



AGREEMENTS OVERVIEW

DDTC In-House Seminar

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References:

- 1) Arms Export Control Act (AECA)
- 2) International Traffic in Arms Regulations (ITAR)
- 3) Guidelines for Preparing Electronic Agreements (Rev 4.2)



PURPOSE

Provide an overview of:

- 1) Technical Assistance Agreements (TAAs)
- 2) Manufacturing License Agreements (MLAs)
- 3) The application process



TOPICS



- Understanding Agreements
- Agreements Overview
- Application Preparation
- Electronic Submission
- Amendments/Re-baselines
- Agreement Maintenance
- Dual/Third-Country National Overview
- Congressional Notification Thresholds
- IFO Licenses
- Export Control Reform



THE MILLION-DOLLAR QUESTION



- When is an agreement necessary?
 - Answer:
 1. When defense services are involved (TAA)
 - or
 2. For foreign manufacturing of defense articles that involves the export of tech data, defense articles, or defense services (MLA)



AGREEMENTS OVERVIEW

DSP LICENSES VS. AGREEMENTS



- **License:** "...permits the export or temporary import of a specific defense article or defense service..." (ITAR 120.20)
 - Involves an exchange of hardware or tech data between two parties
 - Defense service via license only "in exceptional cases" (ITAR 124.1(a))
- **Agreement:** Generally involves multiple transactions of hardware and/or tech data between two or more parties involving performance of defense services
 - **TAA** – "An agreement for the performance of a defense service(s) or the disclosure of technical data...assembly of defense articles is included under this section, provided production rights or manufacturing know-how are not conveyed" (ITAR 120.22)
 - **MLA** – "An agreement whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves...[tech data, defense articles, or defense services]" (ITAR 120.21)



AGREEMENTS OVERVIEW

DSP Licenses vs. Agreements



Defense Service (ITAR 120.9)

- The furnishing of assistance (including training) to foreign persons in the...
 - Design
 - Development
 - Engineering
 - Modification
 - Destruction
 - Manufacture
 - Production
 - Assembly
 - Operation
 - Processing
 - Testing
 - Repair
 - Maintenance
 - Demilitarization
 - Use
- ...of defense articles
- The furnishing to foreign persons of any technical data, as defined by ITAR 120.10 (exception: tech data licenses).
- Military training of foreign units and forces, regular and irregular



AGREEMENTS OVERVIEW

The Major Players



Who are the parties?

- Two major categories
 - U.S. Person (ITAR 120.15)
 - Foreign Person (ITAR 120.16)

Agreements

U.S. Applicant
U.S. Signatories
Foreign Licensees
Sublicensees
End Users





AGREEMENT PREPARATION



- Application must meet ITAR requirements:
 - 124.7 for the agreement
 - 124.12 for the transmittal letter
- To ensure timely review:
 - All supporting documentation must be uploaded with the agreement vehicle
 - Agreement vehicle must be accurate
 - Transmittal letter, agreement, and DSP-5 must clearly identify the intent and purpose



AGREEMENT PREPARATION



- Use the “Guidelines for Preparing Electronic Agreements” (*ver 4.4*) (<http://www.pmdtcc.state.gov/licensing/agreement.html>)
 - Contains DDTC policy and procedures for implementing the Arms Export Control Act (AECA) and the ITAR for Agreements
 - Provides standard formats for different types of agreements
- Change Notifications are posted on webpage
- AECA and ITAR take precedence over Guidelines



ELECTRONIC APPLICATION PACKAGE

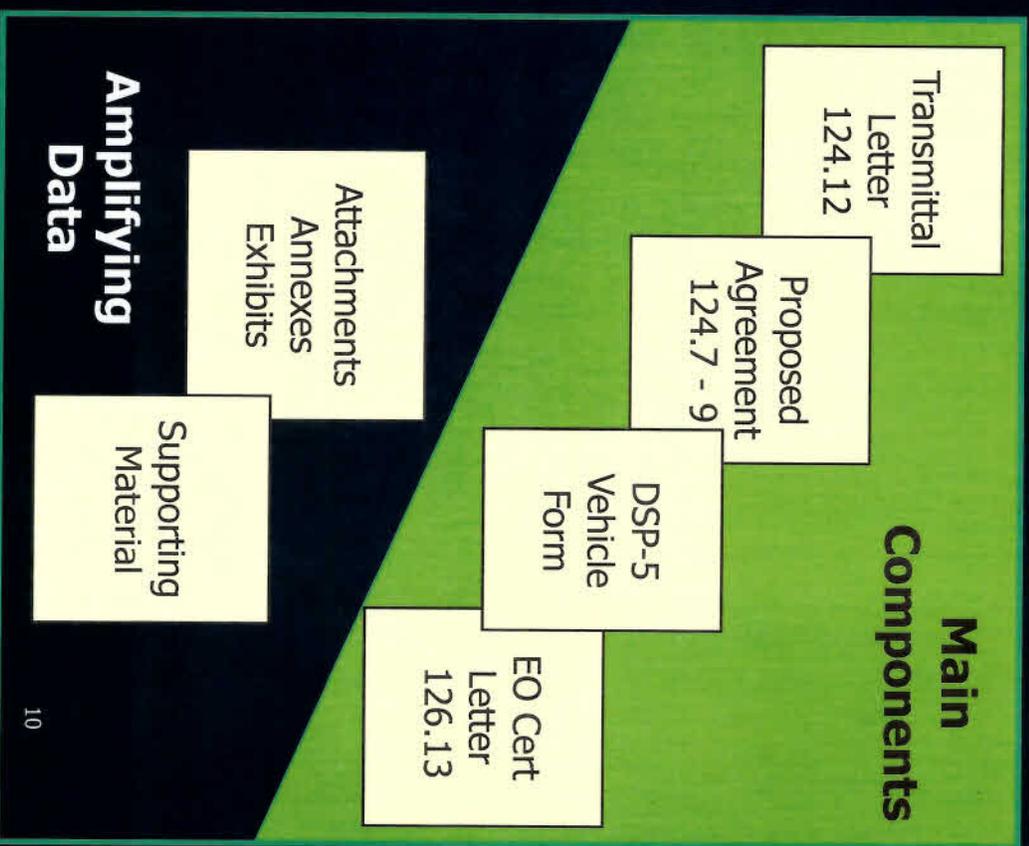


- **Four Main Components**

- Transmittal Letter
- Proposed Agreement
- DSP-5 Vehicle Form
- Empowered Official Certification*
(*If not certified in Block 22 (a) or (c) of DSP-5)

- **Amplifying Data**

- Attachments, Annexes or Exhibits
- Tech data, hardware descriptions
- SOWs, product brochures
- Etc.
- Supporting Material
- Part 130 Statement (if applicable)
- Signed Contract (Congressional)
- Etc.





TAA / MLA APPLICATION PACKAGE



- **Transmittal Letter**

- (a)(1) Registration number
 - (a)(2) Licensee and scope of agreement
 - (a)(3) U.S. Government Contract involved
 - (a)(4) Military security classification (U,C,S,TS)
 - (a)(5) U.S. patent and trademark info
 - (a)(6) Estimated value of the agreement (in table format)
 - (a)(7) Foreign Military Sales information
 - (a)(8) Description of classified material and contact information for the classifying authority
 - (a)(9) Cognizant U.S. security office info
 - (a)(10) ***DELETED***
 - (b)(1-4) Required statements, listed verbatim
- Must include additional information found in DDTC Guidelines, Section 5.1.d

Transmittal
Letter
124.12

Guidelines: see Section 5.1 for more information and see Appendix A, Tab 2 for a sample



TAA / MLA APPLICATION PACKAGE



- **Proposed Agreement**
 - U.S. and foreign signatories
 - Whereas clauses
 - 124.7(1) – Defense articles
 - 124.7(2) – Technical data and defense services
 - 124.7(3) – Expiration date
 - 124.7(4)
 - Transfer territory and end user
 - Sub-licenseses
 - DN/TCN requests
 - Foreign person employment by U.S. signatories
 - Contractor clause
 - 124.8 (124.9 for MLAs) – **Required statements, verbatim**
 - Signature blocks

Draft
Agreement
124.7 - 9

Guidelines: see Section 5.2 for more information and see Appendix A, Tab 3 for a sample



TAA / MLA APPLICATION PACKAGE



- **Amplifying Data**
 - Attachments, Annexes or Exhibits (optional but often helpful)
 - Tech data, hardware descriptions
 - SOWs
 - Product brochures
 - RFPs, contract/awards, etc.
 - Supporting Material (required in certain cases)
 - Part 130 Statement (if fees/commissions are paid)
 - Executive Summary (Congressional)
 - Signed Contract (Congressional)
- All attachments, annexes, or exhibits should be clearly labeled and referenced in the text of the agreement

Attachments,
Annexes,
Supporting
Material



ELECTRONIC SUBMISSION OF AGREEMENTS



- Utilize the D-Trade 2 System
- DSP-5
 - Transmission vehicle for the proposal throughout the process
 - Issuance of the DSP-5 license is simply the mechanism for providing DDTC's position
 - It **does NOT** serve as the authorization to export hardware, tech. data, or services – these are tied to the execution of the agreement
 - **Cannot be altered once submitted**
- Upon submission will receive a DSP-5 number (e.g. 050412345)
- DDTC will assign an agreement number (e.g. TA-1234-15)
- *Guidelines: see Appendix D for step-by-step instructions for filling out the DSP-5*



DSP-5 KEY BLOCKS

(Appendix D of Guidelines)



- **Block 11** must identify primary USML tech data category – e.g., VIII(i)
- **Block 12** must declare the value (or change in value for amendments)
- **Block 14** must contain foreign licensees, end users, sales/marketing territories, and transfer territories
- **Block 16** must contain sub-licensees
- **Block 18** must identify dual nationals and third-country nationals requested pursuant to option 2 (DDTC vetting)
- **Block 21** must contain all U.S. signatories



TAA / MLA APPLICATION PACKAGE



- **Empowered Official Certification**
 - “Empowered Official” defined by ITAR 120.25
 - (a) or (c) in block 22 of the DSP-5 vehicle = no cert letter required
 - (b), (d), or (e) in block 22 of the DSP-5 vehicle = cert letter required
 - Required information for certification letter is found in ITAR 126.13
 - Is applicant or senior official the subject of a criminal complaint?
 - Have any of the parties been convicted of a ITAR 120.27 statute?
 - Certifies U.S. citizenship of person signing application

Empowered
Official
Certification
Letter
126.13

Guidelines: see Section 4 for more information and see Appendix A, Tab 1 for a sample



COMMON AGREEMENT ERRORS

(See Section 2.8 of Guidelines)



- Incorrect Block 12 value
- Proper parties identified in Block 14, 16, and 21 (legal names, no abbreviations, must match agreement document)
- Failure to list all dual nationals/third-country nationals requested pursuant to §124.8(5) in Block 18
- Failure to ID the hardware categories associated with the agreement tech data category the Transmittal Letter (required even if no hardware is being exported)
- Incorrect Part 130 statement
- Failure to delete or move to paragraph (x) items that are no longer USML after ECR
- Insufficient or unclear description of overall export activity



MAJOR AMENDMENTS



- Changes to DDTC approved agreements must be made via an amendment
- Major amendments always require DDTC approval
- Typical major amendments
 - Addition of new hardware or value
 - Expansion of Scope
 - Transfer of additional technical data or defense services
 - New End Users
 - Add foreign licensees or sub-licensees
 - Add Dual/Third Country Nationals
- Major amendments often require additional staffing
- *Guidelines: see Section 6 for additional information*



MINOR AMENDMENTS



- Minor amendments are changes **NOT** requiring DDTC approval
 - Alteration of Delivery and Performance Schedules
 - Minor Administrative Changes:
 - Address Changes
 - Typo Correction (NOT affecting scope)
 - Party removal prior to execution
 - Still requires execution of conformed agreement by all parties
- Upload minor amendment(s) to most recent DSP-5 vehicle within 30 days
- Guidelines: See Section 6.3 for a list of changes that can be made via minor amendment



RE-BASELINES



- Paper agreements that require a major amendment must be re-baselined to convert to the electronic format
- Once electronic, no further re-baselines can be requested
- Why Re-baseline? Same reasons as major amendments
 - Addition of new hardware or value
 - Expansion of Scope
 - Transfer of additional technical data or defense services
 - New End Users
 - Add foreign licensees or sub-licensees
 - Add Dual/Third Country Nationals
- Requested scope changes can be made in the re-baseline
- All re-baselines are treated as new agreements, to include staffing requirements
- Guidelines: See Section 9 for more information



AMENDMENTS/RE-BASELINES SUBMISSION



- Amendments and re-baselines use same requirements as new agreements
- Transmittal Letter (see Appendix A, Tab 6 of Guidelines)
 - Address all ITAR 124.12(a) information
 - Note item as **CHANGE** or **NO CHANGE**
 - **Changes should be in Bold**
 - Include all ITAR 124.12(b) clauses
 - Include Prior Approval Summary
 - For MLAs, include summary table of sales reports
- Assigned a new DSP-5 number (e.g. 050412345) as well as agreement/amendment number (e.g. TA-1234-12A)
- The re-baseline must be a conformed agreement (see Appendix A, Tab 6 of Guidelines)
- Amendment provisos
 - All previous provisos rolled forward with possible modifications
 - New or modified provisos will be annotated as added per specific amendment²¹



AGREEMENT MAINTENANCE



- DSP-83s for SME or classified before export of tech data/defense service ITAR 124.10)
- Submit signed agreement within 30 days (ITAR 124.4)
- Termination/Expiration within 30 days (ITAR 124.6)
- Decision to not conclude within 60 days (ITAR 124.5)
- Status of unsigned agreements annually (ITAR 124.4)
- Sales Reports for MLAs annually (ITAR 124.9)
- Guidelines: See Section 16 for more information



DN/TCN OVERVIEW

(Section 3.5 of Guidelines)



- **Dual National (DN):** An individual who holds nationality from the country of their employer, who is a foreign licensee (or sub-licensee) to the agreement, and also holds nationality from one or more additional countries
- **Third-Country National (TCN):** An individual who holds nationality from a country other than the country of their employer who is a foreign licensee (or sub-licensee) to the agreement
- When determining nationality, the Department of State **does** consider the country of origin or birth, in addition to citizenship
- Export of defense articles or services to a foreign person, inside or outside the U.S., is adjudicated similarly to an export to that foreign country
- However, approval of a DN/TCN only authorizes transfer to that employee; it does not authorize export to the country from which the employee derives



DN/TCN VETTING -- BIG PICTURE



- DN/TCN vetting options
 - Option 1: Foreign Vetting
 - Option 2: DDTC Vetting
 - Option 3: General Correspondence for a specific individual when the foreign party has not been able to determine the risk of diversion using option 1
- Applicant is responsible for coordinating with the foreign licensees which option will be utilized and ensuring the appropriate language is used
- Details of DN/TCN process will be provided separately



LICENSES IN FURTHERANCE OF (IFO) AN AGREEMENT

(Section 15 of Guidelines)



- Hardware on license must be identified in the approved agreement
- License value must not exceed hardware values in 124.12(a)(6) of the transmittal letter
- License submitted by US party to the agreement
- End user on license must be a foreign licensee or end user in the agreement
- Letter of explanation required
- DSP-83 required for SME
- Payoff: the IFO license request will normally not require staffing



ECR AND AGREEMENTS

(Section 20 of Guidelines)



- Licensing of EAR items via paragraph (x) – both hardware and technology
- Agreement values do not include para (x) values
- For legacy agreements, ECR changes require a minor amendment
- Transition period
 - If no items transitioning to CCL, agreement is valid until expiration
 - If some items transitioning to CCL, three-year transition period to allow for amendment
 - If all items transitioning to CCL, agreement is invalid after three years



CONGRESSIONAL NOTIFICATION THRESHOLDS



22 CFR 123.15

- NATO +5 (Japan, Australia, New Zealand, South Korea, Israel):
 - \$25 million Major Defense Equipment (MDE) (22 CFR 120.8)
 - \$100 million: any defense articles, technical data and defense services
- All other countries:
 - \$14 million MDE
 - \$50 million: any defense articles, technical data and defense services



CONGRESSIONAL NOTIFICATION THRESHOLDS



22 CFR 123.15 (Con't):

- USML Category I (a-e) Firearms - \$1 million
- Commercial communication satellites launched from Russian Federation States, Ukraine, and Kazakhstan [AECA 36(c)(2)(B)]

22 CFR 124.11

- SME Manufactured abroad; regardless of value



CONGRESSIONAL NOTIFICATION PROCESS



1. Initial Staffing
 - DoD, DRL, PM/RSAT, Country Desk
 - Will staff without signed contract
2. Draft Certification Package for Congressional Pre-Decisional Concurrent Review
3. Interagency Review – 5 working days to reply
 - Internal State Department
 - Must have SIGNED contract to proceed

Note: The first two steps of the CN process are done simultaneously



CONGRESSIONAL NOTIFICATION PROCESS



4. Tier Review conducted with Hill staffers
- **First Clock Starts:**
 - Answer Questions from Congressional Committees

Tier	Days	Description
I	20	NATO Members +5 (Japan, Australia, New Zealand, South Korea, Israel)
II	30	All other countries, excluding Tier III scenarios
III	40	Special Considerations (e.g. Middle East countries)



CONGRESSIONAL NOTIFICATION PROCESS



5. Congress presented formal notification and Second Clock Starts:
 - 15 days for NATO+5
 - 30 days for rest of the world
6. Publication in the Federal Register



HELPFUL LINKS



- Getting Started with Defense Trade:
http://www.pmdtcc.state.gov/documents/ddtc_getting_started.pdf
- Defense Trade FAQs:
<http://www.pmdtcc.state.gov/faqs/index.html>
- License Review Checklists:
http://www.pmdtcc.state.gov/licensing/documents/License_Review_Ch_ecklists.pdf
- DDTC Staffing Acronyms:
<http://www.pmdtcc.state.gov/documents/DDTC%20Acronyms%208-22-2011.pdf>
- Dtrade Data Entry Tips:
http://www.pmdtcc.state.gov/DTRADE/documents/Guidelines_CompletingDSPForms.pdf



Questions?