



ITAR Exemptions Panel

Dave Allman

Partner

K&L Gates LLP

Dave.Allman@klgates.com

828.835.0121

Patrick Marzluff

Senior Export Control Analyst

Defense Technology Security Administration
(DTSA)

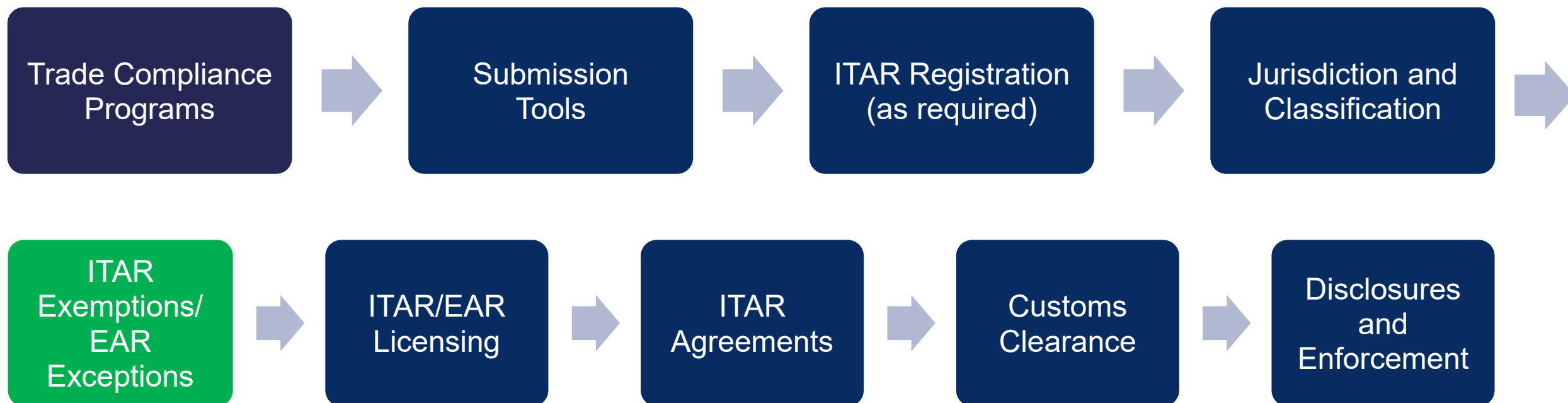
U.S. Department of War

patrick.c.marzluff.civ@mail.mil



Conference Agenda

We are here in the transaction process!





INTRODUCTION

- You now know the basic licensing options under the ITAR but are there other options?
- Before submitting a license application to the Department of State, it is prudent to review the exemptions which can be used in lieu of a formal license request
- Remember that each exemption has unique requirements, and you must satisfy all requirements for use



Scenario Refresher

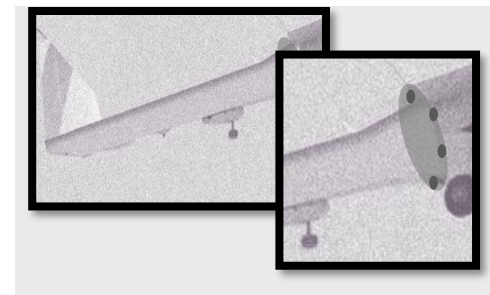
Our company, Anything For A Sale (AFAS), is a manufacturer of the Carmella 500 Tactical UAV. We have only done domestic sales to the U.S. government. We now want to explore the international market.

- In this module, we will be looking at potential exports in this scenario and reviewing potential License Exemptions under the ITAR that might be applicable
- As we consider exemptions/exceptions that might be helpful, don't focus on too much on the specific commodity – our goal is to get comfortable with reading the regulations

Items for Scenario



Carmella 500 Propeller
9A610.y.25



Composite Tail Section **9A610.t**



Carmella 500 Launcher
9A610.x



Micro-SAR Radar
XI(a)(3)(ii)



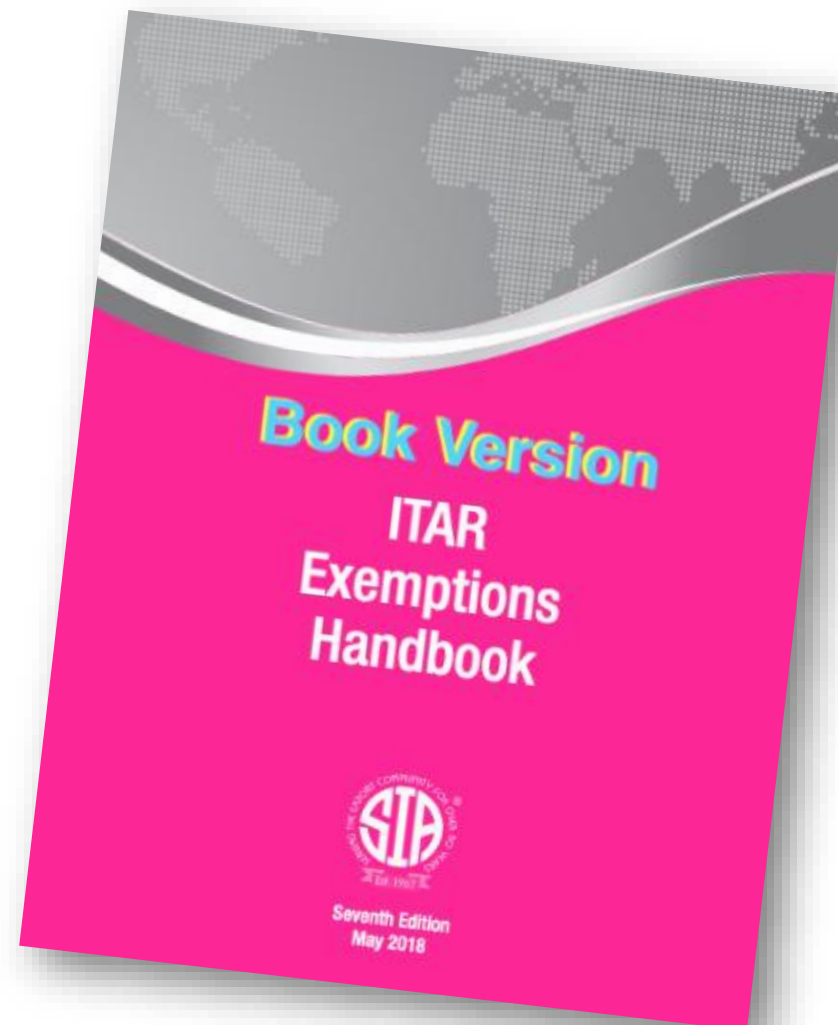
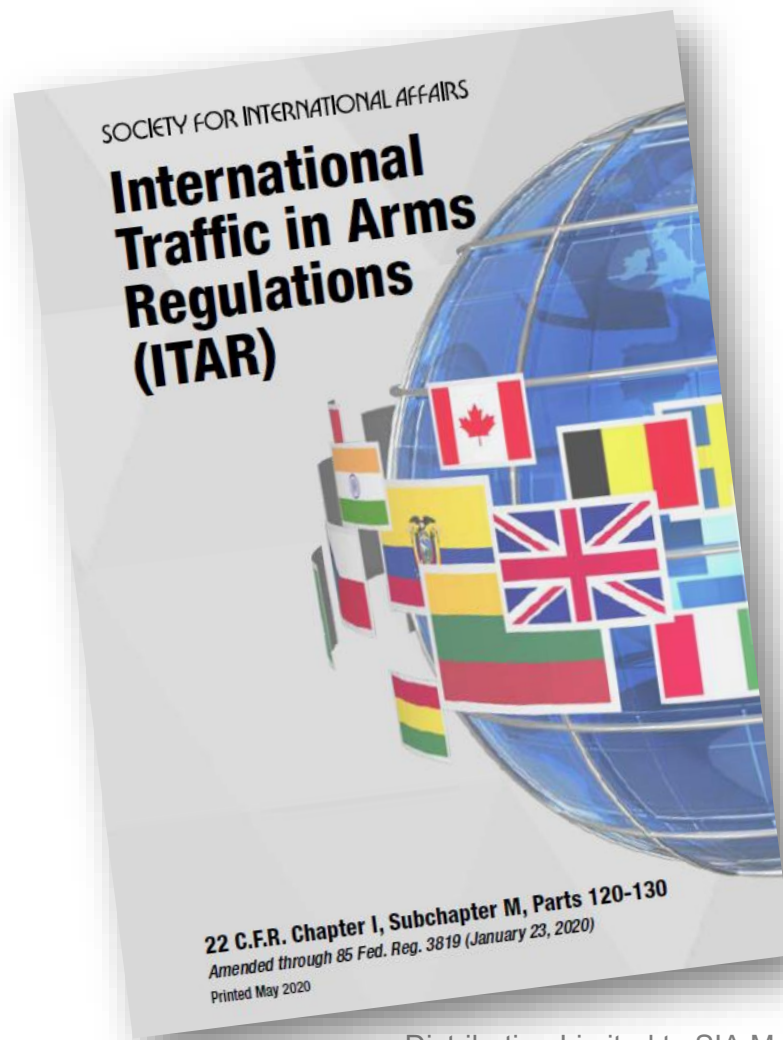
Ground Fueling Station
9A610.f



Carmella 500 Launch Rail
9A610.x



RESOURCES





WHAT IS AN EXEMPTION?

- **Authorization / Approval** to export, temporarily import, reexport, or retransfer without a license or other written authorization (e.g. agreement) provided that a set of defined criteria is met
- Can apply to:
 - Defense articles – hardware and technical data
 - Unclassified and/or classified
 - Defense services



GENERAL CRITERIA FOR USE

- Party using exemption must be registered with DDTC
 - Except in very specific cases
- Registration must be in place for the duration of the exemption use
- Cannot be denied export privileges
- Exemptions CANNOT be used to export to §126.1 proscribed destinations
 - Except in very specific cases

WHY USE EXEMPTIONS?

- Exemptions can be an essential tool for companies
- Used correctly, exemptions can speed up international transactions





RESPONSIBILITIES

- The use of an exemption requires **INCREASED** attention by the exporter
 - Exemptions are **NOT ALWAYS** possible
 - Some items/destinations will never be eligible
- The exporter is provided the opportunity to use exemptions if all criteria are met and they follow all recordkeeping and marking requirements
- You act as the licensing officer



ONE AT A TIME PLEASE!!

- One exemption per transaction
- Don't list multiple exemptions – just because you don't know which one fits best
 - *We must be eligible for at least one of these exemptions, so I'll list them all to ensure coverage.....*
- Decide what the export is that is being covered
 - Is all of it covered by one exemption or a mixture of approvals?

SMALL WARNING

- Some exemptions might be applicable to your hardware or technical data export, but they may be **VERY** difficult to implement and comply with
 - Extensive reporting requirements
 - Certifications from foreign party
 - Onerous Customs filing requirements
 - Potential for audits by the USG
- Do you have the infrastructure to implement all of the exemption requirements?





WHERE TO FIND EXEMPTIONS

- *Generally*, can be found as follows:
 - Part 123 – Hardware Exemptions
 - Part 124 – Defense Service Exemptions
 - Part 125 – Technical Data Exemptions
 - Part 126 – Misc. (Country-specific, FMS, etc.)
- Over 50 exemptions
in the ITAR

**EVERY EXEMPTION HAS A DIFFERENT SET
OF SPECIFIC CRITERIA THAT MUST BE
EVALUATED ON A CASE-BY-CASE BASIS**



EXEMPTIONS HANDBOOK QUICK REFERENCE CHART

ITAR Exemptions Quick Reference Chart | 11

ITAR EXEMPTIONS QUICK REFERENCE CHART

The ITAR Exemptions Quick Reference Chart below can assist you in determining which exemptions may be available to you for use. The right hand columns indicate whether the exemption can be used for HW (Hardware), TD (Technical Data), and/or DS (Defense Services). The last column indicates whether the exemption can be used for Classified (C) and/or Unclassified (U).

This chart should only be used as a guide; you will need to refer to the ITAR and the exemption itself prior to use. It may not be relied upon for legal or regulatory advice or analysis. It is not intended to replace the ITAR or other regulatory documents, or to relieve exporters or importers of their statutory responsibility to comply with current laws, regulations, policies and procedures of the U.S. Government.

For further details on other sections of the ITAR that may be relevant to exemptions, please see the following sections, **General Requirements** and **Exporting Procedures**, in this handbook.

Eligibility

Page	ITAR Citation	Exemption	HW	TD	DS	C/U
23	22 CFR 123.4(a)(1)	Temporary Imports For Overhaul, Service and/or Repair	◆			U
26	22 CFR 123.4(a)(2)	Temporary Imports For Enhancement Or Upgrade	◆			U
28	22 CFR 123.4(a)(3)	Temporary Imports For Exhibition, Demonstration Or Marketing	◆			U
30	22 CFR 123.4(a)(4)	Articles Rejected For Permanent Import	◆			U
32	22 CFR 123.4(a)(5)	Temporary Imports Under Foreign Military Sales (FMS)	◆			U
35	22 CFR 123.4(b)	Temporary Imports For Incorporation Into Other Articles	◆			U

Classified or
Unclassified



READING EXEMPTIONS

- Requirements may be spread in several subcategories.

For Example:

- (a) Defines eligibility (no SME, no MTCR)
- (b) Defines scope of hardware, data or services covered
- (c) Reporting requirements (at time of Customs filing do “X”)
- Refer to Supplements No. 1 and No. 2 to Part 126 for eligible countries or technologies

CHOOSING THE RIGHT EXEMPTION

- Review ITAR entry completely
 - Eligibility for part of the exemption does not qualify as authorization
 - Don't stop once you've found something that looks applicable
 - Keep going through the subcategories that follow
 - Special reporting/certification requirements may be defined
 - Are you able to implement the additional requirements?





HARDWARE EXEMPTIONS

ITAR § 123



TEMPORARY IMPORT EXEMPTIONS

ITAR §123.4(a)

- **§123.4(a)(1): Repair/Return**
 - For service / repair / overhaul / testing, one-to-one replacement
 - Does NOT include modification / upgrades that change performance
- **§123.4(a)(2): Upgrade**
 - For articles to be enhanced, upgraded, or incorporated into another item
 - The subsequent export requires a SEPARATE export approval
- **Requirements for use [§123.4(a)]**
 - Must be unclassified, U.S.-origin items
 - End-user / consignee at the time of subsequent export must match import documentation
 - Subsequent export must be within 4 years from the date of import
 - Shipment / Customs documentation must cite



EXPORT EXEMPTIONS

ITAR §123.16

- **123.16(a) - Criteria for ALL Subcategories**

- Unclassified Defense Articles
- No §126.1, Embargoed or Sanctioned destinations
- Congressional Notification Requirements render exemption ineligible
- No MTCR
- No SME
- Requires EEI filing to cite exemption
- Some exemptions may require additional reporting



EXPORT EXEMPTIONS

ITAR §123.16(b)

- **§123.16(b)(2): Spare Parts/Components < \$500 per trans**
 - Must support a defense article previously authorized for export to the approved end-user
 - Not to a distributor; Can't be used to enhance capability
 - No Split Orders; No more than 24 shipments / year to end user; Cite exemption reference on shipping documents
- **§123.16(b)(5): Public Exhibitions or Trade Shows**
 - Temporary export of non-SME, unclassified hardware
 - Same IDENTICAL item must have been licensed for public exhibitions and the license must still be valid
 - Provide electronic certification to CBP that all criteria is met
 - Cannot use this exemption for demonstrations to individual customers



PERSONAL PROTECTIVE EQUIPMENT

ITAR §123.17(f)-(k)

- **U.S. persons** may *temporarily* export the following:
 - One set of body armor, which may include one helmet; **and / or**
 - One set of chemical agent protective gear, which may include one additional filter canister
- **Requirements (f)-(k)**
 - No DDTC registration required
 - Declare to CBP at each exit using ITN from EEI
 - Personal baggage (not mailed)
 - TEMPORARY and exclusive use; no re-export / **retransfer**
 - Can be used for exports to §126.1 countries*

* **Certain conditions apply. See sections (g)-(i)**



DEFENSE SERVICE EXEMPTIONS

ITAR § 124



ITAR §124.2(a) AND (c)

- **§124.2(a) Training Exemption**
 - Basic Operation and Maintenance Training ONLY*
 - Item must have been lawfully authorized for same recipient
- **§124.2(c) Maintenance Training or Performing Maintenance for NATO Member Countries / Australia / Japan / Sweden**
 - Unclassified US-origin defense articles in inventory of NATO or one of the identified foreign governments
 - Limited to: inspection, testing, calibration or repair, including overhaul, reconditioning, and one to one replacement
 - **Excludes**
 - Modification, Enhancement, Upgrade, or Improvement (except reliability)
 - Know-How, Numerous Categories, MTCR items, and Congressional

***See 120.45 for Maintenance Level Definitions**



TECHNICAL DATA EXEMPTIONS

ITAR § 125



ITAR §125.4(b)(2), (4), AND (5)

- **22 CFR 125.4(b)(2) – Tech Data in Furtherance of an Agreement**
 - An Agreement is NOT the authorization for export. It merely defines scope / limitations. Export occurs via **EXEMPTION**
 - Within the scope of executed AG and all provisos met
 - Covers both classified or unclassified – see Agreement
- **22 CFR 125.4(b)(4) - “Copies” of Tech Data**
 - Data was previously authorized and to same recipient
 - Any revisions must be editorial and can’t add to the content of technology previously authorized
 - Can cover classified or unclassified
- **22 CFR 125.4(b)(5) – Basic Operations, Maintenance, and Training Data**
 - Must be related to an item lawfully exported to same recipient
 - Covers both classified or unclassified
 - Intermediate or depot-level repair and maintenance information not authorized



TRAVELING ABROAD WITH TECH DATA

ITAR §125.4(b)(9)

- Technical Data
- **Regardless of media or format**
 - **Sent or taken:**
 - By a U.S. person or foreign person who is an employee of U.S. corporation (NOT foreign subsidiary) or the USG travelling or on temporary assignment abroad
 - Foreign person employees may only export, reexport, retransfer, or receive such technical data as they are authorized to receive through a separate license or other approval
 - Can include classified (follow NISPOM)
 - Subject to 125.1(b) – no co-pro, re-export, transfer, or retransfer, etc.

Often used for U.S. persons traveling abroad with
Technical Data on their laptop



USG AND COUNTRY- SPECIFIC EXEMPTIONS

ITAR § 126



CANADIAN EXEMPTION ITAR §126.5(b)

Except as provided in Supplement No. 1 to Part 126

Perm & Temp Export of Unclassified Data, Hardware & Services

- End-Use in Canada by a Canadian Gov't or Canadian Registered person or Return to the United States
- Excludes certain munitions, types of data, and services
 - **See Supplement No. 1 to Part 126**
- Excludes exports that transit third countries
- If SME, DSP-83 must be obtained / signed by all foreign consignees (Canadian Government does not need to sign)

**For Defense Services – See also Supplement No. 1 - Note 12
(Exclusions) and Note 14 (Additional Requirements)**



SUPPLEMENT No. 1 TO PART 126 - ITAR §126.5

Supplement No. 1 to Part 126*				
USML Category	Exclusion	(CA) §126.5	(AS) §126.16	(UK) §126.17
IV	Defense articles and services specific to man-portable air defense systems (MANPADS). <i>See Note 6.</i>	X	X	X
IV	Defense articles and services specific to torpedoes.		X	X

- **Note 6:** Defense articles and services specific to Man Portable Air Defense Systems (MANPADS) includes missiles which can be used without modification in other applications. It also includes production and test equipment and components specifically designed or modified for MANPAD systems, as well as training equipment specifically designed or modified for MANPAD systems.



FMS EXEMPTION ITAR §126.6(c)

- Defense Articles, Technical Data, or Defense Services exported under a Foreign Military Sales (FMS) Program
 - ONLY during the time that the FMS Letter of Offer and Acceptance (LOA) (and the associated contract) is **valid**
 - **ALL** defense articles, technical data, or defense services to be exported **MUST** be specifically identified in the executed LOA
- Defense Services (22 CFR 126.6(c)(6))
 - Contract or subcontract must
 - define scope of defense services and duration
 - identify the FMS Case and foreign recipient
 - identify any other U.S. or foreign parties involved



AUKUS – WHAT IS IT?

September 2021: Tri-Lateral Security Partnership to bolster the Australia, UK, and U.S. (AUKUS) defense capabilities

- Pillar I: Submarines | Australia acquisition of armed, nuclear-powered submarine (SSN) capability
- Pillar II: Advanced Capabilities | Technology and information sharing surrounding “advanced and emerging capabilities”



AUKUS – WHAT IS IT?

December 2023: FY2024 National Defense Authorization Act passed

- Pillar I: Authorized SSN-related transfers
- **Pillar II: Required certain exemptions from export controls to be implemented** (Among other things, requires expedited reviews for FMS transfers and transfers not covered by the exemptions)



AUKUS – WHAT IS IT?

April 2024: Interim Final Rule for AUKUS-related Amendments to the EAR (effective immediately)

May 2024: Proposed Rule for AUKUS-related ITAR Amendments

September 2024: Interim Final Rule in effect

December 2025: Final Rule in effect

NOTE: AUS and the UK have comparable exemptions for the United States



AUKUS EXEMPTIONS (§126.7(A) AND (B))

- Brokering Activities, Defense Articles, or Defense Services destined to and between Australia, U.S., and the UK (**EXCEPT those listed in Supplement No. 2 to Part 126**) is allowed
 - MUST occur within the physical territory of Australia, United States, and the UK
 - MUST be:
 - UK or AUS parties who are “Authorized Users”
 - U.S. parties registered with DDTC
 - U.S., UK, or AUS federal or national level governments
 - Value of the transfer DOES NOT exceed congressional notification value
 - 25M for Major Defense Equipment, 100M for Defense Articles and Defense Services
 - Proper Customs documentation



AUKUS EXEMPTIONS (§126.7(c) AND (D))

- ***NEW*** Reexports, retransfers, or temporary imports of defense articles for contractor support to the armed forces of Australia, the United Kingdom, or the United States (**EXCEPT those listed in Supplement No. 2 to Part 126**) is allowed
- MUST be:
 - UK or AUS parties who are “Authorized Users”
 - U.S. parties registered with DDTC
 - Under contract with AUS, UK, or U.S. armed forces, or directly embedded with/operating alongside those armed forces
- MUST be:
 - For on-site support to those armed forces, or return of a defense article to AUS, the UK, or U.S.
 - Defense article originally exported pursuant to a license or other approval
- Value of the transfer DOES NOT exceed congressional notification value
- 25M for Major Defense Equipment, 100M for Defense Articles and Defense Services
- Proper Customs documentation



SUPPLEMENT No. 2 TO PART 126 - EXCLUDED TECHNOLOGY LIST (ETL)

Supplement No. 2 to Part 126 *Sample Entries*	
USML Category	Exclusion
I through XV, and XX	Missile Technology Control Regime (MTCR) articles, as annotated on the USML by an “MT” designation, except for articles described in USML Category VIII(h)(12); and directly related technical data and defense services.
II(k), III(e), IV(i), X(e), and XIX(g)	Manufacturing know-how (see § 120.43(e) of this subchapter) directly related to: —articles described in USML Categories II(d), III(d)(1) or (2), IV(a), (b), (d), (g), or (h), X(a)(1) or (2), or XIX; or —parts, components, accessories, or attachments that are only used in those articles.

Expedited licensing process for ITAR-controlled items on the ETL between Australia, U.K. and Canada (when other exemptions do not apply) EXCEPT those exports exceeding congressional notification thresholds



US/AUS (§126.16) & US/UK (§126.17) DEFENSE TRADE COOPERATION TREATIES

- Provides a comprehensive framework:
 - Permanent & Temporary Export, Transfer, Re-export, Retransfer, or other disposal
 - Defense Articles or Defense Services (**EXCEPT those listed in Supplement No. 1 to Part 126**)
 - Eligible Parties (U.S. Community and Approved Local Community)
 - **TRS ACID Check**
 - Eligible Program (End-Use **MUST** be specifically identified)
 - **AND – Not Excluded by Supplement No. 1 to Part 126**
- Marking and Violation Reporting Obligations

DDTC Website:

https://www.pmddtc.state.gov/ddtc_public?id=ddtc_kb_article_page&sys_id=2d21e8b3dbb8d300d0a370131f96190b

Defense Technology Security Administration

“ENSURING THE EDGE”



DTSA Brief DoW Guidelines for Validating the Use of ITAR Exemptions



Roles & Responsibilities

- **State Department, PM/DDTC**

- Establishes regulatory interpretations of the ITAR
- Holds issuing service/agency and exporter liable for ITAR compliance
- Reviews Exemption Certificate documentation in USXports

- **Defense Technology Security Administration (DTSA)**

- DoW Lead for the review and regulatory revision for rules referred by Department of State or the Department of Commerce
- Implementation oversight of the DoW ITAR Exemption Guidelines
- Serve as focal point for DoW inquiries with State on interpretation of the ITAR exemptions

- **DoW User Community (e.g. U.S. Army, Navy, Air Force)**

- Knowledge and compliance with the ITAR
- Management and oversight of exemption validations
- Required to document Exemption Certificate
- Ensure disclosure release of information is authorized



Overview of the Guidelines



- **DTSA is responsible for developing DoW policy on DoD use of ITAR exemptions**
- **March 2025, DTSA updated DoW ITAR Exemption Guidelines**
 - With increased interest in exemptions after creation of AUKUS exemption § 126.7, created unclassified shareable “best practices and recommendations” for § 126.4, § 126.7, § 126.16, and § 126.17
 - Includes guidance to DoW organizations on the use of § 126.4(a) where DoD is the exporter of record
 - Provides updated guidance to the Military Departments and U.S. DoW organizations for validating U.S. industry’s use of exemptions to the ITAR § § 125.4(b)(1), 125.4(c), 125.5, and 126.4(b)
 - Updates list of DoW Authorized Exemption Officials (AEOs) (General Officers/Flag Officers, or Senior Executive Service personnel) and Exemption Validation Officials (EVO) to whom AEOs can delegate validation authority
- **We’re interested in your feedback, especially on specific examples/challenges to help inform future updates**



Guidelines Scope



- **These guidelines:**
 - provide guidance on how to “use” exemptions – “validation” not “certification”
 - are intended as guidance for DoW organizations only
 - do not interpret or supersede the ITAR
 - do not grant permission to export
- **Validating the use of the exemptions is at DoW’s discretion.**
- **If a DoW organization implements an exemption outside of the guidelines, both the DoW organization and the exporter will be liable to the Department of State.**



126.4 DoW Best Practices

Export Scenario	DoW Best Practices
§ 126.4(a) By a USG entity	Usually self-certified by the exporting DoW activity; MILDEPS provides reach-back guidance to activities' counsel.
§ 126.4(b)(1) By non-USG entity to <i>the USG</i> overseas at USG request	DoW recommends exporters determine for themselves whether a given "request" is sufficient to self-certify use of this exemption. A valid "request" must originate with the cognizant DoW authority for the related activity. A "request" does not need to be written, however, as a best practice, DoW recommends that the exporter document the request to ensure compliance with the §§ 123.22 and 123.26 Recordkeeping requirement for exemptions.
§ 126.4(b)(2) By non-USG entity to a <i>foreign entity</i> at USG written direction	The "written direction" required under ITAR § 126.4(b)(2) must be in writing. A valid "written direction" document must originate from the cognizant DoW authority for the proposed activity. If an exporter is unsure whether their written direction (e.g. contract) qualifies under this section, as a best practice, DoW recommends that the exporter seek written validation from the DoW Component rather than assume their particular contract constitutes "written direction."
§ 126.4(b)(2) By non-USG entity to a <i>foreign entity</i> , pursuant to an <i>International Agreement or Arrangement</i>	Does not require a "request" or "written direction" but is NOT open-ended; DoW strongly recommends that non-USG entities coordinate closely with the cognizant USG officials to ensure that the contemplated scope is authorized for release under § 126.4(a)(1-4).



ACQUISITION &
SUSTAINMENT



Important Contacts

- Only DDTC can provide interpretations of the ITAR, questions regarding ITAR compliance or interpretations of ITAR §126.4 should be directed to DDTC at 202-663-1282 or

ddtccustomerservice@state.gov

- To learn more about DoW Best Practices: If you are a DoW component seeking DoW guidance on the use ITAR Exemption related matters, please send an email to the DTSA Exemptions Team:

dt.sa.mc-alex.ecd.mbx.dtsa-exemptions@mail.mil



Key Take Aways

- The DoW “validation” letter does not grant the exporter permission to invoke a particular exemption. That decision falls solely under the exporter’s responsibility.
- The use of an exemption does not mean less documentation is required; rather there is a higher level of due diligence placed on the empowered official to ensure compliance under the ITAR.
- Documents to support the use of an exemption should closely mirror that which exporters would provide under § 123.28 *Scope of a License* and § 120.15(f) *Recordkeeping for Exemptions*.



PRACTICAL USE AND BEST PRACTICES FOR ITAR EXEMPTIONS

- **Empowered Official approval**
 - Delegated (in writing) only under certain conditions
- **Training (Use and Scope)**
 - Shipping / Receiving; Engineers
 - Program Managers; Business Development; International Travelers
- **Infrastructure** - Evaluate whether your company has the infrastructure to maintain compliance
 - Recordkeeping
 - Reporting
- **Reference Tools**
 - SIA Exemptions Handbook
 - DDTTC Website (Treaties)



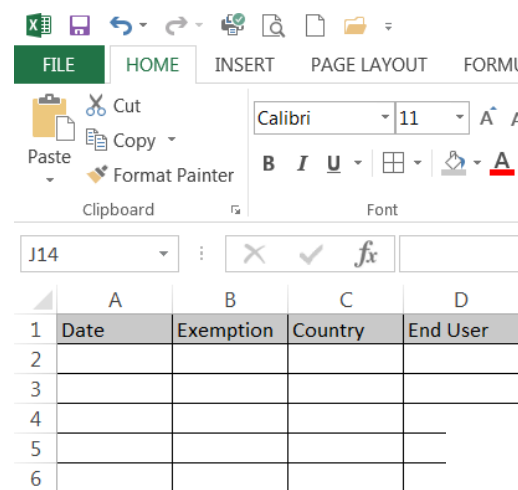
FINISH STRONG

- Records prove you used the exemption correctly and that you analyzed the regulations against the export situation
- Any special piece of information about the export scenario and analysis that confirms the activity is eligible, document it!



METHODS FOR DOCUMENTING

- Tracking Spreadsheets
- Internal Forms
- Electronic Routing Systems



	A	B	C	D
1	Date	Exemption	Country	End User
2				
3				
4				
5				
6				





QUESTIONS & ANSWERS