



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
ACQUISITION LOGISTICS AND TECHNOLOGY
103 ARMY PENTAGON
WASHINGTON DC 20310-0103



May 20, 2004

REPLY TO
ATTENTION OF

SAAL-NP

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Department of Defense (DoD) Guidelines for Certifying Use of International Traffic in Arms Regulation (ITAR) Exemptions

The Office of the Under Secretary of Defense for Policy (OUSD(P)) has issued guidelines for use by the Army and other military departments when certifying requests from DoD elements and U.S. industry for exemptions to the ITAR. The implementation of these guidelines within the Army is at the direction of the Deputy Assistant Secretary of the Army for Defense Exports and Cooperation (DASA(DE&C)). The OUSD(P) has authorized only two officials within the Army (called the Authorized Exemption Official (AEO) and the Exemption Certifying Official (ECO)) to certify ITAR exemptions. The AEO for the Army is the DASA(DE&C) (SAAL-ZN), and the ECO is the Director, Policy for Security Cooperation, Resources, and Exports (SAAL-NP). Specific instructions on processing requests for ITAR exemptions within the Army are contained in the enclosure.

The new guidelines provide a means for assisting DoD elements and U.S. industry in selected circumstances, however, the use of ITAR exemptions remain circumscribed by various conditions and limitations. Only those requests for ITAR exemptions that directly support an Army program or operation may be considered for certification. In general, ITAR exemptions may be considered for certification to support the following Army initiatives.

- a. Sales, loans, leases or grants of defense articles, services and technical data to foreign governments and international organizations.
- b. International cooperative armaments research, development and acquisition agreements.
- c. Government-to-government military and civilian personnel exchange agreements.
- d. Combined military operations and training.
- e. Unilateral military operations abroad.

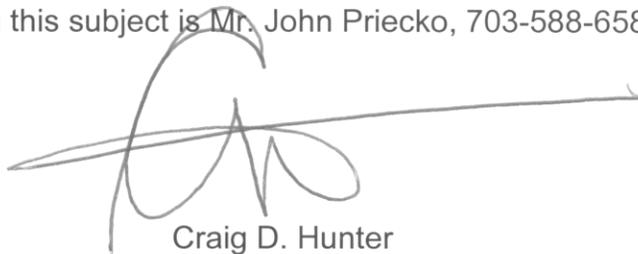


The Army's authority to certify ITAR exemptions is limited. Requests from Army elements and U.S. industry must be under one of the following five specific sections in the ITAR: 125.4(b)(1); 125.4(c); 125.5; 126.4(a); and, 126.4(c). Each section contains criteria that must be met before an ITAR exemption can be certified. Certification will be granted when the proposed export matches the specific purpose stated within these respective ITAR sections. In general, ITAR exemptions can be certified by the Army to support exports to units overseas, classified and unclassified plant visits, offshore bid proposals, and other conditions/criteria. Only the AEO and the ECO may provide guidance that satisfies the conditions of ITAR section 125.4(b)(1). In addition, the Army cannot certify requests that exceed the scope of the five ITAR sections listed above. However, there may be instances wherein the Army would sponsor a request for such an exemption with the Defense Technology Security Administration.

In addition, the Army may not consider requests to certify ITAR exemptions under the following circumstances.

- a. The exemption is solely for the benefit of the exporter.
- b. The basis of the request is tied solely to urgency defined by the applicant.
- c. The foreign end user is prohibited or embargoed under ITAR Section 126.1.
- d. Congressional notification of the proposed export is required under ITAR Sections 123.15, 124.2(2), or 124.11.
- e. The defense item to be exported is controlled by the Missile Technology Control Regime in accordance with ITAR Section 121.16
- f. Exports to non-U.S. persons that are ineligible per Section 120.1(c) of the ITAR.

My point of contact regarding this subject is Mr. John Priecko, 703-588-6586, John.Priecko@hqda.army.mil.

A handwritten signature in black ink, appearing to read 'Craig D. Hunter', with a long horizontal line extending to the right.

Craig D. Hunter
Deputy Assistant Secretary of the Army
for Defense Exports and Cooperation

Enclosure

DISTRIBUTION:

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**ENCLOSURE:
INSTRUCTIONS FOR PROCESSING REQUESTS FOR
INTERNATIONAL TRAFFIC IN ARMS REGULATIONS EXEMPTIONS
IN SUPPORT OF THE U.S. ARMY**

Section I: Background

a. U.S. Army activities and U.S. companies working in support of the Army's mission, programs, Foreign Military Sales cases, and international agreements may request certification from the Office of the Deputy Assistant Secretary of the Army for Defense Exports and Cooperation (ODASA(DE&C)) to use an exemption to the International Traffic in Arms Regulations (ITAR). An exemption to the ITAR provides the legal basis for exporting technical data or defense articles, or providing defense services to a foreign person, without an export license or other authorization issued by the Department of State's (DOS) Directorate of Defense Trade Controls (DDTC). The Army will not certify requests for ITAR exemptions that do not meet the requirements spelled out in the following sections of the ITAR: 125.4(b)(1); 125.4(c); 125.5; 126.4(a); and, 126.4(c). In addition, the Army will not certify exemptions under any other section of the ITAR.

NOTE: All U.S. Governmental entities and U.S. companies who manufacture or export defense articles or furnish defense services are required by law to comply with the provisions of the ITAR and obtain export licenses or other authorizations from DDTC for any technologies that are controlled under the U.S. Munitions List (USML), ITAR Section 121), unless otherwise authorized through an exemption to the ITAR. (The ITAR contains numerous "inherent" exemptions, separate from the five listed above, which allow for limited export based on conditions spelled out in the ITAR. The ODASA(DE&C) has no authority to certify inherent exemptions to the ITAR.) The majority of exports by U.S. companies of USML technologies relating to Army programs and weapon systems will continue to be authorized by the issuance of export licenses or other authorizations from DDTC, or by the invocation of an applicable inherent exemption, rather than by any exemptions that may be certified by the ODASA(DE&C).

b. Exports of dual-use items commodities, assistance, technology and software under jurisdiction of the U.S. Department of Commerce (DOC), subject to the Export Administration Regulations (EAR) and contained on the Commerce Control List (CCL), are not affected by these procedural instructions. All exports of dual-use items or technologies must be approved by the DOC's Bureau of Industry & Security.

c. Implementation of these instructions is at the direction of the Deputy Assistant Secretary of the Army for Defense Exports and Cooperation (DASA(DE&C)). Only two officials within the Army are authorized to certify ITAR exemptions: the DASA(DE&C), as the Authorized Exemption Official (AEO); and, the Director, Policy for Security Cooperation, Resources, and Exports (SAAL-NP), as the Exemption Certifying Official (ECO).

Section II: General Guidelines on the Use of ITAR Exemptions in support of the Army

a. Certification of ITAR exemptions by the ODASA(DE&C) provide a means for assisting Army activities and U.S. industry in selected circumstances, but the use of ITAR exemptions remains circumscribed by various conditions and limitations. Only those requests for ITAR exemptions that directly support an Army program or operation will be considered for certification. In general, ITAR exemptions may be considered for certification to support the following Army initiatives:

- Sales, loans, leases or grants of defense articles, services and technical data to foreign governments and international organizations.
- International cooperative armaments research, development and acquisition agreements.
- Government-to-government military and civilian personnel exchange agreements.
- Combined military operations and training.
- Unilateral military operations abroad.

b. The Army will not consider requests to certify ITAR exemptions under the following circumstances.

- The exemption is solely for the benefit of the exporter.
- The basis of the request is tied solely to urgency defined by the applicant.
- The foreign end user is prohibited or embargoed under the ITAR, Section 126.1.
- Congressional notification of the proposed export is required under ITAR Sections 123.15, 124.2(2), or 124.11.
- The defense item to be exported is controlled by the Missile Technology Control Regime (MTCR) in accordance with the ITAR, Section 121.16
- Exports to non-U.S. persons that are ineligible per the ITAR, Section 120.1(c).

Section III: Procedures

a. A U.S. company seeking certification of an ITAR exemption must address a written request to the cognizant Army official (e.g., a Program Manager (PM) or other appropriate official having management authority) on company letterhead. The request must include all the information contained in the attachment to these instructions. Generally an applicant may only request one exemption per submission. (The cognizant Army official may endorse more than one exemption request in the covering memorandum to ODASA(DE&C).) Requests from U.S. companies to export defense articles, defense services or technical data that are not under the cognizance of a designated Army official must be addressed directly to the ODASA(DE&C). Requests from Army activities to export defense articles, defense services or technical data not related to U.S. company requests must also be addressed directly to the ODASA(DE&C). All requests must be submitted no less than fifteen (15) working days prior to the date of the intended export.

b. The cognizant Army official will evaluate all requests from U.S. companies for ITAR exemptions in accordance with the criteria contained in Section I and Section II above. If the cognizant Army official judges that the request merits support, the request shall be forwarded to ODASA(DE&C) together with a written endorsement from the cognizant Army official in the form of a covering memorandum. The endorsement memorandum will include specific examples of how the company's request to use an ITAR exemption will directly result in benefits to the Army. Requests from Army activities not related to U.S. company requests must also be made in writing to the ODASA(DE&C) and will provide specific information on how use of an ITAR exemption will directly benefit the Army. The duration of Army ITAR exemption certifications will generally be no longer than one year.

c. All requests to use ITAR exemptions will be evaluated for compliance with existing statutory, regulatory, and executive agency guidelines relating to export compliance, as well as the anticipated direct benefit to the Army's interests and equities. Formal decisions to certify or not certify ITAR exemptions will be made in writing by the ODASA(DE&C).

d. Documentation and record keeping for Army Exemption Certifications will be in accordance with the ITAR, Sections 122.5, 123.22(b)(3)(iii), 123.26, and 125.6. In summary, all records pertaining to an Army certification of an ITAR Exemption must be maintained for a period of five years from the expiration date of the exemption.

**ATTACHMENT TO THE ENCLOSURE:
INSTRUCTIONS FOR PROCESSING REQUESTS FOR
INTERNATIONAL TRAFFIC IN ARMS REGULATIONS EXEMPTIONS
IN SUPPORT OF THE U.S. ARMY**

The information identified in this attachment must accompany all requests for ITAR exemptions in support of the U.S. Army.

1. Country or countries of end-use:
2. ITAR Exemption requested (Check only one):
 - 125.4(b)(1) [list the technical data to be disclosed]
 - 125.4(c) [provide applicable bid or solicitation number]
 - 125.5 [provide date of the scheduled plant visit]
 - 126.4(a) [list the purpose of the imports, exports, or defense services]
 - 126.4(c) [list the purpose of the imports, exports, or defense services]
3. Army Activity (O-6/GM-15 level) sponsoring (or requesting) the exemption:
Point of Contact (POC):
Telephone:
Fax:
Email:
4. Detailed description of the defense article, defense service or technical data proposed for export under the ITAR exemption:
5. Exporter of Record (company's name; or, U.S. Army):
DDTC Registration Code:
(If an Army submission, the DDTC Registration Code is G-0450)
POC:
Telephone:
Fax:
E-mail :
6. Name, address and telephone number of other parties involved in the proposed export [foreign end-user(s), intermediate/ultimate consignees, freight forwarder, etc.]:
7. Are any persons named in 5 and 6 above ineligible for any reason?

No
Yes [If yes, contact the ODASA(DE&C)]

8. Assessment of the risk of unauthorized re-transfer or use by persons listed in 5 and 6 above:

9. Security Classification (Check all that apply):

- Controlled Unclassified Information (CUI)
- CONFIDENTIAL
- SECRET

10. USML Category and Sub-category:

11. Are any defense articles proposed for export MTCR Annex Items?

- No
- Yes

12. Reference any relevant Department of Defense (DOD) positions on export license applications or Foreign Military Sales involving similar export activities or technology areas:

13. Provide a brief statement about how approval of the exemption would be in the U.S. national security and foreign policy interest:

14. Describe how use of the exemption would support an Army program, contract, government-to-government arrangement or other Army mission activity. Provide relevant references (copies of documentation should be kept in the official record of the exemption case).

15. If the exemption is pursuant to the ITAR, Section 125.4(c), attach a copy of the written request from the DOD for a quote or bid proposal.

16. If the exemption is pursuant to the ITAR, Section 125.5, attach a copy of the visit request authorization approving access to classified information during a plant visit.

17. Point of Contact in DOD office that actually controls the defense articles, defense service or technical data, if other than the Army Component sponsoring the exemption, and copies of or notations indicating their concurrence:

Name/Organization:
Telephone:
Email:

18. If technical data is industry proprietary information for which the Army and/or the company requesting the exemption do not possess sufficient use rights, do you have written permission for export/disclosure?

Yes (attach a copy of the consent)

No (obtain such rights before proceeding with the exemption request)

19. List the non-transfer and use assurances that will apply to the exemption:
20. Is a DSP-83* required? If so, please state how the DSP-83 will be obtained. (Note: A copy of the DSP-83 must be maintained in the official Army record of the exemption.) [The Form DSP-83 and instructions on how to complete it can be found at <http://www.pmdtc.org/getforms.htm>.]

* A DSP-83 is a form used by the Department of State (DOS) entitled "Nontransfer and Use Certificate." This form is required whenever classified equipment or data, or Significant Military Equipment (see definition below), is exported to a foreign entity.

21. List the conditions and limitations that will apply to the exemption:
22. Is this Significant Military Equipment* (SME) that meets the notification or prior approval requirements of the ITAR, Section 126.8? [An explanation of the requirements contained in the ITAR, Section 126.8 can be found at http://www.pmdtc.org/docs/ITAR/22cfr126_Part_126.pdf.]

No

Notification of State applies

Prior approval of State applies

* Significant Military Equipment is defined in the ITAR as: all classified military equipment; and, all defense articles identified in the U.S. Munitions List (ITAR Section 121.1) which are preceded by an asterisk. [A complete listing of SME defense articles can be found at http://www.pmdtc.org/docs/ITAR/22cfr121_Part_121.pdf.]

23. Describe the specific oversight that the sponsoring DOD Component will implement to ensure compliance with the conditions of the exemption:
24. Expected date of export and method of transmission:
25. Requested exemption duration (No longer than 1 year):