



POLICY

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
2000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-2000

MAR 8 2004

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY  
FOR DEFENSE EXPORTS AND COOPERATION  
DIRECTOR, NAVY INTERNATIONAL PROGRAMS  
OFFICE  
DEPUTY UNDER SECRETARY OF THE AIR FORCE  
FOR INTERNATIONAL PROGRAMS

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

The attached guidelines are issued to provide guidance for Military Department use of the exemptions delegated to DoD in the ITAR. The guidelines:

- Define the circumstances which warrant certification
- Designate exemption authorizing and certifying officials
- Provide limits on the use of the certifications
- Standardize information requirements
- Establish tracking and record keeping requirements

Requests for exemptions that exceed the guidelines promulgated herein should be addressed to the Defense Technology Security Administration for review on a case by case basis. Authority for the service to certify such exemptions will be provided when such an approval remains within the authority granted DoD and the best interests of DoD are served. The Technology Protection System database modification to support certification input and tracking is scheduled for March 15, 2004.

Requests for information or clarification of these guidelines should be forwarded to Robert S. Kovac, Director of Licensing at [Robert.S.Kovac@osd.mil](mailto:Robert.S.Kovac@osd.mil).

Lisa Bronson  
Deputy Under Secretary of Defense,  
Technology Security Policy and  
Counterproliferation

Attachment:  
As stated



**DOD GUIDELINES FOR CERTIFYING USE OF ITAR EXEMPTIONS**

**PURPOSE:** To provide guidance to the Military Departments for certifying US industry use of exemptions to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120-130.

**BACKGROUND:**

a. The International Traffic in Arms Regulations (ITAR) contain numerous exemptions of general applicability. Most exemptions cited in the ITAR have defined conditions and limitations. No license or other US Government (USG) approval is required as long as the exporter complies with the defined conditions and limitations. Use of exemptions authorized by 22 CFR 125.4(b)(1), 125.4(c), 125.5, 126.4(a) and 126.4(c) may be certified pursuant to an official written request, directive or approval from the US Department of Defense. In accordance with the Defense Technology Security Initiative (DTSI), the DoD should make effective use of exemptions to facilitate exports by US persons when those exports further USG interests in defense cooperation with allied and friendly nations.

b. The Military Departments are the DoD agencies primarily responsible for managing and implementing international defense cooperation programs. The guidelines contained herein establish procedures to ensure the Military Departments effectively certify use of authorized ITAR exemptions by US industry in support of DoD international programs as authorized by laws and regulations.

**GUIDELINES:**

a. Authorized Exemption Officials (AEO) are specifically designated general officers or Senior Executive Service personnel in the Military Departments who are authorized to certify use of ITAR exemptions. AEO are responsible for overall management and oversight of the exemption certification process. AEO may delegate authority to certify use of exemptions to the specifically designated Exemption Certifying Official (ECO). AEO will promulgate procedures for implementing these guidelines within their respective departments. The following AEO and ECO are designated:

Army:

AEO: Deputy Assistant Secretary of the Army for Defense Exports and Cooperation (SAAL-ZN)

ECO: Director for Policy for Security Cooperation, Resources, and Exports (SAAL-NP), Office of the Deputy Assistant Secretary of the Army for Defense Exports and Cooperation

Navy:

AEO: Director, Technology Security & Cooperative Programs, Navy International Programs Office (IPO-01)

ECO: Director, Export License Division, Navy International Programs Office (IPO-01A)

Air Force:

AEO: Director of Policy, Office of the Deputy Under Secretary of the Air Force, International Affairs (SAF/IAP)

ECO: Chief, Foreign Disclosure and Technology Transfer Division, Policy Directorate, Office of the Deputy Under Secretary of the Air Force, International Affairs (SAF/IAPD)

b. AEO and ECO must have a working knowledge of DoD exemption certification guidelines and the following basic ITAR definitions and requirements:

1. Definitions of defense article, defense service and technical data.
2. Definitions of foreign person, temporary import, and export.
3. Definitions of Significant Military Equipment (SME) and Major Defense Equipment (MDE).
4. Registration requirements for manufacturers and exporters.
5. Congressional notification requirements.
6. Proposals to foreign persons relating to SME.
7. Non-transfer and use assurances.
8. Prohibited/embargoed/sanctioned/denied persons/destinations/entities.
9. Conditions and limitations contained in 22 CFR 125.4 (b)(1), 125.4(c), 125.5, 126.4(a) and 126.4(c).

c. AEO is responsible for implementing an oversight program to ensure compliance with these guidelines and ITAR requirements within the department.

d. AEO and ECO may certify use of exemptions in accordance with the conditions and limitations contained in 22 CFR 125.4(b)(1), 125.4(c), 125.5, 126.4(a) and 126.4(c). Use of exemptions may be certified when the services of US persons (e.g., US industry) are required pursuant to the following USG activities:

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

e. The 125.4(b)(1) exemption may be certified for a US person to export classified and unclassified technical data to permit participation only in planning discussions/negotiations with foreign governments and international organizations pursuant to the activities listed in d.1. and d.2. of the preceding paragraph. The certification of the US person to permit exports to foreign persons under contract to a foreign government or international organization can only be authorized when the foreign contractor is accompanied by the foreign government or international organization and specifically requested and approved. Certifications must incorporate the limitations imposed by the DoD lead agency (Defense Security Cooperation Agency (DSCA) or the Under Secretary of Defense for Acquisition, Technology and Logistics (AT&L) as applicable). Upon Letter of Offer and Acceptance (LOA), contract or agreement implementation, other applicable exemptions must be used. This certification is authorized only when the export is under the direct control or supervision of the Military Department. For the purpose of this paragraph, the phrase “direct control and supervision” means that either: 1) the Department physically supervises the export, or 2) the Department has reviewed and approved the actual technical data to be exported.

f. Notwithstanding paragraph e. above, use of the 125.4(b)(1) exemption may otherwise be certified in limited circumstances for a US person to export classified and unclassified technical data as a part of a government-led team only when all of the following conditions are met:

1. The exporter is under contract to the Military Department for the technical data required.
2. The export supports one of the activities listed in subparagraph d.3.-d.5.

above.

3. The export is for a definite event and time constraints preclude amending the contract or obtaining the appropriate export license.

g. When deemed in the USG interest, AEO and ECO may certify use of the 125.4(c) exemption for a US person to solicit subcontract proposals from foreign firms for the purpose of developing responses to Military Department acquisition authority requests for quote or bid proposals.

h. Exemptions for exports of classified and unclassified technical data may be certified in conjunction with classified and unclassified plant visits in accordance with the requirements of 22 CFR 125.5.

i. AEO and ECO may certify the use of the 126.4(a) exemption for temporary import or temporary export of classified and unclassified defense articles, services and technical data for official use by the Military Department, or pursuant to a USG sale, loan, lease, grant or international cooperative armaments research, development or acquisition agreement administered by the Military Department.

j. 126.4(c) exemptions may be certified for temporary imports, or temporary or permanent exports of classified or unclassified defense articles, services and technical data for end use by the Military Department in a foreign country pursuant to a contract with, or pursuant to the written direction of, that Department.

k. Exemptions may only be certified for use by eligible US persons registered with the US Department of State, Director of Defense Trade Controls. The Military Department may only certify the use of exemptions in connection with its own contracts. Use of exemptions will not be certified solely for the benefit of the exporter, when exports require Congressional notification, for offshore procurement/production of defense articles, or for exports to prohibited/embargoed/sanctioned/denied persons, destinations or entities. US persons must comply with ITAR requirements for use of exemptions, including applicable criteria and limitations. DoD certifications do not supersede other ITAR requirements for use of exemptions.

l. AEO and ECO must ensure that Military Department designated foreign disclosure officials authorize disclosure of classified and controlled unclassified military information in accordance with NDP-1 before the AEO and ECO certify the use of exemptions.

m. AEO and ECO must ensure required non-transfer and use assurances (DSP-83) are obtained for exports of SME and classified items unless the assurances are stipulated

in a formal written agreement (e.g., LOA, MOU, contract) between the USG and the foreign recipient government.

n. Certification of the use of an exemption does not authorize the AEO and ECO to relieve the exporter of the obligation to comply with the National Industrial Security Program Operating Manual (NISPOM) for the export of classified hardware and/or technical data.

o. Requests for ITAR exemption certifications will be sponsored by organizations within the Military Departments. Sponsoring military organizations will forward written requests to their service AEO or ECO including the following information:

1. Identification of the exporter (the person or company that will claim the exemption).
2. Reason for the export (e.g., cite LOA number, MOU title, or contract number, if applicable), benefit to the US, urgency of request (critical program milestones/decision process) if applicable, end use, and relationship of US person to any related export license/agreement, if applicable.
3. Explanation of the details of the services to be provided by the company in support of the activities listed in paragraph d. above.
4. Complete identification of the end users of the export.
5. Identification of the hardware and/or technical data to be exported. As applicable, the request must provide a copy of all briefings, documents or information to be disclosed by the company. A detailed description of the subject matter (including the NDP-1 category and highest classification of the information involved) may be forwarded if it is impractical to attach the actual material. A statement signed by the servicing foreign disclosure office that the material is authorized for disclosure will suffice.

p. Exemptions must be certified in writing by the respective Military Department AEO or ECO. Copies of the exemption certification will be provided concurrently to the designated export control official of the exporter for which use of the exemption is certified and to the Defense Technology Security Administration, Licensing Directorate. Certifications will include the following elements:

1. Exemption Tracking Number.
2. ITAR exemption number.
3. Name of the exporter for whom use of the exemption is certified.

4. The reason/purpose for certifying use of the exemption (cite LOA number, MOU title, or contract number if applicable), benefit to the USG.
5. Description of the specific defense article, service or technical data exempted.
6. Conditions and limitations as necessary to establish a clearly defined scope for defense articles, services and technical data authorized for export and any handling, control or accountability measures deemed necessary.
7. The foreign end users.
8. Expiration date (Not more than 1 year from date of issue).

q. Denials of requests for certification must be provided concurrently to the sponsoring organizations and to the US Department of State, Director of Defense Trade Controls. Certification denials must include the following elements:

1. Exemption Tracking Number.
2. ITAR exemption number requested.
3. Name of the requested exporter.
4. The requested reason/purpose for use of the exemption (cite LOA number, MOU title, or contract number if applicable), and benefit to the USG.
5. Description of the specific defense article, service or technical data exempted.
6. The reason for denial.
7. The requested end users.
8. Referral to the appropriate licensing venue, if applicable.

r. AEO and ECO will maintain central records of exemption certifications/denials indicating for whom exemptions were certified/denied (company names); what was requested/exempted (specific defense articles, services and technical data); applicable ITAR exemption; date of issue and expiration date (if applicable); and name, office symbol and phone number of certifying official. A record of the exemption must be also entered by the AEO or ECO into the Technology Protection System (TPS) or successor electronic database prior to notification. The Defense Technology Security Administration will annually forward a consolidated report to the Department of State, Managing Director for Defense Trade.

**EXPIRATION:** These guidelines will be reviewed and revalidated (or revised as appropriate) not later than December 31, 2006.

**OFFICE OF PRIMARY RESPONSIBILITY:** The Defense Technology Security Administration, Licensing Directorate, is the office of primary responsibility for these guidelines.