control constitute the U.S. Munitions List that is specified in part 121 of the ITAR.

United States Munitions Import List (USMIL):

Defense articles on the U.S. Munitions List specified in part 121 of the ITAR that are also subject to permanent import control by the Attorney General on the U.S. Munitions Import List enumerated in 27 CFR part 447 are subject to temporary import controls administered by the Secretary of State.

Permanent Imports

Are regulated by the Attorney General under the direction of the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives (see 27 CFR 447,448, 479 and 555)

USML / USMIL



USML Categories

- Category I—Firearms, Close Assault Weapons and Combat Shotguns
- Category II—Guns and Armament *(a) Guns (auto/semi)over caliber .50
- Category III—Ammunition/Ordnance for the articles in Cat I and II
- Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines
- Category V—Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents
- Category VI—Surface Vessels of War and Special Naval Equipment
- Category VII—Ground Vehicles Tanks and Military Vehicles
- Category VIII—Aircraft and Related Articles Describes Aircraft and related articles – bombers, fighters
- Category IX—Military Training Equipment and Training
- Category X—Protective Personnel Equipment
- Category XI—Military Electronics
- Category XII—Fire Control, Range Finder, Optical and Guidance and Control Equipment
- Category XIII—Materials and Miscellaneous Articles
- Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment
- Category XV—Spacecraft Systems and Related Articles
- Category XVI—Nuclear Weapons Related Articles
- Category XVII—Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- Category XVIII—Directed Energy Weapons
- Category XIX Gas Turbine Engines and Associated Equipment
- Category XX—Submersible Vessels and Related Articles
- Category XXI—Articles, Technical Data, and Defense Services Not Otherwise Enumerated



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DDTC Registration:

§122.1 Registration requirements:

- (a) Any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles, or furnishing defense services, is required to register with the Directorate of Defense Trade Controls under §122.2. For the purpose of this subchapter, engaging in such a business requires only one occasion of manufacturing or exporting or temporarily importing a defense article or furnishing a defense service.

§129.2 Definitions:

- (b) **Brokering activities** means any action on behalf of another to facilitate the manufacture, export, permanent import, transfer, reexport, or retransfer of a U.S. or foreign defense article or defense service, regardless of its origin.
 - (1) Such action includes, but is not limited to:
 - (i) Financing, insuring, transporting, or **freight forwarding** defense articles and defense services; or

§129.3(b)2 Exemption:

Persons exclusively in the business of financing, insuring, transporting, customs brokering, or freight forwarding, whose activities do not extend beyond financing, insuring, transporting, customs brokering, or freight forwarding are exempt from registration.





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Empowered Official:

§120.25 U.S. person who:

- Directly employed by the applicant (registered entity) in position of authority for policy or management within organization
- Legally empowered in writing to sign license applications or other requests for approval on behalf of applicant
- Understands provisions / requirements of various export controls & regulations and criminal, civil liability and administrative penalties for violating the Arms Export Control Act and ITAR regulations

Has independent authority to:

- Inquire into any aspect of a export, temporary import or brokering activity by the applicant
- Verify legality of transactions
- Refuse to sign any license application or other request for approval without prejudice or adverse recourse

Buck stops here!





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Department of Commerce vs Department of State



**If in doubt about a specific item being classified under the CCL or the ITAR. . .
Submit a Commodity Jurisdiction for clarification from the Department of State.**

Dept. of Commerce:

- Export Administration Regulations (EAR)
- Commerce Control List (CCL)
- License exceptions
- Lesser controls
- No registration required
- One type of license
- No charge for licenses

Dept. of State:

- ITAR
- USML
- USMIL
- License exemptions
- Stricter controls / SME
- Registration required
- Various types of licenses
- Various types of Agreements
- Cost associated with each license
- Can override Commerce Dept.



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Different Types of Licenses



DSP-5
Permanent
Export
Unclassified
(Most common)



DSP-61
Temporary
Import
Unclassified



DSP-73
Temporary
Export
Unclassified



DSP-85
Export or
Temporary
Import
Classified

ITAR Exemptions



§126.4(a-c) Shipments for US Government Agencies:

License is not required for temp. import or export of any defense article by or for any agency of the US Government.

License is not required for temp. import or export for end-use by US Government in a foreign country.

Providing: shipment pursuant to contract, end-user is US Government agency/facility – w/o be transferred

** Applicable only when all aspects (export, carriage, delivery abroad) is affected by USG or USG bill of lading issued

01

§123.4(a) Temporary import:

Servicing / Repair / Replacement

Unclassified US Origin defense items (also mfg. abroad w/US Government approval).

Serviced – inspection/testing/repair/overhaul & one to one replacement
 - excludes enhancements, upgrades etc.
 - subsequently returned to country from which it imported.

May not be from 126.1 country – Belarus, Cuba, Iran, N. Korea etc.

02





§126.5(b) Permanent and temporary export:

Permanent and temporary export of defense articles to Canada with a license and related technical data

End-use in Canada by Canadian Federal or Provincial government authorities acting in an official capacity of a Canadian-registered person or for return to U.S.
Non-transfer

Limitation: if exported for use by other than qualified Canadian-registered person, an export license from US is required

03

§126.5(a) Canadian exemption:

Temporary import and return to Canada without a license of any unclassified defense article originating in Canada.

Must annotate import documents with statement "imported in accordance with and under the authority of 22CFR126.5(a)

Electronically filed within ACE

04



Filing of the EEI

15 CFR Part 30

§30.2 (a) Filing requirements:

(iv) Notwithstanding exemptions in Subpart D, EEI shall be filed for the following types of export shipments, regardless of value:

(B) Requiring a Department of State, Directorate of Defense Trade Controls (DDTC) license under the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120 through 130).

(C) Subject to the ITAR, but exempt from license requirements, except as noted by the ITAR.

§30.4 Electronic Export Information filing procedures, deadlines, and certification statements:

(a) *EEI transmitted predeparture.* The EEI shall always be transmitted prior to departure for the following types of shipments:

(7) Items identified on the USML of the ITAR (22 CFR 121);

b) Filing deadlines for EEI transmitted

predeparture. The USPPI or the authorized agent shall file the required EEI and have received the AES ITN no later than the time period specified as follows:

- (1) For USML shipments, refer to the ITAR (22 CFR 123.22(b)(1)) for specific requirements concerning predeparture filing time frames. In addition, if a filer is unable to acquire an ITN because the AES or *AESDirect* is not operating, the filer shall not export until the AES is operating and an ITN is acquired. The downtime filing citation is not to be used when the filer's system is down or experiencing delays.

22 CFR 123.22(b)(1):

Air or Truck: 8 Hours PRIOR to departure

Sea or Rail: 24 Hours PRIOR to departure





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GROUP ACTIVITY





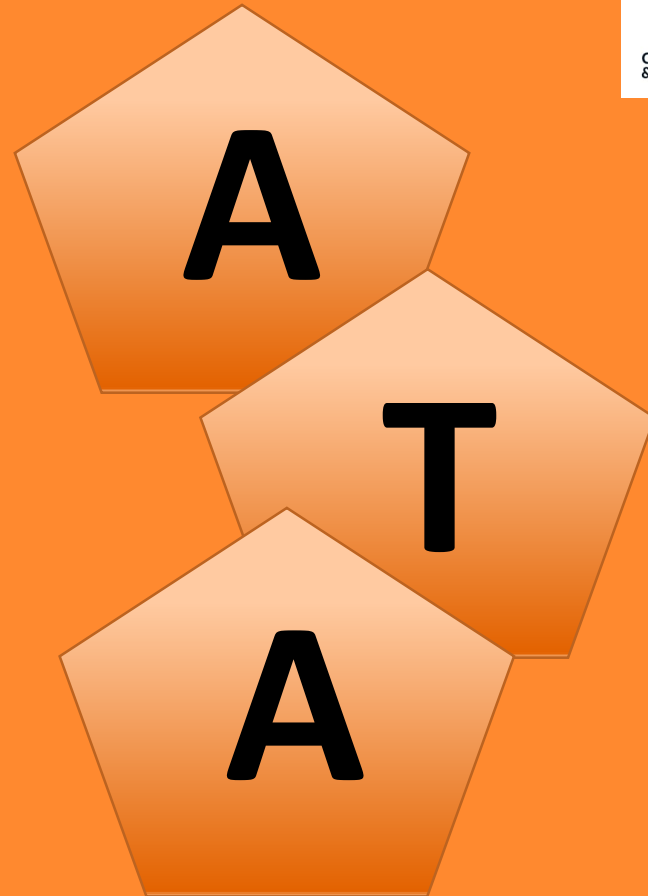
Carnet & **ITAR**

ATA Carnet – international customs and temporary export-import document permits tax and duty free export/import up to one year

Carnet Paper document – not eligible for electronic filing via ACE
DSP-73, 61 filed via ACE

CBP- Chicago requires ATA Carnet to be submitted with original DSP license and supporting documents for review/release. Counterfoil signed off and CBP will internally update Dept. of State concerning license value, import/export information.

Record retention as per §122.5



CARNET



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Recordkeeping

§122.5 Length of time maintained:

All records subject to ITAR must be maintained for a period of five years from expiration of the license or approval, to include exports using an exemption; or from the date of transaction (e.g. expired licenses or other approvals relevant to the export transaction using an exemption).

Electronic/alternate retention – records in electronic format must be maintained using a process capable of reproducing all records on paper. Records must exhibit a high degree of legibility/readability. **similar to CBP alternative recordkeeping regulations

Records maintained under this section shall be made available at all times for inspection and copying by the DDTC or US Immigration and Customs Enforcement, or U.S. Customs and Border Protection. Upon such request, person maintaining records must furnish the records

Lack of training can result in loss of sales, profits and your freedom. Train, Train, Train!

ITAR Training

- On-Line (webinars, classroom)
- Seminars
- Hiring outside consulting firms
- Certifications – CIP (Certified ITAR Professional) – IIEI
- Join Professional Associations
 - ✓ SIA (Society of International Affairs)
 - ✓ NCBFAA
 - ✓ CCBFA
 - ✓ ICPA





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Internal Audits

§127.12 Voluntary Self Disclosures – VSD

DDTC – encourages disclosure of information by persons that believe they may have violated any export control provision of the Arms Export Control Act.

Disclosure must be made prior to USG awareness / inquiry
Generally considered mitigating factor

§127.12(c)&(d)

Written notification w/documentation to DDTC

§127.10 Penalties for non-compliance

financial, debarment, prison

Civil – each violation a fine of not more than \$1,134,602.00

Criminal – each violation a fine of not more than \$1,000,000 or imprisonment not more than 10 year, or both



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RESOURCES

DDTC Website:

https://www.pmdtcc.state.gov/ddtc_public

27 CFR Part 447:

<https://www.ecfr.gov/cgi-bin/text-idx?SID=75a4814376270f752dd2fc59f29dbe56&pitd=20191108&node=pt27.3.447&rgn=div5>

15 CFR Part 30:

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title15/15cfr30_main_02.tpl



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Any Questions?

