




WELCOME





JUNE 8 & 9

ITAR EXPORT COMPLIANCE

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INTERNATIONAL
TRADE
ADMINISTRATION

Dennis Andersh, CEO and President, Parallax Advanced Research & Ohio Federal Research Network



With more than 20 years of documented leadership, management, and technical innovative successes, Andersh's expertise lies in basic research, laboratory research and development system concept development, system and platform development, and the fielding of air, ground and space mission critical systems.

He builds collaborative partnerships of academia, industry, government, commercial, congressional, and local entities to create strategic growth.



Dennis Andersh Video Presentation



John Foster, U.S. Department of State Directorate of Defense Trade Controls

John Foster is a Senior Compliance Specialist in the Directorate of Defense Trade Controls (DDTC) at the U.S. Department of State.

As part of the Compliance and Civil Enforcement Division within DDTC's Office of Defense Trade Controls Compliance, John adjudicates voluntary and directed disclosures, develops and manages consent agreements, and drafts advisory opinions in order to ensure the defense industry's proper compliance with the Arms Export Control Act and the International Traffic in Arms Regulations.



Introduction to the Directorate of Defense Trade Controls

June 8, 2021

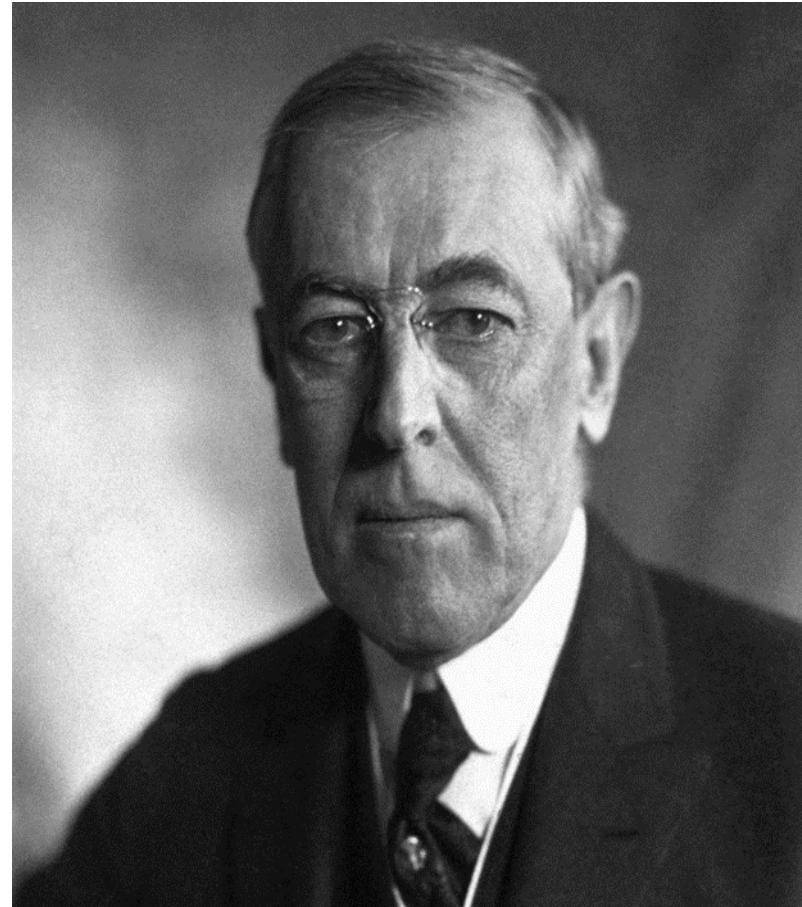
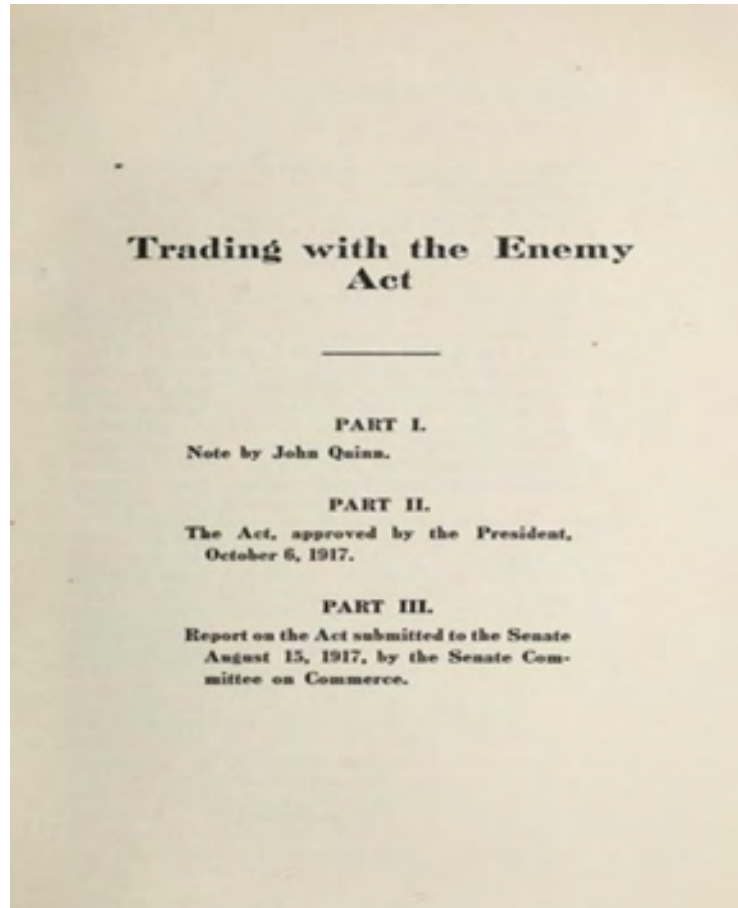
Compliance & Civil Enforcement
Office of Defense Trade Controls Compliance



Brief History of U.S. Export Controls



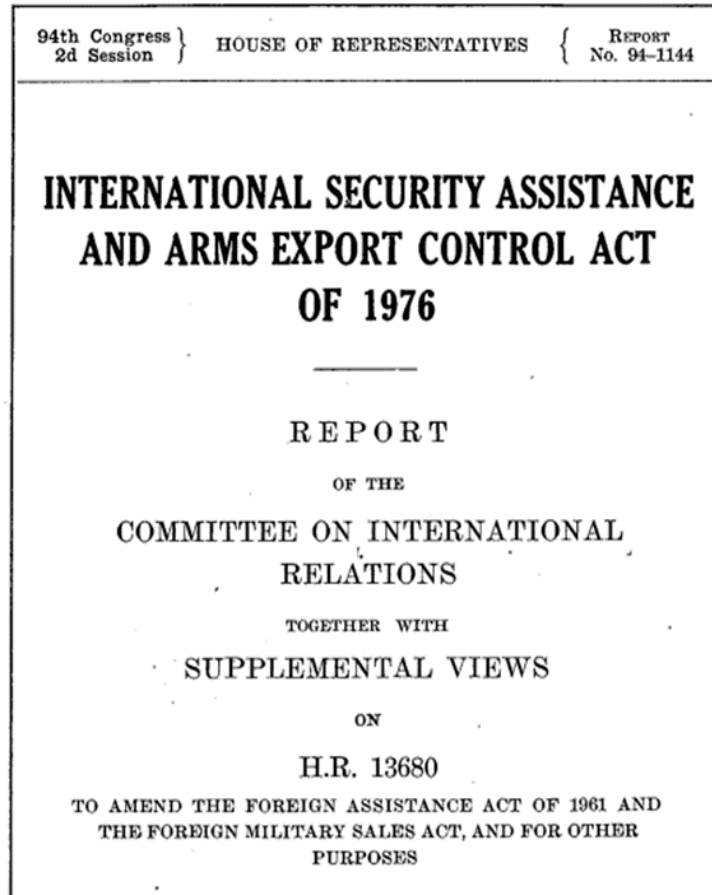
Trading with the Enemy Act of 1917



Neutrality Act of 1935



Arms Export Control Act of 1976



AECA Legislative Purpose

- Governs both Foreign Military Sales and Direct Commercial Sales
- Mandates registration and licensing of U.S. persons engaged in the manufacturing, exporting, and brokering of defense articles and services
- Requires monitoring/reporting of fees, contributions, and commissions



Trade Channels / Authorities

Commercial

(Direct Commercial Sales)

- International Traffic in Arms Regulations (ITAR)
 - United States Munitions List (USML)
- Export Administration Regulations (EAR)
 - Commerce Control List (CCL) (“dual use” and “600 Series” munitions)

Government-to-Government

Foreign Military Sales (FMS)

Foreign Military Financing (FMF)

Security Assistance

← Conventional Arms Transfer Policy →



FMS vs. DCS

- **DIRECT COMMERCIAL SALE (DCS):** A sale made by a U.S. company directly to an international customer.
- U.S. industry is responsible for obtaining a license from DDTC in the Department of State for each transaction.
- **FOREIGN MILITARY SALES (FMS):** Constitutes a direct relationship between two governments.
- Some defense articles can only be sold via government-to-government channels.



International Traffic in Arms Regulations (ITAR)



- Contains the U.S. Munitions List (USML), which designates defense articles and services subject to Department of State export jurisdiction
- Establishes licensing policy and procedures for USML articles
- Details violations and penalties

Interagency Players in U.S. Export Controls



Department of State Leadership



Bureau of Political-Military Affairs

- PM is the principal link between the Department of State and Department of Defense
- PM provides policy direction in the areas of international security, security assistance, military operations, defense strategy and plans, and defense trade.



What's Inside the ITAR?

22 C.F.R. Parts 120-130

- Part 120 Purpose and Definitions
- Part 121 United States Munitions List
- Part 122 Registration
- Part 123 Licensing
- Part 124 Agreements/Offshore Procurement/Defense Services
- Part 125 Technical Data and Classified Defense Articles
- Part 126 General Policies and Provisions
- Part 127 Violations and Penalties
- Part 128 Administrative Procedures
- Part 129 Brokering (Registration and Licensing)
- Part 130 Political Contributions, Fees, and Commissions



DDTC Overview

The Directorate of Defense Trade Controls (DDTC) engages with and regulates the defense export industry by maintaining the International Trafficking and Arms Regulations (ITAR), managing registrations, adjudicating licenses, and promoting and enforcing compliance.

About DDTC:

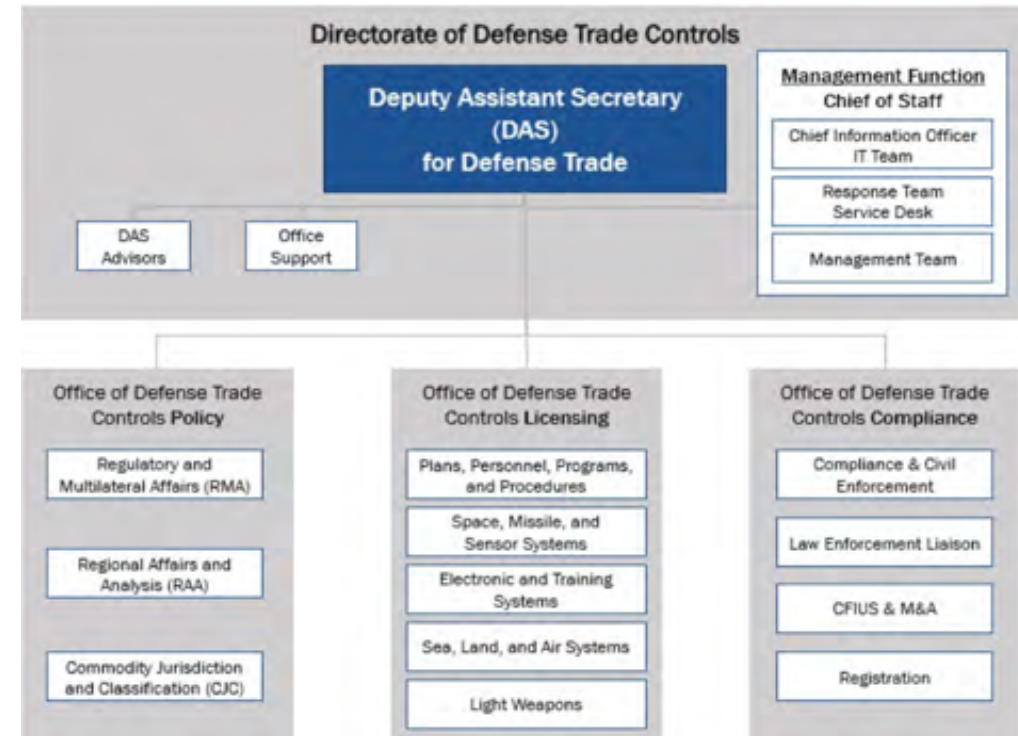
• Organizational Structure:

- Management Office (DTCM)
- Policy Office (DTCP)
- Licensing Office (DTCL)
- Compliance Office (DTCC)

• Key Functions:

- Establishing and maintaining defense export regulations (ITAR)

- Registering entities and individuals
- Adjudicating export licenses
- Responding to inquiries
- Promoting and enforcing compliance

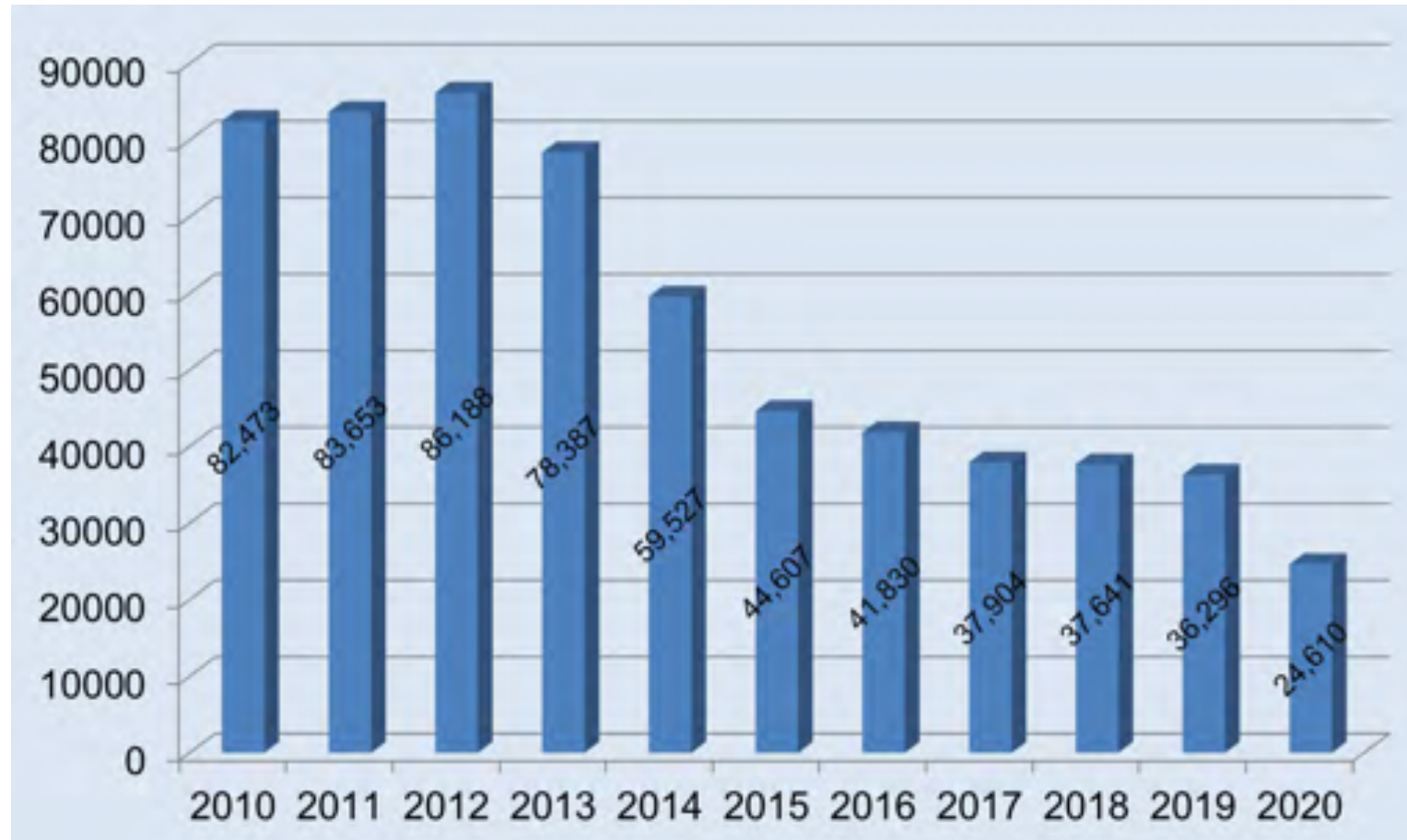


Office of Licensing



- Responds to licensing requests from industry
- Confirms answers to the following questions on every export request – Who, What, When, Where, Why, and How
- Determines if the export is consistent with U.S. foreign policy and national security objectives (seek referrals)
- Makes a final determination (approve, limit, deny, or RWA)

Authorizations Adjudicated by Calendar Year

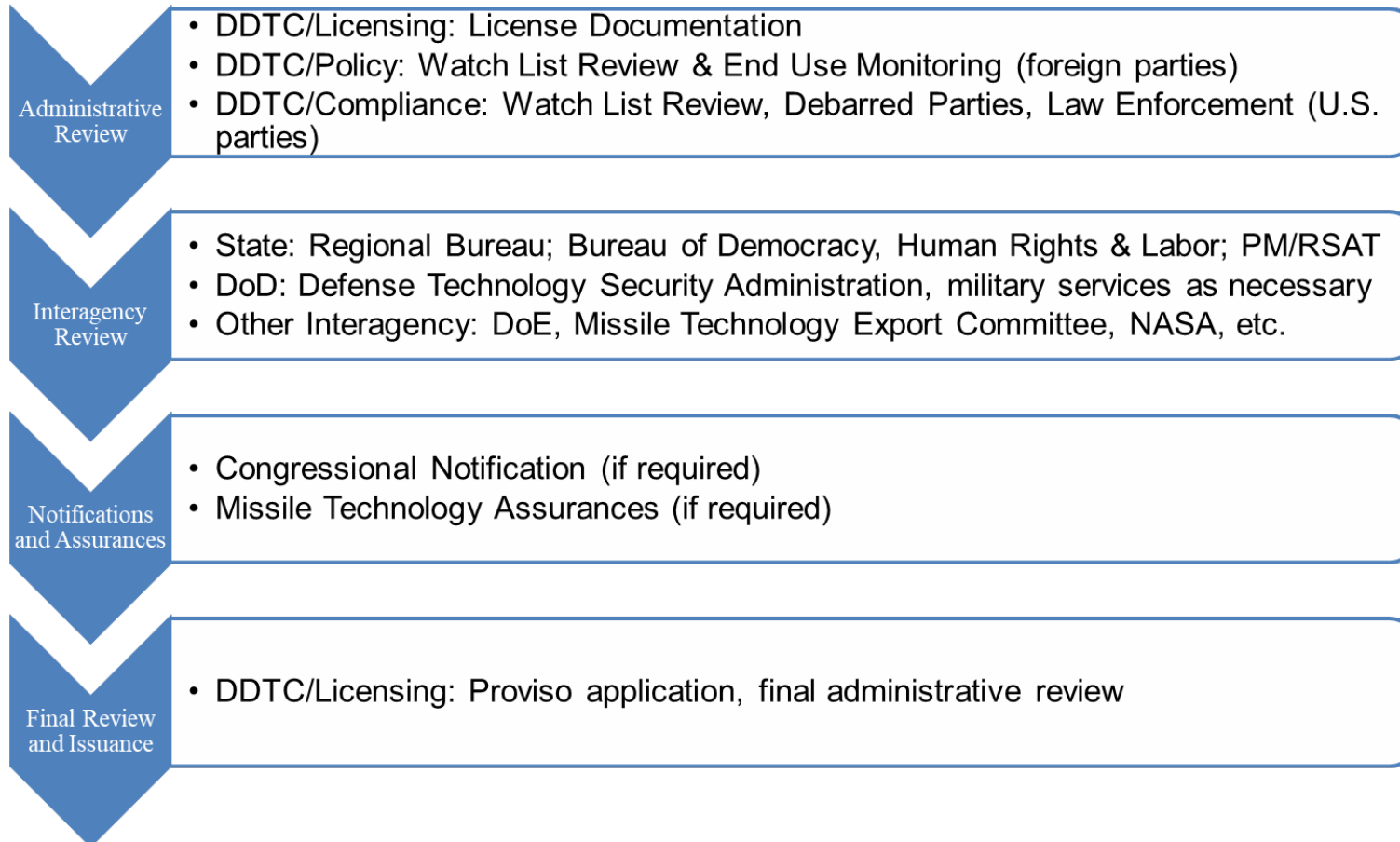


Information Can Also Be Exported

- Control not limited to hardware – ITAR regulates both technical data and defense services
- Physical transfer not required – information can be exported via email, oral communication, etc.
- Export can occur on U.S. soil if controlled information is communicated to a foreign person



Life Cycle of an Export Authorization



Re-exports/Retransfers/Third Party Transfers

- U.S. jurisdiction does not end after initial export
- DCS context: Authorization from DDTC required for reexports or retransfers
- FMS context: Authorization from PM/RSAT required for third party transfers



Office of Policy



- Maintains and updates the ITAR
- Responds to commodity jurisdiction requests from industry
- Conducts end-use monitoring of exports
- Develops and implements policy and guidance for exporters, USG, and foreign partners and allies

DTCP Divisions

Regulatory and Multilateral Affairs (RMA)

Regulatory Policy

How do we and how should we control munitions, in general?

ITAR development and outreach
Bilateral and multilateral regulatory policy matters
Support to legislative, regulatory, and legal matters
Issuing authoritative interpretative guidance related to the ITAR

Technology and Jurisdiction Analysis (TJA)

Technology Policy

How do we and how should we control particular items?

USML review
Develop and maintain technology-based policy
Management of Commodity Jurisdiction cases
“1st Level” Reviews of seized commodities for DHS/FBI and support of pre-trial and trial certifications (law enforcement support)

Country and End-User Analysis (CEA)

Country Policy

How do other countries control munitions and how effective are those controls?

Report on foreign nations’ export control systems and defense industrial bases
Execute Blue Lantern Program and maintain Watchlist
Support DCS country policy development, to include sanctions



Blue Lantern End-Use Monitoring Program

- Pre-license, post-license, and post-shipment inquiries or checks to:
- Verify bona fides of foreign consignees and end-users
- Confirm receipt and disposition of exported articles
- Confirm end-use and compliance with requirements/provisos

- *Required by U.S. law*
- *Over 13,200 checks since 1990*
- *Conducted in 60-90 countries each year*
- *466 checks out of 35,700 applications adjudicated in FY 2018 (about 1.3%)*



Blue Lantern: Mission and Objectives

To help ensure the security and integrity of U.S. defense trade

Objective 1: Build Confidence in Trade Relationship

- Monitor transfer of sensitive hardware, technology, and services
- Verify bona fides of parties, especially intermediaries
- Foster cooperation/confidence among U.S. government, host government, and industry
- Enhance understanding of U.S. export controls

Objective 2: Regulate Hardware & Technology Transfer

- Support and facilitate transfer of increased volume and more advanced hardware and technology; or
- Result in increased scrutiny and/or restrictions on future exports

Objective 3: Impede Gray Arms Trade

- Use of legitimate means for illicit ends
- Uncover false end-use documentation, front companies, hidden intermediaries/brokers

NOT a law enforcement action or investigation.



Office of Compliance

- Processes registrations for arms manufacturers, exporters, brokers
- Ensures ITAR compliance through various means, including company visits/outreach, voluntary and directed disclosures, criminal referrals, and administrative/civil actions when warranted
- Coordinates with law enforcement



Core Responsibilities of DTCC

Registration Compliance & Analysis (RCA)

- Registration of manufacturers, exporters and brokers
- Registration fee collection
- Mergers, acquisitions and divestitures

Compliance & Civil Enforcement (CCE)

- Voluntary and directed disclosures
- Consent agreements and monitoring
- Debarments, reinstatements and rescissions
- Watch List management

Law Enforcement Liaison (LEL)

- Criminal enforcement support (Homeland Security Investigations and Federal Bureau of Investigations)
- Civil/criminal referrals
- Liaison to Export Enforcement Coordination Center (E2C2)
- Deconflictions

Committee on Foreign Investment in the United States (CFIUS)

- Transaction mitigations

- Referral Triage Team
- Company Visit Program
- Advisory Opinion responses



Consequences of Non-Compliance

U.S. and foreign individuals and corporations may be held liable for criminal and civil offenses under the AECA and its enumerated statutes

Consequences of compliance failures:

Affect United States and its partners' national security and foreign policy

Affects an organization's reputation

Potential denial or revocation of export authorizations

Financial cost – costs associated with review, issue resolution and administrative/criminal penalties



Criminal vs. Civil Cases

Criminal Cases

- Willful violation of AECA Section 38 or 39 or any rule or regulation pursuant to the AECA
- Up to \$1 million per violation, 20 years' imprisonment, debarment
- Investigated by U.S. Department of Homeland Security (HSI) and Federal Bureau of Investigation (FBI)
- Coordinated by DOJ's National Security Division
- Prosecuted by DOJ's U.S. Attorney Offices

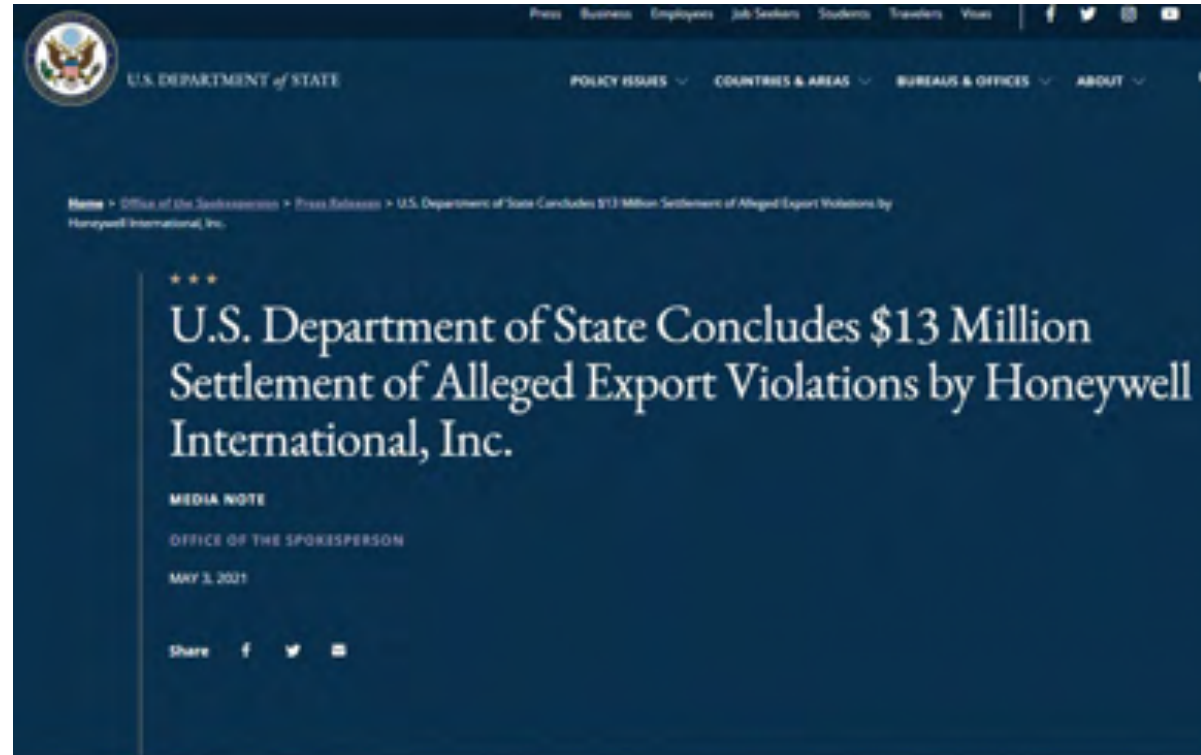
Civil Cases

- Violations of the AECA, rules and regulations – “strict liability” generally applies to all elements of a defense trade transaction
- Up to \$1,183,736 per violation, extra compliance measures, debarment
- Initiated and concluded by DTCC under administrative processes detailed in ITAR Parts 127 and 128
- Generally settled through a negotiated Consent Agreement or debarment
- Adjudicated before Administrative Law Judge, as applicable

Consent Agreements

Consent Agreement

- Negotiated settlement with company for alleged violations
- Monetary penalty and/or enforceable conditions, such as:
 - Audit
 - Reporting
 - Compliance program improvements
 - Outside monitor
- Typically run 3-4 years
- Monitoring by DTCC



The U.S. Department of State has concluded an administrative settlement with Honeywell International, Inc. (Honeywell) of Charlotte, North Carolina, to resolve alleged violations of the Arms Export Control Act (AECA), 22 U.S.C. § 2751 et seq., and the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 170-173. The Department of State and Honeywell have reached this settlement following an extensive

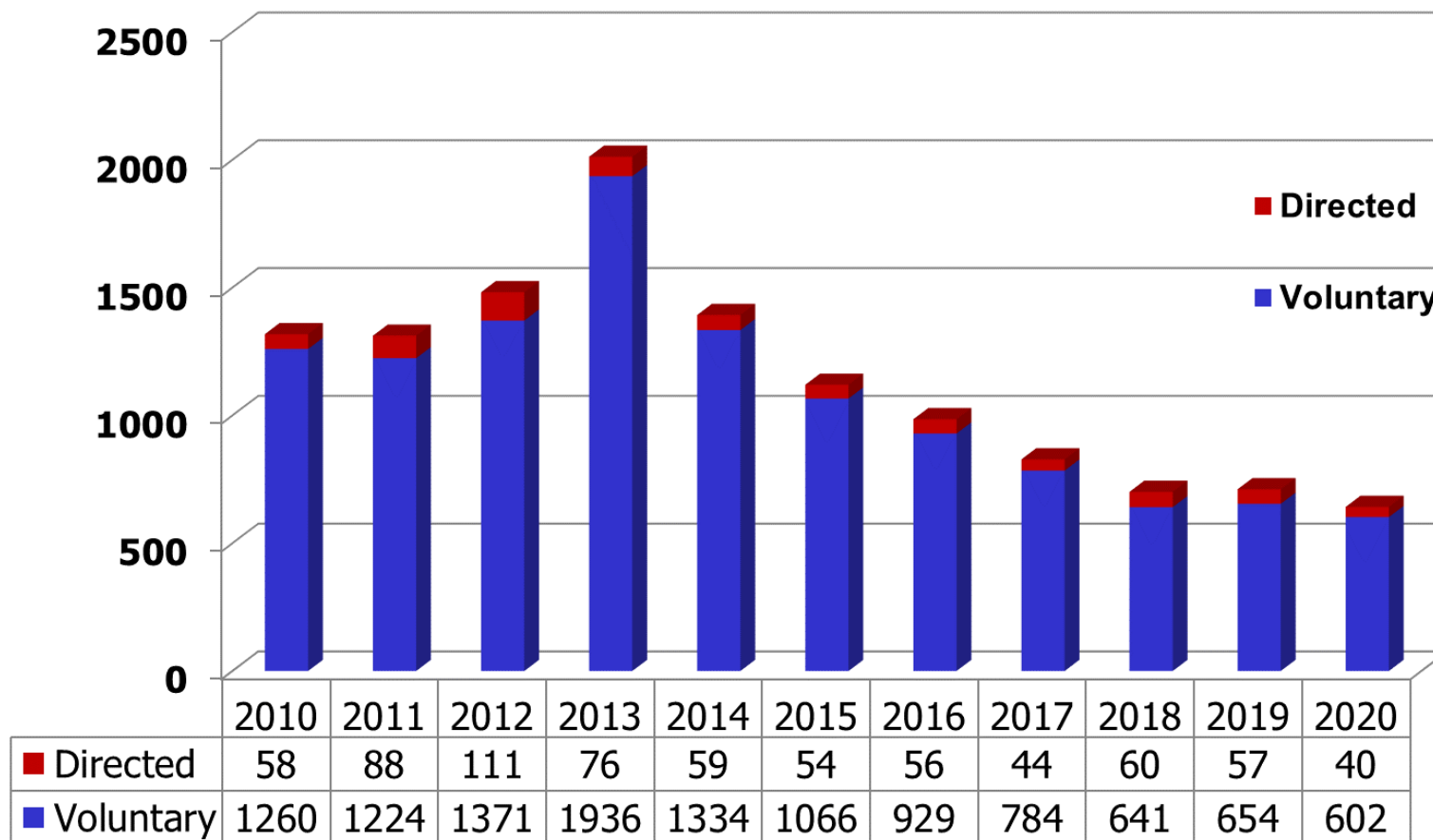
Voluntary and Direct Disclosures

Voluntary Disclosure (VD)	Directed Disclosure (DD)
Persons voluntarily disclose circumstances to DTCC which they believe may have violated any export control provision of the AECA, or any regulation, order, license, or other authorization issued	In the form of a letter, DTCC requests information regarding a potential or actual violation, based on other information received from other sources Information sources: calls, emails, inter-agency, intra-agency, other disclosures
ITAR §127.12	Based on ITAR §122.5(b)
602 voluntary disclosures in FY 2020	40 directed disclosures in FY 2020
<i>Failure to report is considered when assessing penalties</i>	

The Office of Defense Trade Controls Compliance welcomes tips regarding violations. Send tips to Refer-to-DTCC@state.gov or call.



Disclosure Trends by FY



Common ITAR Violations

U.S. Party	Foreign Party
<ul style="list-style-type: none">• Unauthorized export of defense articles and technical data• Activities based on incorrect export control jurisdiction• Proviso violation• Misuse of ITAR exemptions• Administrative Violations• Failure to:<ul style="list-style-type: none">• Properly implement and manage licenses and agreements• Register• Submit 5-day or 60-day notice	<ul style="list-style-type: none">• Unauthorized electronic access to technical data• Unauthorized access to defense articles: foreign ports, freight handling facilities, warehouses• Inadequate physical security• Activities based on incorrect or unknown export control jurisdiction• Retransfers and re-exports without authorization• U.S. person employee of foreign company providing defense services without authorization

Registration Requirement

Type	Manufacturer / Exporter	Broker
Who	Any person who engages in the U.S. in the business of manufacturing or exporting defense articles or furnishing defense services	Broker means any person described below who engages in the business of brokering activities: <ul style="list-style-type: none"> • Any U.S. person wherever located; • Any foreign person located in the U.S.; or • Any foreign person located outside the U.S., if owned or controlled by U.S. person
Exempt	USG agencies acting in an official capacity	USG agencies, foreign governments and international organizations acting in an official capacity
Ref.	AECA Section 38 & ITAR Part 122	AECA Section 38 & ITAR Part 129



Registration Purpose

Collect Information

- Informs USG about the U.S. defense industry (e.g., legal status, export eligibility, foreign ownership/affiliations, legally responsible personnel, areas of activity)
- Channel to provide industry with information about regulations and USG concerns
- Helps validate the bona fides of those engaged in defense trade, especially during the review of export license applications

Fee

- President's National Security Directive requires 75% self-financing
- Money collected supports defense export control functions
- Improvements to licensing function, timeliness, predictability, IT upgrades
- AECA requires fee collection



Defense Export Control Compliance System (DECCS)

The Directorate of Defense Trade Controls (DDTC) is undergoing a major IT Modernization effort to replace legacy systems with modern cloud technologies. The new system, the **Defense Export Control and Compliance System (DECCS)** provides industry access to DDTC applications through a single, online portal. DDTC worked with industry to build the system soliciting feedback and building industry-prioritized features.



Advisory Opinions

The Advisory Opinions (AO) application is used by industry to request official DDTC opinion on matters related to the **interpretation of the ITAR** and for internal users to review submissions and respond to the requester.

DS-7786
Advisory Opinions Form

AO Request Launching Pad

Estimated Burden: 2 Hours

* PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 2 hours per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: Department of State (T/PM/DDTC) Washington, D.C. 20520.

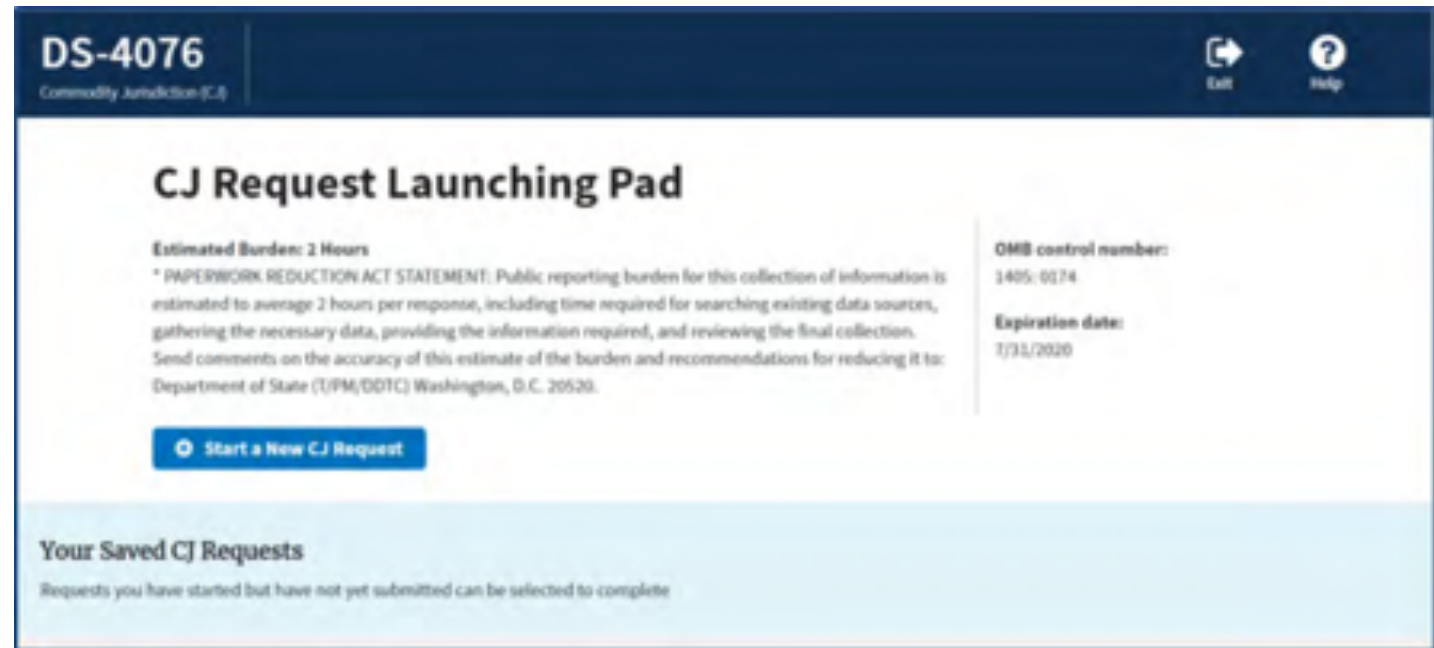
[Start a New AO Request](#)

OMB control number:
1405-0174

Expiration date:
7/31/2020

Commodity Jurisdiction Requests

The Commodity Jurisdiction (CJ) application is used by industry to **request official DDTC opinion** on whether or not an item or service is USML and thereby regulated by DDTC.



The screenshot displays the 'DS-4076 Commodity Jurisdiction (CJ)' interface. At the top, there is a dark blue header with the text 'DS-4076' and 'Commodity Jurisdiction (CJ)' on the left, and 'Exit' and 'Help' icons on the right. The main content area is titled 'CJ Request Launching Pad'. Below this title, it states 'Estimated Burden: 2 Hours' and includes a 'PAPERWORK REDUCTION ACT STATEMENT' regarding the public reporting burden. A blue button labeled 'Start a New CJ Request' is prominently displayed. To the right of the main text, there is a section for 'OMB control number: 1405-0074' and 'Expiration date: 7/31/2020'. At the bottom, a light blue section titled 'Your Saved CJ Requests' contains the text 'Requests you have started but have not yet submitted can be selected to complete'.

DECCS User Management

In the User Management application, companies can manage their own user community: by sending invitations, approving user requests, and modifying permissions.

Users Requesting Company Access

Requests from Users who have enrolled using a Registration Code from this company.

Legend

use the ☒ icon to Approve (this user requesting company access to be permitted to a Request for Access (access to the company is not granted by this action the user must still accept).

use the ☐ icon to Reject and Inactivate this request

Enrolled	User	Email	Nickname	User Provided Company Name	User Provided Reg Code	Valid Until	Actions
2020-03-25 15:09:29	Test Enrollment	lisa.parker123@gmail.com	WonderBlack2		G-5028	2020-04-01 15:09:29	<input checked="" type="checkbox"/> <input type="checkbox"/>

Pending User Requests

There are no Requests for Company Access that are pending action

DECCS Licensing

The Licensing application is used by industry users to request licenses for regulated commodities.



DECCS Registration

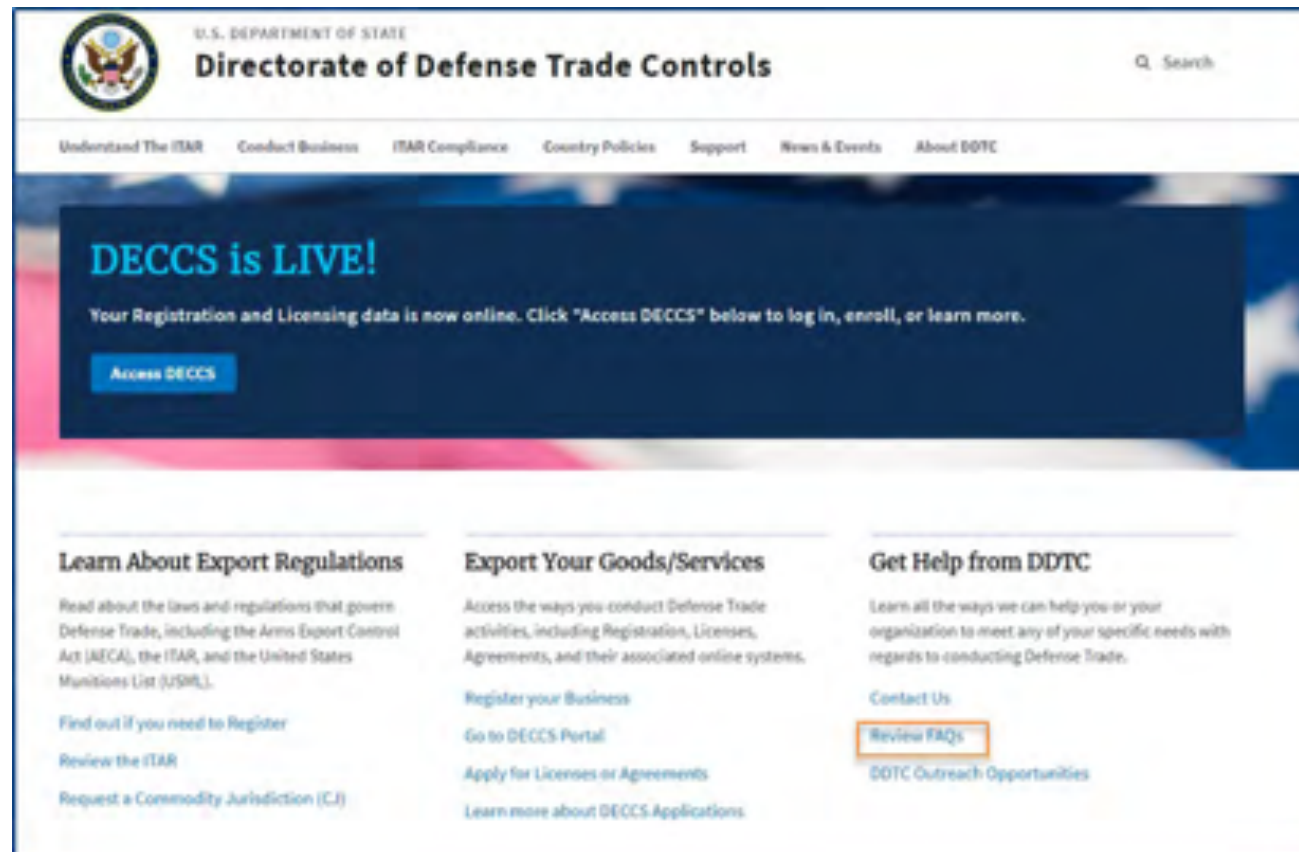
The Registration application is used by industry to register with DDTC. They can create a New registration, Renew their registration, Amend their registration, and Pay for their registration in DECCS.

The screenshot shows the 'Registration' page of the DDTC Registration Application. It features a dark blue header with the title 'Registration' and a welcome message. Below the header is a section titled 'Application History' which contains a table with one row of application data. The table includes fields for application ID, status, role, and dates, along with a 'Renew' button.

Application History			
DS-2032	#1766 - New	Manufacturer/Exporter, Broker (US Person)	M30013, K-5230
Completed	Submitted: 03/05/2020	Processed: 03/05/2020	Renew

For More DECCS Information

Check out our website for FAQs, news & announcements, and helpful information:



DDTC Contact Information

- For substantive questions and inquiries regarding registration and other topics, contact the DDTC Response Team
- Phone number: (202) 663-1282
- E-mail: DDTCCustomerService@state.gov
- For general information, please visit DDTC's website
- <http://www.pmddtc.state.gov/>



Michael Rithmire

- Michael Rithmire joined the Bureau of Industry and Security in 2002 and currently serves the Director of the Sensors and Aerospace Division of the Office of National Security and Technology Transfer Controls. He oversees licensing, commodity classification, commodity jurisdiction determination and control list development related to aerospace, maritime, and sensor commodities and technology. His division leads the Bureaus support to the Wassenaar Arrangement multilateral export control regime as well as providing BIS technical expertise to numerous country-specific export control policy activities.





Licensing Best Practices: EAR License Application Processing and Issuance

Overview

- Preparing a License Application
- A clear and thorough description is critical
- The Licensing Process
- Interagency Review
- Common Agency Concerns
- License Review Period
- Dispute Resolution
- License Conditions
- License Denials



Preparing a License Application: A Thorough Application

- On the license application
- Define the item(s) in terms of the technical parameter(s) of the ECCN(s)
- If technology, define what will and will not be transferred
- Identify the specific end-uses
- Provide any information you know about the ultimate consignee/end-user(s)
- Provide information on any internal controls in place to mitigate the risk of diversion or unauthorized end-users/end-uses
- For 600-series items, cite prior equivalent DDTC approvals
- BIS licenses authorize exports/reexports to and among the end-users listed on license, so craft the license application accordingly.



The Licensing Process: Interagency Review

- Ensures that the U.S. Government decision on a license application draws on the breadth and scope of the government's expertise
- Reviewing agencies have common national security and foreign policy interests, but unique perspectives.
- Reviewing Agencies:
 - Department of Commerce
 - Technical issues (National Security, Non-proliferation and others)
 - Economic issues
 - Department of Defense
 - National security issues – Brings the technical expertise of the Services focused on an individual export/reexport
 - Department of Energy
 - Nuclear and missile issues
 - Department of State
 - Foreign policy issues



The Licensing Process: Common Reviewing Agency Concerns

- **Parties to the transaction:**
 - What are their roles?
 - What do you know about the parties?
 - What is your source for information?
- **End-use concerns:**
 - Is there a balance between the product's capability and the proposed end-use?
 - Is there excess capability? Why?
 - What is the risk of diversion?
- **Controls:**
 - What controls are in place to prevent diversion?
 - Are the controls realistic?
 - Do the parties understand the controls?
 - Are the controls documented?
 - Who will conduct monitoring?

Target known agency concerns in your license application!



The Licensing Process: Licensing Review Period

- The Department of Commerce must review the application and refer it to the reviewing agencies within 9 days of receipt.
- Reviewing agencies have 30 days to respond with recommendations.
- If the reviewing agencies concur on the disposition of the license application, it will be:
 - Approved
 - Approved with conditions
 - Denied



License Conditions (Standard Scope Condition)

- Many licenses are approved with a standard statement of scope: (see § 750.7(a) of the EAR).
- Goal is to eliminate the inclusion of requirements and prohibitions included in the Export Administration Regulations (EAR) as conditions on validated licenses. If proposed conditions negatively impact the proposed transaction, let us know, and propose alternate language.



Standard Scope on All Licenses

- “Unless limited by a condition set forth below, the export, reexport or transfer (in-country) authorized by this license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant is responsible for informing the other parties identified on the license, such as ultimate consignees and end-users, of the license’s scope and of the specific conditions applicable to them. BIS has granted this license in reliance on representations the applicant made in the license application, letters of explanation, and other documents submitted.”



Why Do I Still Get Conditions?

- Export Item sensitivity
- End-User Concerns identified during application review
- Lack of specificity/clarity in the stated end-use

Please review proposed conditions and
Respond before we issue the license



The Licensing Process: Dispute Resolution Process

- If the reviewing agencies disagree on the disposition of the license application, BIS will attempt to resolve the issue at the working level.
- If consensus is not possible, the application will enter into the dispute resolution process:
- Operating Committee (OC) – Career government employees from the reviewing agencies; chaired by BIS
- Advisory Committee on Export Policy (ACEP) – Presidentially-appointed officials (Assistant Secretary level)
- Export Administration Review Board (EARB) – Cabinet level
- President



License Denials Do Occur

- If your transaction involves General Prohibitions 4 through 10 parties/end-uses/circumstances, the general presumption is denial.
- You will normally have contact with Licensing Officer during the course of review.
- When an interagency decision is made to deny a license application, you will receive an Intent to Deny Letter.
- May be transmitted via SNAP-R
- You have 20 days to respond with additional information that may overcome our concerns.
- If no response after 20 days, the case will be denied.
- The applicant almost always has the option to request that the case be RWA'd.





Letters of Explanation

Overview

- When to include a Letter of Explanation (LOE)
- Role and importance of the LOE
- Tailoring the LOE to the transaction and application



Technology Exports

- Required for technology applications
- EAR Part 748, Supplement No. 2
- Who are the parties to the transaction?
- Where will the technology or software be used?
- ECCN for the technology or software
- Foreign availability of comparable technology or software
- Form the technology will be released in and uses in which the technology will be employed.
- Applicant's internal technology control plan



Deemed Exports

- Often helpful to note
- Does the foreign national:
- Have strong ties to the U.S.?
- Intend to become a U.S. citizen or permanent resident?
- Maintain significant ties to the home country?
- Provide special expertise or other benefits?
- Particular expertise or qualifications
- Scientific and technical papers published and presentations at conferences



Complex Hardware Exports

- “Simple” transaction: single item, single consignee, fixed/static end use
- Many consignees/end users
- Relationship between consignees/end users
- Relationship between parties and items
- Many items
- Application and need of each item for each of the end users
- Complex end uses



Licensing: Standard Scope

- Unless limited by a condition set forth below, the export, reexport or transfer (in-country) authorized by this license is for the item(s), end-use(s), and parties described in the license application and any letters of explanation. The applicant is responsible for informing the other parties identified on the license, such as ultimate consignees and end-users, of the license's scope and of the specific conditions applicable to them. BIS has granted this license in reliance on representations the applicant made in the license application, letters of explanation, and other documents submitted.



Standard Scope and LOEs

- License authorizes the transaction as represented in the LOE only
- An export, re-export, or in-country transfer that materially differs from that described in the LOE requires another authorization
- LOEs provide an opportunity to place boundaries around, or “self-condition,” technology, deemed export, and complex hardware licenses



LOEs Should Be Precise...

- The LOE should reflect the proposed transaction
- Templates: review, tailor and update content
- Address EAR concerns specifically
- A SOW, grant proposal, etc. is not an LOE
- Describe what items will and will not be exported, who will and will not have access to them, and how they will and will not be used

...But Not Brittle

- Review your LOEs carefully – carve-outs and other stipulations are binding
- Currently, no “revision” process for material changes to validated licenses
- If your transaction grows to exceed that represented in the LOE, new authorization (new license, license exception, etc.) needed
- Additional end users, items and end uses



Engda Wubneh

U.S. Department of State Directorate of Defense Trade Controls

Engda Wubneh is a Foreign Affairs Officer in the Directorate of Defense Trade Controls (DDTC) at the U.S. Department of State. As part of the Regulatory and Multilateral Affairs (RMA) Team within DDTC's Office of Defense Trade Controls Policy (DTCP), Engda develops and drafts regulatory changes to the International Traffic in Arms Regulations (ITAR), serves as RMA lead for export control issues related to Canada and prohibited countries described in ITAR § 126.1, provides policy guidance through advisory opinions, and supports DDTC's Response Team with policy-specific questions from industry.





Overview of the International Traffic in Arms Regulations (ITAR) and its Applicability in the Domestic Research and Development Context

Engda Wubneh

U.S. Department of State

Office of Defense Trade Controls Policy

Regulatory and Multilateral Affairs Team



What's in this Overview?

- Overview of the ITAR, Arms Export Control Act, and the U.S. Munitions List
- What items/actions/agreements are covered under the ITAR?
- ITAR definitions
- Does the ITAR affect my work?



What is the ITAR?

- ITAR = International Traffic in Arms Regulations
- U.S. regulations that control and govern the export and temporary import of defense articles and defense services



What is the ITAR's Statutory Authority?

- Arms Export Control Act of 1976 (AECA) (22 U.S.C. 2778)
 - Gives the President the authority to control arms exports and imports
 - Authority delegated to the Secretary of State by E.O. 13637 (replaced 11958)
 - Governs Direct Commercial Sales and Foreign Military Sales
- Requires:
 - Registration of manufactures, exporters, and brokers
 - Licensing of exports
 - USG approval of end-use
- Specifies:
 - Congressional reporting requirements
 - Fines and Penalties



What is the purpose of export controls, the AECA and the ITAR?

Promotes National Goals

- Consistent with U.S. foreign policy
- Ensure U.S. national security
- Human rights
- Prevent arms proliferation
- Ensures U.S. Forces maintain cutting edge technologies, equipment, and know-how

Promotes Goals of Allies and Partners

- Promote self-defense of U.S. allies and friends
- Establish compatibility and inter-operability
- Promote mutual defense relationships to share development costs
- Require end-use certification and prevent retransfer to another end-user or re-export to third country



What's Inside the ITAR?

22 CFR §§ 120-130

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- **Part 121 United States Munitions List**
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U.S. Munitions List (USML) Categories

I	Firearms	XII	Fire Control, Laser, Imaging
II	Guns and Armament	XIII	Materials and Misc. Articles
III	Ammunition/Ordnance	XIV	Toxicological Agents
IV	Missiles, Rockets, Torpedoes	XV	Spacecraft and Related Articles
V	Explosives, Propellants	XVI	Nuclear Weapons Related Articles
VI	Naval Vessels	XVII	Classified Articles
VII	Tanks & Vehicles	XVIII	Directed Energy Weapons
VIII	Aircraft	XIX	Gas Turbine Engines
IX	Military Training & Equip.	XX	Submersible Vessels
X	Protective Personnel Equip.	XXI	Miscellaneous Articles
XI	Military Electronics		



What items/actions/agreements are covered under the ITAR?



- **Defense Articles** – ITAR § 120.6
 - Any item or technical data described on the U.S. Munitions List
- **Technical data** – ITAR § 120.10
 1. Information required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles
 2. Classified information relating to defense articles and defense services
 3. Information covered by an invention secrecy order; or
 4. Software directly related to defense articles
- Technical data is NOT:
 - Information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities



What items/actions/agreements are covered under the ITAR?



- **Defense Services** – ITAR § 120.9
 - Furnishing of assistance (including training) to foreign persons whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operations, demilitarization, destruction, processing, or use of defense articles
 - Furnishing technical data to foreign persons whether in the United States or abroad
 - Military training of foreign units and forces including formal or informal instruction of foreign persons in the United States or abroad
- **Brokering** – ITAR § 129.2
 - “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.”



What is a Foreign Person?



Foreign person (ITAR § 120.16) means:

- Any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3).
- Any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).



What is Fundamental Research?

Fundamental research (ITAR § 120.11(a)(8)) as described in the ITAR means:

- Basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community
- It is NOT:
 - Research results that are restricted for proprietary reasons or specific U.S. Government access and dissemination controls
 - The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or
 - The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable

Bottom line: Technical data is NOT fundamental research found in the public domain



Information Can Be Exported

- Control not limited to hardware – the ITAR controls “technical data”
- Physical transfer not required – information can be exported via email, via oral communication, etc.
- Export can occur on U.S. soil, if controlled information is communicated to a foreign person



ITAR § 120.50 – Release

(a) Technical data is released through:

- (1) Visual or other inspection by foreign persons of a defense article that reveals technical data to a foreign person; or
- (2) Oral or written exchanges with foreign persons of technical data in the United States or abroad.



ITAR § 120.17 – “Export”

(a)

(1) An **actual shipment** or transmission out of the United States, including the sending or taking of a defense article out of the United States in any manner;

(2) Releasing or otherwise transferring technical data to a foreign person in the United States (a “**deemed export**”) . . .

(5) **Performing a defense service** on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.



Reexports (ITAR § 120.19) / Retransfers (ITAR § 120.51)



ITAR's jurisdiction does not end after the initial export

- **Reexport:**

- An actual shipment or transmission of a defense article from one foreign country to another foreign country....
- Releasing/transferring technical data to a foreign person who is a citizen or permanent resident of a country other than the foreign country where the release or transfer takes place (a “deemed reexport”)

- **Retransfer:**

- A release of technical data to a foreign person who is a citizen or permanent resident of the country where the release or transfer takes place



Does the ITAR Affect My Work?



Examples of activities where the ITAR may apply to you:

- Conducting research with foreign persons that involve defense articles/technical data or defense services in the U.S.
- Manufacturing a product (defense article) with foreign colleagues on your team in the U.S.
- Presenting, publishing, emailing, or discussing technical data with foreign persons in the U.S. or abroad
 - Sharing technical data with foreign students or foreign visiting scholars in an academic setting
 - Sharing technical data or developing a defense article with foreign persons as part of a joint project for a U.S. client like NASA, or the U.S. military
- Shipping a defense article to a foreign colleague that works in a lab in Country X

Bottom line: You should get approval from the Directorate of Defense Trade Controls before doing any of these activities.



Roundtable Questions

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