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Bureau of Political-Military Affairs

# Defense Trade News

and Export Policy Bulletin

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**Assistant Secretary  
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Thomas E. McNamara

**Deputy Assistant  
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Export Controls**  
Martha Caldwell Harris

**Executive Editor**  
Lana C. Chumley

**Managing and  
Production Editor**  
Nadia L. Brown

**Internet Editor**  
John Sonderman

**Layout Design**  
Paula M. Lorfano

**Graphics Design**  
Richard E. Florence

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## Editor's Note

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The previous "Special Edition" to the *Defense Trade News and Export Policy Bulletin* focused on the Office of Defense Trade Controls' performance in our service to Industry. This issue continues DTC's commitment to serve Industry by focusing on new and admended legislation which will help assure compliance with the law.

We are concerned with what matters to you. If you have questions use the Question and Answer Forum (page 20) and fax it back to us.

It is important that we hear from you with your Feedback!

### *New, Improved* Phone System

DTC has installed a new telephone system, employing a new exchange or returned directory. We believe that the system will be more efficient and, ultimately, will allow us to be more responsive.

The automated directory may be reached by dialing (703)875-6644. This familiar number is the main office number but has new features and should be used to gain access to information and to personnel. Please listen carefully to the directory menu. The case status line may be reached by dialing (703)875-6652. The number for ALISS remains (703)875-7374. The numbers for facsimile messages have not been changed: the Compliance Division and the Computer Support Staff may be reached at (703)875-5663; the Office of the Director, Defense Trade News and the Licensing Division at (703)875-6647. See the back of this issue for a more complete listing.

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## POLICY

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### Regulation of Brokering Activities

#### *New Legislation Requirements*

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The Congress recently passed legislation requiring the registration and licensing of brokering activities relating to commercial munitions sales, as conducted by U.S. persons and foreign persons located in the U.S.

Regulations to implement the law are being formulated. Publication of the regulations in the Federal Register will amend the International Traffic in Arms Regulations (ITAR) accordingly.

The new law amends Section 38 (1) (A) of the Arms Export Control Act (22 U.S.C. 2778 (b) (1) (A) to read:

(i) As prescribed in regulations issued under this section, every person (other than an officer or employee of the United States Government acting in an official capacity) who engages in the business of manufacturing, exporting, or importing any defense articles or defense services designated by the President under subsection (a) (1) shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed in such regulations. Such regulations shall prohibit the return to the United States for sale in the United States (other than for the Armed Forces of the United States and its allies or for any State for local law enforcement agency) of any military firearms or ammunition of United State manufacture furnished to foreign governments by the United States under this Act or any other foreign assistance or sales program of the United States, whether or not enhanced in value or im-

proved in condition in a foreign country. This prohibition shall not extend to similar firearms that have been so substantially transformed as to become, in effect, articles of foreign manufacture.

(ii) (I) As prescribed in regulations under this section, every person (other than an officer or employee of the United States Government acting in official capacity) who engages in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service designated by the President under subsection (a) (1), or in the business of brokering activities with respect to the manufacture, export, import, or transfer of any foreign defense article or defense service (as defined in subclause (IV)), shall register with the United States Government agency charged with the administration of this section, and shall pay a registration fee which shall be prescribed by such regulations.

(II) Such brokering activities shall include the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service.

(III) No person may engage in the business of brokering activities described in subclause (I) without a license, issued in accordance with this Act, except that no license shall be required for such activities undertaken by or for an agency of the United States Government --

(aa) for use by an agency of the United States Government; or

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(bb) for carrying out any foreign assistance or sales program authorized by law and subject to the control of the President by other means.

(IV) For purposes of this clause, the term "foreign defense article or defense service"

includes any non-United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States components. ♦

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# Amendments to the ITAR

*Final Rules Published*

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*Follows the text of ITAR changes published in the Federal Register [Vol 61, page 48830 (September 17, 1996)].*

## Summary

This rule amends the International Traffic in Arms Regulations (ITAR) to correct a typographical error in the definition of "technical data;" eliminate the requirement of reporting subsequent exports of unclassified technical data; and clarify authority and use the current names of any office, bureau, or titles of officers that have changed since 1990.

## Effective Date

September 17, 1996

Federal Register Public Notice No. 1179, dated March 29, 1990, announced that the Office of Munitions Control had changed its name to the Office of Defense Trade Controls. (55 FR 11714.) Part 128 of the International Traffic in Arms Regulations (ITAR) is being amended to reflect the current name of the Office of Defense Trade Controls. Other amendments reflect the name change of the Bureau of Politico-Military Affairs to its current name, the Bureau of Political-Military Affairs. Additionally, references to the "Under Secretary of State for Security Assistance, Science and Technology" are being amended to the current title of the "Under Secretary of State for Arms Control and International Security Affairs." Furthermore, cross references to other sections in the ITAR are being amended for accuracy. The delivery address for the Office of Defense Trade Controls was added to part 128.

These amendments involve a foreign affairs function of the United States. They are exempt from review under Executive Order 12866 but have been reviewed internally by the Department to ensure consistency with the purposes thereof. They are also not sub-

ject to 5 U.S.C. 553 and 554, and do not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act.

## PART 120 - PART AND DEFINITIONS

### § 120.10 Technical data

- (a) \* \* \* \*
- (1) Information, other than software as defined in §12.10(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 and documentation.

\* \* \* \*

## PART 123 - LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

### § 123.22 Filing of export licenses and Shipper's Export Declarations with District Directors of Customs

- (d) A Shipper's Export Declaration is not required for exports of unclassified technical data. Exporters shall notify the Office of Defense Trade Controls of the initial export of the data by either returning the license after self endorsement or by sending a letter to the Office of Defense Trade Controls. The letter shall provide the method, date, license number and airway bill number (if applicable) of the shipment. The letter must be signed by an empowered official of the company and provided to the Office of Defense Trade Controls within thirty days of the initial export.

## PART 128 - ADMINISTRATIVE PROCEDURES

### §128.1 Exclusion of functions from the Administrative Procedure Act.

The Arms Export Control Act authorizes the President to control the import and export of defense articles and services in furtherance of world peace and the security and foreign policy of the United States. It authorizes the Secretary of State to make decisions on whether license application or other written requests for approval shall be granted, or whether exemptions may be used. It also authorizes the Secretary of State to revoke, suspend or amend licenses or other written approvals whenever the Secretary deems such action to be advisable. The administration of the Arms Export Control Act is a foreign affairs function encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act and is thereby expressly exempt from various provisions of that Act. Because the exercising of the foreign affairs function, including the decisions required to implement the Arms Export Control Act, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

### **§ 128.2 Administrative Law Judge**

The Administrative Law Judge referred to in this part is an Administrative Law Judge appointed by the Department of State or of the Department of Commerce, as provided in 15 CFR 788.2. The Administrative Law Judge is authorized to exercise the powers and perform the duties provided for in §§ 127.7, 127.8, and 128.3 through 128.16 of this subchapter.

### **§ 128.3 Institution of Administrative Proceedings**

(a) *Charging Letters.* The Director, Office of Defense Trade Controls, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate proceedings to impose debarment or civil penalties in accordance with § 127.7 or § 127.10 of this subchapter respectively.

Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regula-

tory or other provisions involved. It will give notice to the respondent to answer the charges within 30 days, as provided in § 128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is filed with the answer or within seven (7) days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

(b) *Service.* A charging letter is served upon a respondent:

(1) If the respondent is a resident of the United States, when it is mailed postage prepaid in a wrapper addressed to the respondent at the person's last known address; or when left with the respondent or the agent or employee of the respondent; or when left at the respondent's dwelling with some person of suitable age and discretion then residing herein; or

(2) If the respondent is a non-resident of the United States, when served upon the respondent by any of the foregoing means. If such methods of service are not practicable or appropriate, the charging letter may be tendered for service on the respondent to an official of the government of the country wherein the respondent resides, provided that there is an agreement or understanding between the United States Government and the government of the country wherein the respondent resident permitting this action.

### **128.4 Default**

(a) *Failure to answer.* If the respondent fails to answer the charging letter, the respondent may be held in default. The case shall then be referred to the Administrative Law Judge for consideration in a manner as the Administrative Law Judge may consider appropriate. Any order issued shall have the same effect as an order issued following the disposition of contested charges.

(b) *Petition to set aside defaults.* Upon showing good cause, any respondent against whom a default order has been issued may apply to set aside the default and vacate the order entered thereon. The petition shall be submitted to duplicate to the Assistant Secretary for Political-Military Affairs, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. The Director will refer the petition to the Administrative Law Judge for consideration and a recommendation. The Administrative Law Judge will consider the application and may order a hearing and require the respondent to submit further evidence in support of his or her petition. The filing of a petition to set aside a default does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

#### **§ 128.5 Answer and demand for oral hearing**

\* \* \* \*

(b) *Contents of answer.* An answer must be responsive to the charging letter. It must fully set forth the nature of the respondent's defense or defenses. In the answer, the respondent must admit or deny specifically each separate allegation of the charging letter, unless the respondent is without knowledge, in which case the respondent's answer shall so state and the statement shall operate as denial. Failure to deny or controvert any particular allegation will be deemed an admission thereof. The answer may set forth such additional or new matter as the respondent believes support a defense or claim of mitigation. Any defense or partial defense not specifically set forth in an answer shall be deemed waived. Evidence offered thereon by the respondent at a hearing may be refused except upon good cause being shown. If the respondent does not demand an oral hearing, he or she shall transmit, within seven (7) days after the service of his or her answer, original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue. If any

such materials are in language other than English, translations into English shall be submitted at the same time.

(c) *Submission of answer.* The answer, written demand for oral hearing (if any) and supporting evidence required by § 128.5(b) shall be in duplicate and mailed or delivered to the Office of Administrative Law Judge, United States Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230-0602.

#### **§ 128.6 Discovery**

(a) *Discovery by the respondent.* The respondent, through the Administrative Law Judge, may request from the Office of Defense Trade Controls any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Defense Trade Controls may provide any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Defense Trade Controls may supply summaries in place or original documents and may withhold information from discovery if the interests of national security or foreign policy so require, or if necessary to comply with any statute, executive order or regulation requiring that the information may not be disclosed. The respondent may request the Administrative Law Judge to request any relevant information, books, records, or other evidence, from any other person or government agency so long as the request is reasonable in scope and not unduly burdensome.

(b) *Discovery by the Office of Defense Trade Controls.* The Office of Defense Trade Controls or the Administrative Law Judge may request from the respondent admissions of facts, answers to interrogatories, the production of books, records, or other relevant evidence, so long as the request is relevant and material, reasonable in scope, and not unduly burdensome.

(c) *Subpoenas.* At the request of any party, the Administrative Law Judge may issue subpoenas, returnable before him requiring the

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attendance of witnesses and the production of books, records, and other documentary or physical evidence determined by the Administrative Law Judge to be relevant and material to the proceedings, reasonable in scope, and not unduly burdensome.

(d) Enforcement of discovery rights. If the Office of Defense Trade Controls fails to provide the respondent with information in its possession which is not otherwise available and which is necessary to the respondent's defense, the Administrative Law Judge may dismiss the charges on her or his own motion or on a motion of the respondent. If the respondent fails to respond with reasonable diligence to the requests for discovery by the Office of Defense Trade Controls or the Administrative Law Judge, on her or his own motion or motion of the Office of Defense Trade Controls, and upon such notice to the respondent as the Administrative Law Judge may direct, may strike respondent's answer and declare the respondent in default, or make any other ruling which the Administrative Law Judge deems necessary and just under the circumstances. If a third party fails to respond to the request for information, the Administrative Law Judge shall consider whether the evidence sought is necessary to a fair hearing, and if it is so necessary that a fair hearing may not be held without it, the Administrative Law Judge shall dismiss the charges.

### **§ 128.7 Prehearing conference**

(a)(1) The Administrative Law Judge may, upon his own motion or upon motion of any party, request the parties or their counsel to a prehearing conference to consider:

- (i) Simplification of issues;
- (ii) The necessity or desirability of amendments to pleadings;
- (iii) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or

(iv) Such other matter as may expedite the disposition of the proceeding.

(2) The Administrative Law Judge will prepare a summary of the action agreed will incorporate therein any written stipulations or agreements made by the parties.

(3) The conference proceedings may be recorded magnetically or taken by a reporter and transcribed, and filed with the Administrative Law Judge.

(b) If a conference is impracticable, the Administrative Law Judge may request the parties to correspond with the person to achieve the purposes of a conference. The Administrative Law Judge shall prepare a summary of action taken as in the case of a conference.

### **128.8 Hearings**

(a) A respondent who had not filed a timely written answer is not entitled to a hearing, and the case may be considered by the Administrative Law Judge as provided in § 128.4(a). If any answer is filed, but no oral hearing demanded, the Administrative Law Judge may proceed to consider the case upon the written pleadings and evidence available. The Administrative Law Judge may provide for the making of the record in such manner as the Administrative Law Judge deems appropriate. If respondent answers and demands an oral hearing, the Administrative Law Judge, upon due notice, shall set the case for hearing, unless a respondent has raised in his answer no issues of material fact to be determined. If respondent fails to appear at a scheduled hearing, the hearing nevertheless may proceed in respondent's absence. The respondent's failure to appear will not affect the validity of the hearing or any proceedings or action thereafter.

(b) The Administrative Law Judge may administer oaths and affirmations. Respondent may be represented by counsel. Unless otherwise agreed by the parties and the Administrative Law Judge the proceeding will

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be taken by a reporter or by magnetic recording, transcribed, and filed with the Administrative Law Judge. Respondent may examine the transcript and may obtain a copy upon payment of proper costs.

### **128.9 Proceedings before and report of Administrative Law Judge**

(a) The Administrative Law Judge may conform any part of the proceedings before him or her to the Federal Rules of Civil Procedure. The record may be made available in any other administrative or other proceeding involving the same respondent.

(b) The Administrative Law Judge, after considering the record, will prepare a written report. The report will include findings of fact, findings of law, a finding whether a law or regulation has been violated, and the Administrative Law Judge's recommendations. It shall be transmitted to the Assistant Secretary for Political-Military Affairs, Department of State.

### **§ 128.10 Disposition of proceedings**

Where the evidence is not sufficient to support the charges, the Director, Office of Defense Trade Controls or the Administrative Law Judge will dismiss the charges. Where the Administrative Law Judge finds that a violation has been committed, the Administrative Law Judge's recommendation shall be advisory only. The Assistant Secretary for Political-Military Affairs will review the record, consider the report of the Administrative Law Judge, and make an appropriate disposition of the case. The Director may issue an order debarring the respondent from participating in the export of defense articles or technical data or the furnishing of defense services as provided in § 127.7 of this subchapter, impose a civil penalty as provided in § 127.10 of this subchapter or take such action as the Administrative Law Judge deems appropriate. Any debarment order

will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Administrative Law Judge's report will be served upon the respondent.

### **§ 128.11 Consent agreements**

(a) The Office of Defense Trade Controls and the respondent may, by agreement, submit to the Administrative Law Judge a proposal for the issuance of a consent order. The Administrative Law Judge will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If the Administrative Law Judge does not approve the proposal, the Administrative Law Judge will notify the parties and the case will proceed as though no consent proposal had been made. If the proposal is approved, the Administrative Law Judge will report the facts of the case along with recommendations to the Assistant Secretary for Political-Military Affairs. If the Assistant Secretary for Political-Military Affairs does not approve the proposal, the case will proceed as though no consent proposal had been made. If the Assistant Secretary for Political-Military Affairs approves the proposal, an appropriate order may be issued.

(b) Cases may also be settled prior to service of a charging letter. In such an event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for the approval and signature of the Assistant Secretary for Political-Military Affairs, and no action by the Administrative Law Judge shall be required. Cases which are settled may not be reopened or appealed.

### **§ 128.12 Rehearings**

The Administrative Law Judge may grant a rehearing or reopen a proceeding at any time for the purpose of hearing any relevant and material evidence which was not known or obtainable at the time of the original hearing. A report for rehearing or reopening must contain a summary of such evidence, and must

explain the reasons why it could not have been presented at the original hearing. The Administrative Law Judge will inform the parties of any further hearing, and will conduct such hearing and submit a report and recommendations in the same manner as provided for the original proceeding (Described in § 128.10).

### **§ 128.13 Appeals**

(a) *Filing of appeals.* An appeal must be in writing, and be addressed to and filed with the Under Secretary of State for Arms Control and International Security Affairs, Department of State, Washington, DC 20520. An appeal from a final order denying export privileges or imposing civil penalties must be filed within 30 days after receipt of a copy of the order. If the Under Secretary cannot for any reason act on the appeal, he or she may designate another Department of State official to receive and act on the appeal.

\* \* \* \* \*

(c) *Matters considered on appeal.* An appeal will be considered upon the basis of the assembled record. This record consists of (but is not limited to) the charging letter, the respondent's answer, the transcript or magnetic recording of the hearing before the Administrative Law Judge, the report of the Administrative Law Judge, the order of the Assistant Secretary for Political-Military Affairs, and any other relevant documents involved in the proceedings before the Administrative Law Judge. The Under Secretary of State for Arms control and International Security Affairs may direct a rehearing and reopening before the Administrative Law Judge if he or she finds that the record is insufficient or that new evidence is relevant and material to the issues and was not known and was not available to the respondent at the time of the original hearings.

\* \* \* \* \*

(e) *Preparation of appeals.* -- (1) *General Requirements.* An appeal shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed to the Director, Office of Defense Trade Controls, SA-6, Room 200, Department of State, Washington, DC 20522-0620 or delivered to the 21st street entrance of the Department of State, 2201 C Street, NW., Washington, DC addressed to Director, Office of Defense Trade Controls, SA-6, Room 200, Department of State, Washington, DC 20522-0602.

(2) *Oral presentation.* The Under Secretary of State for Arms Control and International Security Affairs may grant the appellant an opportunity for oral argument and will set the time and place for oral argument and will notify the parties, ordinarily at least 10 days before the date set.

(f) *Decisions.* All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied in whole or in part, or dismissed at the request of the appellant. The decision of the Under Secretary of State for Arms Control and International Security Affairs will be final.

### **§ 128.14 Confidentiality of proceedings**

Proceedings under this part are confidential. The documents referred to in § 128.17 are not, however, deemed to be confidential. Reports of the Administrative Law Judge and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

### **§ 128.15 Orders containing probationary periods**

(a) Revocation of probationary periods. A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part

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of the debarment or suspension period, subject to the conditions stated therein. The Director, Office of Defense Trade Controls, may apply without notice to any person to be affected thereby, to the Administrative Law Judge for in order revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Administrative Law Judge, who will report thereon and make a recommendation to the Assistant Secretary for Political-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order.

(b) *Hearings--(1) Objections upon notice.* Any person affected by an application upon notice to revoke probation, within the time specified in the notice, may file objections with the Administrative Law Judge.

(2) *Objections to order without notice.* Any person adversely affected by an order revoking probation, without notice may request that the order be set aside by filing his objections thereto with the Administrative Law Judge. The request will not stay the effective date of the order or revocation.

(3) *Requirements for filing objections.* Objections filed with the Administrative Law Judge must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Office of Defense Trade Controls. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) *Determination.* The application and objections thereto will be referred to the Administrative Law Judge. An oral hearing if requested, will be conducted at an early convenient date, unless the objections filed raise no issues of material fact to be determined. The Administrative Law Judge will report the facts and make a recommendation to the Assistant Secretary for Political-Military Affairs,

who will determine whether the application should be granted or denied and will issue an appropriate order. A copy of the order and of the Administrative Law Judge's report will be furnished to any person affected thereby.

(5) *Effect of revocation on other actions.* The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

## **§ 128.16 Extension of time**

The Administrative Law Judge, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or to perform any other act required by this part. ♦

### **For Further Information Contact:**

Philips S. Rhoads, Chief, Compliance and Enforcement Branch, Office of Defense Controls, Bureau of Political-Military Affairs, Department of State (703/875-6644).

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## OPERATIONS

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### ITAR Distribution

#### *Where It Can be Found*

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The Office of Defense Trade Controls, due to budgetary constraints, will no longer distribute copies of the International Traffic in Arms Regulations (ITAR) upon request. Copies of the current ITAR will be provided as part of the DTC registration packet to new registrants and persons seeking to renew expiring registrations.

Please note that the Code of Federal Regulations, which includes the ITAR, can be found in a variety of libraries. We expect the ITAR to be featured in the near future on the DTC's "home page" of the Internet. In addition, hard copy editions can be purchased from the

Superintendent of Documents, Government Printing Office (GPO), Washington, D.C. 20402-9325. (If seeking a current copy of the ITAR from GPO, request 22 C.F.R. rather than the notice reprinted in the Federal Register on July 22, 1993 ("Amendments to the International Traffic in Arms Regulations"). The latter has not been updated to reflect subsequent ITAR modifications.)

While the only official version of the ITAR is the U.S. Government printed version of 22 C.F.R. Parts 120-130, various commercial vendors also publish "working" copies, some of which have handy reference aids not found in the official version of the ITAR. ♦

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### So You Want to Export to Pakistan

#### *Assurance of Timely Processing*

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More and more companies have expressed interest in exporting commodities controlled under the United States Munitions List to Pakistan. Here are two things to that, if followed, will assist in the timely processing of your application.

(1) In the transmittal letter for the agreement or the export license identify if the commodity is currently in the Pakistani inventory.

(2) If the article is in the inventory, identify the increase in capability that will result from this export.

In light of the Department's Policy which closely monitors exports of defense articles and services to Pakistan, an extensive review is required for all applications and other approvals, a minimum of 65 working days is necessary to process an application of 40 days is necessary to complete interagency coordination. ♦

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# Defense Services in Support of FMS Needs Agreements

## *A Case Example*

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The Office of Defense Trade Controls (PM/DTC) has frequently been asked the question: "Do I need to do an agreement to support FMS cases?" Maybe this is best addressed via an example.

You've received a contract from the Department of Defense (Foreign Military Sales) to train a foreign armed service in intermediate and depot level maintenance. The DOD contracting officer then directs you to perform this contractual obligation. Do you need an export license? If so, what kind? Are there any exemptions or exceptions you can claim or request?

Yes, you do need export authorization from the Department of State and the proper one is a technical assistance agreement. You are performing a defense service as defined in 22 CFR 120.9: "(1) The furnishing of assistance (including training) to foreign persons... in the ... testing, repair, maintenance... of defense articles; or (2) the furnishing to foreign persons of any technical data controlled under this subchapter..." Per 22 CFR 124.1(a) "the approval of the Office of Defense Trade Controls must be obtained before the services described in § 120.9... may be furnished. In order to obtain such approval, the US person must submit a proposed agreement to the Office of Defense Trade Controls."

Applicants have generally requested to preclude the requirement for an agreement by claiming the exemption under 22 CFR 126.6 regarding FMS cases. This exemption is applicable only if the following three conditions are met: (1) there is a valid DOD Letter of Offer and Acceptance (LOA) (DD Form 1513); (2) a DSP-94 has been properly executed, or LOA for classified shipments; and (3) the export is made by the relevant foreign mission or authorized, registered freight forwarder. In the case of a defense service, you cannot

meet condition (2), a properly executed DSP-94 and therefore 22 CFR 126.6 may not be claimed.

The requirement for an agreement parallels the requirement for A DSP-94. For all FMS cases, if the export is being performed commercially, export authorization, in addition to the approved LOA is required. For hardware this is the DSP-94. For defense services the authorization is the agreement.

In summary, the answer is pretty straight forward: If you're providing a defense service for a foreign customer (either government, company, or individual), even when directed by the Department of Defense, you'll need export authorization, and in this case that's an agreement. ♦

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## Identification of Submitted Documents

### *How Industry Can Help*

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DTC is attempting to streamline its handling of documents and, in the process, expedite responses to requests and inquiries made by industry. Part of this effort involves centralizing the initial processing of many types of documents received by DTC. Therefore, we ask that you follow the following guidelines:

- Unless otherwise directed by DTC personnel or the ITAR, most correspondence will continue to be addressed to the DTC Director (William J. Lowell).
- License applications are generally easily identifiable. Please, however, do not include in the same submission other correspondence or documents not directly related to the applications.

-- If the license application or request for approval requires a transaction exception (e.g., when a party to the transaction is subject to a Department of State policy of denial), please ensure a transmittal letter clearly states this.

-- Other documents submitted to DTC should be clearly marked, preferably in bold letters near the top of the document or in a subject line, to indicate their nature (e.g., TRANSACTION EXCEPTION, VOLUNTARY DISCLOSURE, ADVISORY OPINION).

-- If a previously-assigned DTC number (e.g., license number or DTC registrant code) is related to the material being submitting, please indicate it prominently on the documents. ♦

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## Pick-Up of Completed Export Authorizations

### *Check ROBB First*

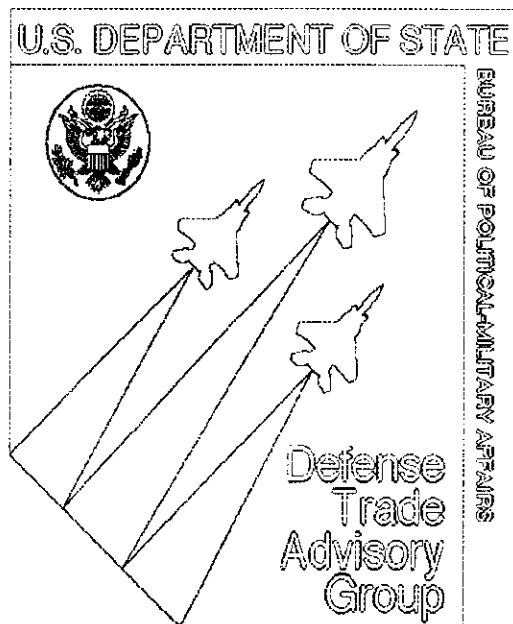
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The Office of Defense Trade Controls (PM/DTC) currently permits companies to arrange to pick-up their completed licenses, agreement approval letters, and other correspondence in person versus having them returned via First Class or overnight mail. However, due to time and personnel constraints and to optimize our electronic assets, PM/DTC is no longer providing telephonic status of availability of export authorizations at the receptionist's desk. This includes identifying if a particular request has been completed and is ready for pick-up. If that information is required before you come to DTC, please take advantage of DTC's Remote Online Bulletin Board (ROBB) which is available 24 hours a day. ROBB is used to track each company's pending applications, other requests, and any cases completed

within the last 30 days. In addition to providing the date of DTC's final action, ROBB also identifies the officer assigned to the case, where the case was sent in the interagency review process, the dates of those responses, the date of the licensing officer's final action, and what the final action taken was (e.g., approved, denied, etc.).

We appreciate your using our electronic services and understanding our need to more appropriately use our personnel to better serve the entire export community. ♦

**If you need more information... contact Jim DePalma, System Manager of the Office of Defense Trade Controls for guidance on ROBB.**



## DTAG Developments

The Defense Trade Advisory Group (DTAG) convened its semi-annual plenary session on May 16, 1996 at the Department of State. Highlights from the session:

### Keynote Speaker:

Dr. Paul Kaminski, Under Secretary of Defense for Acquisition and Technology, suggested that increased defense cooperation can help resolve problems which have arisen in the post-Cold War period.

Countries face limited defense budgets and a growing number of regional conflicts requiring coalition interventions. Because decreased resources limit U.S. involvement in coalition actions, partnerships with other nations have become more important to achieve multilateral objectives. Advancing command and control interoperability and mutual logistics support has the added benefit of encouraging better economic cooperation.

Economic changes are especially apparent in the Partnership for Peace (PFP) nations. Since U.S. defense companies welcome additional sales opportunities for their products, the United States has strong economic incentives to strengthen (industry-to-government and industry-to-industry) ties with the PFP. There are also important political reasons for collaboration: military and industrial ties comprise strong security relations.

DOD has taken action to facilitate collaborative efforts. It has changed its requirements for unique military specifications. Second, it has reviewed its procurement policies to ensure that limited resources are used most effectively to advance the national interest. Lastly, DOD is working to remove bureaucratic barriers and streamline procedures on international defense cooperation. For example, a 1994 directive has shortened the review period for draft memoranda of understanding (MOUs) from 130 days to 30 days.

DOD's Armaments Cooperation Security Committee (ACSC) has identified new opportunities for cooperative. Three International Cooperative Opportunity Groups have been established since October 1994: the United States and its allies are developing lists of programs for cooperation in major weapons systems, S&T programs, and advanced concept technology demonstrations. In addition, the ACSC is examining how Defense Cooperation Armaments ODCA) resources in U.S. embassies can best be utilized in the Post-Cold War era.

The NATO Cooperative R&D Program ensures that all partner nations get involved at the outset of a development program. Under it contributions from our allies would match U.S. funds. In the FY'97 budget, the program was adjusted to place more emphasis on enhancing coalition operations, including ways to reduce friendly fire incidents.

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Dr. Kaminski concluded by discussing DOD's Defense Export Loan Guarantee Program. The new DOD program can issue up to \$15 billion of loan guarantees, would be supported entirely by users' fees, and would not duplicate FMS or commercial arms transfer procedures.

Various parts of DOD and other agencies are discussing how the program will be implemented. Regarding offsets, he prefers a commercial model, noting that teaming arrangements are set up all the time.

### **Working Group Reports: DTAG Officers**

DTAG Policy Working Group (PWG)-projects may include studies on facilitating international arms cooperation, the policy and regulatory aspects of consolidation of the defense industry, advanced aircraft sales, and U.S. arms transfer policy towards Southeast Asia and the Middle East. The Technical Working Group (TWG) is developing Terms of Reference for examining software source code, teaming arrangements, and provisos on licenses. The DTAG Secretariat is working towards establishing a DTAG Homepage on the Internet.

### **U.S. Arms Transfer Policy Issues**

Deputy Assistant for Export Controls Martha C. Harris discussed evolving U.S. arms transfer policy towards Central Europe (CE), the New Independent States (NIS), Latin America, and ASEAN. Political and economic changes in these countries have required the Administration to review USG export policies towards these regions. She noted that, over the last several years, the CE countries have made significant progress in meeting our standards on receiving U.S.-origin arms transfers. Second, the CE states have implemented democratic and market reforms. Last, CE countries have a good record overall on pursuing nonproliferation objectives, the Czech Republic, Hungary, Poland, Slovakia, and Romania having pro-

gressed enough to become members of the Wassenaar Arrangement. These reforms have led the United States to revise its arms transfer policy towards Central Europe. Since February 1994, there is no longer a presumption of denial for arms sales to all CE states except the former Yugoslav Republics, which are under a UN arms embargo. All proposed transfers of defense equipment and requests to incorporate U.S. technology into foreign-origin equipment are considered on a case-by-case basis.

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### **December 5, 1996 DTAG Plenary**

The Defense Trade Advisory Group held a plenary session at the Department of State, Washington, DC. William Schneider, Jr., the DTAG chairman, opened the meeting.

Ms. Ramona Hazera, the Vice Chairman, summarized several DTAG activities for the year and commented that 1997 would be a year of change for the DTAG, not only in its structure, but increase in activity. Important issues which the DTAG will address include the clarification of certain regulations regarding the export of defense services in support of FMS programs; review of technology transfer in terms of protecting US intellectual property rights; continuing review of reporting requirements related to agents and consultants fees; and monitoring regional policy (e.g. Latin America and China); and review of the regulatory impacts on defense industry acquisitions and mergers.

### **Regulatory Working Group**

It was noted that the Regulatory Working Group was working in several areas. Off-shore Procurement, part 130 of the ITAR, recommendations to the US Customs Service on the Automated Export System, and the requirement to obtain Technical Assistance Agreements for services provided under the Foreign Military Sales (FMS) program.

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## Technical Working Group

This Working Group has been deactivated and its members have been reassigned because it has been concluded that the group's technical expertise is best suited for support of policy or complex regulatory issues, such as the work that has been accomplished under the Commercial Communications Satellite Task Force.

## Policy Working Group

The group's efforts involved examination of Defense Export Loan Guarantees, a Foreign Availability Data Base and International Arms Cooperation.

## Guest Speakers

Assistant Secretary of the Air Force for Acquisition Arthur L. Money addressed the role of international sales in the USAF acquisition strategy. He said it is important to export more from the US because most military operations today tend to be multi-national and it is critical to have greater interoperability. Exports are also critical to allowing certain lines to remain open so that USAF might tap into them for replacements. Additionally, exports make it less costly to procure equipment, which is very important given the continuing decrease in procurement funding. He concluded that, as coalition warfare is the future of warfare, armament cooperation is critical.

Navy Assistant Secretary John W. Douglass addressed acquisition reform. He noted that, today, the Navy has the lowest number of ships since 1938. Based on these dwindling numbers, and increasing demands being placed on the Navy for peacekeeping and other operations, the acquisition strategy must include exports as a means of keeping remaining US shipyards alive. The Navy cannot depend on foreign yards for this critical area. Tapping into the commercial industry R&D, particularly for Command and Control and electronics, is providing the necessary leaps in technology.

Thomas Murtagh, Office of the Under Secretary of Defense for International and Commercial Programs, gave a briefing on the Defense Export Loan Guarantee (DELG) program. Under implementing legislation, the DELG is "owned" by Department of State but administered by the Department of Defense, and may apply to FMS and direct commercial sales. The program is built on the Export-Import Bank model. Only a limited number of countries are eligible. Adding new countries beyond those currently on the list would require new legislation.

Defense services are eligible for loan guarantees although ExIm could not fund services in the US.

There is no final DELG commitment to guarantee loans before the USG makes a decision, through an export license or other authorization, on an actual sale. Furthermore, ExIm also requires a signed contract, not merely a letter of intent.

Department of State participants in the course of the day included Under Secretary of State for Arms Control and International Security Affairs Lynn Davis, Thomas E. McNamara, Assistant Secretary for Political Military Affairs, Dr. Martha Caldwell Harris, PM Deputy Assistant Secretary for Export Controls, and Michael C. Lemmon, PM Deputy Assistant Secretary for Regional Security. ♦



## Personnel Updates

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### Out...

**Dan Cook**, a licensing officer departed DTC for new responsibilities at IBM.

**Allen Suchinsky**, Branch Chief of Electronics and Combat Systems retired from the State Department in August 1996.

Completing his tour of duty, Defense Trade Analyst, **LDCR Glenn E. Smith** retired from the Navy. He has assumed new responsibilities in private industry.

**Wendy Payne**, Compliance Operations Specialist responsible for registration, departed DTC for new responsibilities in the Bureau of Administration.

**Nora (Terry) Hunter**, licensing officer retired from the State Department in December 1996 after completing 28 years of government service.

### In...

**Monique Houck** joined DTC in July 1996 as a Munitions Control Specialist. Monique has a Political Science degree from Adelphi University in New York, and a Juris Doctor degree from American University, Washington College of Law in Washington, D.C.

**Patricia R. Scott** is a new Munitions Control Specialist with DTC. Pat comes to DTC from an assignment in the Nuclear Risk Reduction Center where she assisted in multilateral and bilateral communications in support of several treaties.

**Tammy Buttner** joined DTC as a Compliance Specialist. Tammy's previous assignment was in the Office of the Legal Advisor.

**Ruth Jackson** assumed new responsibilities as a Munitions Control Specialist. She previously held a Compliance Specialist position in DTC's Compliance Enforcement Branch.

## Question and Answer Forum

*Now You Know ....*

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The office of Defense Trade Controls will answer selected questions regarding export policies or procedures in the *Defense Trade News and Export Policy Bulletin*. Please make your question(s) as concise and focussed as possible. Simply print or type your question(s) in the space below and mail it to DTC (Attn: Question and Answer Forum) or fax it to (703) 875-5663. We look forward to hearing from you.



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Question(s):

1. \_\_\_\_\_

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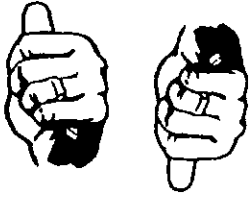
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**Question and Answer Forum**  
PM/DTC, SA-6, Room 200  
Office of Defense Trade Controls  
Bureau of Political-Military Affairs  
U.S. Department of State  
Washington, D.C. 20522-0602



## Feedback

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Please circle or fill in your responses, add any comments, and mail to DTC (Attn: DTN Feedback) or fax to (703) 875-6647.

1. Your organization is a...

1. Manufacturer
2. Exporter
3. Consulting or law firm
4. Freight Forwarder
5. U.S. Embassy or Consulate
6. U.S. Customs element
7. U.S. DOD/Military element
8. Other U.S. Government element
9. Foreign government element
10. Other (please explain in Comments)

2. How many people will read this issue?

1. 1 person
2. 2-5 people
3. 6-10 people
4. 11+ people

3-15. Please rate the **usefulness** of each article on a scale of 1 (worst) to 5 (best). Rate as "0" any articles you did not read.

16-28. Rate **readability** (style and physical presentation) on a scale of 1 (worst) to 5 (best); rate as "0" articles you did not read.

29-31. Please circle the numbers of the **three** topics you would most like to see covered.

1. Defense trade policy
2. Non-defense trade policy
3. Country-specific trade issues
4. Trade legislation

5. Licensing procedures
6. Regulatory and legal issues
7. Licensing case studies
8. Compliance case studies
9. Other (please explain in Comments)

Comments:

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**We welcome lengthier comments, suggestions, and criticism.**



## Log onto ELLIE State's Electronic License Entry System

The State Department's Office of Defense Trade Controls (DTC) now offers on-line electronic license submission via *ELLIE*, the *EL*ectronic *L*icense *E*nter System. Since its inception in late 1993, ELLIE has processed over 2000 applications. Having successfully completed the pilot stage of the project, DTC has gradually increased the number of companies participating in the ELLIE program to over 300.

**ELLIE is a free service.** To use ELLIE, you must have access to DTC's Remote On-line Bulletin Board (*ROBB*). Access to ROBB and ELLIE requires a PC, a modem, and communications software, which your firm may already possess.

**To sign up for ELLIE, please mail this application to DTC (Attn: Computer Support Staff) or fax it to (703) 875-5663.**

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TO: Director, Computer Support Staff, Office of Defense Trade Controls  
FAX: (703) 875-5663

FROM: \_\_\_\_\_  
(Company Name)

We would like to sign up to submit license applications electronically via ELLIE.

We do/do not already use ROBB.

Our firm submits approximately \_\_\_\_\_ license applications to DTC per year.

DTC Registration Code \_\_\_\_\_

Address \_\_\_\_\_

City, State, ZIP \_\_\_\_\_

Point of Contact for ELLIE \_\_\_\_\_

Phone (     ) \_\_\_\_\_ Fax (     ) \_\_\_\_\_



## Sign Up for State Department Export Licensing Training

The State Department's Office of Defense Trade Controls (DTC) can design a seminar on export licensing policies and procedures with your specific needs in mind. We hold our seminars at our office in Arlington, Virginia, minutes from the District of Columbia.

We normally hold four half-day seminars per year, combining participants from different firms, with attendance limited to 30. We encourage small companies to apply. **To sign up, please mail this application to DTC (Attn: Training Seminars Coordinator) or fax it to (703) 875-6647.**

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TO: Training Seminars Coordinator, Office of Defense Trade Controls  
FAX: (703) 875-6647

FROM: \_\_\_\_\_  
(Company Name)

We would like to send attendees to a seminar including training on these topics:

____ Completion of Applications	____ Registration Requirements
____ Country Licensing Policies	____ Congressional Requirements
____ Proscribed Country Requirements	____ Agreement Requirements
____ U.S. Customs EXODUS Program	____ Commodity Jurisdiction Requests
____ Processing of Requests	____ Licensing Foreign Nationals

Other subject areas we would like covered \_\_\_\_\_  
\_\_\_\_\_

Number wishing to attend: \_\_\_\_\_.

Primary U.S. Munitions List categories of defense articles, services, and/or technical data with which our firm deals: 1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_ 4. \_\_\_\_\_

Our attendees would/would not be interested in briefing DTC about our products and services.

DTC Registration Code \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, ZIP \_\_\_\_\_  
Point of Contact for Training \_\_\_\_\_  
Phone (     ) \_\_\_\_\_ Fax (     ) \_\_\_\_\_

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**Training Seminars**  
PM/DTC, SA-6, Room 200  
Office of Defense Trade Controls  
Bureau of Political-Military Affairs  
U.S. Department of State  
Washington, D.C. 20522-0602

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## Contacting the Office of Defense Trade Controls

### Postal Address

Office of Defense Trade Controls  
Bureau of Political-Military Affairs  
SA-6, Room 200  
U.S. Department of State  
Washington, D.C. 20522-0602

### Express Mail/Courier Delivery Address

Office of Defense Trade Controls  
Bureau of Political-Military Affairs  
SA-6, Room 200  
U.S. Department of State  
Washington, D.C. 20522-0602  
(Deliver to Main Department of State Bldg.  
2201 C Street, NW  
Use 21st Street "Joggers' Entrance")

### Fax Numbers

Director; Licensing Division;  
*Defense Trade News:* (703) 875-6647  
Compliance Division;  
Computer Support Staff: (703) 875-5663

### General Telephone Numbers

General Information: (703) 875-6644  
Office Director & Deputies: (703) 812-2567  
*Defense Trade News:* (703) 875-5671  
Licensing Division: (703) 875-6644,  
Press 3  
Registration/Compliance: (703) 875-6650,  
Press 4  
Commodity Jurisdiction: (703) 812-2576

### Status Inquiry Telephone Numbers

Case Status Inquiries: (703) 875-6652  
Congressional Case Status: (703) 875-6641  
Automated License  
Status System (ALISS): (703) 875-7374  
Remote On-Line  
Bulletin Board (ROBB): (703) 875-6650

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### Contacting the Deputy Assistant Secretary for Export Controls

Deputy Assistant Secretary for Export Controls  
Bureau of Political-Military Affairs  
PM, Room 7325A  
U.S. Department of State  
Washington, D.C. 20520-7325

### Contacting the Office of Arms Transfer and Export Control

Office of Arms Transfer  
and Export Control Policy  
Bureau of Political-Military Affairs  
PM/ ATEC, Room 2242  
U.S. Department of State  
Washington, D.C. 20520-2242

Telephone (202) 647-4231  
Fax (202) 647-4232

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### Ordering Forms and Regulations

To order license application forms, write the Office of Defense Trade Controls or fax (703) 875-6647. Please mark your message "**Attn: Forms.**" Specify the type and quantity of forms needed, and provide a phone number and point of contact along with your address. To order a copy of the International Traffic in Arms Regulations, call the Government Printing Office at (202) 783-3238 from 8:00 - 4:00 EST; cite stock number 069-001-000-58-1. Please note that DTC does not distribute the ITAR and GPO does not carry application forms.

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