

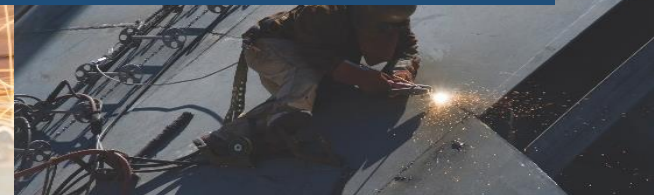


A Procurement Technical
Assistance Center (PTAC)



EXPORT CONTROLS – ITAR AND ASSOCIATED REQUIREMENTS

Acquisition Hour Webinar
April 5, 2017



Webinar Etiquette



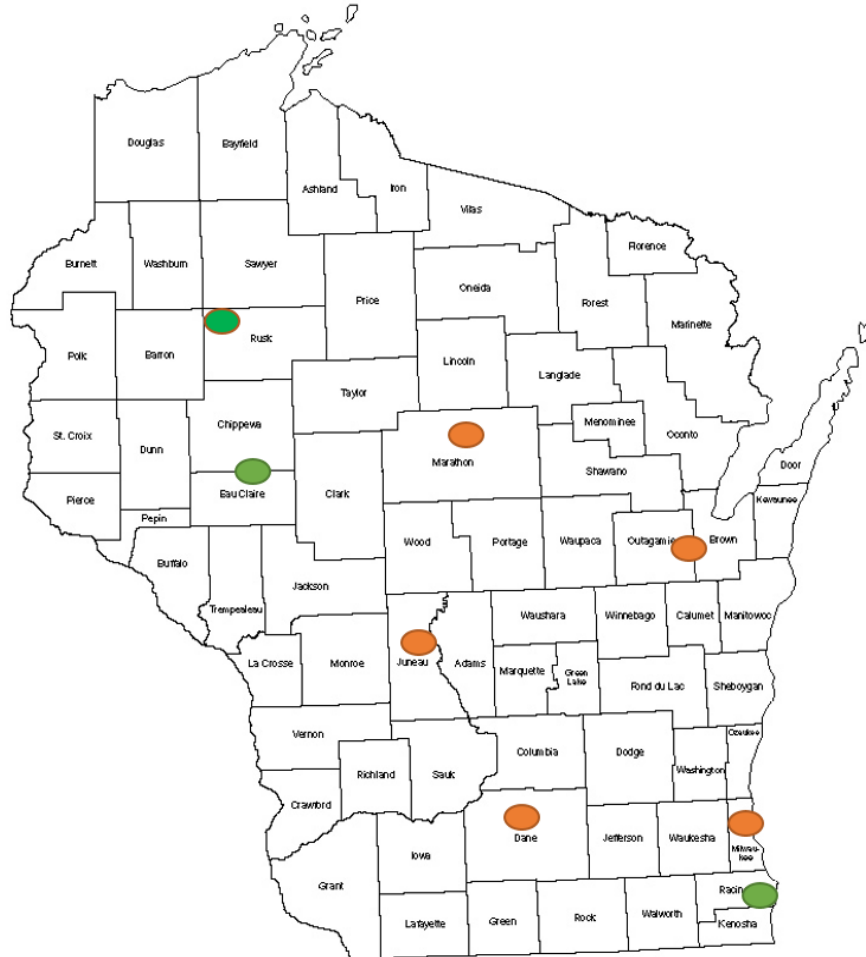
- Please
 - When logging into go-to-meeting, enter the name that you have registered with
 - Put your phone or computer on mute
 - Use the Chat option to ask your question(s): We will read them and our guest speaker will provide an answer to the group
- Thank you!



ABOUT WPI

Supporting the Mission

Assist businesses in creating, development and growing their sales, revenue and jobs through Federal, state and local government contracts.



LOCATIONS:

- **Primary office – Milwaukee** - Technology Innovation Center
- **Staffed Satellite offices**
 - Madison** (FEED – Food Enterprise & Economic Development / MEC – Madison Enterprise Center)
 - Camp Douglas** (Juneau County Economic Development Corporation)
 - Wausau** (Wausau Region Chamber of Commerce)
 - Appleton** (Fox Valley Technical College)
- **Active Partnerships**
 - Racine** – LaunchBox
 - Eau Claire** - Western Dairyland
 - Ladysmith** – Indianhead Community Action

MY ACCOUNT

Hello benjaminb (not benjaminb? [Sign out](#)).

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Current Opportunities [View All](#)

1. [SBA Seeks Funding Proposals from Non-Profits and Local Institutions to Provide Entrepreneurship Training for Service Members, Military Spouses and Veterans - January 18, 2017](#)
WASHINGTON – The U.S. Small Business Administration (SBA) is inviting funding proposals from non-profit organizations, state, local and tribal government agencies, and institutions of higher learning to provide “Boots to Business” entrepreneurship training to service members, military spouses, and veterans.

2. [Chicago Secures \\$1 Billion in Federal Grant Funding for Rail Upgrades - January 10, 2017](#)
Chicago’s Transit Authority will receive nearly \$1.1 billion in federal grant funding to help pay for upgrades meant to expand rail capacity on the north side of the city, officials said Monday.

The money will go toward roughly \$2.1 billion of planned work on the city’s Red and Purple “L” lines. This will include improvements to track, stations, power and signal systems, and the purchase of 32 new railcars, according to the Federal Transit Administration.

3. [Secure That Smart Toaster and Win \\$3,000- January 4, 2017](#) The Federal Trade Commission is offering up to \$25,000 in prize money for applications or tools that help people protect their smart home devices from hackers, according to a Federal Register notice.

The competition, which will announce winners in July, comes as the internet is creeping into more and more household devices ranging from baby monitors to toasters.

These internet-of-things devices are often less secure than traditional internet-connected devices such as laptops and smartphones. It’s also often more difficult to update the software in these devices to patch vulnerabilities, making

ITAR

Overview of program requirements and responsibilities

Marc N. Violante

Wisconsin Procurement Institute

April 5, 2017



Image copied from: <https://www.nh.gov/nhsl/ww2/ww59prt.html>



Major ideas - 2

- Test for requirement to Register
 - USML
 - Manufacture
 - Selling is not mentioned as a requirement
- ITAR applicability
 - Concept of Export
 - The broad nature of to what the program applies
- Information leakage
 - Staff, visitors, copiers, networks, email, suppliers, contractors, others

What happens when ----



Images copied from: eglin.af.mil

“The Spies had come without warning. They plied their craft silently, stealing secrets from the world’s most powerful military. They were at work for months before anyone noticed their presence. And when American officials finally detected the thieves, they saw that it was too late. The damage done.”

There can be other interests as well

The screenshot shows the homepage of 'Successful Farming at AGRICULTURE.COM'. The top navigation bar includes links for 'Talk', 'Magazine', 'TV', 'Radio', 'Login', 'Join', and 'Newsletter', along with a search box. A secondary navigation bar lists categories: 'NEWS', 'MARKETS', 'WEATHER', 'MACHINERY', 'CROPS', 'TECHNOLOGY', 'FARM MANAGEMENT', 'LIVESTOCK', and 'FAMILY'. A dropdown menu is open under 'MARKETS', listing 'Commodity Prices', 'Newswire', 'Markets Analysis', and 'Your World in Agriculture'. On the left sidebar, there is a section titled 'TALK IN MA' with a sub-section 'Blue Sky 2017' and a 'Floor Talk November 7' link. The main content area features a breadcrumb trail 'Home > News > Business' and a large red headline: 'CHINESE NATIONALS CHARGED WITH STEALING CORN TECHNOLOGY'. Below the headline, it says 'By Jeff Caldwell' and '12/13/2013'.

Copied from http://www.agriculture.com/news/business/chinese-nationals-charged-with-stealing_5-ar36216

There can be other interests as well

DJIA ▲ 18249.12 2.02% S&P 500 ▲ 2130.80 2.19% Nasdaq ▲ 5167.30 2.40% U.S. 10 Yr ▼ -13/32 Yield 1.824% Crude Oil ▲ 44.92 1.93%

THE WALL STREET JOURNAL.

Home World U.S. Politics Economy **Business** Tech Markets Opinion Arts Life Real Estate

◀

-  EU Officials Vow to Follow Up on Latest Volkswagen Emissions Findings
-  CBS Taps Moelis, Goldman to Advise on Possible Viacom Merger
-  Tesla to Make New Owners Pay for Some Recharging
-  China's Patent-Lawsuit Profile Grows



BUSINESS

U.S. Steel Accuses China of Hacking

Steelmaker alleges Chinese government hackers stole plans for developing new steel technology



Related programs and regulations

- DFAR requirements
- Joint Certification Program (JCP) – US- Canada
- Nuclear Regulatory Commission
- Missile Technology Export Controls
- Export Administration Regulations (EAR)
 - Commerce Control List
 - The Department of State has also adopted an Order of Review. When classifying your product, you should always begin with the USML Order of Review. If you determine the item in question is not subject to the ITAR because it is not enumerated or otherwise described on the USML and that it is not subject to the exclusive jurisdiction of another agency (such as the Nuclear Regulatory Commission), the item is subject to the EAR. You should then start your analysis of the CCL and may consult the CCL Order of Review.
 - eg. Export of Shotguns to Canada

Overview – U.S. Export Controls

- The U.S. Department of Commerce's Bureau of Industry and Security (BIS)
 - administers and enforces export controls on dual-use and certain munitions items for the Department of Commerce through Export Administration Regulations (EAR) under the authority of the International Emergency Economic Powers Act (IEEPA).
- The Department of State, which controls the export of defense articles and defense services subject to the International Traffic in Arms Regulations (ITAR)
- The Department of Energy, which controls exports and re-exports of technology related to the production of special nuclear materials
- The Nuclear Regulatory Commission, which controls the export of certain nuclear materials and equipment
- The Department of the Treasury -- administers economic sanctions programs.

Interagency effort

- State Department
 - Seeks technical support and national security assessments
 - Department of Defense
 - Works closely with U.S. Customs and Border Protection
 - Review of defense industry registration
 - Performance of defense export end-use check
 - Investigation
 - Civil penalties
 - Works with the Intelligence Community
 - Review alleged diversions and unauthorized transfers
 - Cooperates with the Justice Department and U.S. Attorneys
 - Pre-trial consultations, trial documentary preparation, expert testimony

General Idea – National Intellectual Property

- Intellectual Property – private sector
 - Segregated duties
 - Limited access
 - Controls on distribution***
 - Non-disclosure agreement employees
 - Non-disclosure agreement visitors
 - Trade secrets
 - Copy rights
 - Patents



Copied from Google images

Arms Export Control Act (AECA)

- ITAR implements this act (22CFR 120-130) see: ecfr.gov
- Provides authority to control the export of –
 - Defense articles
 - Defense services
- President (via AECA) charged with exercising this authority
 - Authority delegated to Secretary of State
 - Website: <https://www.pmddtc.state.gov/index.html>
- Regulations are frequently updated and revised
 - Reflects changes in international political and security climate
 - Takes into account technological development

Program – administration & relationship

- The U.S. State Department’s Directorate of Defense Trade Controls (—DDTC”) administers the International Traffic in Arms Regulations (the —ITAR”)
- ITAR – regulations 22 C.F.R. Parts 120 – 130, which implement the Arms Export Control Act (the —AECA”)
- These regulate international defense trade involving the United States.

Is it only about the registration fee?

Rationale for Regulating Defense Exports

- Sale, export, and re-transfer of defense articles and defense services
 - Integral part of safeguarding U.S. national security
 - 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
 - Promote the peaceful resolution of disputes
- Indiscriminate arms transfers --- potentially adverse consequences

Basic Framework -

- ITAR – implements AECA – Arms Export Control Act (22 U.S.C. 2778-2780)
- DDTC – Directorate of Defense Trade Controls, Bureau of Political-Military Affairs
 - Administers Defense Export Regulations
 - Controlling the export and temporary import of defense articles and defense services covered by the United States Munitions List (USML)

- Registration
- Licensing
- Monitoring
- Compliance

Countries subject to certain prohibitions

- For defense articles and defense services, the following countries have a policy of denial:
 - Belarus
 - Burma
 - China
 - Cuba
 - Iran
 - North Korea
 - Syria
 - Venezuela

Countries subject to certain prohibitions**

- For defense articles and defense services, a policy of denial applies to the following countries except as specified in the associated paragraphs below:

Country	Country specific paragraph location
Afghanistan	See also paragraph (g) of this section.
Central African Republic	See also paragraph (u) of this section.
Cyprus	See also paragraph (r) of this section.
Democratic Republic of Congo	See also paragraph (i) of this section.
Eritrea	See also paragraph (h) of this section.
Haiti	See also paragraph (j) of this section.
Iraq	See also paragraph (f) of this section.
Lebanon	See also paragraph (t) of this section.
Libya	See also paragraph (k) of this section.
Somalia	See also paragraph (m) of this section.
Sudan	See also paragraph (v) of this section.
Zimbabwe	See also paragraph (s) of this section.

----- Duty to notify -----

- Any person who knows or has reason to know of a proposed, final, or actual sale, export, transfer, reexport, or retransfer of articles, services, or data as described in paragraph (e)(1) of this section must immediately inform the Directorate of Defense Trade Controls. Such notifications should be submitted to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.
- “Of this section” >>> **§126.1 Prohibited exports, imports, and sales to or from certain countries.**

Export

- (a) Except as set forth in §126.16 or §126.17, *export* means:
 - (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”);
 - (3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR by a U.S. person to a foreign person;
 - (4) Releasing or otherwise transferring a defense article to an embassy or to any of its agencies or subdivisions, such as a diplomatic mission or consulate, in the United States;
 - (5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad; or
 - (6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes (see §126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.
- (b) Any release in the United States of technical data to a foreign person is deemed to be an export to all countries in which the foreign person has held or holds citizenship or holds permanent residency.

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.
- (b) [Reserved]

Proposed and final sales

- No sale, export, transfer, reexport, or retransfer of, and no proposal or presentation to sell, export, transfer, reexport, or retransfer, any defense articles or defense services subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Directorate of Defense Trade Controls.
- However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases.

Advisory opinion and related authorizations

- Any person desiring information as to whether the Directorate of Defense Trade Controls would be likely to grant a license or other approval for the export or approval of a particular defense article or defense service to a particular country may request an advisory opinion from the Directorate of Defense Trade Controls.
- Advisory opinions are issued on a case-by-case basis and apply only to the particular matters presented to the Directorate of Defense Trade Controls. These opinions are not binding on the Department of State, and may not be used in future matters before the Department.
- A request for an advisory opinion must be made in writing and must outline in detail the equipment, its usage, the security classification (if any) of the articles or related technical data, and the country or countries involved. An original and seven copies of the letter must be provided along with seven copies of suitable descriptive information concerning the defense article or defense service.

Required information(1)

- All applications for licenses (DSP-5, DSP-61, DSP-73, and DSP-85), all requests for approval of agreements and amendments thereto under part 124 of this subchapter, and all requests for other written authorizations (including requests for retransfer or reexport pursuant to §123.9 of this subchapter) must include a letter signed by a responsible official empowered by the applicant and addressed to the Directorate of Defense Trade Controls, stating whether:
 - (1) The applicant or the chief executive officer, president, vice-presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is the subject of an indictment or has been otherwise charged (e.g., by criminal information in lieu of indictment) for, or has been convicted of, violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter;

Required information(2)

- (2) The applicant or the chief executive officer, president, vice-presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services from any agency of the U.S. Government;
- (3) To the best of the applicant's knowledge, any party to the export as defined in §126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter, or is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services from any agency of the U.S. government; and

Special/Expedited processing – location dependent

- **§126.14 Special comprehensive export authorizations for NATO, Australia, Japan, and Sweden.**
- **§126.15 Expedited processing of license applications for the export of defense articles and defense services to Australia or the United Kingdom.**

Exemptions

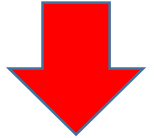
- **§126.16 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and Australia.**
- **§126.17 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom.**
- **§126.18 Exemptions regarding intra-company, intra-organization, and intra-governmental transfers to employees who are dual nationals or third-country nationals.**

Commodity Jurisdiction (CJ)

- The purpose of a commodity jurisdiction (CJ) request is to determine whether an item or service is covered by the U.S. Munitions List (USML) and therefore subject to export controls administered by the U.S. Department of State pursuant to the Arms Export Control Act and the International Traffic in Arms Regulations (ITAR).
- If after reviewing the USML and other relevant parts of the ITAR, in particular ITAR §120.3 and §120.4, you are unsure of the export jurisdiction of an item or service, you should request a CJ determination.
- Registration – not required
- Identify, article or service, and include a history of this product's design, development, and use.
- ... take into account -form and fit of the article; function and performance capability

Commodity Jurisdiction - outcomes

KSS60; KSS7900; KSS8900; LABKA	Sirchie Acquisition company, LLC	Forensic tools which help crime scene investigators (CSI) find fingerprints at crime scenes	ECCN 3A981	07/07/2016
PRIDE Enterprise Software	TRAC Labs, Labs	Several integrated applications for producing and using checklist procedures electronically	EAR99	07/07/2016
Training services for use of the "Alternative"	Alternative Ballistics, LP	Training services for the use of the "Alternative"	Not a defense service	07/01/2016
Ceramic Isolator	CeramTec North America Corporation	Metalized Ceramic	EAR99	07/01/2016
A7740	Hollingsworth & Vose Company	Filter material containing ASZM-TEDA activated carbon and other components for subsequent fabrication into HVAC filters	USML XIV(f)(5)	07/01/2016
LabRAM, Ram 5, RAM 55	Resodyn Acoustic Mixers	High intensity, low frequency acoustics mixing equipment at various weight capacities	CCATS	06/30/2016



https://www.pmdtc.state.gov/commodity_jurisdiction/determination.html November 8, 2016

Form DSP-73

- **Application/License for Temporary Export of Unclassified Defense Articles**
- **Government Furnished Equipment (GFE) For Use by Contractors**
- **Q: Does each contract personnel need their own DSP-73?**
A: No. Your company may obtain a DSP-73 for all the defense articles required by your personnel (that they will carry with them). The DSP-73 may request enough of each piece of equipment so as to allow for changes in manpower on short notice. A single DSP-73 can cover multiple personnel.

126.4 Shipments by or for United States Government agencies

- A license is not required for the temporary import, or temporary export, of any defense article, including technical data or the performance of a defense service, by or for any agency of the U.S. Government for official use by such an agency, or for carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to control by the President by other means.
- This exemption applies only when all aspects of a transaction (export, carriage, and delivery abroad) are affected by a United States Government agency or when the export is covered by a United States Government Bill of Lading.

Basic Framework - requirements

- Registration
 - U.S. persons that manufacture or export defense articles, furnish defense services
 - U.S. and foreign person engaged in arms brokering
 - Information submitted – reviewed by Treasury Department
 - Ensure there are no outstanding law enforcement concerns
 - Does not confer any export privileges
 - Is a prerequisite to export licensing approval
- Registrants, IAW AECA are charged a fee - \$2,250 (initial fee)
 - State Department retains the money
 - Helps support defense export control function

*****Registration

- All manufacturers, exporters, and brokers of defense articles, related technical data and defense services as defined on the United States Munitions List (Part 121 of the ITAR) (PDF, 7MB) are required to register with the Directorate of Defense Trade Controls (DDTC).
- Registration is primarily a means to provide the U.S. Government with necessary information on who is involved in certain manufacturing, exporting and brokering activities.
- Registration does not confer any export rights or privileges, but is a precondition for the issuance of any license or other approval for export.

Registration Code

- Once an entity has properly registered with DDTC, a unique registration code will be assigned to the registrant.
- The DDTC registration code consist of a letter prefix, M (assigned to a manufacturer and/or exporter) or K (assigned to a broker), followed by four or five digits (e.g. K-1234 or M 12345).
- The code is proprietary to the registrant and should be handled as such.
- Company registration codes should not be posted online or given out freely to the public.

Registration – period of validity

- The period of validity for new and renewal registrations is twelve months from the date of issuance.
- The expiration date is included in the registration letter issued by DDT

Registration – review time

- The average review time for a registration request is 45 days.
- We recommend you send your complete registration package electronically through the Electronic Form Submission (EFS) up to a maximum of 60 days in advance of the renewal expiration.
- Intended registrants will save time and money on mail delivery and receive an acknowledgement that their submission has been received. Electronic submission will improve review and adjudication of your registration request.
- Effective January 1, 2014 registration submissions must be submitted electronically.

Registration Fees – 3 Tier

- To align registration fees with the cost of licensing, compliance and other related activities
- The first tier is an annual flat fee of \$2,250.00. The first tier fee is applicable to:
 - First time registrants (Manufacturer, Exporters and stand-alone Brokers);
 - Annual registration renewals for stand-alone Brokers (U.S. and foreign owned or controlled by U.S. persons);
 - Registrants who did not submit any license applications or request for authorization during the twelve month period, ending 90 days prior to the expiration of the current registration.
- The second tier is a set fee of \$2,750 for registrants renewing their registration who have submitted and received a favorable authorization on ten or fewer license applications or request for authorization during a twelve month period, ending 90 days prior to the expiration of their current registration.
- The third tier is a calculated fee for registrants who have submitted and received favorable authorization on more than ten license applications or request for authorization during the twelve month period, ending 90 days prior to the expiration of the current registration. For these registrants, the fee calculation is \$2,750 plus \$250 times the total number of applications over ten. To ensure fairness to those registrants who may fall within the third tier who may have many applications but all of a low value, there is a provision for a reduced fee if the fee calculated above is greater than 3 percent of the total value of all applications. In such cases, the fee will be 3 percent of the total value of all applications or \$2,750, whichever is greater.

Defense Article

- any item or technical data designated in §121.1 <USML> of this subchapter. The policy described in §120.3 is applicable to designations of additional items.
- includes technical data recorded or stored in any physical form, models, mockups or other items that reveal technical data directly relating to items designated in §121.1 of this subchapter.
- includes forgings, castings, and other unfinished products, such as extrusions and machined bodies, that have reached a stage in manufacturing where they are clearly identifiable by mechanical properties, material composition, geometry, or function as defense articles.
- It does not include basic marketing information on function or purpose or general system descriptions.

Defense Article -2

- (a) For purposes of this subchapter, a specific article or service may be designated a defense article (*see* §120.6 of this subchapter) or defense service (*see* §120.9 of this subchapter) if it:
 - (1) Meets the criteria of a defense article or defense service on the U.S. Munitions List; or
 - (2) Provides the equivalent performance capabilities of a defense article on the U.S. Munitions List.
- (b) For purposes of this subchapter, a specific article or service shall be determined in the future as a defense article or defense service if it provides a critical military or intelligence advantage such that it warrants control under this subchapter.
- NOTE TO PARAGRAPHS (A) AND (B): An article or service determined in the future pursuant to this subchapter as a defense article or defense service, but not currently on the U.S. Munitions List, will be placed in U.S. Munitions List Category XXI until the appropriate U.S. Munitions List category has been amended to provide the necessary entry.
- (c) A specific article or service is not a defense article or defense service for purposes of this subchapter if it:
 - (1) Is determined to be under the jurisdiction of another department or agency of the U.S. Government (*see* §120.5 of this subchapter) pursuant to a commodity jurisdiction determination (*see* §120.4 of this subchapter) unless superseded by changes to the U.S. Munitions List or by a subsequent commodity jurisdiction determination; or
 - (2) Meets one of the criteria of §120.41(b) of this subchapter when the article is used in or with a defense article and specially designed is used as a control criteria (*see* §120.41 of this subchapter).
- NOTE TO §120.3: The intended use of the article or service after its export (*i.e.*, for a military or civilian purpose), by itself, is not a factor in determining whether the article or service is subject to the controls of this subchapter.
- [78 FR 22753, Apr. 16, 2013]

Specially designed – re: §120.41(b)

- (b) For purposes of this subchapter, a part, component, accessory, attachment, or software is not specially designed if it:
 - (1) Is subject to the EAR pursuant to a commodity jurisdiction determination;
 - (2) Is, regardless of form or fit, a fastener (e.g., screws, bolts, nuts, nut plates, studs, inserts, clips, rivets, pins), washer, spacer, insulator, grommet, bushing, spring, wire, or solder;
 - (3) Has the same function, performance capabilities, and the same or “equivalent” form and fit as a commodity or software used in or with a commodity that:
 - (i) Is or was in production (*i.e.*, not in development); and
 - (ii) Is not enumerated on the U.S. Munitions List;
 - (4) Was or is being developed with knowledge that it is or would be for use in or with both defense articles enumerated on the U.S. Munitions List and also commodities not on the U.S. Munitions List; or
 - (5) Was or is being developed as a general purpose commodity or software, *i.e.*, with no knowledge for use in or with a particular commodity (e.g., a F/A-18 or HMMWV) or type of commodity (e.g., an aircraft or machine tool).
- NOTE TO PARAGRAPHS (A) AND (B): The term “commodity” refers to any article, material, or supply, except technology/technical data or software.

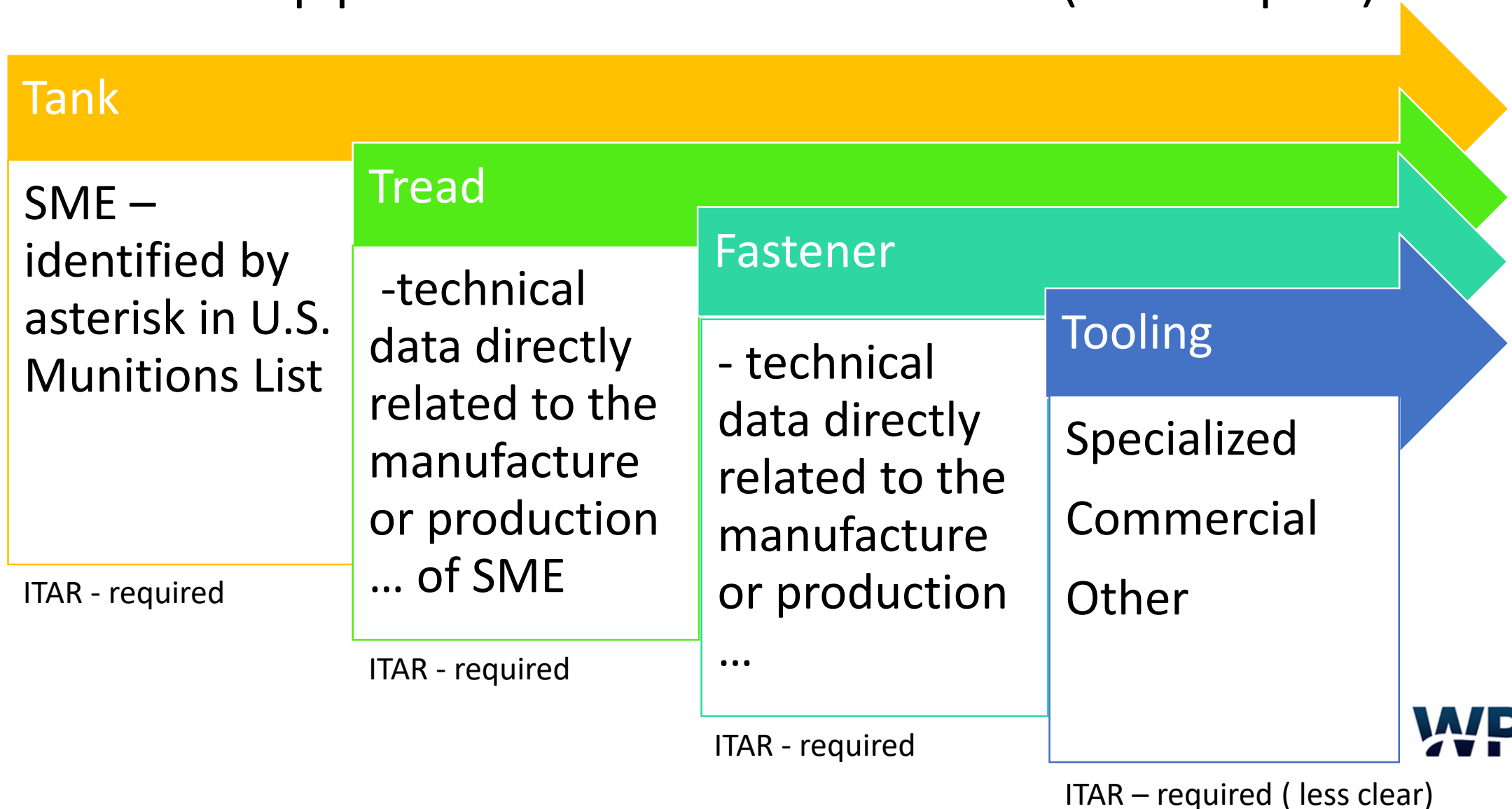
Significant Military Equipment

- (a) *Significant military equipment* means articles for which special export controls are warranted because of their capacity for substantial military utility or capability.
- (b) Significant military equipment includes:
 - (1) Items in §121.1 of this subchapter which are preceded by an asterisk; and
 - (2) All classified articles enumerated in §121.1 of this subchapter.
- [58 FR 39283, July 22, 1993, as amended at 62 FR 67275, Dec. 24, 1997]

SME – extension to

- (b) *Significant military equipment*: An asterisk precedes certain defense articles in the following list. The asterisk means that the article is deemed to be “Significant Military Equipment” to the extent specified in § 120.7 of this subchapter. The asterisk is placed as a convenience to help identify such articles.
- Note that technical data directly related to the manufacture or production of any defense articles enumerated in any category that are designated as Significant Military Equipment (SME) shall itself be designed SME.

SME – Application of definition (example)



USML categories

- Category I—Firearms, Close Assault Weapons and Combat Shotguns
- Category II—Guns and Armament
- Category III—Ammunition/Ordnance
- 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
- Category VIII—Aircraft and Related Articles
- Category IX—Military Training Equipment and Training
- Category X—Personal Protective 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 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

USML – Order of review

- Begin with a review of the general characteristics
- These will guide you to the appropriate category
- Then match the particular
 - Characteristics
 - Function

USML – Composition of an entry

- Defense articles are enumerated by an alpha paragraph designation
- May include subparagraphs
- Each category starts with end platform designation
 - Major systems
 - Parts
 - Components
 - Accessories
 - Attachments
- Most categories will contain an entry tech data

USML – example

- Category II – Guns and Armament – category 2 of 16
- (a) Guns over caliber .50 (12.7 mm, whether towed, airborne, self-propelled, or fixed, including but not limited to, howitzers mortars, cannon and recoilless rifles.
- (g) Tooling and equipment specifically ...
- (h) Test and evaluations equipment – designed or modified for ..
- (j) All other components, parts, accessories, attachments and associated equipment specifically designed or modified for this cat
- (k) Technical data – para’s (a-j) directly related to mfg or prd of any DA

License

- License means a document bearing the word “license” issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or his authorized designee, that permits the export, temporary import, or brokering of a specific defense article or defense service controlled by this subchapter.
- Other approval means a document issued by the Deputy Assistant Secretary of State for Defense Trade Controls, or his authorized designee, that approves an activity regulated by this subchapter (e.g., approvals for brokering activities or retransfer authorizations), or the use of an exemption to the license requirements as described in this subchapter.

Licensing (1)

- Department of State approval of a licensing application required
 - Prior to –
 - Export of defense articles or services
 - ➔ • About 30% of the applications are referred to other offices and agencies
 - Computerized review of all parties to the proposed transaction
 - Compared to “watch list”
 - Match triggers full compliance review before final action
- License application review process
 - Clarifies the ultimate end-use and end-users
 - Related facts

Licensing (2)

- Enforcement perspective
 - Avenue to prevent or eliminate diversions
 - Assists the U.S. Government in
 - Investigations and prosecutions should an export violation be suspected or reported
- Submission of license application
 - Companies must certify eligibility to export
 - Understanding of the laws governing such exports
 - Meet conditions in terms of documentation
 - Handling requirements – especially classified material
- Required legends on shipping documents – re: selling/transfer

Export — we discussed this previously

- (a) Except as set forth in §126.16 or §126.17, *export* means:
 - (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”);
 - (3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR by a U.S. person to a foreign person;
 - (4) Releasing or otherwise transferring a defense article to an embassy or to any of its agencies or subdivisions, such as a diplomatic mission or consulate, in the United States;
 - (5) Performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad; or
 - (6) A launch vehicle or payload shall not, by reason of the launching of such vehicle, be considered an export for purposes of this subchapter. However, for certain limited purposes (see §126.1 of this subchapter), the controls of this subchapter may apply to any sale, transfer or proposal to sell or transfer defense articles or defense services.
- (b) Any release in the United States of technical data to a foreign person is deemed to be an export to all countries in which the foreign person has held or holds citizenship or holds permanent residency.

Release — discussed previously

- (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.
- (b) [Reserved]

Technical data

- (a) *Technical data* means, for purposes of this subchapter:
 - (1) Information, other than software as defined in §120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.
 - (2) Classified information relating to defense articles and defense services on the U.S. Munitions List and 600-series items controlled by the Commerce Control List;
 - (3) Information covered by an invention secrecy order; or
 - (4) Software (*see* §120.45(f)) directly related to defense articles.
- (b) The definition in paragraph (a) of this section does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain as defined in §120.11 of this subchapter or telemetry data as defined in note 3 to Category XV(f) of part 121 of this subchapter. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.

TAA – Technical Assistance Agreement

- An agreement (e.g., contract) for the performance of a defense service(s) or the disclosure of technical data, as opposed to an agreement granting a right or license to manufacture defense articles. Assembly of defense articles is included under this section, provided production rights or manufacturing know-how are not conveyed. Should such rights be transferred, §120.21 is applicable. (See part 124 of this subchapter).

Manufacturing license agreement

- An agreement (e.g., contract) whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:
 - (a) The export of technical data (as defined in §120.10) or defense articles or the performance of a defense service; or
 - (b) The use by the foreign person of technical data or defense articles previously exported by the U.S. person. (See part 124 of this subchapter).

Person

- *Person* means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. If a provision in this subchapter does not refer exclusively to a foreign person (§120.16) or U.S. person (§120.15), then it refers to both.

U.S. Person

- U.S. person means a person (as defined in §120.14 of this part) who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person as defined in §120.16 of this part.

Foreign Person

- Foreign person 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). It also means 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).

Reexport

- (a) *Reexport*, except as set forth in §126.16 or §126.17, means:
 - (1) An actual shipment or transmission of a defense article from one foreign country to another foreign country, including the sending or taking of a defense article to or from such countries in any manner;
 - (2) Releasing or otherwise 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”);
or
 - (3) Transferring registration, control, or ownership of any aircraft, vessel, or satellite subject to the ITAR between foreign persons.
- (b) Any release outside the United States of technical data to a foreign person is deemed to be a reexport to all countries in which the foreign person has held or holds citizenship or holds permanent residency.

Temporary import

- means bringing into the United States from a foreign country any defense article that is to be returned to the country from which it was shipped or taken, or any defense article that is in transit to another foreign destination. Temporary import includes withdrawal of a defense article from a customs bonded warehouse or foreign trade zone for the purpose of returning it to the country of origin or country from which it was shipped or for shipment to another foreign destination. 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 parts 447, 478, 479, and 555).

Distribution agreement

- An agreement (e.g., a contract) to establish a warehouse or distribution point abroad for defense articles exported from the United States for subsequent distribution to entities in an approved sales territory (see part 124 of this subchapter).

Business Considerations

Impact on supply chain and costs

- Suppliers may have to also be ITAR compliant
- May impact production
- May impact transportation requirements
- May increase costs
- May create a need for greater planning and lead times
- What path are your emails taking?
 - What if the route uses a non-US router?
- Data storage – who has access?/who performs maintenance?

Contract management issues

- Flowdown clauses
- Managing access to information
 - Internally – staff and/or employees
 - On site – in the office
 - Offsite – home, conference, during travel
- Selection of subcontractors
- Print & document control, emails, copy services
- Copier hard drive
- IT systems and IT technical staff – in house / contract
- Visitor control/Plant visits/Owners and others

Employee considerations

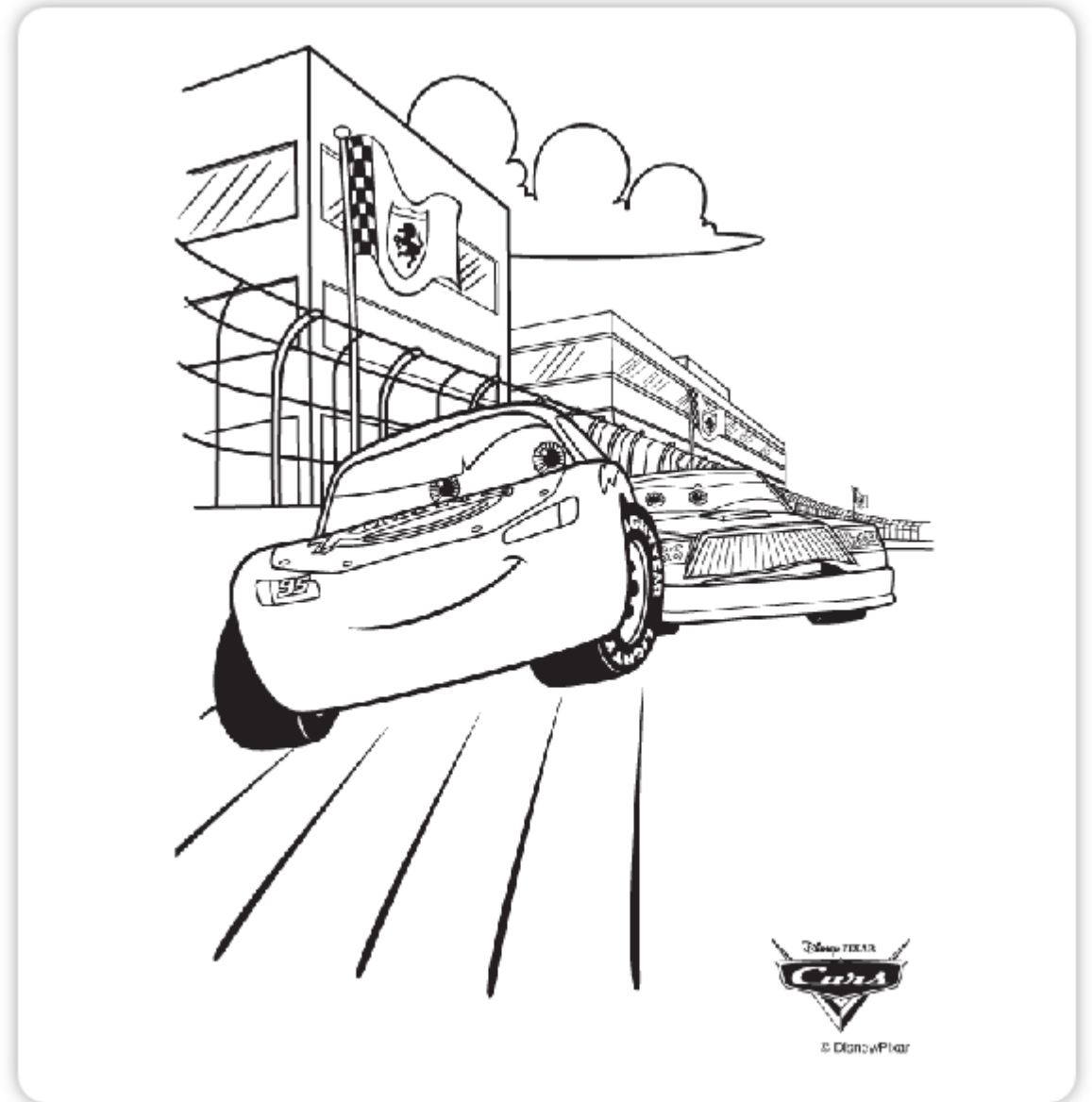
- Access to information
 - Country of birth
 - If not U.S.
 - No access
 - Access requires TAA – country of birth, may require more than 1 TAA
 - Segregation of duties
 - Badge identification
 - Document control
 - Hiring policy – administration, briefing
 - Departure process

Gateway to new opportunities or barrier

- Many primes will only work with ITAR registered subcontractors
- Primes seek
 - Partners & problems solvers
 - Companies that help to manage and reduce risk
 - Strengthen and support the overall effort
- ITAR registration
 - Indicates
 - Awareness of program
 - Establishment of procedures
 - Ability to maintain control over information

Compliance Guidelines


It's all about -
Keeping within
the lines



Pick an approach for success!



Program elements

- Organization Structure
- Corporate Commitment and Policy
- Identification, Receipt and Tracking of ITAR Controlled Items/Tech Data
- Restricted/Prohibited Exports and Transfers
- Recordkeeping
- Internal Monitoring
- Training 
- Violations and Penalties

Oops

- In horse-shoes and hand grenades – close counts
- In golf there are Mulligans
- When you hit send – who is receiving your email?
- When dealing with ITAR program information there are no
 - “do overs”

Whether you hit send, do not protect documents or service an order without performing due diligence, if the information is controlled by the program any of these events may create major issues.

Violations (partial) 22 CFR 127

- a) Without first obtaining the required license or other written approval from the Directorate of Defense Trade Controls, it is unlawful:
 - (1) To export or attempt to export from the United States any defense article or technical data or to furnish or attempt to furnish any defense service for which a license or written approval is required by this subchapter;
 - (2) To reexport or retransfer or attempt to reexport or retransfer any defense article, technical data, or defense service from one foreign end-user, end-use, or destination to another foreign end-user, end-use, or destination for which a license or written approval is required by this subchapter

Authority of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection Officers

- (a) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export or the temporary import of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter or by exemption.
- (b) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers have the authority to investigate, detain or seize any export or attempted export of defense articles or technical data contrary to this subchapter.
- (c) Upon the presentation to a U.S. Customs and Border Protection Officer of a license or written approval, or claim of an exemption, authorizing the export of any defense article, the customs officer may require the production of other relevant documents and information relating to the final export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required by the U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement.
- (d) If an exemption under this subchapter is used or claimed to export, transfer, reexport or retransfer, furnish, or obtain a defense article, technical data, or defense service, law enforcement officers may rely upon the authorities noted, additional authority identified in the language of the exemption, and any other lawful means or authorities to investigate such a matter.

Misrepresentation and omission of facts

(a) It is unlawful to use or attempt to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting, transferring, reexporting, retransferring, obtaining, or furnishing any defense article, technical data, or defense service. Any false statement, misrepresentation, or omission of material fact in an export or temporary import control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778, and 22 U.S.C. 2779.

(b) For the purpose of this subchapter, export or temporary import control documents include the following: ***continued on following slide

Misrepresentation and omission of facts

- (1) An application for a permanent export, reexport, retransfer, or a temporary import license and supporting documents.
- (2) Electronic Export Information filing.
- (3) Invoice.
- (4) Declaration of destination.
- (5) Delivery verification.
- (6) Application for temporary export.
- (7) Application for registration.
- (8) Purchase order.
- (9) Foreign import certificate.
- (10) Bill-of-lading.
- (11) Airway bill.
- (12) Nontransfer and use certificate.
- (13) Any other document used in the regulation or control of a defense article, defense service, or brokering activity regulated by this subchapter.
- (14) Any other shipping document that has information related to the export of the defense article or defense service.

Penalties for violations

- Any person who willfully:
- (a) Violates any provision of §38 or §39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or any rule or regulation issued under either §38 or §39 of the Act, or any undertaking specifically required by part 124 of this subchapter; or
- (b) In a registration, license application, or report required by §38 or §39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).
-shall upon conviction be fined for each violation not more than \$1,000,000 or imprisoned not more than 20 years, or both (22 U.S.C. 2778(c))

Quotes from part 127

(b) It is unlawful:

(1) To violate any of the terms or conditions of a license or approval granted pursuant to this subchapter, any exemption contained in this subchapter, or any rule or regulation contained in this subchapter;

127.2 Misrepresentation and omission of facts.

(a) It is unlawful to use or attempt to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting, transferring, reexporting, retransferring, obtaining, or furnishing any defense article, technical data, or defense service.

(d) A person with knowledge that another person is then ineligible pursuant to §§ 120.1(c) or 126.7 of this subchapter may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization from, the Directorate of Defense Trade Controls:
(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) of this subchapter for such ineligible person; or

Federal Acquisition Regulations (FAR)

- A series of webinars on Wednesdays from 6.00pm to 7.00pm.
 - This introductory session of the FAR REVIEW series is geared towards those interested in becoming CFCM certified. Sessions of this FAR REVIEW series will cover all parts of the FAR and will be beneficial to current Federal contractors and subcontractors even if not intending to participate in the NCMA certification exam.
- Schedule listed below:
 - <https://www.wispro.org/wp-content/uploads/2017/02/FAR-Training-Webinar-Schedule.pdf>

Acquisition Hour Webinars

- April 18, 2017 – [Overview of CPARS](#) – Presented by WPI
- April 19, 2017 – [The New Small Mentor Protégé Program – The SBA Perspective](#) – Presented by US-SBA
- May 2, 2017 – [The HUBZone Program – Certification Benefits and New Regulations](#) – Presented by US-SBA
- May 16, 2017 – [Understanding your Obligations when Quoting and Receiving Awards from Defense Logistics Agency \(DLA\) DIBBS](#) – presented by WPI
- May 17, 2017 – [The SBA 8\(a\) Certification Program](#) – Presented by US-SBA
- May 17, 2017 – [Federal Certifications For Veteran And Service Disabled Veteran Owned Businesses](#) – Presented by WPI

Upcoming WPI Events

- [WHAT IT TAKES TO WIN – WRITING AN EFFECTIVE PROPOSAL](#) – April 6, 2017 – Milwaukee – WI
- [FORT MCCOY ACQUISITION OPEN HOUSE FORUM](#) – April 18, 2017 – Fort McCoy, WI
- [5th ANNUAL U.S. DEPARTMENT OF VETERANS AFFAIRS BUSINESS CONFERENCE](#) – May 10, 2017 – Brown Deer – WI
- [DOD CONTRACTOR BUSINESS SYSTEM REQUIREMENTS CRITICAL TO CONTRACTOR SUCCESS](#) – May 17, 2017 – Wauwatosa, WI
- [DOING BUSINESS WITH THE NATIONAL PARK SERVICE](#) – June 14, 2017 – Ashland, WI
- [11TH ANNUAL VOLK FIELD SMALL BUSINESS CONFERENCE](#) – June 27 – 28, 2017 – Camp Douglas, WI

Government Contracting Opportunities for Small Businesses

- [May 2 & 3, 2017 – Crandon, WI](#)
- [May 23, 2017 – Florence, WI](#)
- [June 13, 2017 – Superior, WI](#)



QUESTIONS?

SURVEY



Continuing Professional Education



CPE Certificate available, please contact:

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Presented by:

Marc Violante

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